


W. 14. a.

Memorandum Date: July 9, 2008  
 Order Date: July 30, 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 THE VACATION OF PORTIONS OF FIRST AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28 AND FALCON STREET AS PLATTED AND RECORDED IN THE PLAT OF HECETA BEACH (BK. 7, P. 25), LANE COUNTY, OREGON PLAT RECORDS, WITH A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (18-12-04-13 & 42)

**I. MOTION**

TO VACATE PORTIONS OF FIRST AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28 AND FALCON STREET AS PLATTED AND RECORDED IN THE PLAT OF HECETA BEACH (BK. 7, P. 25), LANE COUNTY, OREGON PLAT RECORDS, WITH A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (18-12-04-13 & 42)

**II. AGENDA ITEM SUMMARY**

The Board is being asked to approve the vacation of a portion of First Avenue (Co. Rd. #856), a portion of the alley in Block 28 and a portion of Falcon Street in the Plat of Heceta Beach. The portions proposed for vacation comprise two separate 10 feet wide strips of right of way, the northerly portion being 425 feet in length and the southerly portion being 120 feet in length.

**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 the owners of 100% of the property abutting the proposed vacation initially requesting, by the authority of ORS 368.351, a vacation without a public hearing

On May 28, 2008 in a regular meeting of the Lane County Board of Commissioners this vacation proposal was presented for consideration. Although the vacation was not denied, a vote to approve the vacation failed. After further discussion, it was determined that the proposal for vacation would be considered in a public hearing if the petitioners were to choose to pursue the public hearing process and submit the additional fee deposit necessary to process with a public hearing. Primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores) has

submitted the additional fee deposit in order to proceed with a public hearing.

On June 25, 2008, Resolution and Order Number 08-6-25-9 was passed by the Board of Commissioners which set a public hearing date of July 30, 2008 to consider this vacation.

The purpose of this vacation request, as stated by primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores), is to return a 10 feet wide strip of right of way that was dedicated in 1968 to the adjacent property owned by Driftwood Shores in order to provide for more full utilization of their property. The petition for vacation was initiated by Driftwood Shores and sent to four additional owners of properties abutting the vacation, effectively obtaining signatures representing 100% of the abutting properties. The petitioners further state that there are no utilities within the area to be vacated.

First Avenue was originally established with a width of 50 feet in 1915 in the Plat of Heceta Beach as platted and recorded in Book 7, Page 25, Lane County, Oregon Plat Records. That portion of First Avenue from the south line of Kiwanda Street northerly to the north line of Park Way was accepted as part of County Road No. 856 by Board of Commissioners Resolution of Acceptance and Order filed October 21, 1959 in Commissioners Journal 9, Pages 82 and 83. In 1968 the easterly 10 feet of Blocks 23 and 28 in the Plat of Heceta Beach were dedicated and accepted as a part of County Road No. 856 (First Avenue) in Board of Commissioners Order filed May 8, 1968 in Commissioners Journal 38, Page 222, and the Dedication recorded on Reel 391-R, Recorder's Reception Number 24475, Lane County, Oregon Deed Records. This additional dedication to Lane County for right of way purposes was granted by owners Jake L. and Elsie Mann, and mortgagee Fred Holm, prior to acquisition by Driftwood Shores. A search of the records revealed no specific requirements or reasons for the dedication.

The alley in Block 28 and Falcon Street, including the portions of each herein proposed for vacation, were established with widths of 15 feet and 50 feet, respectively, in 1915 in the Plat of Heceta Beach. In 1968 all of the alley in Block 28 except the easterly 10 feet and all the portion of Falcon Street contiguous with Block 28 except the easterly 10 feet were vacated by Board of Commissioners Order of Vacation Number 2640 filed May 8, 1968 and recorded in Commissioners Journal 38, Page 223. The entire 15 feet wide alley in Block 23 was vacated in 1971 by Order of Vacation Number 71-11-24-9 filed in Commissioners Journal 59, Page 349.

The Surveyor's Office notified the City of Florence, Qwest Communications, Central Lincoln 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 nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

The portions of rights of way proposed for vacation are within the Urban Growth Boundary but outside the City Limits of the City of Florence. The City of Florence is supportive of this vacation, and is presently in the process of annexation of the

Driftwood Shores property and portions of First Avenue which will include the portions of rights of way herein proposed for vacation.

There are known improvements existing within the area proposed for vacation, and the meeting of setback requirements along the First Avenue frontage of the Driftwood Shores property has been an ongoing issue with which Lane County Planning and Transportation Planning have been involved, including the granting of a 1993 setback variance and a pending application for variance. The vacation as proposed would help reduce those encroachments, although there will be residual areas of landscaping and parking facilities existing within the remaining right of way subsequent to the vacation.

As shown on a site drawing by primary petitioner's surveyor J.D. McGee, a site visit confirmed that the northerly limit of the proposed vacation as described in the petition extends into the existing asphalt of a portion of the First Avenue Loop. An exception has been added to the vacation's legal description in the Final Order, as agreed to by the primary petitioner, which will resolve that encroachment at the northerly end of the vacation, and as such the Final Order's legal description for the vacation will vary from the legal description contained in the petition.

#### **B. Policy Issues**

Lane Manual 15.300 and 15.305 supplement ORS 368 in allowing for consideration of vacation of rights of way where little need exists for the rights of way, where no property owner is denied legal access as a result of the vacation and where the vacation will not adversely affect orderly development of adjacent property. The rights of way herein considered for vacation as described in the Final Order fall into these categories.

#### **C. Board Goals**

Part of Lane County's Strategic Plan is to contribute to appropriate community development in the area of transportation and land development (Lane County Strategic Plan, Goals, P. 8). The vacation of the portion of right of way as described in the Final Order is consistent with this part of the Strategic Plan.

#### **D. Financial and/or Resource Considerations**

Vacation of this portion of unused right of way will return a marginal portion of land to the tax rolls as real property.

