

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Proposed Vacation)
of a Portion of the Wilson Cutoff County)
Road [aka Beaver Creek Road aka H.C.)
Brinson Road] near Vernonia, Oregon)
)
[Pihl and Meyer Petitions]_____)

ORDER NO. 91-01
(Finalizing Road Vacation)

WHEREAS, pursuant to ORS 368.341(1)(b) the Board of County Commissioners for Columbia County, Oregon, adopted Order No. 70-01 initiating proceedings to vacate two contiguous portions of Wilson Cutoff County Road [aka Beaver Creek Road aka H.C. Brinson Road] near Vernonia, Oregon, pursuant to two separate petitions filed with the Board by Marvin O. and Ellen Meyer, husband and wife, Trustees of the Marvin O. & Ellen Meyer Family Trust ("Meyer"), and Michael D. Pihl ("Pihl"), respectively; and

WHEREAS, after the filing of the petitions with the County Clerk, and because the petitions sought vacation of a continuous length of the same public right-of-way, they were consolidated into one petition; and

WHEREAS, the property petitioned for vacation is generally described as:

All that portion of the Wilson Cutoff County Road 72 (aka Beaver Cr. Rd., aka H.C. Brinson Rd.) lying within Section 18, Township 4 North, Range 4 West of the Willamette Meridian, and continuing 625 feet north from the northern line of Section 18 into Section 7, Township 4 North, Range 4 West, Columbia County

and

WHEREAS, pursuant to ORS 368.346, a public hearing was held on September 12, 2001, at 10:00 a.m. in the Commissioners' Meeting Room, Room 308 of the Columbia County Courthouse, St. Helens, Oregon, to determine if the proposed vacation was in the interest of the public; and

WHEREAS, pursuant to ORS 368.401 to 368.426, notice of the hearing was provided by posting and publication and by service on each person with a recorded interest in the proceeding; and

WHEREAS, County Roadmaster, Dave Hill, filed a report with the Board stating his assessment that the vacation would be in the public interest if the rights of abutting property owners to ingress/egress over the public right-of-way was protected through the recording of easements. A copy of said Roadmaster's report is attached hereto, labeled Exhibit A and is incorporated herein by this reference; and

WHEREAS, Marvin and Ellen Meyer, Trustees of the Marvin O. and Ellen Meyer

Family Trust, have recorded an easement in favor of Everett and Ilene Morgan. A copy of said recorded easement is attached hereto as Exhibit B and is incorporated herein by this reference; and

WHEREAS, Michael D. Pihl has recorded an easement in favor of Leonard and Betty Schmidlin, Everett and Ilene Morgan and the Marvin O. and Ellen Meyer Trust. A copy of said recorded easement is attached hereto as Exhibit C and is incorporated herein by this reference; and

WHEREAS, the Public Works Director has confirmed that the easements attached hereto as Exhibits B and C meet the objective of protecting the rights of all abutting property owners; and

WHEREAS, the Board finds that the petition along with the recorded easements meet the requirements of ORS 368.326 to ORS 368.366;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Vacation of a portion of the Wilson Cutoff County Road 72 (aka Beaver Cr. Rd., aka H.C. Brinson Rd.), as more particularly described hereinabove, is in the public interest.
2. The portion of the Wilson Cutoff County Road 72 as described above is hereby vacated and shall hereby vest in the owners of the land abutting the vacated property by extension of said owners' abutting property boundaries to the center of the vacated property.
3. Pursuant to Order No. 96-93, the following costs are due from this vacation and shall be deducted from the deposits of \$500 *each* paid by Mr. and Mrs. Meyer and Mr. Pihl:

<u>SERVICE</u>	<u>FEE</u>	<u>SUBTOTAL</u>
Filing Petitions by the Clerk	\$28.50 each	\$ 57.00
Review for Correct Property Description by County Surveyor [if required]	\$30.00 [per parcel]	\$ 00.00
Review by Other County Departments	\$175.00 [per single street or alley (or portion thereof)]	\$175.00
	\$50.00 [each additional street or alley (or portion thereof)]	\$00.00
Hearing (if required)	\$100.00	\$100.00
Recording Final Order by the Clerk	\$26.00 [first page]	\$26.00
	\$5.00 [each additional page x 9 pp.]	\$45.00

