

## AGENDA COVER MEMO

**DATE:** December 4, 2003

**TO:** Lane County Board Of Commissioners

**FROM:** Bill Robinson, County Surveyor *BR*

**DEPARTMENT:** Public Works/Land Management Division

**AGENDA TITLE:** **IN THE MATTER OF LEGALIZING A PORTION OF HULBERT LAKE ROAD (COUNTY ROAD NO. 160), BEING LOCATED WITHIN SECTIONS 11, 13 AND 14, TOWNSHIP 15 SOUTH, RANGE 5 WEST OF THE WILLAMETTE MERIDIAN AND ADOPTING FINDINGS OF FACT. (15-05-11, 13 & 14)**

**I. MOTION:** TO APPROVE THE FINAL ORDER LEGALIZING A PORTION OF COUNTY ROAD NO. 160, COMMONLY KNOWN AS HULBERT LAKE ROAD, BEING LOCATED WITHIN SECTIONS 11, 13 AND 14, TOWNSHIP 15 SOUTH, RANGE 5 WEST OF THE WILLAMETTE MERIDIAN.

**II. ISSUE:** To decide whether or not to legalize a portion of Hulbert Lake Road (County Road No. 160), as said road is constructed and traveled.

**III. DISCUSSION:**

**A. Background:**

Hulbert Lake Road, as it is commonly known, currently runs from Ferguson Road northerly approximately 2.39 miles to the Lane/Benton County Line in Sections 11, 13, 14, 23 and 24, Township 15 South, Range 5 West of the Willamette Meridian and provides road access to at least 19 parcels of land. The road (referred to as the road from Benton County line due south of William Crow's to intersect the county road near J. B. Hayes) was originally laid out through road proceedings for County Road No. 160 in the Lane County Courts in 1855. Questions exist, however, as to the formal establishment and the exact location of the road as laid out in those proceedings.

The portion of the road proposed to be legalized begins at the Lane/Benton County Line and runs southerly approximately 1.94 miles to the beginning of County Road No. 270 (being 60 feet in width), originally established in 1871 as a change in the County Road, said beginning located at the Southeast Corner of Section 14, in said Township and Range, approximately 0.45 miles north of Ferguson Road. This portion of road provides road access to at least 12 parcels of property.

From County records, the road appears to have been in existence since the late 1800's and has been maintained by Lane County for more than 50 years. The 1936 Traffic Station Map for

Lane County and the 1942 Oregon Quadrangle Map for this area appear to show the road in its present location. The road, as now constructed and traveled, has been surveyed by Lane County Public Works Engineering and is included in the Capital Improvement Program for reconstruction in 2005.

After Resolution, Notice of Hearing, and Order Number 03-10-15-10 was approved, a certified mailing regarding these proceedings was sent to landowners who have property along the road and notice was posted.

B. Analysis:

ORS 368.201 to ORS 368.221 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.

Hulbert Lake Road has been in existence and maintained by the County for more than 50 years. The original location of the road cannot be determined by existing records of Hulbert Lake Road and although there was no width for the road stated in the road proceedings, the standard width for roads during that period of time was 60 feet per Oregon Statutes. Planned improvements for this road would require the full 60 foot right of way. The legalization will provide for the vacation of the portions of County Road No. 160 which are not included within the limits of the road to be legalized as they pertain to this section of road.

In the legalization proceedings any person may file information that may controvert any matter presented as a part of these proceedings.

Pursuant to ORS 368.211, the county governing body may provide compensation to any person who has established a structure that encroaches into the road right of way subject to the legalization proceedings. There appear to be existing fences and two structures within this proposed right of way that may be subject to these provisions.

Planned improvements to Hulbert Lake Road, including re-surveying, alignment design, mapping and road construction in conjunction with the Capital Improvement Program are scheduled for the summer of 2005. The first phase of the project is to complete the legalization of the road to make it a county road in accordance with ORS Chapter 368. The legalization documents include the Final Order, and the centerline description of the new alignment, including right of way widths, which will be attached to the Final Order as Exhibit "A". The Director's Report, as required by these proceedings, will be an attachment to the Final Order as Exhibit "B".

