

AGENDA COVER MEMO

DATE: May 5, 2003
TO: LANE COUNTY BOARD OF COMMISSIONERS
FROM: K. Robert Ezell, Lane County Surveyor *K. R. Ezell*
DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF VACATING A PORTION OF ROUSE ROAD, ALSO KNOWN AS BLACK BUTTE ROAD (COUNTY ROAD NUMBER 351), WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (22-03-30-10)

I. MOTION:

TO APPROVE THE ORDER VACATING A PORTION OF ROUSE ROAD, ALSO KNOWN AS BLACK BUTTE ROAD, (COUNTY ROAD NUMBER 351), LOCATED SOUTH OF COTTAGE GROVE NEAR THE INTERSECTION OF LONDON ROAD AND SHOESTRING ROAD, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (22-03-30-10)

II. ISSUE:

To decide whether a portion of County Road Number 351, being 30 feet wide, and approximately 148 feet in length, lying east of London Road, near the intersection of Shoestring Road, should be vacated as petitioned for.

III. DISCUSSION:**A. Background:**

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Marco Giarrusso, Louise Giarrusso and Thomas Chrestman, landowners of 100% of the property abutting the proposed vacation of a portion of a Rouse Road. The petitioners are requesting, by the authority of ORS 368.351, a vacation without a public hearing.

County Road Number 351 was established as Rouse Road in July 1879, with a right of way width of 30 feet. Rouse Road was subsequently realigned and altered in 1961. The Alteration Order specifically reserved the northerly portion of County Road Number 351 from the realigned Black Butte Road, commonly known as London Road, to the westerly extension of the southerly line of Tax Lot 200 of Assessor's Map 22-03-30-10, in order to serve as an access for said tax lot.

The petitioners had originally made the request for this vacation in 1997, with intentions to adjust the property lines and transfer the small area of land between the realigned road and the old road, from the Chrestmans (Tax Lot 300) to the Giarrussos (Tax Lot 200). The staff at the Surveyor's Office asked that the property line adjustment be completed before the vacation request was submitted to the Board of Commissioners so that the Giarrussos would not lose legal access to a public road. The property line adjustment was completed in 1998, however the Surveyor's Office was not made aware of this until recently, and the petitioner did not realize that the vacation had not been completed. The Surveyor's Office is now finalizing the vacation process and will be presenting the Board of Commissioners with the request to vacate the portion of Rouse Road that lies within the bounds of the Giarrusso property (Tax Lot 200).

Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, and various other agencies including Transportation Planning, and Lane County Planning sections of the Lane County Public Works Department, as well as area landowners, were contacted regarding the vacation in December, 1997, and again in December, 2002. The agencies and landowners had no objections or did not reply to either of the referrals.

B. Analysis:

If the proposed vacation is approved, it will allow for use of the property by the primary petitioners. The property line adjustment has been completed and recorded on Reel 2421R, Instrument Number 9839172, and the Giarrussos property now extends westerly to the realigned Black Butte Road (London Road) with the subject portion of Rouse Road running through their property.

There are no known utilities within the subject right of way, and no property will be denied legal access to a public road. The right-of-way proposed for vacation is not needed by the Lane County transportation system. The public interest will be served, as unneeded public right of way will be put to better use.

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Approve the vacation of the portion of Rouse Road (County Road Number 351) as petitioned for.
2. Deny the vacation of the portion of Rouse Road (County Road Number 351) as petitioned for.
3. Continue the matter for further consideration.
4. Direct that a public hearing be held for the proposed vacation and that staff contact the petitioners to see if they wish to proceed with this stipulation.

D. Recommendations:

The Public Works Director's Report recommends that the Board support Option Number 1, approving the vacation of the portion of Rouse Road (County Road Number 351) as petitioned for. No property will be denied legal access by this vacation. The vacation is in the public's interest, as vacating this portion of the described right-of-way will allow it to revert back to private property and enable the landowners to more fully utilize their property.

