

W.7.C-

Memorandum Date: September 26, 2006
Order Date: October 25, 2006

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division

PRESENTED BY: Bill Robinson, Lane County Surveyor

AGENDA ITEM TITLE: IN THE MATTER OF THE VACATION OF A PORTION OF BROWN ROAD (CO. RD. #1196), LOCATED IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 6, TOWNSHIP 19 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (19-01-06)

I. MOTION

TO VACATE A PORTION OF BROWN ROAD (CO. RD. #1196), LOCATED IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 6, TOWNSHIP 19 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON (19-01-06)

II. AGENDA ITEM SUMMARY

The Board is being asked to approve the vacation of a portion of Brown Road (Co. Rd. #1196), being 50 feet in length and having a right of way width of 60 feet.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Lawanna E. Swan, the landowner of 100% of the property abutting the proposed vacation of Brown Road.

The petitioner is requesting this vacation in order to establish a larger setback and provide a larger yard area in which to establish vegetation and landscaping structures that will provide a buffer from the end of this dead-end road. As disclosed in the petition, petitioner is in the process of doing two property line adjustments, one of which will be between tax lots 300 and 400 with the intent of selling parcel 400. The other adjustment will be between tax lots 300 and 3400 with the intent of combining all farm improvements within parcel 300 and selling parcel 3400. Petitioner further asserts there are utilities located within the area to be vacated.

Brown Road was originally established as Co. Rd. #1196 in 1941 with a width of 40 feet. It began at a point on the northerly right of way line of the old Willamette Highway

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

FILE NO. 4141

IN THE MATTER OF THE VACATION OF A PORTION OF)	
BROWN ROAD (CO. RD. #1196), LOCATED IN THE)	
SOUTHEAST QUARTER (SE 1/4) OF SECTION 6,)	ORDER NO.
TOWNSHIP 19 SOUTH, RANGE 1 WEST OF THE)	
WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON,)	
WITHOUT A PUBLIC HEARING, AND ADOPTING)	
FINDINGS OF FACT (19-01-06))	

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 Brown Road, Co. Rd. #1196, more particularly described as follows:

Beginning at a point on the north line of the W.H. Fisher Donation Land Claim No. 38, Township 19 South, Range 1 West of the Willamette Meridian, said point being S89°23'00"E a distance of 993.23 feet from the Northwest corner of said DLC No. 38, thence N00°27'00"E a distance of 29.50 feet to a point on the northerly right of way of County Road No. 1196 (Brown Road), thence S89°23'00"E a distance of 50.00 feet to the easterly terminus of said Brown Road, thence S00°27'00"W along said easterly terminus a distance of 60.00 feet, thence N89°23'00"W a distance of 50.00 feet, thence N00°27'00"E a distance of 30.50 feet to the point of beginning, all in the Southeast One Quarter (SE1/4) of Section 6, Township 19 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 primary petitioners are requesting the vacation of this portion of road in order to establish a larger setback and provide a larger yard area in which to establish vegetation and landscaping structures that will provide a buffer from the end of this dead-end road; and

WHEREAS, petitioner is in the process of doing two property line adjustments, one of which will be between tax lots 300 and 400 with the intent of selling parcel 400, and the other adjustment will be between tax lots 300 and 3400 with the intent of combining all farm improvements within parcel 300 and selling parcel 3400; and

WHEREAS, this portion of roadway is not within any incorporated city limits; 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 the adjacent and other nearby landowners were notified by mail regarding the proposed vacation and either had no objection to the vacation or did not respond to the referral; and

WHEREAS, Qwest Corporation responded to the referral stating they have facilities in the area of vacation, and requested that their rights be retained. An easement will be retained in this Order to Vacate to satisfy their request; and

WHEREAS, the petitioners have 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 Brown Road, County Road Number 1196, 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 Brown Road 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 _____, 2006.

Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Attachment "A"-Vicinity Map

10-17-06
[Handwritten signature]

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

File No. 4141

IN THE MATTER OF THE VACATION OF A PORTION)	
OF BROWN ROAD IN SECTION 6, TOWNSHIP 19 SOUTH,)	
RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN)	PETITION TO VACATE
LANE COUNTY, OREGON)	

IN ACCORDANCE WITH the procedures set forth in ORS Chapter 368, the undersigned Lawanna E. Swan, as the sole owner of the adjacent real property, hereby petitions the Lane County Board of Commissioners for the vacation of a portion of County Road Number 1196 (Brown Road), which area to be vacated is described as follows:

BEGINNING AT A POINT ON THE NORTH LINE OF THE W.H.FISHER DONATION LAND CLAIM NO. 38, TOWNSHIP 19 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, SAID POINT BEING S89°23'00"E A DISTANCE OF 993.23 FEET FROM THE NORTHWEST CORNER OF SAID DLC NO. 38, THENCE N00°27'00"E A DISTANCE OF 29.50 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF COUNTY ROAD NO. 1196 (BROWN ROAD), THENCE S89°23'00"E A DISTANCE OF 50.00 FEET TO THE EASTERLY TERMINUS OF SAID BROWN ROAD, THENCE S00°27'00"W ALONG SAID EASTERLY TERMINUS A DISTANCE OF 60.00 FEET, THENCE N89°23'00"W A DISTANCE OF 50.00 FEET, THENCE N00°27'00"E A DISTANCE OF 30.50 FEET TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

IN ADDITION, a map of the area and adjoining tax lots is attached to this petition as a visual depiction of the above legal description.

WHEREAS, the undersigned petitioner is the owner of 100% of the real property (three tax lots) adjacent to the above-described area to be vacated as of the date of filing of this petition..

WHEREAS, the petitioner, as a Statement of Full Disclosure, is letting it be known that she is in the process of doing two property line adjustments, one between tax lot 300 and the eastern portion of tax lot 3400 for the purpose of having all her farm improvements (implement shed, well, etc.) within tax lot 300, and a second property line adjustment between tax lots 300 and 400 for a similar reason, including for the purpose of selling tax lot 400 and the eastern portion of tax lot 3400 from her farm.

WHEREAS, the portion of the area to be vacated does not affect the planned access to tax lot 400 as proposed to be adjusted (maintaining 35 feet frontage), located to the north of Brown Road.

ORIGINAL

DATED this 30 day of August, 2006.

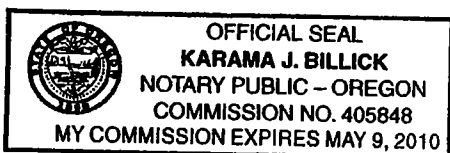
PETITIONER:

Lawanna E. Swan

Lawanna E. Swan
(Map 19-01-06, Tax Lot 300, 400, and 3400)
84020 Brown Road
Dexter, OR 97431

