



Land of Cheese, Trees and Ocean Breeze

**TILLAMOOK COUNTY
PUBLIC WORKS DEPARTMENT**

503 Marolf Loop, Tillamook, OR 97141

(503) 842-3419
FAX: 842-6473

TDD-NONVOICE
Oregon Relay Service

RE: VACATION OF A PUBLIC ROAD

July 12, 2006

In order for a vacation request to be acted upon by the Board of Commissioners, it must be submitted on the enclosed petition form that conforms to the requirements of Oregon State law. Also enclosed are the portions of State Law pertaining to public road vacations. ORS 368.341(1)(c) refers to the need for a petition, and ORS 368.341(3) details the items that must be included in your petition. All signatures on the petition must be notarized. If there is joint ownership of a parcel, then all owners of the parcel must sign the petition.

For completion of the petition, fill out the first two pages of the blank Petition to Vacate with the appropriate information. Each petitioner must complete a copy of the third page and have the respective pages notarized.

The petition must be filed at the Tillamook County Clerk's Office with the following filing fees:

Petition for Vacation	\$600.00
Standard Recording Fee	\$15.00

You must submit the 2 checks BOTH made out to "Tillamook County Clerk's Office" when submitting the petition. Two separate checks are required because they are deposited to independent County accounts.

THE ABOVE FEES ARE NONREFUNDABLE, regardless of the final determination for vacation.

Upon the filing of the Road Vacation Petition, the Board of Commissioners will proceed with your request in the manner outlined in the enclosed copy of the state law.

I would like to draw your attention to ORS 368.351. This allows the Board of Commissioners to make a determination about a vacation without a public hearing if both of the following conditions are met:

- a. The county road official (Director of Public Works) files with the Commissioners an assessment that the petitioned road vacation is in the public interest; **and**
- b. The filed petition contained signatures of 100% of the abutting property owners. ORS 368.336 specifies that a person owning property that abuts either side of the road is an abutting property owner.

If the Tillamook County Board of Commissioners orders the road vacation, then you will be responsible for paying all of the recording fees. These fees include, but are not necessarily limited to, the following:

Standard Recording, each page	\$ 5.00
Assessment & Taxation Fee, per document	10.00
Corner Restoration Fee, per document	9.00
Clerk's Administrative Fee, per document	1.00
Oregon Land Info System Fee, per document	1.00
Surveyor's Fee, per document	25.00
Certified Copy to the Assessor's Office	4.00 + 25¢/add'l page
Certified Copy to the Surveyor's Office	4.00 + 25¢/add'l page

Effective 7/12/06
Subject to change

For a typical two page order the above fees would come to \$64.50. A three page order would total \$70.00.

I want to highlight estimated time frames for various phases of a road vacation under optimum conditions:

- a. Initial Road Dept research (after receipt of Petition from the Commissioner's Office): 1 week
- b. Send out Preliminary Engineer Report to departments, agencies, utilities for their feedback: 4 weeks
- c. Development/submission of final Engineer's Report to Tillamook County Board of Commissioners: 1 week
- d. If required (for contested road vacations or less than 100% of the abutting property owners sign the petition), Notification of Public Hearing: 5 weeks
- e. Scheduling and meeting of the Board of Commissioners to consider the vacation: 10 days

In summary, **under optimum conditions**, I anticipate the vacation process as outlined taking approximately 7+ weeks to complete. I

have seen few public hearing road vacation procedures that end in a decision in less than 7 weeks.

Several additional comments include:

- a. The steps required in the above time frames are necessary to insure proper road vacation procedures are followed. If you have a tight pending suspense (such as a home improvement loan) and decide to initiate a petition to vacate, be aware that timely resolution of the petition to meet your desired time schedule can not be guaranteed.
- b. The blank petition to vacate forms indicate requirements for percentage of abutting property owners. With the exception of where a road intersects with another county road, some party owns the land. This includes beach and river front property. It is not the primary function of Public Works to identify property owners that you are required to list on the petition.
- c. The road vacation process only lifts the County's interest in the road, less any existing easements. It does not guarantee that the land under the road right of way will vest to any specific property owners.
- d. Given submitted petition fees are non-refundable, it may be in the petitioner's best interest for them to do preliminary research to verify current issues (such as utility placements or land use matters) or vesting that may impact the ultimate outcome of any vacation proceeding.
- e. For any known existing private or public utility lines in a proposed road vacation, Tillamook County desires proof of a recorded easement to the respective utility company from the underlying vested owner for access and maintenance of the line(s) prior to proceeding with consideration of a road vacation. The respective utility company will provide feedback to the Road Department that they have no outstanding easement concerns. The Road Department will review any provided utility easement for verification that it identifies the respective utility companies (either specifically or generically). The Road Department will not be involved in determining the legal adequacy of provided utility easement documents. For any utility line where the above easement is not recorded, an approved road vacation order will include a statement that an easement matching the dimensions and location of the proposed road vacation is reserved to the respective utility companies for access to and maintenance of those existing lines.

f. Lastly, if you feel you have adequate information to submit the petition paperwork, you can do so. However, a preview of the petition paperwork and the proposed road vacation by Public Works may eliminate potential problems, time delays or misunderstandings in the process.

I hope this letter has answered your questions. If you have any questions or comments, please feel free to call me at (503) 842-3419.

