BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

In the Matter of the Legalization of a Portion of Price Road, near Rainier, Oregon

ORDER NO. 77-2020

WHEREAS, on July 15, 2020, the Board of County Commissioners (Board) initiated proceedings to legalize a portion of Price Road, near Rainier, Oregon, in accordance with ORS 368.201 to 368.221; and

WHEREAS, a public hearing on the legalization was scheduled for August 26, 2020, and pursuant to ORS 368.206(c), notice of the hearing was provided by service to owners of abutting land and by posting on July 27, 2020; and

WHEREAS, the Columbia County Roadmaster has filed a written report with the Board recommending the legalization of a portion of Price Road on the basis that: (1) through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a portion of Price Road (ORS 368.201(1)); and (2) a portion of Price Road as traveled and used for 10 years or more does not conform to the location of Price Road as described in the county records (ORS 368.201(3)); and

WHEREAS, the Roadmaster's report is attached hereto as Attachment A and incorporated herein by this reference; and

WHEREAS, the Roadmaster's report also recommends that the portion of Price Road proposed for legalization be named Price Road, as it has been commonly referred to for decades, and the portion of Price Road that was accepted in 1925 but never built, be renamed West Price Road; and

WHEREAS; the portion of Price Road proposed for legalization has been surveyed as required by ORS 368.206(1)(a), and the preliminary survey and legal description are attached hereto as Attachment B and are incorporated herein by this reference; and

WHEREAS, the Board held a hearing on August 26, 2020, to determine whether legalization of the road would be in the public interest; and

WHEREAS, the Board heard testimony from abutting land owner Carol Kelley, who spoke in favor of the legalization on the basis that residents have treated the road as a public road and do not want to be responsible for maintenance if the road were to be private; and

WHEREAS, the Board also heard testimony from nearby resident Don Campbell who objected to the legalization because it would take away property from abutting land owner Bob Krause; and

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WHEREAS, no claims pursuant to ORS 368.211 for compensation for structures encroaching on the portions of the road under consideration were filed with the Board for the close of the hearing; and

WHEREAS, no other evidence was filed controverting any matter presented to the Board or alleging any new matter relevant to the proceeding;

NOW, THEREFORE, THE BOARD HEREBY FINDS, as follows:

- 1. The above recitals are adopted as findings in support of this decision.
- 2. The findings and conclusions in the Roadmaster's Report, attached as Attachment A, are adopted to the extent they are consistent with the Board's decision.
- 3. The Board further finds that legalization of the portion of Price Road, as shown in Attachment B, is in the public interest because the road has been in existence for decades, and abutting property owners depend on the road for access. Without legalization, many of the abutting properties would lack definitive legal access to their property. Moreover, the property owners would be responsible for maintenance of the road. The Board heard testimony that abutting property owners are in favor of legalization and do not want to be responsible for maintaining the road. The Board finds this testimony compelling.

The Board also heard testimony in opposition to the legalization on the basis that the County would be taking property for a road. The Board disagrees. The road legalization process in ORS 368.201 et seq. provides a mechanism to legalize an existing road. The Board finds that the portion of Price Road at issue meets two of the criteria for legalization: (1) through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a portion of Price Road (ORS 368.201(1)); and (2) a portion of Price Road as traveled and used for 10 years or more does not conform to the location of Price Road as described in the county records (ORS 368.201(3)). Following the proceeding for legalization in accordance with ORS 368.201 et seq., the Board finds that based on the evidence in the record, legalization of the Price Road as described herein is in the public interest.

4. The Board also finds that naming the portion of Price Road, which is described and depicted in Attachment B, "Price Road" is consistent with the Columbia County Rural Addressing Ordinance (Ordinance No. 81-6, as amended by Ordinance No. 2015-1), which provides that public ways shall be named with the name in common usage by the residents whenever possible. Moreover, renaming the accepted but undeveloped portion of Price Road, "West Price Road" is consistent with the Rural Addressing Ordinance, which prohibit separate roads from having the same name.

