

**AGENDA COVER MEMO**

**DATE:** November 26, 2003  
**TO:** Lane County Board of Commissioners  
**FROM:** Bill Robinson, Lane County Surveyor **BR**  
**DEPARTMENT:** Public Works/Land Management Division

**AGENDA ITEM TITLE:** IN THE MATTER OF THE VACATION OF A PORTION OF ROSE STREET AS PLATTED ON SPARK'S ADDITION TO BLUE RIVER CITY, AND RECORDED IN BOOK 3, PAGE 37, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING AND ADOPTING FINDINGS OF FACT (16-45-28-20)

**I. MOTION:**

**TO APPROVE THE ORDER TO VACATE A PORTION OF ROSE STREET AS PLATTED ON SPARK'S ADDITION TO BLUE RIVER CITY, AND RECORDED IN BOOK 3, PAGE 37, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING AND ADOPTING FINDINGS OF FACT (16-45-28-20)**

**II. ISSUE:**

To decide whether the vacation of the described portion of Rose Street which is 40 feet wide and approximately 290 feet in length, platted on the Spark's Addition to Blue River City, and recorded in Book 3, Page 37, 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 Herbert E. and Betty Jo Wood, and Edwin E. Zeitz, the landowners of 100% of the property abutting the proposed vacation of the portion of Rose Street as platted in Spark's Addition to Blue River City. 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 public status of the described portion of roadway and allow the adjoining landowners to control the use of the land. The road dead-ends at the easterly margin of the Highway 126 and the petitioners have had trouble with the people dumping garbage and abandoning vehicles within the right-of-way.

The petitioners originally requested to vacate only a portion of the street between McCauley Street and Highway 126, however the Lane County Transportation Planning section

recommended that the entire length of the street between McCauley Street and Highway 126 be vacated so that it would not leave a short stub road. A revised petition was prepared and the petitioners are now requesting to vacate the portion of Rose Street between the easterly right-of-way of the realigned State Highway 126 and McCauley Street.

Spark's Addition to Blue River City was recorded in 1906 in Book 3, Page 37, Lane County, Oregon Plat Records. The portion of Rose Street that is proposed for vacation, was dedicated to the public on the plat as a 40-foot wide street.

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.

Several agencies and one landowner replied to the referral. Qwest Communications stated that they have buried cable and facilities along the southeast side of the road and requested that an easement be provided to them granting them the right to maintain, replace and reinforce, if necessary, their existing facilities. Lane Electric Cooperative reported that they have a secondary pole and service wire in the area. Oregon Department of Transportation said that they support the vacation as long as a private access easement is provided and recorded for the benefit of Tax Lots 1600, 1700, 1900 and 2000. Lane County Transportation Planning recommended that a utility easement be retained and a private easement for the benefit of TL 1600, 1700 and 1900 be recorded. The Planning section of Lane County Land Management Division had no objection to the proposed vacation. Dan Whipple, a neighboring landowner, but not an adjoining landowner, replied to the referral indicating that he did not want the street closed but did not give any reasons why. The County Surveyor has attempted to call Mr. Whipple, but found no listing, and has written a letter to Mr. Whipple asking for a more detailed explanation, but Mr. Whipple has not responded.

Bill Robinson, Lane County Surveyor visited the site on August 27, 2003 and took photos of the right of way proposed to be vacated, attached hereon. The photo in "Attachment 1" is taken from the intersection of Rose Street and McCauley Street looking southwesterly down Rose Street. The photo in "Attachment 2" shows the road at the approximate midpoint of the proposed vacation, looking northeasterly back towards McCauley Street, and the photo in "Attachment 3" is taken from the traveled State Highway 126, looking back at Rose Street in a northeasterly direction.

**B. Analysis:**

There are telephone and electrical facilities within the right-of-way and the Order to Vacate will retain a Public Utility Easement for any existing utilities. Although no landowners would currently be landlocked if the vacation is approved, the petitioner has created an access easement for the lots that could potentially be landlocked if sold. This easement has been recorded on Instrument Number 2003-004612, Lane County Oregon Plat Records.

The subject right-of-way is not needed as part of the Lane County transportation system. It is believed that the public interest will be served, as the petitioners will be able to control access through their property and help prevent misuse of the land caused by some of the public.