Sincerely,



Patrick B. Oakes
Engineering Project Supervisor

Enclosures: Petition Form
 ORS Section 368.326

The following is copied from the State of Oregon web site at:
<http://landru.leg.state.or.us/ors/>

Format of the below text is modified from the original format for presentation purposes. Tillamook County will attempt to provide the most current ORS for reference, however prospective petitioners should verify for updates. 7/06

VACATION OF COUNTY PROPERTY

368.326 Purpose of vacation proceedings; 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 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. [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. (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 Ownership 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]

NOTICE

368.401 General notice provisions. (1) ORS 368.401 to 368.426 establish standard methods for providing notice by service, posting or publication in actions or proceedings affecting real property. The methods established in ORS 368.401 to 368.426 for providing notice are applicable when notice is required by law to be made under ORS 368.401 to 368.426.

(2) ORS 368.401 to 368.426 do not:

(a) Limit the use of public moneys for providing notice or providing other information.

(b) Limit the persons to whom notice or information may be provided.

(c) Limit the manner in which notice may be provided.

(d) Apply where other methods for providing notice are specifically provided by law.

(e) Supersede any specific provision for providing notice that is part of any law requiring or permitting notice to be given under ORS 368.401 to 368.426. [1981 c.153 §43]

368.405 [Repealed by 1981 c.153 §79]

368.406 Notice by service. (1) When the law requires notice to owners of certain real property by service, the person providing notice by service may have notice personally served or may have the notice mailed.

(2) A person providing notice shall accomplish notice that is personally served by obtaining a signed acknowledgment of receipt of notice from:

(a) The person being served; or

(b) A person 18 years of age or older who resides at the address of the person being served.

(3) A person providing notice by mail shall accomplish notice by certified mail, return receipt requested, to the address of the person being served.

(4) A person's refusal to sign a receipt for notice that is personally served or mailed under this section is a waiver of any objection based on nonreceipt of the notice in any proceeding.

(5) Except where the person providing notice under this section has personal knowledge of a more appropriate address for the notice, the address to be used for notice personally served or mailed under this section is the address of the person to be served as shown on the tax rolls.

(6) A person serving notice under this section must serve notice at least 30 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §44]

368.410 [Repealed by 1981 c.153 §79]

368.411 Notice by posting. (1) Where the law requires notice by posting, the person providing notice shall post notices in no less than three places. The places where notice may be posted include any of the following:

(a) The property subject to the

proceeding that is the subject of the notice; or

(b) Property within the vicinity of the property described in paragraph (a) of this subsection.

(2) Notice that is posted on property under this section must be plainly visible from a traveled public road.

(3) Notwithstanding subsection (1) of this section, a person providing notice under this section may post fewer than three notices if the small size of the property limits the value of the number of postings.

(4) A person posting notice under this section must post notice at least 20 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §45]

368.415 [Amended by 1953 c.229 §2; 1971 c.427 §1; 1981 c.153 §66; renumbered 368.041]

368.416 Notice by publication. (1) Where the law requires notice by publication, the person providing notice shall publish the notice in a newspaper of general circulation in the county where the property that is the subject of the proceeding is located.

(2) A person publishing notice under this section must publish the notice once at least 20 days before and once within 10 days of the date of the proceeding that is the subject of the notice. [1981 c.153 §46]

368.420 [Repealed by 1981 c.153 §79]

368.421 Record of notice. A person providing notice under any provision of ORS 368.401 to 368.426 shall complete and sign an affidavit containing a record of the procedure followed to provide notice under those sections. The person shall file the affidavit with the public body with jurisdiction over the proceeding that is the subject of the notice or in a place designated by that public body. [1981 c.153 §47]

368.425 [Repealed by 1981 c.153 §79]

368.426 Contents of notice. Any notice under ORS 368.401 to 368.426 must include all of the following:

(1) A short plain statement of the subject matter of the proceeding that requires the notice.

(2) A statement of matters asserted or charged or action proposed to be taken at the proceeding.

(3) An explanation of how persons may obtain more detailed information about the proceeding.

(4) A statement of any right to hearing afforded any parties under law.

(5) The time and place of any proceeding that will take place.

(6) A reference to particular sections of statute, charter, ordinance or rule that provide the jurisdiction and process for the proceeding that is the subject of the notice. [1981 c.153 §48]

IV. The names and addresses of all persons (including utilities) owning any improvements constructed on the property proposed to be vacated:

(Use separate sheet if more space is needed)

V. The names and addresses of all persons owning any real property abutting the property proposed to be vacation are:

NAME & ADDRESS	DESCRIPTION OF PROPERTY
	(Use Tax Lot No. if available)
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(Use separate sheet if more space is needed)

VI. Attached to this Petition are _____ pages containing the notarized signatures of:

- () Owners of 100% of the land abutting the property proposed to be vacated.
- () Owners of at least 60% of the land abutting the property proposed to be vacated.
- () At least 60% of the owners of the land abutting the property proposed to be vacated.

VII. The property proposed to be vacated:

- () Will not be redivided in any manner.
- () Will be redivided as shown on the attached subdivision or partition plan.

**TILLAMOOK COUNTY
PETITION TO VACATE
SIGNATURE SHEET**

Signature required in Section VI of the Petition to Vacate the following described property:

Description of owned property that abuts the property proposed to be vacated (Use legal description or Tax Lot Number)

I certify that I am the owner of property that abuts the property proposed to be vacated, and approve of the proposed vacation

Signed and Dated this _____ day of _____, 20__

Signature

Address

Signature

City, State, Zip

ACKNOWLEDGEMENT

NOTARY PUBLIC)
STATE OF OREGON)
County of Tillamook)

ss.

On _____, 20____, the above named person appeared before me and acknowledged the foregoing instrument to be a voluntary act and deed.

Notary Public for the State of Oregon
My Commission Expires: _____