

AGENDA COVER MEMO

DATE: March 18, 2003
TO: Lane County Board of Commissioners
FROM: K. Robert Ezell, Lane County Surveyor *K. Robert Ezell*
DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF THE VACATION OF A PORTION OF DUNCAN SLOUGH ROAD (COUNTY ROAD NUMBER 499), LOCATED SOUTH OF BERNHARDT CREEK ROAD NEAR KARNOWSKY CREEK, IN SECTIONS 22 AND 23, TOWNSHIP 18 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN (18-11-22 & 23)

I. MOTION

TO APPROVE THE FINAL ORDER FOR THE VACATION OF A PORTION OF DUNCAN SLOUGH ROAD (COUNTY ROAD NUMBER 499), LOCATED SOUTH OF BERNHARDT CREEK ROAD NEAR KARNOWSKY CREEK, IN SECTIONS 22 AND 23, TOWNSHIP 18 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN (18-11-22 & 23)

II. ISSUE

To decide whether the vacation of a portion of Duncan Slough Road (County Road Number 499) being 40 feet wide and approximately 1.4 miles in length, is in the public interest.

III. DISCUSSION

A. Background

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Gloria Brown, Forest Supervisor for the Siuslaw National Forest, requesting that a portion of Duncan Slough Road be vacated so that they can make improvements to the wetlands in and around the old roadbed.

County Road Number 499 was established in 1892 with a right-of-way width of 40 feet to provide an outlet for the Karnowsky homestead. The roadway runs southeasterly from Bernhardt Creek Road. Bernhardt Creek Road is a private road at this location. Duncan Slough Road runs along the bottomlands of Karnowsky Creek through Sections 15, 22, and into Section 23 in Township 18 South, Range 11 West of the Willamette Meridian. The portion proposed to be vacated is that portion lying south and east of the section line between Sections 15 and 22. The subject right of way is bounded on both sides with National Forest land.

Qwest Communications, Northwest Natural Gas and various other public agencies including various County offices were notified of the proposed vacation. The Transportation Planning

section of Lane County responded to the referral stating that they do not oppose the vacation, but recommended that the entire length of Duncan Slough Road be vacated. The other agencies either had no comment or did not respond to the referral.

The proposed vacation was included on the "Consent Calendar" agenda for Board of Commissioners on January 15, 2003, but the Board requested that a public hearing be held regarding this matter so a wider public notice would be provided as provided by ORS 368.401 to 368.426 and the public would be given an opportunity to comment.

The Board approved Resolution and Order Number 03-2-26-10 to set a public hearing on April 9, 2003 to hear and evaluate the merits of whether to vacate a portion of Duncan Slough Road, as petitioned for.

B. Analysis

ORS 368.356 requires that the county governing body shall determine whether the vacation of the property is in the public interest. The public interest in present or future use of this county road is the primary issue to be addressed.

Duncan Sough Road (County Road Number 499) is not maintained by the county, and is not connected to a legal county road. County maintenance of Bernhardt Creek Road ends approximately one mile east of its intersection with Duncan Slough Road and is considered to be a private road west of that point. Vacating the described portion of Duncan Slough Road will not deny legal access to any property. The road is gated just south of its intersection with Bernhardt Creek Road, therefore the public would have to travel over a private road to get access to the segment of Duncan Slough Road that is proposed to be vacated. Whether the road is vacated or not, access will remain unchanged.

The Forest Service has funds for the improvement of the wetlands along the subject roadway which will be easier to accomplish if the road is under their own jurisdiction. Timing is an issue for this project, and because of this the Forest Service did not request to vacate the entire length of roadway, as the northerly portion of this road runs through private property and it would take additional time to obtain easements and agreements from the landowners.

The public interest will be served, as vacating this section of Duncan Slough Road will relieve the County of any potential future maintenance to the road and will allow the Forest Service to better care for the National Forest lands in this area.

C. Alternatives/Options

The Board of County Commissioners has the options to:

1. Approve the vacation of a portion of Duncan Slough Road, County Road Number 499, as petitioned for.
2. Deny the vacation of a portion of Duncan Slough Road, County Road Number 499, as petitioned for.
3. Continue the matter for further consideration.

D. Recommendations

All statutory procedures necessary for the vacation of the above mentioned portion of Duncan Slough Road, (County Road Number 499), have been complied with, including providing legal notice and a report by the Director of Public Works, who recommends approval of the vacation as described in the Final Order. No property owners in the area will be denied road access rights to their property by this proposed vacation. The general public will benefit and it is recommended that County Road Number 499 as described in the Final Order be vacated.