Upon approval of the Final Order to legalize this road, a final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.206. The survey including the alignment and monumentation will be filed for public record in the County Surveyor's Office in accordance with ORS 209.250 and in the County Road Records.

Findings of Fact have been prepared and are included as Exhibit "C" attached to the Final Order, for the proposed legalization of Hulbert Lake Road. Based upon said Findings of

Fact, this legalization will have no predictable negative impact of present or future land use, either in terms of allowable uses or actual development.

C. Alternatives/Options:

The Board of County Commissioners, upon determination that the legalization of the road is in the public interest, has the options to:

1. Continue the matter to allow time for notification to land owners concerning the compensation for fences and structures within the proposed right of way and consideration by the Board. The January 21, 2004 Board meeting date would allow sufficient time for staff to contact land owners.
2. Approve the Final Order to legalize Hulbert Lake Road as proposed.
3. Not approve the Final Order and discontinue these proceedings.

D. Recommendations:

It is recommended that the Board of Commissioners approve Option Number 1. This will continue the matter of approval of the legalization of Hulbert Lake Road until the January 21, 2004 Board date in order to allow time to provide notification to land owners and give the Board time to consider the compensation for fences and structures within the proposed right of way.

E. Timing:

In order to proceed with the planned construction of Hulbert Lake Road, it is important to approve the Final Order in a timely manner, however, notification and consideration of the compensation to property owners would warrant continuation of the matter at this time.

**IV. IMPLEMENTATION/FOLLOW-UP:**

Upon approval, the Hulbert Lake Road Final Order and related attachments will be forwarded to the County Clerk for filing, indexing and entry into the Commissioner's Journal of Administration. The Public Works Director and County Surveyor will index and maintain a legal county road file and road survey for public record as required by ORS 368 and 209. If the Board decides not to approve the legalization proceedings, an order to deny will be prepared at a later date.

**V. ATTACHMENTS:**

Final Order w/attachments:

Legal Description - Exhibit "A"  
Director's Report - Exhibit "B"  
Findings of Fact - Exhibit "C"  
Affidavit of Posting - Exhibit "D"  
Map - Attachment "A"

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

**File No. 4104**

**IN THE MATTER OF LEGALIZING A PORTION OF )  
HULBERT LAKE ROAD (COUNTY ROAD NO. 160), )  
BEING LOCATED WITHIN SECTIONS 11, 13, AND 14, ) FINAL ORDER  
TOWNSHIP 15 SOUTH, RANGE 5 WEST OF THE ) NO.  
WILLAMETTE MERIDIAN AND ADOPTING FINDINGS )  
OF FACT (15-05-11, 13 & 14) )**

**THIS MATTER** now coming before the Board of County Commissioners for Lane County, Oregon, and the Board through the adoption of the Resolution, Notice of Hearing and Order No. 03-10-15-10 has deemed that it is in the public interest to legalize a portion of a road, now commonly known as Hulbert Lake Road, as said road is constructed and traveled; and

**WHEREAS**, Oregon Revised Statutes 368.201 to ORS 368.221 provide for legalization of county roads where certain conditions exist which include determination that: A) Through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; B) The location of a county road cannot be accurately determined; C) The road maintained by the county, used or traveled for 10 or more years, does not conform to the location of the road described in the county road records or a defective road survey; and

**WHEREAS**, the Board being satisfied the legalization of the road, which is part of the traveled and maintained county road system, with a right-of-way width of 60 feet by these proceedings, will be of public utility and benefit, and will enable improvements of the road; and

**WHEREAS**, the Director of the Department of Public Works has prepared a written report in support of the legalization of this road, attached hereto and made a part hereof as Exhibit "B", and that in support of this action, the Board hereby adopts the Findings of Fact, as set forth in Exhibit "C", attached hereto and made a part hereof by this Order; and

