

SETTLEMENT AGREEMENT

Between: Union Pacific Railroad (UPRR)

And: The City of Klamath Falls (City) and Klamath County, Oregon (County)

1. The parties are currently disputing the application and meaning of an agreement (the Agreement) between the State of Oregon, Southern Pacific Company, and Central Pacific Railway Company. The Agreement is attached to this Settlement Agreement as Exhibit 1. The Agreement was filed and recorded in the records of Klamath County on May 4, 1932. The City is a successor in interest to the State of Oregon under the Agreement, and the City represents that it has full authority to enforce and compromise the obligations under the Agreement. UPRR is the successor in interest to Southern Pacific Company and Central Pacific Railway Company, and represents that it has full authority to enforce and compromise the obligations under the Agreement. Having contributed to the construction project at issue in this dispute, the County also represents that it has full authority to compromise any claims it may have under the Agreement.

2. The parties dispute whether the Agreement obligates UPRR to pay a percentage of the costs to construct a structure known as the Bienn Street Bridge in Klamath Falls, Oregon. Rather than engage in costly and uncertain litigation, the parties have elected to compromise under the terms stated in this Settlement Agreement.

3. In consideration of the payment of \$69,925.00, receipt of which is acknowledged, the City and County release UPRR from all obligations under the Agreement, Exhibit 1, including but not limited to any past, present or future obligations to contribute to maintaining, repairing or renewing the Bienn Street Bridge, or its appurtenances.

4. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

5. This Settlement Agreement shall be recorded by UPRR in the office of the Recorder, Klamath County, Oregon.

6. City and County agree to execute all documents reasonably necessary to effectuate this Settlement Agreement.

7. Paragraph 5 of the Agreement is modified to state:

Prior to commencing any work upon or in connection with said overhead crossing or highway upon the right of way and property of Railroad (other than routine maintenance), the State and/or its contractors shall first enter into a written agreement with Railroad, satisfactory to it,

1 - SETTLEMENT AGREEMENT

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Rep: City Recorder

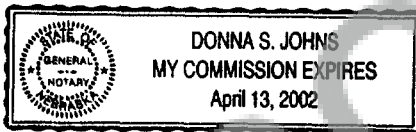
indemnifying Railroad from and against any and all claims, demands, loss, damage or liability growing out of the performance of the work to be done by such contractors, and agreeing to obtain such insurance as is customarily required by Railroad for such projects. For routine maintenance, the State agrees to indemnify and hold harmless the railroad from all claims, demands, loss, damage or liability growing out of the performance of the routine maintenance.

UNION PACIFIC RAILROAD COMPANY

By Thomas T. Ogee
Title Chief Engineer Design

STATE OF NEBRASKA)
) ss.
County of Douglas)

On this 23RD day of February, 2000, Thomas T. Ogee personally appeared before me Donna S. Johns and, being first duly sworn, did say that he/she is Chief Engr. Design of UNION PACIFIC RAILROAD COMPANY, and signed the foregoing on behalf of said corporation by authority of its Board of Directors.



Donna S. Johns
NOTARY PUBLIC FOR State of Nebraska
My Commission Expires: Apr 13, 2000

CITY OF KLAMATH FALLS

By James R. Keller
Title City Manager

STATE OF OR)
) ss.
County of Klamath)

On this 24th day of February, 2000, James R. Keller personally appeared before me Shirley Kappas and, being first duly sworn, did say that he/she is City Manager of CITY OF KLAMATH FALLS, and signed the foregoing on behalf of said municipality by authority of its City Council.



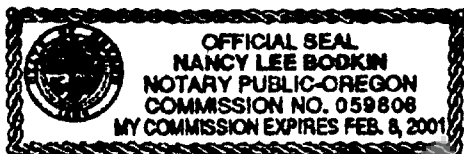
Shirley F. Kappas
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-10-01

KLAMATH COUNTY, OREGON

STATE OF Oregon)
County of Klamath) ss.