Because there is one landowner in the area that may have an objection to the vacation one of the options below is for the Board of Commissioners to set a public hearing if they deem it necessary.

C. Alternatives/Options:

The Board of County Commissioners has the option to:

1. Approve the vacation of the portion of Rose Street, as petitioned for.
2. Deny the vacation of the portion of Rose Street, as petitioned for.
3. Continue the matter for further consideration.
4. Direct that a public hearing be held for the proposed vacation and that staff contact the petitioners to see if they wish to proceed with this stipulation.

D. Recommendations:

The Public Works Director's Report recommends that the Board support Option Number 1, to approve the vacation of the portion of Rose Street, as petitioned for. The proposed road vacation is in the public's interest as vacating this portion of right-of-way will allow the property owners to more fully utilize their property and allow them to restrict public access and help control misuse of the land.

All statutory procedures necessary for a vacation without a public hearing of the above mentioned right-of-way have been complied with, including a report by the Director of Public Works who recommends approval of the vacation as described in the petition.

E. Timing:

Timing is not critical in this matter.

**IV. IMPLEMENTATION/FOLLOW-UP:**

If the Board of County Commissioners approves the Order of Vacation, the documents are to be forwarded to the Lane County Clerk for filing and recording, after which, copies are to be forwarded to the County Surveyor and County Assessor for appropriate action. If the order is denied, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

**V. ATTACHMENTS:**

Photos – Attachment "1"  
Attachment "2"  
Attachment "3"

Order w/ attachments:

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

Contact Person: Bill Robinson x4198



Looking southwesterly at the portion of Rose Street proposed to be vacated. (Photo taken at intersection of McCauley Street and Rose Street.)



Looking northeasterly at Rose Street. (Photo shows approximate midpoint between McCauley Street and State Highway 126.)



Looking northeasterly at end of Rose Street. (Photo taken from State Highway 126.)



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

**FILE NO. 4098**

**IN THE MATTER OF THE VACATION OF A )  
PORTION OF ROSE STREET, AS PLATTED ON )  
SPARK'S ADDITION TO BLUE RIVER CITY, )  
AND RECORDED IN BOOK 3, PAGE 37, LANE ) ORDER NO.  
COUNTY, OREGON PLAT RECORDS, WITHOUT )  
A PUBLIC HEARING AND ADOPTING FINDINGS )  
OF FACT (16-45-28-20) )**

**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 Rose Street. Said portion of right-of-way proposed to be vacated is more particularly described as follows:

“That portion of Rose Street as platted and recorded in Book 3, Page 37, Lane County, Oregon Plat Records, described as follows: Beginning at the northeasterly corner of Lot 2, Block 11 of said plat, said point being the intersection of the southwesterly boundary of McCauley Street and the southeasterly boundary of Rose Street; thence southwesterly along Rose Street to the northeasterly boundary of the relocated McKenzie Highway (State Highway 126); thence northwesterly along said right of way to the northwesterly boundary of Rose Street; thence northeasterly along Rose Street to the mid-point of the southeasterly boundary of Lot 5, Block 13 of said plat; thence southeasterly to the point of beginning, all in the Northwest Quarter (NW ¼) of Section 28, Township 16 South, Range 4 East of the Willamette Meridian.”

**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, Oregon Department of Transportation, and various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and neighboring landowners were notified by mail regarding the proposed vacation; and

**WHEREAS**, Qwest Communications and Lane Electric Cooperative requested that a utility easement be reserved; and

**WHEREAS**, Oregon Department of Transportation and Lane County Transportation Planning asked that a private easement be created and recorded to provide access to Tax Lots 1600, 1700, 1900 and 2000, and the petitioners have done this and it has been recorded on Instrument Number 2003-004612 in the Lane County Oregon Plat Records; and

**WHEREAS**, Dan Whipple, a neighboring landowner, but not an adjoining landowner, indicated that he did not want the street closed but gave no reasoning why, and has not responded to the efforts of the Surveyor's Office asking for an explanation; and

**WHEREAS**, the public will benefit by this vacation, as vacating this portion of right-of-way will allow the landowners to restrict access and control the misuse of the land; and

