


W. 10. a

Memorandum Date: April 3, 2007  
Order Date: May 2, 2007

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**TO:** Board of County Commissioners

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

**PRESENTED BY:** Bill Robinson, Lane County Surveyor 

**AGENDA ITEM TITLE:** IN THE MATTER OF VACATING THE PORTIONS OF THE ALLEYS BETWEEN LOTS 4 & 5 AND LOT 6, AND BETWEEN LOTS 2 & 3 AND LOT 4, IN BLOCK 19 IN THE PLAT OF HUBERT, AS PLATTED AND RECORDED IN BOOK 6, PAGE 32, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (16-05-10-33)

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**I. MOTION**

TO VACATE THE PORTIONS OF THE ALLEYS BETWEEN LOTS 4 & 5 AND LOT 6, AND BETWEEN LOTS 2 & 3 AND LOT 4, IN BLOCK 19 IN THE PLAT OF HUBERT, AS PLATTED AND RECORDED IN BOOK 6, PAGE 32, LANE COUNTY, OREGON PLAT RECORDS (16-05-10-33)

**II. AGENDA ITEM SUMMARY**

The Board is being asked to approve the vacation of a portion of the north-south alley and a portion of the east-west alley in Block 19 in the Plat of Hubert, each of the two portions being 125 feet in length (a total of 250 feet), each with a right of way width of 12 feet.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Lester L. Moser and Nancy J. Moser, and Kittie Stratton, 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.

The purpose of this vacation request, as stated by petitioners, is for the petitioners to assume maintenance responsibilities for the alleys in order to restore the safety and natural integrity of petitioners' properties. The portions of alleys proposed to be vacated are unconstructed, and petitioners further state that in the dry months they pose a significant fire hazard. Petitioners also assert there are utilities in the area to be vacated. An easement will be retained in the Final Order for any existing public utilities.

The portions of alleys proposed to be vacated were established in 1913 in the Plat of Hubert as platted and recorded in Book 6, Page 32 of the Lane County, Oregon Plat Records. Many streets and alleys within the plat of Hubert have previously been vacated. Many of the roads and alleys have never been constructed.

The Surveyor's Office notified Qwest Communications, Emerald People's Utility District, Blachly-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 and nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

**B. Policy Issues**

Lane Manual 15.300 and 15.305 supplement ORS 368 in allowing for consideration of vacation of rights of way, including alleys, where little need exists for the right of way, where no property owner is denied legal access as a result of the vacation and where the vacation will not adversely affect orderly development of adjacent property. The portions of alleys herein considered for vacation fall into these categories.

**C. Board Goals**

Part of Lane County's Strategic Plan is to contribute to appropriate community development in the area of transportation and land development (Lane County Strategic Plan, Goals, P. 13). The vacation of this portion of right of way will not conflict with this part of the Strategic Plan.

**D. Financial and/or Resource Considerations**

Vacation of this portion of unused right of way will return a marginal portion of land to the tax rolls as real property.

**IV. ANALYSIS**

The vacation of these portions of alleys will have no adverse effects on transportation patterns in the area, and the portions to be vacated are not needed by the Lane County Transportation system. No property will be denied legal access by this vacation.

The public interest will be served and not prejudiced, as vacating these portions of alleys will provide for more full utilization of petitioners' properties, including maintenance of areas that pose a fire hazard, while adding a marginal portion of land to the tax rolls, while having no adverse effects on transportation patterns in the area.

**V. ALTERNATIVES/OPTIONS**

The Board of County Commissioners has the option to:

1. Approve the vacation of these portions of alleys, as petitioned for.
2. Deny the vacation of these portions of alleys, as petitioned for.
3. Continue the matter for further consideration.

#### **VI. TIMING/IMPLEMENTATION**

Timing of this matter is not critical.

#### **VII. RECOMMENDATION**

The Public Works Director's Report recommends that the Board support Option Number 1, to approve the vacation of these portions of alleys, as petitioned for. The public interest will be served and not prejudiced, as vacating these portions of alleys will provide for more full utilization of petitioners' properties, facilitate maintenance by the landowners of the areas to be vacated and add a marginal portion of land to the County tax rolls, while having no adverse effects on transportation patterns in the area.

It is further recommended that an easement be retained for existing public utilities.

All statutory procedures necessary for a vacation without a public hearing of the above mentioned rights 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.

#### **VIII. FOLLOW-UP**

If the Board of County Commissioners approves the Order to Vacate these portions of alleys, 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.