Two Certified Copies By the Clerk [one to Assessor, one to Surveyor]	\$3.75 [per copy x 2]	\$ 7.50
	\$00.25 [per page x 18 pp.]	\$ 4.50
Posting the Approved Road Vacation by County Surveyor	\$45.00 [per parcel]	\$45.00
TOTAL OWED		\$460.00

5. The Clerk has already deducted the \$57.00 filing fee for both petitions from the \$1,000.00 deposit paid by Meyer and Pihl, leaving a balance of \$943.00 in the trust account. The Clerk is hereby authorized to disburse the remainder of the deposit as follows:

TO COUNTY CLERK	:	\$ 83.00
TO COUNTY TREASURER	:	\$ 320.00
TO MARVIN OR ELLEN MEYER	:	\$ 270.00
57165 Nehalem Hwy S. Vernonia, OR 97064		
TO MICHAEL D. PIHL	:	\$ 270.00
Post Office Box 321 Vernonia, OR 97064		

6. This order shall be recorded with the County Clerk, a copy inserted in the appropriate road jacket, and certified copies of it shall be filed with the County Surveyor and the County Assessor.

DATED this 28th day of November, 2001.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Chair

APPROVED AS TO FORM:

By: 
Commissioner

By: 
Office of County Counsel


By: 
Commissioner



EXHIBIT A

Columbia County Road Department

P.O. Box 366, 1004 Oregon Street, St. Helens, OR 97051

Phone: 503-397-5090 Fax: 503-397-7215

E-mail: colroad@columbia-center.org

M E M O R A N D U M

COLUMBIA COUNTY

to: Cynthia Zemaitis, Legal Assistant

from: David Hill, Public Works Director

subject: Proposed Road Vacation: Wilson Cutoff County Road No. 72

date: July 26, 2001

JUL 31 2001

COUNTY COUNSEL

Several people have petitioned the County to vacate portions of Wilson Cutoff County Road No. 72.

Everett and Ilene Morgan, and Marvin and Ellen Meyer have petitioned to vacate all of the road that is cross-hatched on the attached map. Because the bridge over Beaver creek has been removed by the County, the Meyer's have agreed to give the Morgan's an easement to their property on the south side of Beaver Creek, if the road is vacated. Leonard and Betty Schmidlin have not signed a petition to vacate this section of the road. The legal description for the County Road calls for it to traverse to the quarter section corner, and I believe that the Schmidlin property also calls for their corner to be at the quarter section corner, therefore it is concluded that they are an abutting property owner.

Mike Pihl has signed a petition to vacate 250 feet of the road adjacent to his property. The assessor's records indicate that Jewell Pihl is also an owner of the property however she has not signed the petition. The Meyers and Morgans did not sign a petition to vacate this section of the road.

The road is currently constructed and has an old asphalt surface on it. This section of road was maintained by the County until about 1990 when the bridge was closed. We currently maintain the north end of the road. There are also utility lines running the full length of this section of the road and therefore if the road was vacated we would need to reserve an easement for all existing utilities.

I believe that the Schmidlins use the south end of this road for access to their property which is primarily a field and is cut for hay. I don't believe they have an approved access to Highway 47.

Therefore, from a road maintenance standpoint I would encourage the vacation of this road, however it is also necessary to protect the interests of abutting property owners. I think it is in the public's interest for the Schmidlins to use this section of road for access to their property rather than create a new access off of Highway 47, and therefore I believe that the petitioners should negotiate with the Schmidlins to provide them an easement to their property or somehow otherwise obtain their signatures on the petition. This could also mean providing and constructing

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an access directly onto Highway 47 with permission from ODOT, but I do not believe that the entire burden should be placed on the Schmidlins due to the vacation of this roadway without their consent.

