



Memorandum Date: November 17, 2023

Order Date: January 9, 2024

TO: Board of County Commissioners

DEPARTMENT: Public Works/Engineering and Construction Services/Surveyors

PRESENTED BY: Mikeal Jay Blommé, Lane County Surveyor

AGENDA ITEM TITLE: ORDER / IN THE MATTER OF THE VACATION OF A PORTION OF BUSHYTAIL TRAIL, A PUBLIC ROAD DEDICATED IN PORTER ACRES, BOOK 5, PAGE 6, LOCATED IN SECTION 31, TOWNSHIP 18 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING. (18-03-31-00-00908).

I. MOTION

TO VACATE A PORTION OF BUSHYTAIL TRAIL, A PUBLIC ROAD DEDICATED IN PORTER ACRES, LOCATED SOUTH OF EUGENE, LANE COUNTY, OREGON WITHOUT A PUBLIC HEARING.

II. AGENDA ITEM SUMMARY

The Board is being asked to approve the vacation of a portion of Bushytail Trail as depicted on the map attached as Exhibit D to the Order, at the request of the Petitioners.

III. BACKGROUND / IMPLICATIONS OF ACTION

A. Board Action and Other History

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Marilyn and Randall Sprick Trustees of the Marilyn M. Sprick Revocable Living Trust and Jerold Hawn and Mary Mori, owners of 100% of the properties abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing.

The road herein proposed to be vacated lie entirely outside of any boundary of an incorporated city or town.

The portion of Bushytail Trail proposed to be vacated lies between the northerly property line of Tax Lot No. 908 of Assessor's Map 18-03-31-00 and ends at its southerly terminus at Tax Lot No. 701 of Assessor's Map No. 18-03-31-00. The total length of road to be vacated is approximately 0.13 miles in length. Bushytail Trail was dedicated to the public in Porter Acres, Book 5 Page 6, Lane County Oregon Plat Records, Lane County, Oregon.

The land abutting the portions of road proposed to be vacated is owned entirely by the Petitioners. The portion of Bushytail Trail coincident with Tax Lot 904 of Assessor's Map No. 18-03-31-00, which comprises of the northerly 660 feet, more or less, will not be vacated and will remain a public road.

ORS 368.331 states *"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"*. The Petitioners, as 100% of the owners abutting this proposed vacation, have consented to this action.

Utility Providers were sent referrals seeking comment on this proposed vacation. None responded to our referral. At the Petitioner's request, a public utility easement will be retained for any existing public utilities that exist within the bounds of the right of way proposed to be vacated.

Referral comment requests were also sent to other agencies including Lane Council of Governments, Eugene Rural Fire Protection District #1, Eugene School District 4J, and Oregon State Department of Fish and Wildlife. There were no responses received.

Lane County Transportation Planning, Lane County Land Management, and the Zone 1 Foreman for Lane County Road Maintenance were also notified. Lane County Transportation Planning responded they had no objection to the vacation. There were no other responses or objections from Lane County Staff.

Four nearby and adjacent landowners were notified by mail, with none objecting to our referral.

B. Policy Issues

Lane Manual 15.300 and 15.305 supplement ORS 368 in allowing for consideration of vacation of rights of way where little need exists for the right of way and where the vacation will not adversely affect orderly development of adjacent property. The rights of way herein considered for vacation as described in the Order are consistent with these categories.

C. Board Goals

The vision of Lane County's Strategic Plan, in part, is to create a vibrant community through wise stewardship of its human and natural resources. The vacation of this right of way as described in the Order will allow the land to be put to useful residential use.

D. Financial and/or Resource Considerations

Vacation of the described right of way will return a marginal portion of land to the tax rolls as real property. **The County's costs of processing the vacation will be paid in full by the Petitioners.**

E. Health Implications

There are no significant health implications.