All statutory procedures necessary for the vacation without a public hearing of the above mentioned right of way have been complied with, including a report by the Director of Public Works, who recommends approval of the vacation as described in the petition.

E. Timing:

Timing is important, as the original request for the proposed vacation was made in 1997 and it would be beneficial to finalize the process and update the records.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Order of Vacation, 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 Deny the Vacation will be presented to the Board at a later regularly scheduled meeting.

If the petitioners are given an option to proceed with a public hearing, they will have 180 days to decide whether or not to continue with the proposed vacation. If they decide to proceed with the proposed vacation the staff will prepare a Resolution and Order to set a date for a public hearing, but if the petitioners decide to terminate the proceedings, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS:

Order w/attachments:

Petition

Director's Report

Findings of Fact

Attachment "A" - Vicinity Map

Contact Person: K. Robert Ezell x3626

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

FILE NO. 3986

IN THE MATTER OF VACATING A PORTION)
OF ROUSE ROAD, ALSO KNOWN AS BLACK)
BUTTE ROAD (COUNTY ROAD NUMBER 351)) ORDER NO.
WITHOUT A PUBLIC HEARING AND ADOPTING)
FINDINGS OF FACT (22-03-30-10))

WHEREAS, this matter now coming before the Board upon a petition under ORS Chapter 368.341, received by the Lane County Surveyor's Office of the Lane County Department of Public Works, for the vacation of a portion of County Road Number 351 (Rouse Road), said portion being more particularly described as:

All that portion of County Road Number 351, Rouse Road, lying within the bounds of a tract of land conveyed to Marco Giarrusso and Louise Giarrusso Living Trust, described in Exhibit 2 of a Boundary Line Adjustment Agreement Deed, as recorded on Reel 2421R, Recorder's Reception Number 9839172, Lane County, Oregon Deed Records, and located within the Northeast quarter (NE ¼) of Section 30, Township 22 South, Range 3 West, of the Willamette Meridian in Lane County, Oregon; and

WHEREAS, the petition complies with the provisions of ORS 368.351, in that the petitioners who are the landowners of 100% of the property abutting the proposed vacation, agree that the vacation should be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public property and roads without a public hearing; and

WHEREAS, Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, and various other agencies including Transportation Planning, and Lane County Planning sections of the Lane County Public Works Department, as well as area landowners, were contacted regarding the vacation and either had no objection or did not reply to the referral; and

WHEREAS, the public will benefit by this vacation and no property will be denied access by this vacation; and

WHEREAS, the petitioners have paid the vacation fee and will pay recording fees upon final approval of the vacation; and

WHEREAS, the Director of the Department 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 statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned for is in the best interest of the public; now, therefore, it is hereby

ORDERED, that the above described portion of County Road Number 351, is hereby vacated; and it is further

ORDERED, 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.

DATED this _____ day of _____, 2003

Peter Sorenson, Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Map

APPROVED AS TO FORM

Date 5-8-03 lane county

OFFICE OF LEGAL COUNSEL

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

File No.

IN THE MATTER OF THE VACATION OF)
A PORTION OF COUNTY ROAD NUMBER)
351 LONDON (BLACK BUTTE) ROAD IN)
SECTION 30 TOWNSHIP 22 SOUTH,)
RANGE 03 WEST OF THE WILLAMETTE)
MERIDIAN, IN LANE COUNTY, OREGON)

PETITION TO VACATE

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Marco Giarrusso and Louise Giarrusso husband and wife and Thomas Chrestman trustee of "The Chrestman Living Trust , dated October 7, 1993" as owner of the adjacent real property hereby petition for the vacation of a portion of County Road Number 351 London (Black Butte) Road, which area to be vacated is described as follows:

"All that portion of County Road Number 351 London (Black Butte) Road located adjacent real property TRSTL No. 22 03 30.10 200 owned by Marco and Louise Giarrusso Husband and wife and adjacent to real property TRSTL No. 22 30 30.10 300 owned by Thomas Chrestman trustee of "The Chrestman Living Trust , dated October 7, 1993". Being further described as that portion of County Road 351 from its southernmost end where abuts the northernmost end of County Road 735 vacated by Board Order July 15, 1964 as recorded on REEL 21 PAGE 919, northerly to a line perpendicular to the centerline of County Road 351 and passing through the point 24.65 chains East of the Southwest corner of Isaac Massey Donation Land Claim No. 39, Section 30 Township 22 South Range 3 West of the Willamette Meridian in Lane County, Oregon.

WHEREAS, the undersigned petitioners are the owners of 100% of all real property located adjacent to the above described area to be vacated, and

WHEREAS, petitioners allege as follows:

1. The purpose of this vacation request is to allow transfer of ownership of a small triangular sliver of land now part of TRSTL 22 03 30.1 300 lying between the old county road the present county road and the creek to the owners of TRSTL 22 03 30.1 200 without creating a separate lot by division. By vacation of the aforementioned portion of the no longer used County Road No.351 separating TRSTL 22 03 30.1 200 and TRSTL 22 02 30.1 300 the ownership of the aforementioned triangular sliver of land can be transferred to the owner of TRSTL 22 03 30.1 200 to become part of TRSTL 22 03 30.1 200.This transfer will facilitate maintenance of the aforementioned triangular sliver of land by the owner of TRSTL 22 03 30.1 200.
2. There are no utilities and no power lines located in the area to be vacated.

Necessary easements for these public and private utilities will be executed between the parties, prior to completion of the vacation, and

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated City or Town, and

WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area...and

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under authority of ORS Chapter 368.326, for vacation without a hearing, and

THEREFORE, the petitioners request an Order of the Board of Commissioners of Lane County as follows:

- 1. Setting a date for vacation of the above described portion of road, with or without a hearing before the Board of Commissioners for Lane County pursuant to ORS Chapter 368.
- 2. Upon review of this matter, to direct the vacation of the above described road, and direct that the vacated area revert and vest in accordance with ORS 368.366.

Dated this 6th day of November 1997.

PETITIONERS:

Marco Giarrusso 11-6-97
Louise Giarrusso 11/7/97
 Marco and Louise Giarrusso
 Map # TRSTL 22 03 30.1 200
 72785 London Rd.
 Lane County, Oregon 97424

Thomas Chrestman 11/17/97
 Thomas Chrestman
 Map # TRSTL 22 03 30.1 300
 72755 London Rd.
 Lane County, Oregon 97424

Mailing address;
71975 London Rd.
Cottage Grove, OR 97424

STATE OF OREGON)
COUNTY OF LANE) ss.

On November 6, 1997, personally appeared the above named

Mary Kreklau

and acknowledged the foregoing instrument to

INDIVIDUAL ACKNOWLEDGMENT

No. 5198

State of Oregon }
 County of Lane } ss.

On this the 17th day of November 1997, before me,

Mary Kreklau

the undersigned Notary Public, personally appeared

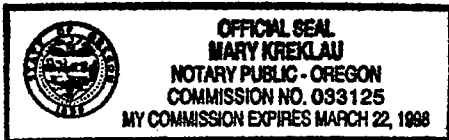
Thomas Chrestman

personally known to me

proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that He executed it.

WITNESS my hand and official seal.



Mary Kreklau
 Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Petition - County Road Number 351

Number of Pages 2 Date of Document 11-06-97

Signer(s) Other Than Named Above None

WHEREAS, petitioners , separately and collectively, have no objection to Lane County proceeding under authority of ORS Chapter 368.326, for vacation without a hearing, and

THEREFORE, the petitioners request an Order of the Board of Commissioners of Lane County as follows:

1. Setting a date for vacation of the above described portion of road, with or without a hearing before the Board of Commissioners for Lane County pursuant to ORS Chapter 368.
2. Upon review of this matter, to direct the vacation of the above described road, and direct that the vacated area revert and vest in accordance with ORS 368.366.

