

W. S. A.

ORIGINAL

**AGENDA COVER MEMO**

**DATE:** September 1, 2005  
**TO:** Lane County Board of Commissioners  
**FROM:** Bill Robinson, Lane County Surveyor  
**DEPARTMENT:** Public Works/Land Management Division

**AGENDA ITEM TITLE:** IN THE MATTER OF VACATING A PORTION OF B STREET, A PUBLIC ROAD WITHIN THE PLAT OF COLES' FIRST ADDITION TO MARCOLA, AS PLATTED AND RECORDED IN BOOK 3, PAGE 4, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (16-01-18-33)

**I. MOTION:**

TO VACATE A PORTION OF B STREET, A PUBLIC ROAD WITHIN THE PLAT OF COLES' FIRST ADDITION TO MARCOLA, AS PLATTED AND RECORDED IN BOOK 3, PAGE 4, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (16-01-18-33)

**II. ISSUE:**

To decide whether a portion of B Street, a public road having a legal right-of-way width of 40 feet, should be vacated as petitioned for. The portion proposed to be vacated is approximately 100 feet in length.

**III. DISCUSSION:**

**A. Background:**

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Jack and Elaine Marsh, and Brad and Suzanne Hallford, owners of 100% of the property abutting the proposed vacation of a portion of B Street. The petitioners are requesting the vacation, by the authority of ORS 368.351, without a public hearing.

The purpose of this vacation request is to incorporate the vacated right-of-way into the petitioners' properties. Vacation of this portion of B Street will allow for more full utilization of petitioners' properties. The circumstances of this vacation request are similar to a vacation of a portion of Pine Street in the Amended Plat of El Carmel Addition to Glenada that was approved by the Board of Commissioners in 2003 (Order No. 03-10-29-11). That vacation allowed the petitioners, who were the owners of 100% of the property adjoining the vacation, to gain some marginal use of vacated right-of-way in order to be able to improve their property

and still be within Lane County Planning requirements. Another similarity between that approved vacation of a portion of Pine Street and this request for the vacation of a portion of B Street is that in each case the portions of rights-of-way to be vacated dead end at the petitioners' properties.

This portion of B Street was established as a public road in 1907 with a width of 40 feet in the Plat of Coles' First Addition to Marcola as recorded in Book 3, Page 4, Lane County, Oregon Plat Records. Unnamed on the original plat, the road subsequently became known as B Street. The portion proposed to be vacated is approximately 100 feet long. The westerly terminus of B Street as originally established, which is also the westerly terminus of this proposed vacation, is at the original easterly right-of-way of the Southern Pacific Railroad, since abandoned and incorporated into Mohawk Country Living Phase II subdivision as platted and recorded in File 75, Slide 962, Lane County, Oregon Plat Records. A nearby portion of B Street was established as County Road #2209 in 1982 by Order #82-8-18-5, said portion running from Carson Street westerly to approximately 27.5' east of the easterly terminus of this proposed vacation, thus the portion to be vacated is public road, but not a County Road.

The Surveyor's Office notified Qwest Communications, Emerald People's Utility District, 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 and other nearby property owners regarding the vacation. Qwest responded to the notice, stating they have facilities in the area and requested that their rights be retained. The other agencies and landowners either had no objections to the vacation or did not respond to the referral.

B. Analysis:

The vacation of this portion of B Street will have no adverse effects on transportation patterns in the area, and the portion to be vacated is not needed by the Lane County Transportation system. No property will be denied legal access by this vacation.

The public interest will be served, as vacating this portion of B Street will provide for more full utilization of petitioners' properties. This vacation has similarities to the vacation recommended and approved in 2003 for a portion of Pine Street in the Amended Plat of El Carmel Addition to Glenada, as described above (see A. Background).

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Approve the vacation of a portion of B Street, as petitioned for.
2. Deny the vacation of a portion of B Street, 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 B Street, as petitioned for. The vacation is in the

public's interest, as vacating this portion of B Street will provide for more full utilization of petitioners' properties, while having no adverse effects on transportation patterns in the area.

It is further recommended that an easement be retained for existing public utilities.

