


W. L. D.

ORIGINAL

Memorandum Date: August 4, 2008
Order Date: August 20, 2008

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division

PRESENTED BY: D. Michael Jackson, Lane County Surveyor 

AGENDA ITEM TITLE: IN THE MATTER OF LEGALIZING A PORTION OF BARRETT CREEK LANE, LOCATED IN THE NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER (NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH, RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND ADOPTING FINDINGS OF FACT (18-12-34-42)

I. MOTION

TO APPROVE THE FINAL ORDER LEGALIZING A PORTION OF BARRETT CREEK LANE, BEING LOCATED IN THE NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER (NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH, RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND ADOPTING FINDINGS OF FACT.

II. AGENDA ITEM SUMMARY

The board is being asked to approve the legalization of a portion of Barrett Creek Lane, being 550 feet in length, and having a right of way width of 20 feet, as said road is constructed and traveled.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The portion of Barrett Creek Lane proposed for legalization is located in the Glenada area southwest of the City of Florence, south of the Hwy 101 bridge over the Siuslaw River and west of Hwy 101, and runs from the westerly right of way of Old Ferry Road westerly 550 feet to the easterly right of way of Cherry Street. Aerial photos indicate Barrett Creek Lane's present geographical location closely matches its location as early as 1953. Barrett Creek Lane has historically been used as access for various improved and unimproved parcels which were originally established in the plats of Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13), as platted and recorded in the Lane County, Oregon Plat Records.

Recent vacations (Board of Commissioners Orders 07-4-4-12 and 07-11-20-11) affecting the plats and rights of way of Colter's Addition to Glenada (Bk. 4, Page 84), the Amended Plat of Colter's Addition to Glenada (Bk. 6, P. 25), Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13) raised public comment regarding the status of Barrett Creek Lane. Questions have long existed as to the status and exact location of Barrett Creek Lane as traveled. No dedications for public right of way or acceptance by Lane County as public or county road have been found for Barrett Creek Lane.

In a letter dated November 30, 2007 Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road.

Board of Commissioners Order 08-1-8-5 authorized the use of County Road Funds to pursue legalization of Barrett Creek Lane.

The matter of legalizing the road was brought before the Board of Commissioners on June 25, 2008 and the Board approved Resolution and Order Number 08-6-25-17, setting a public hearing date of August 20, 2008.

A certified mailing regarding the public hearing was sent to landowners who have property along the road and notice of the hearing was posted in accordance with ORS 368.206 and 368.401 to 368.426. Lane County Transportation Planning submitted comments in response to the notification of this action, and those comments are included with the Final Order as Attachment "B". Frank Suniga, owner of tax lots 100 and 1400 of Assessor's Map 18-12-34-13, called the Surveyor's Office in response to the posting to express his support of the Legalization.

In accordance with ORS 368.221, a right of way width of 20 feet was chosen in order to minimize the impact upon existing property and improvements. A centerline description of the portion of road to be legalized, including right of way width, is attached to and made a part of the Final Order as Exhibit "A".

B. Policy Issues

ORS 368.201 to ORS 368.221 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.

In the legalization proceedings any person may file information that may controvert any matter presented as a part of these proceedings.

C. Board Goals

One of the goals listed in Lane County's Strategic Plan is to contribute to appropriate community development in the area of transportation. The legalization of this road would be of public utility and a benefit to the public.

D. Financial and/or Resource Considerations

Legalization of this portion of Barrett Creek Lane as a County Road would result in potential maintenance costs to Lane County.

IV. ANALYSIS

Uncertainties and controversy among landowners regarding the status of Barrett Creek Lane and its location in relation to adjacent properties have long existed. No dedications for public right of way or acceptance by Lane County as public or county road have been found for Barrett Creek

Lane. Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, have denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road. The Board has authorized the use of County Road Funds to pursue legalization of Barrett Creek Lane.

The legalization of this road would be of public utility and benefit by assuring that the public and Lane County continue to have legal access to a portion of road that has historically been used by the public.

The legalization documents include the Final Order, and the centerline description of the surveyed alignment, including right of way width, which is attached to the Final Order as Exhibit "A". The Director's Report, as required by these proceedings, is attached to the Final Order as Exhibit "B". Findings of Fact have been prepared and are included as Exhibit "C" attached to the Final Order. Based upon said Findings of Fact, this legalization will have no predictable negative impact on present or future land use, either in terms of allowable uses or actual development.

