

W. G. B. I.

AGENDA COVER MEMO

DATE: October 19, 2005
TO: Lane County Board of Commissioners
FROM: Bill Robinson, Lane County Surveyor
DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF THE VACATION OF A PORTION OF OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON (20-03-36)

I. MOTION:

TO VACATE A PORTION OF OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON (20-03-36)

II. ISSUE:

To decide whether the vacation of a portion of Oak Road (Co. Rd. #373), being approximately 600 feet in length and having a statutory right-of-way width of 60 feet, is in the public interest.

III. DISCUSSION:

A. Background:

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Haring Piebenga, Joe Snook, Grange Master and member of the Executive Committee of Dorena Grange No. 835, and Emily Rice, representative for United States Department of Interior Bureau of Land Management, the landowners of 100% of the property abutting the proposed vacation of Oak Road.

The primary petitioner, Haring Piebenga, has installed an electric gate within the right-of-way of Oak Road near the common boundary of their property and the former railroad right-of-way. Petitioner Piebenga is requesting this vacation in order to allow the gate to remain as constructed. If this portion of road is not vacated the owners will be required to remove the gate.

Oak Road, formerly known as Mosby Road (County Road Number 373) was established in 1883, beginning at the north bank of the Row River, crossing the river and extending westerly approximately 0.36 miles, and then continuing southwestwardly about 1.32 miles to a point on the

south side of Mosby Creek. In 1965, the road was relocated and crosses the Row River at a point approximately ¼ mile west of the 1883 alignment. The portion proposed to be vacated is the first 600 feet, more or less, of the 1883 alignment, commencing at the north side of Row River, crossing the river, and extending westerly to the westerly right-of-way of the bike path, former Oregon Pacific and Eastern Railroad. Part of this portion of the road is not constructed, and there is no longer a bridge across Row River at the beginning point of the 1883 alignment. A portion of the original alignment within the portion proposed for vacation, from the old railroad (now bike path) easterly to approximately where it turns north towards the river, has been used by petitioner Piebenga to access his property, as well as the portion of original alignment not proposed to be vacated from Mosby Road easterly to the bike path.

The original request for vacation of a portion of Oak Road was received in April, 2002. In May, 2002, the Surveyor's Office notified Qwest Communications, Lane Electric Cooperative, 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 original request was to vacate the portion east of the bike path, and fees were paid with the intent to proceed without a public hearing. The Transportation Planning section responded to the referral, suggesting that the vacation include the portion of right of way that crosses the bike path. They also recommended that the construction of a hammerhead turnaround be a condition of the vacation, to allow room for vehicles to turn around without driving up onto the bike path. Upon notification of these recommendations, the petitioner changed his request to include the portion of right of way that crosses the bike path, and also applied for a facility permit to construct a turnaround.

Lane Electric Cooperative replied to the referral, stating that they have a pad mount transformer within the right of way. Petitioner Piebenga was also notified of this fact, and informed that within the Order of Vacation an easement for the benefit of Lane Electric Cooperative could be reserved to facilitate their access for maintenance.

During this same time period (May, 2002), Petitioner Piebenga was also informed that since the portion of road proposed to be vacated provides public access to the Row River, and in consideration of the concerns mentioned above, the Surveyor's Office would not support the vacation, would recommend processing the vacation petition with a public hearing, and that additional fees of \$850 would be required for processing with a public hearing should he choose to continue the process. After a period of almost two years of no further action on the part of the petitioner or the County, in April, 2004 the issue of having a closed and locked gate across the public right-of-way again surfaced. In August of 2004, Doug McCart of Lane County Right-of-Way Management section informed petitioner Piebenga that the gate could temporarily be allowed to remain if it were left open, and if the petitioner would actively pursue the vacation. Also at that time, it was suggested to the petitioner the possible solution of moving the gate easterly far enough to be out of the public right-of-way. Petitioner's representative Steve Thoreson indicated that option was not acceptable to the petitioner, since it would necessitate building two gates. During a visit to the site by County Surveyor Bill Robinson on September 1, 2004, Thoreson mentioned that petitioner Piebenga would like to wait until after the November (2004) election to proceed further with the vacation, as he felt that a change in Commissioner seats might have a change in the climate regarding road vacations. During this same approximate time period, neighboring landowner Raymond Kopki (20-03-36, Tax Lot 101) expressed a concern to the County about the vacation and the possibility that construction of a turnaround in conjunction with the vacation might encroach on his property to the west of the

bike path.

