

W. 13.b.


ORIGINAL

Memorandum Date: June 16, 2010

Order Date: July 14, 2010

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division

PRESENTED BY: Mike Jackson, Lane County Surveyor 

AGENDA ITEM TITLE: IN THE MATTER OF LEGALIZING A PORTION OF HAMM ROAD (COUNTY ROAD NUMBER 715½), LOCATED IN SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, AND ADOPTING FINDINGS OF FACT (19-04-15 & 16)

I. MOTION

TO APPROVE THE FINAL ORDER LEGALIZING A PORTION OF HAMM ROAD, LOCATED IN SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, AND ADOPTING FINDINGS OF FACT.

II. AGENDA ITEM SUMMARY

The Board is being asked to approve the legalization of a portion of Hamm Road, being approximately 1.2 miles in length, and having a right of way width of 40 feet, as said road is constructed and traveled.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Hamm Road, as it is commonly known, is located west of Creswell and runs from Territorial Highway to Camas Swale Road. The portion proposed for legalization is approximately 1.2 miles in length and is the most easterly section of Hamm Road. It extends from a point near the southeast corner of Section 16, Township 19 South, Range 4 West, to the intersection of Camas Swale Road and Weiss Road.

Hamm Road was established in 1912, providing a public outlet to several residents between Coyote Valley and Camas Swale Valley. It was established as a 40 foot wide right of way.

The traveled road has been constructed and used for well over 10 years in its present location but does not conform to the location of the road described in the county road records.

In accordance with ORS 368.206 the proposal is to legalize the described portion of right of way at the original width of 40 feet. A centerline description of the portion of

road to be legalized, including right of way width, is attached to and made a part of the Final Order as Exhibit "A".

The matter of legalizing the road was brought before the Board of Commissioners on June 9, 2010 and the Board approved Resolution and Order Number 10-6-9-11, setting a public hearing date of July 14, 2010.

A certified mailing regarding the public hearing was sent to landowners who have property along the road and notice of the hearing was posted in accordance with ORS 368.206 and 368.401 to 368.426.

B. Policy Issues

ORS 368.201 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records. The subject portion of Hamm Road does not conform to the location of the road described in the field notes of the survey of the road in 1911, but has been traveled and used in the existing location for well over 10 years.

In the legalization proceedings any person may file information that may controvert any matter presented as a part of these proceedings.

C. Board Goals

One of the goals listed in Lane County's Strategic Plan is to contribute to appropriate community development in the area of transportation (Lane County Strategic Plan, Goals, P. 8). The legalization of this road would be of public utility and a benefit to the public.

D. Financial and/or Resource Considerations

Legalization of this portion of Hamm Road as a County Road would not incur any new costs to Lane County, as the road is already part of the county road maintenance system.

IV. ANALYSIS

Discrepancies in the location of the legal alignment in relation to the traveled roadway have long existed. Aerial photos from the 1950's and 1960's reveal that the location of Hamm Road during that time period closely matches its present day location. No additional dedications for public right of way or acceptance by Lane County as public or county road along the subject portion of Hamm Road have been found since the original establishment.

The legalization of this road will be of public utility and benefit by assuring that the public has legal access to a portion of road that has historically been used by the public. It will also update the public road records by providing a description of the existing alignment.

The legalization documents include the Final Order, and the centerline description of the surveyed alignment, including right of way width, which is attached to the Final Order as Exhibit "A". The Director's Report, as required by these proceedings, is attached to the Final Order as Exhibit "B". Findings of Fact have been prepared and are included as Exhibit "C" attached to the Final Order. Based upon said Findings of Fact, this legalization will have no predictable negative impact on present or future land use, either in terms of allowable uses or actual development.

Upon approval of the Final Order legalizing this road a final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS Chapter 368. The survey indicating the alignment and monumentation of the road will be filed for public record in the County Surveyor's Office in accordance with ORS 209.250 and 368.106.

V. ALTERNATIVES/OPTIONS

The Board of County Commissioners has the option to:

1. Approve the Final Order to legalize a portion of Hamm Road as proposed.
2. Not approve the Final Order to legalize of the subject portion of Hamm Road.
3. Continue the matter for further consideration.

VI. TIMING/IMPLEMENTATION

Timing of this matter is important in order to complete the legalization process in a timely manner.