#### **IX. ATTACHMENTS**

Order w/attachments:

- Petition to Vacate
- Director's Report - Exhibit "A"
- Findings of Fact - Exhibit "B"
- Attachment - Vicinity Map

Contact Person: Bill Robinson x-4198

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

**STATE OF OREGON**

**IN THE MATTER OF VACATING THE PORTIONS OF THE )  
ALLEYS BETWEEN LOTS 4 & 5 AND LOT 6, AND )  
BETWEEN LOTS 2 & 3 AND LOT 4, IN BLOCK 19 IN THE ) ORDER NO.  
PLAT OF HUBERT, AS PLATTED AND RECORDED IN )  
BOOK 6, PAGE 32, LANE COUNTY, OREGON PLAT )  
RECORDS, WITHOUT A PUBLIC HEARING, AND )  
ADOPTING FINDINGS OF FACT (16-05-10-33) )**

**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 the north-south alley and a portion of the east-west alley in Block 19 in the Plat of Hubert as platted and recorded in 1913 in Book 6, Page 32, Lane County, Oregon Plat Records. Said portions of alleys being more particularly described as follows:

All that portion of the 12-foot wide north-south alley in Block 19 between the northerly right of way of Sixth Avenue and an extension of the northerly lines of lots 4 and 6; also, all that portion of the 12-foot wide east-west alley in Block 19 between the westerly right of way of High Street and an extension of the westerly lines of lots 2 and 4 in Block 19; all in the Plat of Hubert as platted and recorded in Book 6, Page 32, Lane County, Oregon Plat Records, in the Southwest One Quarter (SW1/4) of the Southwest One Quarter (SW1/4) of Section 10, Township 16 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

**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, 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**, Qwest Communications, Emerald Peoples Utility District, Blachly-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 adjacent and nearby landowners were notified by mail regarding the proposed vacation and either had no objection or did not respond to the referral; and

**WHEREAS**, no property will be denied legal access by this vacation; 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 petitioners are requesting this vacation in order that they can assume maintenance responsibilities for the alleys to more fully utilize their properties and restore the safety and natural integrity of their properties; and

**WHEREAS**, the petitioners state that the lack of maintenance of the alleys proposed to be vacated poses a significant fire hazard during the dry months of the year; and

**WHEREAS**, the portions of alleys proposed to be vacated are unconstructed; and

**WHEREAS**, the petitioners assert there are utilities in the area to be vacated; and

**WHEREAS**, many of the streets and alleys in the Plat of Hubert have previously been vacated; 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 portions of the north-south alley and the east-west alley in Block 19 in the Plat of Hubert are hereby vacated; 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 portions of the north-south alley and the east-west alley in Block 19 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 \_\_\_\_\_, 2007.

\_\_\_\_\_  
Chair  
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Vicinity Map

APPROVED AS TO FORM  
Date 4-16-07 lane county  
Wesa  
OFFICE OF LEGAL COUNSEL

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

File No.

**ORIGINAL**

IN THE MATTER OF THE VACATION OF THE ALLEY BETWEEN)  
LOTS 4 & 5 AND LOT 6 AND THE ALLEY BETWEEN)  
LOTS 2 & 3 AND LOT 4 IN BLOCK 19 IN THE PLAT OF HUBERT ) PETITION TO VACATE  
AS PLATTED AND RECORDED IN BOOK 6, PAGE 32, LANE )  
COUNTY, OREGON PLAT RECORDS )

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Lester L. Moser and Nancy J. Moser, husband and wife, and Kittie Stratton as owners of the adjacent real property hereby petition for the vacation of the 12 foot alley located on Block 19, which area to be vacated is described as follows:

All that portion of the 12-foot wide north-south alley in Block 19 between the northerly right of way of Sixth Avenue and an extension of the northerly lines of lots 4 and 6; also, all that portion of the 12-foot wide east-west alley in Block 19 between the westerly right of way of High Street and an extension of the westerly lines of lots 2 and 4 in Block 19: all in the Plat of Hubert as platted and recorded in Book 6, Page 32, Lane County, Oregon Plat Records, in the Southwest One Quarter (SW ¼) of the Southwest One Quarter (SW ¼) of Section 10, Township 16 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

**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 release the alleyways adjoining the petitioners' property which suffers from lack of maintenance and use. Furthermore, during the Spring/Summer months, this area becomes tinder-dry with grasses, weeds and unattended trees, which poses a significant fire hazard, thereby compromising the safety and security of the adjoining landowners, as well as the public at-large.
2. The fire department has stated that it is a hazard due to no water access for their trucks.
3. By vacating the alleyways, the Moser's and Stratton's are prepared to assume the responsibility for the maintenance and upkeep of the alleyways, in order to restore and maintain the safety and natural integrity of the property .
4. It is further the understanding of the petitioners hereto that the County has no immediate or future plans to use and/or improve the alleyways.
5. The north-south alley between lots 5 and 6 would revert to sole ownership and maintenance to Lester L. and Nancy J. Moser.
6. The north-south alley between lots 4 and 6 would be divided equally for ownership and maintenance between Lester L. Moser and Nancy J. Moser and Kittie Stratton.

