



THE FORE SITE

NEWSLETTER FOR THE
CLACKAMAS COUNTY SURVEYOR'S OFFICE

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<http://www.co.clackamas.or.us/surveyor/intro.html>



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PUBLIC LAND CORNERS:

County Wide GPS Project:

As many of you are aware, in the fall of 2000 we began collecting data for a County-wide GPS Control Network. We recently were informed that the project has been approved and the data is now posted on the NGS Datasheet web site at: <http://www.ngs.noaa.gov/datasheet.html>. Maps and copies of the final report will soon be available from our office. We will also place the most useful data on our web site.

We have completed a number of restorations in the Molalla area and will be conducting a GPS survey to tie them all into the geodetic network in the near future. The next area for concentrated restoration will be in the northwestern portion of the County, generally north of the Clackamas River to the County line and from the Willamette River east to SE 162nd.

Do you need a Public Land Corner for a project or will a Public Land Corner fall within one of your projects? Contact our office and we will make every attempt to accommodate you in referencing and/or restoring the corner. Please try to give us as much lead-time as possible. Corner Request forms are available on our web page.

RECORDS OF SURVEY:

Property line adjustment issues:

We are encountering continuing problems in the area of property line adjustments. The primary problem for almost all planning jurisdictions is that the client makes an application, obtain preliminary approval, and surveyors perform the necessary monumentation and file the survey. Most clients think that when the monuments are set that the project is completed. Unfortunately, the process often breaks down at that point because the deeds, necessary to convey the adjusted property, are never recorded. It would be a great help to us, and your clients, if surveyors would take a more proactive role in assuring that their clients are aware that the adjustment is not done until the deeds are recorded with the County Clerk. We are also aware that many surveyors have taken a proactive role and appreciate their efforts. Even some of the most proactive surveyors have struggled getting their clients to understand the process.

For Clackamas County and the City of Sandy, we have agreed to a planning request to require the submission of the final deeds and recording fees together with the final survey map. We will then take the deeds to be recorded. We do not review the deed or description. Any problems encountered in the recording of the deeds will cause them to be returned.

The County and several cities require a signature approval line on Property Line Adjustment Surveys. Obtaining this signature on a PLA survey provides proof that the process was followed and it was approved by planning. The problem occurs when the planning authority delays the approval of the map, yet the surveyor and the County Surveyor's Office are under legal obligations to perform certain acts within definite timelines. In order to mitigate this problem, we suggest that the new monuments representing the adjusted

property line not be set until planning has approved the map. Surveyors can simply put on the map next to the set monument symbol a "date set" line. We will accept the map for review and complete our part, subject to receipt of the original map signed by planning, at which time we would contact the surveyor for the date set. If the monuments are set and the planning jurisdiction has not signed the map, we may be obligated to file the map, which could cause your clients additional expense in filing another map with the planning approval.

Another area that seems to continually cause concern is Property Line Adjustments within subdivisions and partitions. Please be advised of an existing Attorney General Opinion (OP-6350) that states the following:

- "....., we conclude that lot line adjustments may not be used to redraw a previously platted subdivision when the result would be a reconfiguration of the subdivision".
- "ORS chapter 92 does provide that once a lot line has been created, it cannot be changed or vacated except as provided by law"
- "....., we conclude that ORS 92.190 does not empower local governments to allow a subdivision to be reconfigured by extensive series of lot line adjustments. A contrary conclusion would be inconsistent with the statutory policies and is unsupported by the legislative history of the provisions in question."
- "We conclude that the legislature intended to authorize lot line adjustments in subdivisions only where there is a single adjustment, or series of adjustments that are so minor as not to constitute a "reconfiguration" of a subdivision. This interpretation harmonizes ORS 92.109(3) with the other replatting provisions and their underlying policies.

We will be working with County Planning to come up with some specific guidelines for all of us to use in defining what is an appropriate property line adjustment and what is a reconfiguration that needs to be replatted.

DEVELOPMENT REVIEW and RECORDING:

New law changes as a result of the last Legislative session:

Changes were made in the Condominium Act (ORS Chapter 100) by HB 3912. Some of the major changes are:

- Condominium Plat name approval by County Surveyor is now required (ORS 100.115- 5b).
- A new requirement for Condominiums is that the "land" cannot be part of a unit. A unit must be airspace immediately inside or outside of a structure.

There were other additional changes effecting condominium plats. If you are planning to prepare one you will need to review the existing law and changes very carefully. We also recommend that you work very closely with your clients' attorney to make sure that the documentation the attorney prepares and your plat are harmonious. Many of the problems encountered in condominiums are a result of data prepared by the attorney not matching the plat.

A number of changes were made to the Planned Community Act (ORS Chapter 94) by House Bill 3912: One provision is that if there is common property, a homeowners association (HOA) will be required and that prior to the sale of any property, the HOA must be in existence (approved by the State and recorded). Additional requirements may include declarations and maintenance agreements and reserve funds for future maintenance. Developers, surveyors and their attorneys should be very cautious and not use boilerplate declarations or CC&R's from previous plats, as they may not comply.

