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ORIGINAL

AGENDA COVER MEMO

DATE: May 3, 2005
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 SETTING A PUBLIC HEARING DATE FOR THE VACATION OF A PORTION OF OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON (20-03-36)

I. MOTION:

- 1) **TO APPROVE THE RESOLUTION, NOTICE OF HEARING AND ORDER SETTING AN AGENDA DATE OF JULY 13, 2005 AT 1:30 P.M. TO CONSIDER THE VACATION OF A PORTION OF OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN (20-03-36)**

II. ISSUE:

To decide whether to initiate the proceedings to set a public hearing before the Board of Commissioners which could lead to the vacation of a segment of Oak Road, being approximately 600 feet in length and having a statutory right-of-way width of 60 feet, if such vacation is found to be in the public interest.

III. DISCUSSION:

A. Background:

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Haring Piebenga, Joe Snook, Grange Master and member of the Executive Committee of Dorena Grange No. 835, and Emily Rice, representative for United States Department of Interior Bureau of Land Management, the landowners of 100% of the property abutting the portion of Oak Road proposed for vacation.

The primary petitioner, Haring Piebenga, has installed an electric gate within the right-of-way of Oak Road near the common boundary of their property and the former railroad right-of-way. Petitioner Piebenga is requesting this vacation in order to allow the gate to remain as constructed. If this portion of road is not vacated the owners will be required to remove the gate.

the gate.

Oak Road, formerly known as Mosby Road (County Road Number 373) was established in 1883, beginning at the north bank of the Row River, crossing the river and extending westerly approximately 0.36 miles, and then continuing southwestwardly about 1.32 miles to a point on the south side of Mosby Creek. In 1965, the road was relocated and crosses the Row River at a point approximately ¼ mile west of the 1883 alignment. The portion proposed to be vacated is the first 600 feet, more or less, of the 1883 alignment, commencing at the north side of Row River, crossing the river, and extending westerly to the westerly right-of-way of the bike path, former Oregon Pacific and Eastern Railroad. Part of this portion of the road is not constructed, and there is no longer a bridge across Row River at the beginning point of the 1883 alignment. A portion of the original alignment within the portion proposed for vacation, from the old railroad (now bike path) easterly to approximately where it turns north towards the river, has been used by petitioner Piebenga to access his property, as well as the portion of original alignment not proposed to be vacated from Mosby Road easterly to the bike path.

It has been recommended that a public hearing be held regarding the proposed vacation since the portion of Oak Road proposed to be vacated provides public access to the Row River, and also due to concerns expressed by the Lane County Transportation Planning section, by Lane Electric Cooperative and by Raymond Kopki, owner of tax lot 20-03-36-101.

The original request for vacation without a public hearing of a portion of Oak Road was received in April, 2002. At that time the required referral notices soliciting response were sent out to all agencies and adjoining and nearby landowners who might have an interest in the vacation. Concerned responses were received by Lane County Transportation Section and Lane Electric Cooperative. Although not in a formal response to the referral process, nearby landowner Raymond Kopki contacted the Lane County Right-of-Way section about his concern that if the road were vacated as petitioned for it would possibly result in a required turnaround adjacent to or on his property. As a response to these comments, and in consideration of the fact that a portion of the right-of-way proposed to be vacated provides public access to the Row River, the primary petitioner was notified that the Surveyors Office would not recommend support of the vacation and that a public hearing would be recommended.

After the initial vacation petition submission and initiation of processing, nearly two and a half years elapsed with only sporadic and inconsequential interaction between the petitioner and the County. In March, 2005, in response to notice by the County that the original gate and another gate found to also be within the right-of-way should be removed by March 4, 2005, primary petitioner Piebenga submitted a new petition and the additional fees for processing the vacation with a public hearing.

On March 14, 2005, the Surveyors Office again notified 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 the adjoining property owners regarding the vacation. No comments were returned in response to this second notice.

Since the portion of road right-of-way provides public accesses to the Row River, and in consideration of the facts stated above, the Surveyors Office is recommending processing

this petition for vacation with a public hearing.

B. Analysis:

Since the vacation of the portion of Oak Road as petitioned for would affect public access to the Row River, and considering concerned responses as mentioned above in the early referral process, this action merits the process of public hearing.

No property would be denied access to a public road if the subject portion of Oak Road were vacated. Should this portion of Oak Road be vacated, any required utility easements would be reserved in the order.