NOW, THEREFORE, THE BOARD HEREBY ORDERS, as follows:

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- 1. The portion of Price Road as described and depicted in Attachment B is hereby legalized and shall be named "Price Road."
- 2. The undeveloped portion of Price Road shall be renamed "West Price Road."
- 3. Pursuant to ORS 368.106:
 - a. This order shall be recorded in the Columbia County Deed Records without costs.
 - b. The road right-of-way shall be surveyed and monumented.
 - c. The survey shall be prepared in compliance with ORS 209.250.
 - d. The survey shall be recorded with the Columbia County Surveyor.

DATED this LND day or September , 2020

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

By:

Alex Tardif, Chair

Approved as to form

Office of County Counsel

Margaret Wagruder, Commissioner

By:

Henry Heimuller, Commissioner

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COLUMBIA COUNTY

Department of Public Works



1054 Oregon St.
Direct (503) 397-5090
Fax (503) 397-7215
publicworks@co.columbia.or.us
columbiacountyor.gov

MEMORANDUM

To:

Board of County Commissioners

From:

Mike Russell, Public Works Director, Roadmaster

Date:

August 26, 2020

Subject: Price Road Legalization of Constructed Alignment

Action Requested

This is the Road Official's Report consistent with ORS 368.206 regarding holding a public hearing in the matter of legalizing the constructed alignment of Price Road.

The Board of Commissioners will hold a public hearing and deliberate on legalization of the constructed alignment of Price Road.

Background

Maintenance staff identified Price Road as a priority for applying an asphalt overlay this summer. As such staff began preparing the road surface and ditch lines in anticipation of the overlay. This work included digging out poor sections of old pavement and replacing the base with compacted crushed rock, scraping away vegetation at the edge of pavement, cleaning the ditches and replacing culverts as needed.

During the week of June 1, 2020, it was brought to the attention of staff that the road right-of-way may not be where the road was actually built. Upon further investigation, and in coordination with the County Surveyor's Office, staff was unable to find documentation of the legalization of Price Road as it was built.

Staff provided a report to the Board on July 15, 2020 and the Board directed staff to schedule a Public Hearing in the matter of legalizing the constructed alignment of Price Road so that the work to preserve the pavement could continue.

It is the intent of the Roadmaster to cause as little disruption to adjacent property owners as possible. The attempt here is to legalize what has been in use and understood as a public right-of-way for many decades with no changes to fencelines, ditchlines, driveway approaches, or established landscaping and to simply finish the pavement preservation work that was started in July.

Analysis

Referring to the attached diagrams, Exhibits 1 and 2, the right-of-way was established on February 6, 1925 by order of the Columbia County Court as recorded in Book "I", Page 173 of the Commissioners Journal. The right-of-way alignment that was legalized is shown in green (Exhibit 1) and deviates from the built road and continues west. This portion, to staff's knowledge, has never been built except for maybe timber extraction many years ago. For as long as anyone remembers, Price Road has always turned south as it is shown in red on Exhibit 2. Staff has found photographic evidence of the road in this location as far back as the 1950's.

Below is the statutory process for legalizing a county road as presented in Oregon Revised Statutes.

---Start---

LEGALIZATION OF ROADS

- 368.201 Basis for legalization of road. A county governing body may initiate proceedings to legalize a county road under ORS 368.201 to 368.221 if any of the following conditions exist:
- (1) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road.
 - (2) If the location of the road cannot be accurately determined due to:
 - (a) Numerous alterations of the road;
 - (b) A defective survey of the road or adjacent property; or
 - (c) Loss or destruction of the original survey of the road.
- (3) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records. [1981 c.153 §21]

368.205 [Amended by 1975 c.774 §1; 1977 c.338 §1; repealed by 1981 c.153 §79]

- 368.206 Proceedings for legalization of roads; report; notice. (1) If proceedings for legalization of a road are initiated under ORS 368.201, the county governing body shall:
- (a) Cause the road to be surveyed to determine the location of the road and the width of the road according to:
 - (A) The laws governing the width of roads at the time the road was originally established; or
- (B) If the original width of the road cannot be determined, to the width for roads of the same class established by the standards under ORS 368.036;
- (b) Cause the county road official to file a written report with the county governing body including the survey required under this section and any other information required by the county governing body; and
- (c) Cause notice of the proceedings for legalization to be provided under ORS 368.401 to 368.426 by service to owners of abutting land and by posting.
- (2) In a proceeding under this section, any person may file with the county governing body information that controverts any matter presented to the county governing body in the proceeding or alleging any new matter relevant to the proceeding. [1981 c.153 §22]