State of Oregon)
County of Lane) ss

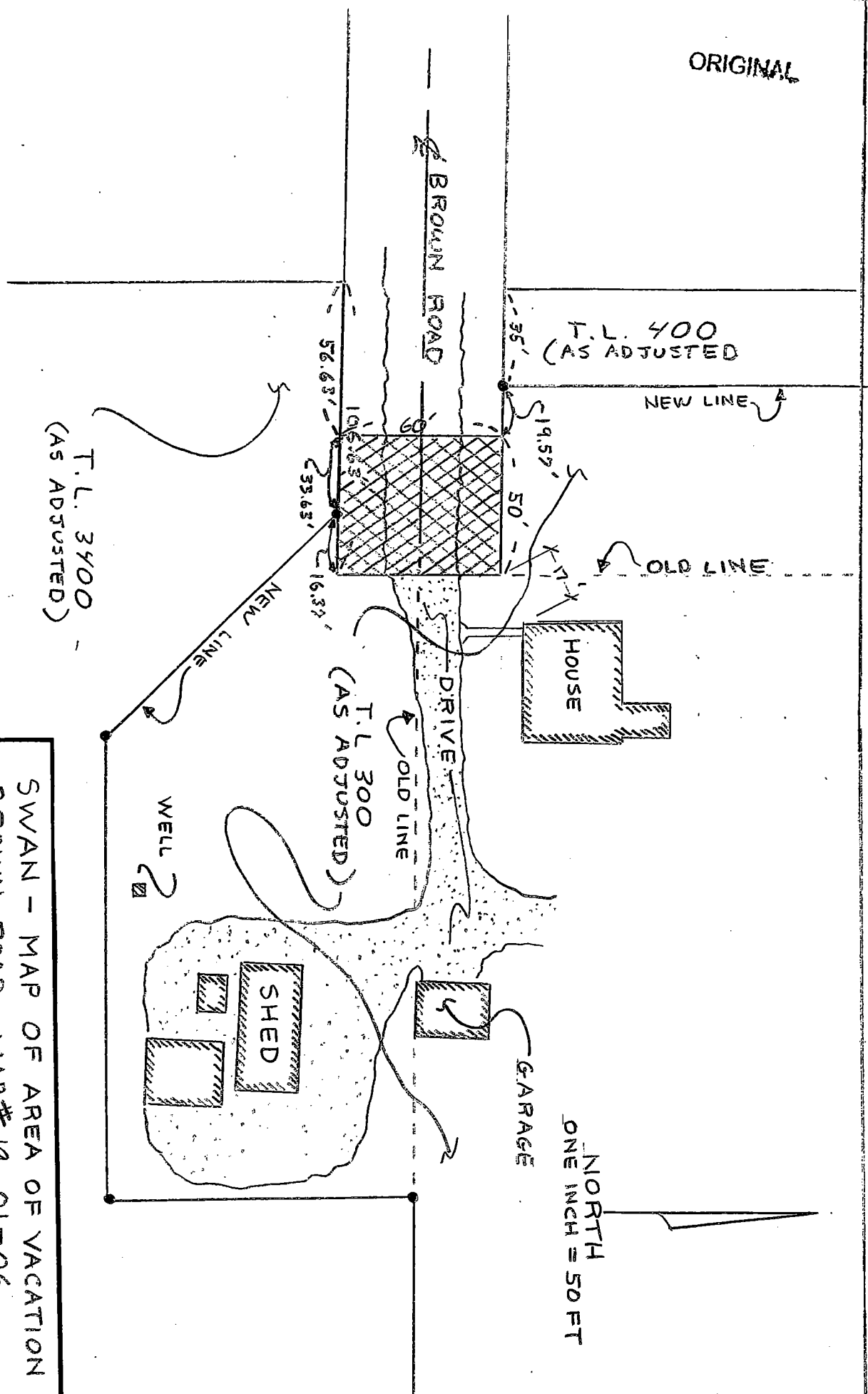
On August 30, 2006, 2006, personally appeared the above-named Lawanna E. Swan and acknowledged the foregoing instrument (Petition to Vacate) to be her voluntary act.



Karama J. Billick
Notary Public for Oregon

My Commission Expires May 9, 2010

ORIGINAL



NEW PROPERTY CORNERS

AREA TO BE VACATED
CENTER LINE

SWAN - MAP OF AREA OF VACATION
BROWN ROAD MAP# 19-01-06

SCALE: 1" = 50 FT		APPROVED BY:	
DATE: JULY 24/06		DRAWN BY: L.E.R.	
TRH LAND USE DIVISION		REVISED	
4765 VILLAGE PLAZA LOOP		AUG 8/06	
EUGENE OR 97401		SUITE 201	
LAWANNA E. SWAN		PH 603-1081	
84020 BROWN ROAD, DEXTER-97431		DRAWING NUMBER	
		1 of 1	

EXHIBIT "A"

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

FILE NO. 4141

IN THE MATTER OF THE VACATION OF A)	
PORTION OF BROWN ROAD (CO. RD. #1196),)	
LOCATED IN THE SOUTHEAST QUARTER (SE 1/4))	DIRECTOR'S
OF SECTION 6, TOWNSHIP 19 SOUTH, RANGE 1)	REPORT
WEST OF THE WILLAMETTE MERIDIAN, IN LANE)	
COUNTY, OREGON, WITHOUT A PUBLIC)	
HEARING, AND ADOPTING FINDINGS OF FACT)	
(19-01-06))	