Upon approval of the Final Order legalizing this road, a final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.206. The survey, including the alignment and monumentation, will be conducted and filed for public record in the County Surveyor's Office in accordance with ORS 209.250.

V. ALTERNATIVES/OPTIONS

The Board of County Commissioners, upon determination that the legalization of the road is in the public interest, has the option to:

1. Approve the Final Order to legalize the portion of Barrett Creek Lane as proposed, with a right of way width of 20 feet.
2. Not approve the Final Order, and discontinue these proceedings.
3. Continue the matter for further consideration.

VI. TIMING/IMPLEMENTATION

Timing of this matter is important in order to complete the legalization process in a timely manner.

VII. RECOMMENDATION

It is recommended that the Board of Commissioners approve Option Number 1. This will legalize the portion of Barrett Creek Lane as described in Exhibit "A" with a right of way width of 20 feet, as proposed and supported by the Public Works Director who has provided a Director's Final Report attached to the Final Order as Exhibit "B".

VIII. IMPLEMENTATION/FOLLOW-UP

If the Board of County Commissioners approves the Final Order legalizing Barrett Creek Lane, the Final Order and related attachments are to be forwarded to the Lane County Clerk for filing, indexing and entry into the Commissioner's Journal of Administration, after which copies are to be

forwarded to the County Surveyor and County Assessor for updating appropriate records. The Public Works Director and County Surveyor will index and maintain a legal county road file and road survey for public record as required by ORS 368 and 209. The final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.206. The survey, including the alignment and monumentation, will be conducted and filed for public record in the County Surveyor's Office in accordance with ORS 209.250. If the Board decides not to approve the legalization proceedings, an order to deny will be prepared at a later date.

IX. ATTACHMENTS

Final Order w/attachments:

Legal Description - Exhibit "A"

Director's Final Report - Exhibit "B"

Findings of Fact - Exhibit "C"

Affidavit of Posting and Mailing - Exhibit "D"

Site Map - Attachment "A"

Lane County Transportation Planning Comments – Attachment "B"

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

IN THE MATTER OF LEGALIZING A PORTION OF)
BARRETT CREEK LANE, LOCATED IN THE NORTHWEST) FINAL ORDER NO.
ONE QUARTER OF THE SOUTHEAST ONE QUARTER)
(NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH,)
RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND)
ADOPTING FINDINGS OF FACT (18-12-34-42))

THIS MATTER now coming before the Board of County Commissioners for Lane County, Oregon, and the Board through the adoption of the Resolution and Order No. 08-6-25-17 has deemed that it may be in the public interest to legalize a portion of a road, now commonly known as Barrett Creek Lane, said portion being located in the Glenada area southwest of the City of Florence, south of the Hwy 101 bridge over the Siuslaw River and west of Hwy 101, running from the westerly right of way of Old Ferry Road westerly 550 feet to the easterly right of way of Cherry Street, in the Northwest One Quarter of the Southeast One Quarter (NW1/4 SE1/4) of Section 34, Township 18 South, Range 12 West of the Willamette Meridian; and

WHEREAS, Oregon Revised Statutes 368.201 to ORS 368.221 provide for legalization of county roads where any of the following conditions exist: A) Through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; B) The location of a county road cannot be accurately determined; or C) The road used or traveled for 10 or more years does not conform to the location of a road described in the county road records; and

WHEREAS, aerial photos indicate Barrett Creek Lane's present geographical location closely matches its location as early as 1953; and

WHEREAS, the portion of Barrett Creek Lane as described herein has historically been used as access for various improved and unimproved parcels which were originally created in the plats of Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13), as said plats were recorded in the Lane County, Oregon Plat Records; and

WHEREAS, no dedications for public right of way or acceptance by Lane County as public or county road have been found for Barrett Creek Lane; and

WHEREAS, questions have long existed as to the status and exact location of Barrett Creek Lane as traveled; and

WHEREAS, in a letter dated November 30, 2007 Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road; and

WHEREAS, Board of Commissioners Order 08-1-8-5 authorized the use of County Road Funds to pursue legalization of Barrett Creek Lane.