### **IV. ANALYSIS**

The vacation of the portions of First Avenue, the alley in Block 28 and Falcon Street as described in the Final Order will have no adverse effects on transportation patterns in the area, and the portion to be vacated is not needed as part of 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 this vacation will facilitate the long-existing commercial enterprise of Driftwood Shores to more fully utilize their property. The vacation will help facilitate compliance with setback requirements where the Driftwood

Shores property fronts the westerly right of way of First Avenue. The resulting right of way width of the portion of First Avenue affected by this vacation will be a minimum of 50 feet, which is the original width of First Avenue as established, and which will meet Lane County minimum standards for an Urban Local street, and City of Florence minimum standards for a "feeder" street.

The proceedings that propose to vacate the said portions of rights of way have provided ample opportunity for comment from the public, affected property owners and other agencies. All required legal notices have been provided in accordance with ORS 368.346 and the Board is free to act at this time

#### **V. ALTERNATIVES/OPTIONS**

The Board of County Commissioners has the option to:

1. Approve the vacation of portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach, as described in the Final Order.
2. Deny the vacation of portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach, as described in the Final Order.
3. Continue the matter for further consideration.

#### **VI. TIMING/IMPLEMENTATION**

Timing of this matter is important in order to complete the vacation prior to the impending annexation of the Driftwood Shores property by the City of Florence.

#### **VII. RECOMMENDATION**

The Public Works Director's Report recommends that the Board support Option Number 1, to approve the vacation of portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach, as described in the Final Order. The public interest will be served and not prejudiced, as vacating these unneeded portions of rights of way will provide for more full utilization of primary petitioner's property while adding a marginal portion of land to the County tax rolls. The vacation of the rights of way as described in the Final Order will have no adverse effects on transportation patterns in the area.

All statutory procedures necessary for a vacation with a public hearing of the above mentioned rights 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 Final Order.

#### **VIII. FOLLOW-UP**

If the Board of County Commissioners approves the Order to Vacate the portions of rights of way as described in the Final Order, 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 and County Assessor for appropriate action. If the Order to Vacate is not approved, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

**IX. ATTACHMENTS**

Order w/attachments:

Petition to Vacate

Final Director's Report - Exhibit "A"

Findings of Fact - Exhibit "B"

Affidavit of Posting, Publication and Mailing – Exhibit "C"

Attachment - Site Map

Contact Person: D. Michael Jackson x-4198

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

IN THE MATTER OF THE VACATION OF PORTIONS OF )  
 FIRST AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28 )  
 AND FALCON STREET AS PLATTED AND RECORDED IN ) FINAL ORDER NO.  
 THE PLAT OF HECETA BEACH (BK. 7, P. 25), LANE )  
 COUNTY, OREGON PLAT RECORDS, WITH A PUBLIC )  
 HEARING, AND ADOPTING FINDINGS OF FACT )  
 (18-12-04-13 & 42) )

**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 portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach as platted and recorded in 1915 in Book 7, Page 25, Lane County, Oregon Plat Records; and

**WHEREAS**, the petitioners, having obtained signatures of the owners of 100% of the property abutting the proposed vacation, initially requested, by the authority of ORS 368.351, a vacation without a public hearing; and

**WHEREAS**, on May 28, 2008 in a regular meeting of the Lane County Board of Commissioners this vacation proposal was presented for consideration, and although the vacation was not denied, a vote to approve the vacation failed. After further discussion, it was determined that the proposal for vacation would be considered in a public hearing if the petitioners were to choose to pursue the public hearing process and submit the additional fee deposit necessary to process with a public hearing; and

**WHEREAS**, primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores) has submitted the additional fee deposit in order to proceed with a public hearing; and

**WHEREAS**, by approving Resolution and Order Number 08-6-25-9, the Board of County Commissioners set July 30, 2008 to conduct a public hearing on the matter of vacating the portions of rights of way described herein before the Board of Commissioners for Lane County, Oregon; and

**WHEREAS**, all necessary procedures for the vacation of the portions of rights of way herein described, having been initiated by petition, have been complied with, pursuant to ORS Chapter 368; and

**WHEREAS**, the Lane County Surveyor has examined the portions of rights of way herein described; 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 368.346, marked as Exhibit "A", attached hereto and made a part hereof, by this Order; and

**WHEREAS**, notification of these proceedings has been provided by posting, mail, and legal publication by the County Surveyor in accordance with ORS 368.401 to 368.426, and as evidenced by the Affidavit of Posting, Publication, and Mailing labeled as Exhibit "C", attached hereto and made a part hereof by this Order; and

**WHEREAS**, the purpose of this vacation request, as stated by primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores), is to return a 10 feet wide strip of right of way that was dedicated in 1968 to the adjacent property owned by Driftwood Shores in order to provide for more full utilization of their property; and

**WHEREAS**, the petitioners further state that there are no utilities within the area to be vacated; and

**WHEREAS**, the configuration of the 10 feet wide portions of right of way proposed for vacation is a result of a combination of dedications and vacations that occurred in 1915 (dedications in the Plat of Heceta Beach, Book 7, Page 25); in 1968 (dedication of the easterly 10 feet of Blocks 23 and 28 in the Plat of Heceta Beach); in 1968 (the vacation of the alley in Block 28 and that portion of Falcon Street contiguous with Block 28, except the easterly 10 feet of each); and in 1971 (the vacation of the entire alley in Block 23 in the Plat of Heceta Beach); and

**WHEREAS**, The Surveyor's Office notified the City of Florence, Qwest Communications, Central Lincoln 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 nearby property owners regarding the vacation, and the agencies and landowners either had no objection to the vacation or did not respond to the referral; and

**WHEREAS**, there are known improvements located within the area to be vacated and although this vacation will reduce those encroachments there will be residual areas of landscaping and parking facilities existing within the remaining right of way subsequent to the vacation; and

**WHEREAS**, the portions of rights of way to be vacated are not needed as part of the Lane County transportation system, and the vacation will leave that portion of First Avenue affected by the vacation with a right of way width of a minimum of 50 feet, which is the original width of First Avenue as established, and said minimum 50 feet width will meet Lane County minimum standards for an Urban Local street and City of Florence minimum standards for a "feeder" street; and

**WHEREAS**, the portions of rights of way to be vacated are within the Urban Growth Boundary but outside the City Limits of the City of Florence; and

