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ORIGINAL

03-9-10-16

AGENDA COVER MEMO

DATE: August 18, 2003
TO: Lane County Board of Commissioners
FROM: William D. Robinson, Interim Lane County Surveyor *WDR*
DEPARTMENT: Public Works - Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF WITHDRAWAL OF COUNTY ROAD STATUS (BUT NOT THE PUBLIC ROAD STATUS) FROM DUNCAN SLOUGH ROAD (COUNTY ROAD NUMBER 499), LOCATED OFF BERNHARDT CREEK ROAD NEAR KARNOWSKY CREEK, IN SECTIONS 15, 22 AND 23, TOWNSHIP 18 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN (18-11-15, 22 & 23)

I. MOTION:

TO APPROVE THE WITHDRAWAL OF COUNTY ROAD STATUS (BUT NOT PUBLIC ROAD STATUS) FROM DUNCAN SLOUGH ROAD (COUNTY ROAD NUMBER 499), LOCATED OFF BERNHARDT CREEK ROAD NEAR KARNOWSKY CREEK, IN SECTIONS 15, 22 AND 23, TOWNSHIP 18 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN (18-11-15, 22 & 23)

II. ISSUE OR PROBLEM:

To decide whether it is in the public interest to withdraw the County Road status (but not the public road status) from Duncan Slough Road (County Road Number 499), being 40 feet wide and approximately 1.8 miles in length.

III. DISCUSSION:

A. Background

The Surveyor's Office of the Department of Public Works has received a request from the Lane County Board of Commissioners to prepare the necessary information for consideration of the reduction of the road status of Duncan Slough Road from county road to public road. This roadway is not an integral part of the county road system and withdrawing county road status will relieve the county of any potential future maintenance to the road.

County Road Number 499 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

National Forest land and private timberlands in Sections 15, 22, and into Section 23 in Township 18 South, Range 11 West of the Willamette Meridian.

Originally the Forest Supervisor of the Siuslaw National Forest submitted a petition requesting that a portion of Duncan Slough Road be vacated, as they are working on a wetlands restoration project in and around the roadway. The Board of Commissioners held a public hearing, and after consideration and deliberation of the record, the Board voted unanimously not to approve the Order to Vacate the subject portion of Duncan Slough Road and directed staff to return with an Order to Deny the vacation. This Order was approved by the Board of Commissioners on May 7, 2003 (Order to Deny #03-5-7-9).

The Board also gave directions to have staff prepare an Order and provide public notice to withdraw county road status (but not the public road status) from said road, and present it to the Board at a later regular scheduled meeting.

B. Analysis

Duncan Slough Road (County Road Number 499) is not currently maintained by the county, and is not connected to a legal county road. The road is in disrepair and does not serve any residences. 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. The road is gated just south of its intersection with Bernhardt Creek Road, and the public must travel over a private road to access Duncan Slough Road. If the order to withdraw county road status is approved, Duncan Slough Road will be reclassified as a public road, and access will remain unchanged. Reducing the status of this right-of-way will relieve the County of the responsibility to maintain the road, yet retain the public status of the road.

The public interest will be served if the road status is changed, as this portion of road is not an integral part of the county road system and withdrawing county road status will relieve the county of any potential future maintenance to the road.

ORS 368.026 states that a governing body may initiate proceedings to withdraw county road status by having the county road official prepare a report stating reasons for the proposed withdrawal and the effects the proposed withdrawal may have on land abutting the county road proposed to be withdrawn. The Final Director's Report addresses these issues.

The provisions of LM 15.410(7) limit the categories of roads to be considered for withdrawal and provide specific guidelines for Board consideration at the time of the public hearing. Duncan Slough Road falls into the following categories of LM 15.410 (7): (a) Dead-end roads which serve four, or fewer, permanent residences; (b) Roads within National Forest boundaries, within Bureau of Land Management ownership areas, or adjacent to resource land areas under single ownership; and (c) Roads that are undeveloped right-of-ways, are dirt roads, or are not currently maintained by County forces. Other provisions of LM 15.410(7) the Board shall consider before a County Road status is withdrawn are listed on Exhibit "C."

The proceedings which would withdraw county road status (but not the public road status) have provided ample opportunity for comment from the public, affected property owners and outside agencies. The statutes do not require the Board to meet any specific criteria in their decision to withdraw County Road status on a segment of road to public road status. Lane Manual 15.410(7) has four categories of County Roads and ten items to consider whenever a County Road is considered for conversion to a local access road, as specified on Exhibit "C". All required legal notice has been

provided in accordance with ORS 368.401 to 368.426 and the Board is free to make a decision at this time.

