BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

In the Matter of the Vacation of a Portion of Custer Avenue, Tillamook County, Oregon

ORDER

This matter came before the Tillamook County Board of Commissioners on April 17, 2024 at the request of the Chris Laity, Director, Public Works, at which time it appears that Road Vacation #574 was filed by property owners on November 22, 2023, in accordance with ORS 368.351. The road to be vacated is described in the attached Exhibit A.

The Board of Commissioners, being fully apprised of the records and files herein, finds as follows:

1. Road Vacation Petition #574 was properly filed with the Tillamook County Clerk on November 22, 2023, in accordance with ORS 368.341.

2. The Petitioners own 100% of the properties fronting the road vacation.

3. The road to be vacated is legally a Public Road.

4. The road to be vacated is a County Road.

5. The public right of way to be vacated is under the jurisdiction of Tillamook County.

6. Public notices were not required as a part of this petition as indicated in ORS 368.351.
7. The Tillamook County Public Works Director prepared and filed with the Board of Commissioners a written report which includes the assessment that the proposed vacation would be in the public interest, in accordance with ORS 368.351.

8. Therefore, after considering the Engineer's Report provided by the Director of Tillamook County Public Works, as well as records and files regarding this matter, the Board determines that the proposed vacation of the above described road is in the public interest, and that the above describe road should be vacated.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

9. In accordance with ORS 368.351, the road as described in Exhibit A is hereby vacated.

DATED THIS 17th day of April, 2024.

THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

Mary Faith Bell, Chair

Doug Olson, Vice-Chair

Erin D. Skaar, Commissioner

ATTEST: Christy Nyseth, County Clerk

APPROVED AS TO FORM:

By: Special Deputy

William K. Sargent, County Counsel

Page 2 of 2 – ORDER TO VACATE A PORTION OF CUSTER AVENUE, TILLAMOOK COUNTY
PETITION TO VACATE PUBLIC RIGHT OF WAY #574
PUBLIC WORKS STAFF REPORT

Date: March 16th, 2024

Report Prepared by: Jasper Lind, Engineering Technician II
For Chris Laity, P.E., Director of Tillamook County Public Works

I. GENERAL INFORMATION

Request: Petition to vacate that portion of Custer Avenue which is located between blocks 37 and 64 of the Brighton Beach Plat.

Area of Interest: An area of undeveloped dedicated public right of way which connects Bayview Boulevard to State Highway 101 approximately 1 mile west of Wheeler, Oregon as shown in the map for Township 2 north, Range 10 west, Section 9BB of the Willamette Meridian.

Petitioner: The petitioners represent 100% of private land abutting the right of way identified in the petition and all are signatories to the petition.

II. APPLICABLE STATUTES / ORDINANCES:

1) ORS 368.326 to 368.426
2) (By Reference from ORS Ch. 92.180 thru 92.192)

III. REVIEW:

1. Right of Way History

1) Creation – Petition #574 requests the vacation of a portion of the Custer Avenue Public Right of Way which is 190 feet long, more or less, and 60 feet wide. This road alignment was originally recorded on the 1909 map of Brighton Beach (C-0002).

2) Prior Vacation / Dedication / Property Line Adjustment – Since the time of the original map, a large portion of the area has been replatted through the 1996 Brighton Beach Estates map (C-460). That same year a substantial portion of Custer Avenue was recorded as vacated in County Court Journal Book 379 Page 625. This left one segment of right of way just under 600 feet in length still connected to Highway 101.
2. Current Petition to Vacate

1) The stated intent of the petitioners is to remove Public Right of Way from the land identified in the petition.

2) 100% of the adjacent or affected landowners are participating in the petition.

IV. PUBLIC ACCESS / TRANSPORTATION SYSTEM or FINANCIAL IMPACT:

1) The only impact of this vacation to the county wide transportation system is that a single fire safety turnaround, currently within a public right of way, would be located on private property.

2) There are no financial costs to Tillamook County.

3) This petition does not impact any existing access to rivers, beaches, or recreational property.

V. STATUS OF PUBLIC UTILITIES

1) All of the utilities responding to our inquiry through the Oregon Utility Notification Center were not located within the subject right of way, but rather, were located in adjacent or proximal right of way.

VII. PETITION CONCLUSION AND RECOMMENDATIONS:

1) Tillamook County Engineering staff has reviewed the subject petition, its supporting documentation, and visited the site.