**WHEREAS**, the City of Florence is supportive of this vacation, and is presently in the process of annexation of the Driftwood Shores property and portions of First Avenue which will

include the portions of rights of way herein described for vacation; and

**WHEREAS**, no property will be denied legal access by this vacation; and

**WHEREAS**, the petitioners have paid a vacation fee deposit of \$4800 and will pay actual costs incurred, including recording fees, upon final approval of the vacation; and

**WHEREAS**, a public hearing was conducted on this date, as ordered, regarding the proposed vacation of the portions of rights of way herein described; and

**WHEREAS**, the Board is of the opinion that approving the vacation as described in this Final Order is in the best interest of the public; and

**WHEREAS**, the area proposed for vacation as described in the petition for vacation extended into the existing asphalt of a portion of First Avenue Loop at the northerly limits of the proposed vacation; and

**WHEREAS**, as agreed to by the primary petitioner, an exception has been added to the legal description and incorporated herein in order to withdraw the northerly vacation limits from encroachment into the existing asphalt of a portion of First Avenue Loop; now therefore it is hereby

**ORDERED**, that in accordance with ORS Chapter 368, the portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach more particularly described as follows:

The easterly 10 feet of Block 23 and the easterly 10 feet of Block 28 as platted and recorded in the Plat of Heceta Beach (Bk 7, P 25), said portions of said blocks having been dedicated as right of way for First Avenue (Co. Rd. #856) by that Deed recorded May 10, 1968 on Reel 391-R, Reception No. 24475, Lane County, Oregon Deed Records, and accepted in Lane County Board of Commissioners Order filed May 8, 1968 in Commissioners Journal 38, Page 222; EXCEPTING herefrom the following described tract: Beginning at a point on the northerly line of Block 28, 10 feet westerly of the northeast corner of Block 28, thence easterly along the north line of Block 28 a distance of 10 feet to the said northeast corner of Block 28; thence southerly along the easterly line of Block 28 a distance of 20 feet; thence northwesterly to the point of beginning.

Also, the easterly 10 feet of the 15 feet wide alley in Block 28 lying westerly of the westerly right of way of First Avenue and the easterly 10 feet of Falcon Street lying westerly of the westerly right of way of First Avenue as platted and recorded in the Plat of Heceta Beach (Bk 7, P 25), said portions of alley and street having been left unvacated in the vacation of portions of said alley and Falcon Street between First Avenue and Beach Drive in Lane County Board of Commissioners Order of Vacation No. 2640 filed May 8, 1968 in Commissioners Journal 38, Page 223;

All in the Southwest One Quarter of the Northeast One Quarter (SW1/4NE1/4) and the Northwest One Quarter of the Southeast One Quarter (NW1/4SE1/4)



of Section 4, Township 18 South, Range 12 West of the Willamette Meridian,  
Lane County, Oregon

are hereby VACATED, and it is further

**ORDERED**, that in support of this action, the Board hereby adopts the Findings of Fact,  
marked as Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

**ORDERED**, that this Order be entered into the Lane County Board of Commissioners  
Journal of Administration, and be further recorded in the Lane County, Oregon Deed Records.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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

Attachment: Site Map

APPROVED AS TO FORM

Date 7-18-08 lane county

  
OFFICE OF LEGAL COUNSEL

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

FILE NO.

IN THE MATTER OF THE VACATION )  
OF PORTIONS OF FIRST AVENUE )  
(CO. RD. #856), THE ALLEY IN BLOCK 28 )  
AND FALCON STREET AS PLATTED AND ) PETITION TO VACATE  
RECORDED IN THE PLAT OF HECETA )  
BEACH (BK. 7, P 25), LANE COUNTY, )  
OREGON PLAT RECORDS (18-12-04-13 & 42) )

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned ASSOCIATION OF UNIT OWNERS OF DRIFTWOOD SHORES SURFSIDE INN CONDOMINIUM, an Oregon Corporation, JEFFREY C. AND CONNIE M CALDWELL, husband and wife, JERARD D. OFLOCK AND REGINA M. OFLOCK, husband and wife, BARRY AND LAURA MERZ, husband and wife, and DAVID PRIVAT, as owners of adjacent real property hereby petition for the vacation of the portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street as platted and recorded in 1915 in the Plat of Heceta Beach (Bk 7, P 25), Lane County, Oregon Plat Records, more particularly described as:

The easterly 10 feet of Block 23 and easterly 10 feet of Block 28 as platted and recorded in the Plat of Heceta Beach (Bk 7, P 25), said portions of said blocks having been dedicated as right of way for First Avenue (Co. Rd. #856) by that Deed recorded May 10, 1968 on Reel 391-R, Reception No. 24475, Lane County, Oregon Deed Records, and accepted in Lane County Board of Commissioners order filed May 8, 1968 in Commissioners Journal 38, Page 222.

Also, the easterly 10 feet of the 15 feet wide alley in Block 28 lying westerly of the westerly right of way of First Avenue and the easterly 10 feet of Falcon Street lying westerly of the westerly right of way of First Avenue as platted and recorded in the plat of Heceta Beach (Bk 7, P 25), said portions of alley and street having been left unvacated in the vacation of portions of said alley and Falcon Street between First Avenue and Beach Drive in Lane County Board of Commissioners Order of Vacation No. 2640 filed May 8, 1968 in Commissioners Journal 38, Page 223;

All in the Southwest One Quarter of the Northeast One Quarter (SW1/4NE1/4) and the Northwest One Quarter of the Southeast One Quarter (NW1/4SE1/4) of Section 4, Township 18 South, Range 12 West of the Willamette Meridian, Lane County, Oregon.

WHEREAS, the undersigned petitioners are the owners of 6 of 6 lots located adjacent to the above described area to be vacated; and are 5 of 5 owners of those lots.

WHEREAS, petitioners allege as follows:

1. The purpose of this vacation request is to: Return the 10 foot strip of land, previously dedicated in May, 1968, to Block 23 and Block 28 in the Plat of Heceta Beach, as platted and recorded in Book 7, Page 25, Lane County Oregon Record of Plats. Vacating this portion of First Avenue will provide for more full utilization of petitioners' property, provide more separation between the petitioners' property and the right-of-way, and add a marginal portion of land to the tax rolls.
2. The vacation of this portion of First Avenue 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. The 10 foot strip of land is no longer necessary to be held in the public interest.

