Memorandum Date: March 24, 2023
Order Date: April 11, 2023

TO: Board of County Commissioners

DEPARTMENT: Public Works/Engineering and Construction Services/Surveyors

PRESENTED BY: Mikeal Jay Blommé, Lane County Surveyor MJB

AGENDA ITEM TITLE: ORDER / IN THE MATTER OF THE VACATION OF A PORTION OF KELSO STREET, COUNTY ROAD NO. 1965, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING (17-04-09-11).

I. MOTION

TO APPROVE THE ORDER TO VACATE A PORTION OF KELSO STREET, COUNTY ROAD NO. 1965, AS DESCRIBED IN THE ORDER, WITHOUT A PUBLIC HEARING.

II. AGENDA ITEM SUMMARY

The Board is being asked to approve the vacation of Kelso Street, as described in the Order and depicted on the map attached as Exhibit "C," at the request of the Petitioners.

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 M. D. Emmerson, signing as CEO of Sierra Pacific Industries, representing 100% ownership of the properties abutting the portion of County Road herein proposed to be vacated, by the authority of ORS 368.351, a vacation without a public hearing.

The Petitioners wish to vacate the portion of Kelso Street located immediately adjacent to map and taxlot numbers 17-04-09-11-00900 and 17-04-09-11-01000, a length of approximately 270 feet, ending at the end of the County Road at its westerly terminus.

Kelso Street is located inside the Urban Growth Boundary off Prairie Road in Northwest Eugene but has not been annexed into the city limits. The street was established as a dedicated County Road in December 1970 with a 60-foot right of way width and has a functional classification as Urban Local.

There are no bridges or railroad crossings along the road. Staff has not identified any areas of public interest such as access to public lands, trails, or waterways to consider.

The Petitioners state the purpose of the vacation is the road no longer serves a present or future public right of way need, as it is surrounded by land owned by Seneca Sawmill Properties. Seneca believes it is in their best interest to obtain control over the road so it can be managed effectively for safety considerations, and future development opportunities. The Petitioners have stated that immediate safety management activities may include installing gates or fencing at the proposed street end.

Referrals were sent to area landowners, providers, agencies, and utility companies seeking comment regarding this proposal. Agencies and utility providers included EWEB, Lane Fire Authority, Lane Council of Governments, Bethel School District, Northwest/Central Ambulance, Lane Transit District, and Lumen/CenturyLink. CenturyLink was the only provider to respond to our referral, and indicated they will require access for the purpose of operating and maintaining their facilities. Petitioners have stated they will retain a public utility easement for this purpose.

Staff from various Lane County Divisions including Transportation Planning, Land Management, Road Maintenance, and Engineering & Construction Services were provided an opportunity to comment on this action. None of the above-mentioned Lane County Divisions has objected to this action.

Our office received no response to our referrals from area landowners.

ORS 368.331 states, *"A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner."* The Petitioners, as 100% of the owners abutting this proposed vacation, have consented to this action.

B. Policy Issues

Lane Manual 15.030 supplement ORS 368 in allowing for consideration of vacation of rights of way where little need exists for the right of way 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 Order are consistent with these categories.

C. Board Goals

The vision of Lane County's Strategic Plan, in part, is to create a vibrant community through wise stewardship of its human and natural resources. The vacation of this right of way as described in the Order is consistent with these categories.

D. Financial and/or Resource Considerations

Vacation of the described right of way will return a marginal portion of land to the County tax rolls as real property. **The County's costs of processing the vacation will be paid in full by the Petitioners.**

E. Health Implications

None.

F. Analysis

Lane County Staff has determined the vacation of Kelso Street will have no adverse effects on transportation patterns in the area and is not needed for transportation purposes. If the vacation is approved, ownership of the road shall revert in accordance with ORS 368.366.

G. Alternatives / Options

The Board of County Commissioners has the option to:

1. Approve the vacation of Kelso Street, as described in the Order.
2. Deny the vacation.
3. Continue the matter for further consideration.

IV. RECOMMENDATION

The Public Works Director's Report recommends the Board support Option No. 1, to approve the vacation of Kelso Street, as described in the Order. The public interest will be served and not prejudiced.