By [Signature]Title Chairman

On this 29th day of February, 2000, Al Switzer personally appeared before me Nancy Lee Bodkin and, being first duly sworn, did say that he/she is Chairman - Board of Commissioners of KLAMATH COUNTY, OREGON, and signed the foregoing on behalf of said county by authority of its Board.

Nancy Lee Bodkin
NOTARY PUBLIC FOR OREGONMy Commission Expires: Feb 8, 2001

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IN WITNESS WHEREOF, DUNN & BAKER, a corporation pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its President and Secretary, and its corporate seal to be hereto affixed this 20th day of March A. D. 1931

Signed, Sealed and Delivered in the
Presence of us as witnesses
D. W. Bayless
E. O. Fisher

By C. A. Dunn, President
By J. M. Baker, Secretary

(CCRP SEAL)

STATE OF OREGON }
County of Klamath } ss

On this 23rd. day of March, 1931, before me appeared C. A. Dunn and J. M. Baker both to me personally known, who being duly sworn, did say that he, the said C. A. Dunn is the President, and he, the said J. M. Baker is the Secretary of DUNN & BAKER the within named Corporation, and that the said affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and said C. A. Dunn and J. M. Baker acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this, the day and year first in this, my certificate, written.

Geo. R. Lindley
Notary Public in and for said County and State
Notary Public for Oregon
My commission expires Sept. 26, 1931

(SEAL)

Filed and recorded May 4th, A. D. 1932, at 3:45 o'clock P. M.

C. R. DeLap, County Clerk,
By *Thary McInerney* Deputy

#1684

Central Pacific Railway Company et al

to

Agreement

STATE OF OREGON

RECEIVED

APR 23 1932

OREGON STATE HIGHWAY COMMISSION
BRIDGE DEPARTMENT

THIS AGREEMENT, made this 4th day of March, 1932, by and between CENTRAL PACIFIC RAILWAY COMPANY, a corporation, first party, SOUTHERN PACIFIC COMPANY, a corporation, second party, (said first and second parties herein collectively called "Railroad"), and the STATE OF OREGON, acting by and through its State Highway Commission, third party, (herein called "State");

RECITALS:

Pursuant to application to the Public Utilities Commissioner of the State of Oregon by the State of Oregon, acting by and through its State Highway Commission, for an order permitting and authorizing a crossing of The Dallas California Highway over the tracks of Railroad at a point near and opposite First Avenue, sometimes known as Elgin Street, Klamath Falls, Klamath County, Oregon, the said Public Utilities Commissioner rendered his Decision No. 1967 under date of July 17th, 1931 as to said application, which said decision granted such authority and is hereby referred to for further particulars.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. Railroad hereby grants to the State, subject to the conditions and limitations hereinafter contained, the right to construct, maintain and use a highway over and across its right of way and crossing its tracks and appurtenances now or hereafter existing thereon by means of an overhead crossing upon that certain piece or parcel of land situate, lying and being in the Southwest Quarter of Section 20, Township 38 South, Range 9 East, Willamette Meridian, County of Klamath, State of Oregon, and more particularly described as follows, to-wit:

Beginning at a point on the Southwesterly Line of Central Pacific Railway Company's right of way, that bears North 0°13' West, 78.952 feet measured along the West Line of the Northeast Quarter of the Southwest Quarter of said Section 20, from the Southwest Corner of said Northeast Quarter of said Southwest Quarter, said point of beginning also bears South 0°13' East 95.048 feet measured along said West line of the Northeast Quarter of the Southwest Quarter of said Section 20, from a point on the Center Line of the originally located main track of said Central Pacific Railway Company,

EXHIBIT

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known as Engineer's Station "C" 3491/74.0; thence North 63°38' West along said Southwesterly right of way line, a distance of 20.129 feet to a point; thence North 0°13' West, a distance of 206.869 feet to a point on the Northeastly Line of said Central Pacific Railway Company's right of way; thence along said Northeastly right of way line the following courses and distances: South 63°38' East 20.129 feet to a point; South 0°13' East 44.728 feet to a point; South 63°38' East 42.693 feet to a point; North 0°26' East 32.593 feet to a point; South 89°34' East 3.447 feet to a point; thence leaving said Northeastly right of way line South 0°13' East a distance of 225.004 feet to a point on said Southwesterly line of said right of way; thence along said Southwesterly right of way line the following courses and distances: North 89°34' West 6.00 feet to a point; North 0°26' East 31.173 feet to a point; North 63°38' West 40.650 feet to the point of beginning, containing an area of 0.2485 of an acre, more or less.

