



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 5, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Molalla to affirm maintenance responsibility of improvements as required by the Oregon Department of Transportation

Purpose/ Outcomes	A developer is seeking Immediate Opportunity Funds from the Oregon Department of Transportation to construct improvements along a portion of Molalla Avenue, a county road. This agreement confirms that the county will maintain these improvements. Such an agreement is required for the developer to seek and obtain these funds.
Dollar Amount and Fiscal Impact	There will be no fiscal impact as the county would be obligated to maintain these improvements regardless of the agreement.
Funding Source	Road Fund
Duration	Ongoing
Previous Board Action/Review	7/27/21: Discussion item at issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Helps keep a strong infrastructure and ensures safe communities 2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Counsel Review	Reviewed and approved by County Counsel on 6/21/21 NB
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. If no, provide brief explanation. Item is not procurement related.
Contact Person	Rick Nys, Development Engineering Supervisor, 503-742-4702

BACKGROUND:

The purpose of this agreement is to facilitate a developer’s application for Immediate Opportunity Funds (“IOF”) via the Oregon Department of Transportation for the construction of typical frontage improvements associated with development such as sidewalk, landscape strip, curb, bicycle lane and pavement improvements along a portion of Molalla Avenue.

The county already maintains this portion of Molalla Avenue and this agreement does not increase the maintenance responsibilities of the county. This agreement confirms the maintenance responsibility of the subject improvements as required by the Oregon Department of Transportation’s IOF application process.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with the City of Molalla.

Respectfully submitted,

Rick Nys

Rick Nys, P.E
Development Engineering Supervisor

INTERGOVERNMENTAL AGREEMENT
Maintenance Agreement
South Molalla Ave Improvements

THIS AGREEMENT is made on the date all required signatures have been obtained, and entered into by and between CLACKAMAS COUNTY, hereinafter referred to as "County," and the CITY OF MOLALLA, hereinafter referred to as "City," each herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, local governments may enter into agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The portion of South Molalla Ave, as shown in Exhibit 1, is a County Road as defined in ORS 368.001, and part of the County transportation system under the jurisdiction and control of the County, and lies outside, but in close proximity to, the boundaries of the City.
3. A project is planned that would result in the construction of a half-street improvement along the frontage of the property described below, which will include up to 20 feet of pavement, a bikeway up to eight feet in width, curb & gutter, planter strip, and sidewalk and stormwater improvements within an area up to 14 feet in width (the "Project").
4. The City is applying with the State of Oregon for Immediate Opportunity Funds to assist with the costs of the Project described above. The Immediate Opportunity Fund Policy Guidelines state that "The improvements must be on a public right-of-way with the local government agency that will assume ownership identified (right-of-way must be acquired before project completion). The local government agency, or the future owner, must also demonstrate how it has adequate ability to fully maintain the improvements."
5. The Parties desire to define their respective obligations to maintain the transportation system improvements along the South Molalla Ave frontage of map and tax lot 52E17A 00102, more fully described as Parcel X (10) of Deed recorded in Clackamas County as Doc No. 2007-055363 for purposes of fulfilling the requirements of the ODOT Immediate Opportunity Fund grant applicable to the Project. The Parties do not intend that this Agreement allocate responsibility to the County for the design or construction of the Project described above.

TERMS OF AGREEMENT

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

1. **Term.** This Agreement shall be effective upon execution. This Agreement shall expire automatically after seven years from the date of completion of the Project.
2. County agrees to maintain the roadway improvements within the right of way under County jurisdiction for the useful life of the Project, which is defined as seven years from the date of completion of the Project, unless the maintenance obligation is transferred during that time period pursuant to ORS 368 or ORS 373.
3. County shall be exclusively responsible for all costs and expenses related to its

performance of work under this agreement. The County shall not be responsible for any costs associated with the design or construction of the Project or, pursuant to ORS 368.910, any costs associated with maintenance of any sidewalk and curb improvement that may be constructed adjacent to the county road.

4. City shall be exclusively responsible for all costs and expenses related to its performance of work under this agreement.

5. **Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project or any of the obligations contained in this Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in

equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.

- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.


- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

- M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

CITY OF MOLALLA

Sign 

Print Dan Huff

Date 6-23-2021

COUNTY OF CLACKAMAS

Sign _____

Print _____

Date _____

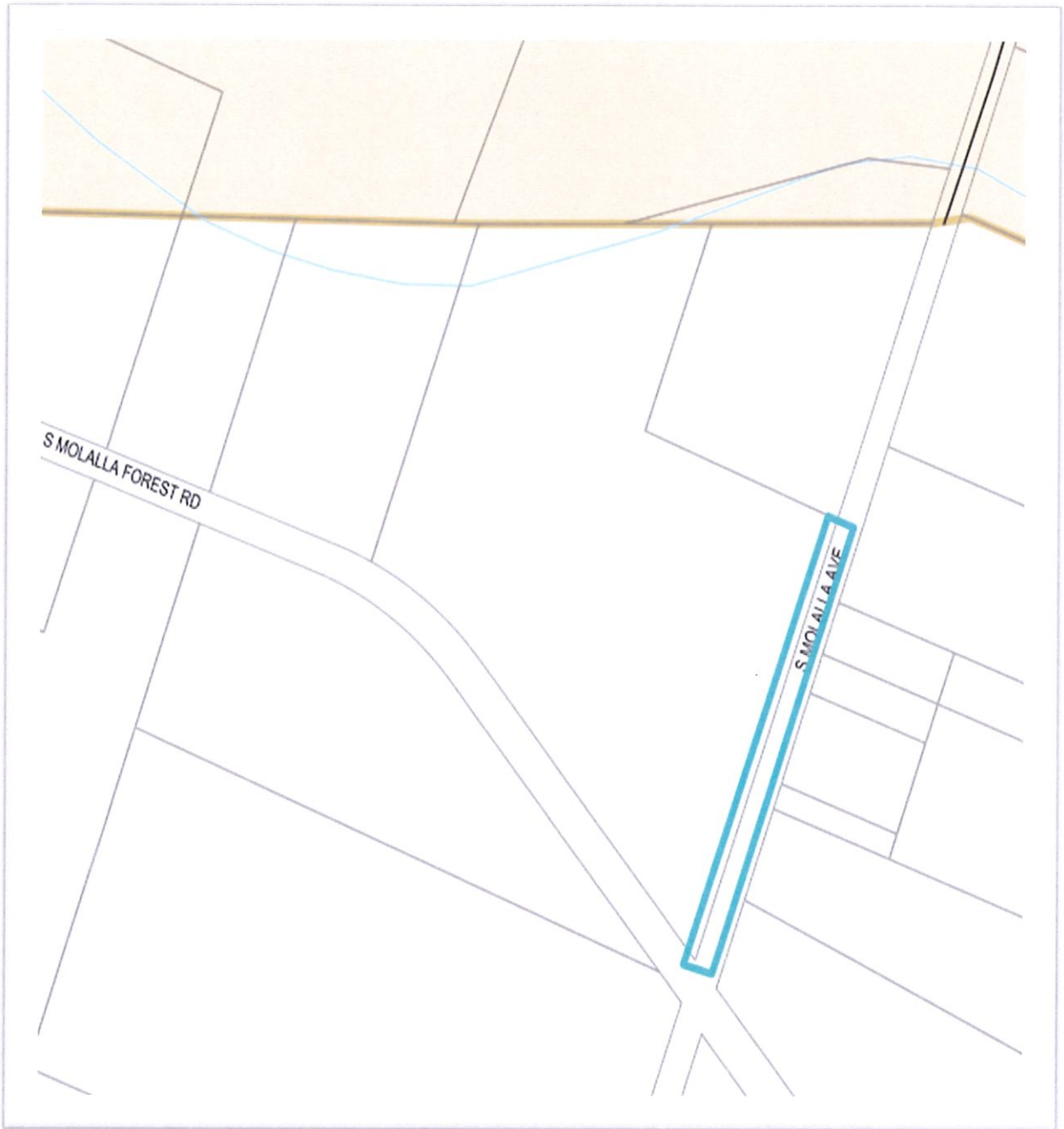
CITY OF MOLALLA – Agency Contact

Mac Corthell, Planning Director
 117 N Molalla Ave, PO Box 248
 Molalla, OR 97038
 (503) 759-0219
 mcorthell@cityofmolalla.com

COUNTY OF CLACKAMAS – Agency Contact

Rick Nys, Development Engineering Supervisor
 150 Beaver Creek Road
 Oregon City, OR 97045
 (503) 742-4702
 richardnys@clackamas.us

Exhibit 1 – Project Location



RECORDING REQUEST AGREEMENTS/CONTRACTS

New Agreement/Contract :
Amendment/Change Order Original Number:

ORIGINATING COUNTY
DEPARTMENT:

DTD – Engineering
Attn: Laura Kitts

OTHER PARTY TO
CONTRACT/AGREEMENT: City of Molalla

BOARD AGENDA ITEM

NUMBER: _____

DATE: 07/29/21

PURPOSE OF
CONTRACT/AGREEMENT:

**INTERGOVERNMENTAL AGREEMENT WITH CITY OF MOLALLA FOR THE
MAINTENANCE AGREEMENT SOUTH MOLALLA AVE IMPROVEMENTS**

Please return recorded document to Engineering Attn: Laura Kitts



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 12, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Board Order Vacating a Portion of Dusty Lane, Public Road No.5032

Purpose/Outcomes	Vacates a portion of Dusty Lane right of way
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	Vacation of south 150 feet Board Order No. 2007-471 8/3/21: Discussion item at issues
Counsel Review	Reviewed and approved by County Counsel on 7/28/21
Procurement Review	This item was not processed through Procurement. This is a Petition for a Road Vacation.
Strategic Plan Alignment	Build public trust through good government
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Dusty Lane, created May 9, 1927, through "Etheletha Park", Plat Number 550, is a paved and gravel road that dead ends at three tracts of private property identified as mostly wetlands. Only one of the tracts can be developed for a single family dwelling. Dusty Lane cannot be extended beyond its current terminus without major mitigation. The petitioner proposes to vacate the southerly 149.00 feet of the 40-foot wide road right-of-way and, has recorded an access easement over this vacated section for all of the properties currently using the road. This portion of road Right-of-Way serves no public need and is no longer a benefit to the traveling public.

The portion to be vacated contains approximately 5,960 square feet, of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to

this vacation, provided that utility rights are reserved.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Dusty Lane right of way.

Sincerely,

Douglas Cutshall

Douglas Cutshall

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

In the matter of the Vacation of
a portion of Dusty Lane, P 5032,
situated In Section 7,
T.2 S., R.5 E., W.M.
Clackamas County, Oregon

}

Board Order No. _____
Page 1 of 2

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 Dusty Lane right of way, described as follows:

All of that portion of Dusty Lane, P 5032, in Etheletha Park, Plat 550, Clackamas County Plat Records, situated in the SE¼ of Section 7, T.2 S., R.5 E., W.M., Clackamas County, Oregon, lying one foot southeasterly of the southwesterly projection of the southeast line of Lot 2, Block 1 of said plat and, between the north end of that portion of previously vacated Dusty Lane right of way described in Board Order 2007-471, Deed Document 2007-87547, Clackamas County Deed Records, also depicted on attached Exhibit "A" and, by this reference being a part of this description. Containing 5,960 square feet more or less.

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

Whereas the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated April 30, 2021; and,

Whereas the Petitioner has provided an access and utility easement over and across this section of vacated right of way per Deed Document 2021-055036 dated June 04, 2021; 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 provided that utility rights are reserved; now therefore,

IT IS HEREBY ORDERED that the above described portion of Dusty Lane as depicted on attached Exhibit "B", containing, 5,960 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated Dusty Lane right of way, be reserved, nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires, or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, the rights are reserved to access, maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; 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.

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

In the matter of the Vacation of
a portion of Dusty Lane, P 5032,
situated In Section 7,
T.2 S., R.5 E., W.M.
Clackamas County, Oregon