**WHEREAS**, all necessary procedures for road legalization have been compiled with, pursuant to ORS Chapter 368.201 through 368.221, including the giving of notice as evidenced by the Affidavit of Posting, Publication and Mailing marked as Exhibit "D", attached hereto, and made a part hereof, by this Order; and

**WHEREAS**, no person has come forward and presented a claim for compensation as provided by ORS 368.211; now therefore, it is hereby

**ORDERED**, that the above said road, commonly known as Hulbert Lake Road, be hereby legalized as a public highway and specifically as a county road, having a right-of-way width of 60 feet; the legal description, of which, being more particularly described on Exhibit "A", attached hereto, and made a part hereof, by this Order; and, it is further

**ORDERED**, that the Director of the Lane County Department of Public Works have the road surveyed and mapped with monuments set to define the right-of-way in accordance with ORS Chapters 209.250 and 368.206; and, it is further

ORDER – LEGALIZATION- Hulbert Lake Road

Page 1 of 2 H:\Survey\AGENDA\Legalization\Hulbert Lk Ford.doc

**ORDERED**, that all portions of County Road No. 160, insofar as said road pertains to the above described portion of Hulbert Lake Road, lying between the termini specified hereinabove, which are not included within the limits of the road as described above, are hereby VACATED, in accordance with ORS 368.126; and, it is further

**ORDERED**, that this Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration and entered into the Road Index Books administered by the Lane County Department of Public Works and the Lane County Surveyor and that said Order be, and is hereby, final and does operate to legalize said road as County Road No. 160.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2003

---

Peter Sorenson, Chair  
Lane County Board of Commissioners

Attachment: .Map

**EXHIBIT "A"****HULBERT LAKE ROAD  
CENTERLINE DESCRIPTION**

A parcel of land lying in Sections 11, 13, and 14, Township 15 South, Range 5 West of the Willamette Meridian, Lane County, Oregon, said parcel being a strip of land 60.00 feet in width lying 30 feet on each side of the centerline of a road commonly known as Hulbert Lake Road as said road has been surveyed by Lane County in 2003, said centerline being described as follows:

Beginning at Engineers' Centerline Station 2+03.25 POT, said beginning point being on the line between Benton County and Lane County and being located 1474.30 feet South and 975.92 feet West of the Brass Cap marking the North ¼ Corner of Section 11, Township 15 South, Range 5 West of the Willamette Meridian, in Benton County, Oregon; run thence South 20° 56' 45" East, 649.82 feet; thence along a 954.93 foot radius curve left (the long chord of which bears South 25° 12' 52" East, 142.16 feet) a distance of 142.29 feet; thence South 29° 29' 00" East, 1260.19 feet; thence along the arc of a 5729.58 foot radius curve right ( the long chord of which bears South 28° 48' 30" East, 135.00 feet) a distance of 135.00 feet; thence South 28° 08' 00" East, 336.04 feet; thence along the arc of a 440.74 foot radius curve left ( the long chord of which bears South 43° 23' 30" East 231.98 feet) a distance of 234.74 feet; thence South 58° 39' 00" East, 95.83 feet; thence along the arc of a 572.96 foot radius curve right (the long chord of which bears South 49° 42' 00" East, 178.27 feet) a distance of 179.00 feet; thence South 40° 45' 00" East, 85.26 feet; thence along the arc of a 1432.39 foot radius curve right (the long chord of which bears South 38° 26' 30" East, 115.39 feet) a distance of 115.42 feet; thence South 36° 08' 00" East, 206.28 feet; thence along the arc of a 954.93 foot radius curve left (the long chord of which bears South 41° 48' 00" East, 188.58 feet) a distance of 188.89 feet; thence South 47° 28' 00" East 112.45 feet; thence along the arc of a 2864.79 foot radius curve right (the long chord of which bears South 45° 58' 30" East, 149.15 feet) a distance of 149.17 feet; thence South 44° 29' 00" East, 70.72 feet; thence along the arc of an 1145.92 foot radius curve right (the long chord of which bears South 36° 55' 00" East, 301.79 feet) a distance of 302.67 feet; thence South 29° 21' 00" East, 298.69 feet; thence along the arc of a 440.74 foot radius curve right (the long chord of which bears South 22° 51' 00" East, 99.79 feet) a distance of 100.00 feet; thence South 16° 21' 00" East, 466.94 feet; thence along the arc of a 1432.39 foot radius curve right (the long chord of which bears South 11° 55' 30" East, 221.03 feet) a distance of 221.25 feet; thence South 7° 30' 00" East, 26.77 feet; thence along the arc of a 318.31 foot radius curve right (the long chord of which bears South 12° 20' 00" West, 216.00 feet) a distance of 220.37 feet; thence South 32° 10' 00" West, 112.22 feet; along the arc of a 150.78 foot radius curve left (the long chord of which bears South 4° 11' 30" West, 141.46 feet) a distance of 147.24 feet; thence South 23° 47' 00" East, 424.48 feet; thence along the arc of a 409.26 foot radius curve left (the long chord of which bears South 34° 54' 00" East, 157.82 feet) a distance of 158.81 feet; thence South 46° 01' 00" East, 233.89 feet; thence along the arc of a 204.63 foot radius curve right (the long chord of which bears South 30° 15' 30" East, 111.15 feet) a distance of 112.56 feet; thence, South 14° 30' 00" East, 888.37 feet; thence along the arc of an 1145.92 foot radius curve right (the long chord of which bears South 6° 15' 00" East, 328.86 feet) a distance of 330.00 feet; thence South 2° 00' 00" West, 343.99 feet; thence along the arc of a 2864.79 foot radius curve left (the long chord of which bears South 0° 02' 30" East, 204.12 feet) a distance of 204.17 feet; thence South 2° 05' 00" East, 262.47 feet; thence along the arc of a 1909.86 foot radius curve right (the long chord of which bears

South 0° 15' 00" East, 122.20 feet) a distance of 122.22 feet; thence South 1° 35' 00" West, 1281.47 feet to Centerline Station 104+22.93 P.I. at the Brass Cap marking the Southeast Corner of Section 14, Township 15 South, Range 5 West of the Willamette Meridian and there ending, all in Lane County, Oregon.

The easterly and westerly right of way lines to extend to intersect the Lane Benton county line and the South line of Section 13 and 14, said Township and Range.

The bearings used herein are based on a bearing of South 19°44'45"East, between LCCM 380 and LCCM 382, set by the Lane County Surveyor's Office, said bearing based on the Oregon Coordinate System (NAD 83), South Zone.

**EXHIBIT "B"**  
**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY**  
**STATE OF OREGON**

**File No. 4104**

<b>IN THE MATTER OF LEGALIZING A PORTION OF</b>	)	
<b>HULBERT LAKE ROAD (COUNTY ROAD NO. 160),</b>	)	
<b>BEING LOCATED WITHIN SECTIONS 11, 13, AND 14,</b>	)	<b>DIRECTOR'S REPORT</b>
<b>TOWNSHIP 15 SOUTH, RANGE 5 WEST OF THE</b>	)	
<b>WILLAMETTE MERIDIAN AND ADOPTING FINDINGS</b>	)	
<b>OF FACT (15-05-11, 13 &amp; 14)</b>	)	

ORS 368.201 to ORS 368.216 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.

Hulbert Lake Road, as it is commonly known, was originally laid out through road proceedings for County Road No. 160 in the Lane County Courts in 1855 and currently runs from Ferguson Road, northerly approximately 2.39 miles to the Lane/Benton County Line. It is located in Sections 11, 13, 14, 23 and 24, Township 15 South, Range 5 West of the Willamette Meridian. The portion of the road proposed to be legalized runs from the Lane/Benton County Line, southerly, approximately 1.94 miles to the Southeast Corner of said Section 14 at the beginning of County Road No. 270 (being 60 feet in width) which was established in 1871 as a change in the County Road.