C. Alternatives/Options

1. Adopt the Final Order to withdraw county road status (but retain public road status) from Duncan Slough Road as described and defined by staff.
2. Direct staff to alter the limits of the withdrawal of county road status (but not public road status) as the Board may wish. An amended Final Order would be scheduled for a future Board meeting.
3. Refuse to withdraw the county road status of Duncan Slough Road. An order to discontinue the proceedings would be prepared for a future agenda date.
4. Postpone this matter for further fact-finding or consideration at a future date to be chosen by the Board.

D. Recommendation

The Public Works Director has recommended that the Board withdraw county road status (but not public road status) from Duncan Slough Road (County Road Number 499) as described in the Final Order. This action will relieve Lane County of responsibility for future road maintenance on Duncan Slough Road.

E. Timing

Timing is not critical in this matter.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Final Order withdrawing county road status it is to be forwarded to the Lane County Clerk for filing and recording, after which, copies are to be forwarded to the County Surveyor who will update appropriate county road records, and the County Engineer, who will update maintenance program records. If the Board wishes to postpone the matter or to terminate proceedings an Order to Postpone or Discontinue will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS:

Final Order w/ attachments:

Director's Final Report – Exhibit "A"

Affidavit of Mailing – Exhibit "B"

Lane Manual 15.410(7) – Exhibit "C"

Map – Attachment "A"

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

FILE NO. 4084

IN THE MATTER OF WITHDRAWAL OF COUNTY)
ROAD STATUS (BUT NOT THE PUBLIC ROAD)
STATUS) FROM DUNCAN SLOUGH ROAD)
(COUNTY ROAD NUMBER 499), LOCATED OFF)
BERNHARDT CREEK ROAD NEAR KARNOWSKY) FINAL ORDER
CREEK, IN SECTIONS 15, 22 AND 23, TOWNSHIP 18)
SOUTH, RANGE 11 WEST OF THE WILLAMETTE)
MERIDIAN (18-11-15, 22 & 23))

THIS MATTER now coming before the Board of County Commissioners for Lane County, Oregon, and it appearing that Duncan Slough Road is no longer needed as part of the county's road system; and

WHEREAS, the County Surveyor has reviewed the Commissioner's Journal and road records and it is concluded that Duncan Slough Road was established as County Road Number 499 in 1892; and

WHEREAS, Duncan Slough Road is not currently maintained by the county and is not connected to a legal county road; and

WHEREAS, Duncan Slough Road is bounded by National Forest land and private timberlands, and the Forest Service is working on a wetlands restoration project in and around the roadbed of Duncan Slough Road; and

WHEREAS, Duncan Slough Road is gated just south of its intersection with Bernhardt Creek Road, and the public must travel over a private road to access to the subject right of way; and

WHEREAS, if Duncan Slough Road is reduced in status from county road to public road the access to the road and the National Forest Land will remain unchanged; and

WHEREAS, the Director of Public Works has prepared a Final Report in support of withdrawing the County Road status (but not public road status) from Duncan Slough Road, said report being marked Exhibit "A" attached hereto, and made a part of these proceedings; and

WHEREAS, all statutory procedures under Oregon Revised Statutes Chapter 368 necessary for this withdrawal of County Road status have been complied with, including public notice as evidenced by the Affidavit of Mailing marked as Exhibit "B", attached hereto and made a part hereof by this Order; and

WHEREAS, provisions of LM 15.410(7) marked as Exhibit "C" attached hereto and made a part hereof, limits the categories of roads to be considered for withdrawal and provides specific guidelines for Board consideration; and this road falls into the category of LM 15.410 (7) (a) Dead-end roads which serve four, or fewer, permanent residences; (b) Roads within National Forest boundaries, within Bureau of Land Management ownership areas, or adjacent to resource land areas under single ownership; and (c) Roads that are undeveloped right-of-ways, are dirt roads, or are not currently maintained by County forces; and

WHEREAS, Oregon Revised Statutes, Chapter 368, after a public hearing, permits the withdrawal of County Road status from a County Road when the Board deems it appropriate to do so, and **NOW, THEREFORE, IT IS HEREBY**

ORDERED, that in accordance with Oregon Revised Statutes, Chapter 368, the county road status (but not the public road status) of Duncan Slough Road, 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 1.8 miles, more or less, to the southeast margin of Bernhardt Creek Road in Section 15, Township 18 South, Range 11 West of the Willamette Meridian, all in Lane County, Oregon, is hereby

WITHDRAWN; and it is further

ORDERED, that these legal road proceedings be filed with the County Clerk's Office in the Commissioner's Journal and a copy be retained in the County Road Records administered by the Director of Public Works and the County Surveyor.