2) The subject property is located between the eastern right of way boundary for State Highway 101 and the western right of way boundary for Bayview Boulevard. Its northern and southern limits are, respectively, block 37 and block 64 of the Brighton Beach Estates Plat.

3) The expressed intent of the petitioner is to remove the public right of way as illustrated in Exhibit 01.

4) Engineering staff recommends Approval of Vacation Petition #574 with the following conditions:
   a) Approval of this petition for Vacation in no way relieves the affected properties, their heirs or assigns, from easements or encumbrances not identified herein.
   b) All fees associated with professional services, document preparation and public recording are to be the sole responsibility of the petitioners. Required final field survey and property line adjustments are to be completed based on BOCC approval, all recordings to be completed within one calendar year.
   c) The existing fire safety turnaround shall be maintained in serviceable condition and free of obstruction by the property owners in perpetuity, or until such time that an alternative is constructed and approved of by both the District Fire Chief and Tillamook County Public Works in writing.

VIII. EXHIBIT LIST:

1. Tax map showing the legal vesting pattern of the vacated right of way.
2. Satellite image and plat maps for the right of way to be vacated.
3. Maps of adjacent surveys and wetlands.
4. Aerial and street view images.
5. Original Petition with letters from Tillamook County Clerk & Assessor Office.
Proposed Area for Right of Way Vacation #574

02N10W09BB
BRIGHTON BEACH
EXHIBIT 03

A SURVEY OF LOTS 17, 18, AND 19, BLOCK 37, "BRIGHTON BEACH"

NM 1/4 OF NM 1/4, SECTION 9, T2N, R1W, M.M., TILLAMOOK COUNTY, OREGON

AUGUST 5, 2022

SHEET 1 OF 2

B-4279

VICTORY MAP

HEPSTON ST

SCALE 1"=100'
**NARRATIVE:**

The purpose of this survey is to locate the exterior boundary of that property described in Tillamook County Instrument Number 2022-00007.

LOT 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, and 26, Block 64, Brighton Beach, NW of the NW 1/4 S9, T2N, R10W, W.M., Tillamook County.

The survey was conducted on June 23, 1982.

**SURVEY REFERENCES:**

1. Record data per Tillamook County Survey C-0001
2. Calculated per record data shown in County Survey C-0006
3. Record data per Tillamook County Survey B-3280
4. Record data per map of Brighton Beach, map C-2.

**BASED ON NAMING:**

The basis of naming for this survey is the line between found monuments 100 and 117 which bears N19°W, the record boundaries from the plot of Brighton Beach Estates, map number C-003.

**PROCEDEH/EOEQEPMENT:**

The survey was performed using a Trimble 3220 total station, which was adjusted using the least squares method in TINCO Business Center. The resulting relative accuracy is in compliance with the principles stated in O.R.S. 920.202.

**SURVEY FOR:**

TIER 1 EXCAVATING, LLC
C/O JEFF HEINTZ
LOTS 13-26, BLOCK 64
BRIGHTON BEACH, NW 1/4 OF THE NW 1/4, S9, T2N, R10W, W.M., TILLAMOOK COUNTY, OREGON

**RECORD OF SURVEY**

BRIGHTON BEACH

**FOUND MONUMENTS TABLE:**

<table>
<thead>
<tr>
<th>MONUMENT</th>
<th>R/L</th>
<th>DESCRIPTION</th>
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<td>R/L</td>
<td>DESCRIPTION</td>
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</tbody>
</table>

**LEGEND:**

- **C-2**
  - BRIGHTON BEACH
  - SET MONUMENT, 3/8" x 30" HOLE WITH YELLOW CAP, STAMPED "BRIGHTON BEACH MONUMENT" 00.00'

**PROCEDURE/EQUIPMENT:**

Survey data collected using a Trimble 3220 total station were adjusted using the least squares method in TINCO Business Center. The resulting relative accuracy is in compliance with the principles stated in O.R.S. 920.202.
November 22, 2023

Tillamook County Board of Commissioners
201 Laurel Avenue
Tillamook, OR 97141

RE: Petition No. 574 – Petition to vacate Custer Ave.

Dear Commissioners:

Enclosed is a certified copy of Petition No. 5743 filed November 21, 2023, to vacate Custer Ave.

Certification from the Assessor regarding ownership was received on November 22, 2023, a copy of which is enclosed along with a certified copy of the petition.

Thank you in advance for your assistance in this matter.

Sincerely,

Christy Biggs
County Clerk

Enclosures
November 22, 2023

Christy Biggs
Tillamook County Clerk
201 Laurel Avenue
Tillamook, Oregon 97141

RE: Petition No. 574 – Petition to vacate Custer Ave.