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Set a Public Hearing date as proposed by staff to consider the vacation of a portion of Oak Road (Co. Rd. #373), as petitioned for.
2. Set any later Public Hearing date, as the Board may wish, to consider the vacation of a portion of Oak Road (Co. Rd. #373), as petitioned for.
3. Refuse to set a date to initiate proceedings to consider the vacation of a portion of Oak Road (Co. Rd. #373), as petitioned for.

D. Recommendations:

The Public Works Director's Preliminary Report, Exhibit "A", attached to the Resolution and Order, recommends that the Board support Option 1, setting a date for a public hearing.

Setting a public hearing date to consider the issues, taking testimony and possibly acting on the request for vacation is the recommended course to take. The date proposed will allow appropriate time for the provision of public notice of the hearing.

E. Timing:

Timing is important in this matter, as the determination of vacation will directly affect the resolution of whether a gate across the roadway is appropriate, and facilitate determination of the appropriate placement of a gate, if allowed. Timely determination in these proceedings is important in order to inform both the public and the petitioner.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Resolution and Order setting a date for a public hearing on the proposed vacation of Oak Road it is to be forwarded to the Lane County Clerk for filing and recording, after which copies are to be forwarded to the County Surveyor who will provide public notice of the proposed action. If the Board wishes to postpone the matter or to terminate proceedings an Order to Postpone or Terminate will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS:

Resolution and Order w/attachments:

Preliminary Director's Report – Exhibit 'A'
Attachment – Vicinity Map

Contact Person: Bill Robinson x-4198

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

FILE NO. 4124

IN THE MATTER OF SETTING A PUBLIC HEARING DATE FOR THE VACATION OF A PORTION OF OAK ROAD (CO. RD. #373), LOCATED IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON (20-03-36)

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RESOLUTION, NOTICE OF HEARING AND ORDER NO.

THIS MATTER now coming before the Board of County Commissioner for Lane County, Oregon, and it appearing to the Board that a valid petition has been received to vacate a portion of Oak Road, and

WHEREAS, Oak Road (Co. Rd #373) was established in 1883 with a statutory right-of-way width of 60 feet, said portion of right-of-way proposed to be vacated being more particularly described as follows:

“All that portion of County Road Number 373 (commonly known as Oak Road) located in the Northeast Quarter (NE ¼) of Section 36, Township 20 South, Range 3 West of the Willamette Meridian and lying East of the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, the beginning point being more particularly described in the original survey notes of said road as beginning at a stone 20x8x6 inches set in the center of the road on the North side of the Row River, in Road District No. 13, opposite the end of the old bridge on said river, at the South end of John Currin’s lane; thence South across the river 3.16 chains (208.56 feet); thence South 86° West approximately 350 feet to the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, and there ending, all in Lane County, Oregon”.

WHEREAS, in accordance with ORS Chapter 368.341 proceedings may be undertaken to consider whether it is in the public interest and benefit to vacate the described portion of Oak Road (Co. Rd. #373); and

WHEREAS, 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 abutting landowners were notified by mail regarding the proposed vacation; and

WHEREAS, Lane County Transportation Planning Department replied with concerns about a locked gate constructed by the primary petitioner being within the public right-of-way, providing for construction of a turnaround if the subject portion of road is vacated and recommendations regarding vacation limits; and

WHEREAS, Lane Electric Cooperative replied with a concern that they have a pad mount transformer in the area to which they need to maintain access; and

WHEREAS, Raymond Kopki, owner of tax lot 20-03-36-100, without formal reply to the initial solicitation for comment on the vacation, later expressed a concern regarding a possible turnaround on or adjoining his property in the event of this vacation; and

WHEREAS, the portion of Oak Road proposed to be vacated provides public access to the Row River,

and it has been past practice to solicit public input when the circumstances of public right-of-way vacation might affect access to a waterway; and

WHEREAS, there are utilities or powerlines located within the area to be vacated; and

WHEREAS, the Director of the Department of Public Works has provided a preliminary written report regarding the proposed vacation, marked as Exhibit "A", attached hereto and made a part hereof, by this Resolution, Notice of Hearing and Order, which recommends that a date be set for the public hearing; now therefore, it is hereby

ORDERED, that July 13, 2005, be established for hearing said report and for conducting a public hearing of the said proposed vacation and the said hearing be held at 1:30 P.M. at the Lane County Public Service Building, 125 East 8th Avenue, Eugene, Oregon 97401; and it is further

ORDERED that notice of the public hearing be provided by service, posting, and publication in accordance with ORS Chapter 368.401 to 368.426.