WHEREAS, pursuant to ORS 368.221, the county governing body may legalize a road that is less than the width for roads of the same class established by the standards under ORS 368.036; and

WHEREAS, in accordance with ORS 368.221, a right of way width of 20 feet was chosen in order to minimize the impact upon existing property and improvements; and

WHEREAS, a centerline description of the portion of road to be legalized, including right of way width, is described in Exhibit "A", attached hereto and made a part hereof by this Order; and

WHEREAS, the Lane County Public Works Engineering and Construction Services Division has completed a preliminary survey of the portion of Barrett Creek Lane herein proposed to be legalized, as now constructed and traveled; and

WHEREAS, the Director of the Department of Public Works has prepared a final written report in conformance with ORS 368.206 in support of the legalization of this road, attached hereto and made a part hereof as Exhibit "B"; and

WHEREAS, in support of this action, the Board hereby adopts the Findings of Fact, as set forth in Exhibit "C", attached hereto and made a part hereof by this Order; and

WHEREAS, all necessary procedures for road legalization have been complied with, pursuant to ORS Chapter 368.201 through 368.221, including the giving of notice as evidenced by the Affidavit of Posting and Mailing marked as Exhibit "D", attached hereto, and made a part hereof by this Order; and

WHEREAS, Lane County Transportation Planning submitted comments in response to the notification of this action, and those comments are attached hereto, and made a part of this Order, as Attachment "B"; and

WHEREAS, Frank Suniga, owner of tax lots 100 and 1400 of Assessor's Map 18-12-34-13, called the Surveyor's Office in response to the posting to express his support of the Legalization; and

WHEREAS, no person has come forward and presented a claim for compensation as provided by ORS 368.211; and

WHEREAS, the Board hereby finds that basis for legalization exists in this case, and that the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records, and that this is sufficient to support this decision; and

WHEREAS, the Board being satisfied the legalization of the road will be of public utility and benefit, and will enable the county to assume maintenance of the road; and now therefore, it is hereby

ORDERED, that the above said road, commonly known as Barrett Creek Lane, be hereby legalized as a county road and specifically as County Road Number 2277, having a right-of-way width of 20 feet, the legal description being more particularly described on Exhibit "A" attached hereto and made a part hereof by this Order; and it is further

ORDERED, that the Director of the Lane County Department of Public Works shall cause to have the road surveyed within the limits of these described proceedings, the right of way monumented, and a survey map prepared in accordance with ORS Chapters 209.250 and 368.206; and it is further

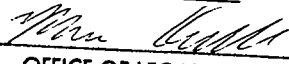
ORDERED, that future county maintenance be limited in scope so as to preserve the rural character of the neighborhood, until such time as a different level of maintenance is deemed appropriate, or necessary by the Public Works Director; and it is further

ORDERED, that this Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration and entered into the Road Index Records administered by the Lane County Department of Public Works and the Lane County Surveyor and that said Order be, and is hereby, final and does operate to legalize said portion of Barrett Creek Lane as County Road Number 2277.

DATED this _____ day of _____, 2008

Chair
Lane County Board of Commissioners

Attachments:
Site Map - Attachment "A"
Lane County Transportation Planning Comments – Attachment "B"

APPROVED AS TO FORM
Date 8-7-08 lane county


OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

BARRETT CREEK LANE

CENTERLINE DESCRIPTION

A strip of land twenty (20) feet in width lying ten (10) feet on each side of the centerline of Barrett Creek Lane, located in Section 34, Township 18 South, Range 12 West of the Willamette Meridian, Lane County, Oregon, as surveyed by Lane County in 2008; the centerline being described as follows:

Beginning at Engineers' Centerline Station L 0+00.00 POB, said station being 2,066.78 feet North and 1,337.17 feet East of the Brass Cap marking the South One-Quarter Corner of Section 34, Township 18 South, Range 12 West of the Willamette Meridian, Lane County, Oregon, said station also being 15.44 feet right of Engineer's Centerline Station 17+82.18 POT of Old Ferry Road, formerly known as the ROOSEVELT COAST HIGHWAY as shown on Oregon State Highway Department Drawing Number 2B23-5 dated February 1930; run thence North 62° 00' 00" West, 79.72 feet; thence on an eighteen (18) degree curve left (the long chord of which bears North 69° 00' 00" West, 77.58 feet) a distance of 77.78 feet; thence North 76° 00' 00" West, 40.79 feet; Thence on a forty (40) degree curve right (the long chord of which bears North 67°00'00" West, 44.82 feet) a distance of 45.00 feet; thence North 58°00'00" West, 47.96 feet; thence on a forty-four (44) degree curve left (the long chord of which bears South 89° 00' 00" West, 141.84 feet) a distance of 150.00 feet; thence South 56° 00' 00" West, 108.75 feet to Engineers' Centerline Station L 5+50.00 POT and there ending, all in Lane County, Oregon.