F. Analysis

Lane County staff have determined the vacation of Bushytail Trail will have no adverse effects on transportation patterns in the area, and the portions to be vacated are unimproved and not needed by the Lane County Transportation system. If the vacation is approved the roads will revert to abutting properties pursuant to ORS 368.366.

G. Alternatives / Options

The Board of County Commissioners has the option to:

1. Approve the vacation of a portion of Bushytail Trail, as described in the Order.
2. Deny the vacation.
3. Continue the matter for further consideration.

IV. RECOMMENDATION

The Public Works Director's Report recommends the Board support Option Number 1, to approve the vacation of a portion of Bushytail Trail, as described in the Order. The public interest will be served and not prejudiced, as vacating these public roads will return unused public right of way back to private ownership, adding a marginal portion of land to the County tax rolls, while having no adverse effects on transportation patterns in the area.

All statutory procedures necessary for a vacation without a public hearing of the above-mentioned public road has been complied with, including a report by the Director of Public Works, who recommends approval of the vacation as described in the Order.

V. TIMING / IMPLEMENTATION

The Petitioner's respectfully request that the Board consider this matter in a timely manner.

VI. FOLLOW-UP

If the Board of County Commissioners approves the Order to Vacate a portion of Bushytail Trail it is to be forwarded to the Lane County Clerk for filing and recording, after which copies are to be forwarded to the County Surveyor and County Assessor for appropriate action. If the Order to Vacate is not approved, an Order to Deny will be presented to the Board at a later regularly scheduled meeting.

VII. ATTACHMENTS

Order with Exhibits:

- Petition to Vacate- Exhibit "A"
- Director's Report - Exhibit "B"
- Map – Exhibit "C"

Contact Person: Mikeal (Jay) Blommé, Ext. 6997

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 24-01-09-19

IN THE MATTER OF THE VACATION OF A
PORTION OF BUSHYTAIL TRAIL, A PUBLIC ROAD
DEDICATED IN PORTER ACRES, BOOK 5, PAGE 6,
LOCATED IN SECTION 31, TOWNSHIP 18 SOUTH,
RANGE 3 WEST OF THE WILLAMETTE MERIDIAN,
IN LANE COUNTY, OREGON, WITHOUT A PUBLIC
HEARING. (18-03-31-00-00908).

The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing. ORS 368.326 to 368.366 allows a county governing body to vacate a subdivision or part of a subdivision, a road or right-of-way, or public interest in property under the jurisdiction of the county, based upon the determination that the vacation is "in the public's interest".

All that portion of Bushytail Trail, located south of the most northerly northwest corner of that certain tract of land under Warranty Deed No. 2008-035871, as recorded in Lane County Deed Records, all in Lane County, Oregon.

Reserving the right for both parties to use a private access along an existing graveled access roadway to adjacent properties under Warranty Deed No. 2008-03587, and Bargain and Sale Deed 94-08136, as recorded in Lane County Deed Records, all in Lane County, Oregon.

WHEREAS, the petition complies with the provisions of ORS 368.351 in that the Petitioners, landowners of 100% of the properties abutting the proposed vacation, request the vacation be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public roads and rights of way without a public hearing; and

WHEREAS, the roads herein proposed to be vacated lie entirely outside of any boundary of an incorporated city or town; and

WHEREAS, Lane ESD, Century Link, and other agencies such as Lane County Land Management, Lane County Transportation Planning, Eugene Rural Fire Protection District #1, Eugene 4J School District, the Oregon State Department of Fish and Wildlife, Lane Council of Governments, and four adjoining and nearby property owners were notified of this action by mail. The above listed agencies and landowners either had no objection to the vacation or did not respond to our referral; and

WHEREAS, the Petitioners hereby retain a public utility easement for any utilities that currently exist within the bounds of the roads being vacated; and

WHEREAS, ORS 368.331 states "*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*" and the petitioner, representing 100% of the abutting landowners, has given consent to these proceedings by signing the petition; and

