

W. G. B. I.
03-8-20-2

AGENDA COVER MEMO

DATE: July 31, 2003

TO: Lane County Board of Commissioners

FROM: William D. Robinson, Interim Lane County Surveyor *WDR*

DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF THE VACATION OF A PORTION OF AN UNNAMED PUBLIC ROAD, LOCATED ALONG THE EASTERLY BOUNDARY OF LOTS 1, 2, AND 5 IN PORTER ACRES, AS PLATTED AND RECORDED IN THE YEAR 1912, IN BOOK 5, PAGE 6, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING AND ADOPTING FINDINGS OF FACT (18-03-29)

I. MOTION:

TO APPROVE THE ORDER TO VACATE A PORTION OF AN UNNAMED PUBLIC ROAD, LOCATED ALONG THE EASTERLY BOUNDARY OF LOTS 1, 2, AND 5, IN PORTER ACRES, AS PLATTED IN THE YEAR 1912, AND RECORDED IN BOOK 5, PAGE 6, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING AND ADOPTING FINDINGS OF FACT (18-03-29)

II. ISSUE:

To decide whether the vacation of the described portion of right-of-way dedicated to the public on the plat of Porter Acres, which is 40 feet wide and approximately 2,423 feet in length, as platted and recorded in 1912 in Book 5, Page 6, Lane County, Oregon Plat Records, 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 Michael W. Soloman, Beverly Stewart and Ronald A. Irvine, Co-Trustees of the Faye H. Stewart Revocable Trust; Faye H. Stewart II and Ronald A. Irvine, Directors of the Faye and Lucille Stewart Charitable Foundation; Eva Marie Jamison, President of RST Ranch, Inc; and John Henry Ruckman. These individuals are the landowners, or representatives for the landowners, of 100% of the property abutting the portion of unnamed road, dedicated to the public on the plat of Porter Acres, proposed for vacation. The petitioners are requesting the vacation without a public hearing, by the authority of ORS 368.351. The purpose of this request is to vacate the unused public right-of-way.

Porter Acres was platted and recorded in 1912 in Book 5, Page 6, Lane County, Oregon Plat Records and dedicated the subject right of way to the public. Later that year Christensen Road was established as a county road, extending northeasterly from a point on the easterly right of way of the platted road, and in 1933 and 1934 additional right of way was conveyed to the County for road purposes which extended Christensen Road southerly. This extension to Christensen Road was in the same general area as the subject road now being proposed to be vacated. At some point in time a portion of Christensen Road was built easterly and outside the county right-of-way, which made the traveled road even closer in proximity to the subject roadway. Earlier this year, a portion of Christensen Road was vacated by Order Number 03-2-5-3, and new right of way was dedicated and accepted by Order Number 03-2-5-4, to conform with the traveled road. (See attached map.) The petitioners assert that access to and from adjacent properties is presently gained by means of Christensen Road, and the unnamed road proposed to be vacated is not constructed or open for public travel.

Qwest Communications, Lane Electric Cooperative, Northwest Natural Gas, various other agencies including the Lane County Planning sections of the Department of Public Works, and neighboring landowners were notified by mail regarding the proposed vacation. Lane Electric Cooperative responded to the referral requesting that an easement be reserved for access to their existing overhead distribution line that runs along the public easement proposed to be vacated. The other agencies and landowners either had no objection or did not respond to the referral.

B. Analysis:

Vacating the portion of unnamed public road, as petitioned for, will allow for the petitioners to more fully utilize their property without having the right-of-way as an encumbrance. This roadway is not constructed or open for public travel at this time, and the right-of-way is not needed as part of the Lane County transportation system.

No property will be denied legal access as a result of this vacation, as the adjoining property owners take access from Christensen Road, a county road located in the same general area as the subject right of way. It is believed that the public interest will be served, as vacating this portion of right-of-way will allow the property owners to more fully utilize their property.

An easement will be reserved for the right of Lane Electric Cooperative to access, maintain, and repair their existing utilities.

