

# OREGON HIGHWAYS

by Teresa Elliott, October 1988

Oregon State Highway Division has a responsibility (whether real or implied) to know what its rights and limits are with respect to its State Highways. While the information identifying those rights are available in various written forms at scattered locations, there appears to be a lack of knowledge of where to find it, and how to decide what is important. The need for decentralized information and the disbandment of the Right-of-way Research Unit necessitate a summary of the pertinent information to be documented and made available, especially to field location units.

Covered in this report are the topics that generate the basic questions of "documented rights" as well as some of the background information for further clarification and understanding of the State's rights. The following abbreviations will be used through out the paper and are in common use:

- A&R - Abandonments and Retentions
- HD - Highway Division or Highway Department
- ODoT - Oregon Department of Transportation
- OL - Oregon Law
- ORS - Oregon Revised Statutes
- OTC - Oregon Transportation Commission
- R/w - Right-of-way
- SHC - State Highway Commission

Topics discussed will include:

- 1) How the State Highways are designated and established.
- 2) "Resolved" Right-of-way
- 3) Right-of-way widths.
- 4) The importance of determining the previous status of the road.
- 5) Changes effecting the highway designation.
  - a. relinquishments
  - b. abandonments and retentions
- 6) Brief description of some of the important and most often used resources.
- 7) List of some of the Oregon statutes directly related the State Highways.
- 8) Closing comments on documenting researches.

## Designations:

The State Highways in Oregon were adopted and brought into the State Highway System in three possible ways :

- 1) By Legislative Act - Statutes
- 2) By the State Highway Commission by Resolution - the Commission was empowered by the Legislature.
- 3) By the Oregon Transportation Commission by Resolution and by the Legislature.

All three of these authorities could and have on occasion adopted, established, changed and even removed highways from the State Highway System. In 1977 the Oregon Legislature repealed the statutory highways, and left sole authority for the State Highway System with the OTC.

You will find a copy of the designations formally in resolutions or as entries in the SHC or OTC meeting minutes. Record of the State Highway Designations are kept in the OTC and SHC records in Commission Services.

#### "Resoluted Right-of-way"

"Resoluted R/W" means the County acquired the Right-of-way by resolution for a given route to be used by the State as a State Highway under the old establishment laws. This right-of-way was usually an easement or donated by deeds from the adjoining property owners.

The original State Highways were established by the SHC by taking over county roads that were considered main traveled routes and the State acquired whatever rights the county had. Since many of the highways were established by some other agency, it is important to determine what rights the State acquired as a result of the Resolution.

#### Right-of-way Widths:

Current Right-of-way Corridor for the State Highways are set by the OTC by adopting the survey resolution. The actual right-of-way is set after the road design is established based on the Corridor resolution.

The original Right-of-way widths were designated by the counties through which the road traverses by resolution, by the SHC by resolution, or by description in a deed if acquired in fee.

The Oregon Legislature by law established a statutory width for the county road right-of-ways. If a resolution or establishment document did not specify a width, then the R/w width is whatever the statutory width was at the time the highway or road was established. This width is valid until such time as

the road is relocated, widened, straightened, or otherwise altered causing a "stated" change in the width. Refer to Dr. William Fry's Chart on Statutory Widths for County Roads attached.

In the early years of the State Highway Commission, the Counties acquired all the right-of-way for the State. The right-of-way was usually an easement, and occasionally in fee. (ORS 366.320)

For Highways across federal public lands, a Right-of-way Easement was acquired from the Bureau of Public Roads, or whatever the government agency responsible for the land at the time.

The current practice in 1988 in the Highway Division is to acquire a fee simple title for the Right-of-way whenever possible. ORS 366.360 gives the State the authority to acquire real property by fee simple title. ( Some States only have the power to acquire easements for roads, Oregon is an exception due to the written statutes.)

The task of acquiring the right-of-way is the responsibility of the Right Of Way Section within Highway Division.

Additional Right-of-way may have been acquired in conjunction with a construction or other improvement project. You need to check the maps in the Final Design Section of the HD in Salem, to see if there has been any changes to the route that will effect the R/w width, plus the State's rights and responsibilities in the highway.

#### Previous Status of Roads:

At the time a given highway was placed on the State Highway System, the road may have been in existence as a county road, a previous territorial road, a wagon road, a toll road, a trail, a county market road, a forest road, a originally platted city street, a military road, or a completely new route where no road had ever gone before.