Dated this 6th day of November 1997.

PETITIONERS:

Marco Giarrusso 11-6-97
Louise Giarrusso 11/7/97
 Marco and Louise Giarrusso
 Map # TRSTL 22 03 30.1 200
 72785 London Rd.
 Lane County, Oregon 97424

Thomas Chrestman 11/17/97
 Thomas Chrestman
 Map # TRSTL 22 03 30.1 300
 72755 London Rd.
 Lane County, Oregon 97424

Mailing address;
 71975 London Rd.
 Cottage Grove, OR 97424

STATE OF OREGON)
COUNTY OF LANE) ss.

On November 6, 1997, personally appeared the above named

Marco Giarrusso and acknowledged the foregoing instrument to be a voluntary act before me:

Mary Krekiau
 Notary Public for Oregon
 My Commission expires: 3-22-98



STATE OF OREGON)
COUNTY OF LANE) ss.

On November 7, 1997, personally appeared the above named

Louis Giarrusso and acknowledged the foregoing instrument to be a voluntary act before me:

Mary Krekiau
 Notary Public for Oregon
 My Commission expires: 3-22-98



Addendum to and for petition to vacate a portion of county rd.no.351 [rouse road]

Addendum: the "Giarrusso Living Trust" , dated May 25,1993 is owned by Marco V. Giarrusso, AND Louise R. Giarrusso, Husband and Wife. and Trustees, of the "Giarrusso Living Trust".

Marco V. Giarrusso *Trustee* Louise R. Giarrusso *Trustee*
Marco V. Giarrusso:Trustee. Louise R. Giarrusso:Trustee.



M. Giarrusso
72785 London Rd.
Cottage Grove, OR 97424

STATE OF Oregon)
) ss
COUNTY OF Lane)

This document was acknowledged before me on March 10, 2003
by Marco V Giarrusso, Trustee Louise R. Giarrusso, Trustee



Judy K Binder
Notary Public for
My commission expires: March 10, 2005

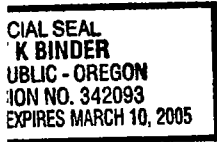


EXHIBIT "A"
IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

FILE NO. 3986

IN THE MATTER OF VACATING A PORTION)
OF ROUSE ROAD, ALSO KNOWN AS BLACK)
BUTTE ROAD (COUNTY ROAD NUMBER 351)) DIRECTOR'S REPORT
WITHOUT A PUBLIC HEARING AND ADOPTING)
FINDINGS OF FACT (22-03-30-10))

The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing.

County Road Number 351 was established as Rouse Road in July 1879, with a right of way width of 30 feet. Rouse Road was subsequently realigned and altered in 1961. The Alteration Order specifically reserved the northerly portion of County Road Number 351 from the realigned Black Butte Road, commonly known as London Road, to the westerly extension of the southerly line of Tax Lot 200 of Assessor's Map 22-03-30-10, in order to serve as an access for said tax lot.

The petitioners had originally made the request for this vacation of right of way in 1997 with the intention to adjust the property lines and transfer the small area of land between the realigned road and the old, from the Chrestmans (Tax Lot 300) to the Giarrussos (Tax Lot 200). The staff at the Surveyor's Office asked that the property line adjustment be completed before the vacation request was submitted to the Board of Commissioners so that the Giarrusos would not loose legal access to a public road. The property line adjustment was completed in 1998, however the Surveyor's Office was not made aware of this until recently, and the petitioner did not realize that the vacation had not been completed. The Surveyor's Office is now finalizing the vacation process and will be presenting the Board of Commissioners with the request to vacate the portion of Rouse Road that lies within the bounds of the Giarrusso property (Tax Lot 200).