**WHEREAS**, the petitioners have paid a vacation fee of \$650 and will pay any remaining recording fees, if applicable, 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 Rose Street in Spark's Addition to Blue River City is hereby vacated; and it is further

**ORDERED**, that a utility easement is hereby reserved for continued access, for repair and maintenance of any existing utilities over the vacated right-of-way; and

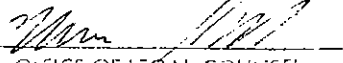
**ORDERED**, that in support of this action, the Board hereby adopts the Findings of Fact, marked as Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

**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 Plat Records.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_  
Peter Sorenson, Chair  
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Vicinity Map (Attachment "A")

APPROVED AS TO FORM  
Date 12-4-03 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 ROSE STREET AS PLATTED )  
ON SPARKS ADDITION TO BLUE RIVER )  
CITY, AND RECORDED IN BOOK 3, PAGE 37, )  
LANE COUNTY, OREGON PLAT RECORDS )  
SECTION 28, TOWNSHIP 16 SOUTH, RANGE )  
4 EAST OF THE WILLAMETTE MERIDIAN )  
IN LANE COUNTY, OREGON. )

PETITION TO VACATE

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned, Herbert E. Wood and Betty Jo Wood, James I. Spicer and Patricia Spicer, and Edwin Eugene Zietz and Barbara Zietz, owners of adjacent real property hereby petition for the vacation of a portion of Rose Street in the plat of Sparks Addition to Blue River City. Said area to be vacated is described as follows:

“That portion of Rose Street as platted and recorded in Book 3, Page 37, Lane County, Oregon Plat Records, described as follows: Beginning at the northeasterly corner of Lot 2, Block 11 of said plat, said point being the intersection of the southwesterly boundary of McCauley Street and the southeasterly boundary of Rose Street; thence southwesterly along Rose Street to the northeasterly boundary of the relocated McKenzie Highway (State Highway 126); thence northwesterly along said right of way to the northwesterly boundary of Rose Street; thence northeasterly along Rose Street to the mid-point of the southeasterly boundary of Lot 5, Block 13 of said plat; thence southeasterly to the point of beginning, all in the Northwest Quarter (NW ¼) of Section 28, Township 16 South, Range 4 East of the Willamette Meridian.”

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 eliminate the public status of the above described portion of roadway and allow the adjoining landowners to control the use of this land. The road dead ends at the easterly margin of the McKenzie Highway and the landowners have had trouble with the public dumping garbage and abandoning vehicles within the right-of-way.
2. Qwest, Inc. has telephone facilities buried within the right of way of Rose Street. An easement will be retained for maintenance of existing utilities within the vacated right-of-way.

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

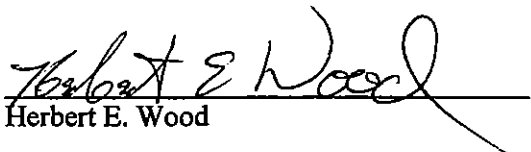
WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation without a hearing, and


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 21<sup>st</sup> day of August, 2002.

PETITIONERS:

  
 \_\_\_\_\_  
 Herbert E. Wood

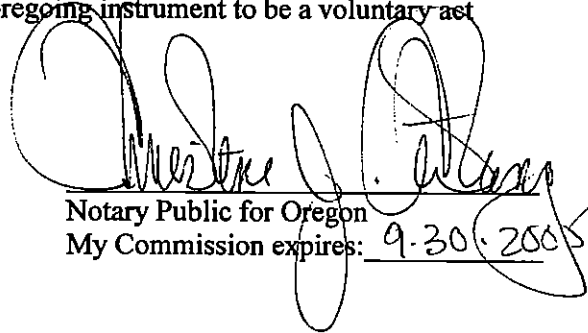
  
 \_\_\_\_\_  
 Betty Jo Wood

Map # 16-45-28-2 Tax Lot 1600, 1700, 1900 & 2000  
 ADDR: 1397 Tamarack Street  
 Springfield, Oregon 97477

STATE OF OREGON )  
 COUNTY OF LANE ) ss.

