

PASSED ORIGINAL

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

FILE NO. 4028

**IN THE MATTER OF THE PETITION FOR VACATING)
MARCUS JESSEN ROAD (COUNTY ROAD NUMBER)
732) LOCATED IN SECTION 19, TOWNSHIP 17)
SOUTH, RANGE 4 WEST AND SECTION 24,)
TOWNSHIP 17 SOUTH, RANGE 5 WEST OF THE)
WILLAMETTE MERIDIAN (17-04-19 & 17-05-24))**

ORDER NO.

01-2-14-11

WHEREAS, this matter now coming before the Board of County Commissioners for Lane County, Oregon, upon the Resolution, Notice of Hearing and Order No. 00-12-13-12 for the proposed vacation of a portion of Marcus Jessen Road, County Road Number 732; and

WHEREAS, Marcus Jessen Road (County Road Number 732) was established in 1914 with a right-of-way width of 60 feet, 30 feet on each side of centerline. Said road being more particularly described as follows:

All of County Road Number 732 (Marcus Jessen Road) from its beginning point in the center of Fir Butte Road (County Road Number 497) as surveyed by Hollis W. Libby in 1913, said point being the Southwest corner of the Northeast quarter (NE ¼) of the Northeast quarter (NE ¼) of Section 24, Township 17 South, Range 5 West of the Willamette Meridian and thence running in an easterly direction approximately 6,889 feet to a point in the center of Green Hill Road (County Road Number 465) said point being South 0°11' West, 1,320.5 feet of the Northeast corner of Section 19, Township 17 South, Range 4 West of the Willamette Meridian, and there ending.

Except that portion within Fir Butte Road and Green Hill Road.

WHEREAS, the petition to vacate was received by the Lane County Surveyor's Office with signatures of all the abutting property owners, or their representatives, however, since that time one of the owners has passed away and the heirs of the property have not indicated their support in the vacation, thus County Counsel has recommended that a public hearing be held regarding the proposed vacation; and

WHEREAS, the petitioners have met the requirement of ORS 368.341(f), as at least 60% of the adjoining landowners have signed the petition to vacate the road; and

WHEREAS, U.S. West Communications, Emerald Peoples 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 abutting landowners were notified by mail regarding the proposed vacation; and

WHEREAS, Lane County Transportation Planning Department replied stating that they support the vacation as proposed, subject to retaining a private access easement and utility easement for any existing facilities; and

WHEREAS, a Grant of Easement and Maintenance Agreement, for a 20 foot-wide easement centered on the existing right of way of the county road, has been executed and recorded on Instrument Number 2000-053385 in Lane County, Oregon Deed Records, for the purpose of providing access to a public road for the landowners who would otherwise be landlocked if Marcus Jessen Road were vacated. The easement provides for any future utility lines needed to serve properties; and

WHEREAS, a utility easement will be reserved for repair and maintenance of any existing utilities over the vacated right-of-way; and

WHEREAS, all necessary procedures for a vacation have been complied with, pursuant to ORS Chapter 368, including the giving of notice as evidenced by the Affidavit of Posting and Publication labeled as Exhibit "C", attached hereto and made a part hereof by this Order; and

WHEREAS, the Director of the Department of Public Works has provided a written report regarding the vacation, as required by ORS 368.346, attached hereto, marked Exhibit "A", and made a part hereof by this Order; and

WHEREAS, a public hearing was conducted on this date, as ordered, regarding the proposed vacation of the road as described above; and

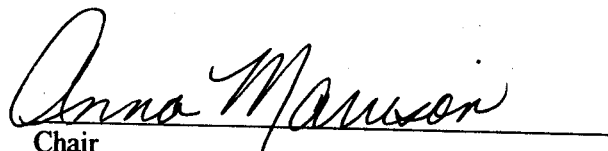
WHEREAS, in accordance with the provisions of ORS 368.356, the Board is of the opinion that approving the vacation of the road, as described herein, is in the best interest of the public, at this time; now therefore, it is hereby

ORDERED, that the vacation of the above described Marcus Jessen Road, County Road Number 732, is hereby approved, and the Board hereby adopts the Findings of Fact, as set forth in Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

ORDERED, that a utility easement is hereby reserved for repair and maintenance of any existing utilities over the vacated right-of-way; 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 and in the records for County Road Number 732 administered by the Lane County Surveyor.