C. Alternatives/Options:

The Board of County Commissioners has the option to:

1. Approve the proposed vacation of the portion of the unnamed public road in Porter Acres, as petitioned for.
2. Deny the proposed vacation of the portion of the unnamed public road in Porter Acres, as petitioned for.
3. Direct that a public hearing be held for the proposed vacation and have staff contact the petitioners to see if they wish to proceed with this stipulation.
4. 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 the unnamed public road in Porter Acres, as petitioned for. No property will be denied legal access by this vacation. The vacation is in the public's interest, as vacating this portion of the described right-of-way will allow the property to revert back to private ownership and enable the landowners to more fully utilize their property.

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 known to be a factor 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. If the order is denied, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

If the petitioners are given an option to proceed with a public hearing, they will have 180 days to decide whether or not to continue with the proposed vacation. If they decide to proceed with the proposed vacation, the staff will prepare a Resolution and Order to set a date for a public hearing, but if the petitioners decide to terminate the proceedings, 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"
- Vicinity Map - Attachment "A"

Contact Person: Bill Robinson, X-4198

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

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

FILE NO. 4077

IN THE MATTER OF THE VACATION OF A PORTION OF AN UNNAMED PUBLIC ROAD, LOCATED ALONG THE EASTERLY BOUNDARY OF LOTS 1, 2, AND 5 IN PORTER ACRES, AS PLATTED AND RECORDED IN THE YEAR 1912, IN BOOK 5, PAGE 6, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING AND ADOPTING FINDINGS OF FACT (18-03-29)

ORDER NO.

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 an unnamed public road. Said area to be vacated is described as follows:

All that portion of an unnamed road dedicated in 1912 on the plat of Porter Acres, as platted and recorded in Book 5, Page 6, Lane County, Oregon Plat Records, located along the easterly boundaries of Lots 1, 2, and 5 of said Porter Acres, in Section 29, Township 18 South, Range 3 West of the Willamette Meridian, in Lane County, Oregon.

Except all that portion of right of way that lies within the limits of Christensen Road (County Road Number 759).

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

WHEREAS, Lane Electric Cooperative responded to the referral stating that they have an existing overhead distribution line that runs along the public easement and requested that an easement be reserved to provide access and continued electrical service to the area; and

WHEREAS, the other agencies and landowners either had no comment or did not respond to the referral; 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 the unnamed road, dedicated to the public on the plat of Porter Acres, is hereby vacated; and it is further

ORDERED, that an easement be reserved for the right of Lane Electric Cooperative to access and maintain their existing overhead distribution line that runs along the vacated right-of-way; and it is further

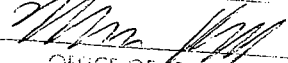
ORDERED, that in support of this action, the Board hereby adopts the Findings of Fact, marked as Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

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 _____, 2003.

Peter Sorenson, Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Attachment "A" - Vicinity Map

APPROVED AS TO FORM
Date 8-7-03 lane county

OFFICE OF LEGAL COUNSEL

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

FILE NO.

IN THE MATTER OF THE VACATION OF)
A PORTION OF DEDICATED PUBLIC ROAD)
IN SECTION 29, TOWNSHIP 18 SOUTH,)
RANGE 3 WEST OF THE WILLAMETTE)
MERIDIAN, IN LANE COUNTY, OREGON)

PETITION TO VACATE

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned, MICHAEL W. SOLOMAN, BEVERLY STEWART, and RONALD A. IRVINE, Successor Co-Trustees of the FAYE H. STEWART Revocable Trust UTD June 14, 1982, as restated by Third Restatement of Revocable Trust Agreement, dated November 14, 1998, and R. S. T. RANCH, INC., an Oregon Corporation, as owners of adjacent real property hereby petition for the vacation of a portion of that 40 foot wide unnamed road dedicated to the public by the plat of Porter Acres, as platted and recorded in Book 5, Page 6, Lane County Oregon Plat Records, that is adjacent to Lots 1, 2, 5, and a portion of Lot 7 thereof, which area to be vacated is described as follows:

The Faye and Lucille Stewart Charitable Foundation;
and John Henry Ruckman;

"All that portion of that unnamed road dedicated by the plat of Porter Acres, as platted and recorded in Book 5, Page 6, Lane County Oregon Plat Records, located adjacent to Lots 1, 2, 5, and a portion of Lot 7 of said Porter Acres, and being further described as follows:

A strip of land in Section 29, Township 18 South, Range 3 West of the Willamette Meridian, 40 feet in width, lying 20 feet left and right of the following described centerline: Beginning at a point 20.0 feet West of a point on the East line of said Porter Acres, said last mentioned point being 545.0 feet South of the Northeast corner thereof, and run thence South 1542.2 feet; thence South 3°45'00" East, 560.7 feet; thence South 0°37'00" East, 320.0 feet more or less, to a point on the Northeasterly extension of the Northerly margin of that platted road along the Southerly line of said Lot 5, and there ending, in Lane County, Oregon.

The ending points of the East and West margin shall also be at their intersection with the Northeasterly extension of said last mentioned Northerly margin, as shown on Exhibit 'A'.

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 to vacate that portion of the above-described dedicated road that has not been opened. Access to and from adjacent properties is presently gained by means of a gravel road located westerly of the vacation area. A portion of County Road No. 759 (Christensen Road) is in the process of being vacated, then will be relocated to conform with the alignment of the gravel road mentioned above.
2. There are powerlines but no utilities located in the area to be vacated, and their disposition will be as follows:
 - A. Powerlines will remain in place.
 - B. Easement rights for the electric transmission line was granted to Lane County Electric Cooperative by Mollie Christensen, a widow, the grantor, by unrecorded Right of Way Easement, date April 28, 1948, 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 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 11th day of October 2001.

PETITIONERS:

Michael W. Solomon
 Michael W. Solomon, Co-Trustee

Ronald A. Irvine
 Ronald A. Irvine, Co-Trustee

Beverly Stewart - Trustee
 Beverly Stewart, Co-Trustee

John Henry Ruckman
 John Henry Ruckman

Faye H. Stewart II
 Faye H. Stewart, II Director
 The Faye and Lucille Stewart Charitable Foundation

Ronald A. Irvine
 Ronald A. Irvine, Director
 The Faye and Lucille Stewart Charitable Foundation

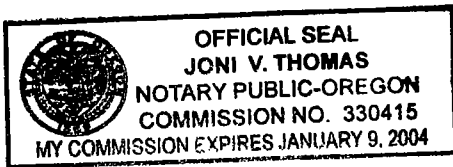
Map 18-03-29-00, Tax Lots 105, 106, 1000, and 1007
P. O. Box 11135
Eugene, OR 97440

RST Ranch, Inc.

R.S.T. Ranch, Inc. by E. Jamison
 Eva Marie Jamison, President
 Map 18-03-29-00
 Tax Lots 301, 900, 1002, and 1003
 84784 Christensen Road
 Eugene, OR 97405

STATE OF OREGON)
County of Lane) ss.

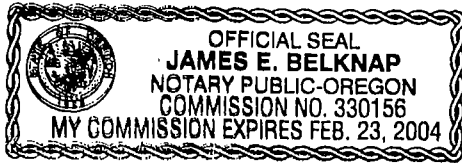
On this 11th day of October, 2001, there personally appeared before me the above-named Eva Marie Jamison, the president of R. S. T. Ranch, Inc. an Oregon Corporation, and she acknowledged the foregoing instrument was executed on behalf of said corporation, and was her voluntary act and deed.



Joni V. Thomas
 Notary Public for Oregon
 My commission expires 1-9-2004

STATE OF OREGON)
County of Lane) ss.

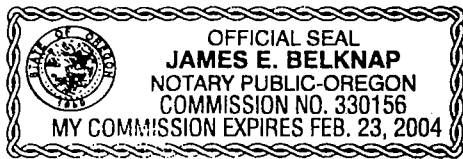
On this 2nd day of NOVEMBER, 2001, there personally appeared before me the above-named Michael W. Solomon and he acknowledged the foregoing instrument to be his voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My commission expires 2/23/2004

STATE OF OREGON)
County of Lane) ss.

