

W. 10-D.1.

AGENDA COVER MEMO

DATE: August 10, 2004
TO: Lane County Board of Commissioners
FROM: Bill Robinson, Lane County Surveyor *gr*
DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF VACATING A PORTION OF SAILOR ROAD (CO. RD. #706), LOCATED IN SECTIONS 29 AND 32, TOWNSHIP 17 SOUTH, RANGE 6 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (17-06-29 & 32)

I. MOTION:

TO VACATE A PORTION OF SAILOR ROAD (CO. RD. #706), LOCATED IN SECTIONS 29 AND 32, TOWNSHIP 17 SOUTH, RANGE 6 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (17-06-29 & 32)

II. ISSUE:

To decide whether a portion of Sailor Road, having a length of approximately 943 feet and width of 60 feet, 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 Larry Konnie, Vice President of Swanson Brothers Lumber Company and J. Laurence Konnie, an individual and Steve Swanson, President of Swanson Superior, LLC and Richard A. Laxson, Manager of Real Estate Field Services for Central Oregon & Pacific Railroad, Inc. These signatories represent the ownership of 100% of the property abutting the proposed vacation of Sailor Road. The petitioners are requesting the vacation, by the authority of ORS 368.351, without a public hearing.

The purpose of this request is to vacate a portion of Sailor Road in order to consolidate land ownerships for the Swanson Brothers Lumber Company log and lumber storage areas and to remove the encumbrance of the unconstructed road right-of-way. Sailor Road right-of-way, as originally established, currently separates commonly owned tax lots and is an encumbrance to

land which has been used contiguously for many years as part of the log and lumber storage area for the Swanson Brothers mill.

Sailor Road was originally dedicated for public use in the Plat of Portola on January 25, 1912 (Book 4, Page 105). It ran from the north bank of Noti Creek in Section 32 northerly to Pine Street in Section 29, a distance of 1700 feet, more or less, with a width of 60 feet. An exception to the Plat contained the approximate westerly 50 feet of Sailor Road from the south line of Section 29 northerly to Pine Street, not including that portion of 60 foot right-of-way of the Mapleton Stage Road (a.k.a. Main Street, Noti Loop, Route F and Highway 126). Although not stated as such on the plat, this exception appears to constitute Government Lot 5 of Section 29.

Sailor Road was established as County Road #706 on February 10th, 1912 by order recorded in Commissioners Journal Reel 12, Page 80. The road as surveyed began at the north bank of Noti Creek in Section 32 and ran northerly a distance of 1691.5 feet, with a width of 60 feet, to the northerly right-of-way of Pine Street.

In 1972 a portion of Sailor Road was vacated from Main Street northerly to Fir Street by order in Commissioners Journal 64, page 721.

The Surveyors Office notified Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjoining property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

B. Analysis:

This portion of Sailor Road is not needed as part of the Lane County transportation system. Properties that would otherwise be isolated due to the vacation as proposed either will have access to other public roadways through common ownership of adjoining tax lots or by existing access easement, with the exception of tax lot 10400 of Assessor's map 17-06-29-30, which is owned by petitioner Swanson Brothers Lumber Company. Swanson Brothers Lumber Company is aware that their tax lot 10400 will be isolated as a result of this vacation of Sailor Road, and indicate it is not a concern, as they have historically had cooperative relations with adjoining petitioner Central Oregon and Pacific Railroad regarding access. Their consent complies with ORS 368.331 which prohibits vacating public lands that would result in deprivation of recorded property rights of access, unless the County governing body has the consent of the affected property owner. The public interest will be served, as vacating this portion of right-of-way will allow petitioner Swanson Brothers Lumber Company to more fully utilize and consolidate their properties which have previously been encumbered by the right-of-way of this unconstructed portion of Sailor Road.

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Approve the vacation of a portion of Sailor Road, having a length of approximately 943 feet, as petitioned for.

2. Deny the vacation of Sailor Road, as petitioned for.
3. Continue the matter for further consideration.

D. Recommendations:

The Public Works Director's Report recommends that the Board support Option Number 1, to approve the vacation of the portion of Sailor Road, as petitioned for. Properties which would otherwise be isolated due to the vacation as proposed either will have access to other public roadways through common ownership of adjoining tax lots or by access easement, except for tax lot 10400 of Assessor's map 17-06-29-30, which is not objectionable to owner and petitioner Swanson Brothers Lumber Company. The vacation is in the public's interest, as it would allow more full utilization and consolidation of petitioner Swanson Brothers Lumber Company's properties.