Dated this _____ day of _____, 2003.

Peter Sorenson, Chair
Lane County Board of Commissioners

Attachment "A": Map

APPROVED AS TO FORM

Date 8-23-03 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 WITHDRAWAL OF COUNTY)
ROAD STATUS (BUT NOT THE PUBLIC ROAD)
STATUS) FROM DUNCAN SLOUGH ROAD)
(COUNTY ROAD NUMBER 499), LOCATED OFF)
BERNHARDT CREEK ROAD NEAR KARNOWSKY)
CREEK, IN SECTIONS 15, 22 AND 23 TOWNSHIP 18)
SOUTH, RANGE 11 WEST OF THE WILLAMETTE)
MERIDIAN (18-11-15, 22 & 23))**

**DIRECTOR'S
FINAL REPORT**

The Board of Commissioners has directed staff to go forward with proceedings to reduce the road status of Duncan Slough Road from county road to public road.

County Road Number 499 was established in 1892 to provide an outlet for the Karnowsky homestead. The roadway runs southeasterly from Bernhardt Creek Road. 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 subject right of way is bounded by National Forest land and private timberlands.

The Forest Supervisor of the Siuslaw National Forest originally submitted a petition requesting that a portion of Duncan Slough Road be vacated, as they are working on a wetlands restoration project in and around the roadbed. The Board of Commissioners held a public hearing, and after consideration and deliberation of the record, the Board voted unanimously not to approve the Order to Vacate the subject portion of Duncan Slough Road and directed staff to return with an Order to Deny the vacation. This Order was approved by the Board of Commissioners on May 7, 2003. The Board also gave directions to have staff prepare an Order and provide public notice to withdraw county road status (but not the public road status) from said road, and present it to the Board at a later regular scheduled meeting.

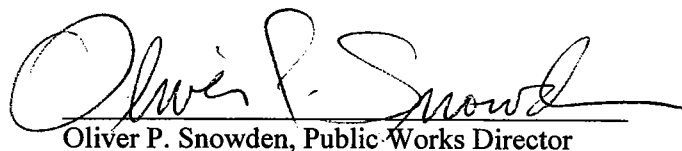
Consideration of withdrawal of county road status of Duncan Slough Road would be within the guidelines of LM 15.410 (7): (a) Dead-end roads which serve four, or fewer, permanent residences; (b) Roads within National Forest boundaries, within Bureau of Land Management ownership areas, or adjacent to resource land areas under single ownership; and (c) Roads that are undeveloped right-of-ways, are dirt roads, or are not currently maintained by County forces.

Duncan Slough Road is not currently maintained by the county, and is not connected to a legal county road. The road is in disrepair and does not serve any residences. 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. The road is gated just south of its intersection with Bernhardt Creek Road, and the public must travel over a private road to access Duncan Slough Road. If the order to withdraw county road status is approved, the subject portion of Duncan Slough Road will be reclassified as a public road, and access will remain unchanged.

ORS 368.026 states that a governing body may initiate proceedings to withdraw county road status by having the county road official prepare a report stating reasons for the proposed withdrawal and the effects the proposed withdrawal may have on land abutting the county road proposed to be withdrawn. This has been provided herein. The proceedings which would withdraw County Road status (but not the Public Road status) have provided ample opportunity for comment from the public, affected property owners and outside agencies. The statutes do not require the Board to meet any specific criteria in their decision to withdraw county road status. All required legal notice has been provided for the public hearing date of September 10, 2003 as disclosed by the Affidavit of Mailing attached to the Order and marked as Exhibit "B", in accordance with ORS 368.401 to 368.426 and the Board is free to make a decision at this time.

It is recommended that the Board withdraw county road status (but not public road status) of Duncan Slough Road as described in the Final Order. This action will relieve Lane County of responsibility for future road maintenance on Duncan Slough Road.