Therefore, I believe it is in the public interest to vacate the section of road as petitioned by the Meyers and the Morgans provided that

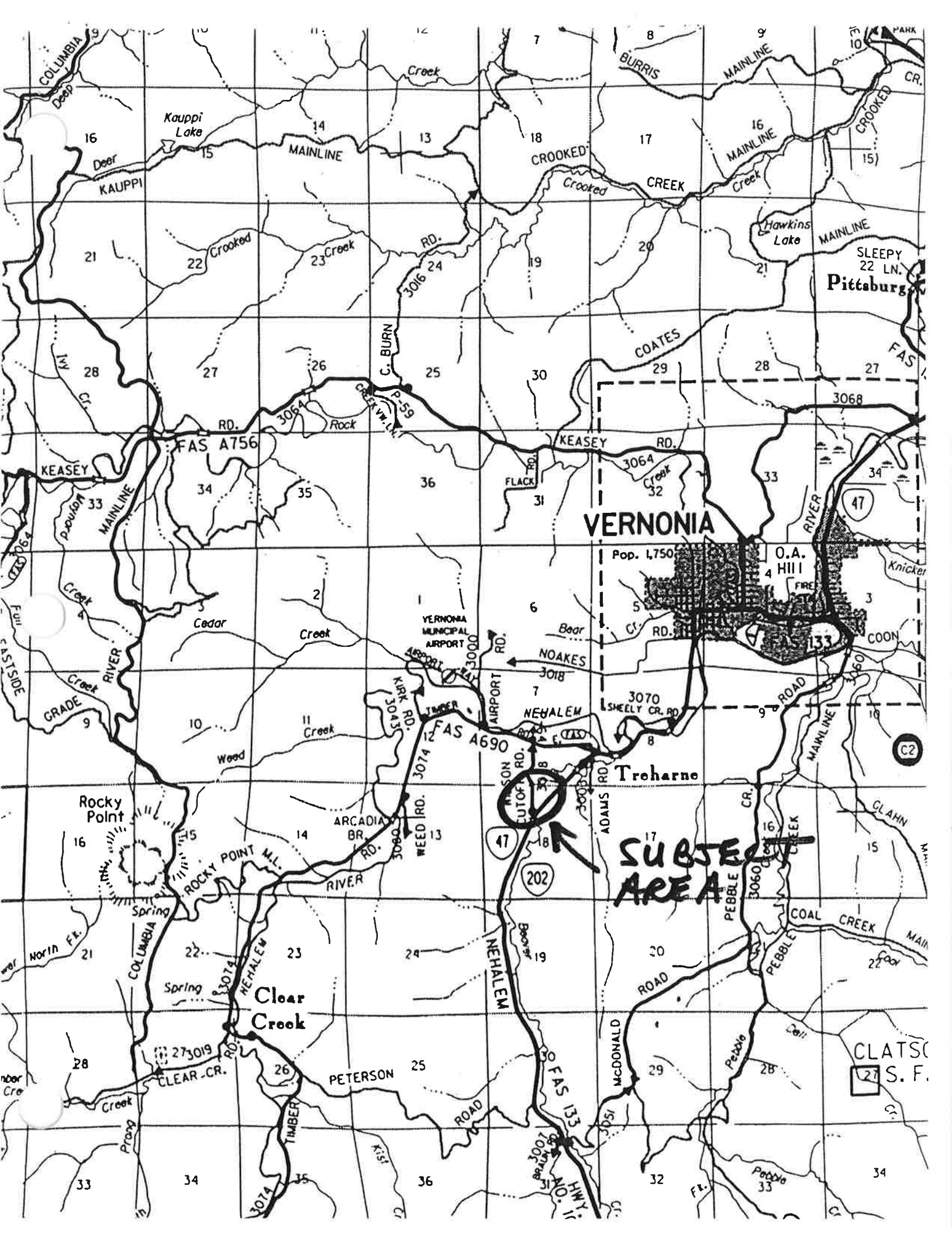
- Leonard and Betty Schmidlin sign in favor of the road vacation, or
- a 40 foot wide easement is provided to the Schmidlin property at the location of their existing access off of Wilson cutoff Road.
- An easement is reserved within the existing right-of-way for all existing utilities.

