



## Coos County Community Development

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### PROCEDURE FOR VACATION OF PUBLIC ROADS

Oregon Revised Statutes (ORS) 368.326 to 368.366 provide the legal procedure for Coos County to vacate public roads, public property, or other public property interest under its jurisdiction. Vacation of public road rights-of-way under Coos County jurisdiction are administered by the Coos County Planning Department. Generally, the procedure is used to vacate public road rights-of-way that are no longer required for public use upon request from one or more abutting or underlying property owners. The process for abutting property owners to request vacation of a public road right-of-way under Coos County jurisdiction is as follows:

#### PETITION

A formal vacation request is made by one or more abutting or underlying property owners (“petitioners”) when they submit a petition package in a form acceptable to the Planning Department. The petition form must include the following:

- A written description of the reason for the requested vacation.
- The names and addresses of:
  - All persons holding any recorded underlying interest in the public right-of-way proposed to be vacated.
  - All persons owning any real property abutting the public right-of-way proposed to be vacated.
  - All persons owning any improvements existing within the public right-of-way proposed to be vacated.
- Notarized signatures by:
  - The owners of at least 60 percent of the land abutting the public right of way, or
  - 100 percent of the owners of land abutting the right of way.

Additionally, the following materials must accompany the completed petition form to provide for a complete petition package:

- Vacation processing fee (refer to fee schedule).
- Legal description of the proposed vacation area on 8½ inch by 11-inch paper prepared, stamped, and signed by a licensed professional land surveyor.
- Map of the proposed vacation area on 8½ inch by 11-inch paper prepared, stamped, and signed by a licensed professional land surveyor.
- Completed service provider consent forms from all affected utility service providers.
- Completed loss of access rights consent forms with notarized signatures by all affected property owners (if applicable, see below for further information).

## LOSS OF ACCESS RIGHTS

If a proposed vacation would deprive any property owner of the legal access necessary for that property owner to exercise their property right, the petitioners must include completed loss of access rights consent forms with notarized signatures from all affected property owners.

ORS 368.331 provides limitations on vacation proceedings that would eliminate access. 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. [1981 c.153 §35]

## ABUTTING OWNERS IN PUBLIC ROAD VACATIONS (ORS 368.336)

Where the property proposed to be vacated is a public road, a person owning property that abuts either side of the road is an abutting property owner, even when the county governing body proposes to vacate less than the full width of the road. Property owners shall be considered “abutting” if they share a property line with the area proposed to be vacated. Property owners sharing only a common corner with the property proposed to be vacated shall not be considered abutting property owners, but shall be entitled to notice as set forth below.

## SERVICE PROVIDER CONSENT

In addition to providing for public travel, public road rights-of-way also provide for utilities which operate within public rights-of-way under provisions in State law and County-issued permits. The County must ensure that affected utility service provider concerns are taken into consideration during vacation proceedings. Utility service providers include operators of transmission facilities for power, natural gas, domestic water, wastewater, telephone, Internet, cable television, and other services. Contact the Road Department for information on any utilities that may hold permits for working in the right -of-way proposed to be vacated.

## PERMIT PROCESSING

Upon submission of a petition package, staff will review and verify it is complete. This includes verifying the names, addresses, and signatures on the petition form along with the ownership. If the petition is found to be incomplete, a notification to the petition will be sent and the application will be placed on hold. Once the petition is completed, staff will send a request for comments to abutting property owners, effected special districts, effected utilities, and property owners sharing a common corner with the property proposed to be vacated. The deadline for providing comments shall be 20 days from the date of the Community Development Department’s mailing of the request for comments.

After the 20-day comment period has lapsed, staff will send the following to the Board of Commissioners:

- The petition package.
- Any comments received within the 20-day comment period.
- A draft Board order to initiate the vacation process.

If the Board of Commissioners adopts the proposed order to initiate the vacation process, the Planning Staff will forward the packet to the following County Departments:

- County Surveyor to verify the legal description and boundary markers.
- County Road Department to conduct a field inspection of the area proposed for vacation and provide a statement of whether the vacation is in the public interest.

Planning staff will prepare and provide any required public notices after a date is set for a final hearing in the vacation proceeding. Notices shall be sent to the following parties:

- The petitioners.
- Any and all additional property owners with property abutting or underlying the property proposed to be vacated.
- Any utilities that would be impacted by the vacation.
- Any property owner that shares a common corner with the property proposed to be vacated, but does not fall under the definition of “abutting” as set forth above.

