

W. 9. D. 9. ORIGINAL
04-3-10-19

AGENDA COVER MEMO

DATE: February 19, 2004
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 VACATING A PORTION OF STEPHENS ROAD, A PUBLIC ROAD, LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 30, TOWNSHIP 17 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (17-01-30)

I. MOTION:

TO VACATE A PORTION OF STEPHENS ROAD, A PUBLIC ROAD, LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF SECTION 30, TOWNSHIP 17 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (17-01-30)

II. ISSUE:

To decide whether a portion of Stephens Road, having a length of approximately 788 feet and width of 50 feet, 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 Leroy Boehm and Marlene E. Boehm. These individuals are the landowners of 100% of the property abutting the proposed vacation of Stephens Road. The petitioners are requesting the vacation, by the authority of ORS 368.351, without a public hearing. The purpose of this request is to vacate a portion of Stephens Road, as it serves access to no residence, dead-ends on the petitioners' property, and has historically encouraged trespass and consequent damage to the petitioners' property.

Stephens Road, at that time unnamed, was initially dedicated and accepted as a public road in 1963, having a right-of-way width of 50 feet, 25 feet on each side of centerline. Said original section began at its intersection with Camp Creek Road (County Road No. 1290), thence

running northeasterly approximately 884 feet, having a width of 50 feet. An ordinance for naming Stephens Road was filed in 1974. In 1978 an additional section of Stephens road was dedicated and accepted as public road, said section beginning at the terminus of the original section, thence running southeasterly approximately 846 feet, having a width of 50 feet. The portion to be vacated is the easterly approximately 788 feet of the herein mentioned second section of dedicated roadway. It is noted that there is a 1 foot strip of privately owned land between the easterly end of the portion to be vacated and the property to the east (tax lot #918). This strip has been carried throughout the history of the dedication process as an exception in the legal descriptions of Stephens Road.

The Surveyors Office notified Qwest Communications, Eugene Water and Electric Board, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjoining property owners regarding the vacation. Initial responses with concerned objections were received from two landowners, Rick Paslay (tax lot #918) and John Harmsen (tax lot #1002). Both of those objections were subsequently retracted. The other agencies and landowners either had no objection to the vacation or did not respond to the referral.

B. Analysis:

The portion of road proposed to be vacated does not serve access to any residence and is not needed as part of the Lane County transportation system. There are no known utilities within the proposed area of vacation, and no property will be denied legal access. 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 and minimize the impacts of trespassing.

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Approve the vacation of a portion of Stephens Road, having a length of approximately 788 feet, as petitioned for.
2. Deny the vacation of Stephens Road, as petitioned for.
3. 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 Stephens Road, 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 it to revert back to private property, enable the landowners to more fully utilize their property and minimize the impacts of trespassing.

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:

Order w/attachments:

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

Contact Person: Bill Robinson x4198

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

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

IN THE MATTER OF VACATING A PORTION OF)
STEPHENS ROAD, A PUBLIC ROAD, LOCATED IN)
THE NORTHWEST QUARTER (NW1/4) OF SECTION)
30, TOWNSHIP 17 SOUTH, RANGE 1 WEST OF THE) ORDER NO.
WILLAMETTE MERIDIAN, IN LANE COUNTY,)
OREGON, WITHOUT A PUBLIC HEARING, AND)
ADOPTING FINDINGS OF FACT (17-01-30))
)

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 Stephens Road, a public road, more particularly described as follows:

Commencing at a Lane County Brass Cap marking the Northwest corner of Section 30, Township 17 South, Range 1 West of the Willamette Meridian; thence along the north line of Section 30, South 89°30'54" East 862.97 feet to a 3/4" iron pin; thence leaving said north line, South 26°53'36" West 263.54 feet to a 3/4" iron pin set at the northerly terminus of Stephens Road centerline; thence South 50°35'30" East 84.15 feet to a point, said point being the POINT OF BEGINNING of this tract of land; thence South 67°52'30" East 788.53 feet to a 1/2" iron pin; thence North 0°10'48" East 53.90 feet; thence North 67°52'30" West 768.38 feet to a point; thence South 22°07'30" West 50.00 feet to the point of beginning, EXCEPTING THEREFROM a 1.00 (one) foot wide strip of land located on the east side of the above described property, all in Lane County, Oregon and containing 0.89 acres, more or less; and

WHEREAS, the petition complies with the provisions of ORS Chapter 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, the petitioners are requesting the vacation of this portion of road, as it serves no residence and is no longer needed as a public road; and

WHEREAS, Qwest Communications, Eugene Water and Electric Board, 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 landowners were notified by mail regarding the proposed vacation. Initial responses with concerned objections were received from two landowners, Rick Paslay (tax lot #918) and John Harmsen (tax lot #1002). Both of those objections were subsequently retracted. The other agencies and landowners either had no objections or did not reply 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 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 Stephens Road is hereby 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 _____, 2004.

Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Attachment "A" - Vicinity Map

APPROVED AS TO FORM

Date 3-1-04 lane county

[Signature]

COUNSEL

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

File No.

IN THE MATTER OF THE VACATION OF A PORTION)
 OF STEPHENS ROAD, IN SECTION 19 and SECTION 30, TOWNSHIP 17)
 SOUTH, RANGE 1 WEST OF THE WILLAMETTE) PETITION TO VACATE
 MERIDIAN, IN LANE COUNTY, OREGON)

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned LeRoy Boehm and Marlene Boehm, husband and wife, as owners of the adjacent real property hereby petition for the vacation of a portion of County Road Number Stephens Road, which area to be vacated is described as follows:

See attached 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 road which dead-ends on our Property, and to better utilize it. People have ridden up road with horses and four-wheelers and trespassed on to our Property. As a result, the road gets torn up and we have to maintain it.
2. There are no utilities, and no powerlines located in the area to be vacated.

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area of Stephens Rd.

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 of 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 be vacated area revert and vest in accordance with ORS 368.366.

DATED this 14 day of Oct, 2003

PETITIONERS:

LeRoy Boehm
 Map # _____ TL
 Addr: 88489 Stephens Road
 Springfield, Oregon 97478

Marlene E Boehm
 Map # _____ TL
 Addr: 88489 Stephens Road
 Springfield, Oregon 97478

State of Oregon)
County of Lane)

On October 14, 2003, personally appeared the above named LeRoy Boehm and Marlene Boehm, and acknowledged the foregoing instrument to be a voluntary act before me:

Pat Cane

Notary Public for Oregon
My Commission

Expires: 08/12/2007

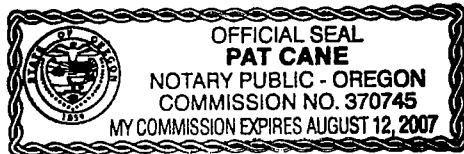


Exhibit 'A'**PROPERTY DESCRIPTION**

A tract of land lying in the Northwest $\frac{1}{4}$ of Section 30, Township 17 South, Range 1 West of the Willamette Meridian, and being a portion of the tract of land conveyed to Leroy Boehm and Marlene E. Boehm, husband and wife, by that certain Memorandum of Contract, recorded on Reel 594, Reception No. 7562, said tract being described as follows:

Commencing at a Lane County Brass Cap marking the Northwest corner of Section 30, Township 17 South, Range 1 West of the Willamette Meridian; thence along the North line of Section 30, South $89^{\circ}30'54''$ East 862.97 feet to a $\frac{3}{4}$ " iron pin; thence leaving said north line, South $26^{\circ}53'36''$ West 263.54 feet to a $\frac{3}{4}$ " iron pin set at the Northerly terminus of Stephens Road centerline; thence South $50^{\circ}35'30''$ East 84.15 feet to a point, said point being the **POINT OF BEGINNING** of this tract of land; thence South $67^{\circ}52'30''$ East 788.53 feet to a $\frac{1}{2}$ " iron pin; thence North $0^{\circ}10'48''$ East 53.90 feet; thence North $67^{\circ}52'30''$ West 768.38 feet to a point; thence South $22^{\circ}07'30''$ West 50.00 feet to the point of beginning, all in Lane County, Oregon and containing 0.89 acres, more or less.

EXCEPTING THEREFROM: A 1.00 (one) foot wide strip of land located on the east side of the above described property.

Bearings used hereon are based on C.S.F. 21372 by William Wilt dated February 14, 1978

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

IN THE MATTER OF VACATING A PORTION OF)
STEPHENS ROAD, A PUBLIC ROAD, IN THE)
NORTHWEST QUARTER (NW1/4) OF SECTION 30,)
TOWNSHIP 17 SOUTH, RANGE 1 WEST OF THE)
WILLAMETTE MERIDIAN, IN LANE COUNTY,)
OREGON, WITHOUT A PUBLIC HEARING)
AND ADOPTING FINDINGS OF FACT (17-01-30))

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.