- 3. That this vacation will not deny any property legal access to a public road.
- 4. There are no utilities 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

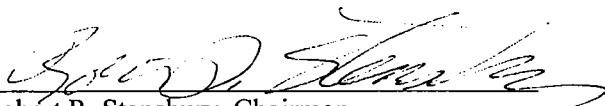
WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area, and

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.341, 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 and alley, without a hearing before the Board of Commissioners for Lane County pursuant to ORS Chapter 368.
- 2. Upon review of this matter, to direct the vacation of the above described road and alley direct that title to the vacated area revert and vest in accordance with ORS 368.635.

DATED this 10 day of March, 2008.

  
 Robert R. Stansbury, Chairman  
 Association of Unit Owners of Driftwood Shores Surfside Inn Condominium

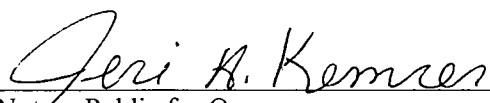
Map 18-12-04-13, Tax Lots 2001, 7000

Site Address: 88416 First Avenue  
Florence, Oregon 97439

STATE OF OREGON )  
County of Lane ) SS

On this 10 of March, 2008, personally appeared the above named Robert R. Stansbury, and acknowledged the foregoing instrument to be a voluntary act and deed.

Witness my hand and seal this day and year last above written.

  
 Notary Public for Oregon

My Commission expires 8/24/2009



*Jeri A. Kemrer*

PETITIONER

Jeffrey C Caldwell  
Jeffrey C. Caldwell

Connie M Caldwell  
Connie M. Caldwell

Map 18-12-04-13, Tax Lot 5000

Site Address: 4558 Falcon Street  
Florence, Oregon 97439

Owner Address: 2310 Main Street  
Springfield, OR 97478

STATE OF OREGON )  
County of Lane ) SS

On this 24 day of March, 2008, personally appeared the above  
named JEFFREY C. CALDWELL AND CONNIE M. CALDWELL, husband and wife,  
and acknowledged the foregoing instrument to be a voluntary act and deed.

Witness my hand and seal this day and year last above written.

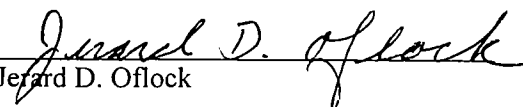
Notary Public for Oregon Jeri A. Kemmer

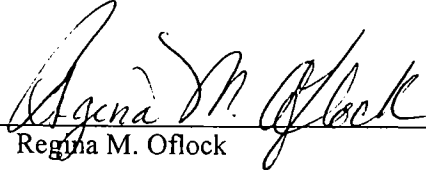
My Commission expires 8-24, 2009



Jeri A. Kemmer

PETITIONER

  
 Jerard D. Oflock

  
 Regina M. Oflock

Map 18-12-04-42, Tax Lot 1202

Site Address: 88384 First Avenue  
Florence, Oregon 97439

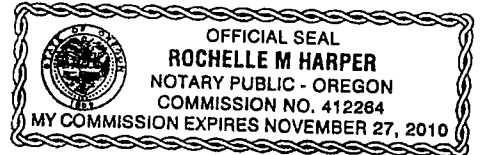
Owner Address: 2250 Rogue River Highway  
Grants Pass, OR 92527

STATE OF OREGON )  
County of Lane ) SS

On this 18<sup>th</sup> day of march, 2008, personally appeared the above  
named JERARD D. OFLOCK AND REGINA M. OFLOCK, husband and wife,  
and acknowledged the foregoing instrument to be a voluntary act and deed.

Witness my hand and seal this day and year last above written.

Notary Public for Oregon Rochelle M. Harper  
My Commission expires November 27, 2010



PETITIONER

Barry A. Merz  
Barry A. Merz, Trustee

Laura L. Merz  
Laura L. Merz, Trustee

Map 18-12-04-13, Tax Lot 4300

Site Address: 4572 Arch Street  
Florence, Oregon 97439

Owner Address: 16399 West Mozart Avenue  
Los Gatos, CA 95032

STATE OF CALIFORNIA )  
County of SANTA CLARA) SS

On this 20th day of March, 2008, personally appeared the above  
named BARRY A. MERZ AND LAURA L. MERZ, trustees MERZ FAMILY TRUST,  
and acknowledged the foregoing instrument to be a voluntary act and deed.

Witness my hand and seal this day and year last above written.

Patricia Mahan  
Notary Public for California

My Commission expires 03/03/09



PETITIONER

David J. Privat  
David J. Privat

Map 18-12-04-42, Tax Lot 700

Site Address: 88395 1st Avenue  
Florence, Oregon 97439

Owner Address: 3123 SW Kenyon Street  
Seattle, WA 98126-3550

STATE OF WASHINGTON)  
County of King ) SS

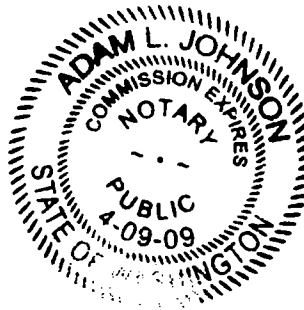
On this 17<sup>th</sup> day of March, 2008, personally appeared the above  
named DAVID J. PRIVAT and acknowledged the foregoing instrument to be a  
voluntary act and deed.

Witness my hand and seal this day and year last above written.

