

**COUNTY OF MENDOCINO  
RIGHT OF WAY VACATION PROCEDURES**

Revised 28 November 1995<sup>1</sup>

Established by Board of Supervisors Resolution No. 84-199, enacted 25 September 1984, based upon the then most recent revisions of the Streets and Highways Code, Section 8300, et seq., based upon the following definitions from Section 8308:

"Street" and "highway" include all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway.<sup>2</sup>

Resolution No. 84-199 established the following procedures:

1. The Streets and Highways (S&H) Code provides that the following types of County highways and public service easements may be vacated by a *summary* vacation procedure:
  - a. A street or highway that has been superseded by relocation, provided that the vacation of the street or highway will not do either of the following:
    - (1) Cut off all access to a person's property which, prior to relocation, adjoined the street or highway.
    - (2) Terminate a public service easement, unless the easement satisfies the requirements of paragraph (d), below. (S&H Code §8330)
  - b. A street or highway, if both of the following conditions exist:
    - (1) For a period of five consecutive years, the street or highway has been impassable for vehicular travel.
    - (2) No public money was expended for maintenance on the street or highway during such period. (S&H Code §8331)
  - c. A street or highway, pursuant to an agreement entered into with the State Department of Transportation, pursuant to §100.2 of the S&H Code, to close the street or highway, at or near the point of its intersection with a State freeway. (S&H Code §8332)

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<sup>1</sup> These procedures, while still controlled by BOS Reso 84-199 and the S&H Code, have been modified slightly as a result of discussion in a meeting of 27 November 1995, attended by Clerk of the Board Joyce Beard, Senior Planner Frank Lynch, Deputy County Counsel Ives Hebert, Director of Public Works Budge Campbell, and Right-of-Way Agent Granville Pool. Joyce brought up concerns raised by Planning in Memo, dated 18 August 1992, from Jerry Heath to Joyce Beard. Reso 84-199 did not take into consideration the notice provisions of CEQA and thus the additional time needed between Reso of Intention and Public Hearing. These and other details are addressed in this revision of these procedures.

Granville Pool, Right-of-Way Agent, 28 November 1995.

<sup>2</sup> §8306 defines a "Public Service Easement" to include all or part of any right in:

- (a) A right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage canal[s], water transmission lines, light and air, and other limited use public easements other than for street or highway purposes. [It seems clear to me that this would include coastal access easements].
- (b) An easement or right of a type described in Section 8340. [§8340 pertains to any easements reserved from the vacation, including but not limited to reservation of public utility easements and easements for future street use]

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- d. A public service easement,<sup>3</sup> in any of the following cases:
    - (1) The easement has not been used for the purpose for which it was dedicated or acquired, for five consecutive years immediately preceding the proposed vacation.
    - (2) The date of dedication or acquisition is less than five years and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.
    - (3) The easement has been superseded by relocation and there are no other public facilities located within the easement. (S&H Code §8333)
  - e. An excess right-of-way of a street or highway not required for street or highway purposes. (S&H Code §8334)
  - f. A portion of a street that lies within property under one ownership and that does not continue through such ownership or end touching property of another. (S&H Code §8334)
- 2. Prohibition: Pursuant to S&H Code §8334.5, notwithstanding any other provision of this resolution, a street, highway, or public service easement *may not be summarily vacated if there are in place public utility facilities that are in use and would be affected by the vacation.*
  - 3. The person requesting vacation of a County highway or public service easement shall submit *a request or a petition*, to the Clerk of the Board, for the vacation of the County highway or public service easement, along with information sufficient to identify the location of the County highway or public service easement and information establishing whether or not the County highway or public service easement is entitled to summary vacation procedures for one of the reasons set forth above. The request or petition shall be accompanied by the payment of any fee which has been established by resolution of the Board of Supervisors. The request shall be accompanied by a legal description of the property to be vacated, a title report setting forth the current status of the property,<sup>4</sup> and a location or vicinity map setting forth the location of the County highway or public service easement.
  - 4. Upon the filing [by an applicant] of a petition or request for vacation and the payment of the fee, if required, the Clerk of the Board shall perform a counter check to determine if all of the information required by ¶3 is present. (In doing so, the Clerk may obtain the assistance of other County departments where necessary.) If the Clerk determines that further information is required, the Clerk shall notify the applicant to submit the information prior to submitting the matter to the Board of Supervisors. Upon determining that the applicant has submitted the required information, the Clerk shall submit the matter to the Board of Supervisors so that the Board, by [minute] order, may fix the date, hour, and place of the hearing on the petition or request at a time not earlier than ~~sixty (60) days~~ [revised to ninety (90) days in 28 November 1995 revision of these procedures, to allow sufficient time for the Department of Planning and Building Services to prepare, notice, and circulate an Initial Study and Draft Negative Declaration] from the date [of the Board's meeting at which] the hearing is set. Except in the case of a summary vacation procedure, this [setting of the date of the meeting at which the matter

<sup>3</sup> See footnote 2.

<sup>4</sup> Property owners cannot seem to understand that the title report that is required under this provision is a report on the status of ownership of the right-of-way itself and the fee title to the land underlying that right-of-way, not simply a preliminary title report on the owner's property. I've endeavored, in my recent revision of the instructions attached to the Road Vacation Petition form, to make this requirement clear.

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is to be heard] shall be done by *resolution of intention to vacate*, as required by S&H Code §8320.