E. Timing

Timing is important in this matter. The Forest Service currently has funds for making improvements to the wetlands on National Forest land in and around the old roadbed of Duncan Slough Road and the vacation is a prerequisite for this project.

IV. IMPLEMENTATION/FOLLOW-UP

If the Board of County Commissioners approves the Final Order of Vacation proposal, it is to be forwarded to the Lane County Recorder for filing and recording, after which, copies are to be forwarded to the County Surveyor and County Assessor for appropriate action. If the vacation is denied, an Order to Terminate the Vacation will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS

Order w/attachments:
Director's Report - Exhibit "A"
Findings of Fact - Exhibit "B"
Affidavit of Posting – Exhibit "C"
Attachment "A" - Vicinity Map

Contact person: K. Robert Ezell, x3626

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

FILE NO. 4084

| | | |
|--|---|------------------------|
| IN THE MATTER OF THE VACATION OF |) | |
| A PORTION OF DUNCAN SLOUGH ROAD |) | |
| (COUNTY ROAD NUMBER 499), LOCATED |) | |
| SOUTH OF BERNHARDT CREEK ROAD |) | FINAL ORDER NO. |
| NEAR KARNOWSKY CREEK, IN SECTIONS |) | |
| 22 AND 23, TOWNSHIP 18 SOUTH, RANGE |) | |
| 11 WEST OF THE WILLAMETTE MERIDIAN |) | |
| (18-11-22 & 23) |) | |

WHEREAS, this matter now coming before the Board of County Commissioners for Lane County, Oregon, upon the Resolution, Notice of Hearing and Order No. 03-2-26-10 for the proposed vacation of a portion of Duncan Slough Road, County Road Number 499; and

WHEREAS, Duncan Slough Road (County Road Number 499) was established in 1892 with a right-of-way width of 40 feet, 20 feet on each side of centerline. Said portion of right-of-way proposed to be vacated being more particularly described as follows:

“All that portion of Duncan Slough Road (County Road Number 499), being 40 feet wide, from the beginning point of said road as surveyed in 1892, said point being in Section 23, Township 18 South, Range 11 West of the Willamette Meridian, thence northwesterly a distance of 1.4 miles, more or less, to the section line between Section 22 and Section 15, Township 18 South, Range 11 West of the Willamette Meridian, all in Lane County, Oregon.”

WHEREAS, the petitioner has met the requirement of ORS 368.341(3)(f) of having at least 60% of the adjoining landowners sign the petition to vacate the road; and

WHEREAS, various public and private agencies have been notified of the proposed vacation and no objection has been received; and

WHEREAS, there are no known utilities or powerlines located within the area to be vacated; and

WHEREAS, no landowner will be deprived of legal access to their land by this road vacation; and

WHEREAS, the Director of Public Works has provided a written report in support of the proposed vacation, as required by ORS 368.346, attached hereto, marked Exhibit “A” and made a part hereof by this Order; and

WHEREAS, all necessary procedures for a road vacation have been completed pursuant to ORS Chapter 368, including the giving of notice as evidenced by the Affidavit of Posting, Publication and Mailing, labeled as Exhibit "C", attached hereto, and made a part hereof by this Order; and

WHEREAS, a public hearing was conducted on this date, as ordered, regarding the proposed vacation of the road as described above; and

WHEREAS, in accordance with the provisions of ORS 368.356, the Board is of the opinion that approving the vacation of the road, as described herein, is in the interest of the public, at this time; now therefore, it is hereby

ORDERED, that the vacation of the above described portion of Duncan Slough Road, County Road Number 499, is hereby vacated and that in support of this action the Board hereby adopts the Findings of Fact, as set forth in Exhibit "B", attached hereto, and made a part hereof by this Order; and it is further

ORDERED, that this Order be entered into the Lane County Board of Commissioners Journal of Administration and be further recorded in the Lane County Oregon Deed Records and in the records for County Road Number 499 administered by the Lane County Surveyor.

DATED this _____ day of _____, 2003

Peter Sorenson, Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Vicinity Map

APPROVED AS TO FORM

Date 3-23-03 lane county

OFFICE OF LEGAL COUNSEL

EXHIBIT "A"
IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

FILE NO. 4084

| | | |
|--|---|-------------------|
| IN THE MATTER OF THE VACATION OF |) | |
| A PORTION OF DUNCAN SLOUGH ROAD |) | |
| (COUNTY ROAD NUMBER 499) LOCATED |) | |
| SOUTH OF BERNHARDT CREEK ROAD |) | DIRECTOR'S |
| NEAR KARNOWSKY CREEK, IN SECTIONS |) | REPORT |
| 22 AND 23, TOWNSHIP 18 SOUTH, RANGE |) | |
| 11 WEST OF THE WILLAMETTE MERIDIAN |) | |
| (18-11-22 & 23) |) | |

The Surveyor's Office of the Department of Public Works received a valid petition to vacate a portion of Duncan Slough Road, County Road Number 499.