On February 2, 2005, in response to no further action on the part of the petitioner, and reports that the original gate was often closed and that the petitioner had built another temporary gate beyond the first one which was also in the public right-of-way, Doug McCart of Lane County Right-of-Way Management section sent petitioner Piebenga a letter requiring gate removal by March 4, 2005.

On March 2, 2005, in response to a request by petitioner Piebenga's attorney William Sherlock for an extension to allow the gate to remain in place, Doug McCart informed petitioner's attorney Sherlock by letter that an extension would not be granted. Said letter also specified that the gateposts, control pedestal and associated fencing could remain temporarily while the vacation process was pursued, and that the gate itself should be removed from the hinges and stored outside of the public right-of-way. Furthermore, the letter stated that the second temporary gate should be removed completely, and that further disposition of this and other property found presently within the public right-of-way would be dependent upon the outcome of the vacation as determined at public hearing.

On March 10, 2005 a new completed petition for vacation was received, along with the additional fees required to process with a public hearing. On March 14, 2005 the Surveyor's Office again notified Qwest Communications, Lane Electric Cooperative, 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. No comments were returned in response to this second notice.

On June 1, 2005, Resolution No. 05-6-1-17 was passed by the Board of Commissioners, which set a public hearing date of July 13, 2005 to consider this petition for vacation. At the public hearing, the Surveyor's Office and Director of Public Works recommended denial of the vacation, since the portion of road proposed to be vacated accesses the Row River, said recommendation of denial being consistent with previous determinations and direction by the Board of Commissioners regarding retaining access to public waterways.

At the public hearing held July 13, 2005, primary petitioner Piebenga's attorney Liam Sherlock gave written and oral testimony in favor of the vacation. Petitioner Piebenga himself also gave oral testimony in favor of the vacation. His testimony expressed hopes that approval of the vacation would help solve problems of dumping and illicit activities on his property, and expressed a commitment to financially facilitate the construction of a turnaround in cooperation with Lane County Transportation Department. Doug McCart of Lane County Right-of-Way Management gave oral testimony regarding an appropriate location for a turnaround. Steve Thoreson, a contractor for petitioner Piebenga, gave oral testimony in favor of the vacation. Commissioner Faye Stewart spoke in favor of the vacation, stating it to be his belief that the vacation would be in the public interest. There was no public oral testimony presented at the hearing in opposition to the vacation; however, a letter in opposition to the hearing signed by A. Kinkade was received two days prior to the hearing and was made available in the hearing. The Board of Commissioners voted to approve the vacation by a 3-1 vote, including in the motion a directive that County staff continue to work with petitioner Piebenga in the development of a turnaround. A turnaround has since been completed by petitioner Piebenga to the satisfaction of the County.

The approval of the vacation of this portion of Oak Road, including the portion underlying the bike path owned by the Bureau of Land Management, will result in deprivation of right of access

to Mr. Piebenga's property. Subsequent to the public hearing, Mr. Piebenga and his attorney, Liam Sherlock, were notified of this and informed that either an easement from the Bureau of Land Management would be needed or else a document of formal consent to vacation under these circumstances (in accordance with ORS 368.331) would need to be executed and included with the Agenda documents and Order. Mr. Piebenga chose to obtain an easement from the Bureau of Land Management, which has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354.

B. Analysis:

ORS 368.356 requires that the county governing body shall determine whether the vacation of the property is in the public interest.

The proceedings that propose to vacate the subject portion of Oak Road have provided ample opportunity for comment from the public, affected property owners, and outside agencies. All required legal notices have been provided in accordance with ORS 368.346 and the Board is free to act at this time.

Lane Electric Cooperative has distribution lines in the area, and an easement for their benefit will be reserved in the Order of Vacation. No other utility lines are known to be in the area.

A grant of access easement across the bike path by the Bureau of Land Management to benefit petitioner Piebenga's property (Tax Lot 20-03-36-100) has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354.

Petitioner Piebenga has completed a turnaround in satisfaction of the Board of Commissioners directive that County staff follow up with a cooperative effort between Lane County and petitioner Piebenga towards constructing a turnaround

C. Alternatives/Options:

1. Approve the vacation of a portion of Oak Road (Co. Rd. #373), as petitioned for.
2. Deny the vacation of a portion of Oak Road (Co. Rd. #373), as petitioned for.
3. Continue the matter for further consideration.

