

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.



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Chair  
Lane County Board of Commissioners

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

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Dan Hurley, Public Works Director  
Department of Public Works