It is important to identify what the nature of the road was prior to and at the time it was placed on the State System. Knowing this information and having the documentation to support it will help to determine who has the jurisdiction, control, maintenance responsibility and who has rights vested in the road. It also helps to identify what regulations govern the road and how wide the Right-of-way is.

Territorial, Wagon, and Military Roads were established by Legislative Acts. Some were by the US Congressional Legislature and some by the Oregon State Legislature. Generally these were established for public use and did not give fee title. However, in some instances with the wagon roads (at least for the Willamette Valley and Cascade Mountain Wagon Road) fee title was given in the form of a grant from the US Government to the State and the transferred to the Wagon Company. There are some files with information on the Wagon, Territorial and Military Roads in the General Research Files in the R/w Research Unit.

The Territorial Roads were given to the Counties through which they traversed by ORS 368.420, (also see General Laws of Oregon 1903, page 272). Territorial roads, state roads, and county roads established by the Oregon Territorial Legislature or the County Commissioners were declared legal roads by the State of Oregon when Oregon entered the Union, (approved June 4, 1859).

In accordance with General Laws of Oregon 1892, p.99, wagon roads were to be surveyed and maps filed, then the roads were to become county roads in each of the counties through which they traversed.

Many of the Military roads also became county roads though I have found no specific regulation governing them. I have heard that when a military troop used a trail or path that route became known as a military road. Polk County has extensive records on their old military roads.

Toll roads were generally privately owned roads which may have been given, or sold to the County or State for use as a highway. There should be deeds in the county records for these roads, indicating who has ownership.

County Market Roads were county roads which were built or improved with State and Federal funds by the county during 1917-1932. By 1932 the County Market Roads funds were exhausted. Many of the Markets Roads became Secondary State Highways, while others remained just county roads. (See SHC Journal of Minutes pages 3126 through 3140 for the Nov. 13, 1931 designation and adoption of many of the secondary state highways.)

Trails consist of indian, settler, or animal trails, some of which evolved into paths, wagon roads, then county roads. There is no specific legislation on trails, they are relevant in establishing a time frame of when or how early a given route was in use.

Right-of-Way across Federal Lands - There are two types of government lands, Reserved Lands and Unreserved or unappropriated Lands. Reserved Lands were set aside by various

Congressional Acts such as the Taylor Grazing Act, U.S. Reclamation projects, power site reserves, Indian Reservations. These federal lands are each governed by different agencies with their own policies regarding granting right-of-way easements for roads across the Reserves. The old R/w files usually contained letters from these agencies specifying the conditions under which the R/w was permitted.

The Unreserved or Unappropriated Lands are generally governed by the Bureau of Land Management or the U.S. Forest Service. Both these agencies give easements for the right-of-way.

Forest Roads were roads that partially passed through a national forest and were built with Federal Forest Roads Funds. (These roads may belong to the County, the State or the Federal Government.) The roads were built with matching funds, but generally the Bureau of Public Roads (BPR) surveyed, designed and constructed the road. When one of these routes became a state highway, the BPR was suppose to send a copy of the maps, plans and right-of-way descriptions to the State Highway Division. There are Forest Road Files for each of these roads in General Files, listed under the Forest Road Number.

In some cases an Application for a Road may be found, along with cooperative agreements, correspondence and contract plans and specifications for roads through the forest. These, if available, are found in the Forest Road File.

A formal application for the R/w through public land was not acquired for every highway. This was not consistently done as each National Forest tended to be autonomous. To provide some standardization of the R/w through national forests a Memorandum of Understanding was established and agreed to between the State and the US Forest Service. A copy of this Memorandum is on file in General Files under Misc. C & A # 7703.

#### Right-of-way through Cities

City Streets may have been platted when the town was originally platted and incorporated, or an addition or subdivision was added to the city limits. These streets were usually dedicated, the plat established the road, but did not necessarily give fee title. The plat tends to have the information about the dedication, and book and page reference to check to see if fee title was given to the city. Generally the property owner has the underlying fee title to the platted city streets. In some subdivisions, though it depends on how the subdivision is laid out and the specific wording in the deeds and the dedication.

For State Highways that are merely routed over existing city

streets, HD only has curb-to-curb (or to the outside of the ditch line if there is no curb) surface jurisdiction and maintenance responsibility (ORS 373.020).