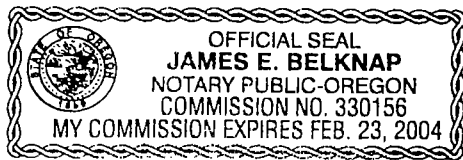
On this 24th day of OCTOBER, 2001, there personally appeared before me the above-named Beverly Stewart and she acknowledged the foregoing instrument to be her voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My commission expires 2/23/2004

STATE OF OREGON)
County of Lane) ss.

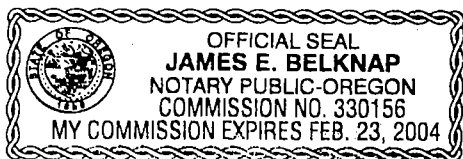
On this 19th day of October, 2001, there personally appeared before me the above-named Ronald A. Irvine and he acknowledged the foregoing instrument to be his voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My commission expires 2/23/2004

STATE OF OREGON)
County of Lane) ss.

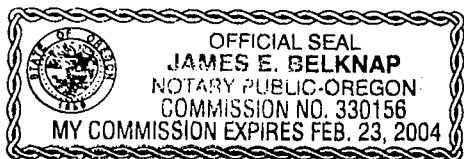
On this 28th day of JANUARY, 2002, there personally appeared before me the above-named JohnHenry Ruckman and he acknowledged the foregoing instrument to be his voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My Commission Expires 2/23/2004

STATE OF OREGON)
County of Lane) ss

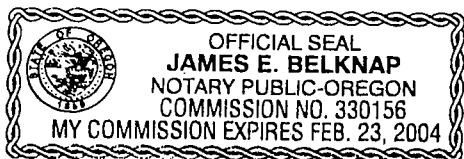
On this 6th day of February, 2002, there personally appeared before me the above named Faye H. Stewart, II, Director, The Faye and Lucille Stewart Charitable Trust, and acknowledged the foregoing instrument to be his voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My Commission expires 2/23/2004

STATE OF OREGON)
County of Lane) ss

On this 7th day of February, 2002, there personally appeared before me the above named Ronald A. Irvine, Director, The Faye and Lucille Stewart Charitable Trust, and acknowledged the foregoing instrument to be his voluntary act and deed.



James E. Belknap
Notary Public for Oregon
My Commission expires 2/23/2004

EXHIBIT "A"

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

FILE NO. 4077

IN THE MATTER OF THE VACATION OF A PORTION)	
OF AN UNNAMED PUBLIC ROAD, LOCATED ALONG)	
THE EASTERLY BOUNDARY OF LOTS 1, 2, AND 5, IN)	
PORTER ACRES, AS PLATTED AND RECORDED IN)	DIRECTOR'S REPORT
THE YEAR 1912, IN BOOK 5, PAGE 6, LANE COUNTY,)	
OREGON PLAT RECORDS, WITHOUT A PUBLIC)	
HEARING AND ADOPTING FINDINGS OF FACT)	
(18-03-29))	

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.

Porter Acres was platted and recorded in 1912 in Book 5, Page 6, Lane County, Oregon Plat Records and dedicated the subject right of way to the public. Later that year Christensen Road was established as a county road, extending northeasterly from a point on the easterly right of way of the platted road, and in 1933 and 1934 additional right of way was conveyed to the County for road purposes which extended Christensen Road southerly. This extension to Christensen Road was in the same general area as the subject road now being proposed to be vacated. At some point in time a portion of Christensen Road was built easterly and outside the county right-of-way, which made the traveled road even closer in proximity to the subject roadway. Earlier this year, a portion of Christensen Road was vacated by Order Number 03-2-5-3, and new right of way was dedicated and accepted by Order Number 03-2-5-4, to conform with the traveled road. (See attached map.) The petitioners assert that access to and from adjacent properties is presently gained by means of Christensen Road, and the unnamed road proposed to be vacated is not constructed or open for public travel.

The Surveyor's Office notified by mail Qwest Communications, Lane Electric Cooperative, Northwest Natural Gas, various other agencies including the Lane County Planning section of the Department of Public Works and neighboring landowners regarding the vacation. Lane Electric Cooperative requested that an easement be reserved for the purpose of accessing and maintaining their existing overhead distribution line located along the right-of-way. The other agencies and landowners either had no objection or did not respond to the referral.

