

PETITION FOR VACATION

To the Board of County Commissioners for Jefferson County, Oregon, in the matter of the vacation of a portion of E.H. Sparks Road where it crosses the property of Carol and Jerry Fuchs, Lennie and Charlotte Brant, and (possibly – the location is disputed) Allen Trust Company in the SE ¼ of Section 26 in T11S, R11E.

I.

I, Carol Fuchs, petition the Jefferson County Board of Commissioners to vacate

_____ in its entirety; or

XXX a portion of E. H. Sparks Road, more particularly described as follows: that portion of E.H. Sparks Road in the Se ¼ of section 26, T11E, R11S commencing one foot east of the north-south center line of Section 26 and continuing west, terminating one foot east of the right of way of the lot of the private road called Lake View Road.

II.

Petitioner is the owner, as shown in the records of Jefferson County, of property abutting the property sought to be vacated.

III.

No portion of the road proposed to be vacated is situated within the corporate limits of any city.

IV.

The particular circumstances that justify granting a vacation of the described property are: (attach extra page if necessary) See Attached

Describe how property is used: Residential

Describe reason for vacation: See attached

Describe condition of property to be vacated: See Attached. Right of Way is not a constructed road and passes close to and through residential buildings.

V.

The names and addresses of all persons owning improvements, holding any recorded interest in, and/or owning any real property abutting the property proposed to be vacated are as follows:

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Carol and Jerry Fuchs
20244 S Furguson Rd
Oregon City OR 97045

Lennie and Sharlotte Brant
21495 Young Ave
Bend OR 97701

Allen Trust Company, Trustee of
the Herbert H. Anderson and
Barbara B. Anderson Revocable
Trust
121 SW Morrison Ste 875
Portland OR 97204

VI.

Pursuant to ORS 368.351, attached to this petition are the acknowledged signatures of owners of:

100 percent of private property proposed to be vacated, or

Acknowledged signatures of owners of ___ percent of property abutting the public property proposed to be vacated. (see attachments) N/A

VII.

Petitioner requests that after the giving of notice as required by law, that an order be entered vacating the property more particularly described above or an order identifying reversion as described below:

The vacated E.H. Sparks Road shall revert to the adjacent property owners as provided in ORS 368.366(d) vesting in the abutting owner by extension of the abutting property on each side "to the center of the vacated property."

VIII.

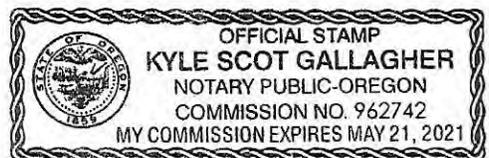
The proposed vacation would not deprive an owner of a recorded property right of access necessary for the exercise of that right.

I hereby declare under penalty of false swearing (ORS 162.075 and 162.085) that the above information is true and correct to the best of my knowledge.

DATED this 1st day of October, 2020.



Carol Fuchs, Petitioner



State of OREGON)
)
County of Clackamas)

Signed or attested before me on October 1st, 2020, by Carol Fuchs.



Notary Public – State of Oregon

ATTACHMENT TO PETITION FOR VACATION

ORS 368.326 to 368.366 govern vacation of county property, including roads. They are set out on Exhibit 1, attached hereto.

ORS 368.351 applies to this Petition, because 100% of the abutting owners of the private property approve and consent to this vacation petition, and no public property owners are impacted or involved. See, Exhibits 2, 3, and 4. As a result, if either (1) the county road official files a report that the vacation is on the public interest, or (2) the county planning director files a report that the interior lot line vacation complies with the zoning code, and the vacation will facilitate development of the parcels over which the road passes, then the county board may, without a hearing, vacate the road.

Here, both conditions of ORS 268.351 are satisfied and the county should find so in its reports, even though only one is required, and the county should vacate the portion of E.H. Sparks Rd as requested.

Preliminary Note: This petition seeks to vacate a portion of E.H. Sparks Road, a 60 foot wide right of way, centered on a line, dedicated in 1896. This petition also seeks to vacation any other roadway, whatever named, that crosses the land described in this petition. For example, “CR 577” is a road shown on some maps, but there is no such road in the county road register. Whether CR 577 follows the E.H. Sparks right of way, or not, is immaterial to this petition because petitioner seeks vacation of any and all such public roads or rights of way that burden these residential properties. There are many documents that refer to roads in the area by various and conflicting names. As used in this petition, the following roads are specially defined below, because it is otherwise difficult to know exactly what is being discussed.