In the case of unincorporated towns or cities, the County Courts had complete jurisdiction and control over any and all streets and alleys in the same manner as any other public road. These streets and alleys were declared by Legislative Act to be public highways known as county roads (see General Laws of Oregon 1903, page 279).

For roads and highways routed through cities which were placed on the State Highway System prior to the city's incorporation or annexation, the OTC has Right-of-Way to Right-of-Way jurisdiction and maintenance responsibility. The laws that apply in this case is the same as it is for State Highways that were county roads, (ORS 366.320).

Refer to the following discussion on County Roads for the roads in existence prior to the city's incorporation that are still under the county jurisdiction.

State Highways located within the city limits where no city street existed prior have been treated as State Highways where the State has R/w to R/w jurisdiction provided the State or the County acquired the R/w. The R/w in this case was usually acquired in fee.

There may be miscellaneous contracts and agreements (Misc. C & A's) between cities, counties and/or the State altering the terms and limits of jurisdiction. If the State was involved these agreements will be on file in General Files Office in ODOT Building, Salem.

It should be noted however that the cities and the counties did not have the authority to enter into any agreement with each other to transfer or relinquish to the city any county road until after 1939. (ORS 373.270 authorized the transfer of jurisdiction of county roads within the corporate city limits upon request from the city. See the procedure given in the statutes.)

#### Right-of-way through Counties

The county roads were to be established in accordance with the procedure set by the Oregon State Legislature (Gen. Laws of Or., 1903, pages 262-285) by the county court or by the County Commissioners. These roads were usually resolute, though the right-of-way may have been acquired by an easement, by fee, by

dedication or by condemnation with eminent domain rights.  
The process a County Road was established is:

- 1) a Petition signed by 12 land holders to Establish a road;
- 2) Petitioners Bond set aside to pay for the survey and viewers expenses;
- 3) a County Resolution Declaring its Intent to Locate and Establish a Road;
- 4) Posting of the notices in three key public locations;
- 5) Appointment of the Viewers, and the assignment of the County Surveyor to survey, locate, lay out, view, and assess whose property will be affected and assess the damages;
- 6) Surveyor's Report;
- 7) Viewer's Report;
- 8) First Reading of the Viewer's Report;
- 9) Second Reading of the Viewer's Report;
- 10) Third or Final Reading of the Viewer's Report;
- 11) Final Surveyor's Report, along with notice of where the field notes and plat are recorded;
- 12) An assessment of damages or list of persons asking for compensation; any remonstrances;
- 13) Final Order Establishing the Road, this is one of the most important documents;
- 14) Finally there should also be a separate listing where the property owners are actually awarded damages, in this case the right-of-way is an easement across their property.

Occasionally some of the steps (i.e. the final reading, the surveyor's report, the assessment of damages and the Final Order) will be combined in the same documents. All of the documents listed in these steps should be filed in the County Court Journals or the County Commissioner's Journals.

In some cases after the County Road has been established by the formal process, the county acquired fee title to all or parts of the right-of-way along the route. This information is located in the Book of Deeds, the Record Book of Deeds, or possibly in the Miscellaneous Deeds Books. Usually there is an Index Book for each of these Books in the county. The Deed Book Index is listed by Grantor - Grantee. (Lake and Clatsop Counties did this).

You may need to go through the indexes looking for any possible land owners in the area to do a Chain of Title Search to find any deeds or easements granted, or sold to the County, the City, the State of Oregon, SHC, or HD, or the USA government. You may also want to check for deed from the persons awarded damages.

These Journals or at least the Indexes are located in the

County Clerk's Office. Some Counties have a Recorder/ Archives Office where they store the older Journals. Some Counties also have these Journals put on Micro film, if this is the case the search for documents may take longer though not necessarily.

County Road Records; surveys; field notes; plats of towns, subdivisions, property boundaries, etc; and GLO information are among some of the information available in most of the County Surveyor's Office or the Road Officials' Office. These documents do not establish the roads; but do provide essential descriptions and references that may be used to locate the formal establishment documents in the County Commissioner's Journals. They also provide valuable information for re-establishing a survey.

For State Highways which were previously county roads, the State of Oregon has whatever rights the county had. ORS 366.320, vested in the State all the R/w owned or held by the County over and along any roads adopted by the State as a State Highway. (i.e. if the county had an easement, then the State acquired an easement; if the county had fee ownership, then the State now has the fee ownership.), (also see ORS 366.290).