D. Recommendations:

The Surveyor's Office, as directed by the Board as part of their determinations and vote of approval in the public hearing on July 13, 2005, hereby submits an Order to Vacate the portion of Oak Road as petitioned for.

All statutory procedures necessary for processing this petition for vacation with a public hearing have been complied with, including providing public notice.

E. Timing:

Timing is important in this matter, since a turnaround has been completed by petitioner Piebenga

to the satisfaction of the County, and final approval of the vacation will allow petitioner Piebenga to implement closure of his gate as originally requested in the petition for this vacation.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Order to Vacate this portion of Oak Road, 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 and County Assessor for appropriate action. If the Order to Vacate is not approved, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS:

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

Contact Person: Bill Robinson x-4198

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

FILE NO. 4124

**IN THE MATTER OF THE VACATION OF A)
PORTION OF OAK ROAD (CO. RD. #373), LOCATED)
IN THE NORTHEAST QUARTER (NE1/4) OF SECTION) ORDER NO.
36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE)
WILLAMETTE MERIDIAN, IN LANE COUNTY,)
OREGON (20-03-36))**

WHEREAS, this matter now coming before the Board of County Commissioners for Lane County, Oregon, upon valid 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 that portion of Oak Road (County Road #373) lying east of the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, more particularly described as follows:

All that portion of County Road Number 373 (commonly known as Oak Road) located in the Northeast quarter (NE ¼) of Section 36, Township 20 South, Range 3 West of the Willamette Meridian, from the beginning point of the road as surveyed in 1883, on the north side of the Row River, thence South across the river 3.16 chains (208.56 feet), thence South 86° West approximately 350 feet to the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, and there ending, all in Lane County, Oregon; and

WHEREAS, the Board of Commissioners conducted a public hearing on July 13, 2005, in accordance with Resolution, Notice of Hearing and Order No. 05-6-1-17, to consider the vacation of the described portion of Oak Road; and

WHEREAS, after consideration and deliberation of the record, which included a report and recommendation for denial of the vacation from the Director of Public Works as well as written material and oral presentation by County Surveyor Bill Robinson, oral and written testimony by primary petitioner's attorney Liam Sherlock, oral testimony by primary petitioner Haring Piebenga, oral testimony by petitioner Piebenga's contractor Steve Thoreson, and oral testimony by Lane County Right-of-Way Management representative Doug McCart, the Board of Commissioners voted to approve the vacation by a 3-1 vote; and

WHEREAS, the Director of the Department of Public Works has provided a written report, as required by ORS 368.346, marked as Exhibit "A", attached hereto and made a part hereof, by this Order, recommending that the described portion of Oak Road be vacated; and

WHEREAS, all necessary procedures for a vacation have been complied with, pursuant to ORS Chapter 368, including notification of these proceedings by posting, mail and legal publication by the County Surveyor as required by ORS 368.401 to 368.426, and evidenced by the Affidavit of Posting, Publication and Mailing dated June 23, 2005, marked as Exhibit "C", attached hereto and made a part hereof by this Order; and

WHEREAS, the petitioners are requesting the vacation of this portion of road in order to allow an existing gate to remain in place at the owner's property line and help reduce dumping and trespass on petitioner Piebenga's property; and

WHEREAS, the primary petitioner has paid a vacation processing fee of \$1500; and

WHEREAS, Qwest Communications, Lane Electric Cooperative, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and abutting landowners were notified by mail regarding the proposed vacation; and

WHEREAS, Lane County Transportation Planning Department replied with concerns about the locked gate being within public right-of-way, providing for construction of a turnaround if the subject portion of road is vacated, and recommendations regarding vacation limits; and

WHEREAS, Lane Electric Cooperative replied with concerns that they have a pad mount transformer to which they need to maintain access; and

WHEREAS, Raymond Kopki, owner of tax lot 20-03-36-100, without formal reply to the initial solicitation for comment on the vacation, later expressed a concern regarding a possible turnaround on or adjoining his property in the event of this vacation; and

WHEREAS, a letter of objection to the vacation was received two days prior to the public hearing written by A Kinkade, and said letter was made a part of the public hearing; and

WHEREAS, in the public hearing held on July 13, 2005 the Board of Commissioners directed County staff to work with primary petitioner Haring Piebenga in the development of a turnaround, and petitioner Piebenga has since completed construction of a turnaround to the satisfaction of the County; and

WHEREAS, an easement has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354, for the purpose of providing access across the bike path owned and administered by the Bureau of Land Management, to the property of primary petitioner Piebenga; 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 vacation of the above described portion of Oak Road (County Road Number 373) is hereby approved; and it is further

ORDERED, that an easement is hereby retained for any and all existing public utilities to preserve, maintain, repair, replace, remove or reinstall any public utility that may now exist within the bounds of the portion of Oak Road herein described by these proceedings as 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 _____, 2005.