On 8-21-2002, personally appeared the above-named Herbert E. Wood  
 and Betty Jo Wood and acknowledged the foregoing instrument to be a voluntary act  
 before me.



  
 \_\_\_\_\_  
 Notary Public for Oregon  
 My Commission expires: 9-30-2005

James I. Spicer  
James I. Spicer

Patricia Spicer  
Patricia Spicer

Map # 16-45-28-2 Tax Lot 1600, 1700 & 1900  
ADDR: 1397 Tamarack Street  
Springfield, Oregon 97477

STATE OF OREGON )  
COUNTY OF LANE ) ss.

On 8-12, 2002, personally appeared the above-named James Spicer  
and Patricia Spicer and acknowledged the foregoing instrument to be a voluntary act  
before me.



Chris Scarpelli  
Notary Public for Oregon  
My Commission expires: April 10 2006

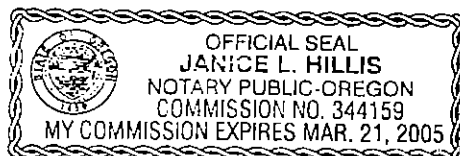
Edwin Eugene Zietz  
Edwin Eugene Zietz

\_\_\_\_\_  
Barbara Zietz

Map # 16-45-28-2 Tax Lot 2100  
ADDR: PO Box 285  
Blue River, OR 97413

STATE OF OREGON )  
COUNTY OF LANE ) ss.

On August 20, 2002, personally appeared the above-named Edwin Eugene Zietz  
and \_\_\_\_\_ and acknowledged the foregoing instrument to be a voluntary act  
before me.



Janice L Hillis  
Notary Public for Oregon  
My Commission expires: 3/21/05

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

FILE NO. 4098

IN THE MATTER OF THE VACATION OF A )  
PORTION OF ROSE STREET, AS PLATTED ON )  
SPARK'S ADDITION TO BLUE RIVER CITY, )  
AND RECORDED IN BOOK 3, PAGE 37, LANE )  
COUNTY, OREGON PLAT RECORDS, WITHOUT )  
A PUBLIC HEARING AND ADOPTING FINDINGS )  
OF FACT (16-45-28-20) )

DIRECTOR'S REPORT

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 portion of street proposed to be vacated was dedicated to the public on the plat of Spark's Addition to Blue River City in 1906, and recorded in Book 3, Page 37, Lane County, Oregon Plat Records. The petitioners are requesting that the public status of this road be vacated so that they can control the use of the land. The road dead-ends at the easterly margin of Highway 126, and the petitioners have had trouble with people dumping garbage and abandoning vehicles within the right of way.

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. Several agencies and one landowner replied to the referral. Qwest Communications stated that they have buried cable and facilities along the southeast side of the road and requested that an easement be provided to them granting them the right to maintain, replace and reinforce, if necessary, their existing facilities. Lane Electric Cooperative reported that they have a secondary pole and service wire in the area. Oregon Department of Transportation said that they support the vacation as long as a private access easement is provided and recorded for the benefit of Tax Lots 1600, 1700, 1900 and 2000. Lane County Transportation Planning recommended that a utility easement be retained and a private easement for the benefit of TL 1600, 1700 and 1900 be recorded. The Planning section of Lane County Land Management Division had no objection to the proposed vacation. Dan Whipple, a neighboring landowner, but not an adjoining landowner, replied to the referral indicating that he did not want the street closed but did not give any reasons why. The County Surveyor has attempted to call Mr. Whipple, but found no listing, and has written a letter to Mr. Whipple asking for a more detailed explanation, but Mr. Whipple has not responded.

Although no landowners would currently be landlocked if the vacation is approved, the petitioner has created a private access easement for the lots that could potentially be landlocked if sold. This easement has been recorded on Instrument Number 2003-004612, Lane County Oregon Plat Records.

It is concluded that vacating this portion of Rose Street, is in the public's interest, as vacating this portion of right-of-way will allow the adjacent property owners to control access and help prevent misuse of the land caused by some of the public. It is therefore recommended that the portion of Rose Street, as described in the Order, be vacated as petitioned for, and that a public utility easement be reserved over the vacated right of way for maintenance of any existing utilities within the subject right of way. It is further recommended that the vacation be allowed without a public hearing.

