

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

PASSED

FILE NO. 4018

IN THE MATTER OF THE VACATION OF A PORTION OF THE)	
EAST-WEST PUBLIC ALLEY, LOCATED IN BLOCK 20 OF)	
GLENADA, AS PLATTED AND RECORDED IN VOLUME W,)	
PAGE 261, LANE COUNTY, OREGON DEED RECORDS,)	ORDER NO.
LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF THE)	
SOUTHWEST QUARTER (SW 1/4) OF SECTION 35, TOWNSHIP)	00-8-16-2
18 SOUTH, RANGE 12 WEST OF THE WILLAMETTE)	
MERIDIAN (18-12-35-32))	

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, for the proposed vacation of a portion of the alley in Block 20 of Glenada; and

WHEREAS, the portion of alley that is proposed to be vacated was platted in 1889 as part of Block 20 on the Plat of Glenada, said portion of right-of-way being more particularly described as follows:

"The TRUE POINT OF BEGINNING being at the East line of Pine Street and the South line of an alley, and also being the Northwest corner of Lot 12, Block 20, of the Original Plat of Glenada, Volume W, Page 261, Lane County, Oregon Deed Records, Section 35, Township 18 South, Range 12 West, Willamette Meridian; thence following the South line of the alley and the North boundary of said Lot 12, North 89°48'00" East, a distance of 142.00 feet to the Northeast corner of said Lot 12; thence North 26°21'54" East, a distance of 17.89 feet to the Southeast corner of Lot 3 of said Block 20; thence South 89°48'00" West, a distance of 150 feet along the North line of said alley to the Southwest corner of Lot 1, of said Block 20; thence South 0°12'00" East, a distance of 16.00 feet to the TRUE POINT OF BEGINNING, all in Lane County, Oregon"; and

WHEREAS, the Board of County Commissioners for Lane County, Oregon conducted a public hearing on March 15, 2000 in accordance with Notice of Hearing and Order Number 00-1-26-12 to consider the petition to vacate a portion of alley as described above; and

WHEREAS, notification of these proceedings was provided 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 and Publication attached to Order Number 00-3-15-7 dated March 15, 2000; and

WHEREAS, after consideration and deliberation of the record, which included a report from the Director of the Department of Public Works, other written material and oral testimonies from affected landowners, a private surveyor, and the County Surveyor, the board voted and the motion to vacate the portion of alley, as described, failed because of a 2-2 vote; and

WHEREAS, on the basis that there was not a majority vote approving the vacation, an Order to Deny the petition to vacate the portion of the alley in Block 20 of Glenada was prepared and presented to the full Board of Commissioners on July 12, 2000; and

WHEREAS, after more discussion on the matter, the Board voted to deny the Order to Deny the vacation, and re-open the record for 30 days to provide an opportunity for more evidence and testimony to be submitted and an Agenda date of August 16, 2000 was set; and

WHEREAS, additional written evidence was provided by the property owners and testimony has been considered; 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 alley be vacated; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned for is in the best interest of the public; now, therefore, it is hereby

ORDERED, that the above described portion of alley in Block 20 of Glenada is 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 16th day of August, 2000.



Chair
LANE COUNTY BOARD OF COMMISSIONERS

APPROVED AS TO FORM

Date 8-7-00 lane county


OFFICE OF LEGAL COUNSEL

16th on the Agenda for review of any written reports from landowners and to make a decision on whether to vacate the segment alley as described in the petition.

The County Surveyor was notified by the Board to provide notice to all property owners who have previously provided testimony either for or against the proposed alley vacation that the record was opened for them to provide written material on the topic of the petition to vacate the alley. Notification was provided as requested. At the date of this report there has not been any written material received from any landowner. If any are received copies will be provided to the Board members.

Vacating the portion of the alley in Block 20 of Glenada, as petitioned for, would allow for the use of the property by the petitioner. There are no known public utilities within the proposed vacation, and it is doubtful that the need for a utility easement within the right-of-way would be needed in the future as utilities are already established in the area. The alley is no longer needed by the Lane County Transportation System and no property will be denied legal access as a result of this vacation.

The neighboring property owner's concern is that the proposed vacation would permit a structure to be built across the alley and block their view of the ocean and river. The County Surveyor has visited this site, however, and observed that there is a substantial drop in elevation from the neighbor's property near Spruce Street to the portion of alley near the petitioner's residence, and it would seem unlikely that the view would be obstructed even if a building were constructed across the alley in the vicinity of Pine Street. Further, the property owner petitioning to vacate the alley could currently build a building, such as a garage, on their property nearer to Spruce Street and possibly obstruct the view of those property owners objecting to the proposed alley vacation. So it is argued that whether the alley is vacated or not a building could be built anywhere on the petitioner's property so long as the building complies with zoning and building regulations. It is emphasized that the petitioners have not suggested any such building be constructed.