VII. RECOMMENDATION

It is recommended that the Board of Commissioners approve Option 1. This will legalize the portion of Hamm Road as described in Exhibit "A" with a right of way width of 40 feet, as proposed and supported by the Public Works Director who has provided a Director's Final Report attached to the Final Order as Exhibit "B"

VIII. IMPLEMENTATION/FOLLOW-UP

If the Board of County Commissioners approves the Final Order legalizing Hamm Road, the Final Order and related attachments are to be forwarded to the County Clerk for filing, indexing and entry into the Commissioner's Journal of Administration, after which copies are to be forwarded to the County Surveyor and County Assessor for updating appropriate records. The Public Works director and County Surveyor will index and maintain a legal county road file and road survey for public record as required by ORS 368 and 209. The final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.206. The survey, including the alignment and monumentation, will be concluded and filed for

public record in the County Surveyor's Office in accordance with ORS 209.250. If the Board decides not to approve the legalization, an order to deny will be prepared at a later date.

IX. ATTACHMENTS

Final Order w/attachments:

- Legal Description – Exhibit "A"
- Director's Final Report – Exhibit "B"
- Findings of Fact – Exhibit "C"
- Affidavit of Posting and Mailing – Exhibit "D"
- Site Map - Attachment "A"

Contact Person: Mike Jackson x 4198

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

IN THE MATTER OF LEGALIZING A PORTION OF HAMM ROAD (COUNTY ROAD NUMBER 715½), LOCATED IN SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN AND ADOPTING FINDINGS OF FACT (19-04-15 & 16)))))))	FINAL ORDER NO.
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THIS MATTER now coming before the Board of County Commissioners for Lane County, Oregon, and the Board through the adoption of the Resolution and Order No. 10-6-9-11 has deemed that it may be in the public interest to legalize a portion of a road, commonly known as Hamm Road, said portion being approximately 1.2 miles in length and is the most easterly segment of Hamm Road, extending from a point near the southeast corner of Section 16, Township 19 South, Range 4 West of the Willamette Meridian, to the intersection of Camas Swale Road and Weiss Road; and

WHEREAS, Oregon Revised Statutes 368.201 to ORS 368.221 provide for legalization of county roads where any of the following conditions exist: A) Through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; B) The location of a county road cannot be accurately determined; or C) The road used or traveled for 10 or more years does not conform to the location of a road described in the county road records; and

WHEREAS, the location of the current traveled and constructed road does not conform to the original road alignment as described in the 1911 field notes, however aerial photos from the 1950's and 1960's reveal that road has been built and used in the present day location for well over 10 years; and

WHEREAS, in accordance with ORS 368.206 the original right of way width of 40 feet is proposed to be legalized; and

WHEREAS, a centerline description of the portion of road to be legalized, is described in Exhibit "A", attached hereto and made a part hereof by this Order; and

WHEREAS, the Lane County Public Works Engineering and Construction Services Division has completed a preliminary survey of the portion of Hamm Road herein proposed to be legalized, as now constructed and traveled; and

WHEREAS, the Director of the Department of Public Works has prepared a final written report in conformance with ORS 368.206 in support of the legalization of this road, attached hereto and made a part hereof as Exhibit "B"; and

WHEREAS, in support of this action, the Board hereby adopts the Findings of Fact, as set forth in Exhibit "C", attached hereto and made a part hereof by this Order; and

WHEREAS, all necessary procedures for road legalization have been complied with, pursuant to ORS Chapter 368.201 through 368.221, including the giving of notice as evidenced by the Affidavit of Posting and Mailing marked as Exhibit "D", attached hereto, and made a part hereof by this Order; and

WHEREAS, no person has come forward and presented a claim for compensation as provided by ORS 368.211; and

WHEREAS, the Board hereby finds that basis for legalization exists in this case, and that the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records, and that this is sufficient to support this decision; and

WHEREAS, the Board being satisfied the legalization of the road will be of public utility and benefit; and now therefore, it is hereby

ORDERED, that the above said road, commonly known as Hamm Road, be hereby legalized as a county road and specifically as County Road Number 715 ½, having a right-of-way width of 40 feet, the legal description being more particularly described on Exhibit "A" attached hereto and made a part hereof by this Order; and it is further

ORDERED, that the Director of the Lane County Department of Public Works shall cause to have the road surveyed within the limits of these described proceedings, the right of way monumented, and a survey map prepared in accordance with ORS Chapters 209.250 and 368.106; and it is further

ORDERED, that this Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration and entered into the appropriate road records administered by the Lane County Department of Public Works and the Lane County Surveyor and that said Order be, and is hereby, final and does operate to legalize said portion of Hamm Road as County Road Number 715½.

