

After Recording Return To:

City Recorder's Office  
City of Newport  
169 SW Coast Hwy  
Newport, OR 97365

Lincoln County, Oregon  
10/04/2012 12:42:20 PM  
DOC-F/ORD  
\$35.00 \$11.00 \$15.00 \$10.00 \$7.00 - Total = \$78.00

2012-09646

Cnt=1 Pgs=7 Stn=20



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I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



THE CITY COUNCIL OF THE CITY OF NEWPORT,  
COUNTY OF LINCOLN, STATE OF OREGON

In the Matter of:

LEGALIZATION OF A PORTION OF NE BIG CREEK ROAD )  
BETWEEN NE 12<sup>TH</sup> ST AND A POINT APPROXIMATELY ) FINAL  
330 FEET EAST OF THE NE ILLER ST INTERSECTION ) ORDER  
(CITY OF NEWPORT, LINCOLN COUNTY, OREGON) )

WHEREAS, the City of Newport maintains NE Big Creek Road as a public roadway within its corporate limits; and

WHEREAS, in addition to maintaining the gravel road surface, the City of Newport has constructed a public water line and authorized the installation of private telephone and electrical utilities along the NE Big Creek Road alignment; and

WHEREAS, a landslide in January 2011 forced the closure of the road; and

WHEREAS, in preparing to repair NE Big Creek Road, the City of Newport learned that the segment of NE Big Creek Road over which it has jurisdiction is not within an established road right-of-way; and

WHEREAS, the Newport City Council initiated proceedings to legalize the subject portion of NE Big Creek Road on July 2, 2012, pursuant to the provisions of ORS 223.935 to 223.950; and

WHEREAS, pursuant to notice duly given on August 2, 2012, the City Council conducted a public hearing on August 20, 2012, and based on the information presented did make and hereby does confirm the following findings of fact:

1. The road segment in question is the portion of NE Big Creek Road from the city limits, approximately 330 feet east of the intersection of NE Iler Street, south and west to its terminus at NE 12<sup>th</sup> Street.

2. Jurisdiction of the road was transferred from the County to the City on July 25, 1984 (ref: Book 31, Page 2536 of the Lincoln County Records).

3. ORS 223.935(1) provides that a city may initiate proceedings to legalize a city road within its corporate limits if through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road. The City of Newport has no record of a road right-of-way existing where the subject segment of NE Big Creek Road (former County Roads 402 and 502) is located. County Assessment maps depict an alignment for the road with the notation "as travelled per 1977 Road Department Survey." County records indicate that an attempt was made during the late 1970's to legalize the road at 60 feet in width; however, that legalization process was not completed. This condition creates doubt as to the legal establishment of the road at its present location.

4. ORS 223.935(3) allows a city to initiate proceedings to legalize a city road within its corporate limits if the road as-traveled and used for 10 years or more does not conform to the location of a road described in the city records. City topographic surveys from March 10, 1968 and February 7, 1971 show this segment of NE Big Creek Road in its current alignment. This evidence is further supported by the jurisdictional transfer agreement between the City and County, and its associated legal description, dated March 25, 1981 (ref: Book 23, Page 2203 of the Lincoln County Records). That agreement indicates that the subject segment of NE Big Creek Road would be maintained for vehicle traffic. In sum, these documents serve as evidence that the road, as-travelled and used, has existed in its current condition for more than 10 years.

5. The City of Newport hired Pariani Land Surveying to conduct a survey to establish the location of NE Big Creek Road that is under the City's jurisdiction, including the as-travelled road and adjoining utilities. The survey was completed on September 11, 2012 and depicts a legalization area that is 60 feet in width. The Pariani survey used as its basis the 1977 County Road Department Survey.

6. A report by the City Engineer was filed with the City Council on August 16, 2012. The report confirms that NE Big Creek Road exists as a gravel roadway as described herein. The report further indicates that the location and boundary of the right-of-way to be established with the Pariani survey is the minimum required to fully contain existing utilities, provide for a safe traveled way for vehicles, and that it conforms to the actual and accepted street alignment.

7. On August 2, 2012 the City Council caused notice of the legalization proceeding and survey to be provided to the owners of abutting land in the manner required.

8. A public hearing was conducted on August 20, 2012, at which members of the public were given an opportunity to file with the Council information that controverts any matter presented to the Council in the proceeding or alleging any new matter relevant to the proceeding.

9. No person has provided information that controverts any matter presented to the Council nor has anyone alleged any new matter relevant to the proceeding.