7. The east-west alley between lots 2 and 3 and lot 4 would revert to sole ownership and maintenance by Kittie Stratton.
8. There are Blachly Lane utilities and Blachly Lane power lines located in the area to be vacated, and their disposition will not change.
9. Necessary easements for all existing public and private utilities will be retained or otherwise be provided for in conjunction with the vacation.
10. By returning the alleys to Lester L. & Nancy J. Moser and Kittie Stratton, revenue for the property would be returned to the tax rolls: 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 the authority of ORS Chapter 368.326, for vacation without a hearing; and

**THEREFORE**, the petitioners request the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above described portion of road and alley, with or without a hearing, pursuant to ORS Chapter 368.
2. Upon review of the matter, to order the vacation of the above described road and alley, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.

ORIGINAL

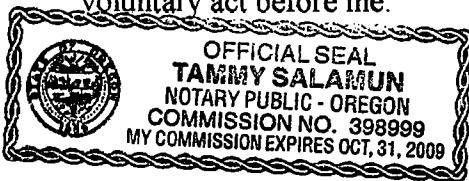
PETITIONERS:

Lester L. Moser  
LESTER L. MOSER  
Map# 16 05 10 3 3, TL #300  
26161 Hall Road  
Junction City, OR 97448

Nancy J. Moser  
NANCY J. MOSER  
Map# 16 05 10 3 3, TL #300  
26161 Hall Road  
Junction City, OR 97448

State of Oregon  
County of Lane ss.

On 13<sup>th</sup> Feb., 2007, personally appeared the above named Nancy J. and Lester L. Moser and acknowledged the foregoing instrument to be a voluntary act before me:



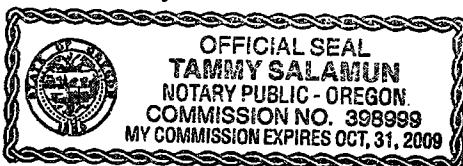
Tammy Salamun  
Notary Public for Oregon (State)  
My Commission Expires: 31 OCT 2009

DATED this 13<sup>th</sup> day of February, 2007

Kittie Stratton  
KITTIE STRATTON  
Map # 16-05-10-33, TL#301  
93082 High Street  
Cheshire, OR 97419

State of Oregon  
County of Lane ss.

On 13<sup>th</sup> Feb, 2007, personally appeared the above named Kittie Stratton and acknowledged the foregoing instrument to be a voluntary act before me:



Tammy Salamun  
Notary Public for Oregon (State)  
My Commission Expires: 31 OCT 2009

DATED this 13<sup>th</sup> day of February, 2007



EXHIBIT "A"

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

IN THE MATTER OF VACATING THE PORTIONS OF THE )  
ALLEYS BETWEEN LOTS 4 & 5 AND LOT 6, AND BETWEEN )  
LOTS 2 & 3 AND LOT 4, IN BLOCK 19 IN THE PLAT OF HUBERT, ) DIRECTOR'S REPORT  
AS PLATTED AND RECORDED IN BOOK 6, PAGE 32, LANE )  
COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC )  
HEARING, AND ADOPTING FINDINGS OF FACT (16-05-10-33) )

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.

The Plat of Hubert was platted in 1913 and recorded in Book 6, Page 32, of the Lane County, Oregon Plat Records. The two portions of alleys proposed for vacation are each 125 feet in length (a total of 250 feet), each having a width of 12 feet. Many streets and alleys within the plat of Hubert have previously been vacated. Many of the roads and alleys have never been constructed.

The petitioners wish to vacate these portions of alleys so that petitioners can assume maintenance responsibilities for the alleys in order to restore the safety and natural integrity of petitioners' properties. The portions of alleys proposed to be vacated are unconstructed, and petitioners further state that in the dry months they pose a significant fire hazard. Petitioners also assert there are utilities in the area to be vacated. An easement will be retained in the Final Order for any existing public utilities. Vacation of these alleys will return a marginal portion of land to the tax rolls as real property and will allow for more full utilization and maintenance of petitioners' properties.

The Surveyor's Office notified Qwest Communications, Emerald People's Utility District, Blachly-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 and nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

These portions of alleys are no longer needed by the Lane County Transportation System and no property will be denied legal access as a result of this vacation. It is concluded that this vacation is in the public's interest, as it will return it to the tax rolls as real property and will allow for more full utilization and maintenance of petitioners' properties, while having no adverse effects on the transportation patterns in the area. It is therefore recommended that these portions of alleys in Block 19 of the Plat of Hubert, as described in the Final Order, be vacated as petitioned for. It is further recommended that the vacation be allowed without a public hearing, and that an easement for existing public utilities be retained in the Final Order.

DATED this 6<sup>th</sup> day of April, 2007.