County Road Number 499 (Duncan Slough Road) was established in 1892 to provide an outlet for the Karnowsky homestead. The roadway runs southeasterly from Bernhardt Creek Road. Bernhardt Creek Road is a private road at this location. Duncan Slough Road runs along the bottomlands of Karnowsky Creek through Sections 15, 22 and into Section 23. The portion proposed to be vacated is that portion lying south and east of the section line between Sections 15 and 22. The subject right of way is bounded on both sides with National Forest land. The Forest Service is requesting that this portion of Duncan Slough Road be vacated so that they can make improvements to the wetlands in and around the old roadbed.

Various public and private agencies were notified of the proposed vacation and either had no objection or did not respond to the referral. The Transportation Planning section of Lane County stated that they do not oppose the vacation, but recommended that the entire length of Duncan Slough Road be vacated.

The Forest Service currently has funds for making improvements to the wetlands in this area and it would be easier for them accomplish if the road is under their own jurisdiction. Timing is an issue for this project, and for this reason the Forest Service did not request to vacate the entire length of roadway, as the northerly portion of the road runs through private property and it would take additional time to obtain easements and agreements from the landowners.

Duncan Slough Road is not maintained as part of the Lane County's road system, and is not connected to a public or county road. County maintenance of Bernhardt Creek Road ends approximately one mile east of its intersection with Duncan Slough Road and is a private road west of that point. The road is gated just south of its intersection Bernhardt Creek Road, therefore the public would have to travel over a private road to get access to the segment of Duncan Slough Road that is proposed to be vacated. Whether the road is vacated or not the road access to the National Forest land will remain unchanged.

There are no known utilities or powerlines located within the area to be vacated and no landowner will be denied legal access as a result of the vacation. It is concluded that the public interest will be served by vacating the portion of Duncan Slough Road as petitioned for, as it will allow the Forest Service to better care for National Forest lands in this area.

Notification of these proceedings has been provided by posting, mail and legal publication by the County Surveyor as required by ORS 368 provisions.

It is recommended that County Road Number 499 (Duncan Slough Road), as described in the Final Order, be vacated as proposed.

DATED this 19TH day of MARCH, 2003.

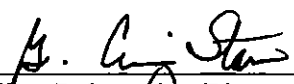

 for Oliver P. Snowden, Director
 Department of Public Works

EXHIBIT "B"**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY****STATE OF OREGON****FILE NO. 4084**

| | | |
|--|---|-------------------------|
| IN THE MATTER OF THE VACATION OF |) | |
| A PORTION OF DUNCAN SLOUGH ROAD |) | |
| (COUNTY ROAD NUMBER 499) LOCATED |) | |
| SOUTH OF BERNHARDT CREEK ROAD A |) | |
| NEAR KARNOWSKY CREEK , IN SECTIONS |) | FINDINGS OF FACT |
| 22 AND 23, TOWNSHIP 18 SOUTH, RANGE |) | |
| 11 WEST OF THE WILLAMETTE MERIDIAN |) | |
| (18-11-22 & 23) |) | |

The Department of Public Works has received a valid petition, signed by the Forest Supervisor of the Siuslaw National Forest, requesting that a portion of Duncan Slough Road (County Road Number 499), as described in the Order, be vacated as petitioned for. The subject road is bounded on both sides by National Forest land. The Forest Service is requesting this vacation so that they can make improvements to the wetlands in and around the old roadbed of Duncan Slough Road.

Findings of Fact (Public Interest)

The Board takes notice and finds:

1. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate a public road based upon the determination that the vacation is "in the public interest".
2. That, pursuant to ORS 197.175 (2) (d), after acknowledgment of a county's comprehensive plan and implementing ordinances, the plan and ordinances, not the Statewide Planning Goals, control land use decisions.
3. That, Lane County's Rural Comprehensive Plan and implementing ordinances were originally acknowledged to be in compliance with the Statewide Planning Goals on September 13, 1984, and reacknowledged on February 14, 1992.
4. That, neither the Lane County Comprehensive Plan nor any land use regulation within the Lane Code establish mandatory standards for the vacation of streets and roads.

