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Memorandum Date: April 13, 2009  
Agenda Date: April 29, 2009

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**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works, Land Management and Engineering Divisions

**PRESENTED BY:** Mike Jackson, Lane County Surveyor  
Frank Simas, Right of Way Manager 

**AGENDA ITEM TITLE:** WORK SESSION / In the Matter of Discussing Policy Direction and Revenue Options for the Vacation, Surrender and Relinquishment of Public Right of Way.

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**I. ISSUE**

To decide if current Lane County policies, procedures and fee schedules for the vacation, surrender, or relinquishment of public right of way should be revised.

**II. DISCUSSION**

**A. Background / Analysis**

During regular meetings of the Board of Commissioners on January 14 and March 3, 2009, staff was directed to report back to the Board in Work Session to discuss ideas for revenue options and policy recommendations on how to improve existing procedures for the vacation, surrender and relinquishment of public right of way.

- **VACATION:** At the current time, Lane County processes right of way vacations under procedures specified in ORS Chapter 368 and Lane Manual Chapter 15. Pertinent provisions are included herein as Attachments 'A' and 'B'. The fees collected by Lane County for processing vacation actions are currently set with the requirement of a "front-end" deposit and a final fee which recovers 100% of our actual processing costs. Pursuant to Lane Manual, deposits collected at the time of filing a petition for initiating a vacation are \$3,400 for a vacation without a public hearing, and \$4,800 for a vacation with a public hearing. Lane County vacation fees are prescribed in Lane Manual 60.853, attached hereto as Attachment 'C'. In the unusual circumstance where Lane County has vested rights, or owns the underlying land in fee simple, the vacated land may be sold, usually to the adjoining property owner(s) requesting the vacation.

The City of Eugene has a system in place whereby in addition to their application and publication fee for vacations, they require the payment of a deposit equal to the assessment of special benefit resulting from the vacation to the benefitted property owners. The special benefit is based upon the value of the real property; and in some cases, the costs previously incurred by the city in the construction of public improvements in the area proposed for vacation. If the vacation is approved by the City Council, the

deposit is retained by the city. If the vacation application is denied, the deposit is returned to the property owner. Eugene - City Code 9.8700 – 9.8725 is made a part hereof as Attachment 'D'.

For comparison purposes, the Board asked staff to provide information regarding two relatively recent vacations. For Latta Road, the actual fee charged was \$1,642 (this was prior to the 2007 fee increase) and the estimated special benefit would have been \$16,800. For First Avenue, in Florence near Driftwood Shores, the actual fee charged was \$5,808 compared with an estimated special benefit of \$39,000. It should be noted the First Avenue vacation was denied.

Although governed by a somewhat different process and ORS Section than used by Counties in Oregon, the City of Eugene recently found it to be in the public interest to vacate a portion of 13<sup>th</sup> Avenue and an alley in the vicinity of the new U of O basketball arena site. The special benefit paid to the city for this 2008 vacation was \$482,950.

The cities of Springfield, Florence, and Bend have similar systems in place, wherein vacation fees are established on the basis of the assessed value or estimated special benefit of the property being vacated, or some variation thereof. Douglas County also assesses a special benefit fee for the value of property to be vacated. A chart of vacation fees charged by comparable county and city jurisdictions is included herein as Attachment 'E'.

Cities follow vacation procedures specified in ORS 271.080 – 271.230, as outlined in Attachment 'F'. The procedures are similar to those specified in Chapter 368, which a county is obligated to follow, but are not identical. One notable, if subtle difference is a county must determine a vacation is in the public interest, while a city determines whether the public interest is "prejudiced", i.e., only approves a vacation if it does not harm the public interest. A special benefit fee is not discussed in either chapter

The AOC County Road Manual, Chapter 7.505 discusses charges for vacation proceedings and states that a fee schedule charging those who benefit from a property vacation may be established and further, that it may be based on administrative cost, or based on the benefit property owner's estimated gain as a result of the vacation. It cautions since vacated land usually involves public right-of-way easements (as opposed to fee-owned land) and does not technically ever become the property of the county, even while in use as a public road, it is not available to sell once vacated. Thus, any charge needs to avoid the characteristics that constitute a sale. The AOC County Road Manual, Chapter 7 (Vacation of Public Property) is attached hereto as Attachment 'G'.

Requiring an applicant to pay the appraised value for property upon approval of a vacation is not without controversy. In 1979, the Oregon Attorney General gave an opinion on the matter of city vacations and stated, "In short, we believe that exaction of fees or conditions equaling the appraised value of the land under the vacated street or road would be held invalid by a court." However, the opinion did state that it is permissible to weigh public detriment of a vacation against the public benefit, and to approve a vacation subject to any act that may weight the scales in favor of public interest. The opinion stated that in cases where the only reasonable finding is that the public interest is not prejudiced, exaction of fees equaling the appraised value of the land

would have no legal justification and would be held invalid by a court. The opinion is included below as Attachment 'H'.

During discussions on this matter in 2005, Lane County Legal Counsel questioned the legality of setting vacation fees on the basis of property value. The term "special benefit" may have arisen from this question.

ORS 368.366 states that if the county holds title to vacated property in fee, or if it is a public square (these are typically resulting from dedications to public use by a developer in connection with a subdivision plat), the property shall vest in the county. In those situations, the county clearly has legal authority to sell the property. This statute also says if vacated property it is not county owned or in a public square, title shall vest in the rightful owner holding title according to law, or by extension of abutting property boundaries to the center of the vacated property. In these situations, as mentioned previously, a legal question arises, as to whether or not a landowner should be required to essentially pay for something they already own. If the Board finds a public right of way is no longer needed by Lane County or the public, it might be considered to be more in the public interest to extinguish the easement and return the property to the tax rolls.

Notwithstanding the above noted provisions of ORS 368.366, a county Board of Commissioners may also determine the vesting of vacated property in an order of vacation.

Establishment of private benefit over and above recouping the costs of vacation proceedings will require staff time to estimate a credible value for the rights to be gained by the private owner/petitioner. This may result in situations where the petitioner is not sure if they would like to proceed with a vacation, until they know the costs, and once the costs are known, they may opt not to pursue the matter. A provision should be made for the collection of staff costs incurred in preparing estimates of benefit, should the petitioner or interested party decide not to pursue the vacation.

Different viewpoints and interpretations of statutory and case law are the reason Lane County and the City of Eugene have different fee structures. If the Board of Commissioners is interested in taking on the risk of charging a special benefit fee for vacation actions, the County Surveyor's Office and County Counsel could begin drafting the necessary revisions to Lane Manual.

In summary, if a fee interest is involved, the County currently sells the vacated area at market value subsequent to the vacation, unless the area is to be conveyed to a city or service district and carries a public use restriction. If an easement is involved, then the title already vests in the underlying fee owner, and there may be overriding benefit to the County in vacation to avoid future costs.

- **SURRENDER:** Lane County cooperates with various individual cities in the process to transfer (surrender) jurisdiction of county roads located within the respective cities. Surrender procedures are specified in ORS 373.270, which is included herein as Attachment 'I'.