  
Oliver P. Snowden, Public Works Director  
Department of Public Works

## **EXHIBIT "B"**

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

**IN THE MATTER OF VACATING THE PORTIONS OF THE )  
ALLEYS BETWEEN LOTS 4 & 5 AND LOT 6, AND )  
BETWEEN LOTS 2 & 3 AND LOT 4, IN BLOCK 19 IN THE ) FINDINGS OF FACT  
PLAT OF HUBERT, AS PLATTED AND RECORDED IN )  
BOOK 6, PAGE 32, LANE COUNTY, OREGON PLAT )  
RECORDS, WITHOUT A PUBLIC HEARING, AND )  
ADOPTING FINDINGS OF FACT (16-05-10-33) )**

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 the north-south alley and a portion of the east-west alley in Block 19 in the Plat of Hubert as platted and recorded in 1913 in Book 6, Page 32, Lane County, Oregon Plat Records, and as described in the Order, be vacated as petitioned for. The petitioners wish to vacate these portions of alleys so that petitioners can assume maintenance responsibilities for the alleys in order to restore the safety and natural integrity of petitioners' properties. The portions of alleys proposed to be vacated are unconstructed, and petitioners further state that in the dry months they pose a significant fire hazard. Petitioners also assert there are utilities in the area to be vacated. Vacation of these alleys will return a marginal portion of land to the tax rolls as real property and will allow for more full utilization and maintenance of petitioners' properties.

#### **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 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:

1. That, the petitioners own property abutting the proposed vacation. Said property is further identified as Tax Lots 300, 301 and 302 of Assessor's Map 16-05-10-33.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or easements based upon the determination that the vacation is "in the public interest".
3. That, Qwest Communications, Emerald People's Utility District, Blachly-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 and nearby property owners were notified by mail regarding the proposed vacation and either had no objection or did not respond to the referral.
4. That, vacating these portions of alleys in Block 19 in the Plat of Hubert as described in the Order will not deny any landowners legal road access to a public road.
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)**

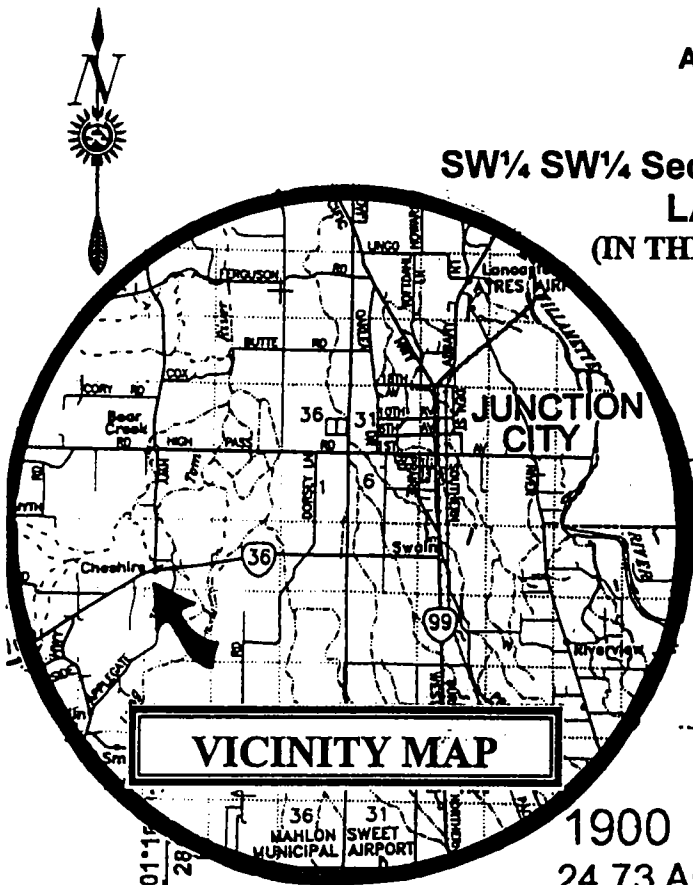
Based on the above findings of fact, the Board concludes, as a matter of law, that this vacation will not have any predictable negative impact on present or future land use, either in terms of allowable uses or actual development. The Board further concludes that statutory procedures necessary for making a determination on this vacation, without a public hearing, have been met.

ATTACHMENT

(Plat of Hubert, Portion of  
Alleys in Block 19--Vacation)

SW¼ SW¼ Section 10 T. 16 S. R. 5 W. W.M.  
LANE COUNTY  
(IN THE PLAT OF HUBERT)

NO SCALE



VICINITY MAP

1900  
24.73 AC

TO BE  
VACATED

SW COR  
DLC NO 55  
ESE COR  
DLC NO 46

N88°32'20"W  
776.94'

13.51 CH (950')

LOT 7  
3.58

1205  
4.3 AC

1206  
4.19 AC

LOT 6

NW COR  
A WILLSON

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