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 the vacation 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 - Vicinity Map

Contact Person: Bill Robinson x4198

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

**IN THE MATTER OF VACATING A PORTION OF B STREET, )  
A PUBLIC ROAD WITHIN THE PLAT OF COLES' FIRST )  
ADDITION TO MARCOLA, AS PLATTED AND RECORDED ) ORDER NO.  
IN BOOK 3, PAGE 4, LANE COUNTY, OREGON PLAT )  
RECORDS, WITHOUT A PUBLIC HEARING, AND )  
ADOPTING FINDINGS OF FACT )  
(16-01-18-33) )**

**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 B Street, a public road, more particularly described as follows:

All that portion of B Street lying westerly of the northerly extension of the westerly line of the easterly 12.5 feet of Lot 3, Block 10 in the Plat of Coles' First Addition to Marcola, Oregon as platted and recorded in Book 3, Page 4, Lane County, Oregon Plat Records, all in the Southwest One Quarter of the Southwest One Quarter (SW1/4 SW1/4) of Section 18, Township 16 South, Range 1 West of the Willamette Meridian, Lane County, Oregon; 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 rights-of-way without a public hearing; and

**WHEREAS**, the petitioners are requesting the vacation of this portion of road in order to incorporate the vacated right-of-way into their properties, which will provide for more full utilization of their properties; and

**WHEREAS**, this portion of B Street is not within any incorporated city limits; and

**WHEREAS**, Qwest Communications, Emerald People's Utility District, 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 and other nearby landowners were notified by mail regarding the proposed vacation; and

**WHEREAS**, Qwest responded to the notice, stating they have facilities in the area and requested that their rights be retained; and

**WHEREAS**, the other agencies and landowners either had no objections or did not reply to the referral; and

**WHEREAS**, the petitioner has paid a vacation fee of \$650 and will pay recording fees upon final approval of the vacation; and

**WHEREAS**, no property will be denied access to a public road by this 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 B Street, a public road, is hereby vacated; and it is further

**ORDERED**, that an easement is hereby retained for any and all existing public utilities to preserve, maintain, repair, replace, remove or reinstall any public utility that may now exist within the bounds of the portion of B Street herein described by these proceedings as 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 \_\_\_\_\_, 2005.

\_\_\_\_\_  
Anna Morrison      Chair  
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Vicinity Map