Anna Morrison Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Attachment - Vicinity Map

APPROVED AS TO FORM

Date 10-25-05 lane county



OFFICE OF LEGAL COUNSEL

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

ORIGINAL

FILE NO.

**IN THE MATTER OF THE VACATION OF A)
PORTION OF A COUNTY ROAD, COMMONLY)
KNOWN AS OAK ROAD (COUNTY ROAD)
NUMBER 373) IN THE NE ¼ OF SECTION 36,) **PETITION TO VACATE**
TOWNSHIP 20 SOUTH, RANGE 3 WEST OF)
THE WILLAMETTE MERIDIAN IN LANE)
COUNTY, OREGON.)**

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned, Haring L. Piebenga, Joe Snook, constituting the Executive Committee of Dorena Grange No. 835, and Emily Rice , representative of United States Department of Interior Bureau of Land Management, owners of adjacent real property hereby petition for the vacation of a portion of County Road Number 373 (commonly known as Oak Road), which area to be vacated is described as follows:

“All that portion of County Road Number 373 (commonly known as Oak Road) located in the Northeast quarter (NE ¼) of Section 36, Township 20 South, Range 3 West of the Willamette Meridian and lying east of the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, the beginning point being more particularly described in the original survey notes of said road as beginning at a stone 20x8x6 inches set in the center of the road on the North side of the Row River, in road District No. 13, opposite the end of the old bridge on said river, at the South end of John Currin’s lane; thence South across the river 3.16 chains (208.56 feet); thence South 86° West approximately 350 feet to the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, and there ending.”

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 the vacation request is to allow existing gate to remain in place at owners property line.
2. There are no utilities, and no powerlines located in the area to be vacated.

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 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 title to the vacated area revert and vest in accordance with ORS 368.366.

DATED this 22 day of FEBRUARY, 2008.

PETITIONERS:

Haring L. Piebenga
Owner

ORIGINAL

Map # 20-03-36 Tax Lot 100
ADDR: 36534 Oak Road
Cottage Grove, Oregon 97424

STATE OF OREGON)
COUNTY OF LANE) ss.

On 2-22, 2005, personally appeared the above-named HARING L. PIEBENGA
Print Signature
Haring L. Piebenga

and acknowledged the foregoing instrument to be a voluntary act before me.

Randall Wells
Notary Public for Oregon
My Commission expires: 3-10-08

Joe Snook
Representative for Dorena Grange # 835

Map # 20-02-31 Tax Lot 1800
ADDR: 77796 Sunset Drive
Cottage Grove, Oregon 97424



STATE OF OREGON)
COUNTY OF LANE) ss.

On March 2, 2005, personally appeared the above-named Joe Snook Joe Snook
Print Signature
Joe Snook as Representative for Dorena Grange # 835

and acknowledged the foregoing instrument to be a voluntary act before me.

Sarah Schmitt
Notary Public for Oregon
My Commission expires: 9/9/06

Emily Rice
Representative for BLM

Map # 20-03-36 Tax Lot 2103
ADDR: P.O. Box 10226
Eugene, Oregon 97440



STATE OF OREGON)
COUNTY OF LANE) ss.

On March 7, 2005, personally appeared the above-named Emily Rice Emily Rice
Print Signature
Emily Rice as Representative for BLM

and acknowledged the foregoing instrument to be a voluntary act before me.



