



**DAN JOHNSON**  
DIRECTOR

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

November 3, 2022

Board of Commissioners  
Clackamas County  
Members of the Board:

**Permanent Right of Way Vacation of an unused portion of 98<sup>th</sup> Avenue, County Road Number 1769. Funding is through petitioner. County General Funds are not involved.**

<b>Purpose/Outcomes</b>	Vacates a portion of 98 <sup>th</sup> Avenue right of way.
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Petitioners road vacation fee. Revenue
<b>Duration</b>	Upon execution; permanent road right of way vacation.
<b>Previous Board Action</b>	11/2/22: Discussion item at issues.
<b>Counsel Review</b>	Reviewed and approved by County Counsel on 10/18/2022
<b>Procurement Review</b>	Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This is a road right of way vacation
<b>Strategic Plan Alignment</b>	Build a Strong Infrastructure
<b>Contact Person</b>	Doug Cutshall, Engineering Technician 503-742-4669

**BACKGROUND:**

98<sup>th</sup> Avenue (Fairfield Avenue, per plat) County Road No. 1769, located in the SE quarter of Section 9, Township 2 South, Range 2 East, W.M., was dedicated February 19, 1925 through Hollywood Gardens, Plat Number 501. The subject portion of right of way has been minimally improved and is merely a utility and drainage corridor today. This road right of way is of no use to the traveling public. There are no negative impacts to the traveling public or the adjoining property owners by this road action. This action is pursuant to ORS 368.326.

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.

After considering traffic impacts, fiscal impacts, and social impacts, staff believes that it would be in the public's interest to approve the Board Order vacating that portion of 98<sup>th</sup> Avenue, a 30 foot wide right of way, as described in Exhibit "A" and shown in Exhibit "B", in accordance with ORS 368.351.

**RECOMMENDATION:**

Staff respectfully recommends that the Board adopt the attached Board Order Vacating a portion of 98<sup>th</sup> Avenue County Road Number 1769, DTD Number 22018, in Hollywood Gardens, Plat 501, Clackamas County Plat Records.

Respectfully submitted,

*Douglas Cutshall*  
Douglas Cutshall  
Engineering Technician DTD

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

In the matter of the Vacation of a portion of 98<sup>th</sup> Avenue right of way situated in the SE 1/4 of Section 9, T.2 S., R.2 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 368.351, 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 a portion of 98th Avenue right of way, described as follows:

All of that portion of 98th Avenue, as depicted in "Hollywood Gardens", Plat Number 501, Clackamas County Plat Records, situated in the SE1/4 of Section 9, T.2 S., R.2 E., W.M., Clackamas County, Oregon, lying south of and between a line beginning at a point described in Deed Document 2016-084780, Parcel 1, Clackamas County Deed Records, lying on the west boundary of said plat that is 280.93 feet northerly of the southwest corner of said plat, to the angle point on the northwesterly line of Lot 4, Block 15, of said plat and, a line that is 30 feet north of and parallel to the south boundary of said plat. Depicted on attached Exhibit "A" and, by this reference being a part of this description. Containing 7,366 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 May 10, 2022; 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 98<sup>th</sup> Avenue right of way as depicted on attached Exhibit "A", containing, 7,366 square feet, more or less, be vacated; and,

**IT IS FURTHER ORDERED** that rights for all existing utilities within the vacated 98<sup>th</sup> Avenue and, the unnamed road right of way 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 and, any storm or sanitary sewer 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 98<sup>th</sup> Avenue right of way  
situated in the SE 1/4 of  
Section 9, T.2 S., R.2 E., W.M.  
Clackamas County, Oregon



