

PASSED

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

FILE NO. 4124

IN THE MATTER OF THE VACATION OF A )  
PORTION OF OAK ROAD (CO. RD. #373), LOCATED )  
IN THE NORTHEAST QUARTER (NE1/4) OF SECTION ) ORDER NO.  
36, TOWNSHIP 20 SOUTH, RANGE 3 WEST OF THE ) 05-11-2-2  
WILLAMETTE MERIDIAN, IN LANE COUNTY, )  
OREGON (20-03-36) )

**WHEREAS**, this matter now coming before the Board of County Commissioners for Lane County, Oregon, upon valid 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 that portion of Oak Road (County Road #373) lying east of the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, more particularly described as follows:

All that portion of County Road Number 373 (commonly known as Oak Road) located in the Northeast quarter (NE ¼) of Section 36, Township 20 South, Range 3 West of the Willamette Meridian, from the beginning point of the road as surveyed in 1883, on the north side of the Row River, thence South across the river 3.16 chains (208.56 feet), thence South 86° West approximately 350 feet to the westerly right-of-way of the former Oregon Pacific and Eastern Railroad, and there ending, all in Lane County, Oregon; and

**WHEREAS**, the Board of Commissioners conducted a public hearing on July 13, 2005, in accordance with Resolution, Notice of Hearing and Order No. 05-6-1-17, to consider the vacation of the described portion of Oak Road; and

**WHEREAS**, after consideration and deliberation of the record, which included a report and recommendation for denial of the vacation from the Director of Public Works as well as written material and oral presentation by County Surveyor Bill Robinson, oral and written testimony by primary petitioner’s attorney Liam Sherlock, oral testimony by primary petitioner Haring Piebenga, oral testimony by petitioner Piebenga’s contractor Steve Thoreson, and oral testimony by Lane County Right-of-Way Management representative Doug McCart, the Board of Commissioners voted to approve the vacation by a 3-1 vote; and

**WHEREAS**, the Director of the Department of Public Works has provided a written report, as required by ORS 368.346, marked as Exhibit “A”, attached hereto and made a part hereof, by this Order, recommending that the described portion of Oak Road be vacated; and

**WHEREAS**, all necessary procedures for a vacation have been complied with, pursuant to ORS Chapter 368, including notification of these proceedings by posting, mail and legal publication by the County Surveyor as required by ORS 368.401 to 368.426, and evidenced by the Affidavit of Posting, Publication and Mailing dated June 23, 2005, marked as Exhibit "C", attached hereto and made a part hereof by this Order; and

**WHEREAS**, the petitioners are requesting the vacation of this portion of road in order to allow an existing gate to remain in place at the owner's property line and help reduce dumping and trespass on petitioner Piebenga's property; and

**WHEREAS**, the primary petitioner has paid a vacation processing fee of \$1500; and

**WHEREAS**, Qwest Communications, Lane Electric Cooperative, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and abutting landowners were notified by mail regarding the proposed vacation; and

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

**WHEREAS**, Lane Electric Cooperative replied with concerns that they have a pad mount transformer to which they need to maintain access; and

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

**WHEREAS**, a letter of objection to the vacation was received two days prior to the public hearing written by A Kinkade, and said letter was made a part of the public hearing; and

**WHEREAS**, in the public hearing held on July 13, 2005 the Board of Commissioners directed County staff to work with primary petitioner Haring Piebenga in the development of a turnaround, and petitioner Piebenga has since completed construction of a turnaround to the satisfaction of the County; and

**WHEREAS**, an easement has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354, for the purpose of providing access across the bike path owned and administered by the Bureau of Land Management, to the property of primary petitioner Piebenga; 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 vacation of the above described portion of Oak Road (County Road Number 373) is hereby approved; 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 Oak 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.

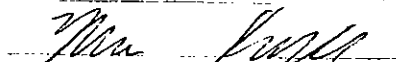
**DATED** this 2nd day of November, 2005.