Adam L. Johnson

Notary Public for Washington

My Commission expires 04.09.09

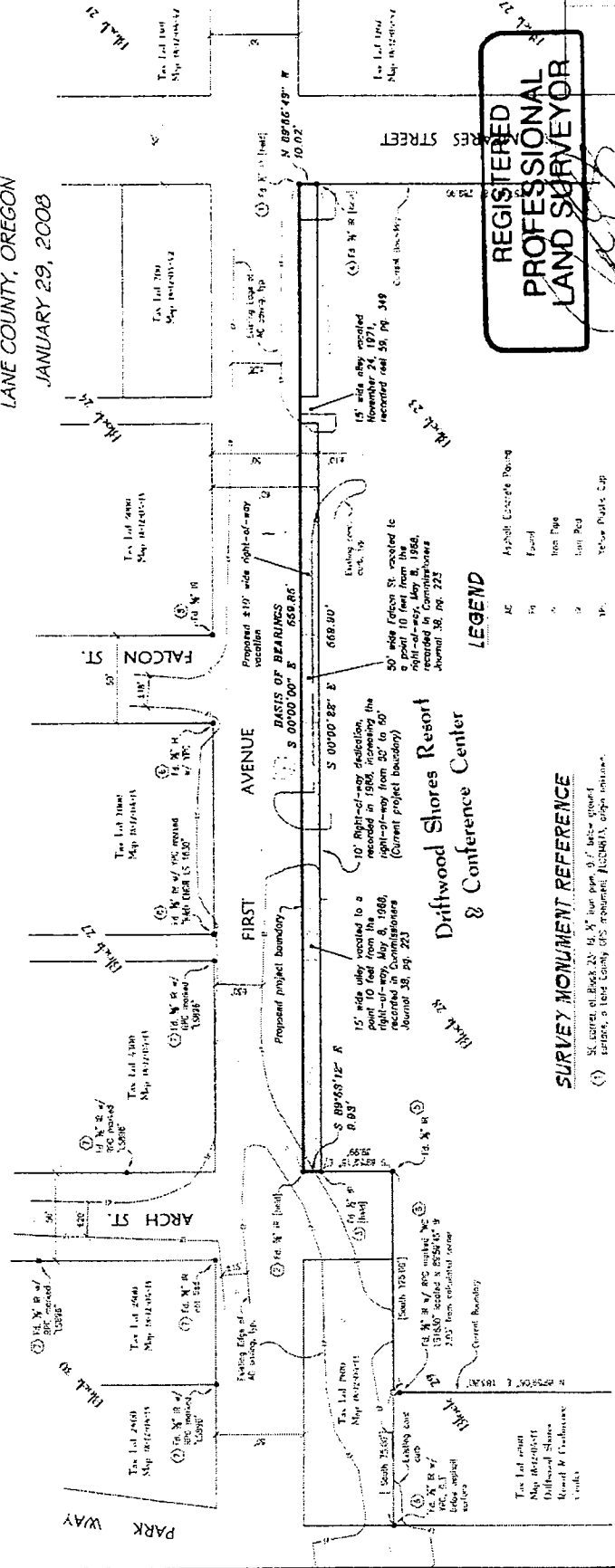
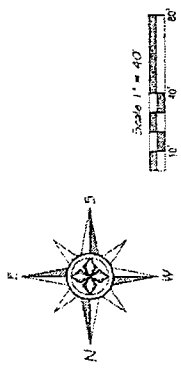


PROPOSED RIGHT-OF-WAY VACATION  
 DRIFTWOOD SHORES RESORT  
 & CONFERENCE CENTER

**NARRATIVE**  
 The purpose of this survey is to verify existing measurements of record along right-of-way and to show the relative location of parcel corners in the proposed street vacation and resulting right-of-way area.

BLOCKS 23 & 28 OF "HECETA BEACH" in the  
 N.E. 1/4 & S.E. 1/4 OF SECTION 4, T. 18 S., R. 12 W., W.M.,  
 LANE COUNTY, OREGON

JANUARY 29, 2008



**RIGHT-OF-WAY BOUNDARY & BASIS OF BEARINGS**

1. Found one half plat 1 and 2 (Block 23 & 28) introduced in 1885 on the basis of bearings and the southeast corner at block 23 and northwest corner of Block 28 respectively. The proposed street vacated boundary shown is based on area between found monument points 4 and 1; found monuments points 1 and 2, and a "split off" flag based on found monuments 3, 3 & 5. The "split monument" positions in record documents respectively well and, after some original are unknown, they have been accepted and recorded in previous original surveys.
2. Monument at block 23, set per OS 28188.
3. Monument at block 28, set per OS 28188.
4. Monument referenced in OS 28188.
5. Monument at block 23, set per OS 28188.
6. Monument at block 28, set per OS 28188.
7. Monument at block 23, set per OS 28188.
8. Monument at block 28, set per OS 28188.
9. Monument at block 23, set per OS 28188.
10. Monument at block 28, set per OS 28188.

**SURVEY MONUMENT REFERENCE**

1. Monument at block 23, set per OS 28188.
2. Monument at block 28, set per OS 28188.
3. Monument at block 23, set per OS 28188.
4. Monument at block 28, set per OS 28188.
5. Monument at block 23, set per OS 28188.
6. Monument at block 28, set per OS 28188.
7. Monument at block 23, set per OS 28188.
8. Monument at block 28, set per OS 28188.
9. Monument at block 23, set per OS 28188.
10. Monument at block 28, set per OS 28188.

**REGISTERED PROFESSIONAL LAND SURVEYOR**  
 JOHN D. MCGEE  
 #58902

**RENEWAL DATE** 12/31/08  
 FEB. 8, 2000

**REGISTERED PROFESSIONAL LAND SURVEYOR**

JDMcGee, Inc.  
 Engineering  
 Land Use Planning  
 Watershed Design  
 Survey Systems for Gov.  
 5000 NE Oregon St.  
 Portland, OR 97218  
 Phone: 503.281.1100  
 Fax: 503.281.1101

**LEGEND**

AC	Asphalt Concrete Road
FM	Fence
IR	Iron Pipe
LP	Lead Pipe
YPC	Yellow Plastic Cap
RFC	Red Plastic Cap
CON	Concrete
IM	Found Monument, in place
OP	Old Monument, in place
IP	In place Project Boundary
PP	Proposed Project Boundary
EP	Existing Property Line
RR	Proposed Right-of-Way Vacation
RR	Existing Edge of AC Right
RR	Existing Concrete Curb
RR	Proposed Roadway & Utilities
RR	Point Marker Reference

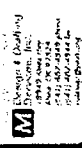




EXHIBIT "A"

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

<b>IN THE MATTER OF THE VACATION OF PORTIONS OF FIRST</b>	)	
<b>AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28 AND</b>	)	
<b>FALCON STREET AS PLATTED AND RECORDED IN THE PLAT</b>	)	<b>FINAL DIRECTOR'S</b>
<b>OF HECETA BEACH (BK. 7, P. 25), LANE COUNTY, OREGON</b>	)	<b>REPORT</b>
<b>PLAT RECORDS, WITH A PUBLIC HEARING, AND ADOPTING</b>	)	
<b>FINDINGS OF FACT (18-12-04-13 &amp; 42)</b>	)	

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 initially requesting, by the authority of ORS 368.351, a vacation without a public hearing.