For this reason it is important to determine whether a route through town was in existence prior to the town being platted and incorporated, or if it came into being with the platting of the town.

From 1914-1940 the Counties also acquired the Right-of-way for the State for the new State Highways being constructed. In these cases, often the county purchased a fee title or an easement from the private property owners, though the County may have no record of it being a county road or even existing. In these cases it was not a county road, it is a State Highway. Usually the highway was a completely new route traversing across a new frontier.

Santiam Highway through Jefferson County is an example where the county acquired the R/w for the State Highway. Since the County acquired the Right-of-way for the State the Road Records did not contain any record of the highway. This information had to be obtained by checking the State Highway map for the adjacent property owners, then going through the County Record of Deeds for the deeds conveying title.

Remember the boundaries and names of the counties have changed and shifted from time to time also. While a road may not have been established under one county, though it existed, you may need to check with the county records it was previously in. The Right-of-way Research Unit has an old map showing the county boundary changes.

## Changes to State Highways

State Highway R/w can be changed when projects are relocated, widened, signalized, etc. For previous construction projects that changed or might have changed the R/w, the maps in Final Design Unit provide useful information and clues to the widths, relevant R/w files or other SHC actions to check.

Additions to and deletions of portions of State Highways can be effected by OTC.

The method in which an area can be removed from the state highway system when the right-of-way is no longer needed for the highway purposes depends on the type of title the State has. The area is still part of the state highway system until is formally removed.

If the R/w is an easement, then the State can abandon the area through the Abandonment and Retention process.

Programming Section processes proposals for any highway or portion a highway to be removed from the State Highway System. Once their process has been completed and they have determined the R/w is only an easement, a resulting agreement and resolution is presented to OTC and when approved is filed as an A & R in Commission Services.

Though Programming Section does not generally do any field research, you may want to check with them to see if they have any documentation on whatever highway you are working on, as they do have some information.

If the State has fee title to the highway or a portion of the highway, then the property can not be abandoned. It may be relinquished to the county for highway purposes by the relinquishment process or it may be sold as excess property.

Relinquishments transfer the rights of the State for portion of right-of-way acquired for a state highway to other governmental bodies, usually the county or city for public use. The relinquishment is set forth through an agreement between SHC, and the agency the rights are being transferred to. Usually the relinquishment document contains a "built in" reversionary clause, providing in the event the agency no longer uses it for public use, the property reverts automatically back to the State as the underlying fee owner (ORS 271.330).

If the property is considered excess by the Right-of-way Property Management Section, then the excess can be sold usually through auctions for fair market value.

A brief description of some of the important and most frequently used resources follows.

Abandonments and Retentions :

There is a card index on top of the file cabinets for the A&R's. This index is alphabetically by County, and then numerically by Highway Number.

Commission Services :

Commission Services is an administrative office for the OTC. Resources available for researches in Commission Services include SHC Minutes; Primary and Secondary Highway Designation Resolutions; Abandonment and Retention Resolutions; Survey Resolutions; and Throughway Resolutions.

County Records :

Information available in the County Clerks Office includes Miscellaneous Book of Deeds, Road Survey Books, Books of Mortgages, County Court Proceedings or County Commissioners' Minutes. There should be Indices for each of these books.

Miscellaneous Contracts and Agreements :

These are on file in General Files. There is a card index alphabetically by party and subject which you can look through. The Region Offices and the District Maintenance Offices usually have a copy of the Misc. C&A.

SHC and OTC Minutes :

There are Indexes of all the SHC Journals of Minutes, except for the time period between 1937 and 1941. If you are looking for something in that time period, you either have to look for the specific date or check each journal for its general index. The Indexes may list items related to the highway by Highway name, county, or even subject matter.

State Highway Designations :

There are indexes of the Primary and Secondary Highway Designation Resolutions in the File Drawer. Sometimes you may need to just thumb through the folders, to find what you are looking for. Each Folder, which actually is an envelop in disguise, has its contents summarized on the outside front of the Folder.