Stephens Road, at that time unnamed, was initially dedicated and accepted as a public road in 1963, having a right-of-way width of 50 feet, 25 feet on either side of centerline. Said original section began at its intersection with Camp Creek Road (County Road No. 1290), thence running northeasterly approximately 884 feet, having a width of 50 feet. An order for naming Stephens Road was filed in 1974. In 1978 an additional section of Stephens road was dedicated and accepted as public road, said section beginning at the terminus of the original section, thence running southeasterly approximately 846 feet, having a width of 50 feet. The portion to be vacated is the easterly approximately 788 feet of the herein mentioned second section of dedicated roadway. It is noted that there is a 1 foot strip of privately owned land between the easterly end of the portion to be vacated and the property to the east (tax lot #918). This strip has been carried throughout the history of the dedication process as an exception in the legal descriptions of Stephens Road. The petitioners are requesting this vacation because the portion to be vacated serves access to no residence, dead-ends on the petitioners' property, and has historically encouraged trespass and consequent damage to the petitioners' property.

The Surveyors Office notified Qwest Communications, Eugene Water and Electric Board, 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 landowners regarding the vacation. Initial responses with concerned objections were received from two landowners, Rick Paslay (tax lot #918) and John Harmsen (tax lot #1002). Both of those objections were subsequently retracted. The other agencies and landowners either had no objection to the vacation or did not respond to the referral.

The portion of Stephens Road proposed to be vacated, having a length of approximately 788 feet, is no longer needed by the Lane County transportation system and no property will be denied legal access by this vacation. There are no known utilities within the right-of-way. It is concluded that this vacation is in the public's interest, as it will allow the property owners to more fully utilize their property.

It is therefore recommended that the portion of Stephens Road, as described in the Order, be vacated as petitioned for. It is further recommended that the vacation be allowed without a public hearing.

DATED this 25th day of February, 2004.

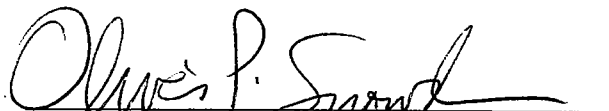

Oliver P. Snowden, Public Works Director

EXHIBIT "B"

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

IN THE MATTER OF VACATING A PORTION OF)
STEPHENS ROAD, A PUBLIC ROAD, LOCATED IN)
THE NORTHWEST QUARTER (NW1/4) OF SECTION)
30, TOWNSHIP 17 SOUTH, RANGE 1 WEST OF THE)
WILLAMETTE MERIDIAN, IN LANE COUNTY,) FINDINGS OF FACT
OREGON, WITHOUT A PUBLIC HEARING)
AND ADOPTING FINDINGS OF FACT (17-01-30))

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 Stephens Road, a public road as described in the Order, be vacated as petitioned for. The petitioners are requesting this vacation as this portion of right-of-way, having a length of approximately 788 feet, serves access to no residence, dead-ends on the petitioners' property, and has historically encouraged trespass and consequent damage to the petitioners' 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.

EXHIBIT "B"

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

1. That, 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 Lot 1015 of Assessor's Map 17-01-30.
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, Eugene Water and Electric Board, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and adjoining landowners were notified by mail regarding the proposed vacation. Initial responses with concerned objections were received from two landowners, Rick Paslay (tax lot #918) and John Harmsen (tax lot #1002). Both of those objections were subsequently retracted. The other agencies and landowners either had no objection to the vacation or did not respond to the referral.
4. That, vacating the portion of Stephens Road, as described in the Order, will not deny any landowners legal road access to a public road.
5. There are no known utilities affected by the proposed vacation.
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.

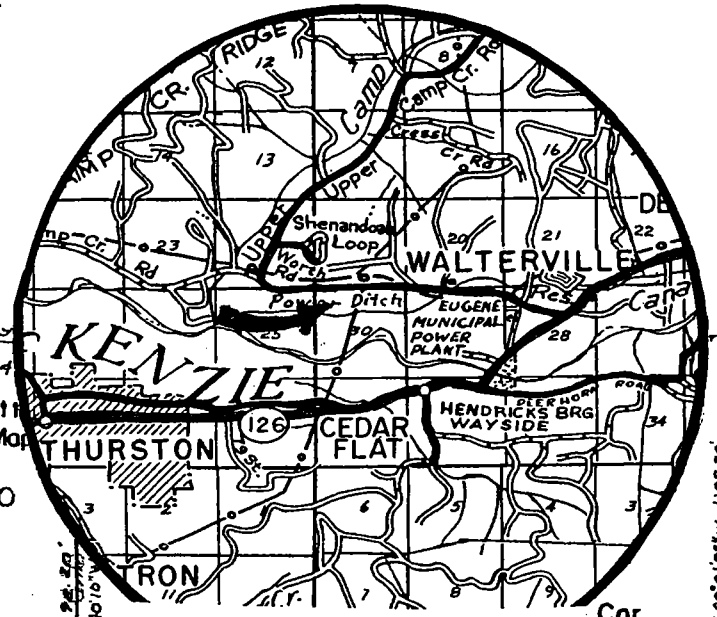
Items (1) and (2) have been complied with.