On May 28, 2008 in a regular meeting of the Lane County Board of Commissioners this vacation proposal was presented for consideration. Although the vacation was not denied, a vote to approve the vacation failed. After further discussion, it was determined that the proposal for vacation would be considered in a public hearing if the petitioners were to choose to pursue the public hearing process and submit the additional fee deposit necessary to process with a public hearing. Primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores) has submitted the additional fee deposit in order to proceed with a public hearing.

On June 25, 2008, Resolution and Order Number 08-6-25-9 was passed by the Board of Commissioners which set a public hearing date of July 30, 2008 to consider this vacation.

The purpose of this vacation request, as stated by primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores), is to return a 10 feet wide strip of right of way that was dedicated in 1968 to the adjacent property owned by Driftwood Shores in order to provide for more full utilization of their property. The petition for vacation was initiated by Driftwood Shores and sent to four additional owners of properties abutting the vacation, effectively obtaining signatures representing 100% of the abutting properties. The petitioners further state that there are no utilities within the area to be vacated.

First Avenue was originally established with a width of 50 feet in 1915 in the Plat of Heceta Beach as platted and recorded in Book 7, Page 25, Lane County, Oregon Plat Records. That portion of First Avenue from the south line of Kiwanda Street northerly to the north line of Park Way was accepted as part of County Road No. 856 by Board of Commissioners Resolution of Acceptance and Order filed October 21, 1959 in Commissioners Journal 9, Pages 82 and 83. In 1968 the easterly 10 feet of Blocks 23 and 28 in the Plat of Heceta Beach were dedicated and accepted as a part of County Road No. 856 (First Avenue) in Board of Commissioners Order filed May 8, 1968 in Commissioners Journal 38, Page 222, and the Dedication recorded on Reel 391-R, Recorder's Reception Number 24475, Lane County, Oregon Deed Records. This additional dedication to Lane County for right of way purposes was granted by owners Jake L. and Elsie Mann, and mortgagee Fred Holm, prior to acquisition by Driftwood Shores. A search of the records revealed no specific requirements or reasons for the dedication.

**EXHIBIT "A"**

The alley in Block 28 and Falcon Street, including the portions of each herein proposed for vacation, were established with widths of 15 feet and 50 feet, respectively, in 1915 in the Plat of Heceta Beach. In 1968 all of the alley in Block 28 except the easterly 10 feet and all the portion of Falcon Street contiguous with Block 28 except the easterly 10 feet were vacated by Board of Commissioners Order of Vacation Number 2640 filed May 8, 1968 and recorded in Commissioners Journal 38, Page 223. The entire 15 feet wide alley in Block 23 was vacated in 1971 by Order of Vacation Number 71-11-24-9 filed in Commissioners Journal 59, Page 349.

The Surveyor's Office notified the City of Florence, Qwest Communications, Central Lincoln 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 nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

The portions of rights of way proposed for vacation are within the Urban Growth Boundary but outside the City Limits of the City of Florence. The City of Florence is supportive of this vacation, and is presently in the process of annexation of the Driftwood Shores property and portions of First Avenue which will include the portions of rights of way herein proposed for vacation.

There are known improvements existing within the area proposed for vacation, and the meeting of setback requirements along the First Avenue frontage of the Driftwood Shores property has been an ongoing issue with which Lane County Planning and Transportation Planning have been involved, including the granting of a 1993 setback variance and a pending application for variance. The vacation as proposed would help reduce those encroachments, although there will be residual areas of landscaping and parking facilities existing within the remaining right of way subsequent to the vacation.

As shown on a site drawing by primary petitioner's surveyor J.D. McGee, a site visit confirmed that the northerly limit of the proposed vacation as described in the petition extends into the existing asphalt of a portion of the First Avenue Loop. An exception has been added to the vacation's legal description in the Final Order, as agreed to by the primary petitioner, which will resolve that encroachment at the northerly end of the vacation, and as such the Final Order's legal description for the vacation will vary from the legal description contained in the petition

The vacation of the portions of First Avenue, the alley in Block 28 and Falcon Street as described in the Final Order will have no adverse effects on transportation patterns in the area, and the portion to be vacated is not needed as part of 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 this vacation will facilitate the long-existing commercial enterprise of Driftwood Shores to more fully utilize their property. The vacation will help facilitate compliance with setback requirements where the Driftwood Shores property fronts the westerly right of way of First Avenue. The resulting right of way width of the portion of First Avenue affected by this vacation will be a minimum of 50 feet, which is the original width of First Avenue as established, and which will meet Lane County minimum standards for an Urban Local street, and City of Florence minimum standards for a "feeder" street.

Notification of these proceedings has been provided by posting, mail and legal publication by the County Surveyor in accordance with ORS 368.401 to 368.426.

**EXHIBIT "A"**

It is therefore recommended that the portions of First Avenue (Co. Rd. #856), the alley in Block 28 and Falcon Street in the Plat of Heceta Beach, as described in the Final Order, be vacated.

DATED this 14 day of JULY, 2008.

  
ACTING Public Works Director  
Department of Public Works

**EXHIBIT "B"**

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

<b>IN THE MATTER OF THE VACATION OF PORTIONS OF</b>	)	
<b>FIRST AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28</b>	)	
<b>AND FALCON STREET AS PLATTED AND RECORDED IN</b>	)	<b>FINDINGS OF FACT</b>
<b>THE PLAT OF HECETA BEACH (BK. 7, P. 25), LANE</b>	)	
<b>COUNTY, OREGON PLAT RECORDS, WITH A PUBLIC</b>	)	
<b>HEARING, AND ADOPTING FINDINGS OF FACT</b>	)	
<b>(18-12-04-13 &amp; 42)</b>	)	

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 initially requesting, by the authority of ORS 368.351, a vacation without a public hearing.