Inquiries regarding this vacation may be directed to Bill Robinson, Lane County Surveyor, Public Service Building, 125 East 8th Avenue, Eugene, Oregon, 97401, telephone (541) 682-4195.

DATED this _____ day of _____, 2005

Anna Morrison, Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachments: Vicinity Map

APPROVED AS TO FORM

Date: 5-10-05 lane county.

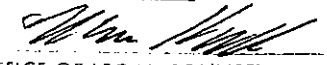

OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

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

FILE NO. 4124

IN THE MATTER OF SETTING A PUBLIC HEARING DATE)
FOR THE VACATION OF A PORTION OF OAK ROAD (CO.)
RD. #373), LOCATED IN THE NORTHEAST QUARTER)
(NE1/4) OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 3)
WEST OF THE WILLAMETTE MERIDIAN, IN LANE)
COUNTY, OREGON (20-03-36)

PRELIMINARY
DIRECTOR'S REPORT

The Surveyor's Office of the Department of Public Works received a valid petition signed by 100% of the landowners abutting the portion of Oak Road (Co. Rd. #373) proposed to be vacated. The primary petitioner is requesting this vacation in order to avoid removal of a gate he has constructed within the public right-of-way of Oak Road.

Oak Road, formerly known as Mosby Road (Co. Rd. #373), was established in 1883 with a statutory width of 60 feet, beginning at the north bank of the Row River, crossing the river and extending westerly approximately 0.36 miles, and then continuing southwesterly about 1.32 miles to a point on the south side of Mosby Creek. In 1965, the road was relocated and crosses the Row River at a point approximately 1/4 mile west of the 1883 alignment. The portion proposed to be vacated is the first 600 feet, more or less, of the 1883 alignment, commencing at the north side of Row River, crossing the river, and extending westerly to the westerly right-of-way of the bike path, former Oregon Pacific and Eastern Railroad.

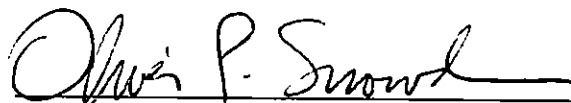
It has been recommended by the Surveyor's Office that a public hearing be held regarding the proposed vacation due to the fact that a portion of the proposed vacation provides public access to the Row River, and also due to concerned responses as stated below.

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, as well as nearby landowners were notified by mail regarding the proposed vacation. Lane County Transportation Planning Division replied with concerns about the locked gate being within public right-of-way, providing for construction of a turnaround if the subject portion of road is vacated and recommendations regarding vacation limits. Lane Electric Cooperative replied with concerns that they have a pad mount transformer to which they need to maintain access. Nearby landowner Raymond Kopki, although not in formal response to the referral, later contacted Lane County Right-of-Way section about his concern that if the road were vacated as petitioned for it would possibly result in a required turnaround adjacent to or on his property. The other agencies and landowners either had no objections or did not respond to the referral.

It is recommended that the Resolution to consider the vacation of a portion of Oak Road (Co. Rd. #373) be approved and a date for conducting a public hearing be set by the Board of County Commissioners.

A final report will be submitted prior to the time of the public hearing.