WHEREAS, the public interest will be served by this vacation as it currently serves only one adjacent property owner and is not needed for access; will remove the responsibility of managing the public road right of way from Lane County's jurisdiction; will allow the vacated lands to be put to more productive use by the underlying landowner; and will return approximately 0.75 acres to the tax rolls; and

WHEREAS, the Director of the Department of Public Works has provided a written report in support of the proposed vacation, as required by ORS 368.351, marked as Exhibit "B", attached, and made a part of this Order; and

WHEREAS, the Petitioners have paid a vacation fee deposit of \$3,400 and will pay actual costs incurred, including recording fees, upon final approval of the vacation; and

WHEREAS, all statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned is in the best interest of the public.

NOW, THEREFORE, the Board of Commissioners of Lane County **ORDERS** as follows:

1. The portions of Bushytail Trail as described above are hereby VACATED.
2. Pursuant to ORS 368.366, title to the vacated lands will revert to private ownership as provided by law.
3. An easement is hereby retained for any and all existing public utilities to preserve, maintain, repair, replace, remove, or reinstall any public utilities that may now exist within the bounds of the portion of the roads herein described by these proceedings as vacated.
4. This Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration, and be further recorded in the Lane County, Oregon Deed Records.

ADOPTED this 9th day of January, 2024.

Chair
Lane County Board of Commissioners

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

IN THE MATTER OF THE VACATION OF A PORTION OF)
BUSHYTAIL TRAIL, A PUBLIC ROAD DEDICATED IN)
PORTER ACRES, BOOK 5, PAGE 6, LOCATED IN)
SECTION 31, TOWNSHIP 18 SOUTH, RANGE 3 WEST) PETITION TO VACATE
OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY,)
OREGON, WITHOUT A PUBLIC HEARING.)
(18-03-31-00-00908))

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Marilyn Sprick and Randall Sprick, Trustees of the Marilyn M Sprick Revocable Living Trust, and Jerold Hawn and Mary Mori, husband, and wife, as owners of the adjacent real property hereby petition for the vacation of a portion of Bushytail Trail, which is described as follows:

All that portion of Bushytail Trail, located south of the most northerly northwest corner of that certain tract of land under Warranty Deed No. 2008-035871, as recorded in Lane County Deed Records, all in Lane County, Oregon.

Reserving the right for both parties to use a private access along an existing graveled access roadway to adjacent properties under Warranty Deed No. 2008-03587, and Bargain and Sale Deed 94-08136, as recorded in Lane County Deed Records, all in Lane County, Oregon.

WHEREAS, the undersigned petitioners are the owners of 100% of all the real property adjacent to the above described area to be vacated: and

WHEREAS, petitioners allege as follows:

1. The purpose of this vacation request is to vacate the unimproved south half of Bushytail Trail that presently and in the past has never had any clearing of the forest or road construction of any kind. Regarding ORS 368.331- Limitation on use of vacation to eliminate access, the public road for the south end of Bushytail Trail provides no access to any structures or improvements on either of the petitioners' respective properties. In other words, it is an unimproved public road with no utility or power line easements. Vacation of this unimproved portion would have no deleterious impact on either of the petitioners' property and no impact on any other Lane County properties. Currently growing within this forested easement are well-established Douglas Fir, Incense Cedar, White Oak, Black Oak, Madrone, Ponderosa Pine, ferns, and wildflowers. The major benefit to the petitioners is that by vacating the easement the petitioners eliminate the possibility of forested land being cleared by any future owner of either Tax Lots 701 or the combined Tax Lots 908 and 802. Vacation would protect the current forest land and the aesthetics of both petitioners' property into the future.
2. There are no utilities and no power lines located in the area to be vacated. If found otherwise, necessary easements for all public and private utilities will be retained or otherwise be provided for in conjunction with this vacation; and

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, the public interest will be served by protecting the remaining forest within unimproved portions of Bushytail Trail from clearing and construction that has no useful purpose, and

WHEREAS, petitioners, separately and collectively, acknowledge that the filing fee is an estimate of the vacation fee, and that we accept responsibility for full payment of Lane County Surveyor's Office and Deeds & Records fees, regardless of whether this vacation is approved or denied; and

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation without a hearing; and

THEREFORE, the petitioners request the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above described portion of road, without a public hearing pursuant to ORS Chapter 368.
2. Upon review of this matter, to order the vacation of the above described road, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.