But, as evidenced by the exhibits attached hereto, County Road 577 is not a public road (at least not on these properties, and is not in the same location as the E.H. Sparks Road right of way. In the relevant area, they are not the same, and CR 577 has no legal status across these properties independent of E.H. Sparks Rd. Petitioner asserts that the location of E.H. Sparks road is shown on Exhibits 5 and 6, the WH Pacific survey of 2019. If the county finds otherwise, then the area determined by the county to be E.H. Sparks Rd (and any other road) is the subject of this Petition.

This Petition seeks vacation only of a portion of the E.H. Sparks Rd, beginning one foot east of the De Monte property boundary (the center line of section 26, running north/south), and continuing west to one foot east of the lot owned by Three Rivers Recreation Area LOA on which Lakeview Rd is constructed. See, attached Exhibit 5 (the survey is more easily viewed by this expansion of the relevant portion, and is accompanied by a transcript of the testimony of Christopher Brown, the surveyor from WH Pacific, taken at the recent trial about that road, to which the county was a party). As discussed below, there are questions about whether E.H. Sparks Rd, crosses the Allen Trust Company (Anderson) property, but that owner has consented to this petition, and joins in it, in case the county finds that it does.

“**E.H. Sparks Rd**” means the road centered on a survey line created in 1896, that was identified and located on the 2019 survey of WH Pacific (attached as Exhibit 6), and shown as a red dashed line (named the E.H. Sparks ROW on the survey). E.H. Sparks Rd does not include the road across the De Monte property, referred to herein as County Road 577, and which is referred to on the WH Pacific survey as “E.H. Sparks aka CR 577 per DeJarnatt,” noting the naming error of DeJarnatt.)

“**CR 577**” or “**County Road 577**” is not in the county register, but purports to extend from Montgomery Rd across the De Monte property that was surveyed by DeJarnatt, who called it both County Road 577 and E.H. Sparks Rd. See, Exhibit 7, the Survey of Lake Billy Chinook Estates by DeJarnatt, prepared for Mr. De Monte.

(a) In Mr. De Monte’s Measure 49 decision that approved the subdivision of his property, (attached as Exhibit 8) this road is called “Fly Creek Rd” (Exhibit 8, pp. 7 and 16). Fly Creek Rd, not E.H. Sparks Rd, is required to be “legalized” or brought to standards, and it ends at the east boundary of the De Monte property. Exhibit 8, p. 7. Its status as a public road is irrelevant, because (1) it is not along the E.H. Sparks right of way (at least not in this area), (2) it ends at the property line between De Monte and Fuchs on the south portion and Allen Trust Co on the north portion, and was called Fly Creek Rd, not E.H. Sparks Rd by the parties in Mr. De Monte’s Measure 49 subdivision of his property.

(b) Access for the De Monte property is required to be “via County Road 577 and a 60’ road easement per 36-295.” Exhibit 8, p. 8, paragraph 4. That easement, also called Fly Creek Rd., may have become an extension of CR 577.

(c) Mr. De Monte appears to claim that his old Fly Creek Rd. is both a public road, CR 577, and the E.H. Sparks Road, in order to wrongfully claim the right to continue the road across three parcels, belonging to Allen Trust Co., Fuchs and Brant. The 2019 Survey of WH Pacific, Exhibit 6, shows that CR 577 is not in the same location as E.H. Sparks Rd., and so is not E.H. Sparks Rd. In fact, Mr. De Monte’s own Measure 49 claim calls it “Fly Creek Rd.,” not E.H. Sparks Road. They are two different roads.

(c) DeJarnatt also surveyed the Allen Trust Co. property (then owned by Anderson) and found no road encroachment either by CR 577 or E.H. Sparks Rd., in 2003. See, attached Exhibit 9. E.H. Sparks Rd. would be shown to the south of CR 577, not where CR 577 terminates at the boundary, as required by the Measure 49 approval.

“**Lakeview Rd**” means the private road constructed by and for the Three Rivers Recreation Area Sparks Rd, for private use of its members and guests and invitees.

The Board of County Commissioners should obtain both a report from the county road official, and the planning director in compliance with ORS 368.351.

1. Road Official Report - Vacation is in the Public Interest. ORS 368.351 Provides that the public interest supports vacation of the requested portion of E.H. Sparks Rd (“Road” or the “Vacation Parcel”):

Facts supporting the public interest in this vacation:

1. This section of Road is not on the county's Transportation System Plan for development, as shown on the county's web site. As such, it is not set for improvement nor public use. No System Development Charge funds can be used for capital improvements to the road, resulting in a drain on the county's general fund for any such improvements.
2. The county surveyor and assessor incorrectly locate E.H. Sparks Rd in several different locations. On tax map 11 11 26D, attached as Exhibit 10, the unnamed road crosses over a small triangle of property owned by the Allen Trust Co. The Allen Trust Co. lot appears as tax lot 1900 on tax map 11 11, attached as Exhibit 11, which shows the road, here named "County Road 577 E.H. Sparks Road" running not across, but to the south of the Allen Trust Co. (Anderson) tax lot 1900. And, tax map 11 11 35B, attached as Exhibit 12, (showing the De Monte lots, also shows "E.H. Sparks Rd, County Road #577" significantly to the south of the Allen Trust Co. (Anderson) property, and it does not cross, nor even abut the Allen Trust Co. property. The expense, and litigious nature of the dispute among owners supports the county finding the public interest in saving public funds, and vacating the portion of E.H. Sparks Rd that lies on the Fuchs and Brant parcels, and which might cross the Allen Trust parcel.
3. The portion of E.H. Sparks Road that is requested for vacation has not been constructed, and construction will cost a great deal, including the cost of grading and storm water disposal on the rocky terrain.
4. If constructed, the portion of E.H. Sparks Road would pass through the Brant residence, and very close to the Fuchs's lawfully constructed dwelling.
5. If it were constructed, the E.H. Sparks Road segment would not terminate on a public road, but would extend to a private road (Lakeview Rd), inviting trespass on the private road which has controlled access through locked gates. Vacation is in the public interest because it prevents this unlawful conduct. (It might be possible to avoid the trespass, but that would involve two gates on Lakeview Rd, at the edges of the E.H. Sparks right of way, but that involves significant dangers as discussed below).
6. If it were constructed, the E.H. Sparks Road segment would terminate in the apex of a very tight, downhill, hairpin turn on the private road, Lakeview Rd. Visibility (sight distance) is very limited in this turn and would cause traffic hazards endangering vehicles, pedestrians, and bicycles. The intersection would not meet county standards. See, Exhibit 13, the stamped report of Engineer Ferguson, dated 2015, referring to Jefferson County Code Design Standards 12.18.000, which is based on ASHTO guidelines. Lakeview Rd leads to a boat access, so vehicles towing heavy boats use this road, and would be required to navigate this dangerous intersection.
7. Exhibit 13, Engineer Ferguson's report also concludes that the stopping distance does not comply with county standards, and is unsafe under the same county standards. Again, trucks towing boats to the boat ramp are a foreseeable problem at this intersection. And construction of

two gates to prevent access from the E.H. Sparks right of way to Lakeview Rd would compound the dangers.

8. Owners of land abutting the private Lakeview Rd and other roads within the TRRA are concerned about safety matters – burglaries and theft of property from their private cottages and homes that are now protected by limitations on access. The threat to people and property arising from easy access to often-unoccupied dwellings constitutes a threat to public order, and is not in the public interest. In addition, owners and residents are likely to request expensive sheriff's patrol services on a regular basis if the private roadway is opened to public access via this segment of the Road.

9. There is an appeal pending in the Oregon Court of Appeals of the Jefferson County Circuit Court decision which found that E.H Sparks Road is a public road. The appeal will be expensive and waste public resources. Further appeal from the Court of Appeals is likely, regardless of the outcome, costing more public resources. Vacation will relieve the county of any duty to defend the appeal, and will result in safer travel conditions.

10. The pending appeal will not aid the county to locate where E.H. Sparks Rd actually lies, because the road's location was not determined by the trial court. As a result, a new trial on the road's actual location will be necessary, or at least probable, unless the road is vacated. That trial is likely to be contentious and expensive. The testimony of Christopher Brown of WH Pacific, the surveyor that located the EH Sparks Rd, in the trial court is attached to Exhibit 6, above.

11. Once constructed, the E.H Sparks road would require maintenance and repair, as well as signs and safety patrol of the dangerous intersection with Lake View Rd, and possibly gates with locks to prevent unlawful trespass, further burdening the county with general fund expenses.

2. Planning Director Approval – the vacation complies with zoning code and uses on the lands.

Petitioners request that the county planning director issue a report that the interior lot line vacation requested complies with applicable land use regulations and facilitates development of the property affected by the vacation. Currently, the lots have adequate access without construction of E.H. Sparks Rd, and the lot sizes are appropriate. No utilities require the roadway to be vacated. All land use regulations are satisfied by vacation. In addition, the residential uses on the lots are not just facilitated, but are made much safer by vacation because the right of way passes through and close to the residential dwellings. There are also traffic safety issues that arise from any construction of the roadway at the intersection with the private road, Lake View Rd.

The Planning Director's report should support vacation, either independent of, or together with the report of the road official.

As set forth above, the county should vacate the portion of the E.H. Sparks Road in the SE ¼ of Section 26, T11S, R11E, where it crosses the Fuchs and Brant properties (and possibly the Allen Trust Co. property) except for the easternmost one foot, and the westernmost one foot of the road segment on those properties.