Typically, surrenders are formally requested by a resolution adopted by a city council.

Lane County subsequently conducts a public hearing and the Board of Commissioners approves or denies the transfer by Board Order.

Until recently, Lane County distributed road funds to incorporated cities throughout Lane County on the basis of the total mileage of county roads surrendered to each city, and there was a monetary incentive for cities to request these transfers. Since County road funds are no longer being transferred to the cities, the incentive has been minimized.

Surrenders of roads are frequently pursuant to the terms of an Intergovernmental Agreement (IGA) and are usually in connection with a Lane County Road Improvement Project which lies entirely within a city's limits. They include roads that would more appropriately be under city jurisdiction for matters relating to land use and access control, traffic engineering and maintenance. The County may expend Road Funds to bring the road up to Urban standards, but the offsetting benefit lies in the avoidance of future maintenance costs. These IGAs sometimes include the provision of matching funds by the city for allocation to road and non-road expenditures related to the project.

Surrender of county roads to a city, benefits Lane County due to the shifting of responsibility for costs associated with regular road maintenance, or other improvements. Upon surrender, the city becomes the responsible jurisdiction.

As a result of the ongoing monetary benefit to Lane County, a fee has not been charged for processing surrender actions. Typical processing costs are estimated at \$4,000 - \$5,000. It is common to transfer multiple roads through a single surrender action.

Implementing a surrender fee at this time may further dampen city desire to request such transfers.

- **RELINQUISHMENT:** As to relinquishments, a recent item processed by staff involved strips of land along the frontages of the River Road Transit Station. Lane County sold most of this parcel to Lane Transit District and retained an approximate 20,000 square foot commercial parcel to be leased to a private business to provide revenue for the Road Fund in the future.

In the process of completing the survey necessary for the Property Line Adjustment, it was discovered there were areas of county-owned land along River Road and River Avenue being used as street and sidewalk right of way which had never been dedicated for public use.

These areas could not be sold as they were not productive from an economic standpoint, and as county-owned land rather than right of way, they were in effect land-locking the areas which were sold and proposed for leasing by the County. This relinquishment was a benefit to Lane County in that it relieved the County of future maintenance for these areas (including sidewalk maintenance as required by Eugene Code and ORS); solved the land-locking issue; and helped to clarify liability in the event of damage claims in the future involving property damage or personal injury.

Approximately 19 relinquishments were completed by Lane County in the past 10 years. These fall into three major categories, namely:

1. Situations involving a parcel that through error or oversight was not included in an alteration of establishment after a road improvement project was ultimately surrendered to a city. Unless a parcel of this type is relinquished, its status is still County-owned land and it legally land locks the adjacent property. Also, the County will remain responsible for maintenance of the parcel including debris removal, mowing, eviction of illegal campers, etc. The parcel could be entirely within a city and not near any County roads due to the surrender having been completed and is therefore best maintained by the city having jurisdiction over the road.
2. Areas of county land that were excess and intentionally not included in a surrender, but are later needed by the city for expansion of the adjacent roadway improvements. These are typically small remnants that may have little, if any, value to the adjacent private owner and cannot be sold to others because of land-locking issues. These are a benefit to the County to relinquish because of future maintenance responsibilities as with (1) above.
3. Areas that were not annexed to the city at the time of the surrender and could therefore not be included, but which now lie between the city street and a private ownership wishing to be annexed to the city. Once these areas are relinquished to the city, they can be dedicated to public use and will become part of the right of way under city jurisdiction.

Relinquishments of parcels purchased with Road Funds are completed under the provisions of ORS 271.330, which requires a condition be included in the conveyance document specifying that the property shall be used for a public purpose for not less than 20 years from the date of the conveyance.

- During the regular meeting of the Board of Commissioners on March 3, 2009, Commissioner Fleenor requested staff investigate the question who oversees the statutory requirement of ORS Chapter 222, which states a city may not annex property surrounded by its corporate boundaries under the provisions of ORS 222.750(2) if public right of way constitutes more than 25% of the perimeter of the territory.

In answer to this question, the city is responsible for meeting this statutory requirement.

## **B. Options**

### **VACATION:**

1. Leave vacation fees as they are, with 100% of processing costs being recovered.
2. Leave current fees in place with 100% of processing costs being recovered. Include additional fee for special benefit, on the basis of estimated value of vacated property.

3. Leave current fees in place with 100% of processing costs being recovered. Include an additional fee for special benefit, on the basis of estimated value of vacated property. Special benefit may include increased value to the benefited properties.

If the Board decides to implement a fee for special benefits, it would be recommended to allow it to be paid only in cases where there is no apparent conflict with public interest.

Consideration should be given to whether the payment of a special benefit outweighs public interest with regard to public access to public lands, lakes, rivers, streams, beaches, public dunes, national forests, parks, or other public recreational areas.

#### SURRENDER:

1. Continue current no fee policy for processing surrenders.
2. Implement a fee for surrenders which includes a front end deposit, and a final fee to recover 100% of processing costs.

#### RELINQUISHMENT:

1. Continue current policy of relinquishment of unneeded county road fund property by sale on the basis of appraised value.

### III. ATTACHMENTS

Attachment 'A' - ORS 368.326 – 368.426  
 Attachment 'B' - LM 15.300 – 15.305  
 Attachment 'C' - LM 60.853  
 Attachment 'D' - Eugene Code 9.870 – 9.8725  
 Attachment 'E' – ORS 271.080 – 271.230  
 Attachment 'F' – Comparable Vacation Fees Chart  
 Attachment 'G' – AOC County Road Manual, Chapter 7  
 Attachment 'H' – Attorney General's Opinion  
 Attachment 'I' - ORS 373.270

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**ATTACHMENT 'A'****ORS 368.326 – ORS 368.426**

## 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]

## ATTACHMENT 'B'

### LANE MANUAL CHAPTER 15

#### ROAD VACATIONS

##### **15.300 General Requirements.**

Vacation of County Roads pursuant to the process provided in LM 15.305 or conversion of County Roads to Local Access Road or Public Road (non-County maintained) status by withdrawal of County Road status pursuant to ORS Chapter 368 may be considered where little need exists for the road to be part of the County Road System. The following categories of County Roads may be considered by the Board of County Commissioners for vacation or withdrawal of County Road status:

- (1) Dead-end roads which serve four or fewer permanent residences.
- (2) Roads within National Forest boundaries, within Bureau of Land Management ownership areas, or adjacent to resource land areas under single ownership.
- (3) Roads that are undeveloped rights-of-way, are dirt roads, or are not currently maintained by County forces.
- (4) Roads that have received County maintenance, but are unusually difficult to maintain because of substandard road width, right-of-way width, steep topography, or materials or construction practices, which may result in excessive cost and liability exposure.
- (5) The following items shall be considered by the Board in reviewing these actions on a case-by-case basis:
  - (a) The need for a public right-of-way to provide for the orderly development of adjacent property.
  - (b) The need for public maintenance of the right-of-way.
  - (c) School bus traffic.
  - (d) Bridges and the potential for public safety problems associated with bridges.
  - (e) Railroad crossings and PUC requirements for County participation in applications for railroad crossing improvement or establishment.
  - (f) The potential for landslide and stability problems.
  - (g) Resource hauling (timber, agriculture, sand and gravel) that would unfairly burden other property owners.
  - (h) Use by law enforcement or fire protection personnel.
  - (i) Potential use as detour routes in the case of construction or disaster.
  - (j) Potential for elimination of right of access that is a matter of public record. *(Revised by Order No. 04-5-5-8, Effective 6.4.04)*

##### **15.305 Vacation Procedures.**

The below-listed procedures should be considered the policy of Lane County, and establish certain desirable safeguards in addition to the procedures for vacation of streets, lots, alleys, roads, highways, commons and public squares provided in ORS Chapter 368.