5. Upon the setting of the hearing, the Clerk of the Board shall immediately refer copies of the petition or request for vacation to the Department of Planning and Building Services, the Department of Public Works, and the County Counsel.
6. Except in cases of summary vacation [which require no public hearing and no notices], the Clerk of the Board shall give notices required by S&H Code §§8321 & 8322. [Note: This reference to §8321 pertains to the requirement for notices to be mailed "to each of the petitioners at the address set in the petition." Presumably this means that notices must be mailed to each petitioner at his or her individual address. §8322 pertains to the publication of notices in an appropriate "local" newspaper. This section specifies publication "for at least two successive weeks prior to the hearing..." Our interpretation of this provision is that, even if the newspaper is published daily, the notice need only be published once each week. This revision of these procedures modifies this provision so that the notice will also meet the requirements of CEQA which requires at least a 21-day notice prior to the hearing. To meet the requirements of both CEQA and the S&H Code, we publish the first notice at least 21 days prior to the hearing and again one week later. The Department of Public Works generally prepares these notices but does so in collaboration with the Clerk and Planning. We have worked together to assure that the notice, as published and as posted on the road, will meet the notice requirements of both CEQA and the S&H Code.]
7. The Mendocino County Department of Planning and Building Services shall do the following:
  - a. Conduct the environmental studies required by CEQA. [In so doing, Planning prepares an initial study and invites comments from appropriate interested agencies and parties, such as the Department of Fish and Game and public utilities which might have facilities in the area.
  - b. Determine whether or not the proposed vacation is consistent with the County General Plan. (S&H Code §8313 & Gov't Code §65402(a))
  - c. Review and make a recommendation as to whether or not the County highway or public service easement proposed to be vacated is useful as a pedestrian, bicycle, or equestrian trail, as required by S&H §§8314, 2381, & 156.
8. The Department of Public Works shall do the following:
  - a. Prepare a report to the Board of Supervisors, setting forth the location of the County highway or public service easement, the County's interest therein, whether it is a part of the County's Maintained Road System, the Department of Public Works' recommendation regarding vacation proceedings, and any other information it deems pertinent to the proceedings [*i.e.*, utilities, ownership of underlying fee].
  - b. Post the notices required by S&H Code §8323. [These notices are not required for summary vacation proceedings. Note: As discussed above, in connection with the Clerk's notification responsibilities, the notices are posted at least 21 days in advance of the hearing date.]
9. The County Counsel shall prepare the resolution of vacation. [In practice, prepared by DPW and reviewed by Co.Co.]

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10. The public hearing [if one is required] shall be conducted in the following manner:
  - a. The Board of Supervisors shall first [after determining that proper notice of the hearing has been made] receive the report of the Department of Planning and Building Services as to environmental considerations pursuant to CEQA, whether the proposed vacation is consistent with the General Plan, and whether or not the County highway or public service easement proposed to be vacated is useful as a pedestrian, bicycle, or equestrian trail.
  - b. The Board of Supervisors shall receive the report of the Department of Public Works.
  - c. The hearing shall then be opened up to the public and the Board shall hear the evidence offered by persons interested in the matter.
  - d. The Board shall make a determination as to whether or not the County highway or public service easement proposed to be vacated is useful as a pedestrian, bicycle, or equestrian trail. Pursuant to S&H Code §§8314, 2381, & 156, the County highway or public service easement shall not be vacated unless the Board determines that the right-of-way or parts thereof are not useful as a pedestrian, bicycle, or equestrian trail.
  - e. The Board shall adopt the appropriate negative declaration or order an EIR to be prepared *at the expense of the applicant*. If an EIR is required, the hearing shall be continued to a date certain after the EIR is completed. [If no EIR is required, the Department of Planning and Building Services is directed to prepare and file a Negative Declaration and Notice of Determination and file same with the County Clerk. Petitioners, if any, are required to pay the \$25.00 filing fee before this can be filed. A deadline for payment of this fee is set forth in the Resolution of Vacation; if the fee is not paid by the deadline, the vacation action is null and void. The fee is made payable to the Mendocino County Clerk but submitted to the Department of Planning and Building Services to accompany the filing.]
  - f. The Board shall determine whether or not the proposed vacation is consistent with the General Plan.
  - g. If the Board finds, from all evidence submitted, that the County highway or public service easement described in the petition is unnecessary for present or prospective public use, the Board may adopt a resolution vacating the County highway or public service easement pursuant to S&H Code §8324(b).
11. Upon adoption of a resolution of vacation, the Clerk of the Board shall cause a certified copy of the resolution of vacation, attested by the Clerk under seal, to be recorded without acknowledgement, certificate of acknowledgement, or further proof in the office of the Recorder of the County [of Mendocino]. No fee shall be charged for recordation. Upon such recordation, the vacation is complete. (S&H Code §8325) [This revision includes a provision—included in the Resolution of Vacation—that the recordation shall not be made until the payment of the N.D. filing fee, as set forth above in ¶10.e.]
12. Pursuant to S&H Code §8340, et seq., the County Board of Supervisors may, in the resolution of vacation, reserve and preserve certain public easements.<sup>5</sup> If there are in place public utility facilities that are in use, the Board of Supervisors *shall*, unless it is determined that the public convenience and necessity otherwise require, reserve and except from the vacation any easement and right necessary to maintain, operate, replace, remove, or renew the public utility facilities (S&H Code §8340(c)). *The vacation of the street, highway, or public service easement shall have the effect on property rights set forth in S&H Code §§8350, 8351, 8352, & 8353.*

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<sup>5</sup> See footnote 2.

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*Disposition of excess property shall be governed by S&H §§8355, 8356, & 8357. [The short version of these sections is that if the County owns the right-of-way in fee, it will still own the land underlying the right-of-way following the vacation and must follow certain procedures for disposition of such property (unless the property is to be retained in County ownership). If the right-of-way is an easement, whether deeded or prescriptive in nature, vacation of the right-of-way will remove the easement from the land, causing the surface rights to revert to the owner of the underlying fee.]*