All statutory procedures necessary for a vacation without a public hearing for these proceedings have been complied with, including a report by the Director of Public Works, attached as Exhibit "B," who recommends approval of the vacation as described in the Order.

V. TIMING / IMPLEMENTATION

The Petitioners respectfully ask the Board to consider this request in a timely manner.

VI. FOLLOW-UP

If the Board of County Commissioners approves the Order to Vacate Kelso Street, it shall 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.

VII. ATTACHMENTS

Order and Exhibits:
Petition to Vacate – Exhibit "A"
Director's Report – Exhibit "B"
Map – Exhibit "C"

Contact Person: Mikeal (Jay) Blommé, Ext. 6997

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 23-04-11-03

IN THE MATTER OF THE VACATION OF A PORTION OF KELSO STREET, COUNTY ROAD NO. 1965, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING. (17-04-09-11)

WHEREAS The Surveyor's Office of the Department of Public Works has received a valid petition signed by M. D. Emmerson, signing as CEO of Sierra Pacific Industries, representing 100% ownership of the properties abutting the portion of County Road herein proposed to be vacated, by the authority of ORS 368.351, a vacation without a public hearing, said County Road being more particularly described as follows:

> All that portion of a 60-foot wide road known as Kelso Street, County Road No. 1965, beginning at the northerly extension of the east line of that tract of land granted by Statutory Warranty Deed to Seneca Sawmill Company, an Oregon Corporation, recorded on Instrument No. 2022-020657, Lane County Oregon Deeds and Records; thence westerly 268.72 feet, more or less, to the West line of the James Peek Sr. Donation Land Claim No. 50, Township 17 south, Range 4 West of the Willamette Meridian, last said point also being the westerly end of said County Road No. 1965, all in Lane County, Oregon.
>
> Reserving the rights for any public utility easement of record for the purpose of operating and maintaining existing public utility facilities.

WHEREAS, the petition complies with the provisions of ORS 368.351 in that the Petitioners are landowners of 100% of the properties abutting the proposed vacation, request the vacation be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public roads and rights of way without a public hearing; and

WHEREAS, the section of Kelso Street, County Road No. 1965, herein proposed to be vacated lies entirely outside of any boundary of an incorporated city or town; and

WHEREAS, City of Eugene, EWEB, Lane County Land Management, Transportation Planning, Road Maintenance, Lane Council of Governments, Lane Fire Authority, Bethel School District, Northwest/Central Ambulance, and Lane Transit District were sent referrals seeking comment on the proposed vacation. The above listed utility companies, agencies and providers either had no objection to the vacation or did not respond to our referral; and

WHEREAS, Lumen/CenturyLink requests access be preserved for the purpose of operating and maintaining their facilities; and

WHEREAS, the Petitioners have agreed to retain a public utility easement for all public utilities that are located within the area to be vacated; and

WHEREAS, ORS 368.331 states, *"A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner."* No landowner will lose legal access by approval of this action; and

WHEREAS, the public interest will be served by this vacation as Kelso Street is not needed for transportation purposes; and will remove the road right of way from Lane County's jurisdiction; and will return a marginal portion of land to the County tax rolls; 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 368.351; and

WHEREAS, the Petitioners have paid a vacation fee deposit of $3,400 and will pay actual costs incurred, including recording fees, upon final approval of the vacation; and

WHEREAS, all statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned is in the best interest of the public.

NOW, THEREFORE, the Board of Commissioners of Lane County **ORDERS** as follows:

1. Kelso Street, County Road No. 1965, as described above is hereby VACATED.

2. Ownership of the vacated right of way shall revert in accordance with ORS 368.366.

3. A public utility easement shall be retained for the purpose of operating, replacing, repairing, maintaining, inspecting, or reconstructing any public utility facility located within the portion of the road to be vacated.

4. This Order be filed with the Lane County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration, after which copies are to be forwarded to the County Surveyor and County Assessor for appropriate action.

ADOPTED this 11th day of April, 2023.

_____
Pat Farr, Chair
Lane County Board of Commissioners

Exhibit "A"

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON.

