

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Policy Session Worksheet

Presentation Date: 10/16/2018 **Approx. Start Time:** 2:00pm **Approx. Length:** 30 minutes

Presentation Title: Road Vacation Procedure with Hearing

Department: Department of Transportation and Development (DTD)

Presenters: Doug Cutshall, Michael Bays, Nate Boderman

Other Invitees: Mike Bezner

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

No action from the board will be necessary. This session is for informational purposes.

EXECUTIVE SUMMARY:

Generally, Clackamas County vacates road right of way with the consent of 100% of the adjoining property owners forgoing the need for a public hearing. At this time, a road vacation with less than 100% consent has been initiated. ORS 368.346 outlines the requirement for reporting, notifying and holding a hearing for County property vacation proceedings. The purpose of this policy session is to acquaint the board with this rare process and to answer any questions the board may have for staff.

FINANCIAL IMPLICATIONS (current year and ongoing):

N/A The costs associated with the road vacation process, including reporting, notifying and the public hearing are borne by the public road vacation applicant.

Is this item in your current budget? YES NO

What is the cost? N/A

What is the funding source? N/A

STRATEGIC PLAN ALIGNMENT:

- This item aligns with DTD's strategic business plan to provide survey, design, right of way, construction and project management services to the public so they can safely and efficiently connect with goods, services, employment and people.
- This item aligns with the County's performance goal "Build Public Trust through Good Government".

LEGAL/POLICY REQUIREMENTS:

ORS 368.326 - ORS 368.366
Clackamas County Code 7.03.095(A)

PUBLIC/GOVERNMENTAL PARTICIPATION:

DTD staff will continue to work with the Board of Commissioners to facilitate the road vacation process by investigating, reporting and compiling the necessary petition and associated

documents. DTD staff will remain as the point of contact for the public to initiate the vacation of public rights of way.

OPTIONS:

N/A

RECOMMENDATION:

N/A

ATTACHMENTS:

ORS 368.326 - ORS 368.366

Clackamas County Code 7.03.095(A)

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Michael Bays @ 503-742-4667
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VACATION OF COUNTY PROPERTY

368.326 Purpose of vacation procedures; limitation. ORS 368.326 to 368.366 establish vacation procedures by which a county governing body may vacate a subdivision, part of a subdivision, a public road, a trail, a public easement, public square or any other public property or public interest in property under the jurisdiction of the county governing body. The vacation procedures under ORS 368.326 to 368.366:

(1) Shall not be used by the county governing body to vacate property or an interest in property that is within a city.

(2) Are an alternative method to the method established under ORS chapter 92 for the vacation of a subdivision. [1981 c.153 §34]

368.331 Limitation on use of 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]

368.336 Abutting owners in vacation proceedings. Where the property proposed to be vacated under ORS 368.326 to 368.366 is a public road, a person owning property that abuts either side of the road is an abutting property owner for purposes of ORS 368.326 to 368.366 even when the county governing body proposes to vacate less than the full width of the road. [1981 c.153 §36]

368.341 Initiation of vacation proceedings; requirements for resolution or petition; fees. (1) A county governing body may initiate proceedings to vacate property under ORS 368.326 to 368.366 if:

- (a) The county governing body adopts a resolution meeting the requirements of this section;
- (b) The person who holds title to property files with the county governing body a petition meeting the requirements of this section and requesting that the property be vacated; or
- (c) The owner of property abutting public property files with the county governing body a petition meeting the requirements of this section and requesting vacation of the public property that abuts the property owned by the person.

(2) A county governing body adopting a resolution under this section shall include the following in the resolution:

- (a) A declaration of intent to vacate property;
- (b) A description of the property proposed to be vacated; and
- (c) A statement of the reasons for the proposed vacation.

(3) Any person filing a petition under this section shall include the following in the petition:

(a) A description of the property proposed to be vacated;

(b) A statement of the reasons for requesting the vacation;

(c) The names and addresses of all persons holding any recorded interest in the property proposed to be vacated;

(d) The names and addresses of all persons owning any improvements constructed on public property proposed to be vacated;

(e) The names and addresses of all persons owning any real property abutting public property proposed to be vacated;

(f) Signatures, acknowledged by a person authorized to take acknowledgments of deeds, of either owners of 60 percent of the land abutting the property proposed to be vacated or 60 percent of the owners of land abutting the property proposed to be vacated; and

(g) If the petition is for vacation of property that will be redivided in any manner, a subdivision plan or partitioning plan showing the proposed redivision.

(4) The county governing body may require a fee for the filing of a petition under this section. [1981 c.153 §37]

368.346 Report, notice and hearing for vacation proceedings. Except as provided in ORS 368.351:

(1) When a vacation proceeding has been initiated under ORS 368.341, the county governing body shall direct the county road official to prepare and file with the county governing body a written report containing the following:

(a) A description of the ownership and uses of the property proposed to be vacated;

(b) An assessment by the county road official of whether the vacation would be in the public interest; and

(c) Any other information required by the county governing body.