10. No person has established a structure on any real property which encroaches within the proposed road right-of-way and for that reason no person is entitled to compensation as a result of this legalization process, pursuant to ORS 223.945; and

WHEREAS, the City Council of the City of Newport has and hereby does determine that the road legalization is in the public interest, and therefore chooses to complete the road legalization procedures for the identified portion of NE Big Creek Road.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All of the foregoing recitals and findings of fact are hereby confirmed and adopted as findings of fact in support of this order.

2. The City Council of the City of Newport hereby enters its final order legalizing the road laid out and surveyed by Pariani Land Surveying, as described in Exhibit A, attached hereto and incorporated herein by this reference. The Council shall conduct no further hearing to consider the matter, which is hereby concluded and the road legalization procedures are hereby declared complete, and the identified portion of NE Big Creek Road shall hereafter exist as described in Exhibit A.

3. The City Recorder shall cause a copy of this Order to be recorded in the film records of Lincoln County, Oregon and a copy of this Order shall be forwarded to the Director of Public Works of the City of Newport, the County Surveyor, the County Assessor, and the Community Development Director of the City of Newport.

4. Pariani Land Surveying shall cause the centerline and right-of-way to be monumented and file a copy of the survey map and supporting narrative with the County Surveyor in accordance with ORS 223.950(2) and ORS 209.250.

5. Consistent with ORS 223.950(4), upon completion of the steps ordered above, any records showing the location of the road that conflict with the location of the road as described in this Order, and specifically within Exhibit A, are void.

SO ORDERED this 17<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Mark McConnell, Mayor

Attest:

  
\_\_\_\_\_  
Margaret M. Hawker, City Recorder

**Big Creek Road Center Line Description**

A parcel of land lying in the SE 1/4 Section 32, SW 1/4 Section 33, Township 10 South, Range 11 West, NE 1/4 Section 5, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon;

Big Creek Road Center line is described thus, with variable width rights of way lines as identified in the table below:

Commencing at the center line intersection of Big Creek Road and 12<sup>th</sup> Street, said point being South 7°43'18" West, 2472.96 feet from the Southeast corner of Section 32, Township 10 South, Range 11 West, Willamette Meridian, City of Newport, Lincoln County, Oregon, and Engineer's center line station 2+40.45; Thence North 00°44'34" West, 514.54'; Thence along a 337.03 foot radius curve to the left (the long chord of which bears North 19°09'11" West, 212.88 feet) 216.59 feet; Thence along a 322.53 foot radius compound curve to the left (the long chord of which bears North 49°49'45" West, 136.99 feet) 138.04 feet; Thence along a 443.30 foot radius compound curve to the left (the long chord of which bears North 70°13'49" West, 125.86 feet) 126.12 feet; thence North 78°23'29" West, 64.95 feet; Thence along a 100.00 foot radius curve to the right (the long chord of which bears North 46°28'16" West, 105.75 feet) 111.42 feet; thence North 14°33'02" West, 32.47 feet; thence along a 301.56 radius curve to the left (the long chord of which bears North 24°58'16" West, 109.09 feet) 109.69 feet; thence North 35°23'29" West, 72.83 feet; thence along a 143.24 foot radius curve to the right (the long chord of which bears North 19°02'43" West, 80.63 feet) 81.73 feet; thence North 02°41'58" West, 96.90 feet; thence along a 747.34 foot radius curve to the right (the long chord of which bears North 00°56'18" East, 94.83 feet) 94.90 feet; thence North 04°34'33" East, 133.19 feet; thence along a 114.59 foot radius curve to the left (the long chord of which bears North 8°28'20" West, 51.74 feet) 52.19 feet; thence North 21°31'13" West, 96.70 feet; thence along a 440.74 foot radius curve to the right (the long chord of which bears North 12°04'37" West, 144.63 feet) 145.28 feet; thence North 02°38'01" West, 41.88 feet; thence along a 716.20 foot radius curve to the left (North 06°45'35" West, 103.06 feet) 103.15 feet; thence North 10°53'09" West, 63.10 feet; thence along a 238.73 foot radius curve to the right (the long chord of which bears North 01°48'01" East, 104.85 feet) 105.72 feet; thence North 14°29'11" East, 175.28 feet; thence along a 763.94 foot radius curve to the left (the long chord of which bears North 07°24'21" East, 188.33 feet) 188.81 feet; thence North 00°19'31" East, 44.71 feet; thence along a 954.93 foot radius curve to the left (the long chord of which bears North 02°56'44" West, 108.97 feet) 109.03 feet; thence North 06°13'00" West, 108.48 feet; thence along a 286.48 foot radius curve to the right (the long chord of which bears North 04°52'04" East, 110.15 feet) 111.38 feet; thence along a 384.50 foot compound curve to the right (the long chord of which bears North 23°45'22" East, 104.42 feet) 104.74 feet; thence North 31°33'37" East, 99.55 feet; thence along a 260.44 foot radius curve to the right (the long chord of which bears North 40°21'30" East, 79.67 feet) 79.98 feet; thence North 49°09'22" East, 255.75 feet; thence along a 130.22 foot radius curve to the left (the long chord of which bears North 25°50'21" East, 103.09