From county records, the road appears to have been in existence since at least the late 1800's and Lane County has maintained this segment of road for more than 50 years. The 1936 Traffic Station Map for Lane County and the 1942 Oregon Quadrangle Map for this area appear to show the road in its present location. The original location of the road cannot be determined by existing records of Hulbert Lake Road and although no width for the road was stated in the road proceedings, the standard width for roads during that period of time was 60 feet per Oregon Statutes. Planned improvements for this road would require the full 60 foot right of way width.

The planned improvements associated with this project, include re-surveying, alignment design, mapping and road construction in conjunction with the Capital Improvement Program for 2005. The legalization of this road would be of public utility and a benefit to the public and will provide for the vacation of the portions of County Road No. 160, which are not included within the limits of the road to be legalized as they pertain to this section of road.


Pursuant to ORS 368.211, the county governing body may provide compensation to any person who has established a structure that encroaches into the road right of way subject to the legalization proceedings. There appear to be existing fences and two structures within this proposed right of way that may be subject to these provisions.



A Final Order to legalize Hulbert Lake Road with a 60 foot right of way has been prepared. A legal description based on the road survey of the traveled road provides a new alignment which is marked Exhibit "A" and attached to the Final Order. Notice of these proceedings, by mail, posting and publication has been provided in accordance with ORS Chapters 368.201 through 368.221.

Upon approval of the Final Order legalizing this portion of Hulbert Lake Road, a final road survey, which includes road centerline and right of way monumentation, will be completed and survey maps will be prepared in accordance with ORS 209.250 and 368.106. The Final Order will be filed with the County Clerk and entered into the Commissioners Journal of Administration. The Final Order and the survey maps will be filed for public record in the County Surveyor's Office and in the County Road files administered by the Public Works Department and the County Surveyor.

Dated this 4<sup>th</sup> day of December, 2003.

  
Oliver P. Snowden, Director  
Department of Public Works

## EXHIBIT "C"

## IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

## STATE OF OREGON

File No. 4104

IN THE MATTER OF LEGALIZING A PORTION OF )  
 HULBERT LAKE ROAD (COUNTY ROAD NO. 160), )  
 BEING LOCATED WITHIN SECTIONS 11, 13, AND 14, ) FINDINGS OF FACT  
 TOWNSHIP 15 SOUTH, RANGE 5 WEST OF THE )  
 WILLAMETTE MERIDIAN AND ADOPTING FINDINGS )  
 OF FACT (15-05-11, 13 & 14) )

The Department of Public Works finds that a portion of County Road No. 160, commonly known as Hulbert Lake Road has been traveled and maintained as a county road for at least ten years with some doubt existing as to its legal road status. The use and maintenance of the road for 10 years or more by the Public Works Department and other elements are basis for legalization proceedings as defined by ORS 368.201. There are approximately 12 properties along this road that would benefit from the legalization of the Hulbert Lake Road as said road is constructed and traveled.

**Findings of Fact**

The Board takes notice and finds:

1. That, pursuant to ORS 368.201 through 368.221, a county governing body may initiate proceedings to legalize a county road based upon the determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or, if the location of the road cannot be accurately determined; or, if the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.
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 legalization of county roads.

**Conclusion of Law**

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 applicable as they pertain to these legalization proceedings.

**Findings of Fact (Impacts and Process of Legalization)**

The Board takes notice and finds as follows:

1. That, the legalization of Hulbert Lake Road will be of public benefit and utility.
2. That, the identified property is outside any city limits and therefore under the jurisdiction of Lane County.
3. That, ORS 368.201 provides for legalization of county roads if certain conditions exist. In this case, through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road, and the location of the road cannot be accurately determined; and the road has been traveled, maintained by the Lane County Public Works Department, and used by the public for 10 years or more, does not conform to the location of a road described in any of the County records.
4. That, legalizing Hulbert Lake Road as described in the Order will not deny access to any landowners.