The location of said piece or parcel of land is shown tinted in red on Shasta Division Drawing #6025, Sheet 1 of 1, hereto attached and made a part of this agreement.

2. State shall furnish all labor, materials, tools and implements, and perform all necessary work of excavation for construction of said overhead crossing, and install, maintain and remove, upon completion of the work, the necessary false work, and perform the work of constructing abutments, wing-walls, piers and floor system, and any and all other work in connection with the construction of said overhead crossing, unless otherwise provided for herein.

3. Said overhead crossing upon and across said right of way and tracks shall be constructed substantially as shown on Oregon State Highway Commission's Drawing No. 4282, Sheet 1, hereto attached and made a part hereof, and the detail drawings of said overhead crossing shall be subject to the approval of Railroad and the Public Utilities Commissioner of the State of Oregon.

4. State may perform the work herein provided for with its own forces, or may let said work by contract.

5. In the event that any work upon or in connection with said overhead crossing or highway, to be done upon the right of way and property of Railroad, is to be let to contractors by the State, such contractors shall be subject to the approval of Railroad as to their responsibility and ability to perform the work over and across the tracks and property of Railroad, and no work shall be commenced until such contractors shall have first entered into a written agreement with Railroad, satisfactory to it, and indemnifying Railroad from and against any and all claims, demands, loss, damage or liability growing out of the performance of the work to be done by such contractors, and such contractors shall furnish, at no expense to Railroad, a good and sufficient bond in the amount of Ten Thousand (10,000) Dollars of a reliable surety company, in form and satisfactory to Railroad, guaranteeing the true and full performance of all of the terms, conditions and stipulations contained in said agreement to be entered into with Railroad by said contractors, as here in this paragraph provided.

6. Railroad shall make such repairs and restoration of tracks, and furnish such inspectors, watchmen or flagmen as it may deem necessary for the safety of the movements of its trains and property, and to supervise the prosecution of the work, and if Railroad finds it necessary to alter or change the location of any signal, telephone, telegraph or other wire lines upon its right of way, or to perform any other work upon its right of way that may be necessary in connection with the construction of said overhead crossing, all expenses incurred in connection therewith, and for such inspectors, watchmen or flagmen shall be deemed and considered a part of the cost of the work herein provided for, and be apportioned between Railroad and State as hereinafter provided; it being understood, however, that this section shall not apply to future proposed lowering of roadbed.

7. All work on Railroad's right of way contemplated by this agreement shall be done in a good and workmanlike manner to the satisfaction of Railroad, and each portion thereof shall be promptly commenced and diligently prosecuted, and shall be done at such times and in such manner as not to interfere with the operations of Railroad.

8. All expenses incurred by Railroad in connection with the work herein provided for shall be the actual amounts incurred by Railroad in connection with labor and materials used, furnished or expended in the performance of said work to be done in fulfillment of its obligations hereunder, plus commercial tariff freight rates as published and in effect on all materials delivered at the job. Ten (10) per cent of all labor charges incurred by Railroad for work done by its own forces shall be added to provide compensation for superintendence and overhead.

9. At the close of each month during the progress of construction work settlement shall be promptly made between Railroad and State whereby fifty (50) per cent of expenditures for the grade separation structure, including changes or relocation of wire lines, repairs and restoration of tracks, cost of inspectors, watchmen or flagmen, and any and all other expenses incurred by Railroad in connection with the work herein provided for, shall be borne and paid by Railroad, and the remaining fifty (50) per cent, including the entire cost of paving, shall be borne and paid by State.