DATED this 14th day of February, 2001


Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachments: Vicinity Map

APPROVED AS TO FORM

Date 1-30-01 lane county


OFFICE OF LEGAL COUNSEL

File No.

In the matter of the vacation of]
 county road number 732 ,]
 Marcus Jessen Rd. in section 24]
 Township 17 South, Range 5 West]
 & section 17 TS 17 Range 4 West]
 Of The Willamette Meridian, In]
 Lane County, Oregon]

Petition To Vacate

PURSUANT to the procedures set forth in ORS Chapter 368, we, the undersigned Jerry A. Pace and Ruby A. Pace, husband and wife, and all others undersigned as owners of adjacent real property hereby petition for the vacation of county road 732, Marcus Jessen Rd., which area to be described as follows:

All that portion of County Road 732, Marcus Jessen Road located adjacent to real property owned by the undersigned being further described as an undeveloped right-of-way, beginning at a point at Fir Butte Rd. and thence to a point at Greenhill Road and there ending, all in Lane County Oregon.

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 this vacation request is to return the use of this land and the benefits thereof to the adjacent property owners

.2. There are telephone lines and powerlines located underground in the area to be vacated and their disposition will be as follows

- A. Telephone.....as currently maintained
- B. Underground powerline.....as currently maintained

Necessary easements for these public and private utilities will be executed between the parties prior to completion of the vacation, and

WHEREAS: Graveled portion on west end.....as currently maintained and used.

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 road, with or without a hearing before the Board of Commissioners for Lane Co. 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.....day of2000

To initiate this kind of vacation under O.R.S. 368.351 we need a valid petition per O.R.S. 368.341; and the following fees:

\$550.00 as a filing fee per Lane Manual 60.853 at the time you submit your petition to the County Surveyor's Office.

\$65.00 recordation fee at the County Clerks Office at the time the final documents are recorded in the Deed Records.

\$ 5.00 Approval fee per Lane Code 2.900(2) in the case of approval.

Some right-of-way vacations or any vacation deemed controversial must proceed with a Public Hearing. These necessarily are more prolonged in order to provide adequate Public Notice. A valid petition per O.R.S. 368.341 must be submitted. The fees are typically:

\$1,250.00 as a filing fee per Lane Manual 60.853 at the time you submit your petition to the County Surveyor's Office.

\$ 35.00/hour for Posting legal Notices and any field investigation required by the County Surveyor.

\$90.00 recordation fee at the County Clerks Office at the time the final documents are recorded in the Deed Records.

\$ 5.00 Approval fee per Lane Code 2.900(2) in the case of approval.

CAUTION: "Public Interest" is the sole test which the Commissioners will use to determine whether to approve or deny your petition.

PETITIONERS:

Jerry and Ruby Pace

Jerry Pace Ruby Pace

Map# 17 05 24 TL700
89189 Fir Butte Rd.
Eugene OR 97402

Anthony and Vida Berry

Anthony Berry Vida L Berry

Map# 17 05 24 TL 400
89181 Fir Butte Rd.
Eugene OR 97402

Donald J. Schroeder

Donald J Schroeder

Map# 17 05 24 TL 300
89215 Fir Butte Rd.
Eugene OR 97402

Leonard and Nancy Harrington

Leonard & Harrington, Nancy Harrington

Map# 17 05 24 TL 800
89165 Fir Butte Rd,
Eugene OR 97402

James E. Rookard

James E. Rookard POA

Map# 17 04 19 TL 500
89175 Fir Butte Rd.
Eugene OR 97402

Haase, Frederick D & Linda S

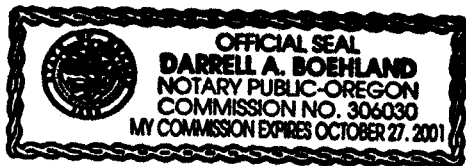
Map# 17 04 19 TL 600 TL 100
205 E. Diamond Ave
Anchorage Alaska 99515

Southern Pacific Co.
Union Pacific Corp.