It is concluded that this vacation is in the public's interest, as this right-of-way is not needed as part of the Lane County transportation system. Vacating the portion of unnamed public road, as petitioned for, will allow for the petitioners to more fully utilize their property without having the right-of-way as an encumbrance.

It is therefore recommended that the portion of the unnamed public road, as described in the Order, be vacated as petitioned for, and that a utility easement be reserved for the right of Lane Electric Cooperative to access and maintain their overhead distribution line located along the right-of-way. It is further recommended that the vacation be allowed without a public hearing.

DATED this _____ day of _____, 2003.

Oliver P. Snowden, Public Works Director

EXHIBIT "B"

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

FILE NO. 4077

IN THE MATTER OF THE VACATION OF A PORTION)	
OF AN UNNAMED PUBLIC ROAD, LOCATED ALONG)	
THE EASTERLY BOUNDARY OF LOTS 1, 2, AND 5, IN)	
PORTER ACRES, AS PLATTED AND RECORDED IN)	FINDINGS OF FACT
THE YEAR 1912, IN BOOK 5 PAGE 6, LANE COUNTY,)	
OREGON PLAT RECORDS, WITHOUT A PUBLIC)	
HEARING, AND ADOPTING FINDINGS OF FACT)	
(18-03-29))	

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 the portion of the unnamed public road in Porter Acres, as described in the Order, be vacated. The petitioners are requesting the vacation in order to eliminate the public status of the unconstructed right-of-way. Access to and from adjacent properties is gained by means of Christensen Road (County Road Number 759), which is located just west of the subject platted right of way.

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.

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

1. 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 105, 106, 301, 800, 900, 1002, 1003, & 1010 of Assessor's Map 18-03-29.
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, 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 surrounding landowners were notified by mail regarding the proposed vacation. Lane Electric Cooperative requested that a utility easement be reserved for the purpose of accessing and maintaining their overhead distribution line that runs along the subject right-of-way. The other agencies and landowners either had no objection or did not respond to the referral.
4. That, an easement will be reserved in the Order to provide Lane Electric Cooperative continued access and rights to maintain existing utilities.
5. That, vacating the portion of public right-of-way in Porter Acres, as described in the Order, will not deny any landowners legal road access to a public road.
6. 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.

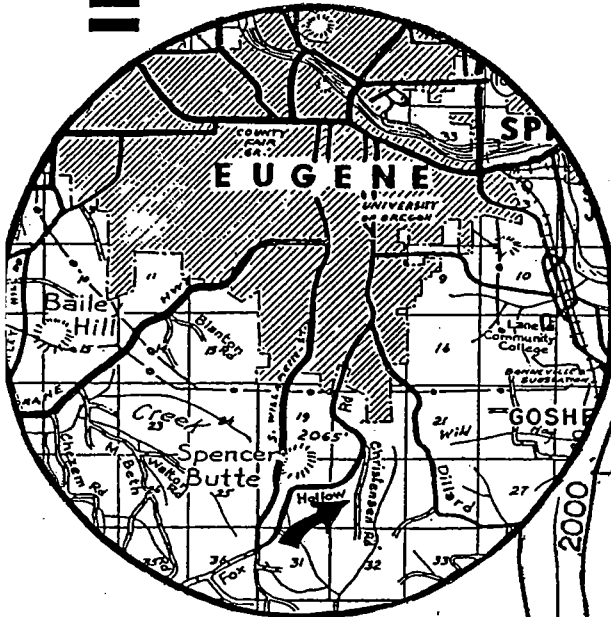
Conclusions of Law (Impacts and Process of Vacation)

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.

Sec. 29 T. 18S. R. 3W. W.M.