DATED this 1<sup>st</sup> day of December, 2003.

  
Oliver P. Snowden, Public Works Director

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

**FILE NO. 4098**

<b>IN THE MATTER OF THE VACATION OF A</b>	)	
<b>PORTION OF ROSE STREET, AS PLATTED ON</b>	)	
<b>SPARKS ADDITION TO BLUE RIVER CITY, AND</b>	)	
<b>RECORDED IN BOOK 3, PAGE 37, LANE COUNTY,</b>	)	<b>FINDINGS OF FACT</b>
<b>OREGON PLAT RECORDS, WITHOUT A PUBLIC</b>	)	
<b>HEARING AND ADOPTING FINDINGS OF FACT</b>	)	
<b>(16-45-28-20)</b>	)	

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 Rose Street, located between State Highway Number 126 and McCauley Street, and between Block 11 and a portion of Block 13 of Spark's Addition to Blue River City, as described in the Order, be vacated. The road dead-ends at the easterly margin of Highway 126, and the petitioners have had trouble with people dumping garbage and abandoning vehicles within the right of way. The petitioners are requesting the vacation of this segment of Rose Street in order to restrict public access and control the misuse of the property.

**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 1600, 1700, 1900, 2000, and 2100 of Assessor's Map 16-45-28-20.
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, Oregon Department of Transportation and various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and neighboring landowners were notified by mail regarding the proposed vacation.
4. That, Qwest Communications and Lane Electric Cooperative have requested a easement be retained for the purpose of accessing, maintaining and repairing their existing utilities within the right of way.
5. That, Dan Whipple, a neighboring landowner, but not an adjoining landowner, replied to the referral indicating that he did not want the street closed but did not give any reasons why. The County Surveyor has attempted to call Mr. Whipple but found no listing, and has written a letter to Mr. Whipple asking for a more detailed explanation, but Mr. Whipple has not responded.
6. That, a utility easement has been retained in the final order, and will be recorded upon approval of the vacation, for repair and maintenance of any existing utilities over the vacated right of way.
7. That, the petitioners have created a private access easement for the lots that could potentially be landlocked.
8. 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 'A'

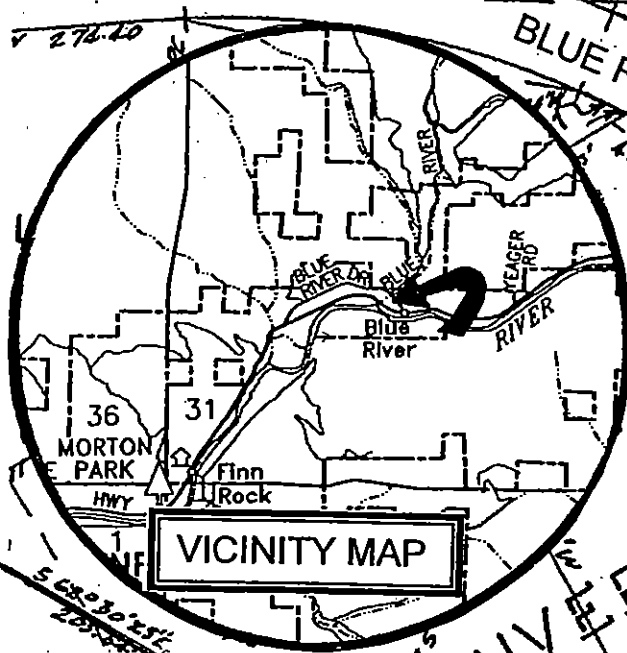
ORIGINAL



NW 1/4 Section 28 T. 16S. R. 4 E. W.M.

LANE COUNTY

NO SCALE



VICINITY MAP

TL 1600, 1700, 1900, 200 & 4200  
 Herbert E. & Betty J. Wood  
 1397 Tamarack St.  
 Springfield, OR 97477

TL 2100  
 Edwin E. Zietz  
 PO Box 285  
 Blue River, OR 97413

TL 2201  
 Dan Edward Whipple  
 244 Elmore  
 Lebanon, OR 97355

**PROPOSED  
 TO BE  
 VACATED**