Map# 17 04 19 TL 300
P O box 2500
Broomfield CO 80038

STATE of OREGON }
COUNTY of LANE } ss.

ON March 8, 2000, Personally appeared the above-named
..... and acknowledged the
foregoing instrument to be a voluntary act before me:



Darrell A Boehland
Notary Republic for Oregon
My Commission Expires: 10-27-2001

PETITION- COUNTY ROAD 732 , MARCUS JENSON ROAD

PETITIONERS:

Jerry and Ruby Pace

Anthony and Vida Berry

.....
Map# 17 05 24 TL700
89189 Fir Butte Rd.
Eugene OR 97402

.....
Map# 17 05 24 4 TL 400
89181 Fir Butte Rd.
Eugene OR 97402

Donald J. Schroeder

Leonard and Nancy Harrington

.....
Map# 17 05 24 TL 300
89215 Fir Butte Rd.
Eugene OR 97402

.....
Map# 17 05 24 TL 800
89165 Fir Butte Rd,
Eugene OR 97402

James E. Rookard

Haase, Frederick D & Linda S

.....
Map# 17 04 19 TL 500
89175 Fir Butte Rd.
Eugene OR 97402

.....
Map# 17 04 19 TL 600 TL 100
205 E. Diamond Ave
Anchorage Alaska 99515

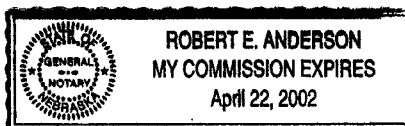
Southern Pacific Co.
Union Pacific Corp

.....
Map# 17 04 19 TL 300
P O box 2500
Broomfield CO 80038

STATE of OREGON }
COUNTY of LANE } ss.

ON March 3, 2000, Personally appeared the above-named.....
Jim Roth..... and acknowledged the
foregoing instrument to be a voluntary act before me:

Robert E Anderson
Notary Republic for Oregon Nebraska
My Commission Expires: 4/22/2002



PETITION- COUNTY ROAD 732 , MARCUS JENSON ROAD

PETITIONERS:

Jerry and Ruby Pace
Jerry A. Pace Ruby Pace
Map# 17 05 24 TL700
89189 Fir Butte Rd.
Eugene OR 97402

Anthony and Vida Berry
Anthony Berry Vida L Berry
Map# 17 05 24 TL 400
89181 Fir Butte Rd.
Eugene OR 97402

Donald J. Schroeder
Donald J Schroeder
Map# 17 05 24 TL 300
89215 Fir Butte Rd.
Eugene OR 97402

Leonard and Nancy Harrington
Leonard Harrington Nancy Harrington
Map# 17 05 24 TL 800
89165 Fir Butte Rd,
Eugene OR 97402

James E. Rookard
.....
Map# 17 04 19 TL 500
89175 Fir Butte Rd.
Eugene OR 97402

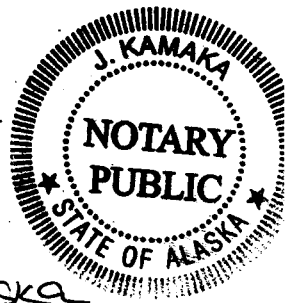
Haase, Frederick D & Linda S
Frederick D Haase
Map# 17 04 19 TL 600 TL 100
205 E. Diamond Ave
Anchorage Alaska 99515

Southern Pacific Co.
Union Pacific Corp.
.....
Map# 17 04 19 TL 300
P O box 2500
Broomfield CO 80038

STATE of OREGON }
COUNTY of LANE } ss.