All statutory procedures necessary for a 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 not critical in this matter.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Order of Vacation, the documents are to be forwarded to the Lane County Clerk for filing and recording, after which, copies are to be forwarded to the County Surveyor and County Assessor for appropriate action.

V. ATTACHMENTS:

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

Contact Person: Bill Robinson x4198

EXHIBIT "A"

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

FILE NO. 4113

**IN THE MATTER OF VACATING A PORTION OF SAILOR)
ROAD (CO. RD. #706), LOCATED IN SECTIONS 29 AND 32,)
TOWNSHIP 17 SOUTH, RANGE 6 WEST OF THE) DIRECTOR'S
WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON,) REPORT
WITHOUT A PUBLIC HEARING, AND ADOPTING)
FINDINGS OF FACT (17-06-29 & 32))**

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.

Sailor Road was originally dedicated for public use in the Plat of Portola on January 25, 1912 (Book 4, Page 105). It ran from the north bank of Noti Creek in Section 32 northerly to Pine Street in Section 29, a distance of 1700 feet, more or less, with a width of 60 feet. An exception to the Plat contained the approximate westerly 50 feet of Sailor Road from the south line of Section 29 northerly to Pine Street, not including that portion of 60 foot right-of-way of the Mapleton Stage Road (aka Main Street, Route F and Highway 126). Although not stated as such on the plat, this exception appears to constitute Government Lot 5 of Section 29.

Sailor Road was established as County Road #706 on February 10th, 1912 by order in Commissioners Journal Reel 12, Page 80. The road as surveyed began at the north bank of Noti Creek in Section 32 and ran northerly a distance of 1691.5 feet, with a width of 60 feet, to the northerly right-of-way of Pine Street.

In 1972 a portion of Sailor Street was vacated from Main Street northerly to Fir Street (R64-721).

The petitioners are requesting this vacation in order to consolidate land ownerships for the Swanson Brothers Lumber Company lumber and log storage areas and to remove the encumbrance of the unconstructed road right-of-way. Sailor Road right-of-way, as originally established, currently separates commonly owned tax lots and is an encumbrance to land which has been used contiguously for many years as part of the log and lumber storage area for the Swanson Brothers mill.

The Surveyors Office notified Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjoining landowners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

EXHIBIT "A"

The portion of Sailor Road proposed to be vacated, having a length of approximately 943 feet, is no longer needed by the Lane County transportation system. The public interest will be served, as vacating this portion of right-of-way will allow petitioner Swanson Brothers Lumber Company to more fully utilize and consolidate their properties which have previously been encumbered by the right-of-way of this unconstructed portion of Sailor Road. Properties which would otherwise be isolated due to the vacation as proposed either will have access to other public roadways through common ownership of adjoining tax lots or by existing access easement, with the exception of tax lot 10400 of Assessor's map 17-06-29-30, which is not objectionable to owner and petitioner Swanson Brothers Lumber Company. Their consent complies with ORS 368.331 which prohibits vacating public lands that would result in deprivation of recorded property rights of access, unless the County governing body has the consent of the affected property owner.

It is therefore recommended that the portion of Sailor Road, 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 17th day of August, 2004.


Oliver P. Snowden, Public Works Director

EXHIBIT "B"

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

FILE NO. 4113

IN THE MATTER OF VACATING A PORTION OF SAILOR)
ROAD (CO. RD. #706), LOCATED IN SECTIONS 29 AND 32,)
TOWNSHIP 17 SOUTH, RANGE 6 WEST OF THE)
WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON,) FINDINGS OF FACT
WITHOUT A PUBLIC HEARING, AND ADOPTING)
FINDINGS OF FACT (17-06-29 & 32))

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 a portion of Sailor Road (Co. Rd. #706) as described in the Order, be vacated as petitioned for. The petitioners are requesting this vacation, having a length of approximately 943 feet, in order to consolidate land ownerships for the Swanson Brothers Lumber Company lumber and log storage areas and to remove the encumbrance of the unconstructed road right-of-way. Sailor Road right-of-way, as originally established, currently separates commonly owned tax lots and is an encumbrance to land which has been used contiguously for many years as part of the log and lumber storage area for the Swanson Brothers mill.