EXCEPT: That portion lying within the right of way of Old Ferry Road, formerly known as the ROOSEVELT COAST HIGHWAY as shown on Oregon State Highway Department Drawing Number 2B23-5 dated February 1930.

ALSO EXCEPT: That portion lying within the right of way of Cherry Street lying within GLENADA, as platted and recorded in Volume "W", Page 261 and the AMENDED MAP OF SOUTH FLORENCE ADDITION TO GLENADA, as platted and recorded in Book 2, Page 13, Lane County Oregon Plat Records.

The bearings used herein are based on the Oregon Coordinate System (NAD 83/91), South Zone.

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

IN THE MATTER OF LEGALIZING A PORTION OF BARRETT CREEK LANE, LOCATED IN THE NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER (NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH, RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND ADOPTING FINDINGS OF FACT (18-12-34-42))))))))	DIRECTOR'S FINAL REPORT
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ORS 368.201 to ORS 368.216 provides that a county governing body may initiate proceedings to legalize a county road based upon: A) The determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or B) If the location of the road cannot be accurately determined; or, C) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.

The portion of Barrett Creek Lane proposed for legalization is located in the Glenada area southwest of the City of Florence, south of the Hwy 101 bridge over the Siuslaw River and west of Hwy 101, and runs from the westerly right of way of Old Ferry Road westerly 550 feet to the easterly right of way of Cherry Street. Aerial photos indicate Barrett Creek Lane's present geographical location closely matches its location as early as 1953. Barrett Creek Lane has historically been used as access for various improved and unimproved parcels which were originally established in the plats of Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13), as platted and recorded in the Lane County, Oregon Plat Records

Recent vacations (Board of Commissioners Orders 07-4-4-12 and 07-11-20-11) affecting the plats and rights of way of Colter's Addition to Glenada (Bk. 4, Page 84), the Amended Plat of Colter's Addition to Glenada (Bk. 6, P. 25), Glenada (Vol. W, P. 261), the South Florence Addition to Glenada (Bk. 2, P. 9) and the Amended Map of South Florence Addition to Glenada (Bk. 2, P. 13) raised public comment regarding the status of Barrett Creek Lane. Questions have long existed as to the status and exact location of Barrett Creek Lane as traveled. No dedications for public right of way or acceptance by Lane County as public or county road have been found for Barrett Creek Lane.

In a letter dated November 30, 2007 Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road.

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The matter of legalizing the road was brought before the Board of Commissioners on June 25, 2008 and the Board approved Resolution and Order Number 08-6-25-17, setting a public hearing date of August 20, 2008.

A certified mailing regarding the public hearing was sent to landowners who have property along the road and notice of the hearing was posted in accordance with ORS 368.206 and 368.401 to 368.426. Lane County Transportation Planning submitted comments in response to the notification of this action, and those comments are included with the Final Order as Attachment "B". Frank Suniga, owner of tax lots 100 and 1400 of Assessor's Map 18-12-34-13, called the Surveyor's Office in response to the posting to express his support of the Legalization

The legalization of this road would be of public utility and benefit by assuring that the public and Lane County continue to have legal access to a portion of road that has historically been used by the public.

A Final Order to legalize this portion of Barrett Creek Lane with a right of way width of 20 feet has been prepared. In accordance with ORS 368.221, a right of way width of 20 feet was chosen in order to minimize the impact upon existing property and improvements. A legal description based on the road survey of the traveled road has been prepared and is marked Exhibit "A" attached to and made a part of the Final Order. Notice of these proceedings has been provided by mail and posting in accordance with ORS Chapters 368.206 and 368.401 to 368.426.

Upon approval of the Final Order legalizing this road, a final survey of the centerline with monuments set to define the right of way lines of the project will be completed in accordance with ORS 368.206. The survey, including the alignment and monumentation, will be conducted and filed for public record in the County Surveyor's Office in accordance with ORS 209.250. The Final Order and the survey maps will be filed for public record in the County Road files administered by the Public Works Department and the County Surveyor. The Final Order will be filed with the County Clerk and entered into the Commissioners Journal of Administration, and copies of the Final Order will be forwarded to the Surveyor's Office and Assessor's Office for updating appropriate records.