DATED this 21st day of August, 2003.

A handwritten signature in black ink that reads "Oliver P. Snowden". The signature is written in a cursive style with a long horizontal flourish at the end.

Oliver P. Snowden, Public Works Director

EXHIBIT "B"

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORIGINAL

STATE OF OREGON

FILE NO. 4084

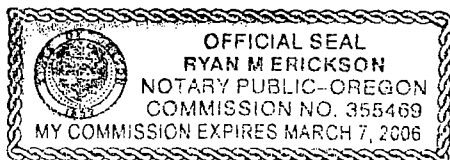
IN THE MATTER OF WITHDRAWAL OF COUNTY)
ROAD STATUS (BUT NOT THE PUBLIC ROAD)
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(COUNTY ROAD NUMBER 499), LOCATED OFF) AFFIDAVIT
BERNHARDT CREEK ROAD NEAR KARNOWSKY) OF MAILING
CREEK, IN SECTIONS 15, 22 AND 23 TOWNSHIP 18)
SOUTH, RANGE 11 WEST OF THE WILLAMETTE)
MERIDIAN (18-11-15, 22 & 23))

I, William D. Robinson, Interim Lane County Surveyor, certify as follows:

That on 7th day of August 2003, notice was sent by Certified Mail to the property owners, affected by the proposed road action, in accordance with Oregon Revised Statutes Chapter 368.

William D. Robinson
William D. Robinson
Interim Lane County Surveyor

Subscribed and sworn to before me this 20th day of Aug, 2003



Ryan M. Erickson
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

Lane Manual 15.410

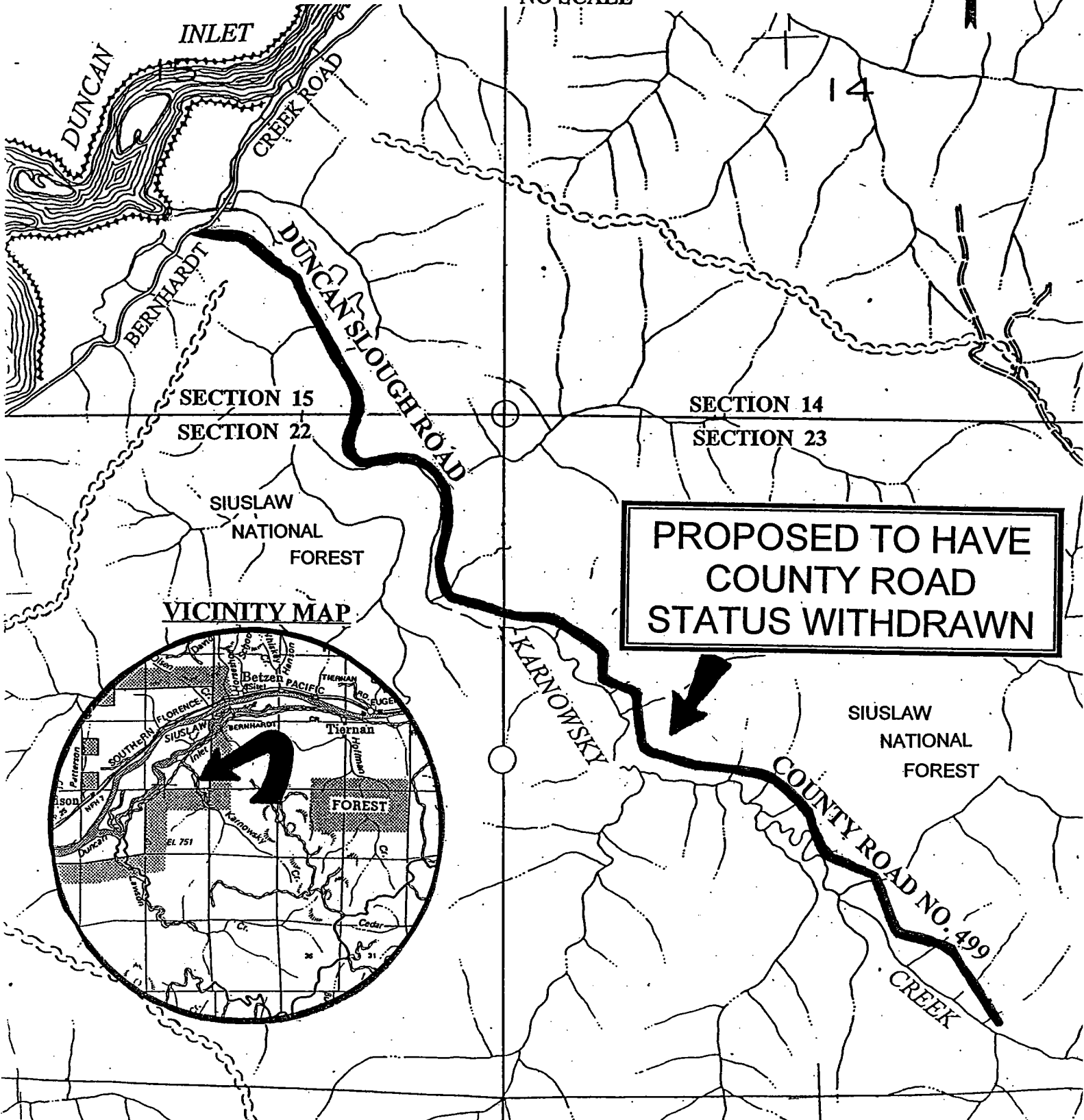
- (7) Vacation of County roads pursuant to the process provided in LM 15.305 or conversion of County roads to "local access road" (non-County maintained) status by withdrawal of County road status pursuant to ORS Chapter 368 may be considered where little need exists for the road to be part of the County Road System. The following categories of County roads may be considered by the Board of County Commissioners for vacation or withdrawal of County road status:
- (a) Dead-end roads which serve four, or fewer, permanent residences.
 - (b) Roads within National Forest boundaries, within Bureau of Land Management ownership areas, or adjacent to resource land areas under single ownership.
 - (c) Roads that are undeveloped right-of-ways, are dirt roads, or are not currently maintained by County forces.
 - (d) Roads that have received County maintenance, but are unusually difficult to maintain because of substandard road width, right-of-way width, or materials or construction practices, which may result in excessive cost and liability exposure.
 - (e) The following items shall be considered by the Board in reviewing these actions on a case-by-case basis:
 - (i) The need for a public right-of-way to provide for the orderly development of adjacent property.
 - (ii) The need for public maintenance of the right-of-way.
 - (iii) School bus traffic.
 - (iv) Bridges and the potential for public safety problems associated with bridges.
 - (v) Railroad crossings and PUC requirements for County participation in applications for railroad crossing improvement or establishment.
 - (vi) The potential for landslide and stability problems.
 - (vii) Resource hauling (timber, agriculture, sand and gravel) that would unfairly burden other property owners.
 - (viii) Use by law enforcement or fire protection personnel.
 - (ix) Potential use as detour routes in the case of construction or disaster.
 - (x) Potential for elimination of right of access that is a matter of public record.