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 roads or right-of-ways 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 public easements.

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.

EXHIBIT "B"

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

1. That, 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. Said property is further identified as tax lots 7600, 7700, 7800, 10300, 10400, 10500 of Assessor's Map 17-06-29-30; also, an unidentified tax lot to the north and west of tax lot 7600 of Assessor's Map 17-06-29-30, ownership confirmed to be petitioner Central Oregon and Pacific Railroad, Inc.; and tax lots 300, 601 and 701 of Assessor's Map 17-06-32.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or right-of-ways based upon the determination that the vacation is "in the public interest".
3. That, Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and adjoining landowners were notified by mail regarding the proposed vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.
4. That, properties which would otherwise be isolated due to the vacation as proposed either will have access to other public roadways through common ownership of adjoining tax lots or by existing access easement, with the exception of tax lot 10400 of Assessor's Map 17-06-29-30, which is not objectionable to owner and petitioner Swanson Brothers Lumber Company. Their consent complies with ORS 368.331 which prohibits vacating public lands that would result in deprivation of recorded property rights of access, unless the County governing body has the consent of the affected property owner.
5. 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.

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

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

FILE NO. 4113

IN THE MATTER OF VACATING A PORTION OF)
SAILOR ROAD (CO. RD. #706), LOCATED IN)
SECTIONS 29 AND 32, TOWNSHIP 17 SOUTH, RANGE) ORDER NO.
6 WEST OF THE WILLAMETTE MERIDIAN, IN LANE)
COUNTY, OREGON, WITHOUT A PUBLIC HEARING,)
AND ADOPTING FINDINGS OF FACT (17-06-29 & 32))

WHEREAS, this matter now coming before the Board upon a petition received by the Surveyor's Office of the Lane County Department of Public Works requesting, under authority of ORS Chapter 368.341, the vacation of a portion of Sailor Road (Co. Rd. #706), more particularly described as follows:

All that portion of Sailor Road, County Road No. 706, lying South of Noti Loop Road , in Sections 29 and 32, Township 17 South, Range 6 West of the Willamette Meridian, all in Lane County, Oregon, and;

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

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

WHEREAS, the petitioners are requesting the vacation of this portion of road in order to consolidate land ownerships for the Swanson Brothers Lumber Company lumber and log storage areas and to remove the encumbrance of the unconstructed road right-of-way; and

WHEREAS, Sailor Road right-of-way, as originally established, currently separates commonly owned tax lots and is an encumbrance to land which has been used contiguously for many years as part of the log and lumber storage area for the Swanson Brothers mill; and

WHEREAS, Qwest Communications, Emerald People's Utility Board, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjacent landowners were notified by mail regarding the proposed vacation; and

WHEREAS, the agencies and landowners either had no objections or did not reply to the referral; and

WHEREAS, properties that would otherwise be isolated due to the vacation as proposed either will have access to other public roadways through common ownership of adjoining tax lots or by existing access easement, with the exception of tax lot 10400 of Assessor's map 17-06-29-30, which is owned by petitioner Swanson Brothers Lumber Company; and

WHEREAS, isolation of tax lot 10400 of Assessor's map 17-06-29-30 as a result of this vacation is not objectionable to owner and petitioner Swanson Brothers Lumber Company, and their consent complies with ORS 368.331 which prohibits vacating public lands that would result in deprivation of recorded property rights of access, unless the County governing body has the consent of the affected property owner; and

WHEREAS, the petitioners have paid a vacation fee of \$650 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 368.351, marked as Exhibit "A", attached hereto 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 Sailor Road is hereby vacated; and it is further

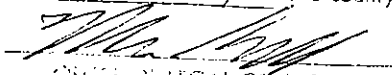
ORDERED, that in support of this action, the Board hereby adopts the Findings of Fact, marked as Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

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 _____, 2004.