DATED this 16th day of September, 2023

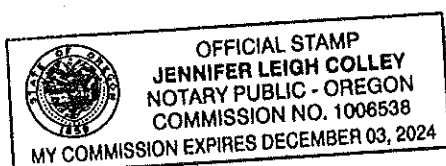
PETITIONERS:

Marilyn Sprick
Marilyn Sprick, Trustee
Marilyn M Sprick Revocable Living Trust
84679 Bushytail Trail
Eugene, OR 97405
(18-03-31-00-00802 & 00908)

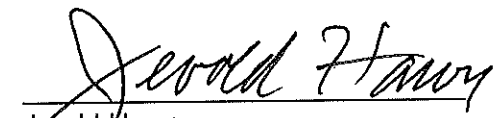
Randall S Sprick
Randall Sprick, Trustee
Marilyn M Sprick Revocable Living Trust
84679 Bushytail Trail
Eugene, OR 97405
(18-03-31-00-00802 & 00908)

State of Oregon)
 SS
County of Lane)

Subscribed and sworn to (or affirmed) before me on this 16th day of September, 2023, by Marilyn Sprick and Randall Sprick, trustees of the Marilyn M Sprick Revocable Living Trust, proved to me on the basis of satisfactory evidence to be the persons who appeared before me.



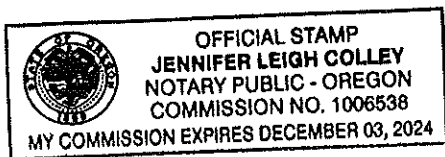
Jennifer Colley
Notary Public for Oregon
My Commission Expires: 12/3/2024


Jerold Hawn
31524 Wildwood Creek Rd.
Eugene, OR 97405
(18-03-31-00-00701)


Mary Mori
31524 Wildwood Creek Rd.
Eugene, OR 97405
(18-03-31-00-00701)

State of Oregon)
County of Lane) SS

Subscribed and sworn to (or affirmed) before me on this 10th day of September, 2023, by Jerold Hawn and Mary Mori, proved to me on the basis of satisfactory evidence to be the persons who appeared before me.



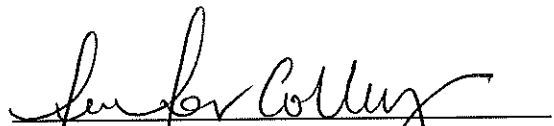

Notary Public for Oregon
My Commission Expires: 12/3/24

EXHIBIT "B"

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

DIRECTOR'S REPORT

IN THE MATTER OF THE VACATION OF A PORTION OF BUSHYTAIL TRAIL, A PUBLIC ROAD DEDICATED IN PORTER ACRES, BOOK 5, PAGE 6, LOCATED IN SECTION 31, TOWNSHIP 18 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING. (18-03-31-00-00908).

The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing. ORS 368.326 to 368.366 allows a county governing body to vacate a subdivision or part of a subdivision, a road or right-of-way, or public interest in property under the jurisdiction of the county, based upon the determination that the vacation is "in the public's interest".

The Petitioners, Marilyn and Randall Sprick Trustees of the Marilyn M. Sprick Revocable Living Trust and Jerold Hawn and Mary Mori, wish to vacate a portion of Bushytail Trail as described in the Order and depicted on Exhibit C to the Order. Bushytail Trail is considered a Local Access Road (public road) as defined in Lane Code 15.010(35)(e). The purpose of vacating the road is for the Petitioner's personal use.