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

Attachment: Attachment - Vicinity Map

APPROVED AS TO FORM

Date: 10-25-05 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

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

**ORIGINAL**

**FILE NO.**

**IN THE MATTER OF THE VACATION OF A )  
PORTION OF A COUNTY ROAD, COMMONLY )  
KNOWN AS OAK ROAD (COUNTY ROAD )  
NUMBER 373) IN THE NE ¼ OF SECTION 36, )     **PETITION TO VACATE**  
TOWNSHIP 20 SOUTH, RANGE 3 WEST OF )  
THE WILLAMETTE MERIDIAN IN LANE )  
COUNTY, OREGON. )**

**PURSUANT** to the procedures set forth in ORS Chapter 368, we the undersigned, Haring L. Piebenga, Joe Snook, constituting the Executive Committee of Dorena Grange No. 835, and Emily Rice , representative of United States Department of Interior Bureau of Land Management, owners of adjacent real property hereby petition for the vacation of a portion of County Road Number 373 (commonly known as Oak Road), which area to be vacated is described as follows:

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

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

**WHEREAS**, petitioners allege as follows:

1. The purpose of the vacation request is to allow existing gate to remain in place at owners property line.
2. There are no utilities, and no powerlines located in the area to be vacated.

**WHEREAS**, no portion of the area to be vacated is located within the boundaries of an incorporated City or Town; and

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

**WHEREAS**, petitioners, separately and collectively, have no objection to Lane County proceeding under the Authority of ORS Chapter 368.326, for vacation without a hearing; and

**THEREFORE**, the petitioners request an Order of the Board of Commissioners for Lane County as follows:

1. Setting a date for vacation of the above described portion of road, with or without a hearing before the Board of Commissioners for Lane County pursuant to ORS Chapter 368.
2. Upon review of this matter, to direct the vacation of the above described road, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.

**DATED** this 22 day of FEBRUARY, 2008.

7

**PETITIONERS:**

Haring L. Piebenga  
Owner

ORIGINAL

Map # 20-03-36 Tax Lot 100  
ADDR: 36534 Oak Road  
Cottage Grove, Oregon 97424

STATE OF OREGON )  
COUNTY OF LANE ) ss.

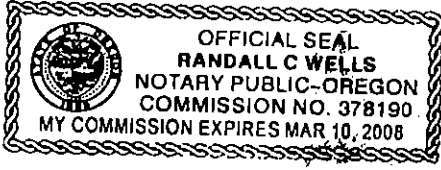
On 2-22, 2005, personally appeared the above-named HARING L. PIEBENGA  
Print Signature  
Haring L. Piebenga

and acknowledged the foregoing instrument to be a voluntary act before me.

Randall Wells  
Notary Public for Oregon  
My Commission expires: 3-10-08

Joe Snook  
Representative for Dorena Grange # 835

Map # 20-02-31 Tax Lot 1800  
ADDR: 77796 Sunset Drive  
Cottage Grove, Oregon 97424



STATE OF OREGON )  
COUNTY OF LANE ) ss.

On March 2, 2005, personally appeared the above-named Joe Snook Joe Snook  
Print Signature  
Joe Snook as Representative for Dorena Grange # 835

and acknowledged the foregoing instrument to be a voluntary act before me.

Sarah Schmitt  
Notary Public for Oregon  
My Commission expires: 9/9/06

Emily Rice  
Representative for BLM

Map # 20-03-36 Tax Lot 2103  
ADDR: P.O. Box 10226  
Eugene, Oregon 97440



STATE OF OREGON )  
COUNTY OF LANE ) ss.

On March 7, 2005, personally appeared the above-named Emily Rice Emily Rice.  
Print Signature  
Emily Rice as Representative for BLM

and acknowledged the foregoing instrument to be a voluntary act before me.



Carolyn A. Tillery  
Notary Public for Oregon  
My Commission expires: June 10, 2005

**EXHIBIT "A"**

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

**FILE NO. 4124**

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

**DIRECTOR'S  
FINAL REPORT**

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 Oak Road (Co. Rd. #373). The primary petitioner is requesting this vacation in order to avoid removal of a gate he has constructed within the public right-of-way of Oak Road.

Oak Road, formerly known as Mosby Road (County Road Number 373), was established in 1883 with a statutory width of 60 feet, beginning at the north bank of the Row River, crossing the river and extending westerly approximately 0.36 miles, and then continuing southwesterly about 1.32 miles to a point on the south side of Mosby Creek. In 1965, the road was relocated and crosses the Row River at a point approximately ¼ mile west of the 1883 alignment. The portion proposed to be vacated is the first 600 feet, more or less, of the 1883 alignment, commencing at the north side of Row River, crossing the river, and extending westerly to the westerly right-of-way of the bike path, former Oregon Pacific and Eastern Railroad.