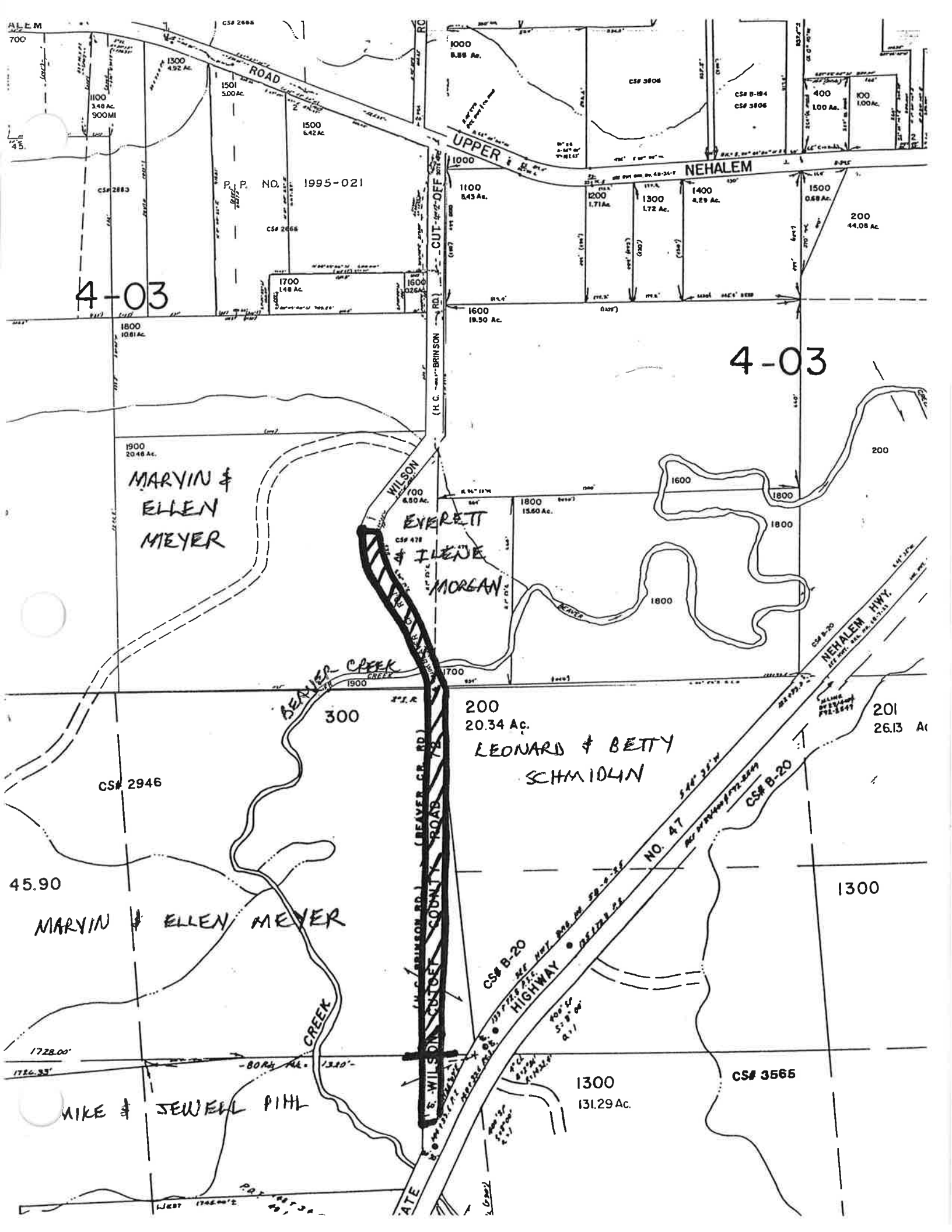
I believe it is in the public interest to vacate the section of road petitioned to be vacated by Mike Pihl provided that the following sign as being in favor of the petition:

- Marvin and Ellen Meyer
- Leonard and Betty Schmidlin
- Everett and Ilene Morgan, and
- a 40 foot wide easement is provided for all of the above property owners within the existing road right-of-way, and
- An easement is reserved within the existing right-of-way for all existing utilities.