Carolyn A. Tillery
Notary Public for Oregon
My Commission expires: June 10, 2005

EXHIBIT "A"

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

FILE NO. 4124

IN THE MATTER OF THE VACATION OF A)	
PORTION OF OAK ROAD (CO. RD. #373), LOCATED)	DIRECTOR'S
IN THE NORTHEAST QUARTER (NE1/4) OF SECTION)	FINAL REPORT
36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE)	
WILLAMETTE MERIDIAN, IN LANE COUNTY,)	
OREGON (20-03-36))	

The Surveyor's Office of the Department of Public Works received a valid petition signed by the landowners of 100% of the abutting property to vacate a portion of Oak Road (Co. Rd. #373). The primary petitioner is requesting this vacation in order to avoid removal of a gate he has constructed within the public right-of-way of Oak Road.

Oak Road, formerly known as Mosby Road (County Road Number 373), was established in 1883 with a statutory width of 60 feet, beginning at the north bank of the Row River, crossing the river and extending westerly approximately 0.36 miles, and then continuing southwestwardly about 1.32 miles to a point on the south side of Mosby Creek. In 1965, the road was relocated and crosses the Row River at a point approximately ¼ mile west of the 1883 alignment. The portion proposed to be vacated is the first 600 feet, more or less, of the 1883 alignment, commencing at the north side of Row River, crossing the river, and extending westerly to the westerly right-of-way of the bike path, former Oregon Pacific and Eastern Railroad.

It was recommended that a public hearing be held regarding the proposed vacation due to the fact that a portion of the proposed vacation provides public access to the Row River, and also due to concerned responses as mentioned below. On June 1, 2005, Resolution No. 05-6-1-17 was passed by the Board of Commissioners, which set a public hearing date of July 13, 2005 to consider this petition for vacation.

Qwest Communications, Lane Electric Cooperative, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, as well as nearby landowners were notified by mail regarding the proposed vacation. Lane County Transportation Planning Division replied with concerns about the locked gate being within public right-of-way, providing for construction of a turnaround if the subject portion of road is vacated and recommendations regarding vacation limits. Lane Electric Cooperative replied with concerns that they have a pad mount transformer to which they need to maintain access. Nearby landowner Raymond Kopki, although not in formal response to the referral, later contacted Lane County Right-of-Way section about his concern that if the road were vacated as petitioned for it would possibly result in a required turnaround adjacent to or on his property. A letter of opposition to the vacation was received two days prior to the public hearing signed by A. Kinkade. The other agencies and landowners either had no objections or did not respond to the referral.

At the public hearing held July 13, 2005, the Surveyor's Office and Director of Public Works recommended denial of the vacation, since the portion of road proposed to be vacated accesses the Row

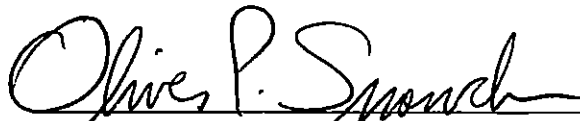
EXHIBIT "A"

River, said recommendation of denial being consistent with previous determinations and direction by the Board of Commissioners regarding retaining access to public waterways. Primary petitioner Piebenga's attorney Liam Sherlock gave written and oral testimony in favor of the vacation. Petitioner Piebenga himself also gave oral testimony in favor of the vacation. His testimony expressed hopes that approval of the vacation would help solve problems of dumping and illicit activities on his property, and expressed a commitment to financially facilitate the construction of a turnaround in cooperation with Lane County Transportation Department. Doug McCart of Lane County Right-of-Way Management gave oral testimony regarding an appropriate location for a turnaround. Steve Thoreson, a contractor for petitioner Piebenga, gave oral testimony in favor of the vacation. Commissioner Faye Stewart spoke in favor of the vacation, stating it to be his belief that the vacation would be in the public interest. There was no public oral testimony presented at the hearing in opposition to the vacation; however, a letter in opposition to the hearing signed by A. Kinkade was received two days prior to the hearing and was made available in the hearing. The Board of Commissioners voted to approve the vacation by a 3-1 vote, including in the motion a directive that County staff continue to work with petitioner Piebenga in the development of a turnaround. A turnaround has since been completed by petitioner Piebenga to the satisfaction of the County.

The approval of the vacation of this portion of Oak Road, including the portion underlying the bike path owned by the Bureau of Land Management, will result in deprivation of right of access to Mr. Piebenga's property. Subsequent to the public hearing, Mr. Piebenga and his attorney, Liam Sherlock, were notified of this and informed that either an easement from the Bureau of Land Management would be needed or else a document of formal consent to vacation under these circumstances (in accordance with ORS 368.331) would need to be executed and included with the Agenda documents and Order. Mr. Piebenga chose to obtain an easement from the Bureau of Land Management, which has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354.