## M I S C E L L A N E O U S     H I G H W A Y

### L E G I S L A T I O N

- ORS 271.330 .....Relinquishment of State property to other governmental bodies for public use, with reversionary clause.
- ORS 366.285 .....Procedures for establishing or re-establishing highways when the location is in doubt.
- ORS 366.290 .....Adding to, or removing roads from the State Highway system.
- ORS 366.300 .....Treatment of portions of highways eliminated from the highway when relocated 1) if for public use, goes to county; 2) otherwise reverts to abutting owners; Covered in an Abandonment and Retention Resolution.
- ORS 366.320.....State has whatever the rights were vested in the County at the time the State took over a county road as a State Highway State has R/w to R/w jurisdiction.
- ORS 366.360 .....The State may acquire fee simple title to real property acquired by the State by either donation, agreement, or exercise of the power of eminent domain.
- ORS 368.420 .....All territorial Roads in the State were declared to be county roads at the time the State entered the Union.
- ORS 373.020 .....For State Highways routed over city streets the State has curb-to-curb jurisdiction.
- ORS 373.260 .....Since 1939 a County may enter into an agreement with any city for construction, improvement, or repair of, and for the acquisition of R/w for any county road or city street within the city limits.
- ORS 373.270 .....Allows for the transfer of jurisdiction of county roads within city limits to the city upon request, procedure given in the statute.
- ORS 374.005 thru  
ORS 374.095 .....Oregon "Throughway Laws".

Documentation is important if the status for the highways are to be known, understood and usable to the state employees as well as the general public. A memo to the file documenting what research was done could easily be included in the project file and any related R/w File.

Previously research information has been stored in the Right-of-way Research Unit in Salem. At this time researches that have been done for small area are stored in various file cabinets for each highway in Room 10. As the Unit disbands and Right-of-way relocates to the Fourth Floor of the Transportation Building the final resting ground for the research information is unknown.

Originally written by Teresa Elliott June 1987 .

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Reviewed by Jack Sollis, Nov. 1988.

Stored on computer disk under "a:hwy-info.def" in Word Perfect.

WHERE TO FIND INFORMATION :

Abandonment Resolutions  
Commission Services

Agreements  
General Files

Assessor's Maps  
Maps for all counties are located in Revenue Building

Bridge Files  
Bridge files room

Forest Highway Construction Maps (FRV Maps)  
Final Design

Forest Service Maps  
Marge Dixon's file cabinet

GLO (Government Land Office Plats  
R/W Descriptions, County Mapping

Highway Resolutions  
Commission Services

Highway Survey Field Notes  
Newer books in Final Design, older volumes in storage building  
on Broadway

Mile Point Logs  
Research files in Federal Aid/Research office, Bound together  
in binders in Final Design, County Mapping (they make these and  
send them out)

R/W Maps  
Final Design

R/W Mosaics  
Photogrammetry

Subdivision Plats  
R/W Descriptions

Thruway Maps  
Order thru General Files

## RESOURCES AVAILABLE WITHIN HIGHWAY DIVISION:

### Commission Services

Minutes of State Highway Commission (Minutes and Indexes in vault)  
Abandonment & Retention Resolutions (Index in card files)  
Survey Resolutions (Index in card files)  
Primary & Secondary Highway Resolutions

### GENERAL FILES

Agreements  
Cattle Guard File  
Construction Contracts (old ones on microfilm)  
Book of contractors (alphabetical, to look up contract numbers)  
Historical Highway Files  
Forest Highway Files  
Thruway maps are ordered through this office

### RIGHT-OF-WAY OFFICE

Right-of-way files

### FINAL DESIGN

Construction field notes (old ones in storage)  
Construction maps (indexed by straight line maps and highway files. Old ones are on microfiche in Final Design)  
Right-of-way maps (indexed by highway files and large Right-of-way index map)  
County maps (  
Forest highway construction maps (FRV maps)  
Mile point notebooks  
Bridge log

### BRIDGE

Highway & county files on bridge maintenance  
Maintenance files by bridge number (old in archives)  
Several phot albums of old bridges in bridge library  
File of information on buildings, bridges, culverts, cattle passes

### R/W DESCRIPTIONS

City plats  
GLO plats  
Metzger maps

### HIGHWAY STORAGE

COUNTY MAPPING & MILEAGE CONTROL

GLO Plats  
City Maps  
Mile Point Logs

PHOTOGRAMMETRY

Mosaics  
Aerial photography

PHOTOCOPY

Latest Quad Maps  
General Highway Maps (County Maps)  
Highway List (alphabetically and by highway number)