It should be noted to Marvin and Ellen Meyer that by vacating this section of roadway that they will likely lose public road frontage to their property and this could restrict their ability to partition their property in the future. It appears that they may have frontage to Highway 47 but it may be difficult to obtain public road access to the highway from ODOT at this location.

If you have any questions, I would be happy to discuss this with you.





ALEM

700

CS# 2668

1100
3.40 AC
900MI

1300
4.92 AC

1501
5.00 AC

1500
6.42 AC

1000
8.88 AC

CS# 3808

CS# B-19-4
CS# 3806

400
1.00 AC

100
1.00 AC

P. P. NO. 1995-021

1000

1100
6.43 AC

1200
1.71 AC

1300
1.72 AC

1400
4.29 AC

1500
0.69 AC

200
44.08 AC

4-03

1700
1.48 AC

1600
0.26 AC

1600
19.50 AC

4-03

1900
20.48 AC

MARYIN &
ELLEN
MEYER

1700
6.80 AC

EVERETT
& IRENE
MORAN

1800
15.60 AC

1600

1800

200

1800

BEAVER CREEK

300

1700

200
20.34 AC

LEONARD & BETTY
SCHMIDLIN

201
26.13 AC

CS# 2946

45.90

MARYIN & ELLEN MEYER

NO. 47

CS# B-20

1300

1728.00'

1786.83'

-80R₂ AL. 1310'

MIKE & SEWELL PIHL

1300
131.29 AC

CS# 3566

WEST 1746.00'

EXHIBIT B

EASEMENT

We, the undersigned, MARVIN O. AND ELLEN MEYER, TRUSTEES OF THE MARVIN O. AND ELLEN MEYER FAMILY TRUST, do hereby give, grant and convey unto EVERETT KEITH AND ILENE ANITA MORGAN the perpetual right to use, in common with the grantors, a certain roadway, formerly known as the H.C. Brinson Road, the Beaver Creek Road, the Wilson cutoff Road #72, as now located and now in use, across the following described real property:

Portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 7, T4N, R4N, WM

also, Portion of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec 18, T4N, R4N, WM

It is stipulated that the right of way above conveyed shall become appurtenant to

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 7, T4N, R4N, WM, Tax Lot #1700

In witness thereof we have executed the foregoing on this 17th of September 2001.

MARVIN O. & ELLEN MEYER FAMILY TRUST

Marvin O. Meyer Trustee

Ellen Meyer Trustee

The above named MARVIN O. MEYER & ELLEN MEYER personally appeared before me on this September 17th, 2001 and acknowledged the foregoing to be their free act & deed.

In testimony whereof I have hereunto set my hand & seal this date



Kellie J. Murray

Return to: Marvin O. Meyer
57165 Nehalem Hwy. S.
Vernonia, Oregon 97064

I hereby certify that the within instrument was received for record and recorded in the County of Columbia State of Oregon

SEP 19 2001 10:06

ELIZABETH HUSER, County Clerk

By Elizabeth Huser Deputy

Received of Marvin O. Meyer of Oregon

FEES \$ 36.00

ONBE



AGREEMENT FOR EASEMENT

THIS AGREEMENT, Made and entered into this 10th day of October, 192000, by and between Michael D. Pihl hereinafter called the first party, and Leonard & Betty J. Schmidlin; Everett K. & Ilene Morgan; and the Marvin O. & Ellen Meyer Trust ..., hereinafter called the second party;

WITNESSETH:

WHEREAS: The first party is the record owner of the following described real estate in Columbia County, State of Oregon, to-wit:

A portion of the S 1/2 of the NW 1/4 of Sec 18, T4N, R4W, W.M., Columbia County, Oregon

and has the unrestricted right to grant the easement hereinafter described relative to said real estate;

NOW, THEREFORE, in view of the premises and in consideration of One Dollar (\$1) by the second party to the first party paid and other valuable considerations, the receipt of all of which hereby is acknowledged by the first party, they agree as follows:

The first party does hereby grant, assign and set over to the second party

An ingress & egress easement over the center 20 foot wide portion of the now vacated County Road No. 72, also known as Wilson Cutoff County Road, located in the SE 1/4 of the NW 1/4 of Section 18, T 4 N, R 4 W, W.M., in Columbia County, Oregon. Said road use easement more particularly located and defined as the existing paved portion of said Wilson Cutoff Road, beginning at its intersection with the North boundary of State Highway # 47, thence North to the South line of the NE 1/4 of the NW 1/4 of said Section 18.