Bobby Green, Sr. Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Vicinity Map

APPROVED AS TO FORM
Date 8-23-04 Lane county

OFFICE OF LEGAL COUNSEL

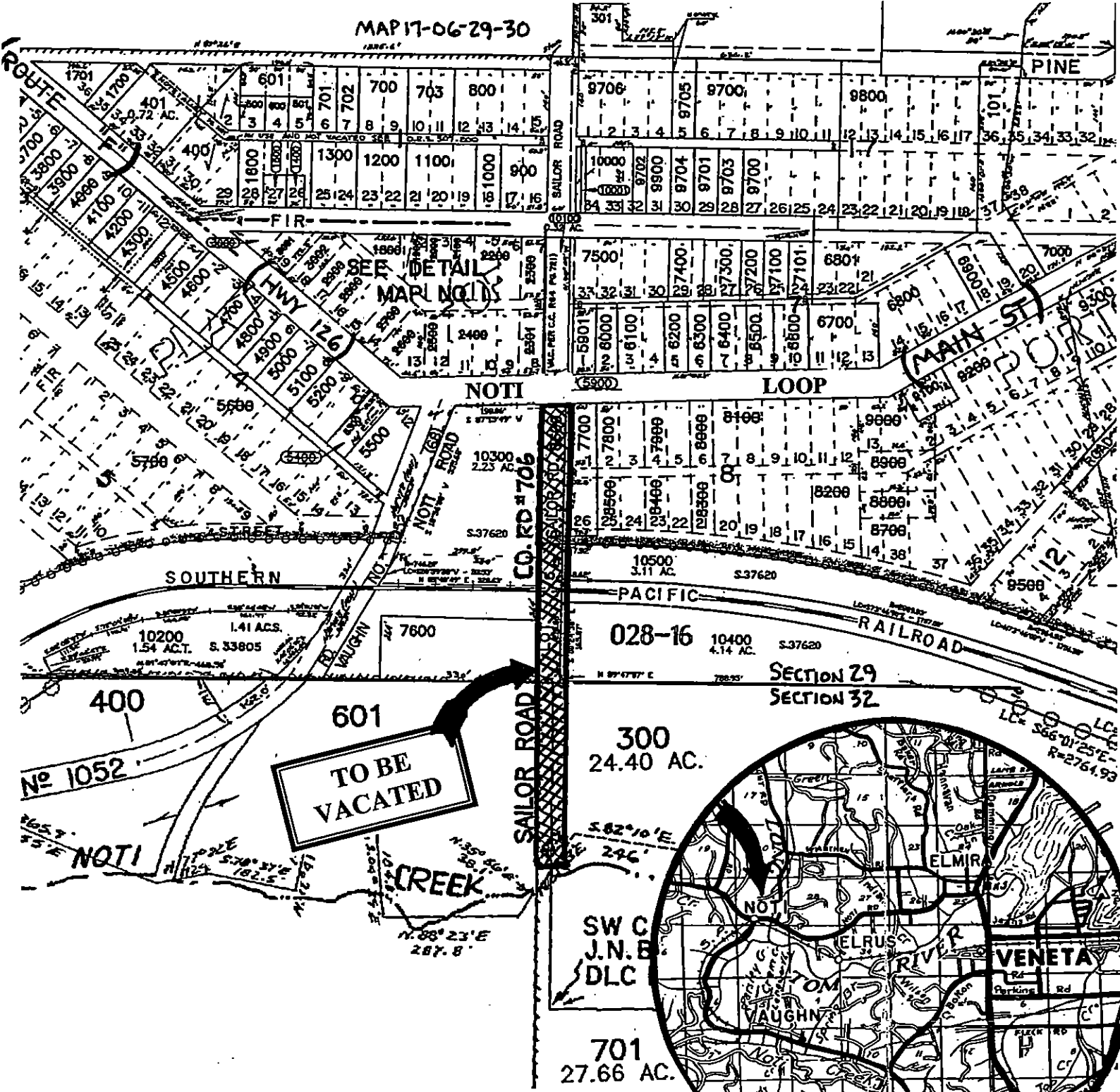


ATTACHMENT

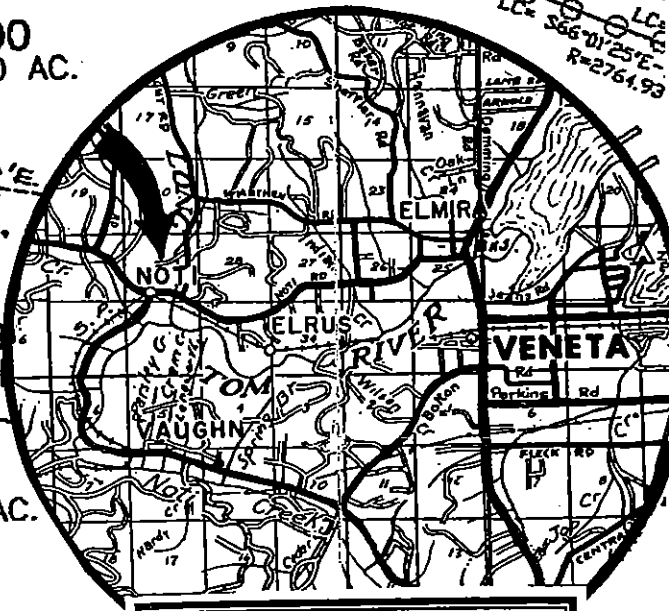
SW1/4 Section 29 and NW1/4 Section 32
T. 17 S., R. 6 W., W.M.
LANE COUNTY