It was recommended that a public hearing be held regarding the proposed vacation due to the fact that a portion of the proposed vacation provides public access to the Row River, and also due to concerned responses as mentioned below. On June 1, 2005, Resolution No. 05-6-1-17 was passed by the Board of Commissioners, which set a public hearing date of July 13, 2005 to consider this petition for vacation.

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

At the public hearing held July 13, 2005, the Surveyor's Office and Director of Public Works recommended denial of the vacation, since the portion of road proposed to be vacated accesses the Row

## EXHIBIT "A"

River, said recommendation of denial being consistent with previous determinations and direction by the Board of Commissioners regarding retaining access to public waterways. Primary petitioner Piebenga's attorney Liam Sherlock gave written and oral testimony in favor of the vacation. Petitioner Piebenga himself also gave oral testimony in favor of the vacation. His testimony expressed hopes that approval of the vacation would help solve problems of dumping and illicit activities on his property, and expressed a commitment to financially facilitate the construction of a turnaround in cooperation with Lane County Transportation Department. Doug McCart of Lane County Right-of-Way Management gave oral testimony regarding an appropriate location for a turnaround. Steve Thoreson, a contractor for petitioner Piebenga, gave oral testimony in favor of the vacation. Commissioner Faye Stewart spoke in favor of the vacation, stating it to be his belief that the vacation would be in the public interest. There was no public oral testimony presented at the hearing in opposition to the vacation; however, a letter in opposition to the hearing signed by A. Kinkade was received two days prior to the hearing and was made available in the hearing. The Board of Commissioners voted to approve the vacation by a 3-1 vote, including in the motion a directive that County staff continue to work with petitioner Piebenga in the development of a turnaround. A turnaround has since been completed by petitioner Piebenga to the satisfaction of the County.

The approval of the vacation of this portion of Oak Road, including the portion underlying the bike path owned by the Bureau of Land Management, will result in deprivation of right of access to Mr. Piebenga's property. Subsequent to the public hearing, Mr. Piebenga and his attorney, Liam Sherlock, were notified of this and informed that either an easement from the Bureau of Land Management would be needed or else a document of formal consent to vacation under these circumstances (in accordance with ORS 368.331) would need to be executed and included with the Agenda documents and Order. Mr. Piebenga chose to obtain an easement from the Bureau of Land Management, which has been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354.

In response to the public hearing proceedings in which the Board of Commissioners determined this vacation to be in the public interest, it is therefore recommended that the vacation of this portion of Oak Road, as described in the final order, be approved.

DATED this 19<sup>th</sup> day of October, 2005



Oliver P. Snowden, Director - Department of Public Works

**EXHIBIT "B"**

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

**FILE NO. 4124**

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

**FINDINGS OF FACT**

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 Oak Road (Co. Rd. #373). The primary petitioner is requesting this vacation in order to avoid removal of a gate he has constructed within the public right-of-way of Oak Road. The subject portion of right-of-way is approximately 600 feet in length with a statutory 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 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:

## EXHIBIT "B"

1. That, the petitioners own property abutting the proposed vacation. Said property is further identified as Tax Lots 100 and 2103 of Assessor's Map 20-03-36, and Tax Lot 1800 of Assessor's Map 20-02-31.
2. 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".
3. That, 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 neighboring landowners were notified by mail regarding the proposed vacation.
4. That, Lane County Transportation Planning responded with concerns about the locked gate being within public right-of-way, providing for construction of a turnaround if the subject portion of road is vacated, and recommendations regarding vacation limits.
5. That, Lane Electric Cooperative responded with concerns that they have a pad mount transformer to which they need to maintain access.
6. That, Raymond Kopki, owner of taxlot 20-03-36-101, did not respond to the formal referral, however later contacted the Lane County Right-of-Way section to express concerns that if the road were vacated as petitioned for it would possibly result in a required turnaround adjacent to or on his property.
7. That, two days prior to the public hearing for this matter, A. Kinkade submitted a letter of opposition to the vacation, which was made a part of the public hearing proceedings.
8. That, a public hearing was held on July 13, 2005 in which this vacation was approved by a 3-1 vote by the Lane County Board of Commissioners.
9. That, in the public hearing held on July 13, 2005 the Board of Commissioners directed County staff to work with primary petitioner Haring Piebenga in the development of a turnaround, and petitioner Piebenga has since completed construction of a turnaround to the satisfaction of the County.
10. That, the vacation of this portion of Oak Road will result in deprivation of right of access to primary petitioner Piebenga's property (Tax Lot 100 of Assessor's Map 20-03-36), and to provide for access Mr. Piebenga has obtained an easement from the Bureau of Land Management across the bike path owned and administered by the Bureau of Land Management (part of Tax Lot 2103 of Assessor's Map 20-03-36), said easement having been executed and recorded in the Lane County Office of Deeds and Records, Instrument No. 2005-079354.
11. That, the County Surveyor provided legal notice for the public hearing by service, posting, and publication, as required by ORS 368.401 to 368.426.
12. That, pursuant to ORS 368, a county governing body may make a determination about a vacation of property with a public hearing if:
  - (1) The county governing body adopts a resolution meeting the requirements of ORS 368.341.

## **EXHIBIT "B"**

- (2) The county road official files a written report containing a description of the property proposed for vacation and stating whether or not the vacation is in the public interest.
- (3) 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), (2) and (3) 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

FILE NO. 4124

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

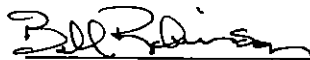
AFFIDAVIT OF POSTING,  
PUBLICATION  
AND MAILING

I, Bill Robinson, Lane County Surveyor, certify as follows:

That on the 22nd day of June, 2005, 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:

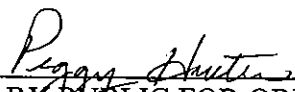
1. Posted on "No Motor Vehicles" signpost on the southerly side of Row River Road on the westerly side of the bike path.
2. Posted on "Stop" signpost on the easterly side of the bike path and on the southerly side of Oak Road, approximately 0.2 mile easterly of Layng Road.
3. Posted on "Bridge Tour" signpost on the easterly side of Layng Road, approximately 50 feet southerly of the intersection of Layng Road and Oak Road.

I further certify that on the 10<sup>th</sup> day of June, 2005 notice was sent by Certified Mail to the abutting property owners affected by the proposed road action, in accordance with Oregon Revised Statutes Chapter 368. Notice was also sent by General Mail to other property owners in the area, as well as private and public agencies having an interest in these vacation proceedings. Also, on June 23, 2005 and July 5, 2005 notice is scheduled to run in the Register Guard.

