



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

April 25, 2019

Board of Commissioners
Clackamas County

Members of the Board:

Adoption of an Order Related to the Previously Approved Vacation of McNary Road

Purpose/Outcomes	To adopt an order implementing the Board's prior decision finding that the vacation of a portion of McNary road is in the public interest.
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	N/A
Previous Board Contact	October 16, 2018 Policy Session; February 28, 2019 public hearing.
Strategic Plan Alignment	Build public trust through good government.
Counsel Review	Reviewed and approved by County Counsel on 4/16/19
Contact Person	Doug Cutshall, Engineering Technician, 503-742-4669

BACKGROUND

McNary Road, (Tourtellotte Road) County Road No. 2132 is situated in the SW1/4 of Section 8, T.2 S., R.2 E., W.M. The petitioner wishes to vacate an unimproved and unused portion of McNary Road that lies northeasterly of its intersection with Norma Road and, northwesterly of and adjoining the petitioners property.

The petitioner did not acquire 100% of the adjoining property owners signatures required to allow the Board to vacate the right of way without a hearing. ORS 368.346 required the Board to hold a hearing to determine if the road vacation is in the public interest. As required by statute, a report was provided to the Board from the County Road Official describing the ownership and uses of the property to be vacated, as well as the assessment of the County Road Official as to whether the vacation is in the public interest.

On February 28, 2019, a duly noticed public hearing was held and testimony was received. Clackamas County Code Section 7.03.095(4) provides that the Board consider the following criteria when determining whether a vacation is in the public interest:

- a. Whether the vacation would inhibit or preclude access to an abutting property, and

From: Rose MZ Freeby <jamjr21@comcast.net>
Sent: Thursday, February 28, 2019 11:19 AM
To: 'Cutshall, Doug' <DougCut@co.clackamas.or.us>
Subject: FW: McNary road Vacation - Board of Commissioners public question and for the record

We watched the hearing at home and were concerned a vote occurred before this issue email was in the record? Can you please forward it to the Commissioners and County Counsel?
Was written input not considered?
Could they have conditioned the vacation on this access? The roadway is private and the transportation plan loses another link? Public loses access?

From: Rose MZ Freeby <jamjr21@comcast.net>
Sent: Thursday, February 28, 2019 9:34 AM
To: 'Cutshall, Doug' <DougCut@co.clackamas.or.us>
Cc: 'Westb5@comcast.net' <Westb5@comcast.net>; 'tcrawley40@gmail.com' <tcrawley40@gmail.com>
Subject: McNary road Vacation - Board of Commissioners public question and for the record

Good morning Doug:

We cannot make it in person and submit this as concerned neighbors. We are concerned about the vacation of the easement and how this fits with long term capital projects and transportation plans. We were hoping to have this information in for the Commissioners' consideration and also to be on the list for a copy of their decision. We appreciate your assistance with this. Thank you .

We live on Oetkin and there are not suitable bike and pedestrian facilities to connect Oatfield and Webster . We saw in the U of O archives:
project number 3062 Table 5 3 C Long term capital projects in the 3 1 14 Ordinance Zdo246 Ex A.:
McNary Rd/Mabel Avenue

And wonder how vacating the easement fits with adding a bike way and pedestrian facility (Table 5 3 c long term capital projects #3062 Map 11 c)?

We note that both Oetkin and Thiessen are narrow and busy through ways and we could see the easement being used for this purpose ?
We did not see this addressed in the report. What happened to this planning and project and is now a good time to look at how it fits in ?

We appreciate the Commissions time and consideration . We are unable to attend in person so submit this for the record.

Thank you
Please copy us with the decision .
Have an excellent Thursday .

Jesse and Rose Freeby
5301 SE Oetkin Rd
Milwaukie Or 97267

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: February 20, 2019

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF MCNARY ROAD**

LOCATION: McNary Road, (Tourtellotte Road) County Road No. 2132 is situated in the SW1/4 of Section 8, T.2 S., R.2 E., W.M.

FACTS AND FINDINGS: The petitioner wishes to vacate an unimproved and unused portion of McNary Road that lies northeasterly of its intersection Norma Road and, northwesterly of and adjoining the petitioners property. McNary Road was dedicated to the public through deeds from several property owners which were then accepted by the Court, July 6th 1939, to be used for a county road. This unused and unconstructed portion of McNary Road right of way is a dead end road, provides no connectivity to any through streets, and is not used to access adjoining property. Vacating this 60 foot wide, 960 foot long portion of McNary Road will not deprive public access to adjoining properties and will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, pursuant to ORS 368.346(1)(c) allows the Board to request additional information be added to this report, and (4) The county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies have been contacted and do not have any objections to this vacation. This road vacation does not violate any portion of Clackamas County Code 7.03.095 (4).