Notices of the meeting will only be provided if a public hearing is required. Otherwise, only the petitioner will be notified. A recommendation to the Board of Commissioners that a proposed vacation is in the public’s interest is typically based on the following findings (the final decision rests solely with the Board of Commissioners):

- In regards to abutting or underlying property owner consent:
  - The Petitioners, who represent 100 percent of the owners of property abutting or underlying the subject public property, have submitted a complete petition; or
  - Upon notice, abutting or underlying property owners who are not parties to the petition have not provided comments in opposition to the proposed vacation.
- In regards to loss of access rights:
  - No owners of a recorded property right would be deprived of access necessary for the exercise of their property right with the proposed vacation if implemented; or
  - Owners of a recorded property right who would be deprived of access necessary for the exercise of their property right with the proposed vacation if implemented have consented to the vacation.

Additional findings that a proposed vacation is in the public’s interest may include:

- No public road improvements exist within the proposed vacation area.
- The proposed vacation would provide for development of the abutting properties in accordance with state and local law. This means abutting property could be developed in accordance with the zoning.

A recommendation to the Board of Commissioners may contain a recommendation that the scope of the vacation be modified or reduced in order to ameliorate problems that would be created if the vacation proceeds as set forth in the petition package.

#### WHEN FINAL HEARING IS REQUIRED

A final hearing of the Board of Commissioners is required unless the petition for a vacation was signed by 100 percent of the property owners abutting or underlying the public property proposed to be vacated and:

1. No objection has been made by the owner of a property that shares a common corner with the public property proposed to be vacated;
2. No objection has been made by a utility service provider lawfully operating on the property proposed to be vacated; and
3. The County Road Official files with the Board of Commissioners a written report that contains the County Road Official's assessment that any vacation of public property is in the public interest.

The Board may, in its sole discretion, decide that any application for a vacation shall proceed to a hearing, regardless of the consent of abutting owners, the recommendation of staff, or any other factor.

#### VESTING OF VACATED PROPERTY

When a public road right-of-way under County jurisdiction is vacated, the vacated property usually reverts to the abutting owners up to the center of the road. However, depending on how the road is owned or how the vacation is requested, title to the land may go separately from abutting ownerships. The Board could also order a different reversion of the property based on information brought forth at the public hearing or in the petition. If a property owner would like to exchange property in the vacated way, they may do so through a property line adjustment. See Planning Staff for additional information.

# PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE COOS COUNTY BOARD OF COMMISSIONERS

We, the undersigned (holding recorded interest or abutting the proposed property or owning improvements constructed on the proposed property for vacation), respectfully request the following described road be vacated.

Description of road to be vacated:

Reason for road vacation request:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
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STATE OF OREGON                     )  
   )    ss.  
 County of \_\_\_\_\_            )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

\_\_\_\_\_  
 Notary Public for Oregon.  
 My Commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  )    ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal  
\_\_\_\_\_  
Notary Public for Oregon.  
My Commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  )    ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal  
\_\_\_\_\_  
Notary Public for Oregon.  
My Commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  )    ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal  
\_\_\_\_\_  
Notary Public for Oregon.  
My Commission expires: \_\_\_\_\_

**I CERTIFY THAT THIS IS THE TRUE AND ORIGINAL PETITION CIRCULATED BY ME.**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**ADDRESS**

**TELEPHONE:** \_\_\_\_\_

**VACATION LOSS OF ACCESS CONSENT FORM**

I, \_\_\_\_\_, am the owner of Tax Account Number \_\_\_\_\_ in Coos County, Oregon. The proposed road vacation of some portion of \_\_\_\_\_ will deprive me of access to a public road necessary for the exercise of my recorded property right.

According to Oregon Revised Statutes 368.331:

**368.331 Limitation on use of vacation proceedings to eliminate access.** *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.*

I hereby give the Board of County Commissioners of Coos County, Oregon consent to proceed with the proposed road vacation of some portion of \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

STATE OF OREGON                    )  
  )    SS.  
County of Coos                        )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
MY COMMISSION EXPIRES: \_\_\_\_\_

**SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION**

\_\_\_\_\_, as Chief Petitioner, intends to submit a petition for Coos  
(Chief Petitioner’s Name)

County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider,

(Service Provider Name)

Does not have existing facilities within the area proposed for vacation.

Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, \_\_\_\_\_  
(Service Provider Name)

Consents to the vacation of this section of public right of way.

Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.

Does not consent to the proposed right of way vacation for the following reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name of Service Provider Representative

\_\_\_\_\_  
Representative’s Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date