10. The books, papers, records and accounts of the State and Railroad, insofar as they relate to the items of expense for labor and materials, or are in any way connected with the work herein contemplated to be paid for by the parties hereto, shall at all reasonable times be open to the inspection of the agents and representa-

EXHIBIT

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11. After the completion of the work herein contemplated fifty (50) per cent of the cost of maintaining, repairing and renewing the grade separation structure, exclusive of paving, shall be borne by Railroad, and the remaining fifty (50) per cent, including the entire cost of paving, shall be borne by State.

12. Nothing herein contained shall impair or restrict the right of Railroad, or either of them, to at any time or times construct, maintain, use and operate, on the present or other grade, existing or additional railroad tracks and appurtenances thereto, including water and fuel pipe lines and conduits and telephone, telegraph, signal, power and other electric lines and other facilities upon, along or across any and all parts of said land above described, all or any of which may be freely done at any time or times by Railroad or its successors without liability to State or any one else for compensation or damage.

13. Should the said highway be abandoned at any time, or should the same not be used for the purpose herein designated for one (1) year continuously, Railroad shall have the right to resume and retake exclusive possession of its said right of way and/or remove said overhead crossing at the expense of the State, and all rights herein granted by Railroad to State shall forthwith cease and determine.

14. State shall not grant or consent to any franchise, right, privilege or easement upon, across, over or under Railroad's right of way.

15. This agreement shall be recorded by the State in the office of the Recorder of Klamath County, Oregon.

16. This instrument is subject to all valid and existing contracts, leases, liens or encumbrances which may affect the said property, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

17. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in triplicate by their respective officers thereunto duly authorized, and their corporate seals to be hereunto affixed, as of the day and year first herein written.

STATE OF OREGON, acting by and through
its State Highway Commission, (CORP SEAL)
By L. M. Scott
Chairman, State Highway Commission
By E. B. Aldrich (CORP SEAL)
State Highway Commissioner
By Carl G. Washburne (CORP SEAL)
State Highway Commissioner

SOUTHERN PACIFIC COMPANY,
By J. H. Dyer, Vice President
Attest G. L. King, Assistant Secretary

CENTRAL PACIFIC RAILWAY COMPANY,
By G. L. King, Vice President
Attest D. P. Ewing, Assistant Secretary

Form Approved:-----

Contract Attorney
Countersigned
F. L. McCaffery, Auditor 68
Per J. L. Deering

Attest: F. B. Glaisyer, Secretary

NOTARIAL ACKNOWLEDGMENT

SOUTHERN PACIFIC COMPANY

CENTRAL PACIFIC RAILWAY COMPANY

STATE OF CALIFORNIA,)
) ss.
CITY AND COUNTY OF SAN FRANCISCO.)

On this 12th day of April, 1932, before me Frank Harvey, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared J. H. Dyer and G. L. King, known to me to be the Vice President and Assistant Secretary, respectively, of Southern Pacific Company, one of the corporations that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of Southern Pacific Company; and each of them acknowledged to me that such corporation executed the same; and personally appeared G. L. King and D. P. Ewing, known to me to be the Vice President and Assistant Secretary, respectively, of Central Pacific Railway Company, one of the corporations that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of Central Pacific Railway Company; and each of them acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, State of California, on the day and year in this certificate first above written.



Frank Harvey
Notary Public in and for the City and County of
San Francisco, State of California

(SEAL)

EXHIBIT 1
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This map attached to the foregoing instrument--Central Pacific Railway Co. et al to the State of Oregon. SHASTA DIVISION DRAWING 60925 Sheet 1 of 1.



Legend:
 C.P. Ry. Co. R. of W. lines.
 Red Tint-Proposed Easement.