NO SCALE

MAP 17-06-29-30



TO BE VACATED



VICINITY MAP

MAP 17-06-32

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

File No. 4113

IN THE MATTER OF THE VACATION OF A PORTION OF SAILOR) PETITION TO VACATE
ROAD (COUNTY ROAD NO. 706), IN SECTIONS 29 & 32 OF)
TOWNSHIP 17 SOUTH, RANGE 6 WEST OF THE WILLAMETTE)
MERIDIAN, IN LANE COUNTY, OREGON)

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned, J. Laurence Konnie, Swanson Bros. Lumber Co., Inc., Central Oregon & Pacific Railroad, Inc., and Swanson Superior, LLC as owners of the adjacent real property hereby petition for the vacation of a portion of Sailor Road as shown on the Plat of Portola, which area to be vacated is described as follows:

All that portion of Sailor Road , County Road No. 706, lying South of
Noti Loop Road.

WHEREAS, the undersigned petitioners are the owners of 100% of all the 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:
 - a) To consolidate land ownerships. Currently Swanson Bros. Lumber Co. ownership of Tax Lots 7700 and 7800 is separated from their Tax Lot 10300 by the unused roadway which we are petitioning to be vacated. To actually construct this roadway would cause a hardship to the operations of Swanson Bros. mill.
 - b) To allow for the use of the unconstructed and isolated section of roadway for industrial purposes. This section of roadway has been used for many years as a part of the lumber and log storage areas for the Swanson Bros. mill. However, being a part of a public roadway limits the ability to use this area in the most productive capacity.
 - c) To relieve encroachments which currently exist within the undeveloped roadway. As noted above, a portion of this roadway is being used for lumber and log storage. To the South, in Section 32, Tax Lots 300 and 601 have a random fence within the roadway. Vacation of this portion of the roadway would allow for a more productive use of both properties, and allow for a good definition of boundaries between the properties.
2. This roadway is not necessary since all affected properties use other means of access to an

ORIGINAL

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 the authority of ORS Chapter 368.326, for vacation without a hearing; and

THEREFORE, the petitioners request an Order of the Board of Commissioners for 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 of 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 title to the vacated area revert and vest in accordance with ORS 368.366.

DATED this 14th day of July, 2004.

PETITIONERS:

Larry Konnie
Swanson Bros. Lumber Co., Inc.
Tax Lots 7700, 7800, 10300, 10400, & 10500
Tax Map 17-06-29-30
Tax Lot 701, Tax Map 17-06-32
P.O. Box 309
Noti, Oregon 97461

J. Laurence Konnie
J. Laurence Konnie
Tax Lot 300
Tax Map 17-06-32
21409 Vaughn Road
Veneta, OR 97487

Steve Swanson
Swanson Superior, LLC
Tax Lot 601
Tax Map 17-06-32
P.O. Box 459
Noti, Oregon 97461

Richard G. Larson
Central Oregon & Pacific Railroad, Inc.
Tax Lot 7600
Tax Map 17-06-29-30
4040 Broadway - Suite 200
San Antonio, TX 78209

STATE OF OREGON)
COUNTY OF LANE) S.S.

On May 21st, 2004, did personally appear the above named Larry Konnie, as Vice President of Swanson Bros. Lumber Co., Inc., and acknowledged the foregoing instrument to be a voluntary act before me:



Traci Huffman
Notary Public for Oregon
My Commission Expires: 9-14-04

STATE OF OREGON)
COUNTY OF LANE) S.S.

On May 21st, 2004, did personally appear the above named J. Laurence Konnie, and acknowledged the foregoing instrument to be a voluntary act before me:



Traci Huffman