EFFECTIVE DATE: _____ day of _____, 2010

Chair
Lane County Board of Commissioners

Attachments:
Site Map - Attachment "A"

APPROVED AS TO FORM

Date 6-30-10 lane county


OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

**HAMM ROAD
CENTERLINE DESCRIPTION**

A strip of land forty (40) feet in width lying twenty (20) feet on each side of the centerline of Hamm Road, located in Sections 15 and 16, Township 19 South, Range 4 West of the Willamette Meridian, Lane County, Oregon, as surveyed by Lane County in 2009; the centerline being described as follows:

Beginning at Engineers' Centerline Station L2 230+20.87 PT, said point being located 194.50 feet South and 137.94 feet West of the Brass Cap marking the Southeast corner of Section 16, Township 19 South, Range 4 West of the Willamette Meridian, Lane County, Oregon; run thence North 14° 41' 54" East 888.77 feet; thence along a 358.10 foot radius curve right (the long chord of which bears North 32° 35' 57" East, 220.14 feet) a distance of 223.76 feet; thence North 50° 30' 00" East 305.45 feet; thence along a 337.03 foot radius curve left (the long chord of which bears North 35° 15' 00" East, 177.30 feet) a distance of 179.41 feet; thence North 20° 00' 00" East, 166.45 feet; thence along a 159.15 foot radius curve right (the long chord of which bears North 49° 30' 00" East, 156.74 feet) a distance of 163.89 feet; thence North 79° 00' 00" East, 49.24; thence along a 358.10 foot radius curve left (the long chord of which bears North 72° 30' 00" East, 81.08 feet) a distance of 81.25 feet; thence North 66° 00' 00" East 52.72 feet; thence along a 220.37 foot radius curve right (the long chord of which bears North 84° 30' 00" East, 139.85 feet) a distance of 142.31 feet; thence South 77° 00' 00" East 119.40 feet; thence along a 286.48 foot radius curve left (the long chord of which bears North 88° 00' 00" East, 148.29 feet) a distance of 150.00 feet; thence North 73° 00' 00" East 35.17 feet; thence along a 130.22 foot radius curve left (the long chord of which bears North 34° 00' 00" East, 163.90 feet) a distance of 177.27 feet; thence North 5° 00' 00" West 83.75 feet; thence along a 136.42 foot radius curve right (the long chord of which bears North 50° 15' 00" East, 224.18 feet) a distance of 263.10 feet; thence South 74° 30' 00" East 190.56 feet; thence along a 572.96 foot radius curve right (the long chord of which bears South 71° 45' 00" East, 54.98 feet) a distance of 55.00 feet; thence South 69° 00' 00" East 83.85 feet; thence along a 716.20 foot radius curve left (the long chord of which bears South 71° 15' 00" East, 56.24 feet) a distance of 56.25 feet; thence South 73° 30' 00" East 287.69 feet; thence along a 1145.92 foot radius curve right (the long chord of which bears South 71° 45' 00" East, 69.99 feet) a distance of 70.00 feet; thence South 70° 00' 00" East 88.91 feet; thence along a 572.96 foot radius curve left (the long chord of which bears South 79° 52' 42" East, 196.59 feet) a distance of 197.57 feet; thence South 89° 45' 25" East 510.28 feet; thence along a 300.00 foot radius curve left (the long chord of which bears North 66° 59' 15" East, 236.90 feet) a distance of 243.53 feet; thence North 43° 43' 55" East 130.26 feet; thence along a 250.00 foot radius curve right (the long chord of which bears North 84° 02' 40" East, 323.48 feet) a distance of 351.79 feet; thence South 55° 38' 35" East 219.61 feet; thence along a 120.00 foot radius curve left (the long chord of which bears North 75° 34' 55" East, 180.51 feet) a distance of 204.31 feet; thence North 26° 48' 25" East 48.89 feet; thence along a 120.00 foot radius curve right (the long chord of which bears North 59° 40' 35" East, 130.25 feet) a distance of 137.68 feet; thence South 87° 27' 15" East 692.68 feet to Engineers' Centerline Station L2 296+71.67 Back =L39+00.00 Ahead and there ending, said Station being the point of beginning of the Alteration of

EXHIBIT "A"

Camas Swale Road as approved by the Board of Commissioners on September 7, 1966, and said point also being the intersection of Camas Swale Road (County Road No. 1344) and Weiss Road (County Road No. 9) all in Lane County, Oregon.