Various public and private agencies and area landowners were contacted regarding the vacation in December, 1997, and again in December, 2002, and either had no objection or did not reply to the referral.

No property will be denied legal access by this vacation. The vacation would allow for use of the property by the property owners. The public interest will be served as unneeded public right-of-way will be put to better use.

It is therefore recommended, that the portion of County Road Number 351, as described in the Order, be vacated as petitioned for. It is further recommended that the vacation be allowed without a public hearing.

DATED this 5th day of May, 2003.



Oliver P. Snowden, Director
Department of Public Works

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

FILE NO. 3986

IN THE MATTER OF VACATING A PORTION)
OF ROUSE ROAD, ALSO KNOWN AS BLACK)
BUTTE ROAD (COUNTY ROAD NUMBER 351)) FINDINGS OF FACT
WITHOUT A PUBLIC HEARING AND ADOPTING)
FINDINGS OF FACT (22-03-30-10))

The Surveyor's Office of the Department of Public Works has received a valid petition, signed by the owners of 100% of the property abutting the proposed vacation, requesting that the portion of Rouse Road as described in the Order be vacated as petitioned for. The petitioners request the vacation in order that they can use the land more effectively. Due to a property line adjustment the portion of right of way proposed to be vacated is no longer needed as access.

Findings of Fact (Public Interest)

The Board takes notice and finds:

1. That, pursuant to ORS 368.326 and 368.366, a county governing body may vacate roads or right-of-way 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 petitioners own all property abutting the proposed vacation. Said property is further identified as Tax Lots 200 & 300 of Assessor's Map 22-03-30-1.
2. That, the previously identified property is outside any city limits and therefore under the jurisdiction of Lane County.
3. That, the Emerald People's Utility District, Northwest Natural Gas, Qwest Communications, and various other agencies including Transportation Planning, and Lane County Planning sections of the Lane County Public Works Department, as well as area landowners, were contacted regarding the vacation and either had no objection or did not reply to the referral.
4. That, there are no known existing utilities within the right-of-way proposed for vacation.
5. That, vacating the portion of Rouse Road as described in the Order will not deny any landowners legal road access to a public road, provided the conveyance as discussed in the report from the Director of the Department of Public Works occurs.
6. That, pursuant to ORS 368.351, a county governing body may make a determination about a vacation of property without a public hearing if:
 - (1) The county road official files a written report stating that the vacation is in the public interest.
 - (2) The proceedings were initiated by petition indicating the approval of 100% of the adjoining property owners.