368.210 [Repealed by 1981 c.153 §79]

- 368.211 Compensation for property affected by road legalization. (1) A county governing body shall provide for compensation under this section to any person who has established a structure on real property if the structure encroaches on a road that is the subject of legalization proceedings under ORS 368.201 to 368.221.
- (2) To qualify for compensation under this section, a person must file a claim for damages with the county governing body before the close of the hearing to legalize the road. The county governing body shall consider a claim for damages unless the county governing body determines that:
- (a) At the time the person acquired the structure, the person had a reasonable basis for knowing that the structure would encroach upon the road;
 - (b) Upon the original location of the road, the person received damages;
- (c) The person or the person's grantor applied for or assented to the road passing over the property; or
- (d) When making settlements on the property, the person found the road in public use and traveled.
- (3) The compensation allowed under this section shall be just compensation for the removal of the encroaching structure.
- (4) The county governing body may proceed to determine compensation and acquire the structure by any method under ORS 368.096.
- (5) If a county governing body determines that removal of the encroaching structure is not practical under this section, the county governing body may acquire property to alter the road being legalized. [1981 c.153 §23]

368.215 [Repealed by 1981 c.153 §79]

- 368.216 Order under road legalization proceeding. (1) After considering matters presented in a proceeding to legalize a road under ORS 368.201 to 368.221, a county governing body shall determine whether legalization of the road is in the public interest and shall enter an order abandoning or completing the legalization procedures on the road.
- (2) When a county governing body legalizes a road under ORS 368.201 to 368.221, the county governing body shall comply with ORS 368.106.
- (3) Courts shall receive any order filed under this section as conclusive proof that the county road exists as described in the order.
 - (4) Upon completion of the legalization procedures under ORS 368.201 to 368.221:
- (a) Any records showing the location of the road that conflict with the location of the road as described in the order are void; and
 - (b) The road exists as shown on the order legalizing the road. [1981 c.153 §24]

368.218 [1975 c.774 §2; repealed by 1981 c.153 §79]

368.220 [Repealed by 1975 c.771 §33]

- 368.221 Legalization of road of substandard width. Notwithstanding ORS 368.036, a county governing body may legalize a road at any width that is less than the width of the road described in ORS 368.206 if the county governing body determines that:
 - (1) The legalization of the road at the lesser width is in the public interest; or

(2) An encroachment on the road may not be practically removed under ORS 368.211. [1981 c.153 §25]

---End---

Roadmaster's Analysis of ORS 368.201 through 368.221 for Price Road

368.201 Basis for Legalization of Road

The Roadmaster finds that because doubt exists as to the legal establishment or evidence of establishment of the public road as travelled, there is a need to clarify the status of Price Road as a public county-maintained road. This is not to say that the evidence may not exist within the County records including Commissioner's Journals, but that staff is unable to locate it.

The Roadmaster also finds that the road, as traveled, has been in use for 10 years or more and does not conform to the location of a road described in the known county records. See Exhibits 1 and 2.

368.206 Proceedings for legalization of roads; report; notice

In conformance with this section, the County Surveyor has performed a survey and developed a legal description of the portion of Price Road under consideration. The width of the road was determined to be 40 feet consistent with the legal width established by State Law in 1924 and supported by the recorded right-of-way width in the records. Exhibit 3 (2 pages) and Exhibit 4 are the draft survey document and legal description developed by the County Sureyor's Office regarding this matter. The final version of the drawing and description will be attached to any subsequent Board Order as necessary.

The County Roadmaster is submitting this report in conformance with this section.

In accordance with notice and posting requirements of this section, County staff notified adjacent property owners and known interested parties and posted the notice along the roadway.

368.211 Compensation for property affected by road legalization

The County Roadmaster has determined, along with the County Surveyor, that there are no structures that need to be moved or removed from the proposed right-of-way. Therefore, there is no compensation considerations anticipated as a result of this action. At this time, staff has no knowledge of any claim from any of the property owners in this regard.