LANE COUNTY

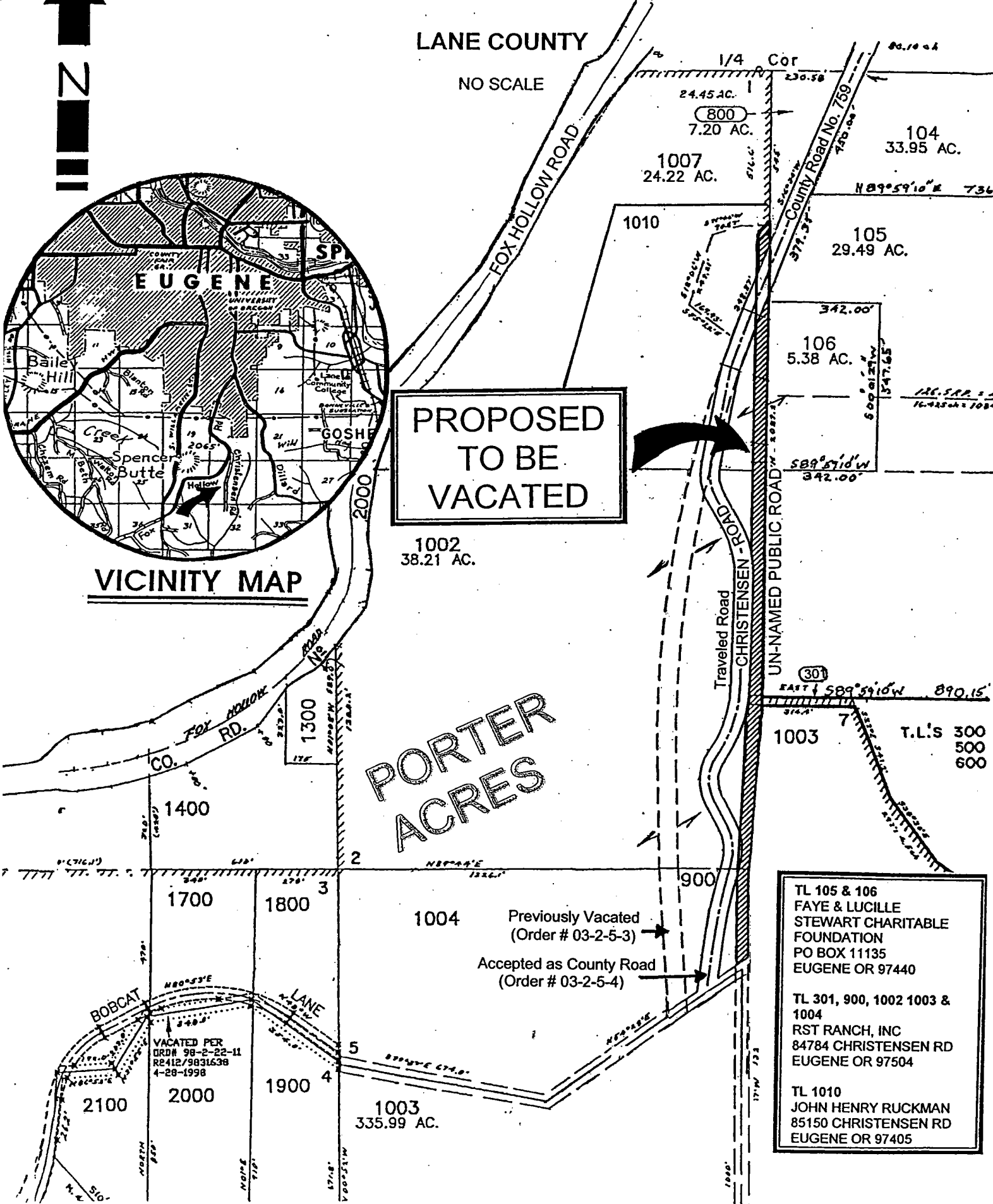
NO SCALE



VICINITY MAP

PROPOSED TO BE VACATED

PORTER ACRES



TL 105 & 106
 FAYE & LUCILLE
 STEWART CHARITABLE
 FOUNDATION
 PO BOX 11135
 EUGENE OR 97440

TL 301, 900, 1002 1003 &
 1004
 RST RANCH, INC
 84784 CHRISTENSEN RD
 EUGENE OR 97504

TL 1010
 JOHN HENRY RUCKMAN
 85150 CHRISTENSEN RD
 EUGENE OR 97405

Previously Vacated
 (Order # 03-2-5-3)

Accepted as County Road
 (Order # 03-2-5-4)

VACATED PER
 ORD# 98-2-22-11
 R2412/9831638
 4-28-1998