Trail Plan.
Scale: 1" = 100'

SOUTHERN PACIFIC COMPANY
PACIFIC LINES
CHELSEA
PROPOSED EASEMENT FOR OVERHEAD CROSSING
OREGON HIGHWAY COMMISSION.
SCALE AS SHOWN. K.H. JUNE, 1933

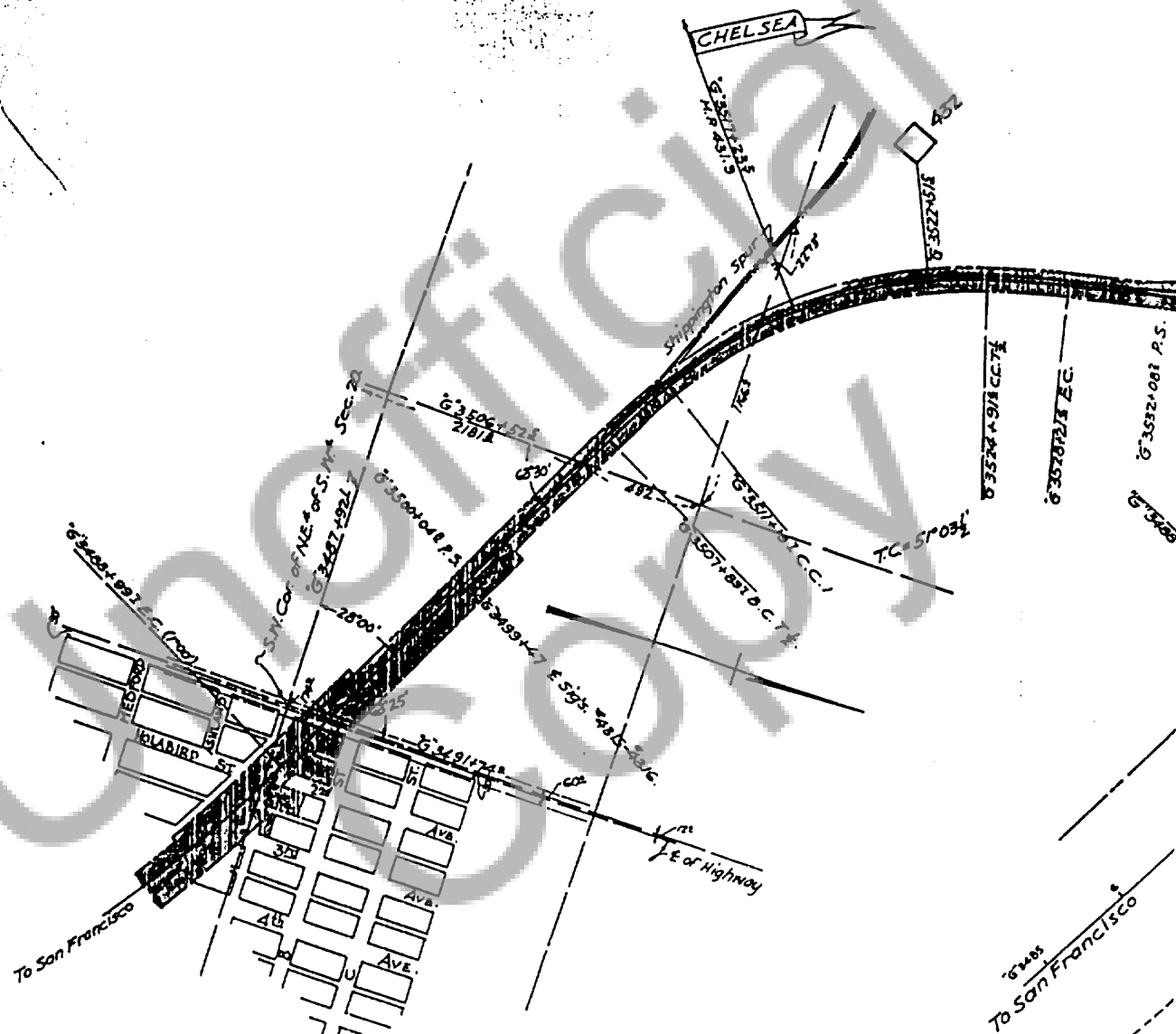
JUNE, 1931.