In response to the public hearing proceedings in which the Board of Commissioners determined this vacation to be in the public interest, it is therefore recommended that the vacation of this portion of Oak Road, as described in the final order, be approved.

DATED this 19th day of October, 2005



Oliver P. Snowden, Director - Department of Public Works

EXHIBIT "B"

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

FILE NO. 4124

**IN THE MATTER OF THE VACATION OF A PORTION OF)
OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST) FINDINGS OF FACT
QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH,)
RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN)
LANE COUNTY, OREGON (20-03-36))
)**

The Department of Public Works has received a valid petition signed by the landowners of 100% of the abutting property to vacate a portion of Oak Road (Co. Rd. #373). The primary petitioner is requesting this vacation in order to avoid removal of a gate he has constructed within the public right-of-way of Oak Road. The subject portion of right-of-way is approximately 600 feet in length with a statutory width of 60 feet.

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 public roads or easements 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.

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

EXHIBIT "B"

- (2) The county road official files a written report containing a description of the property proposed for vacation and stating whether or not the vacation is in the public interest.
- (3) The governing body shall establish a time and place for a hearing to consider the proposed vacation and shall give notice of said hearing under ORS 368.401 to 368.426.

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

Conclusions of Law (Impacts and Process of Vacation)

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

EXHIBIT "C"

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

FILE NO. 4124

IN THE MATTER OF THE VACATION OF A PORTION)
OF OAK ROAD (CO. RD. #373), LOCATED IN THE)
NORTHEAST QUARTER (NE1/4) OF SECTION 36,)
TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE)
WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON)
(20-03-36)

AFFIDAVIT OF POSTING,
PUBLICATION
AND MAILING

I, Bill Robinson, Lane County Surveyor, certify as follows:

That on the 22nd day of June, 2005, I caused to be posted three (3) copies of the Notice of Hearing in the above entitled matter in three places, positioned to be visible to the traveling public, as follows:

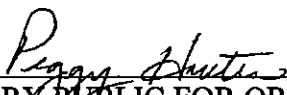
1. Posted on "No Motor Vehicles" signpost on the southerly side of Row River Road on the westerly side of the bike path.
2. Posted on "Stop" signpost on the easterly side of the bike path and on the southerly side of Oak Road, approximately 0.2 mile easterly of Layng Road.
3. Posted on "Bridge Tour" signpost on the easterly side of Layng Road, approximately 50 feet southerly of the intersection of Layng Road and Oak Road.

I further certify that on the 10th day of June, 2005 notice was sent by Certified Mail to the abutting property owners affected by the proposed road action, in accordance with Oregon Revised Statutes Chapter 368. Notice was also sent by General Mail to other property owners in the area, as well as private and public agencies having an interest in these vacation proceedings. Also, on June 23, 2005 and July 5, 2005 notice is scheduled to run in the Register Guard.