- (1) The Surveyor's Office, upon receipt of any petition or resolution of the Board submitted in accordance with ORS Chapter 368, shall send a copy of such petition or resolution to the Planning Director and County Engineer for review.
- (2) Upon receipt of such petition or resolution, the Surveyor's Office shall mail to persons owning property adjoining that to be vacated notice of the date, time and place of the hearing.
- (3) Prior to the time of the scheduled hearing, the Surveyor's Office shall also contact any public utilities, cities, or other public agencies, which in the judgment of the Surveyor's Office might have an interest in the vacation, and solicit the views of such utilities or agencies regarding the vacation.
- (4) When special planning or engineering considerations are involved, and at the discretion of the Planning Director and County Engineer, the petition or resolution may be submitted to the Planning Commission or Roads Advisory Committee for consideration and recommendations as appropriate. Such referral, however, shall not delay the hearing and decision on the petition or resolution by the Board.
- (5) Road vacations proposed as part of lot or parcel reconfigurations or property line adjustments, that will result in loss of connectivity between Public and/or County Roads as defined in LC 15.010(35) shall require approval of a replat of all subdivision lots and partition parcels adjacent to the road to be vacated pursuant to the requirements of LC Chapter 13. As part of the replat process, the County may require dedication of right-of-way or the creation of private easements, and road improvements, to ensure previously existing connectivity between Public or County Roads is maintained.

(6) Vacations, other than those by petition, shall be referred to the Roads Advisory Committee for its consideration and recommendations.

(7) The Surveyor's Office shall attach a copy of the affidavit of posting to the final order of vacation prior to its submission to the Board of County Commissioners for action.

(8) The Board shall consider the general requirements of LM 15.300 in making its decision. *(Revised by Order No. 91-5-15-20, Effective 5.15.91; 04-5-5-8, 6.4.04)*

**ATTACHMENT 'C'****LANE MANUAL 60.853****60.853 Fees.**

Pursuant to ORS 368.326 through 368.368, the following fee schedule shall be paid at or prior to the time of filing petitions for the vacation of all or any part of any lot, tract, street, alley, road, highway, common or all or any part of any public square or any other public property or public interest in property in any unincorporated area or town:

(1) \$4,800 deposit for a proposed vacation of public lands with a public hearing. The final fee will be based on actual costs incurred by Lane County determined at the completion of the project. Actual costs include normal document processing and the hourly rate of staff assigned to the project, plus a Land Management Division overhead rate.

(2) \$3,400 deposit for a proposed vacation of public lands without a hearing per ORS 368.351. The final fee will be based on actual costs incurred by Lane County determined at the completion of the project. Actual costs include normal document processing and the hourly rate of staff assigned to the project plus a Land Management Division overhead rate.

Fees shall be made payable to the Lane County Surveyor for the purposes of offsetting the costs of investigating and acting on such petitions by Lane County. The difference between the actual costs and the deposit will be billed or refunded to the applicant. An approved County vacation shall not be recorded until any additional amounts are paid.

The cost of legal advertising and recording fees shall be borne by petitioner.

*(Revised by Order No. 01-4-4-6, Effective 7.1.01; 04-2-11-3, 7.1.04; 07-4-18-3, 7.1.07)*

# ATTACHMENT 'D'

## Eugene City Code - Vacations

### Vacations

**9.8700**     **Purpose of Vacations.** In order to ensure the orderly development of land, public ways in the form of streets, roads, alleys, rights-of-way, pedestrian and/or bicycle easements and accessways, or utility easements are established, obtained, or reserved by the city. As land develops, and as land uses change over time, public ways may no longer be necessary for ensuring the orderly development of land. This land use code and state law provide procedures, requirements, and criteria for vacating public ways. The vacation process includes a review of the need for public ways and the manner in which to dispense with public ways. In addition, sections 9.8700 through 9.8725 of this land use code provide a process for the vacation of undeveloped subdivision and partition plats or parts thereof.

*(Section 9.8700, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20353, enacted November 28, 2005, effective June 1, 2006.)*

**9.8705**     **Applicability of Vacation Procedures.**

- (1) The vacation process applies to recorded undeveloped subdivision and partition plats and to public ways and public easements under the jurisdiction of the city.
- (2) The city's vacation process does not apply to lands over which Lane County or the state have jurisdiction such as unannexed plats or public ways within the Urban Growth Boundary, or county roads and state highways within the corporate limits of the city where jurisdiction has not been transferred to the city.
- (3) Vacation of public ways and public easements may be applied for by private citizens, public agencies, or the city council in accordance with EC 9.7000 through 9.7885 Application Procedures.

*(Section 9.8705, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)*

**9.8710**     **Vacations, Application Requirements.**

- (1) Vacation of unimproved public easements shall be considered in accordance with the Type I Application Procedures contained in EC 9.7000 through 9.7885 and the approval criteria contained in EC 9.8715. In the case of public utility easements, statements of concurrence with the vacation from affected utility providers must be submitted with the application.
- (2) Vacation of improved public easements, unimproved public right-of-way, and vacation and rededication of unimproved public rights-of-way, except improved public easements and public right-of-way located within undeveloped subdivision or partition plats, shall be considered in accordance with the Type II Application Procedures contained in EC 9.7000 through 9.7885 and the approval criteria contained in EC 9.8720. In the case of public utility easements, letters of concurrence to the vacation from affected utility providers must be submitted with the application.
- (3) Vacation of any public way acquired with public funds, vacation of improved public right-of-way, and vacation of undeveloped subdivision and partition plats, or parts thereof, including public right-of-way and improved public easements located therein, shall be considered and decided upon by the city council in accordance with the procedures contained in EC 9.7445 through 9.7455 and the approval criteria contained in EC 9.8725.
- (4) All applications shall be accompanied by the application fee established by the city manager pursuant to Chapter 2 of this code, and an additional amount sufficient to pay the expenses related to publication of the vacation notice.
- (5) In addition to payment of the application and publication fees referenced in subsection (4) above, a vacation of improved or unimproved public right-of-way, any public way

acquired with public funds, or any undeveloped subdivision or partition plat, or portions thereof, shall require the payment by the applicant of a deposit equal to the assessment of special benefit that results from the vacation and disposition of property to the benefitted property owners.