4-7-05  
*[Handwritten signature]*

Section 18, T. 16 S. R. 1 W., W.M.  
LANE COUNTY  
NO SCALE



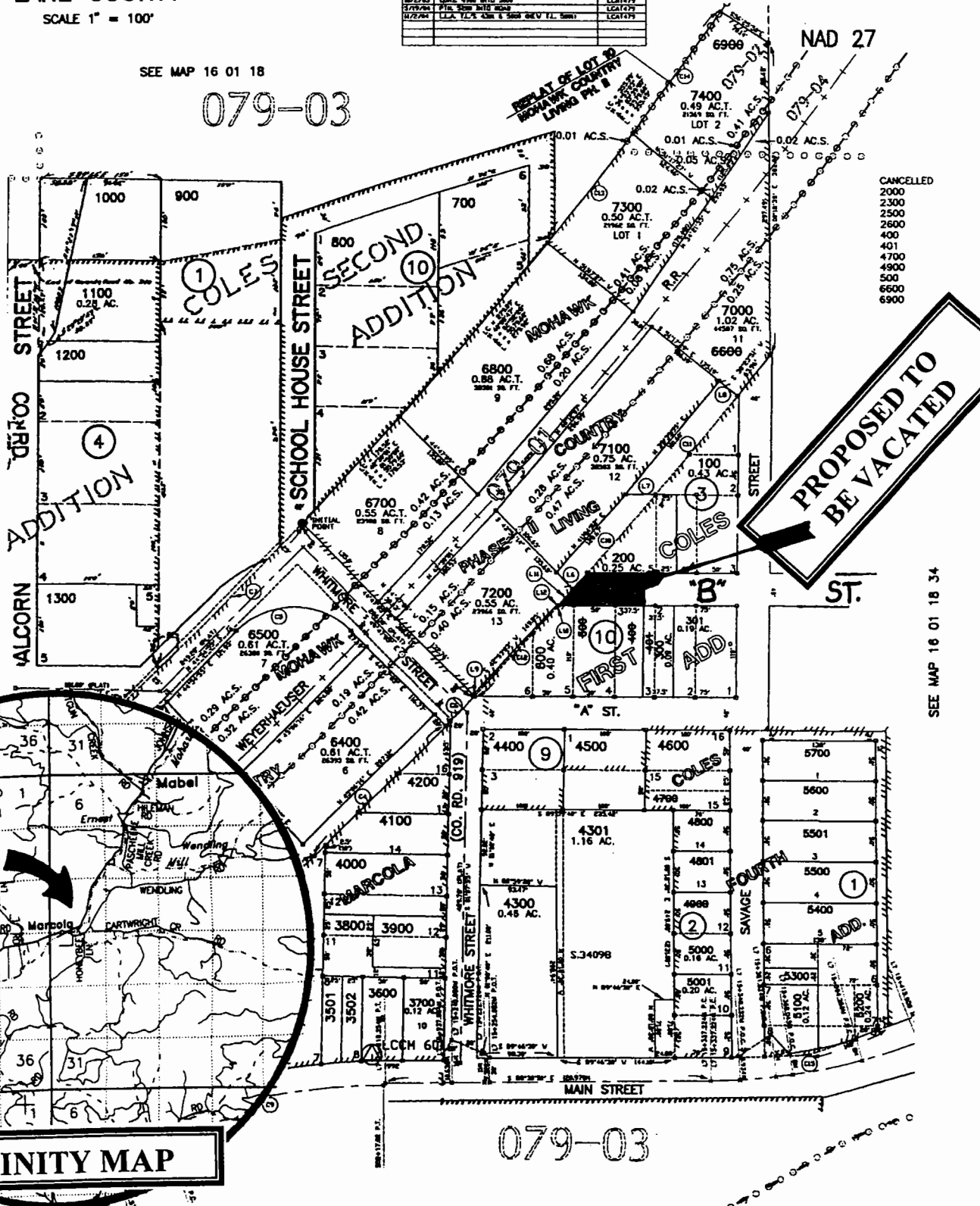
SW $\frac{1}{4}$ SW $\frac{1}{4}$  SEC. 18 T. 16 S. R. 1 W. W.M.  
LANE COUNTY  
SCALE 1" = 100'

DATE	REVISION	EMPLOYEE
5/27/87	PREP. PLAN. 4388 & SUB. INTO ROAD	LEATHY
7/23/87	PREP. SUB. INTO ROAD	LEATHY
8/23/87	SETUP PROPERTY & CANCELLAS MAPS	LEATHY
9/15/87	CONF. PLAN INTO SUB.	LEATHY
11/17/87	PREP. SUB. INTO ROAD	LEATHY
1/27/88	PLA. T.L.C. 4388 & SUB. DEV. T.L. SUB.	LEATHY