It is my assessment that the proposed vacation is in the public interest.

whether an access reservation would be adequate to protect that access;

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right-of-way;

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right-of-way;

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

f. Whether there are present and future likely benefits of the right-of-way to the traveling public;

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

At the conclusion of the hearing, the Board determined that, in light of the testimony and the criteria in Clackamas County Code Section 7.03.095(4), the vacation of a portion of McNary Road is in the public interest.

Approximately 30 minutes prior to the start of the February 28, 2019 public hearing, Jesse and Rose Freeby sent an email to staff that contained testimony related to this matter. Staff did not receive this message in time to provide the testimony to the Board. The email is provided with this report. The Board does retain the discretion to reopen the public hearing and reconsider its earlier decision. The Board is not, however, obligated to do so.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the order related to the previously approved vacation of a portion of McNary Road, County Road No. 2132.

Sincerely,

Douglas Cutshall
Engineering Technician D.T.D.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
A portion of McNary Road,
Co. Rd. 2132, situated
In Section 08, T.2 S., R.2 E., W.M.
Clackamas County, Oregon



Order No.
Page 1 of 3

Whereas This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of an unconstructed portion of McNary Road, County Road No.2132, described as follows:

All that portion of McNary Road, Co. Rd. 2132, situated in the southwest ¼ of Section 08, T.2 S., R.2 E., W.M., Clackamas County, Oregon, lying northeasterly of the southerly extension a line that is one foot northeasterly of the southwest line of that property described in Deed Document 2005-066529, Clackamas County Deed Records and, as shown on attached Exhibits "A" and, being a part of this description.

Whereas ORS 368.356 requires the Board of County Commissioners to determine whether the proposed vacation is in the public interest, and Clackamas County Code Section 7.03.095(4) provides that the Board consider the following criteria when determining whether a vacation is in the public interest:

- a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;
- b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right-of-way;
- c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right-of-way;
- d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;
- e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;
- f. Whether there are present and future likely benefits of the right-of-way to the traveling public;
- g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;
- h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
A portion of McNary Road,
Co. Rd. 2132, situated
In Section 08, T.2 S., R.2 E., W.M.
Clackamas County, Oregon



Order No.
Page 2 of 3

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation; and

Whereas the Board finds that the vacation would not inhibit or preclude access to an abutting property; and

Whereas the Board finds that it's not physically possible to build a road that meets contemporary standards over the existing terrain or right-of-way; and

Whereas the Board finds that it's not economically feasible to build a road that meets contemporary standards over the existing terrain or right-of-way; and

Whereas the Board finds that another nearby road can effectively provide the same access as the right-of-way to be vacated; and

Whereas the Board finds that the right-of-way to be vacated has no present or future value in terms of development potential, use in transportation linkages, or use in road replacements; and

Whereas the Board finds that there is no present or future likely benefit of the right-of-way to the traveling public; and

Whereas the Board finds that anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated and the land under the right-of-way is better suited to support the proposed development;

Whereas the Board finds that the right-of-way proposed to be vacated leads to a creek, river, or other waterway, but the terrain is such that it is not well-suited for public recreation; and

Whereas the Board finds that the right-of-way proposed to be vacated does not lead to any federal, state or local public lands that can be used for public recreation; and

Whereas the Board having read said petition and report from the County Road Official and having heard public testimony, have determined that on all things considered, the vacation of the above described portion of roadway to be in the public interest; and,

Whereas Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; now therefore,

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
A portion of McNary Road,
Co. Rd. 2132, situated
In Section 08, T.2 S., R.2 E., W.M.
Clackamas County, Oregon



Order No.
Page 3 of 3

IT IS HEREBY ORDERED that the attached described portion of McNary Road,
Co. Rd. 2132, containing, 52,038 square feet, more or less, be vacated; and,