}

Board Order No. _____
Page 2 of 2

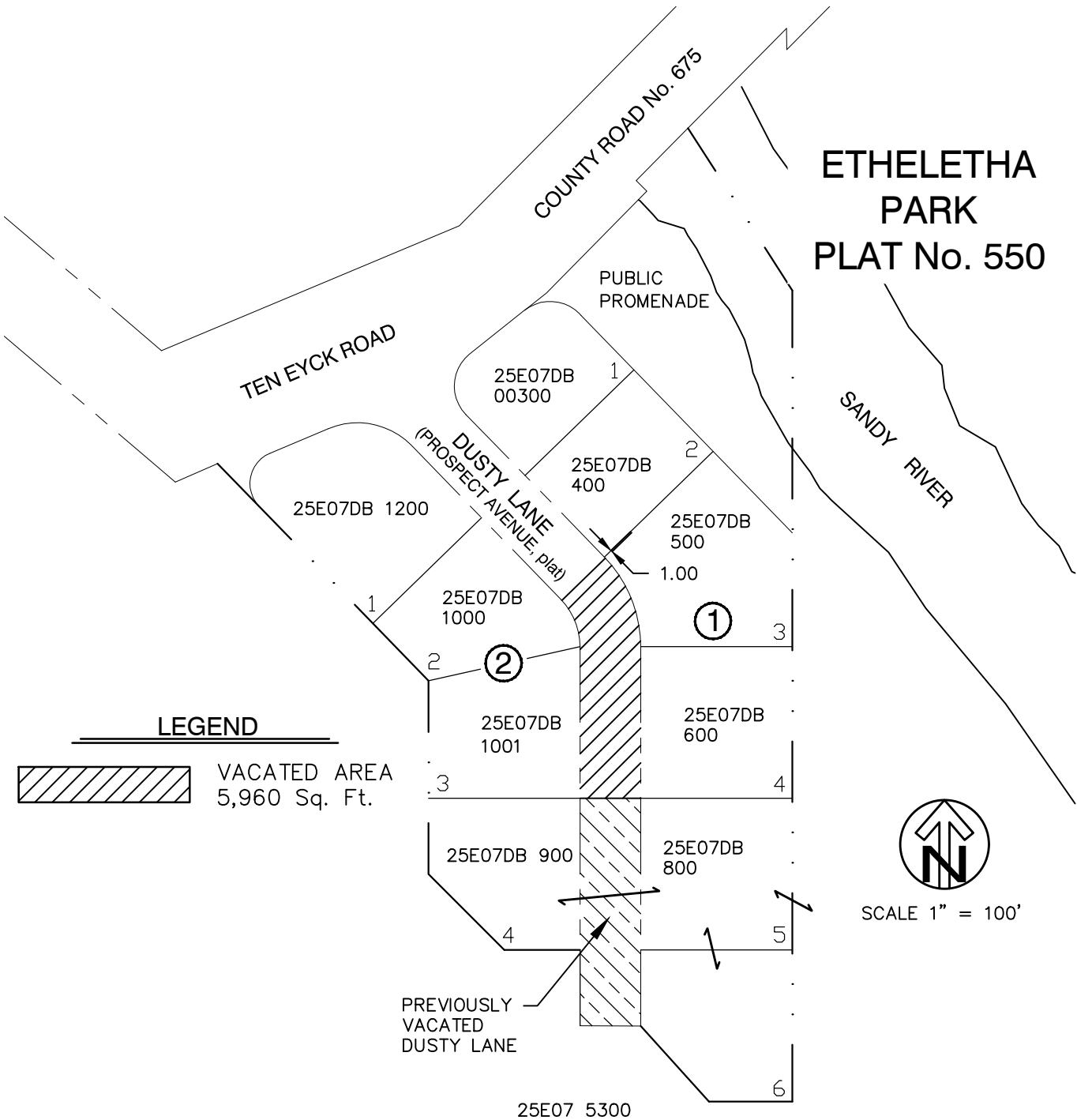
ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

Chair

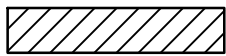
Recording Secretary

SITUATED IN THE SE $\frac{1}{4}$ OF
SECTION 7, T.2 S., R.5 E., W.M.

ETHELETHA
PARK
PLAT No. 550



LEGEND



VACATED AREA
5,960 Sq. Ft.



SCALE 1" = 100'

MEMORANDUM

TO: Board of Commissioners

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

DATE: April 30, 2021

SUBJ: **BOARD ORDER VACATING A PORTION OF DUSTY LANE**

LOCATION: The proposed road vacation is located in the southeast quarter of Section 7, Township 2 South, Range 5 East, Willamette Meridian, northeasterly of the City of Sandy.

FACTS AND FINDINGS: Dusty Lane, Public Road No. 5032, created May 9, 1927, through "Etheletha Park", Plat Number 550, is a paved and gravel road that dead ends at three tracts of private property identified as mostly wetlands. Only one of the tracts can be developed for a single family dwelling. Dusty Lane cannot be extended beyond its current terminus without major mitigation. The petitioner proposes to vacate the southerly 149.00 feet of the 40-foot wide road right-of-way and has recorded an easement over the vacated section to provide access to all affected properties. This portion of road right-of-way serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

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, provided that utility rights are reserved.

This road vacation does not violate any portion of Clackamas County Code 7.03.095 (4) (A). Said Code enumerated as follows;

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;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is available via recorded Ingress Egress and Utility Easement per Document 2021-055036

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

Finding: Dusty Lane has been constructed to the southerly limit of the subdivision and conveys current residential traffic.

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

Finding: It was economically feasible to build a road in a portion of this right of way however there is no public need to further improve this 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;

Finding: There are no other roads that effectively provides the same access.

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;

Finding: The right of way has present and future value to only the adjoining properties.

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

Finding: There are no 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;

Finding: There are no anticipated impacts to 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

Finding: Not applicable.

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.

Finding: Not applicable.

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