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| SHASTA DIV'N. |
| DRO. # 6925 |

A K S A F E T Y A F I L L M +

610-11 County Record 467-77

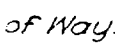
This map attached to the foregoing instrument--Central Pacific Railway Co. et al
to the State of Oregon. SHASTA DIVISION DRAWING #6925 Sheet 1 of 1.



Legend:

- Brown Tint - C.P.Ry. Co. Right of Way.
 Red Tint - Proposed Easement.

Location Plan.
Scale: 1" = 400'.

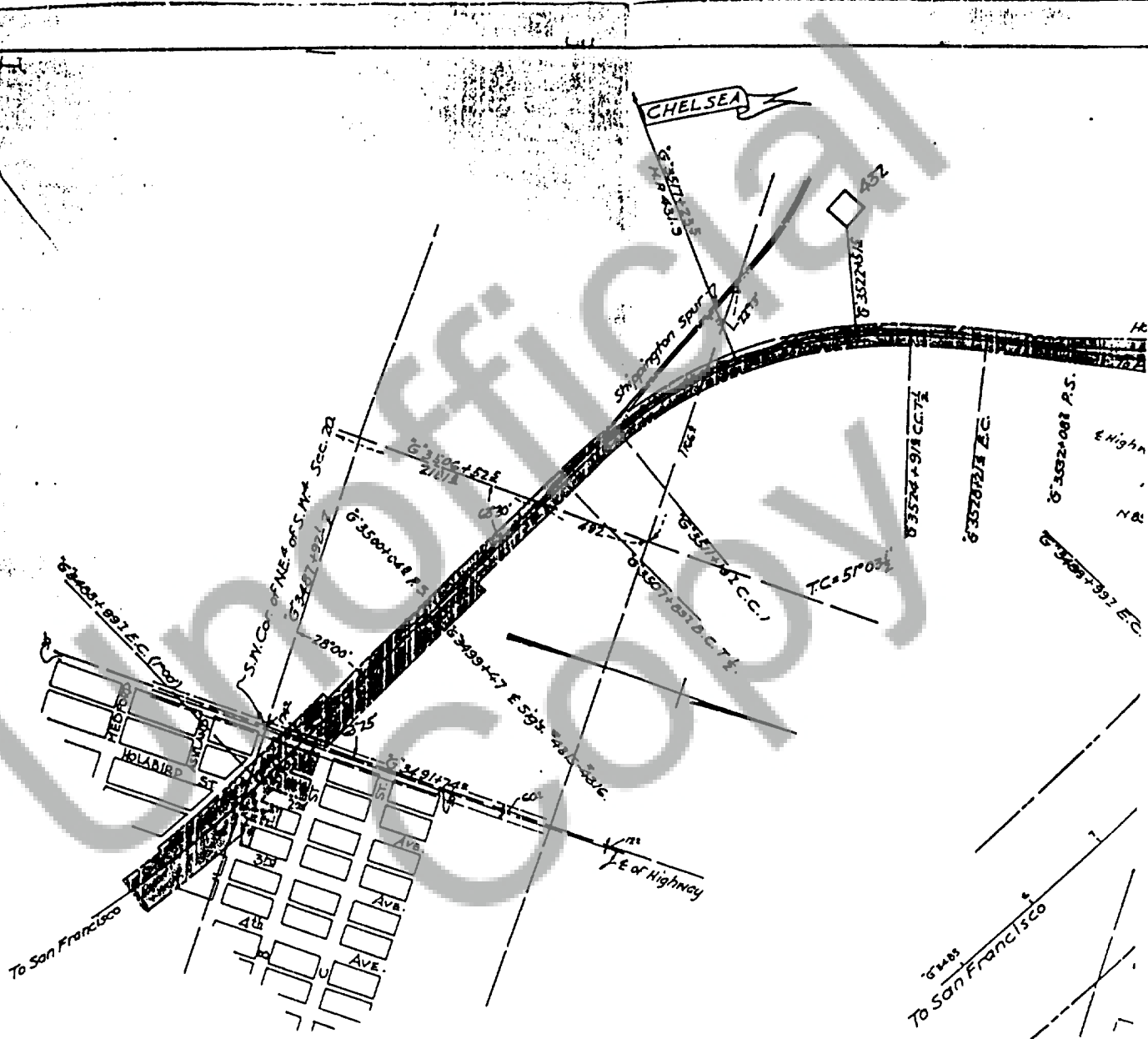


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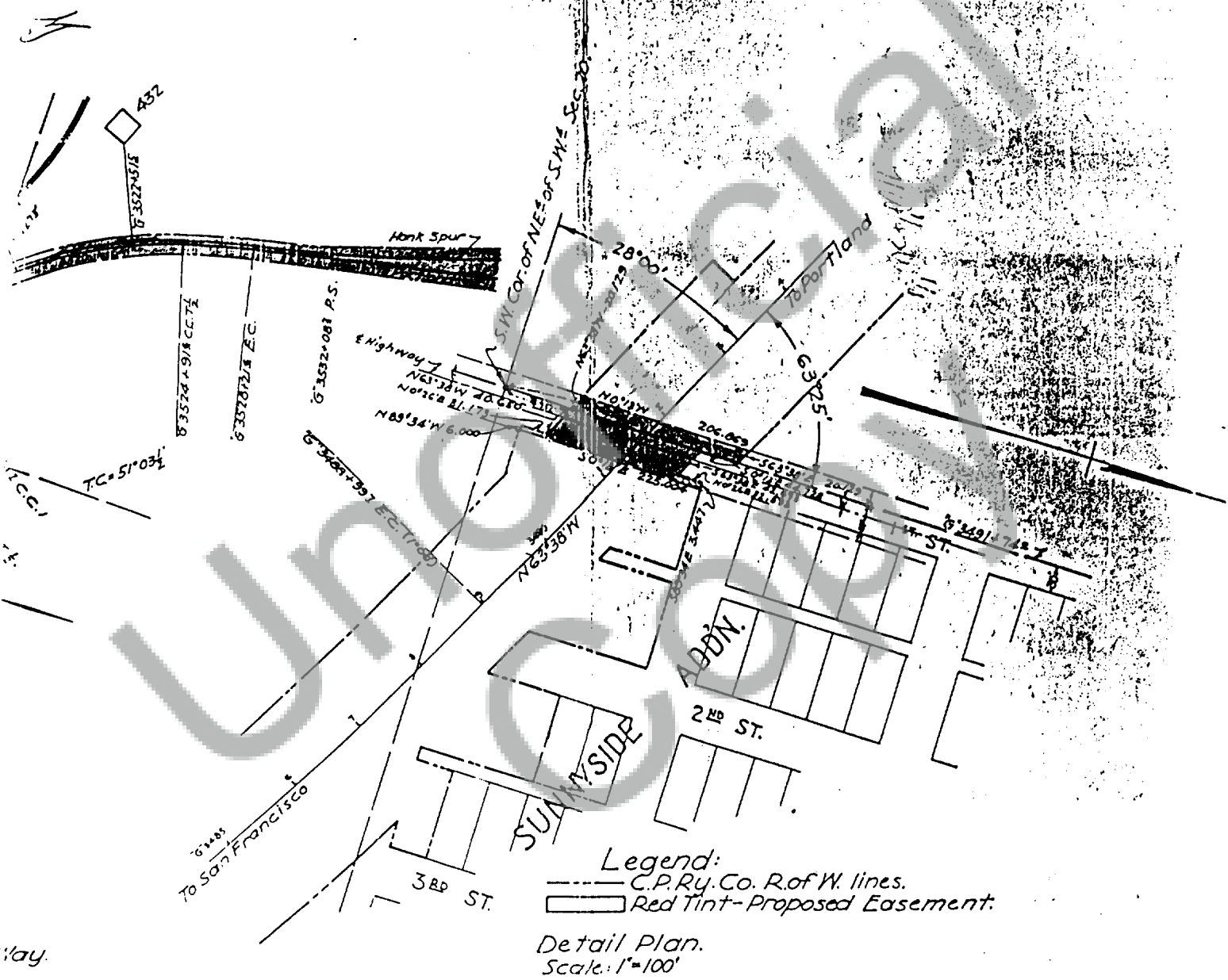
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Legend:
 [Brown Tint] Brown Tint - C.P. Ry. Co. Right of Way.
 [Red Tint] Red Tint - Proposed Easement.