IN THE MATTER OF THE VACATION OF A PORTION OF KELSO STREET, COUNTY ROAD NO. 1965, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON. (17-04-09-11)	))))	PETITION TO VACATE

Pursuant to the procedures set forth in ORS Chapter 368, we the undersigned SENECA SAWMILL COMPANY, as owner of the adjacent real property hereby petition for the vacation of a portion of a 60-foot-wide road known as Kelso Street, County Road No. 1965, located in the NE 1/4 of the NE 1/4 of Section 9, Township 17 South, Range 4 West of the Willamette Meridian, which area of road to be vacated is described as follows:

> All that portion of a 60-foot wide road known as Kelso Street, County Road No. 1965, beginning at the northerly extension of the east line of that tract of land granted by Statutory Warranty Deed to Seneca Sawmill Company, an Oregon Corporation, recorded on Instrument No. 2022-020657, Lane County Oregon Deeds and Records; thence westerly 268.72 feet, more or less, to the West line of the James Peek Sr. Donation Land Claim No. 50, Township 17 South, Range 4 West of the Willamette Meridian, last said point also being the westerly end of said County Road No. 1965, all in Lane County, Oregon.

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

WHEREAS, the petitioners allege as follows:

1. The purpose of this vacation request is to identify that portion of Kelso Street that does not serve a present nor future public right of way need, as it is surrounded by Seneca Sawmill Company (SSC) owned parcels. The road was originally dedicated by deed for public use by adjacent landowners to meet the needs of the neighborhood and public. Since SSC has acquired the properties to the north and south of the road, it is no longer necessary for the County to maintain public access and maintenance of the portion of road herein proposed for vacation. SSC believes that it is beneficial to obtain control over the identified section of road so that it can be managed more directly and effectively by SSC for safety considerations and future development opportunities. Immediate safety management activities may include SSC installing gates or fencing at the proposed street end.

2. Vacating these public rights of ways will alleviate the County of the responsibility to maintain the areas that currently have no value for public use.

3. There are Eugene Water & Electric Board (EWEB) utilities, and one powerline located in the area to be vacated, and their disposition will be as follows:

    A. Necessary easements for all existing public and private utilities will be retained or otherwise be provided for in conjunction with this vacation.

B. A separate utility easement with EWEB, recorded on Instrument No. 2000-6454, Lane County Oregon Deeds & Records, will be retained if vacation is granted.

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, public interest will be served by returning unused public right of way back to private ownership and taxable real property; and

WHEREAS, petitioners, separately and collectively, acknowledge that the filing fee is a deposit and an estimate of the vacation fee, and that we accept responsibility for full payment of fees associated with the processing of this vacation in accordance with Lane County Surveyor's Office public land vacation fees and Lane County Deeds & Records recording fees, regardless of whether this vacation is approved or denied; and

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

THEREFORE, the petitioners request the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above-described portion of road, with or without a public hearing pursuant to ORS Chapter 368.

2. Upon review of this matter, to order the vacation of the above-described road, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.

PETITIONERS:

SENECA SAWMILL COMPANY,
an Oregon corporation

By:

M. D. Emmerson
CEO of Sierra Pacific Industries, Its Manager

State of Oregon)
County of Lane) §

On _____, 2022, personally appeared the above named _____ and acknowledged the foregoing instrument to be a voluntary act before me:

_____
Notary Public for Oregon
My Commission Expires: _____

See attached ~~Cert~~ acknowledgement

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SHASTA)

On 1/12/23 before me, TIRZAH CHASE, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared M. D. EMMERSON,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

TIRZAH CHASE
Notary Public - California
Shasta County
Commission # 2383176
My Comm. Expires Nov 15, 2025

Signature _____ (Seal)

EXHIBIT "B"

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

DIRECTOR'S REPORT	IN THE MATTER OF THE VACATION OF A PORTION OF KELSO STREET, COUNTY ROAD NO. 1965, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING. (17-04-09-11)

The Surveyor's Office of the Department of Public Works has received a valid petition signed by M. D. Emmerson, signing as CEO of Sierra Pacific Industries, representing 100% ownership of the properties abutting the portion of County Road herein proposed to be vacated, by the authority of ORS 368.351, a vacation without a public hearing.

The Petitioners wish to vacate the portion of Kelso Street located immediately adjacent to map and taxlot numbers 17-04-09-11-00900 and 17-04-09-11-01000, a length of approximately 270 feet, ending at the end of the County Road at its westerly terminus.