- (a) The assessed value of special benefit and the amount of money to be deposited shall be determined by the city manager. The assessed value of special benefit shall include:
    1. The value of the real property; and
    2. The costs incurred by the city in the construction of public improvements.
  - (b) Notice of the proposed assessment for benefits shall be given by mail to the owners of the property to be assessed no less than 20 days prior to the public hearing of the vacation application before the city council, or in the case of Type II applications, 10 days prior to the issuance of the Planning Director's decision. The notice shall contain a statement of the names, addresses, and the amount of the proposed assessment of each land owner's special benefit by the vacation. Where a public hearing is required, the notice shall also include the hour, date, and place of the public hearing at which the city council will hear objections to the vacation or assessment.
  - (c) At least 5 working days prior to the public hearing, or in the case of a Type II application, 5 working days prior to the decision, the land owner shall deposit with the city the sum of money called for by this subsection (5).
  - (d) If the vacation application is approved, the deposit shall be retained by the city. If the vacation application is denied, the deposit shall be returned to the land owner.
- (6) For vacations of improved or unimproved right-of-way, the application must include the required consent from surrounding property owners as set forth in ORS 271.080(2).
  - (7) For vacations of unimproved public easements and improved public easements, the application must include the signatures of all property owners and owners of property adjacent to the easement being vacated.

*(Section 9.8710, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20353, enacted November 28, 2005, effective June 1, 2006.)*

**9.8715 Approval Criteria for the Vacation of an Unimproved Easement.** The planning director shall approve, approve with conditions, or deny the vacation application. Approval or approval with conditions shall be based on all of the following.

- (1) The subject area is not presently or in the future needed for public services, facilities, or utilities, and the vacation does not prevent the extension of, or the retention of public services, facilities, or utilities; or if needed, the applicant shall provide for the replacement and abandonment of any existing public services, facilities or utilities in the subject area.
- (2) Such public services, facilities, or utilities can be extended in an orderly and efficient manner in an alternate location.

*(Section 9.8715, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20353, enacted November 28, 2005, effective June 1, 2006.)*

**9.8720 Approval Criteria for Vacation of Improved Easements, Unimproved Public Right-of-Way, and Vacation and Rededication of Unimproved Public Right-of-Way.** The planning director shall approve, approve with conditions, or deny the vacation application. The application shall be approved if the vacation is found to be consistent with the all of the following criteria:

- (1) The subject area is not presently or in the future needed for public services, facilities, or utilities, and the vacation does not prevent the extension of, or the retention of public services, facilities, or utilities; or if needed, the applicant shall provide for the



replacement and abandonment of any existing public services, facilities, or utilities in the subject area.

- (2) Such public services, facilities, or utilities can be extended in an orderly and efficient manner in an alternate location.
- (3) The vacation does not impede the future best use of the remainder of the property under the same ownership or any adjoining land; or adversely affect the development of the remainder land, or any adjoining land, or access thereto; and the vacation does not conflict with provisions of this land use code including the street connectivity standards and block lengths.
- (4) Payment of the special benefit assessment(s) resulting from the vacation of unimproved right-of-way required by EC 9.8710(5)(a), have been made to the city.

*(Section 9.8720, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02; amended by Ordinance No. 20353, enacted November 28, 2005, effective June 1, 2006.)*

**9.8725**     **Approval Criteria for the Vacation of Improved Public Right-of-Way, Public Ways Acquired with Public Funds, and Undeveloped Subdivision and Partition Plats.** The city council shall approve, or approve with conditions and reservations of easements, the vacation of improved public right-of-way, public ways acquired with public funds, or undeveloped subdivision and partition plats, or portions thereof, including public right-of-way and improved public easements located therein, only if the council finds that approval of the vacation is in the public interest.

*(Section 9.8725, see chart at front of Chapter 9 for legislative history from 2/26/01 through 6/1/02.)*

**ATTACHMENT 'E'**

**VACATION FEE COMPARISONS**

April 13, 2009

**LANE COUNTY**

Vacation Without Public Hearing	\$3,400 deposit, with final fee based on actual costs.
Vacation With Public Hearing	\$4,800 deposit, with final fee based on actual costs.

**CITY OF EUGENE**

Vacation - Unimproved Public Easement	\$1,277.48
Vacation - Platted Lot Line	\$1,277.48
Vacation - Improved Public Easement	\$1,277.48
Vacation - Undeveloped Plat	\$1,277.48
Vacation & Rededication of Unimproved Right-of-Way	\$4,013.38
Vacation - Unimproved Right-of-Way	\$4,013.38
Vacation - Improved Public Right-of-Way	\$4,956.23
Vacation - R-O-W with Public Funds	\$4,956.23

In addition to payment of the application and publication fees, a vacation of improved or unimproved public right of-way, any public way acquired with public funds, or any undeveloped subdivision or partition plat, or portions thereof, requires the payment by the applicant of a deposit equal to the assessment of special benefit that results from the vacation and disposition of property to the benefited property owners.

The assessed value of special benefit and the amount of money to be deposited shall be determined by the city manager and approved by the city council. The assessed value of special benefit shall include the value of the real property; and the costs incurred by the city in the construction of public improvements.

**CITY OF SPRINGFIELD**

	<u>FEE IN CITY</u>	<u>FEE IN UGB</u>
Vacation Easements	\$1,241	\$1,873
Vacation ROW, Subdivision Plat and other public property	\$4,742	\$7,154

In addition to payment of the application and publication fees for a vacation of improved or unimproved public right-of-way, any public way acquired with public funds, or any undeveloped subdivision or partition plat, or portions thereof, a payment to the City is required in an amount equal to the assessment of special benefit resulting or inuring to the abutting property that results from the vacation and disposition of property to the benefited property owners.

The assessed value of special benefit that results from the vacation and disposition of property to the benefited abutting property owners shall include the value of the real property, the costs incurred by the City in the construction of public improvements, if any such improvements have been made, and the value of any public easements or reservations retained by the City.

**CITY OF FLORENCE**

Street or Alley Vacation

\$1,000 Application fee

Abutting owners are also assessed the value of the public way proposed for vacation. The assessment is calculated on the basis of the square foot value of the abutting property as shown on county tax rolls, less a percentage for easements retained for public use. The assessment is to be paid to the city in lump sum, or by 20 semi-annual payments at 10% interest.

**CITY OF BEND**

Vacation deposit to cover the cost of publishing, posting notices, and other expenses as incurred.

May also require payment of special benefit upon the real property abutting upon the vacated area, and the costs of curbs, drainage, paving, sewer or other local improvement already completed or to be constructed upon the area vacated. The assessments, together with all costs shall not exceed the amount of special benefit resulting or inuring to the abutting property by reason of such vacation.