Conclusion of Law (Public Interest)

Based upon the above findings of fact, the Board concludes, as a matter of law, that neither the Statewide Planning Goals nor the Lane County Rural Comprehensive Plan and related land use regulations are an applicable measure of the "public interest", as it pertains to this vacation.

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

1. That, the petitioner, Siuslaw National Forest, owns the property abutting the proposed vacation. Said property is further identified as Tax Lots 500 and 501 of Assessor's Map 18-11-22; and Tax Lots 200, 201 and 400 and of Assessor's Map 18-11-23.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate public roads or easements based upon the determination that the vacation is "in the public interest".
3. That, the previously identified property is outside any city limits and therefore under the jurisdiction of Lane County.
4. That, Northwest Natural Gas Company and Qwest Communications along with various other agencies and the Lane County offices have been contacted and either had no objection to the vacation or have not responded to the referral.
5. That, no property will be denied legal access as a result of this vacation.
6. That, the Lane County Department of Public Works does not maintain the subject road, and does not perceive of any existing or future use for County Road Number 499.
7. That, the County Surveyor has provided legal notice for the public hearing by service, posting, and publication, as required by ORS 368.401 to 368.426.
8. That, pursuant to ORS 368.341 and 368.346, a county governing body may make a determination about a vacation of property with a public hearing if:
 - (1) The owner of property abutting public property files a petition meeting the requirements of ORS 368.341.
 - (2) The county road official files a written report containing a description of the property proposed for vacation and stating that the vacation is in the public interest.
 - (3) The governing body establishes a time and place for a hearing to consider the proposed vacation and gives notice of said hearing under ORS 368.401 and 368.426.

Items (1), (2) and (3) have been complied with.

Conclusions of Law (Impacts and Process of Vacation)

Based on the above findings of fact, the Board concludes, as a matter of law, that this vacation will not have any predictable negative impact on present or future land use, either in terms of allowable uses or actual development. The Board further concludes that statutory procedures necessary for making a determination on this vacation, with a public hearing, have been met.

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

FILE NO. 4084

**IN THE MATTER OF THE VACATION OF
A PORTION OF DUNCAN SLOUGH ROAD
(COUNTY ROAD NUMBER 499), LOCATED
SOUTH OF BERNHARDT CREEK ROAD
NEAR KARNOWSKY CREEK, IN SECTIONS
22 AND 23, TOWNSHIP 18 SOUTH, RANGE 11
WEST OF THE WILLAMETTE MERIDIAN
(18-11-22 & 23)**

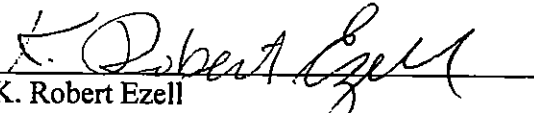
**AFFIDAVIT OF POSTING,
PUBLICATION
AND MAILING**

I, K. Robert Ezell, Lane County Surveyor, certify as follows:

That on the 17th day of March, 2003, I caused to be posted four (4) copies of the Notice of Hearing in the above entitled matter in four places, positioned to be visible to the traveling public, as follows:

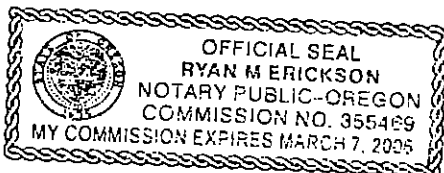
1. Posted at the beginning of Bernhardt Creek Road at Milepost .05, on sign post reading "Narrow Winding Road, next 4 Miles" located on North side of road.
2. Posted on sign post reading "Narrow Winding Road With Turnouts" located 3.7 miles from Bernhardt Creek Road at turnoff to Duncan Island Bridge.
3. Posted on Alder tree located on East side of Duncan Slough road near Davidson Industries gate, 4.8 miles from Bernhardt Road.
4. Posted on Douglas Fir tree located on West side of road on Private/USFS boundary where proposed vacation of Duncan Slough Road begins.

The undersigned further certifies that on March 20, 2003 and April 2, 2003 notice is scheduled to run in the Register Guard. Also that on March 6, 2003 notice was sent to adjacent owners and various private and public agencies having an interest in these vacation proceedings by Certified Mail.


K. Robert Ezell
Lane County Surveyor

State of Oregon)
County of Lane)^{ss.}

Subscribed and sworn to before me this 18th day of March, 2003.




NOTARY PUBLIC FOR OREGON
My Commission Expires:

ATTACHMENT "A"

SECTIONS 22 & 23
TOWNSHIP 18 SOUTH, RANGE 11 WEST, W.M.
LANE COUNTY
NO SCALE