feet) 105.99 feet; thence North 02°31'19" East, 113.98 feet; thence along a 146.91 foot radius curve to the right (the long chord of which bears North 35°04'58" East, 158.13 feet) 166.98 feet; thence North 67°38'37" East, 395.80 feet; thence along a 521.92 foot radius curve to the right (the long chord of which bears North 75°27'39" East, 145.39 feet) 145.87 feet; thence along a 260.44 foot radius reversing curve to the left (the long chord of which bears North 71°51'50" West, 104.77 feet) 105.49 feet, more or less to a point on the City of Newport City Limits, said point also being at Engineer's center line station 49+53.29 and being North 31°23'04" East, 1589.99 feet of the Southeast corner of Section 32, Township 10 South, Range 11 West, Willamette Meridian, City of Newport, Lincoln County, Oregon, and the terminus of this center line description.

The width in feet of said strip of land is as follows:

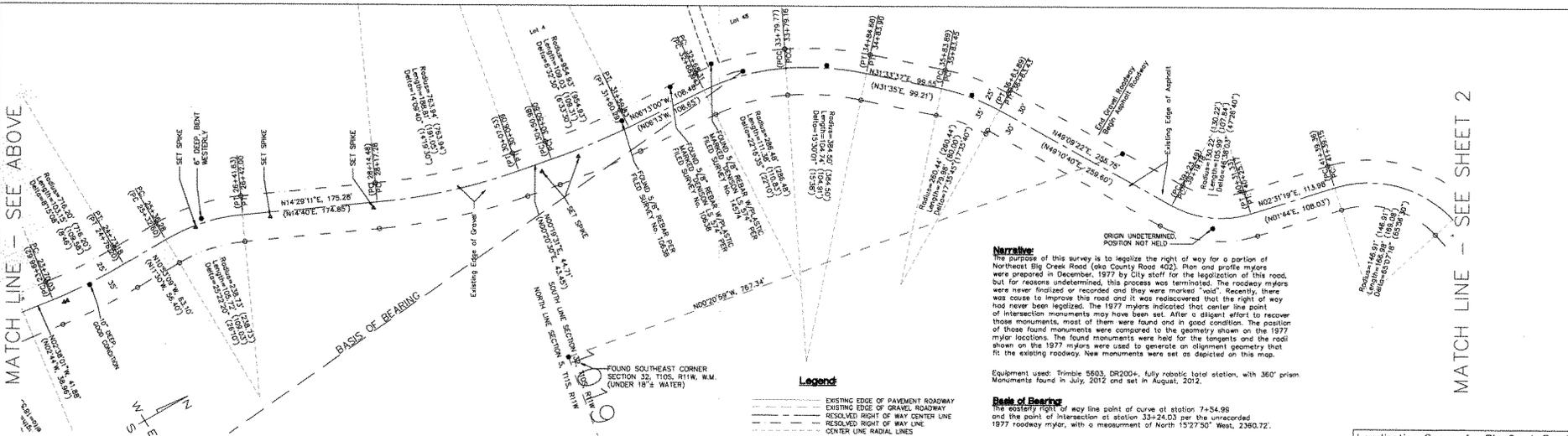
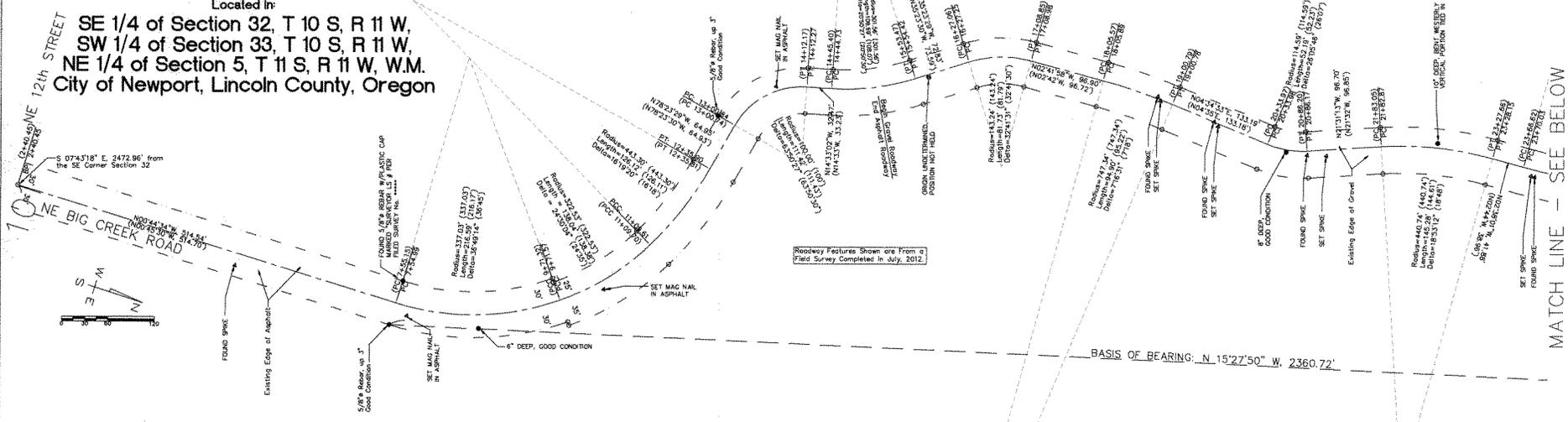
| Station Center Line | Width on {direction} | Width on Left/Right Side of Center Line |
|---------------------|----------------------|---|
| 2+40.45             | 9+71.32              | 30.00 Left, 30.00 Right                 |
| 9+71.32             | 36+63.89             | 25.00 Left, 35.00 right                 |
| 36+63.89            | 49+53.29             | 30.00 Left, 30.00 Right                 |