**BENTON COUNTY**

Vacation (Any)

\$1,100

**CLACKAMAS COUNTY**

Vacation

\$125, plus recording costs

**DESCHUTES COUNTY**

Vacation (Any)

\$500

**DOUGLAS COUNTY**

\$50, plus recording costs. May assess special benefits for the value of the property to be vacated.

**JACKSON COUNTY**

Right-of-Way Vacation

\$40

**LINN COUNTY**

Vacation of County Road

\$195 without a hearing  
\$295 with a hearing

**MARION COUNTY**

Road Vacation

\$1290, plus \$125.00 filing fee

**WASHINGTON COUNTY**

Vacation of Public Property

Fee = Actual Cost  
Minimum fee \$280  
Deposit 120% of estimated cost

**ATTACHMENT 'F'**

ORS 271.080 – 271.230

**VACATION**

**271.080 Vacation in incorporated cities; petition; consent of property owners.** (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefore setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

[Amended by 1999 c.866 §2]

**271.090 Filing of petition; notice.** The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

**271.100 Action by city governing body.** The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

**271.110 Notice of hearing.** (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005 c.22 §196]

**271.120 Hearing; determination.** At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**271.130 Vacation on city governing body's own motion; appeal.** (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**271.160 Vacations for purposes of rededication.** No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement.** To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

**271.190 Consent of owners of adjoining property; other required approval.** No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**271.200 Petition; notice.** (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected

thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**271.210 Hearing; grant of petition.** Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

**271.220 Filing of objections; waiver.** All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

**271.230 Records of vacations; fees.** (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]

# ATTACHMENT 'G'

## AOC COUNTY ROAD MANUAL CHAPTER 7: VACATION OF PUBLIC PROPERTY

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## CHAPTER 7: VACATION OF PUBLIC PROPERTY

**7.000 INTRODUCTION.** A public area or a public interest in an area under county jurisdiction may be vacated when a county governing body determines the public use is no longer required and that discontinuance of public usage would be in the public's interest. Unless the owner consents, vacation of public lands is not allowed if the vacation would deprive the owner of a recorded property right the access necessary for the exercise of the recorded property right. This principle applies to county roads, local access roads, and other properties.

The vacation procedures outlined in ORS 368.326 to 368.366 may be followed by a county. The county may also refine or improve this procedure to meet local needs, but supplemental county procedures may not conflict with other state laws or constitutional protection.

The vacation procedures apply to all property in the county that is outside cities, including private interests such as subdivision plats. These vacation procedures, if used for vacation of a subdivision, supplement ORS 92.205 to 92.245, which may be used for vacation of an undeveloped subdivision. The county or public interest usually pertains to a road, but could involve a public square, trail, or any other public property. Once vacated, county-owned land, including vacated right-of-way, in which the county has fee title may be disposed of by established sale procedures.

The vacation of most property within a city is up to the city, using procedures of ORS 271.080 to 271.230 and city regulations. However, if property within the limits of a city is under county jurisdiction, the county may act to vacate the property providing the city concurs.

The statutes described in this chapter have replaced previous statutes addressing the vacation of public lands, towns and plats as well as previous statutes addressing the vacation of county roads and county line roads. Persons who were familiar with the road vacation statutes prior to 1981 may notice there no longer is a reference to road right-of-way not being extinguished by adverse possession. Since protecting public land from loss by adverse possession is not directly related to vacation of road right-of-way, the two subjects were separated with the repeal of ORS 368.620 by 1981 c. 153, sec. 79. Those having a reason to refer to the law exempting public land from loss by adverse possession should see ORS 275.027.

**7.015 SPECIAL REFERENCES:** The following are sources of information outside this manual that are particularly relevant to sections of this chapter, as noted.

### Section 7.100

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Termination of Right-of-Way" (2005)

Oregon Law Institute, Oregon Government Law 2005: *The Latest Chapters in Public Law*, Ch. 3, "Streets and Roads, Rights of Abutting Owners" (2005)

**7.100 STATUTORY SUMMARY.** ORS 368.326 to 368.426 contain procedures for vacation of public roads and other property. Vacation may be initiated by resolution of the county governing body or by petition of individuals. If by petition, acknowledged signatures of owners of 60 percent of the abutting land or 60 percent of the owners of abutting land must be included. A report of the proposed vacation must then be made by the county road official, notice must be given to owners of abutting land, and a

hearing must be held to consider the proposed vacation. Notice and hearing are not required if the petition for vacation includes the signatures of the owners of 100 percent of the private property internal to the area to be vacated and owners of 100 percent of the land abutting any public property involved and if the county road official files a written report that the vacation is in the public interest. As used here, a public agency owning property outright should be considered to be within the meaning of owners of private property.

The county governing body determines if the vacation is in the public interest and issues an order granting or denying the vacation. Costs are established and persons liable for payment are determined by the governing body. The order directs payments of established costs by those liable.

Vacation of public land affecting two counties or a county and a city requires coordinated action and individual orders by the governing bodies involved.

The governing body may determine ownership (vesting) of vacated property in the order or resolution vacating the property. Generally, vacated road right-of-way vests in the owner holding underlying title. When not otherwise provided, property usually vests by extending boundaries of abutting property to the center of the vacated property. Vacated public squares vest in the county.

## **7.110 STATUTES ON VACATION OF PUBLIC ROADS AND OTHER PROPERTY**

### *Chapter 368*

#### *Vacation of County Property*

**368.326 Purpose of vacation proceedings; limitation.**

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

**368.336 Abutting owners in vacation proceedings.**

**368.341 Initiation of vacation proceedings; requirements for resolution or petition.**

**368.346 Report, notice and hearing for vacation proceedings.**

**368.351 Vacation without hearing.**

**368.356 Order and costs in vacation proceedings.**

**368.361 Intergovernmental vacation proceedings.**

**368.366 Ownership of vacated property.**

## **7.120 CITATIONS ON VACATION OF PUBLIC ROADS AND OTHER PROPERTY**

Pacific Western Company and Lowell Patton v. Lincoln County, 166 Or. App. 484, 998 P.2d 798 (2000): Patton owned a large parcel of land west of Highway 101 and east of the Pacific Ocean beach in Lincoln County. In August 1993, Patton partitioned (without the county's approval) a one-acre parcel in the Northwest corner of the lot. He executed a sale to Pacific Western, of which he was the sole owner, and began developing the lot as a recreational vehicle park. In 1995, five nearby landowners of property filed

a petition with the Lincoln County Board of Commissioners to initiate proceedings to vacate a portion of NW Sandy Drive, the only public roadway that provided access to the partitioned lot. The Board approved the vacation, and the trial court agreed, stating that under ORS 368.331, the county was not obligated to obtain Patton's consent. The Court of Appeals reversed, holding that the trial court had misconstrued the statute and that consent is required when vacation would deprive an owner of access necessary for the exercise of a recorded property right. The fact that Patton did not originally partition the lot properly does not defeat his appeal because he did properly file the bargain and sale deed, making Pacific Western an owner of a recorded property right.