Kelso Street is located inside the Urban Growth Boundary off Prairie Road in Northwest Eugene but has not been annexed into city limits. The street was established as a dedicated County Road in December 1970 with a 60-foot right of way width and has a functional classification as Urban Local.

There are no bridges or railroad crossings along the road. Staff has not identified any areas of public interest such as access to public lands, trails, or waterways to consider.

The Petitioners state the purpose of the vacation is the road no longer serves a present or future public right of way need, as it is surrounded by land owned by Seneca Sawmill properties. Seneca believes it is in their best interest to obtain control over the road so it can be managed effectively for safety considerations, and future development opportunities. The Petitioners have stated that Immediate safety management activities may include installing gates or fencing at the proposed street end.

The public road easement herein proposed to be vacated lies entirely outside of any boundary of an incorporated city or town.

ORS 368.331 states, *"A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner."* No landowner will lose legal access by approval of this action.

Referrals were sent to area landowners, providers, agencies, and utility companies seeking comment regarding this proposal. Agencies and utility providers included EWEB, Lane Fire Authority, Lane Council of Governments, Bethel School District, Northwest/Central Ambulance, Lane Transit District, and Lumen/CenturyLink. CenturyLink was the only provider to respond to our referral, and indicated they will require access for the purpose of operating and maintaining their facilities. Petitioners have stated they will retain a public utility easement for this purpose.

Staff from various Lane County Divisions including Transportation Planning, Land Management, Road Maintenance, and Engineering & Construction Services were provided an opportunity to comment on this action. None of the above-mentioned Lane County Divisions has objected to this action.

Our office received no response to our referrals from area landowners.

In summary, it has been determined that Kelso Street as described in the Order and depicted on Exhibit "C" is not needed by the Lane County Transportation System. It has also been concluded the vacation of this road is in the public's best interest, as vacating this road will return unused public right of way back to private ownership, adding a marginal portion of land to the County tax rolls; and have no adverse effects on transportation patterns or recreational activities in the area. It is further recommended that the vacation be allowed without a public hearing and a public utility easement be retained for all public utilities that exist within the right of way to be vacated.

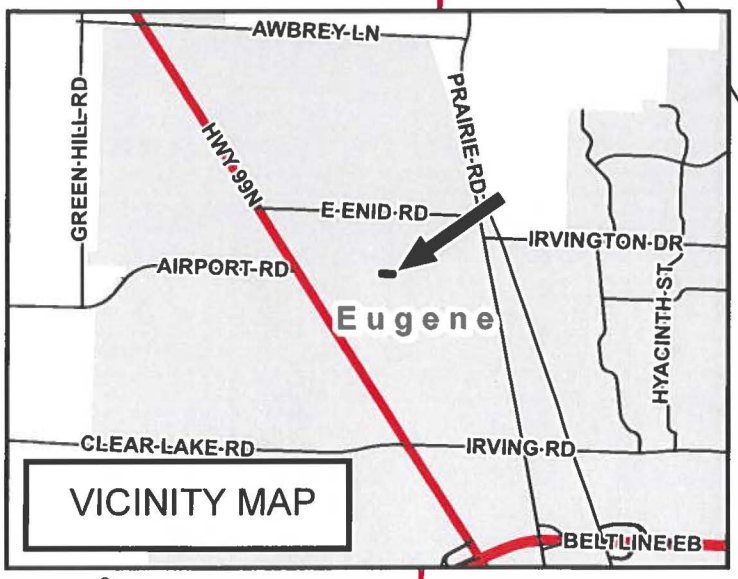
DATED this _____ day of _____, 2023.

_____

Dan Hurley, Director
Department of Public Works

EXHIBIT "C"

KELSO STREET
(COUNTY ROAD NO. 1965)
PROPOSED TO BE VACATED



SENECA SAWMILL COMPANY

SENECA SAWMILL COMPANY

17-04-04-00-02105

17-04-04-00-02200

KELSO ST (COUNTY ROAD NO. 1965)

17-04-09-20-00100

17-04-09-11-01000

17-04-09-11-00900

RIGHT OF WAY TO BE VACATED

SENECA SAWMILL COMPANY

SENECA SAWMILL COMPANY

CLEO AVE

N

NO SCALE