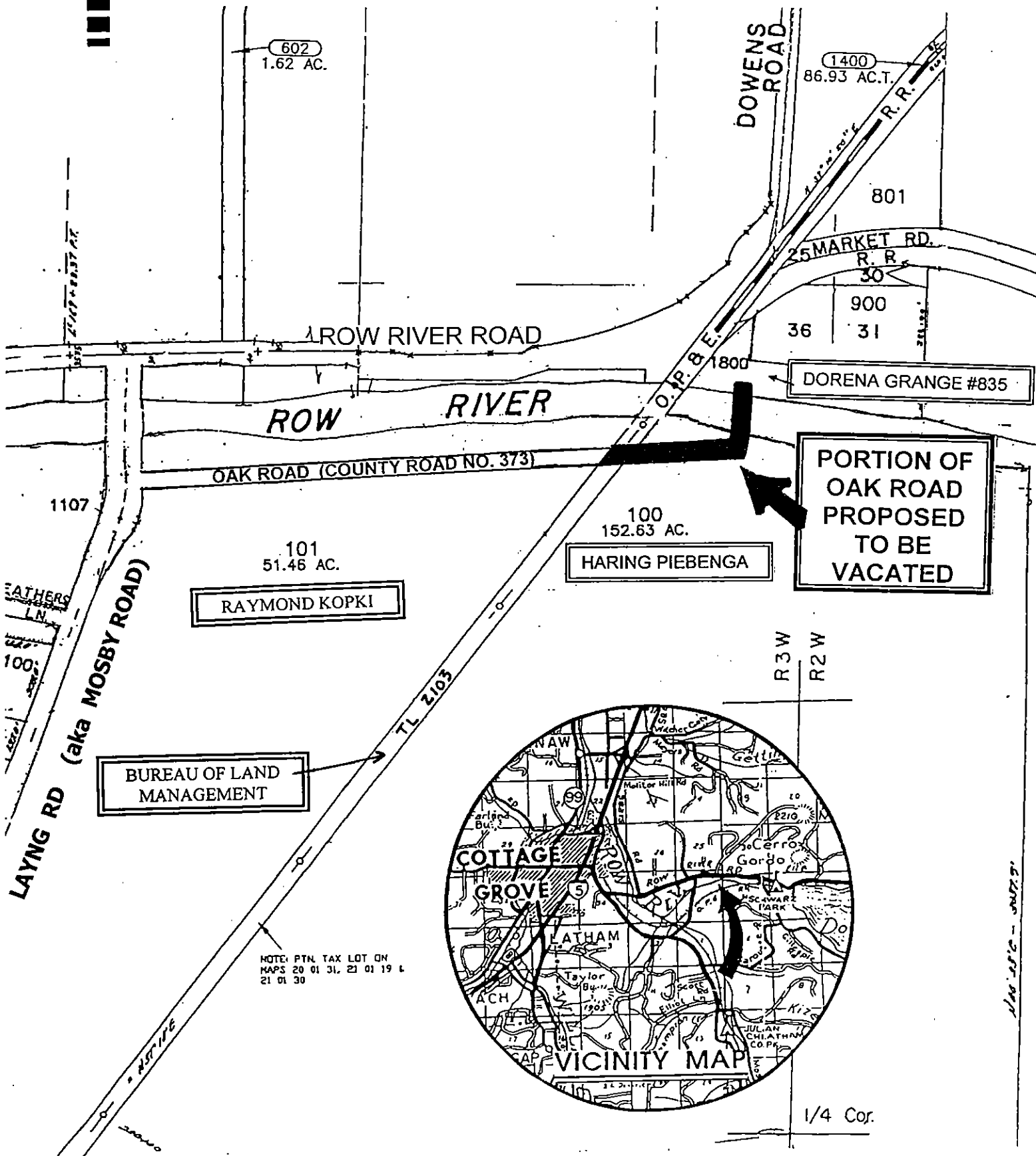
DATED this 6th day of May, 2005



Oliver P. Snowden, Director - Department of Public Works

NE 1/4 Sec. 36 T. 20S. R. 3W. W.M.
LANE COUNTY

NO SCALE



602
1.62 AC.

1400
86.93 AC.T.

801

MARKET RD.
R.R.
30
900
36 31

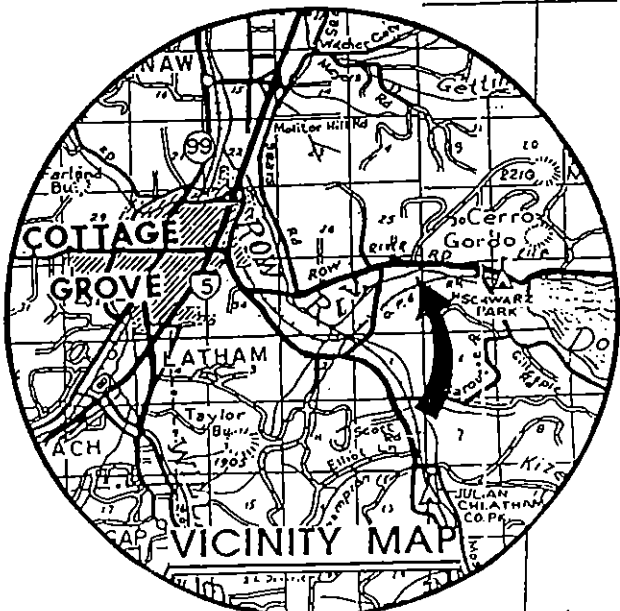
DORENA GRANGE #835

PORTION OF
OAK ROAD
PROPOSED
TO BE
VACATED

100
152.63 AC.
HARING PIEBENGA

101
51.46 AC.
RAYMOND KOPKI

BUREAU OF LAND
MANAGEMENT



NOTE: PTN. TAX LOT ON
MAPS 20 01 31, 21 01 19 &
21 01 30

1/4 Cor.