The Surveyor's Office of the Department of Public Works received a valid petition signed by the landowners of 100% of the abutting property to vacate a portion of Brown Road, Co. Rd. #1196. The petitioner is requesting this vacation in order to establish a larger setback and provide a larger yard area in which to establish vegetation and landscaping structures that will provide a buffer from the end of this dead-end road. As disclosed in the petition, petitioner is in the process of doing two property line adjustments, one of which will be between tax lots 300 and 400 with the intent of selling parcel 400. The other adjustment will be between tax lots 300 and 3400 with the intent of combining all farm improvements within parcel 300 and selling parcel 3400. The subject portion of right of way to be vacated is 50 feet in length with a width of 60 feet.

Brown Road was originally established as Co. Rd. #1196 in 1941 with a width of 40 feet. It began at a point on the northerly right of way line of the old Willamette Highway (present day Wheeler Road), ran north 1059.6 feet to near the Northwest corner of the W.H. Fisher Donation Land Claim No. 38, thence ran easterly 1043.6 feet to its terminus. Additional dedications increased the right of way of Brown Road to 60 feet, including a dedication by the petitioner in 1977 recorded in Reel 853, Instrument #7740485, Lane County Office of Deeds and Records. The portion of road requested to be vacated is the easternmost 50 feet at its terminus.

The Surveyor's Office 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 and nearby property owners regarding the vacation. Qwest Corporation responded to the referral stating they have facilities in the area of vacation, and requested that their rights be retained. An easement will be retained in the Order to Vacate to satisfy their request. The other agencies and landowners either had no objection to the vacation or did not respond to the referral.

EXHIBIT "A"

The vacation of this portion of Brown Road 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 and not prejudiced, as vacating this portion of Brown Road will provide for more full utilization of petitioner's property, while adding a marginal portion of land to the tax rolls. It will also reduce the County's total road maintenance inventory mileage.

It is therefore recommended that this portion of Brown 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 17th day of OCTOBER, 2006

For William D. Robinson
Oliver P. Snowden, Director
Department of Public Works

EXHIBIT "B"

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

FILE NO. 4141

IN THE MATTER OF THE VACATION OF A PORTION OF)	
BROWN ROAD (CO. RD. #1196), LOCATED IN THE)	FINDINGS OF FACT
SOUTHEAST QUARTER (SE 1/4) OF SECTION 6, TOWNSHIP)	
19 SOUTH, RANGE 1 WEST OF THE WILLAMETTE)	
MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A)	
PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT)	
(19-01-06))	

The Department of Public Works has received a valid petition signed by the landowners of 100% of the abutting property to vacate a portion of Brown Road, Co. Rd. #1196. The petitioner is requesting this vacation in order to establish a larger setback and provide a larger yard area in which to establish vegetation and landscaping structures that will provide a buffer from the end of this dead-end road. As disclosed in the petition, petitioner is in the process of doing two property line adjustments, one of which will be between tax lots 300 and 400 with the intent of selling parcel 400. The other adjustment will be between tax lots 300 and 3400 with the intent of combining all farm improvements within parcel 300 and selling parcel 3400. The subject portion of right of way to be vacated is 50 feet in length with a width of 60 feet.

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 public roads or easements 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 re-acknowledged 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)