SIUSLAW RIVER

ATTACHMENT "A"

ORIGINAL

SECTIONS 15, 22 & 23
TOWNSHIP 18 SOUTH, RANGE 11 WEST, W.M.
LANE COUNTY
NO SCALE

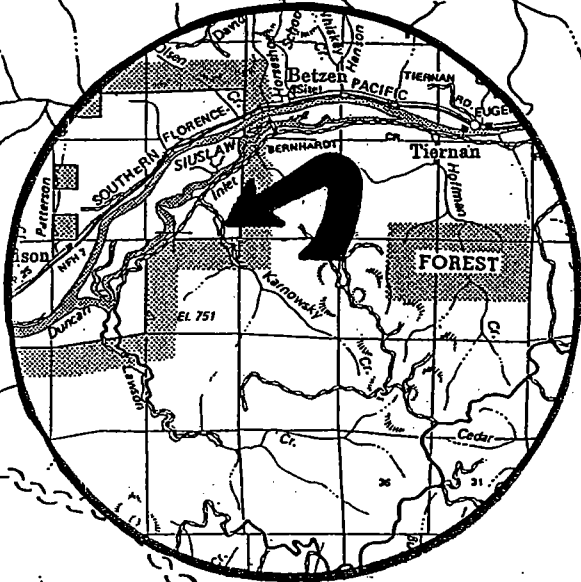


SECTION 15
SECTION 22

SECTION 14
SECTION 23

PROPOSED TO HAVE
COUNTY ROAD
STATUS WITHDRAWN

VICINITY MAP



SIUSLAW
NATIONAL
FOREST

COUNTY ROAD NO. 499
CREEK