  
\_\_\_\_\_  
Bill Robinson  
Lane County Surveyor

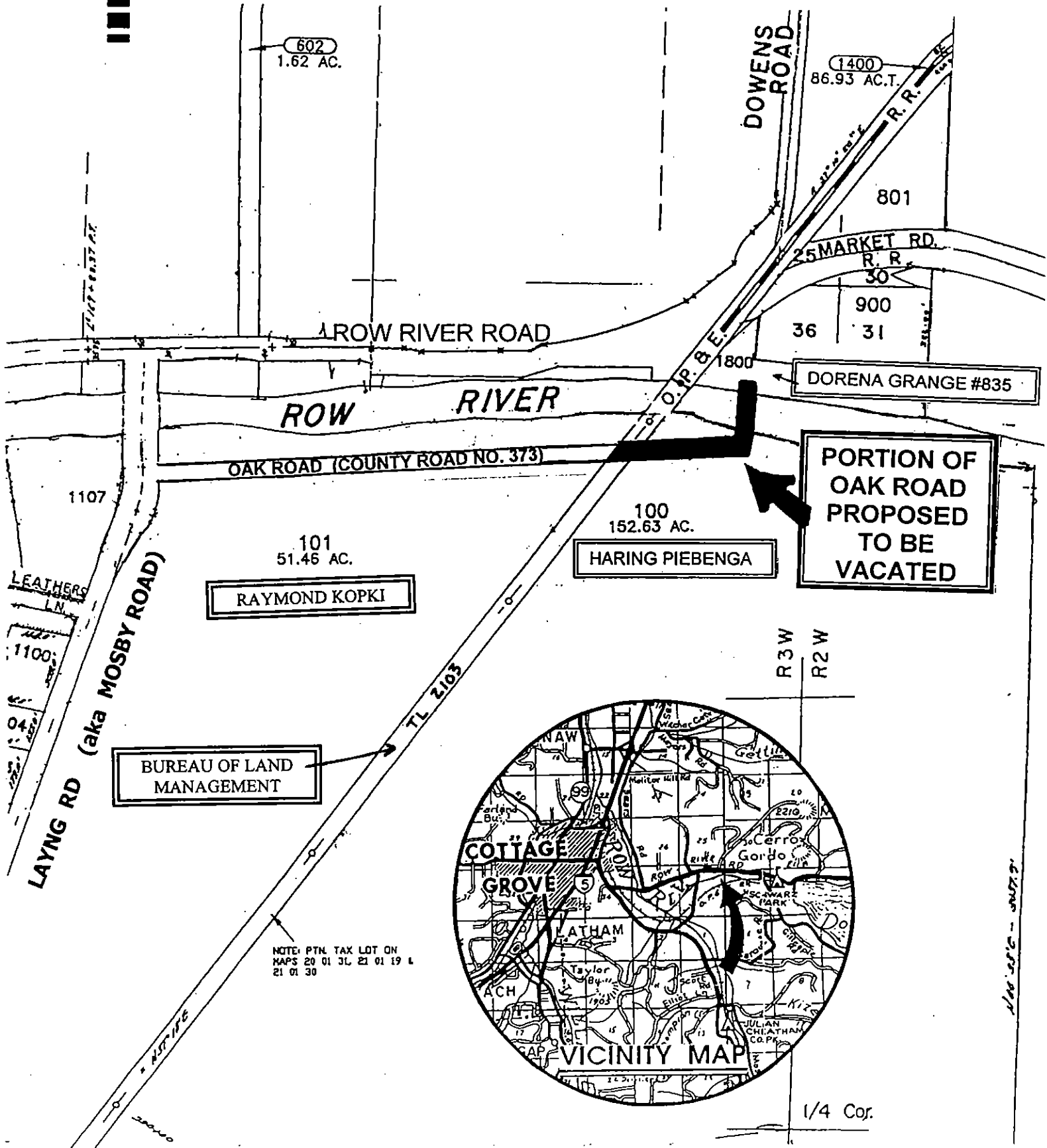
Subscribed and sworn to before me this 23<sup>rd</sup> day of June, 2005.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Oct. 13, 2007

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

NO SCALE



602  
1.62 AC.

1400  
86.93 AC.T.

801

25 MARKET RD.  
R. R.

30  
900  
36 31

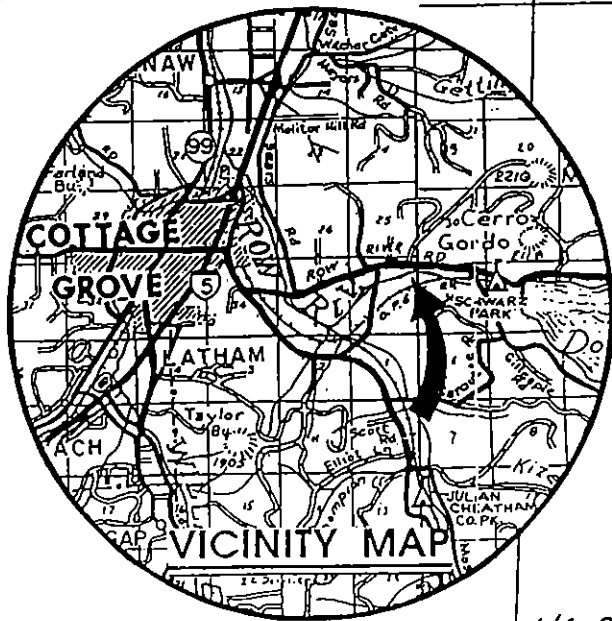
DORENA GRANGE #835

PORTION OF  
OAK ROAD  
PROPOSED  
TO BE  
VACATED

100  
152.63 AC.  
HARING PIEBENGA

101  
51.46 AC.  
RAYMOND KOPKI

BUREAU OF LAND  
MANAGEMENT



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

1/4 Cor.

11/20/02 - 10/27/03