368.216 Order under road legalization proceeding

Following the hearing and Board deliberation, staff will prepare an order for adoption consistent with the Board's direction. Subsequent action taken by staff will be in accordance with the order and this section.

368.221 Legalization of road of substandard width

Staff is not recommending legalization of a substandard right-of-way width.

This is different than the travel surface width which, in some areas, does not meet current County Road Standards. For the paved portion of the road section under consideration, staff has prepped the road to try to reach a paved surface width of 20 feet after the overlay in order to get closer to

a standard travel surface width as much as practical. For the unpaved gravel portion, staff is not recommending any change to the travel surface other than legalization of the right-of-way that includes any sections that have a substandard travel surface.

Other Relevant Information

There is an established maintenance record for Price Road as travelled

Currently, our road maintenance activities are tracked through work requests and time card data in the Integrated Road Information System (IRIS) used by the Department of Public Works. Records of maintenance work dating back to implementation of this system in 2007 show consistent maintenance activity on this Road. Specific maintenance activity on the subject portion of Price road is corroborated by 30+-year employees who have said they have done work on this section of Price Road since the beginning of their career at the County.

Existing appurtenances along the roadway indicate that property owners have treated the roadway as having right-of-way due to a consistent alignment of fencelines, mailboxes, driveway approaches, etc. along this portion of Price Road.

2013 Email

Staff was able to find an email dated June 18, 2013 that indicates this was a known issue at that time. No further action was taken with this information until it was brought to the Roadmaster's attention in June 2020.

Renaming the currently legalized unconstructed portion that heads off to the West of the current alignment

Staff is recommending that the Board, within its Board Order, rename the unconstructed portion of the road to West Price Road. This will allow residents along the travelled alignment to keep their current address. Upon construction by a developer, the road will use this new name or as otherwise directed by the Board of Commissioners.

Alternative to Legalization

If the Board chooses not to proceed with the legalization process, multiple properties will be landlocked without legal access. Individual land owners will need to work together to establish the necessary easements to gain legal access to their respective properties and will have to take on the maintenance of the resulting easements together, which is typically done through a road maintenance agreement between the landowners.

As stated previously, the Roadmaster's intent is to avoid this by addressing what amounts to a clerical error in the County's records and not change anything that exists currently except to officially designate this portion of Price Road as a public county-maintained right-of-way.

Next Steps

The Board of Commissioner's is holding a public hearing in accordance with the statutory process for legalizing a county road.

Following the public hearing and Board deliberation, staff will prepare a Board Order consistent with the Board's direction.

Upon adoption by the Board, necessary action will be taken by staff to record the legalization with the County Clerk and County Surveyor.

Attachments

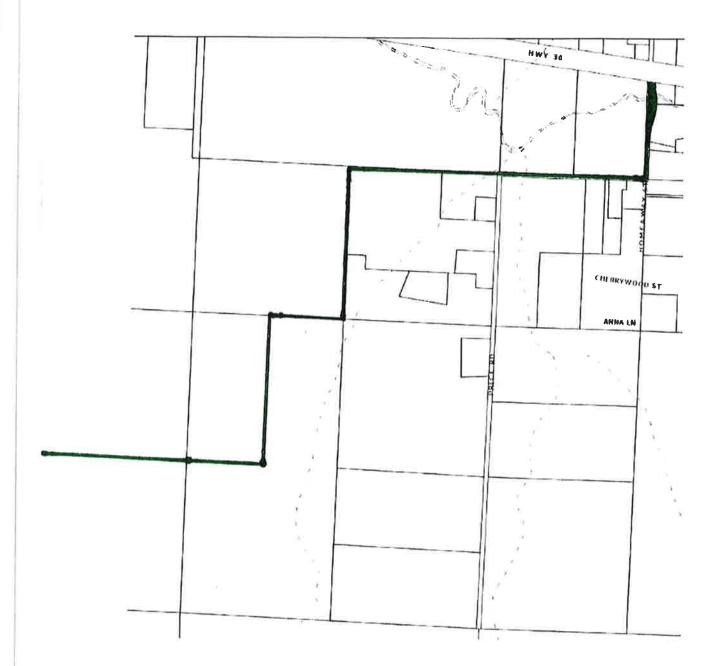
Exhibit 1 - Price Road Alignment As Petitioned in 1924