Bearings are based on County Survey No. (Not recorded yet), filed September, 2012, Lincoln County, Oregon.

# Map of Survey

Located In:

SE 1/4 of Section 32, T 10 S, R 11 W,  
 SW 1/4 of Section 33, T 10 S, R 11 W,  
 NE 1/4 of Section 5, T 11 S, R 11 W, W.M.  
 City of Newport, Lincoln County, Oregon



T10S, R11W, S5A  
 T10S, R11W, S33C  
 T10S, R11W, S32D

**Survey For:**  
 City of Newport Public Works  
 Tim Cross, P.E., City Engineer  
 169 SW Coast Highway  
 Newport, OR 97365

**Survey By:**  
 Pariani Land Surveying, Inc.  
 P.O. Box 551  
 Shady Cove, OR 97539

**References:**  
 1977 roadway legalization (unrecorded)  
 Lincoln Wood Subdivision  
 Filed Survey 10636

- Legend**
- EXISTING EDGE OF PAVEMENT ROADWAY
  - - - EXISTING EDGE OF GRAVEL ROADWAY
  - - - RESOLVED RIGHT OF WAY CENTER LINE
  - - - RESOLVED RIGHT OF WAY LINE
  - - - CENTER LINE RADIAL LINES
  - ( ) DATA PER UNRECORDED LEGALIZATION PLAN & PROFILE MYLARS DATED DEC. 13, 1977, OBTAINED FROM THE LINCOLN COUNTY SURVEYORS OFFICE, UNLESS NOTED OTHERWISE
  - FOUND 1 1/2\"
  - SET 5/8\"
  - ▲ SURVEY CONTROL POINT SPODE SPIKE OR MAG NAIL

**Narrative:**  
 The purpose of this survey is to legalize the right of way for a portion of Northeast Big Creek Road (aka County Road 402). Plan and profile mylars were prepared in December, 1977 by City staff for the legalization of this road, but for reasons undetermined, this process was terminated. The roadway mylars were never finalized or recorded and they were marked 'road'. Recently, there was cause to improve this road and it was rediscovered that the right of way had never been legalized. The 1977 mylars indicated that center line point of intersection monuments may have been set. After a diligent effort to recover those monuments, most of them were found and in good condition. The position of those found monuments were compared to the geometry shown on the 1977 mylar locations. The found monuments were held for the tangents and the radii shown on the 1977 mylars were used to generate an alignment geometry that fit the existing roadway. New monuments were set as depicted on this map.

**Equipment used:** Trimble 5603, DP200+, fully robotic total station, with 360° prism. Monuments found in July, 2012 and set in August, 2012.