Oregon Shores Conservation Coalition v. Lincoln County, 164 Or. App. 426, 992 P.2d 936 (1999): Plaintiffs appealed a decision by the county to vacate a portion of County Road 804 located entirely in the city, a decision in which the city concurred. The road was a 60-foot wide unimproved right-of-way running south along the beach, had never been improved or used extensively for transportation, and was used to some extent as a footpath. An overplatted subdivision was developed encroaching within the right-of-way, and the county conducted proceedings to vacate the portion of the right-of-way within the subdivision. The city adopted a resolution concurring with the county's determination. The plaintiffs appealed the decision to the Land Use Board of Appeals (LUBA), which remanded on the grounds that the county violated Implementation Requirement (IR) of Goal 17 (Coastal Shorelands) of the state land use goals. The Court of Appeals reversed, holding that while the county's decision was a "land use decision" subject to the jurisdiction of LUBA, the IR and Goal 17 were inapplicable to the county's decision, since the city had enacted prior legislation implementing both the IR and goal with respect to the right-of-way in question. However, Policy 6 of the city comprehensive plan and the city zoning ordinance adopted virtually identical language to IR 6 of Goal 17, which requires that where the vacated access is along the "ocean shore," there must be alternate access points within the "affected site."

Harding v. Clackamas County, 89 Or. App. 385, 750 P.2d 167 (1988): Schurgin Development Corp. sought review of the Land Use Board of Appeal's (LUBA) order reversing Clackamas County's vacation of a portion of Southeast 90th Avenue, a county road, which abutted Schurgin's planned development project. Harding was the holder of an easement that provided access to the vacated street from the athletic club she operated. In vacating the road, the county followed the summary vacation procedures in ORS 368.351 rather than the procedures in ORS 368.346 that would have provided the holder notice and hearing rights. The Court of Appeals affirmed LUBA's decision, holding that the conditions of ORS 368.351 were not met because Schurgin, the sole signatory of the vacation petition, did not own the abutting property at the time of the petition, and because Harding had not petitioned for or consented to the vacation. In addition, the county road official's report did not state that the vacation was presently in the public interest, as required by ORS 368.351. The failure to follow vacation procedures, including giving notice when required, rendered the vacation invalid.

Martin v. Klamath County, 39 Or. App. 455, 592 P.2d 1037 (1979): Plaintiff owned a large tract of land that included a strip of land which had previously been used by the public as a roadway. The road was originally part of the Klamath Indian Reservation road system and was transferred to Klamath County following the termination of the reservation. The portion of the road in question included a bridge over the Sprague River. The bridge was washed out by a flood and not replaced, resulting in very little use of the road. The plaintiff erected a fence across the road to prevent persons from driving down the road and depositing trash on plaintiff's property. Plaintiff brought an action against the county to quiet title to the strip of land. The Court of Appeals held that the doctrine of common law abandonment does not apply when the legislature provides a method by which a county may abandon or vacate roads. Therefore, the road was not vacated and the county was entitled to have plaintiff enjoined from interfering with the public's use of the road until vacation proceedings were properly utilized.

Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners, 287 Or. 591, 601 P.2d 769 (1979): Plaintiffs challenged the determination of the Board of Commissioners to vacate a portion of County Road No. 26460, known as Old Peak Road. After the board decided to vacate the stretch of road, the plaintiffs filed a petition for a writ of review attacking the legality of the board's order. The trial court granted the county's motion to disallow the writ on the ground that road vacation procedures are legislative and not judicial or "quasi-judicial" and therefore are not reviewable by writ of review. The Court of Appeals affirmed. The Oregon Supreme Court reversed, stating that the function of vacating a road qualified as a quasi-judicial function for purposes of the writ of review because the plaintiff's challenge was not limited to questioning the county's decision on the merits, but also included a challenge to the procedures used by the county board. While the allegation did not specify what procedural failures undermined the proceedings, the lack of specificity was not the stated ground of the trial court's dismissal of the writ. The writ of review would not extend, however, to those elements of the trial court's decision involving an exercise of discretionary policy judgment, such as a discussion of the utility of the road.

Fahey v. City of Bend, 252 Or. 267, 449 P.2d 438 (1969): When the property abutting a road has passed prior to the vacation of that road, it is assumed that the grantor intended that title in the street portion of the lot also passed at the time of the conveyance, unless stipulated otherwise.

**7.500 DISCUSSION OF VACATION PROCEEDINGS.** The following parts of this chapter may be helpful in carrying out property vacation procedures or in determining the merits of supplementing the statutes by county ordinance. Vacation proposals are often initiated by persons who expect to benefit either from the resulting reassignment of the vacated land or in some other manner. However, a county is under no obligation to vacate a road right-of-way or other property held for public use, even if all owners of abutting land seek the vacation. The long-term public interest, rather than the present state of public use, is the important consideration when making a vacation decision. When a property vacation will cause no identifiable loss to the long-term public interest and no damage to property owners in the vicinity, the vacation may facilitate better use of the land. Items that should be considered include:

- Present use and condition of the property, including maintenance cost and nuisance liability
- Potential future public uses
- Potential private uses, their social and economic impacts on the neighborhood, and their effect on property taxes
- Need for easement to utility companies or others if property is vacated.

**7.505 CHARGES FOR VACATION PROCEEDINGS.** Persons requesting vacation of public property and those who may benefit from a vacation may be required to pay the costs involved. A county may establish fees to recover county costs. In the case of a vacation proposal initiated by petition, payment may be an appropriate responsibility of the petitioners. A vacation that is completed may warrant payment by those who benefit. More specifically, a fee schedule could have one of the following forms.

- A fee schedule for charging petitioners may be established. The amount of the charge would be one that has some reasonable relation to county costs for administration of vacation proposals. County officials may elect to charge a fee under one of the following conditions:
  - (1) As a condition to processing a petition, even though the vacation may not be allowed
  - (2) As an amount to be retained only if the vacation is allowed
  - (3) As a dual fee, with the second part charged only if the vacation is allowed.

- A fee schedule for charging those who benefit from a property vacation may be established. The fee could be a set amount having some reasonable relation to county administrative cost or it could be an amount based on the benefit property owner's gain as a result of the vacation. Some cities have used the appraised value of the land a property owner receives because of a vacation as the measure of benefit. Since the land vacated does not normally become the property of the county,<sup>1</sup> it is not available to sell. Thus, any charge needs to avoid the characteristics that constitute a sale. The following Eugene code sections 7.595 to 7.605 illustrate one charge system.