There is no indication that this platted alley has ever been constructed or opened for public travel since it was platted in 1889. It is therefore considered to be in the public interest to vacate this portion of the alley in Block 20 of Glenada as it will allow the petitioner to more fully utilize her property. Legal notice has been provided to the public for these vacation proceedings as required by statute.

It is recommended that the portion of alley in Block 20 of Glenada, as described in the Order, be vacated as petitioned for.

Attachment "A" shows the portion of the alley proposed for vacation.

Attachment "B" shows an area perspective of the alley and its relationship to the surrounding lands, bay, and Siuslaw River.

DATED this 3rd day of AUGUST, 2000.



 John E. Goodson, Director
 Department of Public Works

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

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IN THE MATTER OF THE VACATION OF A PORTION OF THE)
EAST-WEST PUBLIC ALLEY, LOCATED IN BLOCK 20 OF)
GLENADA, AS PLATTED AND RECORDED IN VOLUME W,)
PAGE 261, LANE COUNTY, OREGON DEED RECORDS,) FINDINGS OF FACT
LOCATED IN THE NORTHWEST QUARTER (NW ¼) OF THE)
SOUTHWEST QUARTER (SW ¼) OF SECTION 35, TOWNSHIP)
18 SOUTH, RANGE 12 WEST OF THE WILLAMETTE)
MERIDIAN (18-12-35-32))

The Department of Public Works has received a valid petition, signed by Ms. Nora C. Cusic, the owner of 100% of the property abutting the proposed vacation, requesting that a portion of the alley in Block 20 of Glenada, as described in the Order, be vacated as petitioned for. The petitioner is requesting the portion of alley that lies within her property be vacated so that she can plan for the overall use of her property and not have the alley as an encumbrance. At the present time, the alley is filled with typical coastal vegetation. It is concluded it would be in the public interest to vacate this portion of the alley, as there is no indication that this portion of alley has ever been constructed or open for public travel, and the County has no future plans of constructing the alley. No one will be denied legal access to their property as a result of this vacation.

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-ways 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 establishes 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. The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owner of 100% of the property abutting the proposed vacation. Said property is further identified as Tax Lots 1000, 1100, and 1400 of Assessor's Map 18-12-35-32.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or right-of-ways based upon the determination that the vacation is "in the public interest".
3. That, vacating a portion of the alley in Block 20 of Glenada, as described in the Order will not deny any landowners legal road access to a public road.
4. That, various public and private agencies, as well as neighboring landowners were contacted regarding the proposed vacation.
5. That, there was objection to the proposed vacation from the neighboring property owners, and because of the opposition a public hearing was held on March 15, 2000. Upon consideration and deliberation of the record, the Board voted on the matter and the motion to vacate failed because of a 2-2 vote.
6. That, because there was not a majority vote approving the vacation, an Order to Deny the petition to vacate a portion of the alley was prepared and presented to the full Board on July 12, 2000.
7. That, on July 12, 2000, after hearing testimony from an affected property owner, and discussion among the Board members, the Board voted to deny the Order to Deny the Order to Vacate the alley and re-open the record for 30 days, to provide an opportunity for more evidence and testimony to be submitted. A date of August 16, 2000 was set for further deliberation on whether it was in the public interest to vacate the segment of alley.
8. That, pursuant to ORS 368.346(2) a county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

Item 8, has been complied with.