ON March 30, 2000, Personally appeared the above-named
Frederick D Haase and acknowledged the
foregoing instrument to be a voluntary act before me:

[Signature]
Notary Republic for Oregon Alaska
My Commission Expires: 4/2/03



PETITIONERS:

Jerry and Ruby Pace
Jerry A. Pace Ruby Pace
Map# 17 05 24 TL700
89189 Fir Butte Rd.
Eugene OR 97402

Anthony and Vida Berry
Anthony Berry Vida L Berry
Map# 17 05 24 TL 400
89181 Fir Butte Rd.
Eugene OR 97402

Donald J. Schroeder
Donald J. Schroeder
Map# 17 05 24 TL 300
89215 Fir Butte Rd.
Eugene OR 97402

Leonard and Nancy Harrington
Leonard Harrington Nancy Harrington
Map# 17 05 24 TL 800
89165 Fir Butte Rd,
Eugene OR 97402

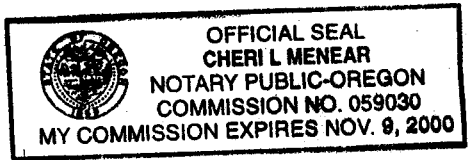
James E. Rookard
.....
Map# 17 04 19 TL 500
89175 Fir Butte Rd.
Eugene OR 97402

Haase, Frederick D & Linda S
F D Haase Linda S Haase
.....
Map# 17 04 19 TL 600 TL 100
205 E. Diamond Ave
Anchorage Alaska 99515

Southern Pacific Co.
Union Pacific Corp.
.....
Map# 17 04 19 TL 300
P O box 2500
Broomfield CO 80038

STATE of OREGON }
COUNTY of LANE } ss.

Deschutes
ON *April 6*, 2000, Personally appeared the above-named *Linda Reed*
Haase and acknowledged the
foregoing instrument to be a voluntary act before me:



Cheri L. Meneas
.....
Notary Republic for Oregon
My Commission Expires:.....

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

FILE NO. 4028

<p>IN THE MATTER OF THE PETITION FOR VACATING) MARCUS JESSEN ROAD (COUNTY ROAD NUMBER) 732) LOCATED IN SECTION 19, TOWNSHIP 17) SOUTH, RANGE 4 WEST AND SECTION 24,) TOWNSHIP 17 SOUTH, RANGE 5 WEST OF THE) WILLAMETTE MERIDIAN (17-04-19 & 17-05-24))</p>	<p>DIRECTOR'S FINAL REPORT</p>
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The Surveyor's Office of the Department of Public Works received a valid petition to vacate Marcus Jessen Road, County Road Number 732.

Marcus Jessen Road was established as County Road Number 732 in 1914 with a right-of-way width of 60 feet. The right-of-way is approximately 1.30 miles in length, extending from Fir Butte Road (County Road Number 497) to Green Hill Road (County Road Number 465) and lies outside of Eugene's Urban Growth Boundary. The right-of-way is unconstructed except for a graveled portion, approximately 0.25 miles in length, coming off of Fir Butte Road. The petitioners are requesting this vacation for the purpose of returning the use of the land, and the benefits thereof, to the adjacent landowners.

Initially, the petition to vacate was received by the Lane County Surveyor's Office with signatures of 100% of the abutting owners or their representatives; however, since that time, one of the petitioners has passed away and the heirs of the property have not indicated their support of the vacation. County Counsel has advised that a public hearing be held regarding the proposed vacation.

The petitioners have met the requirement of ORS 368.341 (f), as at least 60% of the adjoining landowners have signed the petition to vacate the road.

U.S. West Communications, Emerald Peoples 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 abutting landowners were notified by mail regarding the proposed vacation. Lane County Transportation Planning Department commented that the majority of property abutting this road is zoned agricultural and there does not appear to be a need to retain this road. They stated that they support the vacation as proposed, subject to retaining a private access easement and utility easement to maintain existing utility lines. The other agencies either had no objections or did not respond to the referral.