EXCEPT: That portion lying south of the south line of Section 16, Township 19 South, Range 4 West of the Willamette Meridian.

The bearings used herein are based on the Oregon Coordinate System (NAD 83/91), South Zone based on Global Positioning System (GPS) tie to Lane County System (LCCM) control station 1080. The project theta angle is $-1^{\circ}48'25.4''$ with distances and coordinates being ground measured while the bearings are on the grid.

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

IN THE MATTER OF LEGALIZING A PORTION OF HAMM)	
ROAD (COUNTY ROAD NUMBER 715½), LOCATED IN)	
SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4)	DIRECTOR'S
WEST OF THE WILLAMETTE MERIDIAN AND ADOPTING)	FINAL
FINDINGS OF FACT (19-04-15 & 16))	REPORT

ORS 368.201 to ORS 368.216 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.

The portion of Hamm Road, as it is commonly known, proposed for legalization is approximately 1.2 miles in length and is the most easterly segment of County Road Number 715½, extending from a point near the southeast corner of Section 16, Township 19 South, Range 4 West of the Willamette Meridian, to the intersection of Camas Swale Road and Weiss Road.

The location of the current traveled and constructed road does not conform to the original road alignment as described in the field notes in 1911, but aerial photos and maps reveal that location of Hamm Road has been built and traveled in its present day location for over 40 years. No additional dedications for public right of way or acceptance by Lane County as public or county road have been found for the subject portion of Hamm Road since it was established in 1912.

The matter of legalizing the road was brought before the Board of Commissioners on June 9, 2010 and the Board approved Resolution and Order Number 10-6-9-11 setting a public hearing date of July 14, 2010.

A certified mailing regarding the public hearing was sent to landowners who have property along the road and notice of the hearing was posted in accordance with ORS 368.206 and 368.401 to 368.426.

The legalization of this road will be of public utility and benefit by assuring that the public has legal access to a portion of road that has historically been used by the public. It will also update the public road records by providing a description of the existing alignment.

A Final Order to legalize this portion of Hamm Road, at the original right of way width of 40 feet, has been prepared. A legal description based on the road survey of the traveled road has been prepared and is marked Exhibit "A" attached to and made a part of the Final Order. Notice of these proceedings has been provided by mail and posting in accordance with ORS Chapters 368.206 and 368.401 to 368.426.

Upon approval of the Final Order legalizing this road, a final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.106. The survey, including the alignment and monumentation, will be conducted and filed for public record in the County Surveyor's Office in accordance with ORS 209.250. The Final Order and the survey maps will be filed for public record in the County Road files administered by the Public Works Department and the County Surveyor. The Final Order will be filed with the County Clerk and entered into the Commissioners Journal of Administration, and copies of the Final Order will be forwarded to the Surveyor's Office and Assessor's Office for updating appropriate records.

Dated this 28 day of June, 2010



Director

Department of Public Works

EXHIBIT "C"

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

IN THE MATTER OF LEGALIZING A PORTION OF HAMM)	
ROAD (COUNTY ROAD NUMBER 715½), LOCATED IN)	
SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4)	FINDINGS OF FACT
WEST OF THE WILLAMETTE MERIDIAN AND ADOPTING)	
FINDINGS OF FACT (19-04-15 & 16))	

The Department of Public Works finds that a portion of County Road No. 715½, commonly known as Hamm Road has been traveled and maintained as a county road in or near its present location for well over ten years. The constructed and traveled road differs from original alignment as described in the field notes dated 1911. No additional dedications for public right of way or acceptance by Lane County as public or county road have been found for this portion of Hamm Road, however based on aerial photos of the area, it appears that this segment of road has existed in its current location for over 40 years.

The public would benefit from the legalization of Hamm Road, as it would clarify the legal alignment of the road and assure that the public has legal access to the portion of road that has historically been used by the public.

Findings of Fact

The Board takes notice and finds:

1. That, pursuant to ORS 368.201 through 368.221, a county governing body may initiate proceedings to legalize a county road based upon the determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or, if the location of the road cannot be accurately determined; or, if the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.
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 re-acknowledged 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 legalization of county roads.

Conclusion of Law

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

EXHIBIT "C"

related land use regulations are applicable as they pertain to these legalization proceedings.

Findings of Fact (Impacts and Process of Legalization)

The Board takes notice and finds as follows:

1. That, the legalization of this portion of Hamm Road will be of public benefit and utility.
2. That, the identified property is outside any city limits and under the jurisdiction of Lane County.
3. That, ORS 368.201 provides for legalization of county roads if certain conditions exist. In this case the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.
4. That, legalizing the portion of Hamm Road as described in the Order will not deny access to any landowners.