On May 28, 2008 in a regular meeting of the Lane County Board of Commissioners this vacation proposal was presented for consideration. Although the vacation was not denied, a vote to approve the vacation failed. After further discussion, it was determined that the proposal for vacation would be considered in a public hearing if the petitioners were to choose to pursue the public hearing process and submit the additional fee deposit necessary to process with a public hearing. Primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores) has submitted the additional fee deposit in order to proceed with a public hearing.

On June 25, 2008, Resolution and Order Number 08-6-25-9 was passed by the Board of Commissioners which set a public hearing date of July 30, 2008 to consider this vacation.

The purpose of this vacation request, as stated by primary petitioner Association of Unit Owners of Driftwood Shores Surfside Inn Condominium (Driftwood Shores), is to return a 10 feet wide strip of right of way that was dedicated in 1968 to the adjacent property owned by Driftwood Shores in order to provide for more full utilization of their property. The petitioners further state that there are no utilities within the area to be vacated.

The configuration of the 10 feet wide portions of right of way proposed for vacation is a result of a combination of dedications and vacations that occurred in 1915 (dedications in the Plat of Heceta Beach, Book 7, Page 25); in 1968 (dedication of the easterly 10 feet of Blocks 23 and 28 in the Plat of Heceta Beach); in 1968 (the vacation of the alley in Block 28 and that portion of Falcon Street contiguous with Block 28, except the easterly 10 feet of each); and in 1971 (the vacation of the entire alley in Block 23 in the Plat of Heceta Beach).

As shown on a site drawing by primary petitioner's surveyor J.D. McGee, a site visit confirmed that the northerly limit of the proposed vacation as described in the petition extends into the existing asphalt of a portion of the First Avenue Loop. An exception has been added to the vacation's legal description in the Final Order, as agreed to by the primary petitioner, which will resolve that encroachment at the northerly end of the vacation, and as such the Final Order's legal description for the vacation will vary from the legal description contained in the petition.

The rights of way located along the westerly side of First Avenue (Co. Rd. #856) contiguous with the Driftwood Shores property as described in the Final Order are no longer needed as part of Lane County's transportation system, and the remaining width of the First Avenue right of way after the vacation will be a minimum of 50 feet and will meet minimum Lane County standards for an Urban Local street and City of Florence minimum standards for a "feeder" street. No property will be denied legal access by this vacation. Vacation of this portion of right of way will return a marginal portion of land to the tax rolls as real property and will allow for more full utilization and maintenance of primary petitioner's properties. The portion of rights of way as described in the Final Order are within the Urban Growth Boundary but outside the City Limits of the City of Florence. The City of Florence is supportive of this vacation, and is presently in the process of annexation of the Driftwood Shores property and portions of First Avenue which will include the portions of rights of way to be vacated.

### **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 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 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 petitioners own property abutting the proposed vacation. Said property is further identified as Tax Lots 2001, 4300, 5000 and 7000 of Assessor's Map 18-12-04-13, and Tax Lots 700 and 1202 of Assessor's Map 18-12-04-42.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or easements based upon the determination that the vacation is "in the public interest".

3. That, the Surveyor's Office notified the City of Florence, Qwest Communications, Central Lincoln 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 nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.
4. That, vacating the rights of way as described in the Order will not deny any landowners legal road access to a public road.
5. That, the County Surveyor has provided legal notice for the public hearing by service, posting, and publication, as required by ORS 368.401 to 368.426.
6. That, pursuant to the provisions of ORS Chapter 368, a county governing body may make a determination about a vacation of property with a public hearing if:
  - (1) The county road official files a written report containing a description of the property proposed for vacation and stating that the vacation is in the public interest.
  - (2) The governing body shall establish a time and place for a hearing to consider the proposed vacation and shall give notice of said hearing under ORS 368.401 to 368.426.

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, with a public hearing, have been met.

EXHIBIT "C"

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

IN THE MATTER OF THE VACATION OF PORTIONS OF	)	
FIRST AVENUE (CO. RD. #856), THE ALLEY IN BLOCK 28	)	AFFIDAVIT OF POSTING,
AND FALCON STREET AS PLATTED AND RECORDED IN	)	PUBLICATION
THE PLAT OF HECETA BEACH (BK. 7, P. 25), LANE	)	AND MAILING
COUNTY, OREGON PLAT RECORDS, WITH A PUBLIC	)	
HEARING, AND ADOPTING FINDINGS OF FACT	)	
(18-12-04-13 & 42)	)	

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

That on the 8<sup>th</sup> day of July, 2008 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 4"x4" treated wooden fence post located at the northwest corner of the intersection of Meares Street and First Avenue immediately westerly of the landscaped southeasterly corner of the Driftwood Shores property.
2. Posted on power pole #V04G3 located at the northeast corner of the intersection of Falcon Street and First Avenue.
3. Posted on a "Do Not Enter" sign post located on the westerly side of the southerly end of First Avenue Loop at its intersection with First Avenue.

The undersigned further certifies that on July 10, 2008 and July 21, 2008 notice is scheduled to run in the Register Guard and on July 9, 2008 and July 26, 2008 notice is scheduled to run in the Siuslaw News. Also, that on June 30, 2008 notice was sent to adjacent owners by Certified Mail, and to various other private entities and public agencies having an interest in these vacation proceedings by General Mail.