16 01 18 33

SEE MAP 16 01 18

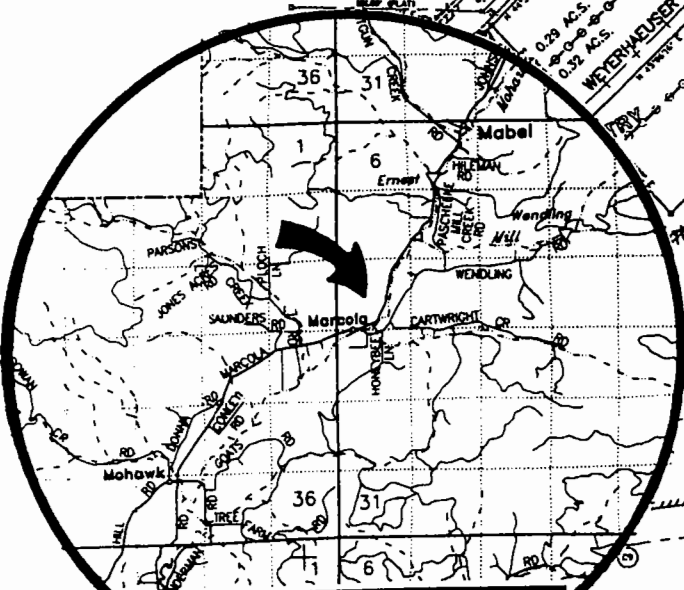
079-03



- CANCELLED
- 2000
- 2300
- 2500
- 2600
- 400
- 401
- 4700
- 4900
- 500
- 6600
- 6900

**PROPOSED TO BE VACATED**

SEE MAP 16 01 18 34



**VICINITY MAP**

079-03

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

<b>IN THE MATTER OF VACATING A PORTION OF B</b>	)	
<b>STREET, A PUBLIC ROAD WITHIN THE PLAT OF</b>	)	
<b>COLES' FIRST ADDITION TO MARCOLA, AS PLATTED</b>	)	<b>DIRECTOR'S</b>
<b>AND RECORDED IN BOOK 3, PAGE 4, LANE COUNTY,</b>	)	<b>REPORT</b>
<b>OREGON PLAT RECORDS, WITHOUT A PUBLIC</b>	)	
<b>HEARING, AND ADOPTING FINDINGS OF FACT</b>	)	
<b>(16-01-18-33)</b>	)	

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Jack and Elaine Marsh, and Brad and Suzanne Hallford, owners of 100% of the property abutting the proposed vacation of a portion of B Street requesting, by the authority of ORS 368.351, a vacation without a public hearing.

The petitioners are requesting this vacation in order to incorporate the vacated right-of-way into their properties. Vacation of this portion of B Street will allow for more full utilization of petitioners' properties.

This portion of B Street was established as a public road in 1907 with a width of 40 feet in the Plat of Coles' First Addition to Marcola as recorded in Book 3, Page 4, Lane County, Oregon Plat Records. Unnamed on the original plat, the road subsequently became known as B Street. The portion proposed to be vacated is approximately 100 feet long. The westerly terminus of B Street as originally established, which is also the westerly terminus of this proposed vacation, is at the original easterly right-of-way of the Southern Pacific Railroad, since abandoned and incorporated into Mohawk Country Living Phase II subdivision as platted and recorded in File 75, Slide 962, Lane County, Oregon Plat Records. A nearby portion of B Street was established as County Road #2209 in 1982 by Order #82-8-18-5, said portion running from Carson Street westerly to approximately 27.5' east of the easterly terminus of this proposed vacation, thus the portion to be vacated is public road, but not a County Road.

The Surveyor's Office notified Qwest Communications, Emerald People's Utility District, 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 and other nearby property owners regarding the vacation. Qwest responded to the notice, stating they have facilities in the area and requested that their rights be retained. The other agencies and landowners either had no objections to the vacation or did not respond to the referral.

The portion of B Street proposed to be vacated, having a length of approximately 100 feet, is no longer needed by the Lane County transportation system. The circumstances of this vacation request are similar to a vacation of a portion of Pine Street in the Amended Plat of El Carmel

Addition to Glenada that was approved by the Board of Commissioners in 2003 (Order No. 03-10-29-11). That vacation allowed the petitioners, who were the owners of 100% of the property adjoining the vacation, to gain some marginal use of vacated right-of-way in order to be able to improve their property and still be within Lane County Planning requirements. Another similarity between that approved vacation of a portion of Pine Street and this request for the vacation of a portion of B Street is that in each case the portions of rights-of-way to be vacated dead end at the petitioners' properties.

It is concluded that this vacation is in the public's interest, as vacating this portion of B Street will provide for more full utilization of petitioners' properties, while having no adverse effects on transportation patterns in the area. No property will be denied legal access by this vacation. An easement for existing public utilities will be retained.

It is therefore recommended that the portion of B Street, 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 6<sup>th</sup> day of September, 2005.