STATE LIBRARY

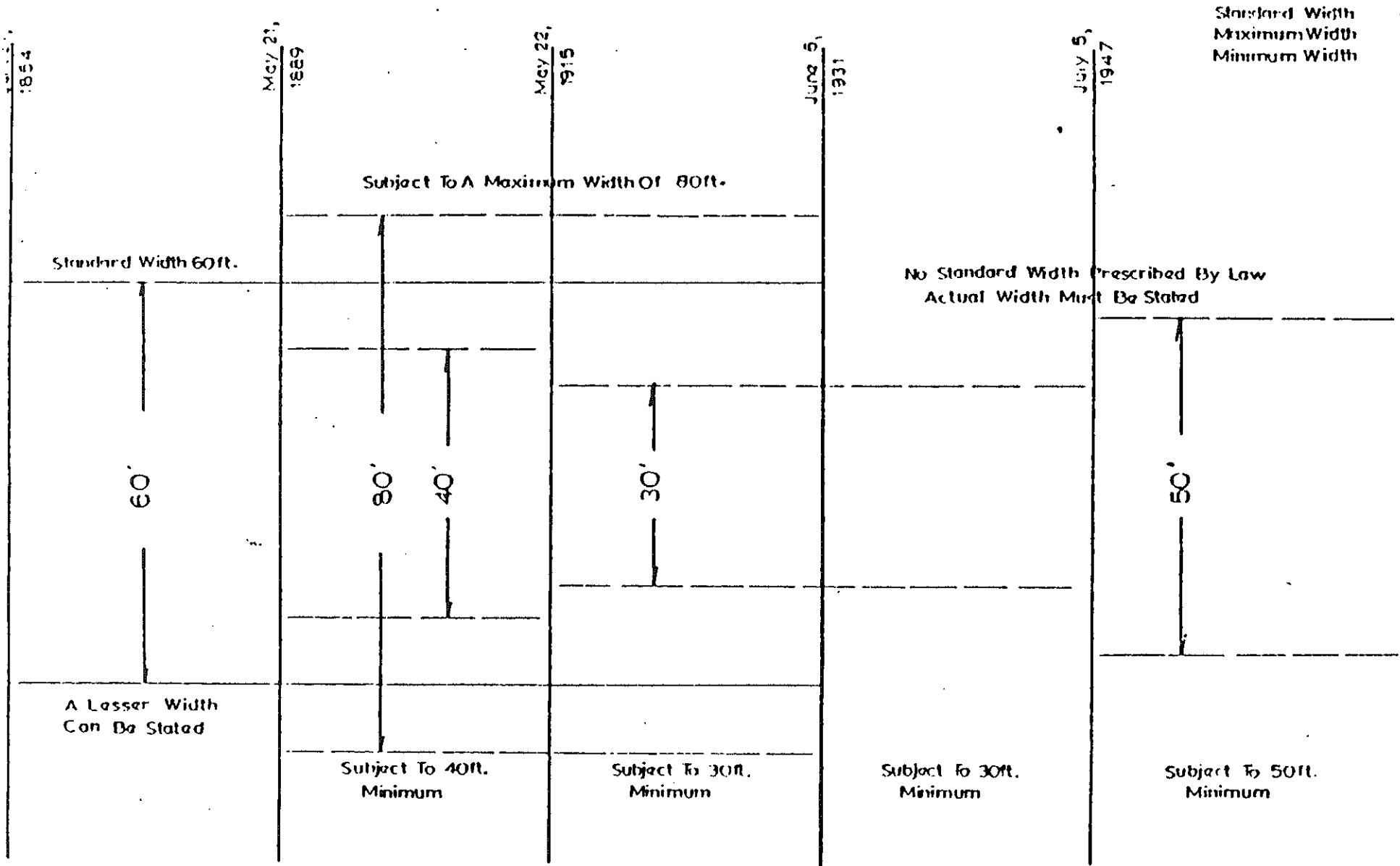
ODOT LIBRARY

Complete Set of Biennial Reports  
Complete set of Oregon Historical Society Journal with Index  
Oregon Laws  
Oregon Revised Statutes  
Some history books

ENVIRONMENTAL

Historical Information

# STATUTORY COUNTY ROAD WIDTHS



Law prescribes 60 ft. as standard width when no width is stated. Stated width controls subject to specified limits.

Law prescribes no standard width. Width of county road must be stated subject to specified minimum.

\*\* This Chart is from William Frys' article on "Determining R/W Widths for County Roads".