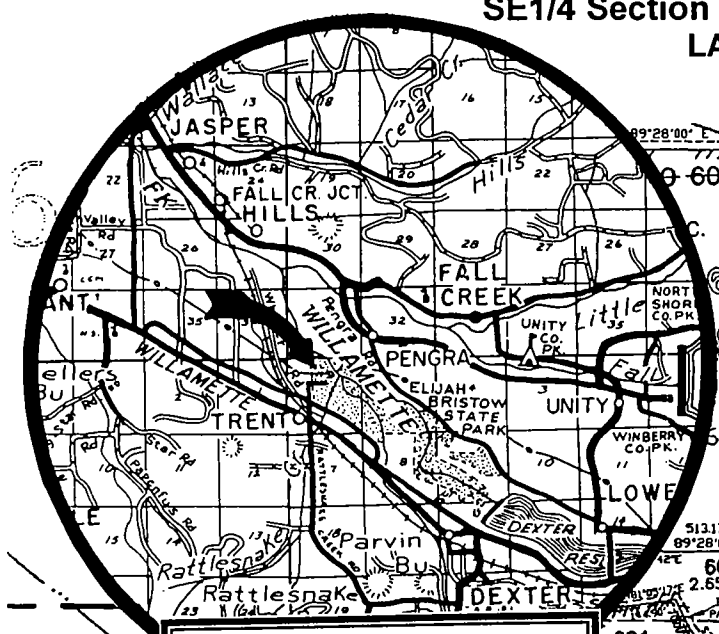
The Board takes notice and finds as follows:

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 Lots 300, 400 and 3400 of Assessor's Map 19-01-06.
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, Brown Road was originally established as Co. Rd. #1196 in 1941 with a width of 40 feet. It began at a point on the northerly right of way line of the old Willamette Highway (present day Wheeler Road), ran north 1059.6 feet to near the Northwest corner of the W.H. Fisher Donation Land Claim No. 38, thence ran easterly 1043.6 feet to its terminus. Additional dedications increased the right of way of Brown Road to 60 feet, including a dedication by the petitioner in 1977 recorded in Reel 853, Instrument #7740485, Lane County Office of Deeds and Records. The portion of road requested to be vacated is the easternmost 50 feet at its terminus.
4. That, the Surveyor's Office 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 and nearby property owners regarding the vacation. Qwest Corporation responded stating they have facilities in the area of vacation, and requested that their rights be retained. An easement will be retained in the Order to Vacate to satisfy their request. The other agencies and landowners either had no objection 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.

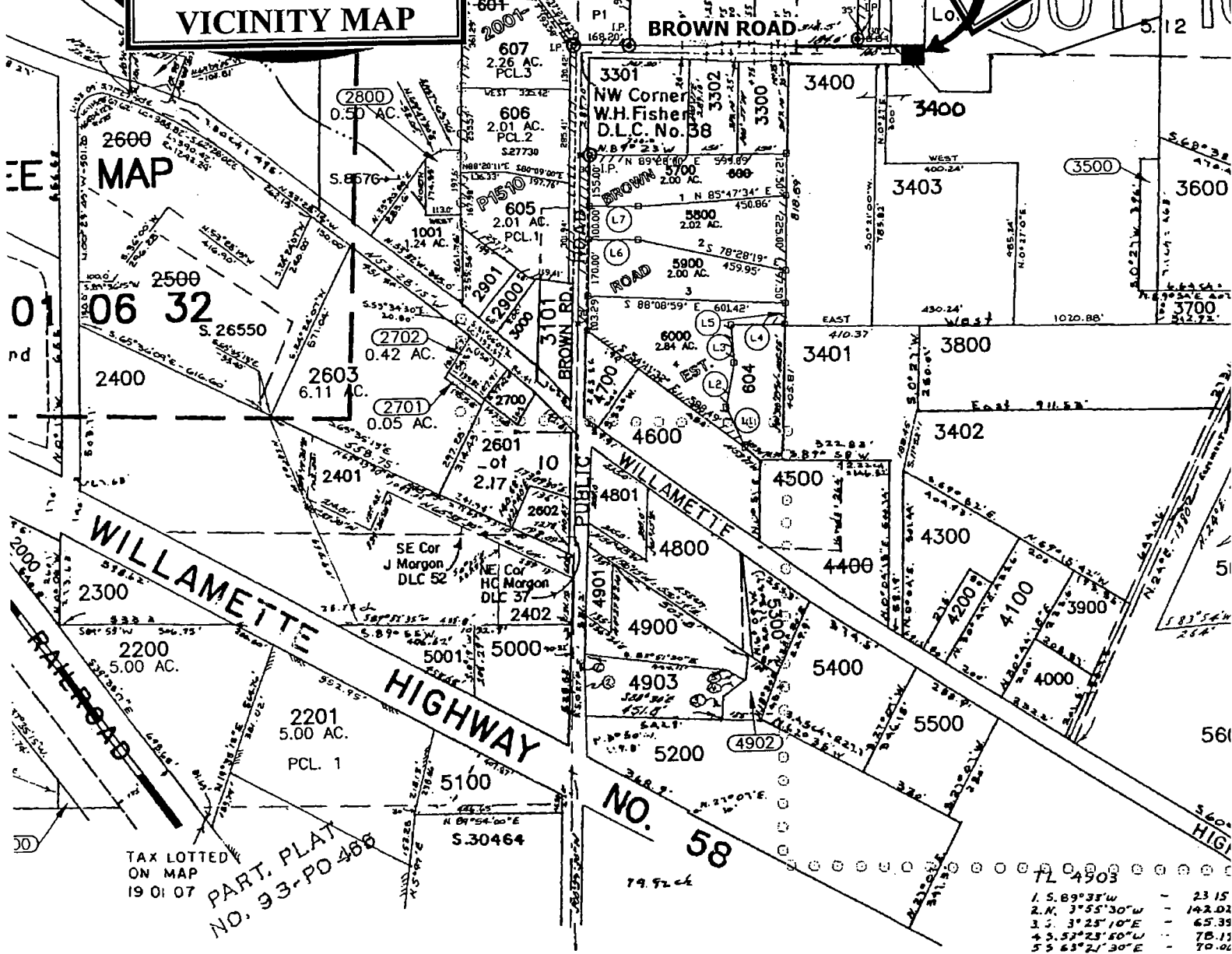
Conclusions of Law (Impacts and Process of Vacation)