Conclusions of Law (Impacts and Process of Vacation)

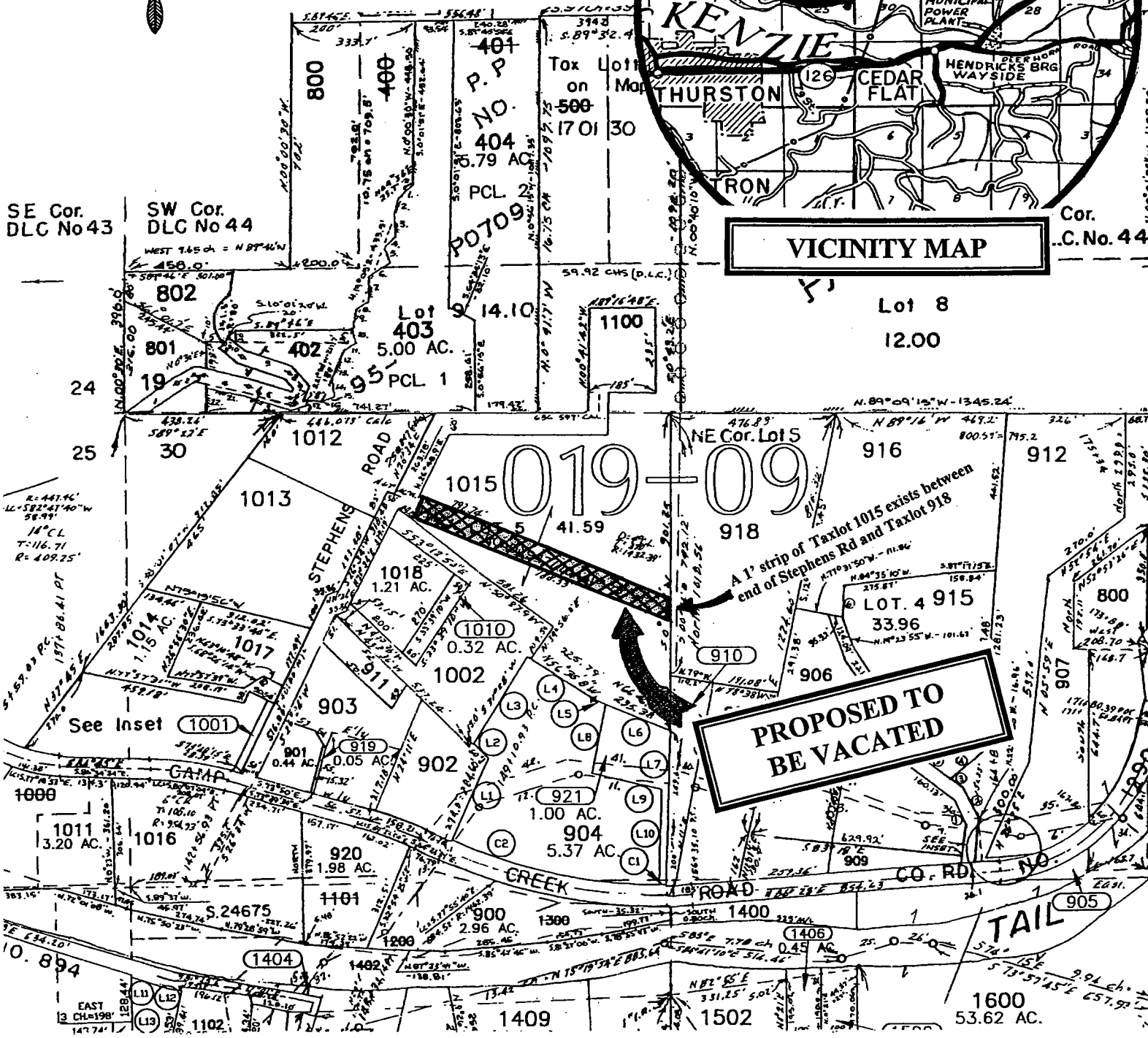
Based on the above findings of fact, the Board concludes, as a matter of law, that this vacation will not have any predictable negative impact on present or future land use, either in terms of allowable uses or actual development. The Board further concludes that statutory procedures necessary for making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

NW 1/4 NW 1/4 Section 30 T. 17 S. R. 1 W. W.M.
LANE COUNTY

NO SCALE



VICINITY MAP



PROPOSED TO BE VACATED

A 1' strip of Taxlot 1015 exists between end of Stephens Rd and Taxlot 918

SE Cor. DLC No 43
SW Cor. DLC No 44

Cor. C.No. 44

R=447.96'
LC=582'41"40" W
58.99'
14° CL
T=116.71
R=409.75'

EAST
13 CH=198'
147.74'

N.00°09'15"W-1109.30