Dated this 5th day of August, 2008.



Director
Department of Public Works

EXHIBIT "C"

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

IN THE MATTER OF LEGALIZING A PORTION OF)	
BARRETT CREEK LANE, LOCATED IN THE NORTHWEST)	
ONE QUARTER OF THE SOUTHEAST ONE QUARTER)	FINDINGS OF FACT
(NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH,)	
RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND)	
ADOPTING FINDINGS OF FACT (18-12-34-42))	

Uncertainties and controversy among landowners regarding the status of Barrett Creek Lane and its location in relation to adjacent properties have long existed. No dedications for public right of way or acceptance by Lane County as public or county road have been found for Barrett Creek Lane. Charles C. Rosecrans, Jr. and Kathleen S. Rosecrans, owners of tax lots 400 and 500 of Assessor's Map 18-12-34-42 over which the road travels in part, have denied Lane County the use of Barrett Creek Lane as it exists on their property, and have also denied other members of the public use of the road. The Board has authorized the use of County Road Funds to pursue legalization of Barrett Creek Lane. There are several properties along this portion of road, as well as the general public and Lane County, that would benefit from its legalization as said road is constructed and traveled.

Findings of Fact

The Board takes notice and finds:

1. That, pursuant to ORS 368.201 through 368.221, a county governing body may initiate proceedings to legalize a county road based upon the determination that through conditions of omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road; or, if the location of the road cannot be accurately determined; or, if the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.
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 legalization of county roads.

EXHIBIT "C"**Conclusion of Law**

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 applicable as they pertain to these legalization proceedings.

Findings of Fact (Impacts and Process of Legalization)

The Board takes notice and finds as follows:

1. That, the legalization of this portion of Barrett Creek Lane will be of public benefit and utility.
2. That, the identified property is outside any city limits and under the jurisdiction of Lane County.
3. That, ORS 368.201 provides for legalization of county roads if certain conditions exist. In this case the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records.
4. That, legalizing the portion of Barrett Creek Lane as described in the Order will not deny access to any landowners.

Conclusions of Law (Impacts and Process of Legalization)

Based on the above findings of fact, the Board concludes, as a matter of law, that this legalization 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 legalization, including, inter alia, those set forth in ORS 368.201, et seq., have been met.

EXHIBIT "D"

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

IN THE MATTER OF LEGALIZING A PORTION OF)	
BARRETT CREEK LANE, LOCATED IN THE NORTHWEST)	AFFIDAVIT OF
ONE QUARTER OF THE SOUTHEAST ONE QUARTER)	POSTING AND MAILING
(NW1/4 SE1/4) OF SECTION 34, TOWNSHIP 18 SOUTH,)	
RANGE 12 WEST OF THE WILLAMETTE MERIDIAN, AND)	
ADOPTING FINDINGS OF FACT (18-12-34-42))	

I, D. Michael Jackson, Lane County Surveyor, certify as follows:

That on the 25th day of July, 2008, and in accordance with ORS 368.206(c) and 368.401 to 368.426, I caused to be posted three (3) copies of the Notice of Hearing in the above entitled matter in three places, positioned to be visible to the traveling public, as follows:

1. Posted on a "Dead End" sign post on the east side of Old Ferry Road at the intersection of Old Ferry Road and Barrett Creek Lane, north of the group of mailboxes serving Old Ferry Road and Barrett Creek Lane.
2. Posted on a "Stop" sign post at the junction of Old Ferry Road with U.S. Highway 101, south of the group of mailboxes serving Old Ferry Road and Barrett Creek Lane.
3. Posted on a 40" fir tree near the intersection of Barrett Creek Lane and Cherry Street, on the northerly side of the southerly fork of existing roads, approximately 150 feet southwesterly from said intersection.

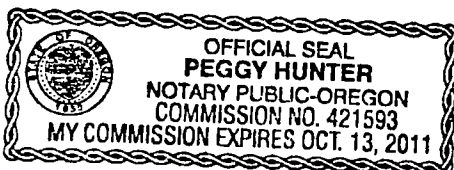
The undersigned further certifies that on July 14, 2008 notice was sent to the adjoining landowners via certified mail.