It is our intent that this easement be a nonexclusive right of way access, transferable with the land(s) of the grantees.

(Insert here a full description of the nature and type of the easement granted to the second party.)

The second party shall have all rights of ingress and egress to and from said real estate (including the right from time to time, except as hereinafter provided, to cut, trim and remove trees, brush, overhanging branches and other obstructions) necessary for the second party's use, enjoyment, operation and maintenance of the easement hereby granted and all rights and privileges incident thereto.

Except as to the rights herein granted, the first party shall have the full use and control of the above described real estate.

The second party hereby agrees to hold and save the first party harmless from any and all claims of third parties arising from second party's use of the rights herein granted.

The easement described above shall continue for a period of Permanent, always subject, however, to the following specific conditions, restrictions and considerations:

The heretofore defined easement specifically limited to the benefit of the following properties;

- The North 1/2 of the NW 1/4 of Section 18, T 4 N, R 4 W, W.M. as deeded to The Marvin O. & Ellen Meyer Family Trust, per Columbia County Deed Document # 94-1939.
- The portion of the NW 1/4 of the NE 1/4 of Section 18, T 4 N, R 4 W, W.M., as deeded to Leonard & Betty J. Schmidlin, per Columbia County Deed Documents Book 209, page 251.
- The tract of land in the SW 1/4 of the SE 1/4 and the SE 1/4 of the SW 1/4 of Section 7, T 4 N, R 4 W, as deeded to Everett Keith & Ilene M. Morgan, per Deed Documents Book 200, page 470.

If this easement is for a right of way over or across first party's said real estate, the center line of said easement is described as follows:

N/A not applicable

and second party's right of way shall be parallel with said center line and not more than feet distant from either side thereof.

During the existence of this easement, its maintenance and the cost of said maintenance shall be the responsibility of (check one): [] the first party; [] the second party; [] both parties, share and share alike; [] both parties, with the first party being responsible for% and the second party being responsible for%. (If the last alternative is selected, the percentages allocated to each party should total 100.)

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but also their respective heirs, executors, administrators and successors in interest as well.

In construing this agreement, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this agreement shall apply equally to individuals and to corporations. If the undersigned is a corporation, it has caused its name to be signed and its seal affixed by an officer or other person duly authorized to do so by its board of directors.

IN WITNESS WHEREOF, the parties hereto have executed this easement in duplicate.

Dated 10-4-2001

Michael D. Pihl

FIRST PARTY

(If executed by a corporation, affix corporate seal and use the form of acknowledgment opposite.)

STATE OF OREGON, County of Columbia ss.

This instrument was acknowledged before me on 10-4-2001 by Michael D. Pihl



Derl Roberts Notary Public for Oregon

(SEAL) My commission expires: 1-21-03

AGREEMENT FOR EASEMENT

BETWEEN

Michael D. Pihl 1010 Bridge Street Vernonia, Oregon 97064

AND

Leonard & Betty J. Schmidlin; Everett K. & Ilene Morgan; and the Marvin O. & Ellen Meyer Trust all of Vernonia, Oregon 97064

AFTER RECORDING RETURN TO

Michael D. Pihl 1010 Bridge Street Vernonia, Oregon 97064

STATE OF OREGON, County of ss.

I hereby certify that the within instrument was received for record and recorded in the County of Columbia, State of Oregon.

11 22 '01 OCT -4 P 2:53



ELIZABETH HUSER, County Clerk

By: Huser Deputy

Receipt # 30678 # of Pages 2

FEES \$ 31.00

BY _____ Deputy