\_\_\_\_\_  
D. Michael Jackson  
Lane County Surveyor

State of Oregon )  
County of Lane )

Subscribed and sworn to before me this 9<sup>th</sup> day of July, 2008 by  
D. Michael Jackson.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires:

ATTACHMENT Vacation—Portions of 1<sup>st</sup> Avenue, Alley in Block 28, and Falcon Street in Plat of Heceta Beach

SW1/4NE1/4 and NW1/4SE1/4 Section 4, T. 18 S. R. 12 W., W.M.  
LANE COUNTY  
NO SCALE

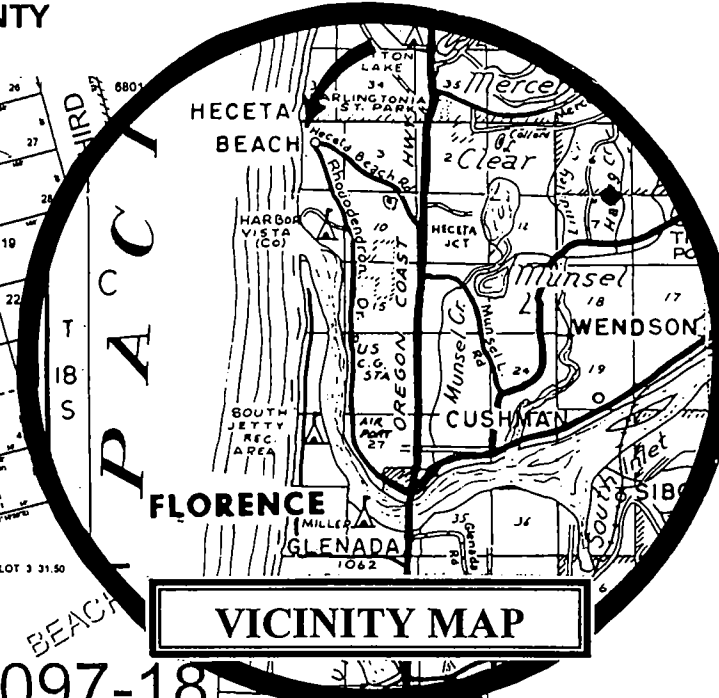
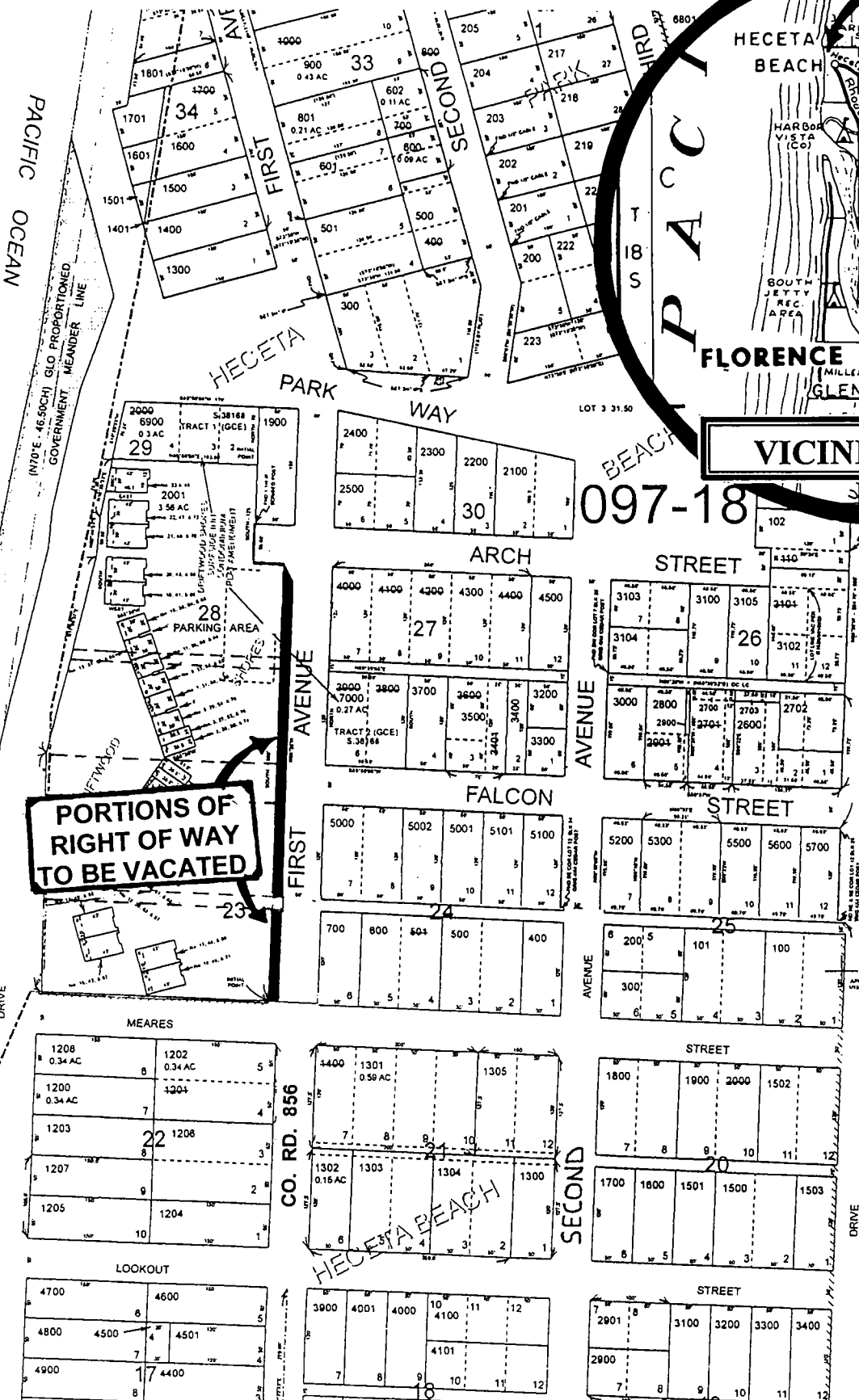


SHORES

SECOND FLOOR	UNIT	SW
20	201	647
21	202	644
22	203	650
23	204	640
24	205	654
25	206	636
26	206	658
27	210	632
28	213	662
29	214	628
30	217	666
31	218	624
32	221	670
33	222	620
34	225	674
35	226	616
36	226	678
37	230	613
38	231	681
39	232	610
40	233	684
41	234	607
42	235	687
43	236	604
44	238	607

FOURTH FLOOR	UNIT	SW
401	649	
402	646	
403	652	
404	642	
405	656	
406	638	
408	660	
410	634	
413	664	
414	630	
417	668	
418	626	
421	672	
422	622	
425	676	
426	618	



097-18