Dear Ms. Biggs:

I have researched our records and certify that the petitioners are the adjacent landowners of record in the proposed vacation.

This certification is in accordance with ORS 368.341(3)(f).

Respectfully,

Denise Vandecoevering
Assessor & Tax Collector

cc. Wendy Schink, GIS Cartographic Analyst
cc. KaSandra Larson, Chief Deputy of Assessment & Taxation
I. The undersigned person(s) hereby petitions the Tillamook County Board of Commissioners
to vacate the following described property:

Unimproved Custer Ave, starting from the S.W. corner of
Parcel 2N100901, East to the S.E. corner of Parcel 2N10-1
GBB 0290, then South to the N.E. corner of Parcel
2N10GBB2900, then West to N.W. corner of Parcel 2N1004GB-
B02900, then 60 North along County Hwy 101 Row, to the
Point of Beginning. As Illustrated on the Map.

(Use separate sheet if more space is needed)

and certifies that all information contained in this Petition is true and complete.

II. The reasons for requesting this vacation are:

1. To allow for better use of this real estate.
2. To discourage the use of this Public Land
   For Squatters and Homeless people. Adjacent to
   our Properties.

(Use separate sheet if more space is needed)

III. Names and addresses of all persons holding any recorded interest in the property proposed
to be vacated are:

<table>
<thead>
<tr>
<th>NAME &amp; ADDRESS</th>
<th>DESCRIPTION OF INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tillamook County</td>
<td>Recorded Public Right of Way</td>
</tr>
</tbody>
</table>

(Use separate sheet if more space is needed)
IV. The names and addresses of all persons (including utilities) owning any improvements constructed on the property proposed to be vacated:

NAME & ADDRESS

(Use separate sheet if more space is needed)

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

NAME & ADDRESS

DESCRIPTION OF PROPERTY

(Use Tax Lot No. if available)

NAME & ADDRESS

DESCRIPTION OF PROPERTY

(Use separate sheet if more space is needed)

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

(×) Owners of 100% of the land abutting the property proposed to be vacated.

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

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

VII. The property proposed to be vacated:

( ) Will not be redivided in any manner.

(✓) Will be redivided as shown on the attached subdivision or partition plan.
To be split down the middle to the adjacent property owners.
TILLAMOOK COUNTY
PETITION TO VACATE
SIGNATURE SHEET

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

Unimproved Custer Ave, the section between Bayview Blvd and US Hwy 101 as illustrated on the map

Signatures Required:  

X Robert PaykockMcSherry  
X Michelle R. McSherry

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

201004 BB 01000  
201004 BB 01100

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

Signed and Dated this 9 day of November, 20

Robert P. McSherry  

Michelle R. McSherry

Signature

14603 E 166 St,  

Salem, OR 97307

Address

City, State, Zip

NOTARY PUBLIC
STATE OF OREGON
County of TILLAMOOK

ACKNOWLEDGEMENT

On November 9, 2022, the above named person appeared before me and acknowledged the foregoing instrument to be a voluntary act and deed.

Josette Yvonne Gody
Notary Public for the State of Oregon
My Commission Expires: December 19, 2023
TILLAMOOK COUNTY
PETITION TO VACATE
SIGNATURE SHEET

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

Unimproved Custer Ave, The section between Payview Blvd and US Hwy 101, as illustrated on the map.

Signature Required: Jeff Lee Heintz

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

2N/160G BBC 2900

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

Signed and Dated this 9th day of November, 2023

__________________________
Signature

__________________________
Address

__________________________
City, State, Zip

ACKNOWLEDGEMENT

NOTARY PUBLIC )
STATE OF OREGON ) ss.
County of Tillamook )

On November 9, 2023, the above named person appeared before me and acknowledged the foregoing instrument to be a voluntary act and deed.

__________________________
Josette Godsy
Notary Public for the State of Oregon
My Commission Expires: December 19, 2023

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL

Christy Biggs
Clerk

State of Oregon

Petition to Vacate, Page 2
In The Matter of Custer Ave. Road Vacation

Property Owners Contact Information,

Parcel # 2N1009BB02900
    Jeff Lee Heintz
    Jeff.tierl@comcast.net
    502-209-2470

Parcels #'s 2N1009BB01000
    2N1009BB01100
    Robert and Michelle McSherry
    Mitchmcsherry@yahoo.com
    503-260-2908