*[Eugene Code] 7.595                      Vacation of Streets and Alleys - Deposit of Petitioner.*

*Whenever a petition for the vacation of a street, alley or a part thereof or other public place or part thereof for the vacation of an easement is presented to the finance officer for filing and consideration by the council, the person presenting the petition shall deposit with the finance officer a fee as established by resolution of the council. This deposit will be used to pay the cost of publishing and position notices of the proposed vacation and other expenses as are incurred. In case the cost exceeds the amount of the deposit, an additional sum sufficient to cover the deficiency shall be collected by the finance officer before the vacation is completed.*

*[Eugene Code] 7.600                      Vacation of Streets and Alleys - Grant or Denial of Petition.*

*(1) The council may, upon hearing a petition for the vacation of a street, alley or other public place, grant the same in whole or in part, or may deny the same in whole or in part, or may grant the same with reservations as would appear to be for the public interest; including reservations pertaining to the maintenance and use of all public utilities in the portion vacated, and may make an assessment and provide for the payment to the city a sum of money as the council may find to be just and equitable as an assessment of special benefit on the real property abutting on the street or alley or a benefit to the property which, by reason of the vacation abuts on a street or alley, and the cost of curbs, drainage, paving, sewer or other local improvement already completed or to be constructed upon the property vacated. The assessments, together with all costs shall not exceed the amount of special benefit resulting or inuring to the abutting property by reason of the vacation.*

*(2) In the event a petition is wholly denied, the deposit shall be retained. Any money retained, and any sum assessed and collected as benefits, shall be paid into the finance office.*

*[Eugene Code] 7.605                      Vacation of Streets and Alleys - Notice of Proposed Assessment.*

*Notice of proposed assessments of benefits shall be given to the owners of the property to be assessed at least seven days before the council meeting at which the assessments are to be considered or made. The finance officer shall cause notice to be given either by publication in one issue of a newspaper of general circulation in the city or by sending by certified mail to the owner of each parcel of real property proposed to be assessed, at the address of the owner as is contained in the assessment records in the office of the assessor of the county. The notice shall contain a statement of the names, addresses and amount of proposed assessment of each landowner alleged benefitted by the vacation and hour, date and place of the meeting of the council which will consider objections to the vacation or to the assessment.*

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<sup>1</sup> See Fowler v. Gehrke, 166 Or. 239, 111 P.2d 831 (1941).

The following should be considered when establishing a fee to recover the actual costs to the county. Several hours of staff time are required to assist the petitioners in preparing an adequate petition; to check signatures and property ownerships; to prepare the road official's report to the governing body; and when a vacation is granted, to change road records and assessor's records. When less than 100 percent of the affected property owners sign a petition, substantial additional costs result for posting and publication of notices, notification of individuals, and holding a public hearing. One practical approach to establishing a fee schedule is to charge a fee ranging between 8 to 12 hours of the payroll cost of the person expected to do a majority of the work on the petition for petitions signed by 100 percent of the affected persons. If the fee is double for petitions signed by less than 100 percent of the affected persons, this should approximate the processing costs.

**7.510 VACATION AS PART OF RELOCATION.** Vacation proceedings are required when a road is relocated and the old right-of-way is abandoned. However, ORS 368.126 (see chapter 5) modified this rule and allows vacation to be effective on identification of those parts to be abandoned in the final resolution or order establishing the new road when the new road follows the same general alignment as the previous road.

Counties may want to establish criteria to be used to determine when the alteration of a road is not a relocation requiring separate vacation proceedings to dispose of abandoned portions. Factors to be considered might include the extent to which the new road would follow the general alignment of the old and whether accessibility to the road by any abutting land owners would be eliminated.

**7.515 CONTINUATION OF TITLE.** ORS 368.366 provides that, notwithstanding other general rules in the section, a county governing body may determine vesting of vacated property. This appears to favor vesting of vacated property in any manner that best serves the public interest as long as it does not result in an unconstitutional taking of property rights. For example, in the case of a public square or a road right-of-way established by county purchase, property could normally vest in the county. As another example, for roads established by prescriptive use, title to underlying properties would remain with the original and successor owners. There are instances where a vacated road may not be equally divided. A vacation proposal that contemplates some vesting of ownership other than that described in ORS 368.366 (1) (d) should describe the vesting in the petition. For example, if the entire right-of-way was dedicated off property holdings along one side of the road, the vacated portions might properly return to that side of the road, and the petitioners should know that is contemplated. The basic rule is that if title to the vacated property is held in fee, the property shall vest to the owner holding title. For example, if the county purchased road right-of-way in fee, in contrast to purchasing a road easement over someone's property, the vacated road would properly remain in county ownership until it was sold by the county. An exception to the rule on attachment occurs when vacated property is a public square. In this case, the property vests in the county.

**7.520 EASEMENTS OVER VACATED PROPERTY.** Because right-of-way serves as the location of various public facilities, utilities and drainage, the county's order of vacation may, and often does, reserve easements within the area being vacated. This may be done by a general preservation of easements or by a more specific description of easements to be preserved. As a condition of vacation, formal easements for any continuing uses must be recorded in the county property records. This is necessary to protect both the easements and future buyers of the property.

**7.525 VACATION OF UNDEVELOPED SUBDIVISIONS.** ORS 92.205 to 92.245 contain procedures for vacation of undeveloped subdivisions. These procedures are to be used predominantly when an undeveloped subdivision that was approved before adoption of a comprehensive plan fails to

conform to current comprehensive plan and zoning provisions. The agency or body reviewing the subdivision may, after a hearing, require a revision of the subdivision or vacate the subdivision by adopting an ordinance to that effect. Alternatively, an owner of property within a subdivision may request that the procedures in ORS 368.326 to 368.426 be used by the county to vacate a subdivision or some portions of a subdivision, or the county governing body may utilize its legislative authority to expand subdivision vacation procedures. Vacation of a subdivision normally vacates any local access roads within the subdivision.

**7.530 VACATION WITH 100 PERCENT CONSENT.** ORS 368.351 allows for procedural simplification when owners of all property to be directly affected by a vacation have signed a petition both seeking and approving the vacation. In this case, the section allows vacation to occur "without complying with [the notice and hearing requirements of] ORS 368.346," if the vacation is assessed by the county road official as "in the public interest." Note that ORS 368.356 requires the county governing body to make the final determination as to whether the vacation is in the public interest. Thus, consideration of a 100 percent vacation proposal is not terminated if the county road official determines that the vacation is not in the public interest. Instead, the road official must complete the report required by ORS 368.346 and the notice and hearing procedures must be followed. The sample forms in this chapter contain an example of 100 percent vacation proceedings supplemented by notice and hearing. As a practical matter, if a county road official is unable to assess a vacation as being in the public interest, it may be well to advise the petitioners before proceeding that there may be added costs under the notice and hearing procedure.

**7.535 EXTENT OF NOTICE.** ORS 368.346 requires that notice of a vacation hearing be provided by posting and publication and by service on specified persons. When this requirement is carried out according to the notice statutes, it adequately covers the dual requirement in *Shoji v. Gleason* that notice must (a) apprise interested persons (those with a property interest) of the pending proceeding and (b) reasonably convey the necessary information.

Some of the past problems with notice resulted in 1977 statutory amendments to identify persons with easement over property as parties who should have notice. A road vacation could, for example, affect access to a utility easement over adjacent land. The 1977 legislation gave added emphasis to the need to search the records adequately to find those with a recorded interest and to provide other methods of notice if there is uncertainty. Notice is costly, and recognition of the 1977 legislation in the new vacation statutes, together with the *Shoji* case, has probably increased costs a county may charge petitioners who seek a vacation. Individual counties may find it possible to streamline the statutory procedures to some degree, as long as the basic reasons behind title searches and notice are not lost. See section 2.300 to 2.330 for Principles of Notice and related information.