Exhibit 2 – Price Road As-Built Alignment

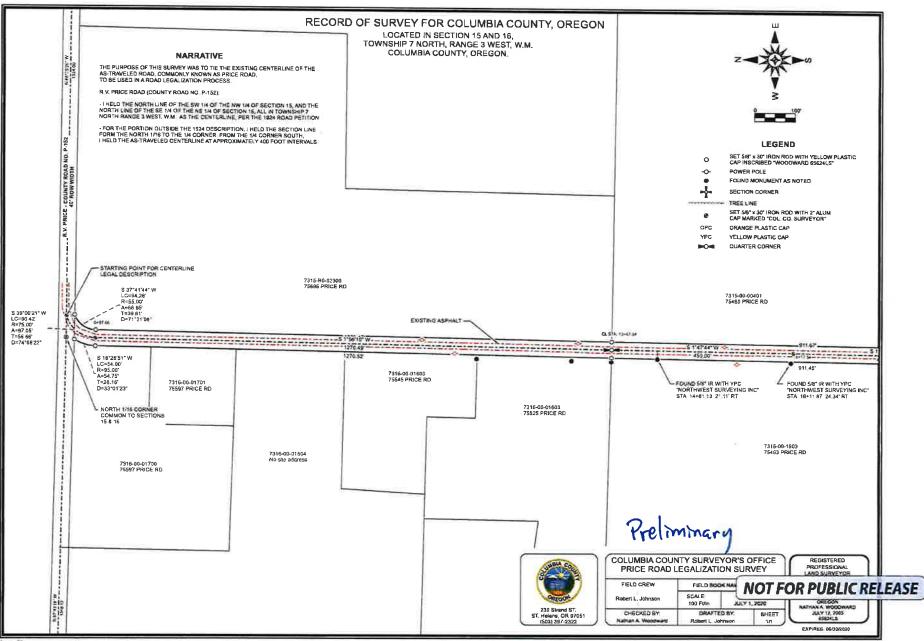
Exhibit 3 – Price Road As-built Legalization Survey

Exhibit 4 – Price Road As-built Legalization Description

PRICE ROAD A. RETITIONERS TH 1924.







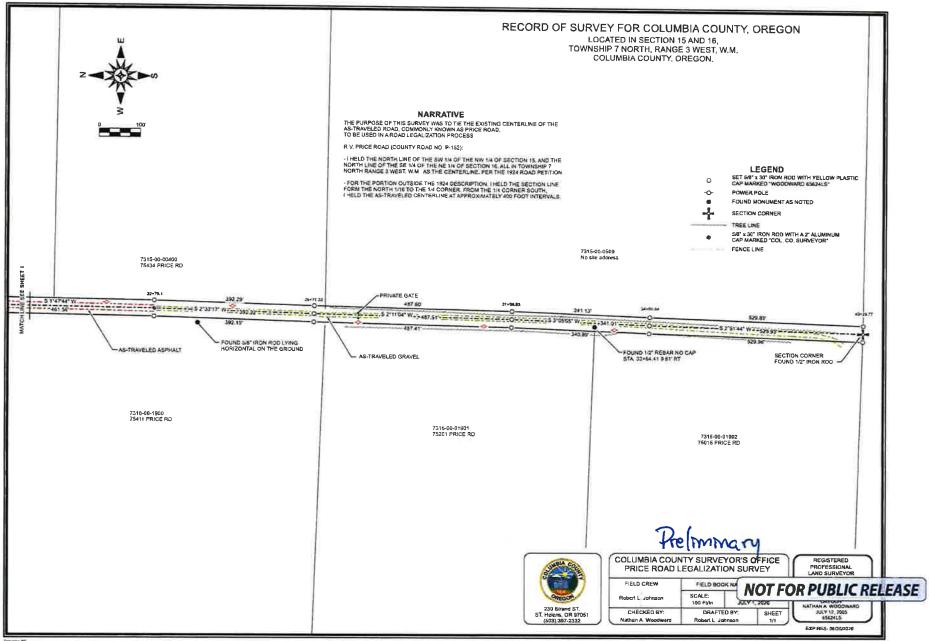


Exhibit 4

Prelmmary EXHIBIT "A"