Bushytail Trail was dedicated to the public in Porter Acres, Book 5, Page 6, Lane County Oregon Plat Records.

Bushytail Trail is located south of Eugene outside of the city limits, it extends southerly from Wildwood Creek Road approximately 1320 feet where it dead ends at a private property owned by the Petitioners. The Petitioners request that the entirety of Bushytail Trail be vacated, except for the northernmost 660.84 feet, more or less, adjacent to a property identified as Tax Lot 904 of Assessor's Map 18-03-31-00, which is under different ownership. The northernmost 660.84 feet of Bushytail Trail that will remain a public road and is accounted for in the legal description on the Order and is not affected by these proceedings. The area of this road proposed to be vacated is depicted on Exhibit C to the Order.

The purpose of this vacation request is to vacate the unimproved south half of Bushytail Trail that presently, and in the past, has never had any clearing of the forest or road construction of any kind. Regarding ORS 368.331- Limitation on use of vacation to eliminate access, the public road for the south end of Bushytail Trail provides no access to any structures or improvements on either of the Petitioners' respective properties. In other words, it is an unimproved public road with no utility or power line easements. Vacation of this unimproved portion would have no deleterious impact on either of the Petitioners' property and no impact on any other Lane County properties. Currently growing within this forested easement are well-established Douglas Fir, Incense Cedar, White Oak, Black Oak, Madrone, Ponderosa Pine, ferns, and wildflowers. The major benefit to the Petitioners is that by vacating the easement the Petitioners eliminate the possibility of forested land being cleared by any future owner of either Tax Lots 701 or the combined Tax Lots 908 and 802. Vacation would protect the current forest land and the aesthetics of both Petitioners' property into the future. There are no utilities and no

EXHIBIT "B"

power lines located in the area to be vacated. If found otherwise, necessary easements for all public and private utilities will be retained or otherwise be provided for in conjunction with this vacation.

Referrals seeking comments to these proceedings were sent to the utility companies serving this area including CenturyLink/Lumen, and N.W. Natural Gas, none of which responded to our referral. With that being said, the Petitioner has requested that a utility easement be retained in the Order for any utility that currently exists within the bounds of the right of way being vacated. The referral sent to the utility providers indicated that the Petitioner has asked to retain an easement for existing utilities.

Several Lane County Public Works Divisions were asked to provide comment on these proceedings. Lane County Land Management and Lane County Transportation Planning both commented they were not opposed to this action, and that the roads are not needed for transportation purposes.

In addition to the agencies and divisions listed above, referrals were sent to Eugene Rural Fire Protection District 1, Eugene 4J School District, Oregon Department of Fish and Wildlife, Lane Council of Governments, and four adjacent and nearby property owners. The agencies and landowners either had no objection to the vacation or did not respond to our referral.

ORS 368.331 states *"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"*. As stated above, the Petitioners are the sole owners of the adjacent properties, and have consented to the vacation of these roads as evidenced by the signed petition. The roads will still serve as access, but will lose their public status if these proceedings are approved. Other forms of legal access can be created by the Petitioners in the future if deemed necessary.

The County's costs of processing the vacation will be paid in full by the Petitioners.

In summary, it has been determined that the south half of Bushytail Trail, as described in the Order, is not needed by the Lane County Transportation System. It has also been concluded the vacation of these roads is in the public's best interest, as vacating these public roads will return unused public right of way back to private ownership, adding a marginal portion of land to the County tax rolls, while having no adverse effects on transportation patterns or recreational activities in the area. It is further recommended the vacation be allowed without a public hearing.

DATED this _____ day of _____, 2023

Dan Hurley, Public Works Director
Department of Public Works

BUSHY TAIL TRAIL - IN PORTER ACRES - PROPOSED TO BE VACATED