  
Oliver P. Snowden, Public Works Director



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

IN THE MATTER OF VACATING A PORTION OF B )  
STREET, A PUBLIC ROAD WITHIN THE PLAT OF )  
COLES' FIRST ADDITION TO MARCOLA, AS ) FINDINGS OF FACT  
PLATTED AND RECORDED IN BOOK 3, PAGE 4, LANE )  
COUNTY, OREGON PLAT RECORDS, WITHOUT A )  
PUBLIC HEARING, AND ADOPTING FINDINGS OF )  
FACT (16-01-18-33) )

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 B Street, a public road, as described in the Order, be vacated as petitioned for. The petitioners are requesting this vacation in order to incorporate the vacated right-of-way into their properties. Vacation of this portion of B Street will allow for more full utilization of petitioners' properties.

**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. 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 Lots 200, 600 and 7200 of Assessor's Map 16-01-18-33.

2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or rights-of-way based upon the determination that the vacation is "in the public interest".
3. That, this portion of B Street was established as a public road in 1907 with a width of 40 feet in the Plat of Coles' First Addition to Marcola as recorded in Book 3, Page 4, Lane County, Oregon Plat Records. Unnamed on the original plat, the road subsequently became known as B Street. The portion proposed to be vacated is approximately 100 feet long. The westerly terminus of B Street as originally established, which is also the westerly terminus of this proposed vacation, is at the original easterly right-of-way of the Southern Pacific Railroad, since abandoned and incorporated into Mohawk Country Living Phase II subdivision as platted and recorded in File 75, Slide 962, Lane County, Oregon Plat Records. A nearby portion of B Street was established as County Road #2209 in 1982 by Order #82-8-18-5, said portion running from Carson Street westerly to approximately 27.5' east of the easterly terminus of this proposed vacation, thus the portion to be vacated is public road, but not a County Road.
4. That, Qwest Communications, Emerald People's Utility District, 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 and other nearby property owners were notified regarding the vacation. Qwest responded to the notice, stating they have facilities in the area and requested that their rights be retained. The other agencies and landowners either had no objections to the vacation or did not respond to the referral.
5. That, this vacation will not deny any property legal 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.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

File No.

IN THE MATTER OF THE VACATING A PORTION )  
 OF B STREET, A PUBLIC ROAD WITHIN THE PLAT )  
 OF COLES' FIRST ADDITION TO MARCOLA, AS ) PETITION TO VACATE  
 PLATTED AND RECORDED IN BOOK 3, PAGE 4, )  
 LANE COUNTY, OREGON PLAT RECORDS (16-01-18-33) )

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Jack E. Marsh and Elaine M. Marsh, husband and wife, and Brad Hallford and Suzanne Hallford, husband and wife, as owners of the adjacent real property hereby petition for the vacation of a portion of B Street, which area to be vacated is described as follows:

"All that portion of B Street lying westerly of the northerly extension of the westerly line of the easterly 12.5 feet of Lot 3, Block 10 in the Plat of Coles' First Edition to Marcola, Oregon, as platted and recorded in Book 3, Page 4, of the Lane County, Oregon Plat Records, all in the Southwest One Quarter of the Southwest One Quarter (SW1/4 SW1/4) of Section 18, Township 16 South, Range 1 West of the Willamette Meridian, Lane County, Oregon."

**WHEREAS**, the undersigned petitioners are the owners of 100% of all the real property adjacent to the above described area to be vacated; and

**WHEREAS**, petitioners allege as follows:

1. The purpose of this vacation request is to add to our real properties.
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 ..... ; 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 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 8 day of Aug, 2005

PETITIONERS:

Jack E. Marsh  
Elaine M. Marsh

Jack E. & Elaine M. Marsh  
Map# 16 01 18 33 0600  
Addr: 38101 A Street  
Marcola, Oregon 97454

Budley Hallford  
Suzanne Hallford

Brad and Suzanne Hallford  
Map# 16 01 18 33 200  
Addr: 38103 B Street  
Marcola, Oregon 97454

State of Oregon)  
County of Lane ) ss.

On Aug, 8, 2005, personally appeared the above named Jack Marsh and Elaine Marsh and Budley Hallford and Suzanne Hallford and acknowledged the foregoing instrument to be a voluntary act before me:

Keli Stone  
Notary Public for Oregon  
My Commission Expires: 4-21-2009