PRICE ROAD ?? CENTERLINE DESCRIPTION

A parcel of land lying in Sections 15 and 16, Township 7 North, Range 3 West of the Willamette Meridian, Columbia County, Oregon, said parcel being a strip of land 40.00 feet in width, lying 20 feet on each side of the existing road centerline, commonly known as Price Road, as surveyed by Columbia County in 2020, said centerline being more particularly described as follows:

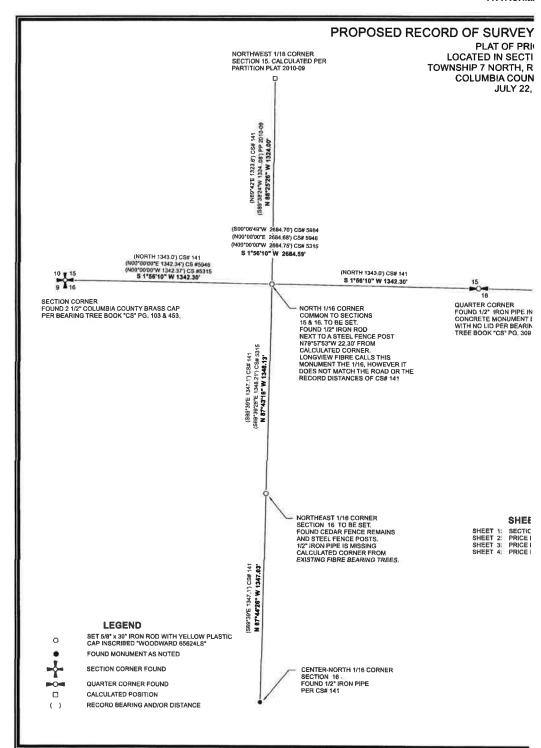
Beginning at a point on a curve, said point being the intersection between the center of the existing Price Road (County Road No. P-152) and the curve of the existing as traveled centerline, said point lying S88°25′19″E a distance of 54.50′ from the North 1/16 corner common to Sections 15 and 16; Thence 97.05′ along the arc of curve to the left having a radius of 75.00 feet, a delta of 74°08′22″and a chord which bears S39°00′21″W a distance of 90.42′ to a point on the Section line between Sections 15 and 16; Thence along said section line S01°56′10″W a distance of 1270.49′ to the Quarter Corner common to Sections 15 and 16; thence S01°47′44″W a distance of 911.56′; thence S02°33′17″W a distance of 392.22′; thence S02°11′04″W a distance of 487.51′; thence S03°05′05″W a distance of 341.01′; thence S02°51′44″W a distance of 529.93′ to the Section Corner common to Sections 15, 16, 21 and 22.

The sidelines of the above described centerline are to extend and terminate at the existing Price Road (County Road No. P-152) Right of Way and the South Section line of Section 15 and 16.

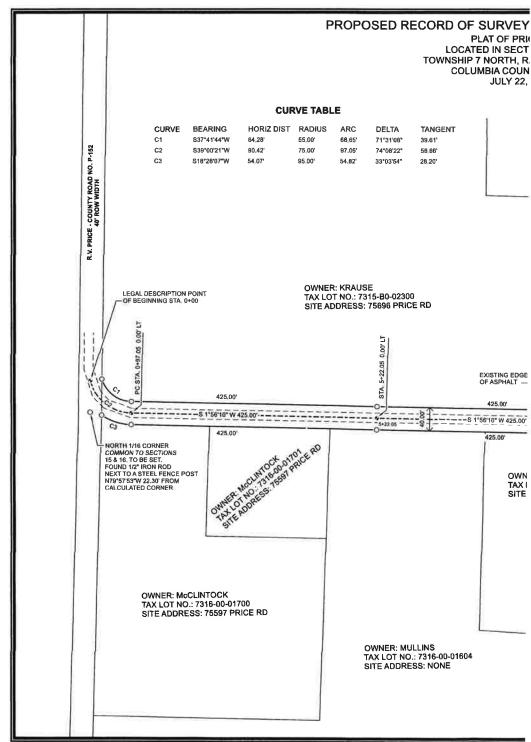
The Bearings for this description are Geodetic, based on a GPS tie to the Section Corner common to Sections 15, 16, 21 and 22, having a Latitude of 46°05'04.112" North, Longitude of 123°03'12.694" West. The convergence angle = -1°48'39" based on Oregon State Plane Coordinate System, Oregon North Zone.