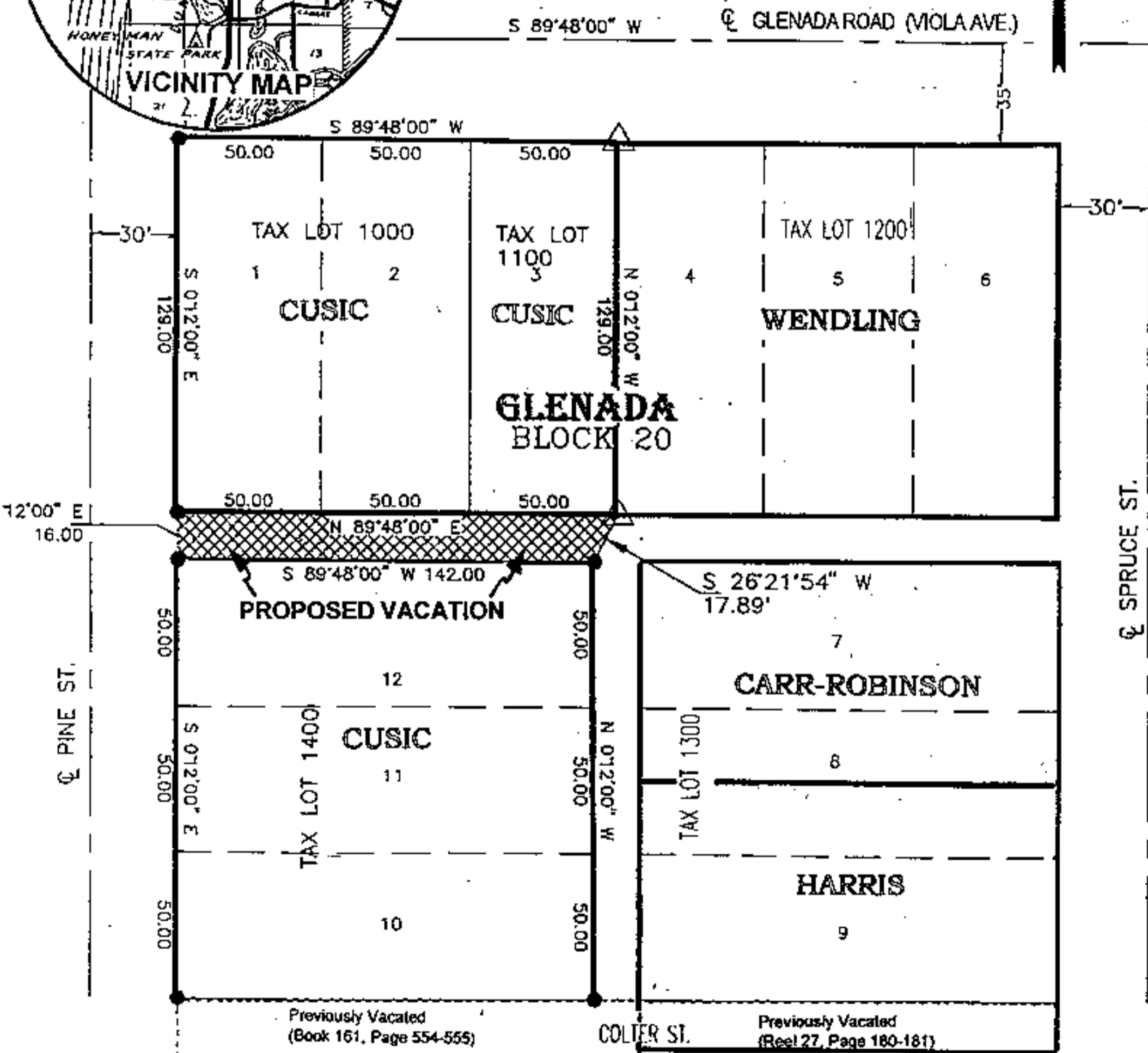
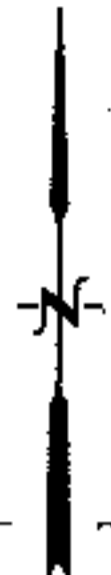
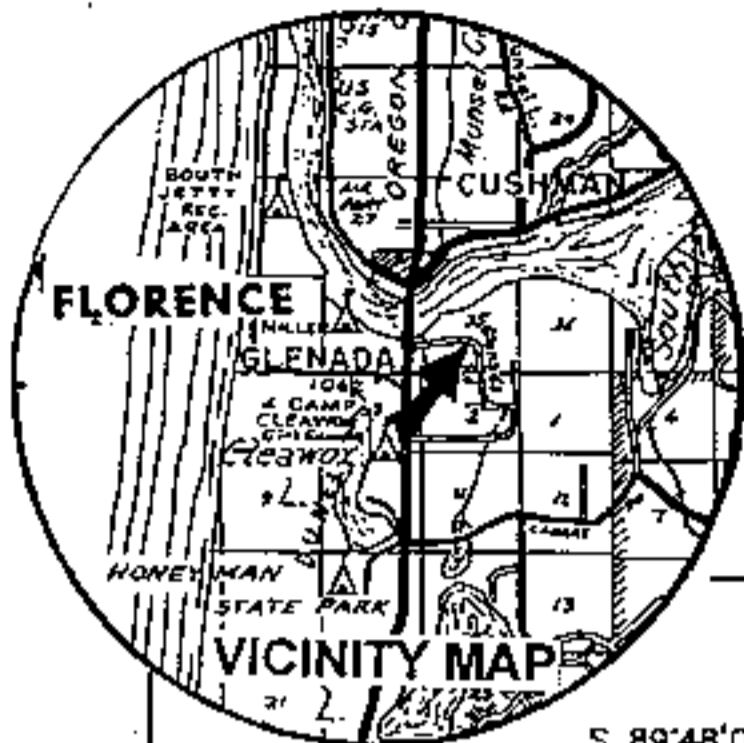
Conclusions of Law (Impacts and Process of Vacation)

Based on the above findings of fact, the Board concludes, as a matter of law, that this vacation will not have any predictable negative impact on present or future land use, either in terms of allowable uses or actual development. The Board further concludes that statutory procedures necessary for making a determination on this vacation, without a public hearing, have been met.