Bill Robinson
Lane County Surveyor

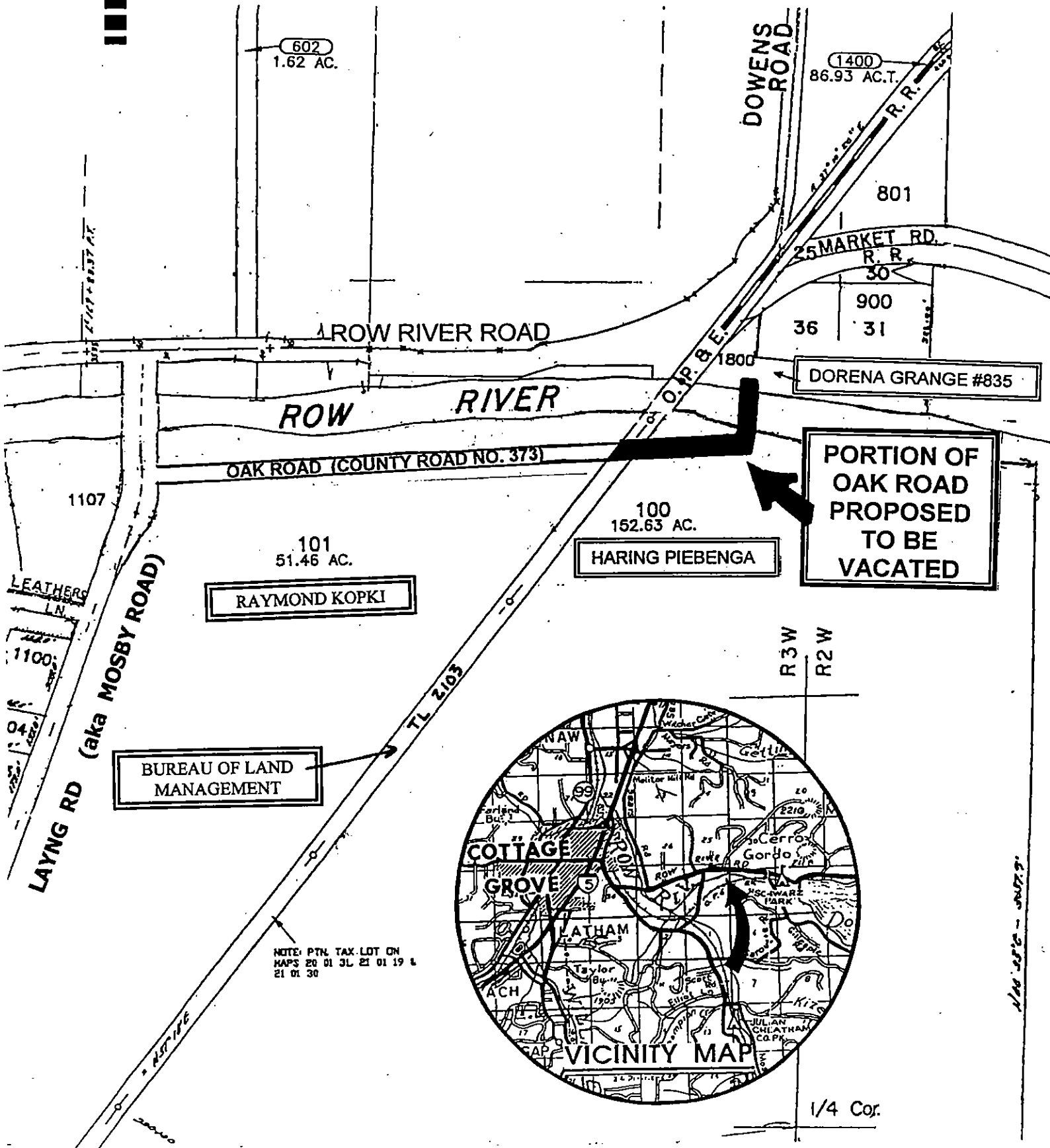
Subscribed and sworn to before me this 23rd day of June, 2005.



NOTARY PUBLIC FOR OREGON
My Commission Expires: Oct. 13, 2007

NE 1/4 Sec. 36 T. 20S. R. 3W. W.M.
LANE COUNTY

NO SCALE

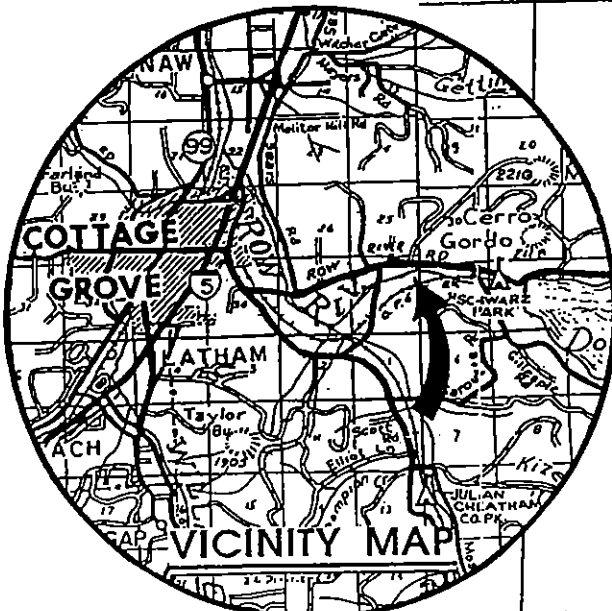


**PORTION OF
OAK ROAD
PROPOSED
TO BE
VACATED**

HARING PIEBENGA

RAYMOND KOPKI

**BUREAU OF LAND
MANAGEMENT**



NOTE: PTH. TAX LOT ON
MAPS 20 01 3L 21 01 19 &
21 01 30

Map 200 - 2007