**Conclusions of Law (Impacts and Process of Legalization)**

Based on the above findings of fact, the Board concludes, as a matter of law, that this legalization 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 legalization, including, inter alia, those set forth in ORS 368.201, et.seq., have been met.

**EXHIBIT "D"**  
**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY**  
**STATE OF OREGON**

File No. 4104

**IN THE MATTER OF LEGALIZING A PORTION )**  
**OF HULBERT LAKE ROAD (COUNTY ROAD )**  
**NO. 160), BEING LOCATED WITHIN SECTIONS ) AFFIDAVIT OF POSTING**  
**11, 13, AND 14, TOWNSHIP 15 SOUTH, RANGE 5 ) PUBLICATION & MAILING**  
**WEST OF THE WILLAMETTE MERIDIAN AND )**  
**ADOPTING FINDINGS OF FACT )**  
**(15-05-11, 13 & 14)**

I, Bill Robinson, Interim Lane County Surveyor, certify as follows:  
 That on the 13th day of November, 2003, caused to be posted 3 copies of the Notice of Hearing in the above entitled matter in five places, positioned to be visible to the traveling public, as follows:

1. Posted on a directional "↔" sign post located on the westerly side of the intersection of Ferguson Road, Washburn Road & Hulbert Lake Road.
2. Posted on EPUD Power Pole Number 1505/148700 located near the mid-point of the subject portion of Hulbert Lake Road, on the westerly side of road approximately 1.2 miles from each end.
3. Posted on "Entering Lane County a Nuclear Free Zone" sign located at the Lane/Benton County Line.

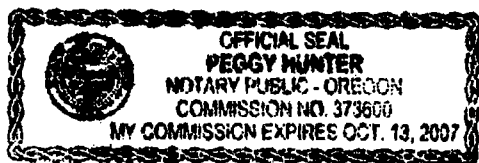
The undersigned further certifies that on November 21, 2003 and December 3, 2003 notice is scheduled to run in the Register Guard, and that on November 3, 2003 notice was sent to the adjoining landowners via certified mail.