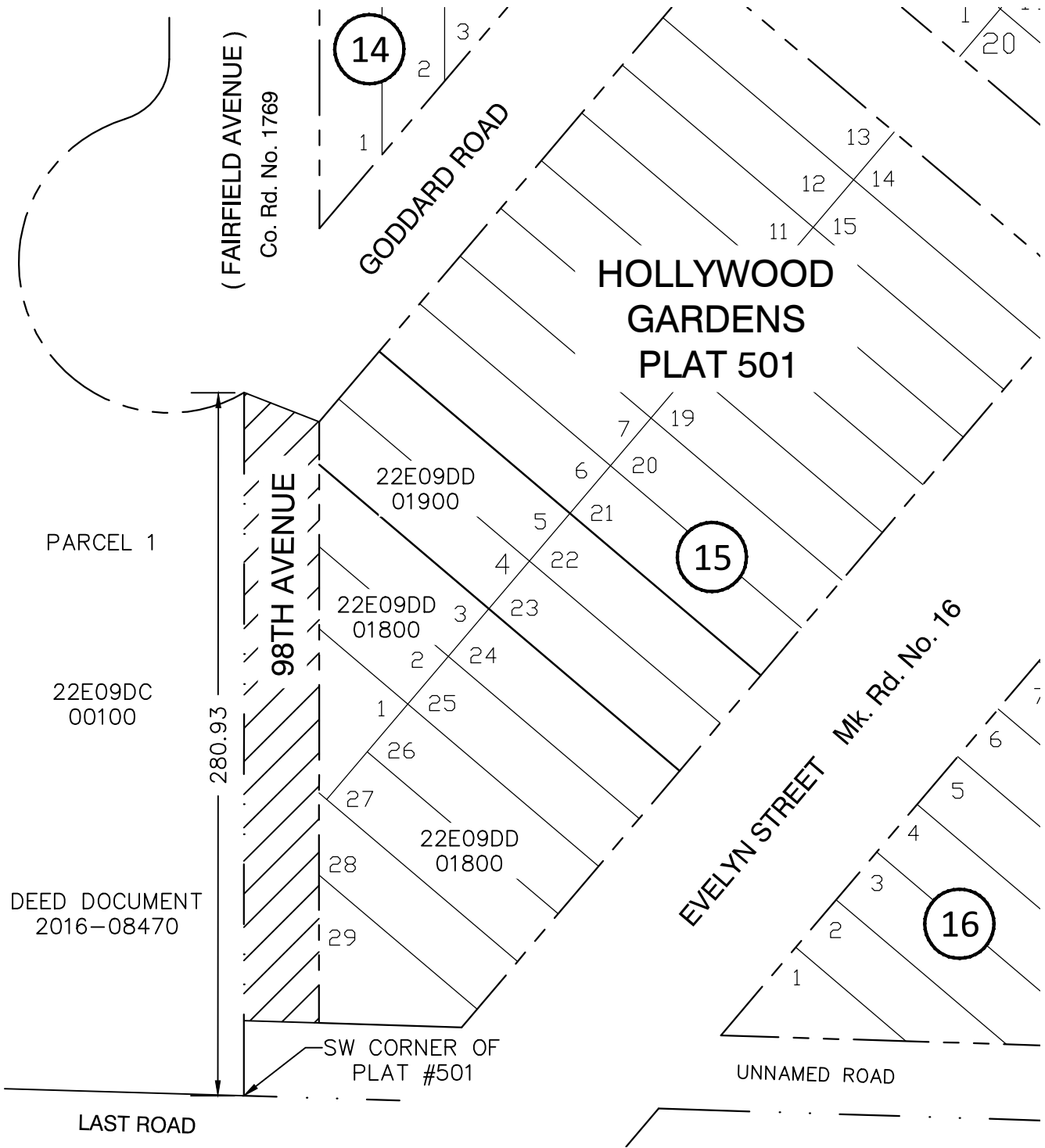
Board Order No. \_\_\_\_\_  
Page 2 of 2

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022  
BOARD OF COUNTY COMMISSIONERS

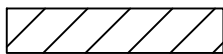
\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

SITUATED IN THE SE1/4 OF  
SECTION 9, T.2 S., R.2 E., W.M.



**LEGEND**



VACATED AREA  
7,366 Sq. Ft.



SCALE 1" = 60'

DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT

150 BEAVERCREEK ROAD  
OREGON CITY, OR 97045



BY: D. CUTSHALL

DATE: 05/11/2022

**EXHIBIT "A"**

SHEET  
1 OF 1

## MEMORANDUM

TO: Board of Commissioners

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

DATE: May 10, 2022

SUBJ: **BOARD ORDER VACATING A PORTION OF 98th AVENUE**

**LOCATION:** The proposed road vacation is located in the SE quarter of Section 9, Township 2 South, Range 2 East, Willamette Meridian and, Hollywood Gardens, Plat Number 501.

**FACTS AND FINDINGS:** The southerly 281 feet of 98<sup>th</sup> Avenue (Fairfield Avenue, per plat) County Road No. 1769, has not been improved to any County Road Standard since it's dedication on February 19, 1925. Several other roads were dedicated to the public through the Hollywood Gardens plat, the subject portion of 98<sup>th</sup> Avenue right of way is minimally improved and is merely used for utility and drainage corridor. 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 existing improved local access roads.

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

Finding: It is physically possible to build a road in the right of way however, the 98th Avenue right of way is only 30 feet wide which does not allow for the construction of a road meeting current county road standards.

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

Finding: It may be economically feasible to build a road in this portion of right of way however, there is no public need to further improve the 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 other roads that effectively provide 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 substandard right of way width does have present and future value to only the adjoining properties and, the utilities and drainage structures within them.

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 substandard width 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 is no anticipated growth or changes in use of the surrounding area or of the substandard width right of ways 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.

# COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Description:

After recording please return to: **X** \_\_\_\_\_

County Admin

Procurement

If applicable, complete the following: \_\_\_\_\_

Board Agenda Date/Item Number: \_\_\_\_\_