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

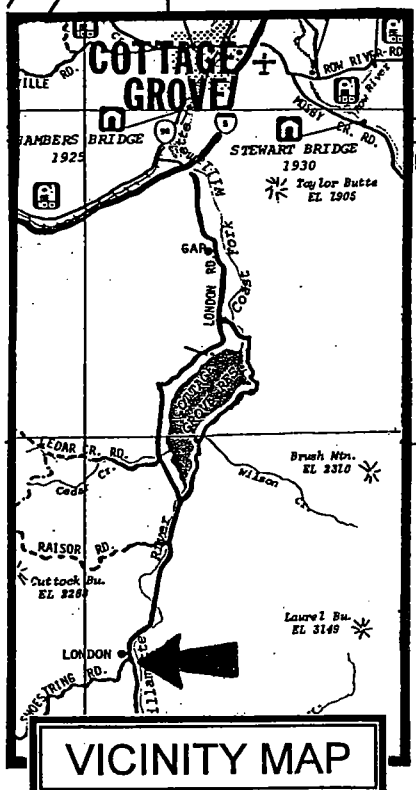
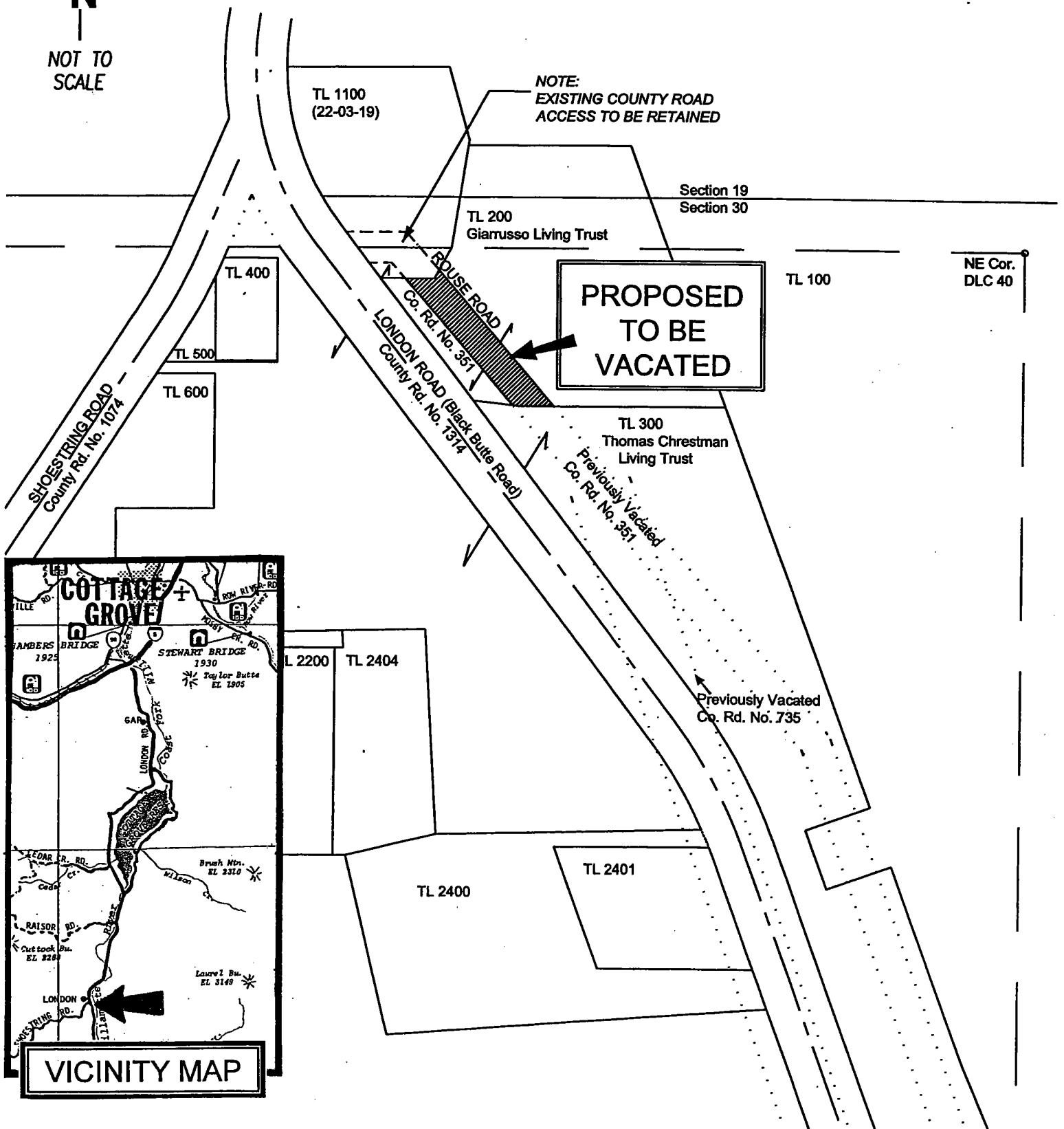
Conclusions of Law (Impacts and Process of Vacation)

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, without a public hearing, have been met.

ATTACHMENT "A"

NE 1/4 Sec. 30 T.22S. R.3 W. W.M.

LANE COUNTY



VICINITY MAP