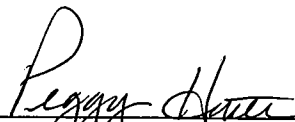


D. Michael Jackson
Lane County Surveyor

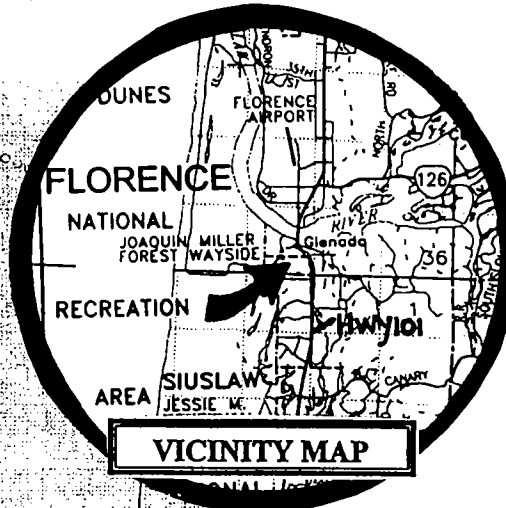
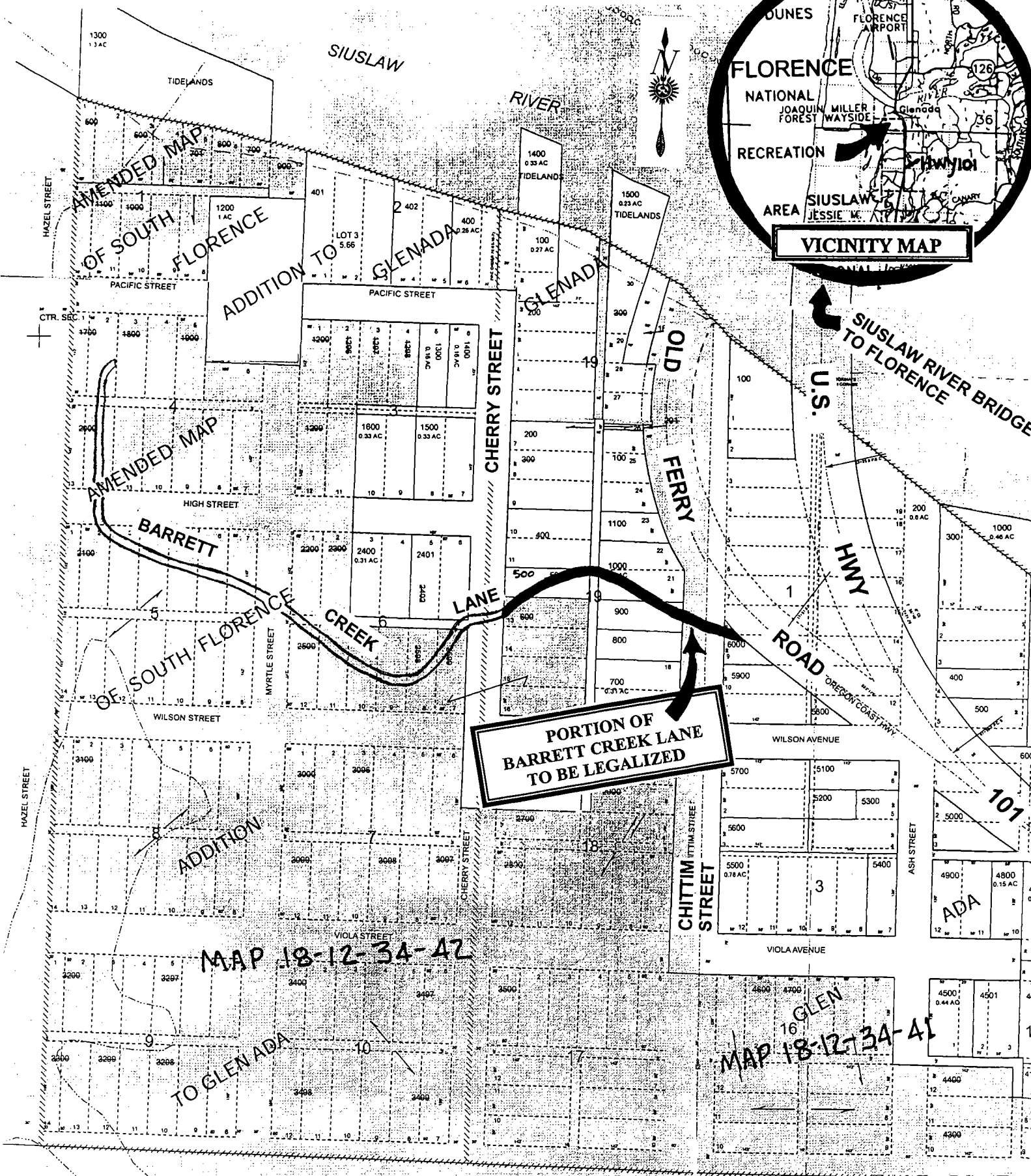
State of Oregon)
County of Lane)

Subscribed and sworn to before me this 30th day of July, 2008 by
D. Michael Jackson, as Lane County Surveyor.