Conclusions of Law (Impacts and Process of Legalization)

Based on the above findings of fact, the Board concludes, as a matter of law, that this legalization 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 legalization, including, inter alia, those set forth in ORS 368.201, et seq., have been met.

EXHIBIT "D"

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

IN THE MATTER OF LEGALIZING A PORTION OF HAMM)
 ROAD (COUNTY ROAD NUMBER 715½), LOCATED IN)
 SECTIONS 15 AND 16, TOWNSHIP 19 SOUTH, RANGE 4)
 WEST OF THE WILLAMETTE MERIDIAN AND ADOPTING)
 FINDINGS OF FACT (19-04-15 & 16))

AFFIDAVIT OF
POSTING AND MAILING

I, Mike Jackson, Lane County Surveyor, certify as follows:

That on the 22nd day of June 2010, and in accordance with ORS 368.206(c) and 368.401 to 368.426, I caused to be posted four (4) 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 a power pole labeled "1311 R 1" on the north side of Hamm Road at the intersection of Weiss Road.
2. Posted on a bearing tree near a gravel pull out on the south side of Hamm Road, approximately 850 feet west of the intersection of Weiss Road.
3. Posted on a tree on the north side of Hamm Road near a dirt road that has been blocked off by large rocks, approximately 0.35 northeasterly of a private gravel road and approximately 0.85 miles westerly of Weiss Road.
4. Posted on a tree on the south side of Hamm Road near a gravel pull-out, approximately 600 feet northeasterly of the private gravel road and approximately 1 mile westerly of Weiss Road.

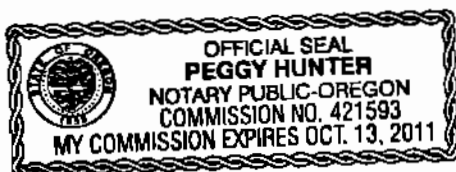
The undersigned further certifies that on June 11th, 2010 notice was sent to the adjoining landowners via certified mail.



Mike Jackson
Lane County Surveyor

State of Oregon)
 County of Lane)

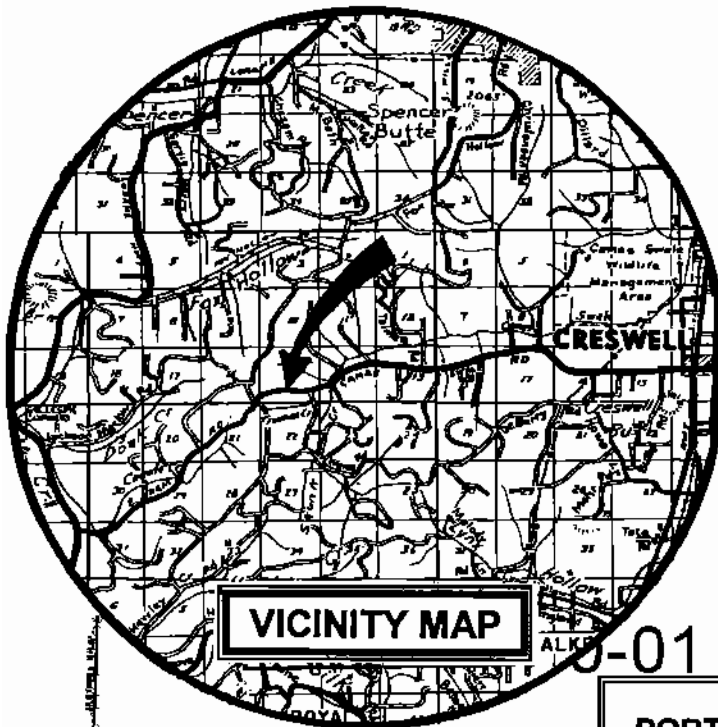
Subscribed and sworn to before me this 23rd day of JUNE, 2010 by
 Mike Jackson, as Lane County Surveyor.




 NOTARY PUBLIC FOR OREGON
 My Commission Expires: OCT. 13, 2011

ATTACHMENT 'A'

LEGALIZATION OF A PORTION OF HAMM ROAD (COUNTY ROAD NO. 715 1/2)
SECTIONS 15 & 16, TOWNSHIP 19 S., RANGE 4 W., W.M.
Lane County



NO SCALE