*Bill Robinson*

Bill Robinson, Interim  
 Lane County Surveyor

State of Oregon)  
 County of Lane)<sup>ss.</sup>

Subscribed and sworn to before me this 14<sup>th</sup> day of November, 2003



*Peggy Hunter*  
 NOTARY PUBLIC FOR OREGON

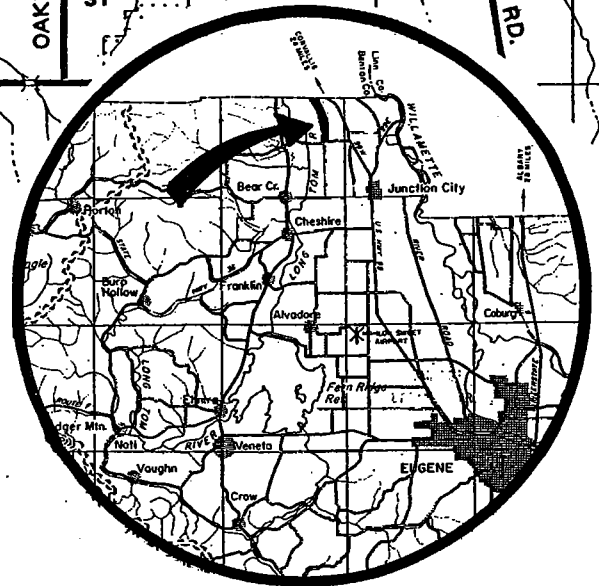
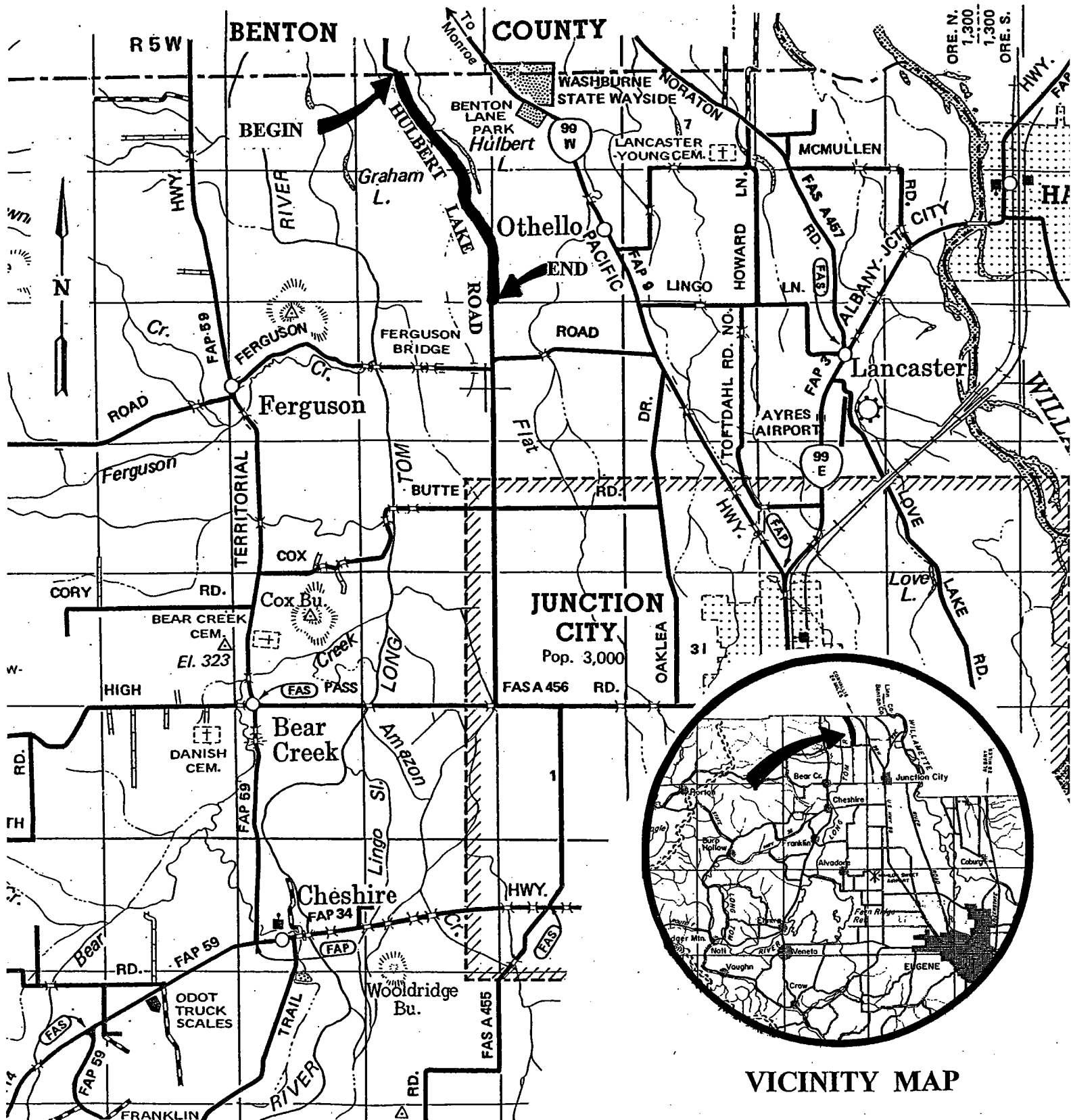
# ATTACHMENT "A"

ORIGINAL

SECTIONS 11, 13 & 14, T 15 S, R 2 W, W. M.

LANE COUNTY

Scale: 1"= 1 mile



VICINITY MAP