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.

SE1/4 Section 6, T. 19 S. R. 1 W., W.M.
LANE COUNTY
NO SCALE



VICINITY MAP



WHEREAS, the portion of the area to be vacated does not affect the planned access to the eastern portion of tax lot 3400, located to the south of Brown Road. Eastern tax lot 3400 has a frontage of 90.26 feet adjoining Brown Road, as described in a Declaration of Property Line adjustment Deed recorded July 17, 2006, Reception Number 2006-049723, Lane County, Oregon Deed Records. The proposed vacation only affects approximately 33.63 feet of this frontage dimension, leaving SOME 56.63 feet for access. The future buyer (of a pending sale) of tax lot 3400 was made aware of the request to vacate Brown Road for 33.63 feet of the easternmost frontage. This buyer, to the extent the sale closes, acknowledges the above and the desire that the south half of the County road right-of-way is to revert to tax lot 300 (petitioner). In the event the south half of the County road right-of-way is directed to revert to tax lot 3400, a Quit Claim Deed for said portion of right-of-way will be executed to place petitioner in title to said portion of vacated right-of-way.

WHEREAS, the petitioner asserts as follows:

1. The purpose of this vacation is to
 - Re-establish a larger setback, eliminating the 17-foot building setback.
 - Provide a larger yard for the use of the petitioner, including planting of landscaping screening, trees, and possible development of trellises, gazebo, etc.
2. There is only an underground telephone line (utility) serving the petitioner's home. This line is located along the edge of pavement within the larger road area to be vacated, and the disposition will be to provide, to the extent required, the necessary easement for all existing private utilities, to the extent they exist, in conjunction with this vacation.
3. The attached photos of the subject site help explain what is represented above.

WHEREAS, no portion of the road area to be vacated is located within the boundaries or urban growth boundary jurisdiction of any incorporated city or town.

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

WHEREAS, the petitioner has no objection to Lane County proceeding under the authority of ORS Chapter 368.326, with or without a hearing.

NOW THEREFORE, the petitioner requests the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above-described portion of Brown Road, with or without a hearing, pursuant to ORS Chapter 368.
2. Upon review of this matter in facts and evidence, to order the vacation of the above-described portion of road, and:
 - Direct title to the vacation area revert and vest in accordance with ORS 368.366.