ATTACHMENT 'A'

NW 1/4 SW1/4 SECTION 35 T.18S., R. 12W., W.M.
LANE COUNTY

SCALE 1"=50'

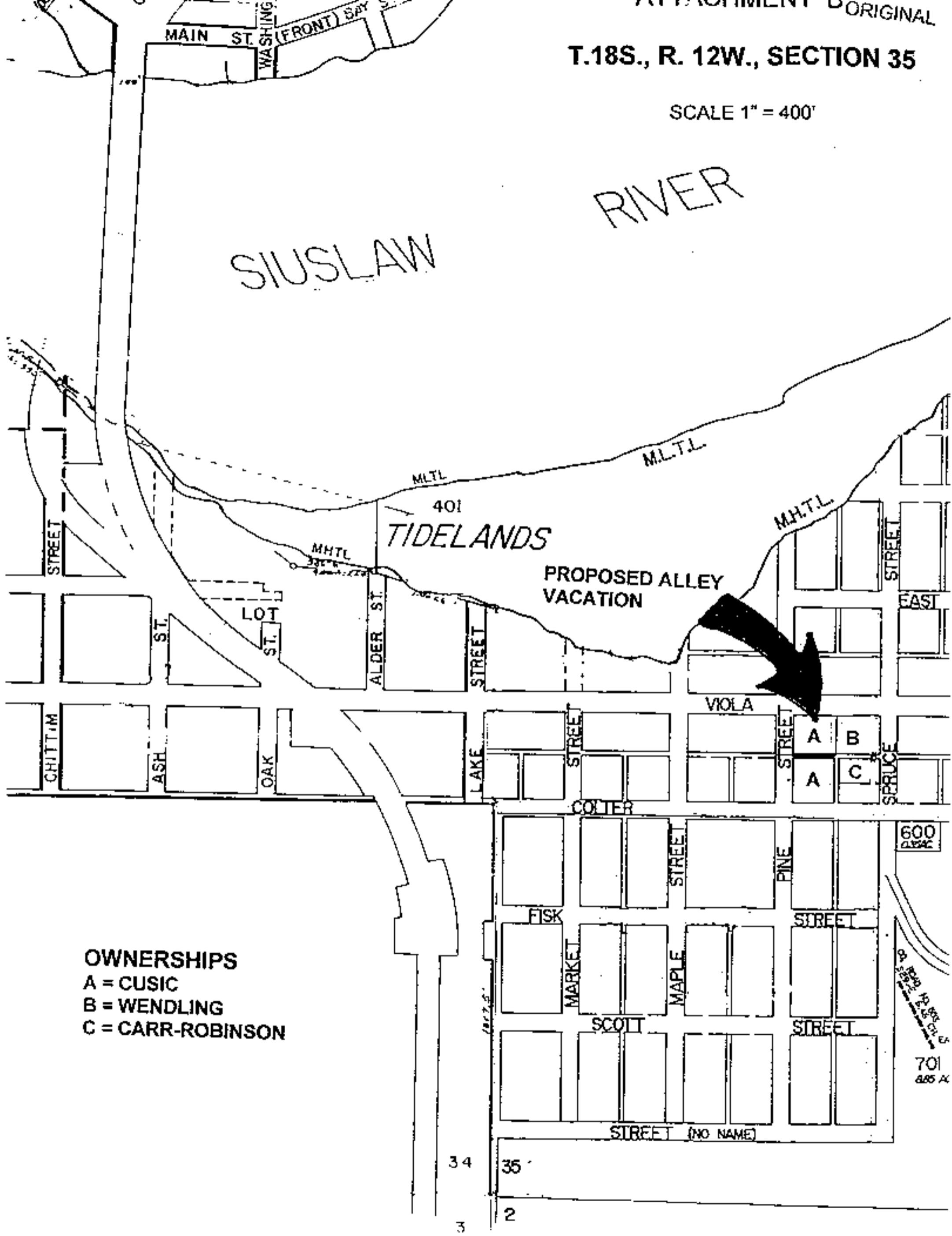


T.18S., R. 12W., SECTION 35

SCALE 1" = 400'

SIUSLAW

RIVER



OWNERSHIPS
 A = CUSIC
 B = WENDLING
 C = CARR-ROBINSON

600
 701
 805 A

34
 35
 2
 3