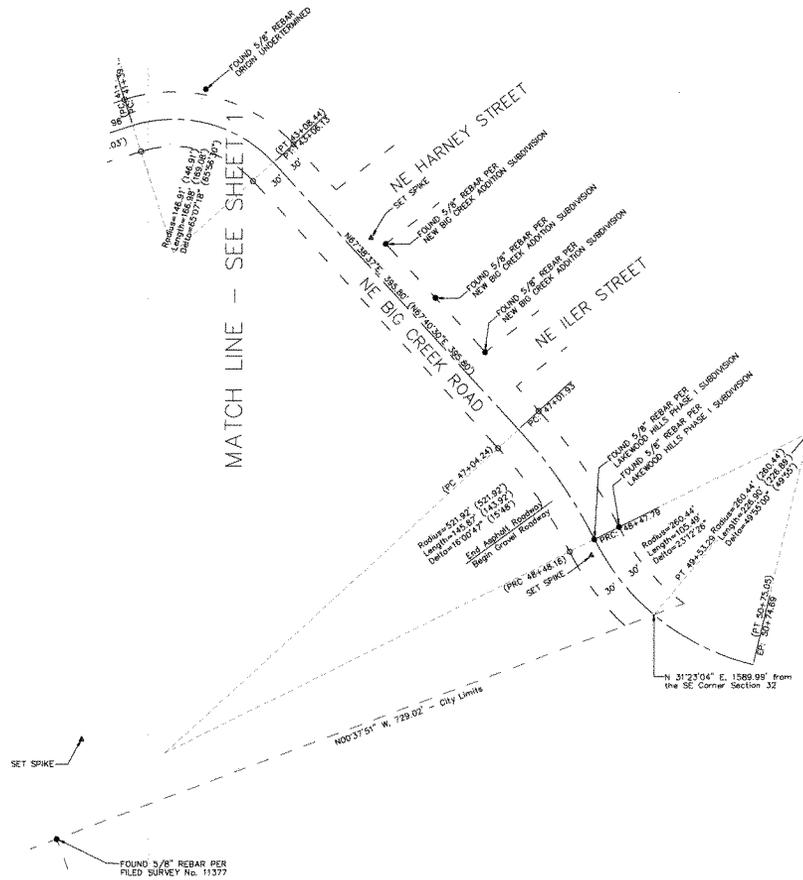
**Point of Bearing:**  
 The eastern right of way line point of curve at station 7+54.98 and the point of intersection at station 33+24.03 per the unrecorded 1977 roadway mylar, with a measurement of North 15°27'50\"

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
 Pariani  
 OREGON  
 JOHN R. PARIANI  
 #21382  
 Expires: December 31, 2012

Legalization Survey for Big Creek Road  
**Pariani Land Surveying**  
 P.O. Box 551  
 Shady Cove, OR 97539  
 541-890-1131  
 Date: Sept. 11, 2012 1" = 60'  
 Scale: 2012-107  
 Sheet: 1 of 2

# Map of Survey

Located in:  
 SE 1/4 of Section 32, T 10 S, R 11 W,  
 SW 1/4 of Section 33, T 10 S, R 11 W,  
 NE 1/4 of Section 5, T 11 S, R 11 W, W.M.  
 City of Newport, Lincoln County, Oregon



MATCH LINE - SEE SHEET 1



### Legend

- EXISTING EDGE OF PAVEMENT ROADWAY
- EXISTING EDGE OF GRAVEL ROADWAY
- RESOLVED RIGHT OF WAY CENTER LINE
- RESOLVED RIGHT OF WAY LINE
- CENTER LINE RADIAL LINES
- ( ) DATA FROM UNRECORDED LEGALIZATION PLAN & PROFILE, WYLAIS DATED DEC. 12, 1971, OBTAINED FROM THE LINCOLN COUNTY SURVEYORS OFFICE.
- FOUND 1/2" MONUMENT, PER UNRECORDED WYLAIS UNLESS NOTED OTHERWISE
- ⊗ SET 5/8" X 30" REBAR W/ORANGE PLASTIC CAP MARKED "PARIANI LS 51382"
- ▲ SURVEY CONTROL POINT EDGE SPIKE OR MAG NAIL

T10S, R11W, S5A  
 T10S, R11W, S33C  
 T10S, R11W, S32D

|  |   |                      |                  |
|--|---|----------------------|------------------|
| REGISTERED<br>PROFESSIONAL<br>LAND SURVEYOR<br>Preliminary<br>OREGON<br>JOHN W. PARIANI<br>#51382<br><small>Renewal: December 31, 2012</small> | Legalization Survey for Big Creek Road  |                      |                  |
|  | <b>Pariani Land Surveying</b><br>P.O. Box 551<br>Shady Cove, OR 97539<br>541-890-1131 |                      |                  |
|  | Date:<br>2012-10-17   | Job No.:<br>2012-107 | Sheet:<br>2 of 2 |