House Bill 3686 created a new class of subdivision specifically for Manufactured Home Parks that existed before July 2, 2001. While they will be treated differently from a planning perspective, they must still comply with all of the standard platting requirements.

Senate Bill 184 eliminates the need for a plat notary to place a wet ink stamp on the mylars. In lieu of the stamp, they will be required to the following information for an Oregon notary on the plat:

_____ (Notary signature in archival quality black ink)
Notary Public Signature

_____ (Printed name of Notary Public)

NOTARY PUBLIC - OREGON (*or applicable state that allows this method*)

COMMISSION NO. _____ (Notary's Commission number)

MY COMMISSION EXPIRES _____ (Month by name [not abbreviated], two –digit date and complete year i.e.: January 25, 2002)

(Note: Text in () should not appear on the plat.

**This method of notary may not meet the requirements of another state. Please assure sure that if the other state requires stamping that they do so with appropriate ink that will not bleed and permanent ink pens (not ballpoint). Any crimp stamps must be on a separate sheet attached to the plat, (do not attempt to crimp stamp any mylar material).*

Title Companies and title packages:

We have had a number of projects submitted for review recently where the title packages were incomplete. Examples of missing items are: report not describing all of the property being platted; missing copies of the exceptions (listed in the report); missing vesting and adjoiners deeds. Often, we are not provided with the related documents that need to be recorded with the plat in a timely manner. We can speed up the recording process if we get draft versions of the documents to review earlier in the process.

Also, if you are aware of a problem that is going to arise that requires a “deed chain” to resolve or clarify an issue, it would be very helpful to get that to us early, rather than for us to have to ask for it.

Cities: The City of Sandy has returned all plat inspection work to the County Surveyor's Office.

Riparian Issues:

The issue of plats and surveys with streams, rivers and property with riparian rights, seems to be coming up more often lately. With that in mind we have developed a "**Navigability Statement**" to be shown on **appropriate plats**. We recommend (not require) that surveyors add such a statement to records of survey that have riparian boundaries. The only current “Navigable River” in Clackamas County is the Willamette River. The Sandy River is undergoing a "Navigability Study" but does not yet have a "determination". Several other tributaries of the Willamette below the Oregon City falls have automatic navigability for the "portion with tidal influence". If you encounter a plat with a stream of river plat with tidal influence, contact the Division of State Lands or Carl Clinton at our office.

Statement if river is not navigable:

“Navigability Statement”

*The property ownership on this map / plat is depicted to the center or thread of the stream or river. A “Determination of Navigability” ** by the Division of State Lands / Oregon State Land Board has not been made. **Ownership of riparian (water) boundaries on streams and rivers in the State of Oregon is either to the center (thread) of the stream or river or, if it is navigable, to the ordinary high water line of that waterway. The official location of the riparian boundary can only be made with a formal “Determination of Navigability” by the State Land Board.*

Alternative statement if river is navigable:

“Navigability Statement”

*The property ownership on this map / plat is depicted to the ordinary high water of the stream or river. A “Determination of Navigability” ** by the Division of State Lands / Oregon State Land Board was made on insert date.*

***Ownership of riparian (water) boundaries on streams and rivers in the State of Oregon is either to the center (thread) of the stream or river or if it is navigable to the ordinary high water line of that water way. The official location of the riparian boundary can only be made with a formal “Determination of Navigability” by the State Land Board.*

Public / Private Utility Easements:

The usage and definition of these easement types seem to be applied differently on some plats. In an effort to make sure that we have a common definition and understanding, we define a private utility or private easement as one in which the easement has a specific beneficiary, such as an adjoining lot or lots in a subdivision, (i.e. a private storm drainage easement across lots 1 and 2 for the benefit of the owners of lots 4 and 5). We define a public utility easement as one that is defined by Oregon Law or is a “regulated” utility such as a cable television or a local water or sewer district. Another effective method that we have seen used is to identify the utility easement and then laundry list the facilities that can use them such as “electrical, telephone, cable TV, natural gas, water, sewer, and storm drainage” or as “public and other regulated utilities.” The specific definition may be the better method, as we have received many contacts that question what can be placed within those easements and who has ultimate control of them. Some cities actually want the utility easements granted to them (they then cannot be public utility easements). The city then franchises the use of the easement out to various utilities. In those cases, the city is the controlling entity.

Encroachments and Gaps:

In the past, we have accepted easements to resolve an encroachment issue such as an adjoiner’s fence on property being developed. In the future, this will generally not be an acceptable practice. Any encroachment must be resolved prior to the approval of the plat by this office. An easement only serves to burden a future owner’s property and allow the use of their property by another while requiring the owner to pay taxes on the property and suffer any liability. It is not the duty of the surveyor to solve the problems, but it is their obligation to disclose any encroachments or gaps to the county and their client in a timely manner. This will prevent the processing of a plat from being stopped pending resolution of those boundary issues.

RECORDS RESEARCH:

We have made some changes in charge accounts allowed by this office. The charge accounts have been limited to those that are used regularly. Some accounts that were not being used have been dropped. If you have any questions about the charge accounts please contact Debbie Fuller at 503-353-4492.