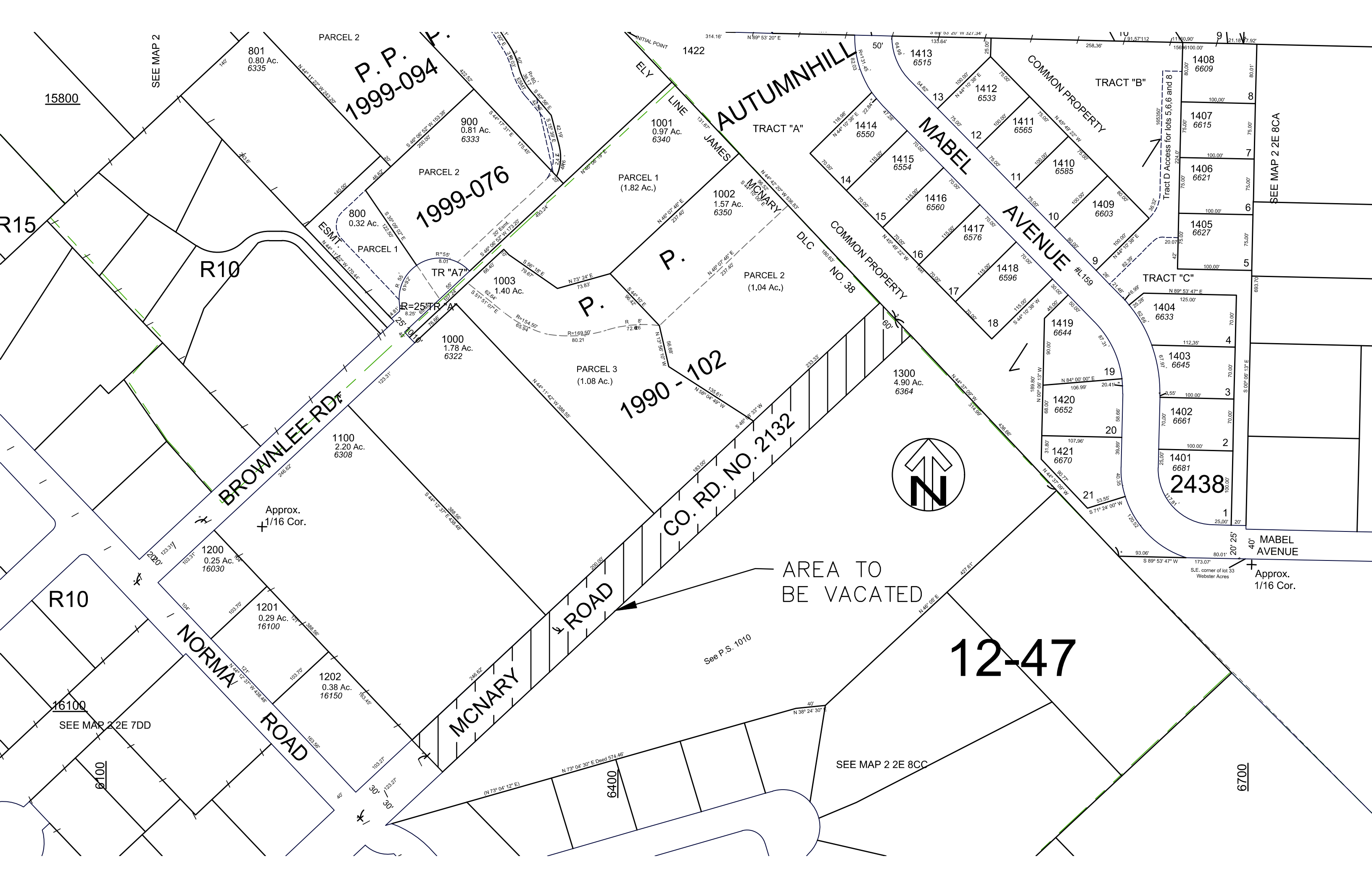
IT IS FURTHER ORDERED, that this Order and attached exhibits be
recorded in the Deed Records for Clackamas County and that a copy be filed with the County
Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2019

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



P. P. 1999-094 K.

1999-076

1990-102

CO. RD. NO. 2132

See P.S. 1010

12-47

AREA TO BE VACATED

SEE MAP 2 2E 8CC

SEE MAP 2 2E 8CA

SEE MAP 2

Tract D Access for lots 5, 6, 6 and 8



Approx. 1/16 Cor.

Approx. 1/16 Cor.

15800

R10

16100

SEE MAP 2 2E 7DD

6100

R10

R10

NORMA ROAD

BROWNLEE RD

ROAD

MCNARY

ELY LINE

AUTUMNHILL

TRACT "A"

TRACT "B"

TRACT "C"

MABEL AVENUE

PARCEL 1 (1.82 Ac.)

PARCEL 2 (1.04 Ac.)

PARCEL 3 (1.08 Ac.)

COMMON PROPERTY
DLC NO. 38

MABEL AVENUE #L 159

2438

801
0.80 Ac.
6335

900
0.81 Ac.
6333

800
0.32 Ac.

1000
1.78 Ac.
6322

1100
2.20 Ac.
6308

1200
0.25 Ac.
16030

1201
0.29 Ac.
16100

1202
0.38 Ac.
16150

1001
0.97 Ac.
6340

1002
1.57 Ac.
6350

1300
4.90 Ac.
6364

1413
6515

1412
6533

1411
6565

1410
6585

1409
6603

1408
6609

1407
6615

1406
6621

1405
6627

1419
6644

1420
6652

1404
6633

1403
6645

1402
6661

1401
6681

1415
6554

1416
6560

1417
6576

1418
6596

1414
6550

1415
6554

1416
6560

1417
6576

1418
6596

1419
6644

1420
6652

1421
6670

1421
6670

1420
6652

1419
6644

1418
6596

1417
6576

1416
6560

1415
6554

1414
6550

1413
6515

1412
6533

1411
6565

1410
6585

1409
6603

1408
6609

1407
6615

1406
6621

1405
6627

1404
6633

1403
6645

1402
6661

1401
6681

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699

1400
6699