**7.700 SAMPLE FORMS.** Forms and policy documents on vacation proceedings follow but do not cover all the procedures a county may need to follow. Modifications may be necessary to adapt them to individual county conditions or to unusual aspects of individual cases. To illustrate, some of the specific example forms used involved a 100 percent petition in Marion County, but because of certain unclear ownership facts a hearing was provided and procedure followed is as though the petition had been less than 100 percent. In a 100 percent petition situation the notice and hearing forms normally should be unnecessary. The sample forms are as follows:

**7.702 Resolution Setting Fee Schedule (see also sec. 7.505)**

**7.704 Information and Procedure for Road Vacation**

**7.706 Road Official's Administrative Guide**

**7.708 Resolution, Notice of Hearing, and Order**

**7.710 Affidavit of Posting**

**7.712 Affidavit of Service**

**7.714 Petition for Vacation**

**7.716\* Posted County Notice of Public Hearing**

**7.718\* Published County Notice of Public Hearing**

**7.720\* Mailed Notice to Parties of Interest**

**7.722 Sample Letter to Public Utility Company**

**7.724 Road Official's Report**

**7.726 Board Order Granting a Vacation**

**7.728 Board Order Denying a Vacation**

\* Items required when vacation process is initiated by petition and less than 100 percent of affected property owners sign petition



**ATTACHMENT 'H'**

**The following is an excerpt from OPINIONS OF ATTORNEY GENERAL OF THE STATE OF OREGON, 1979, Pages 467-474**

**SECOND QUESTION PRESENTED**

May a city or county condition the grant of a petition for street vacation upon agreement by the petitioner to pay the appraised value of the vacated street area which will become property of the petitioner by operation of law?

**ANSWER GIVEN**

No.

**DISCUSSION**

In the second question presented, we are asked if a city or county may condition the grant of a petition for the vacation of a street or road upon payment by the petitioner of the appraised value of the vacated street area which would become property of the petitioner. We are informed that it is the practice in certain cities to exact payments from abutting landowners when streets are vacated.

We conclude that the exaction by a city or county of payment for the appraised value of the vacated land must be characterized as an unreasonable condition. To exact payment for the appraised value of the property amounts to requiring the property owner to pay for what he already owns.

Support for this conclusion can be found in the statutes authorizing street vacations for incorporated cities. ORS 271.140 provides:

*“The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest as provided by ORS 271.060.”* (Emphasis added).

The statute authorizing county road vacations in unincorporated areas contain a similar provision. ORS 271.060.

We note also that the fundamental requirement of a street or road vacation is that a finding be made “whether the public interests will be prejudiced by the vacation of such plat or street or parts thereof. . . .” ORS 271.120. Once this finding is made and the other steps leading to the vacation are completed, the property automatically by operation of law belongs to the abutting landowner. ORS 271.060, *supra*; cf. *Portland Baseball Club v. Portland*, 142 Or 13, 18 P2d 811 (1933).

It is clearly permissible for a city to weigh the public detriment of a vacation against the public benefit of a proposed or possible use, and to vacate the street subject to a condition or enforceable agreement that the property owner acquiring title to the vacated property perform any act necessary to weight the scales in favor of the public interest. In the usual case, however, if the only reasonable finding is that the public interest will not be prejudiced by the vacation, exaction of a cash payment as a condition precedent to making such a finding would appear to have no legal justification. While reasonable fees for the costs of the vacation are permitted, we find no statutory authorization for a further requirement that a property owner pay the appraised value of the property. In short, we believe that exaction of fees or conditions equaling the appraised value of the land under the vacated street or road would be held invalid by a court.<sup>5</sup>

JAMES A. REDDEN  
Attorney General

<sup>5</sup> We note that ORS 271.170 provides for the city charter provisions which may provide an alternative system. We know of no such charter provision which would authorize the practice of exacting the appraised value of the underlying land as a condition to granting a street vacation. Moreover, we have doubt as to the validity of such a charter provision.

## ATTACHMENT 'I'

## ORS 373.270

**373.270 Transferring jurisdiction over county roads within cities.** (1) Jurisdiction over a county road within a city may be transferred under this section whenever:

(a) The county governing body deems it necessary, expedient or for the best interest of the county to surrender jurisdiction over any county road or portion thereof within the corporate limits of any city; and

(b) The governing body of the city deems it necessary or expedient and for the best interests of the city to acquire jurisdiction over the county road or part thereof to the same extent as it has over other public streets and alleys of the city.

(2) To initiate a proceeding for the transfer of jurisdiction under this section, the county governing body, upon its own motion or upon the request of the city by its governing body, shall give notice by:

(a) Posting in three public places in the county, one of which shall be within the limits of the city; or

(b) Publishing the notice once a week for four successive weeks in some newspaper of general circulation in the county.

(3) Notice under this section shall give the time and place of hearing and a succinct statement of the proposed action requested and describing the road or portion thereof proposed to be surrendered by the county to the city with convenient certainty.

(4) At the time and place mentioned in the notice under this section or at such adjournment as it may fix, the county governing body shall hear the matter, consider any objections or testimony offered by any person interested and determine whether it is necessary, expedient or for the best interests of the county to surrender jurisdiction over the county road or portion thereof to the city.

(5) If a county governing body determines to surrender jurisdiction under this section and initiates action under this section:

(a) The county governing body shall make an order to that effect and offer to the city to surrender jurisdiction over the county road or portion thereof, and may limit the time for the acceptance of the offer; and

(b) The city by appropriate municipal legislation may within the time specified accept the county order and offer to surrender jurisdiction under this section.

(6) If a city governing body determines to initiate action under this section for the surrender of jurisdiction by a county over a county road:

(a) The city governing body may initiate the action by passage of appropriate municipal legislation that requests surrender and that may set any time or other limitations upon acceptance by the city of the surrender; and

(b) The county governing body may surrender jurisdiction of the county road without further action by the city if the county governing body adopts an order surrendering the county road that meets the limitations established by the city in its legislation.

(7) When a city adopts appropriate municipal legislation accepting a county governing body's order under subsection (5) of this section or when a county governing body adopts an order meeting city legislation under subsection (6) of this section:

(a) The jurisdiction of the county over the county road or portion thereof as a county road, or for its improvement, construction or repair shall cease;

(b) The full and absolute jurisdiction over the road for all purposes of repair, construction, improvement and the levying and collection of assessments therefore shall vest in the city; and

(c) The city shall have the same jurisdiction over the road or portion thereof as by its charter and the laws of the state are given or granted it over any of the public streets and alleys of such city.

(8) This section is applicable to all county roads, whether acquired by the county or the public by condemnation, defective condemnation and user, user or prescription or in any manner provided by law or in which the easement for road purposes is in the public. [Amended by 1981 c.153 §73]