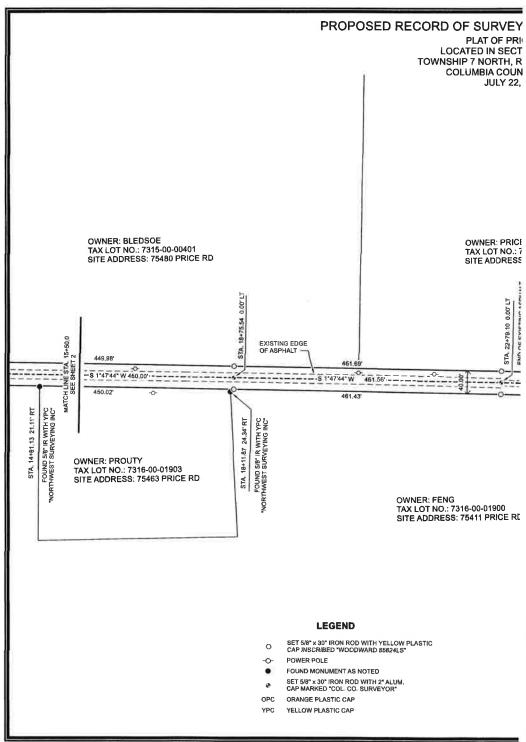
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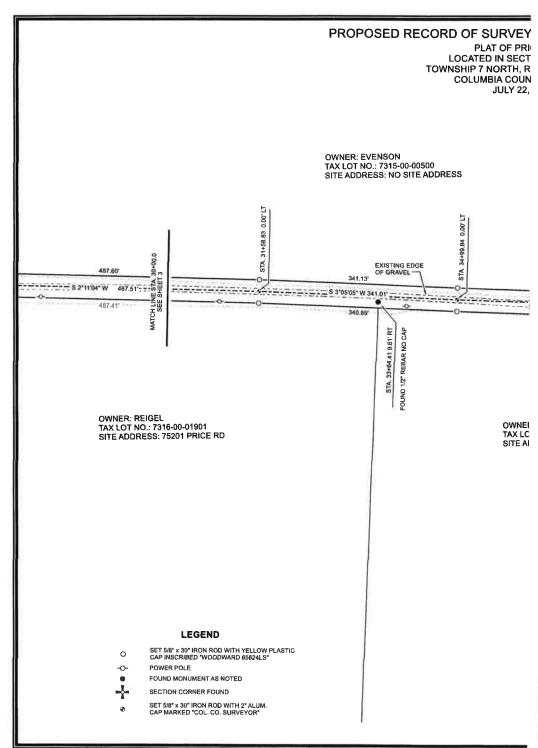


EXHIBIT "A"

PRICE ROAD CENTERLINE DESCRIPTION

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Beginning at a point on a curve, said point being an intersection between the center line of the established Price Road (County Road No. P-152) and a curve on the as traveled centerline, said point lying S88°25′19″E a distance of 54.50′ from the North 1/16 corner common to Sections 15 and 16; Thence 97.05′ along the arc of curve to the left having a radius of 75.00 feet, a delta of 74°08′22″and a chord which bears S39°00′21″W a distance of 90.42′ to a point on the Section line between Sections 15 and 16; Thence along said section line S01°56′10″W a distance of 1270.49′ to the Quarter Corner common to Sections 15 and 16; thence S01°47′44″W a distance of 911.56′; thence S02°33′17″W a distance of 392.22′; thence S02°11′04″W a distance of 487.51′; thence S03°05′05″W a distance of 341.01′; thence S02°51′44″W a distance of 529.93′ to the Section Corner common to Sections 15, 16, 21 and 22.

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REGISTERED PROFESSIONAL

WOODWARD

EXPINES: 6/30/2022