 NOTARY PUBLIC FOR OREGON
 My Commission Expires: October 13, 2011

NW1/4SE1/4 Section 34, T. 18 S. R. 12 W., W.M.
LANE COUNTY
NO SCALE



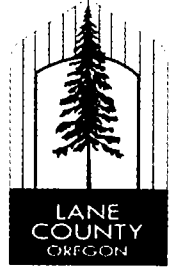
**PORTION OF
BARRETT CREEK LANE
TO BE LEGALIZED**

MAP 18-12-34-42

MAP 18-12-34-41

TO GLEN ADA

GLEN



August 4, 2008

TO: Surveyor's Office
FROM: Celia Barry, Transportation Planning
RE: Proposed Barrett Creek Lane legalization

Thank you for the opportunity to comment regarding consideration of Barrett Creek Lane for legalization. Legalization has implications for road improvement requirements, potential liability issues, and safety. Transportation Planning would like to assist with information that might be important in this decision, and intend to have staff present at the hearing in case there are questions about it from the Board.

First it might be helpful to clarify the definition of a county road, how it differs from a public road, or local access road (LAR), and how the statute and Lane Code differ as to the definition of a public road.

If legalized, Barrett Creek Lane would have the status of a county road. As you know, a "county road" is a public road that has been accepted into the county road system and is the maintenance responsibility of the Department of Public Works (LC 15.010(35)(e)(i)).

In contrast, a Public Road is not normally maintained by the County unless it has been accepted by the Board as a County Road (LC 15.010(35)(e)(vii)).

"Public road" has a broad statutory definition: *A road over which the public has a right of use that is a matter of record* (ORS 368.001).

Lane County has limited this definition by adding language to Lane Code that further requires that the road be dedicated to the county and officially accepted as a public road by the Board of Commissioners (LC 15.010(35)(e)(vii)).

A number of policy questions arise from the prospect of legalization of Barrett Creek Lane.

First; the road would not meet county road standards in Lane Code Chapter 15.705. In part, these requirements include:

- 50 feet minimum right-of-way width;
- 18 feet minimum travel surface;
- A paved surface.

Upon legalization, there may be an expectation on the part of adjoining property owners that the road be brought up to standards. It is likely that adequate right-of-way width is not available and acquisitions would be necessary. If not county road standards, the question arises as to which standard the road must meet, and whether the county is incurring potential liability if the road does not meet county road standards.

Second, Transportation Planning is unsure of what standard the road currently meets and whether emergency vehicle access is possible. If easements connecting to the county road

segment are improved where they intersect with the county road, a facility permit would be required. If no road improvements are proposed within the county right-of-way, then no facility permit would be required and it is unclear what mechanism can be used to insure safety and adequacy. Either way, it is unclear what standards to compel to ensure a minimum level of safe and adequate access.

If the road is legalized, the Board may want to contemplate withdrawal of county road status under ORS 368.026 at some point in the future, thereby reducing the status of the road to "public" or local access road. This would remove the legalized segment from county operational and maintenance jurisdiction, and allow the county to apply minimum code provisions for safe access applicable to public roads (LARS) in Lane Code 15.045(2). These provisions require certification of emergency vehicle access or a declaration holding the county harmless from liability if certification cannot be provided.

In summary, Transportation Planning notes the following issues with respect to the proposed legalization of Barrett Creek Lane:

1. Who will be responsible to ensure the legalized portion of Barrett Creek Lane is safe and adequate for access?
2. The code does not provide clear direction on which standards to apply if new development will be taking access using the legalized portion.
3. Will the county be responsible, at road fund expense, for any needed improvements to the road? If legalization occurs, staff recommends that any necessary improvements be carried out at private expense under a facility permit.
4. Will the Department of Public Works be responsible for ongoing maintenance of the road, or will county road status be withdrawn?

Thank you for considering these comments.