(2) Upon receipt of the report under subsection (1) of this section, a county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

(3) Notice of the hearing under this section shall be provided under ORS 368.401 to 368.426 by posting and publication and by service on each person with a recorded interest in any of the following:

(a) The property proposed to be vacated;

(b) An improvement constructed on public property proposed to be vacated; or

(c) Real property abutting public property proposed to be vacated.

(4) During or before a hearing under this section, any person may file information with the county governing body that controverts any matter presented to the county governing body in the proceeding or that alleges any new matter relevant to the proceeding. [1981 c.153 §38]

368.351 Vacation without hearing. A county governing body may make a determination about a vacation of property under ORS 368.326 to 368.366 without complying with ORS 368.346 if the proceedings for vacation were initiated by a petition under ORS 368.341 that indicates the owners' approval of the proposed vacation and that contains the 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 public property proposed to be vacated and either:

(1) The county road official files with the county governing body a written report that contains the county road official's assessment that any vacation of public property is in the public interest; or

(2) The planning director of the county files a written report with the county governing body in which the planning director, upon review, finds that an interior lot line vacation affecting private property complies with applicable land use regulations and facilitates development of the property subject to interior lot line vacation. [1981 c.153 §39; 2005 c.762 §1]

368.356 Order and costs in vacation proceedings. (1) After considering matters presented under ORS 368.346 or 368.351, a county governing body shall determine whether vacation of the property is in the public interest and shall enter an order or resolution granting or denying the vacation of the property under ORS 368.326 to 368.366.

(2) An order or resolution entered under this section shall:

(a) State whether the property is vacated;

(b) Describe the exact location of any property vacated;

(c) Establish the amounts of any costs resulting from an approved vacation and determine persons liable for payment of the costs;

(d) Direct any persons liable for payment of costs to pay the amounts of costs established; and

(e) If a plat is vacated, direct the county surveyor to mark the plat as provided under ORS 271.230.

(3) When an order or resolution under this section becomes final, the county governing body shall cause the order to be recorded with the county clerk and cause copies of the order to be filed with the county surveyor and the county assessor. The order or resolution is effective when the order or resolution is filed under this subsection.

(4) Any person who does not pay costs as directed by an order under this section is liable for those costs. [1981 c.153 §40]

368.361 Intergovernmental vacation proceedings. (1) Notwithstanding ORS 368.326, a county governing body may vacate property that is under multiple public jurisdiction or that crosses and recrosses from public jurisdiction to public jurisdiction if:

(a) Vacation proceedings are initiated by each public body with jurisdiction;

(b) The public bodies proceed separately with vacation proceedings or conduct a joint proceeding; and

(c) Each public body reaches a separate decision about the proposed vacation.

(2) Each public body must reach a separate decision to vacate property under this section before the vacation may be completed. If each public body has determined that the property should be vacated, each public body shall issue a separate order or resolution vacating those portions of the property under their respective jurisdictions.

(3) Notwithstanding ORS 368.326, a county governing body may vacate property that is under the jurisdiction of the county and that is entirely within the limits of a city if that city, by resolution or order, concurs in the findings of the county governing body in the vacation proceedings.

(4) Public bodies vacating property under this section shall each use procedures for vacation that each uses for other vacation proceedings. [1981 c.153 §41; 1989 c.219 §1]

368.366 Vesting of vacated property. (1) When a county governing body vacates public property under ORS 368.326 to 368.366, the vacated property shall vest as follows:

(a) If the county holds title to the property in fee, the property shall vest in the county.

(b) If the property vacated is a public square the property shall vest in the county.

(c) Unless otherwise described in paragraph (a) or (b) of this subsection, the vacated property shall vest in the rightful owner holding title according to law.

(d) Except as otherwise provided in this subsection, the vacated property shall vest in the owner of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property.

(2) Notwithstanding subsection (1) of this section, a county governing body may determine the vesting of property vacated under ORS 368.326 to 368.366 in the order or resolution that vacates the property. [1981 c.153 §42]

7.03.095 Vacation Proceedings and Road Status Changes

A. Vacation Proceedings.

1. Vacation of any public property listed in ORS 368.326 shall be carried out pursuant to ORS 368.326–368.366.
2. Partial vacations of public property, with reservations of rights in the form of easements (utility, ingress/egress, etc.) shall also be carried out pursuant to ORS 368.326–368.366.
3. A vacation of public property may eliminate rights of public access, but no vacation of public property shall be allowed if the vacation would deprive an owner of access to their property without their consent.
4. In determining whether vacation of public property is in the public interest, the Board shall consider the following criteria:
 - 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
 - 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.
5. The Order issued pursuant to ORS 368.356 at the conclusion of any vacation proceeding shall not be a land use decision, but may be appealed by Writ of Review under ORS 34.102