In 1998, the U.S. Department of Interior - Bureau of Land Management had expressed an interest in keeping Marcus Jessen Road a public road, however the Lane County Surveyor's Office has recently contacted them and they have indicated that they no longer have an interest in this right-of-way.

A private 20 foot-wide easement agreement has been executed to provide access to Fir Butte Road for the properties that would otherwise be landlocked as a result of this vacation. With this easement agreement in place, no property will be denied legal access if the right-of-way is vacated. The easement document further provides for future utility lines to serve properties along the road.

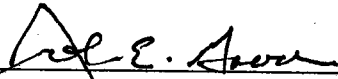
If the petition to vacate is approved a utility easement will be reserved in the Final Order for the repair and maintenance of any existing utilities within the vacated right-of-way.

Except for the graveled section of roadway mentioned above, the road is not constructed or opened for public travel. The road is not needed as part of the Lane County Transportation System, therefore it is considered to be in the public interest to vacate Marcus Jessen Road, County Road Number 732, as it will allow the petitioners to more fully utilize the property.

The public notice of the proposed petition to vacate the Marcus Jessen Road was provided as required by ORS 368 provisions.

It is therefore recommended that the Final Order be approved and Marcus Jessen Road be vacated as petitioned for, and that a public utility easement be reserved for the repair and maintenance of any existing utilities within the vacated right-of-way.

DATED this 26th day of JANUARY, 2001



John E. Goodson, Director - Department of Public Works

EXHIBIT "B"

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

FILE NO. 4028

IN THE MATTER OF THE PETITION FOR VACATING)	
MARCUS JESSEN ROAD (COUNTY ROAD NUMBER)	
732) LOCATED IN SECTION 19, TOWNSHIP 17)	FINDINGS OF FACT
SOUTH, RANGE 4 WEST AND SECTION 24,)	
TOWNSHIP 17 SOUTH, RANGE 5 WEST OF THE)	
WILLAMETTE MERIDIAN (17-04-19 & 17-05-24))	

The Department of Public Works has received a valid petition, signed by at least 60% of the owners of the property abutting the proposed vacation, requesting that Marcus Jessen Road (County Road Number 732), as described in the Order, be vacated as petitioned for. The petitioners are requesting this vacation for the purpose of returning the use of the land, and the benefits thereof, to the adjacent property owners.

Findings of Fact (Public Interest)

The Board takes notice and finds:

1. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or right-of-way 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 700, & 800 of Assessor's Map 17-05-24 and Tax Lots 100, 300, 500, & 600 of Assessor's Map 17-04-19.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or right-of-way based upon the determination that the vacation is "in the public interest".
3. That, U.S. West Communications, Emerald Peoples 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 abutting landowners were notified by mail regarding the proposed vacation. Lane County Transportation Planning replied stating that they support the vacation as proposed, subject to retaining a private access and utility easement.
4. That, a private access road easement agreement has been executed for the benefit of affected landowners along the road; therefore, no property will be denied legal vehicle access as a result of this vacation.
5. That, an easement is reserved by the Vacation Order for repair and maintenance of any existing public utilities over the vacated right-of-way.
6. 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.
7. 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.
 - (2) 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.
 - (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 and 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.

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

FILE NO. 4028

IN THE MATTER OF THE PETITION FOR VACATING)
MARCUS JESSEN ROAD (COUNTY ROAD NUMBER 732))
LOCATED IN SECTION 19, TOWNSHIP 17 SOUTH, RANGE)
4 WEST AND SECTION 24, TOWNSHIP 17 SOUTH, RANGE)
5 WEST OF THE WILLAMETTE MERIDIAN.)
(17-04-19 & 17-05-24)

AFFIDAVIT OF POSTING,
PUBLICATION
AND MAILING

I, K. Robert Ezell, Lane County Surveyor, certify as follows:

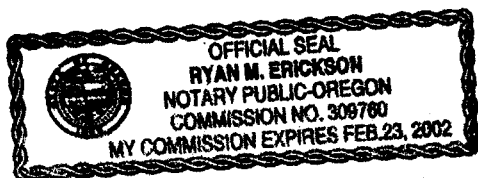
That on the 19th day of January, 2001, I caused to be posted four (4) copies of the Notice of Hearing in the above entitled matter in four places, positioned to be visible to the traveling public, as follows:

1. Posted on Emerald People's Utility District (EPUD) power pole numbered 247702 located near the intersection of Marcus Jessen and Fir Butte Road at driveway to 89165.
2. Posted on Emerald People's Utility District (EPUD) power pole numbered 247701 located near the intersection of Marcus Jessen and Fir Butte Road at driveway to 89189.
3. Posted on a 34" diameter Oak tree about 15 feet south of the traveled Marcus Jessen Road, near the intersection of Marcus Jessen and Fir Butte Road.
4. Posted on a fence post behind EPUD transformer numbered 249781 about 1,300 feet east of Fir Butte Road on Marcus Jessen Road.

The undersigned further certifies that on January 25, 2001 and February 7, 2001 notice is scheduled to run in the Register Guard. Also that on January 9, 2001 notice was sent to adjacent owners and various private and public agencies having an interest in these vacation proceedings by Certified Mail.

K. Robert Ezell
K. Robert Ezell
Lane County Surveyor

Subscribed and sworn to before me this 24th day of January, 2001.



Ryan M. Erickson
NOTARY PUBLIC FOR OREGON
My Commission Expires:

ORIGINAL

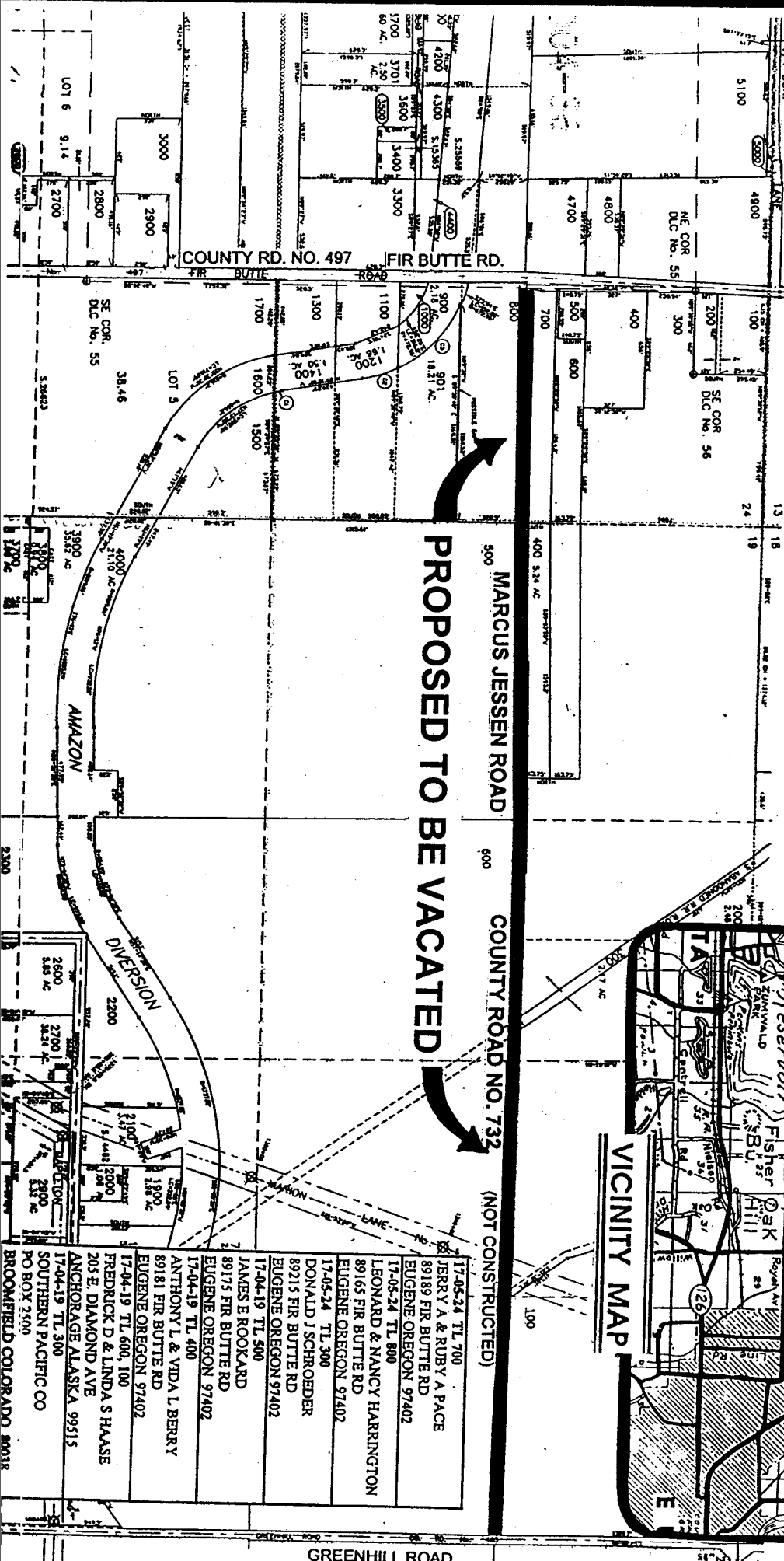


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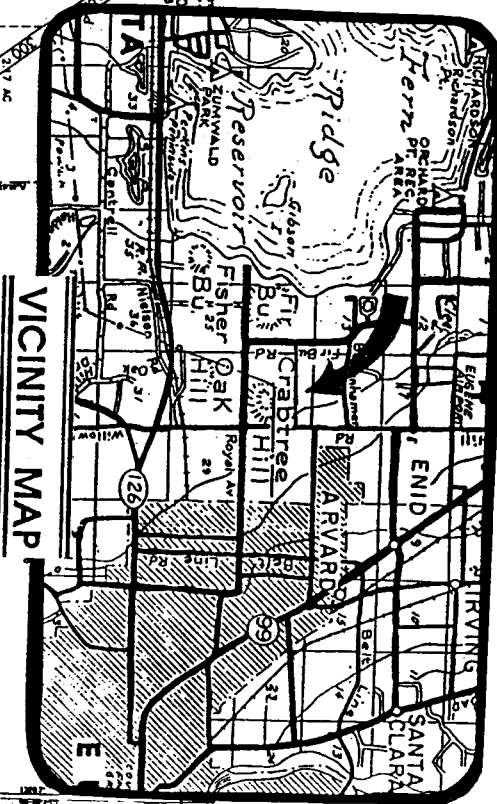
ATTACHMENT 'A'

Section 24 T. 17S. R. 5W. W.M. and Section 19 T. 17S. R. 4W. W.M.

LANE COUNTY



PROPOSED TO BE VACATED



VICINITY MAP

(NOT CONSTRUCTED)

17-05-24 TL 700	JERRY A & RUBY A PACE
89189 FIR BUTTE RD	EUGENE OREGON 97402
17-05-24 TL 800	LEONARD & NANCY HARRINGTON
89165 FIR BUTTE RD	EUGENE OREGON 97402
17-05-24 TL 300	DONALD J SCHROEDER
89215 FIR BUTTE RD	EUGENE OREGON 97402
17-04-19 TL 500	JAMES E ROOKARD
89175 FIR BUTTE RD	EUGENE OREGON 97402
17-04-19 TL 400	ANTHONY L & VIDA L BERRY
89181 FIR BUTTE RD	EUGENE OREGON 97402
17-04-19 TL 600, 100	FREDRICK D & LINDA S HAASE
203 E DIAMOND AVE	ANCHORAGE ALASKA 99515
17-04-19 TL 300	SOUTHERN PACIFIC CO
PO BOX 2500	BROOMFIELD COLORADO 80038