Location Plan.
 Scale: 1" = 400'.

Bl. with County Deed Record Vol. 77



SOUTHERN PACIFIC COMPANY

PACIFIC LINES

CHELSEA

PROPOSED EASEMENT FOR OVERHEAD CROSSING
OREGON HIGHWAY COMMISSION.
SCALE AS SHOWN. K.M.

JUNE 1931.

SHASTA 1

DRG. 88

STATE OF OREGON, }
COUNTY OF MARION. } ss.

On this 4th day of March, 1932, before me appeared Leslie M. Scott, E. B. Aldrich and Carl G. Washburne, to me personally known, who being each duly sworn did say: that he, the said Leslie M. Scott is Chairman of the State Highway Commission of the State of Oregon, and that he, the said E. B. Aldrich is State Highway Commissioner of the State of Oregon, and that he, the said Carl G. Washburne is State Highway Commissioner of the State of Oregon, and that the seal affixed to the within instrument is the seal of the State Highway Commission, and that the said instrument was signed and sealed in behalf of the State of Oregon by authority of the State Highway Commission, and the said Chairman and the said Commissioners each acknowledged said instrument to be the free act and deed of said State of Oregon by said State Highway Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

H. Bernard Glaisyer
Notary Public for Oregon
My commission expires: March 26, 1935

(SEAL)

Filed and recorded May 4th, A. D. 1932, at 3:10 o'clock P. M.

C. R. DeLap, County Clerk,

By *Thay McGee* Deputy

#1692

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE----DIVISION, ---- DISTRICT OF OREGON

IN THE MATTER OF
MORTGAGE INVESTMENT CO., an Oregon corporation } No. B-16556 IN BANKRUPTCY
BANKRUPT }

At Portland, in said District, on the 17th day of December, A. D. 1931, before the Honorable John H. McNary Judge of said Court in Bankruptcy, the petition of Joseph Schlapik, John Carson and Ellen Carson, and Alco Sanitary Supply Co., that Mortgage Investment Co., an Oregon corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Mortgage Investment Co., an Oregon corporation is hereby declared and adjudged a bankrupt accordingly.

IT IS THEREFORE ORDERED, That upon the petition filed in this Court by or against said bankrupt on the 1st day of October, A. D. 1931, said matter be referred to A. M. Cannon one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Mortgage Investment Co., an Oregon corporation shall attend before said Referee on the 2d day of January, 1932, at Portland and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

WITNESS the Honorable John H. McNary, Judge of the said Court, and the seal thereof, at Portland in said District, on the 17th day of December, A. D. 1931

(SEAL OF THE COURT)

G. H. Marsh, Clerk
By L. S. Rogers, Deputy Clerk

UNITED STATES OF AMERICA }
DISTRICT OF OREGON } ss.

I, G. H. Marsh, Clerk of the United States DISTRICT Court for the DISTRICT OF OREGON, do hereby certify that the foregoing copy of Adjudication of Bankrupt and Order of Reference (Combined) in cause No. B-16556, in the matter of Mortgage Investment Co., an Oregon corporation, bankrupt, has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony thereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 5th of February, 1932

(SEAL),
G. H. Marsh, Clerk,
By L. S. Rogers, Deputy Clerk

State of Oregon, County of Klamath
Recorded 04/20/00, at 8:46 a.m.
In Vol. M00 Page 13019
Linda Smith,
County Clerk Fee\$ 76⁰⁰