



# COUNTY OF HUMBOLDT

For the meeting of: 11/8/2022

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File #: 22-1290

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**To:** Board of Supervisors

**From:** Public Works

**Agenda Section:** Time Certain Matter

SUBJECT:

Resolution to Summarily Vacate a Portion of Fisher Road (4G070) South of State Highway 36 in Hydesville

RECOMMENDATION(S):

That the Board of Supervisors:

1. Adopt the attached resolution to summarily vacate a portion of Fisher Road (4G070) south of State Highway 36 in Hydesville pursuant to Streets and Highways Code section 8334;
2. Accept and execute the easement deed for a turnout on Fisher Road; and
3. Direct the Clerk of the Board to record, via Department of Public Works Land Use Division in the Office of the County Recorder, a certified copy of the resolution and easement deed.

SOURCE OF FUNDING:

Road Division (1200-325 and 1200-322)

DISCUSSION:

The Humboldt County Department of Public Works (“Public Works”) received a request from Kelly and Shelby Patton that the county vacate a segment of Fisher Road that is on their property. If the Board vacates the proposed portion of Fisher Road, this action will extinguish the easement described in the attached resolution. This action would also remove the proposed section of Fisher Road from the county-maintained road system. Since the vacation would result in the road not having a turnaround at the end, the applicants have agreed to dedicate right of way for a turnaround area as well as construct the turnaround, should the vacation be approved. Should the Board approve the vacation, the owners will have sixty (60) days to construct the turnout described in the attached easement deed to the County of Humboldt. An Encroachment Permit has been issued for the construction. Public Works staff will inspect the turnout to ensure that the turnout has been constructed as described.

**Present Condition:** The county-maintained portion of Fisher Road terminates on the Patton’s property. The county-maintained road does not extend to the river bar. The county does not have a deeded right of way for this segment of Fisher Road; instead, the county is asserting a common law dedication through public use and maintenance.

In most instances, the county has a right of way that is filed or recorded at the County Recorder's Office. The two (2) most common types of right of way documents that the county has are: right of ways created through deeds; and right of ways created through dedications on maps. This is commonly referred to as a "deeded right of way". These documents give the public specific rights to use, improve, operate and maintain a public road including all appurtenant uses - such as public utilities.

A third type of right of way that is common in Humboldt County are right of ways established through a historic procedure that existed in state law in the late 1800's. These right of ways are generally old wagon routes. Right of ways that were established through this procedure are documented in a book titled "Road Register." This is commonly referred to as a "Road Register right of way".

In some rare instances, the county operates and maintains a road where the county does not have a deeded right of way and the road is not in the Road Register. When this occurs, the county is utilizing a person's property without the benefit of a defined right of way. If there were to be a disagreement between the underlying landowner and the county regarding the right of way, the county would need to seek resolution with a court. The county would argue that there is an implied common law dedication through the public's use of the road and that the county has been maintaining and operating the road. If the county was awarded by the court a judgement in favor of a public road right of way, the county would then be able to record the judgement in the County Recorder's Office thereby perfecting a deeded right of way. Until the common law dedication is perfected in court, it is merely a statement that the county would "likely" prevail in court when attempting to perfect the right of way. A right of way that has not been perfected in court is commonly referred to as a "common law dedicated right of way".

The same considerations also apply to a person using another person's property. Like the county, a person may have a deeded right of way to cross another person's property. When a person does not have permission from the landowner and does not have a right of way that is recorded at the County Recorder's Office, the person is doing so without the benefit of a defined right of way. If there were to be a disagreement between person and the underlying landowner regarding the right of way, the person using the right of way would need to seek resolution with a court. The person would argue that they have a prescriptive right of way. If the person was awarded by the Court a judgement in favor of right of way, the person would then be able to record the judgement in the County Recorder's Office thereby perfecting a legal right of way. Until the prescriptive right is perfected in court, it is merely a statement that a person believes that they would likely prevail in Court when attempting to perfect the right of way. A right of way that has not been perfected in Court is commonly referred to as a "prescriptive right of way".

Research of Public Works records indicates that the end of county maintenance has always been, more or less, at the same point as it is today. The May 4, 1934 Road log indicates that the county maintained the road up to the railroad right of way parcel which runs along the south side of the Patton homestead area, about a quarter mile north of the current end of county-maintained mileage. Researching the county-maintained mileage on this road is challenging as the road also continues north from State Hwy 36. Changes in county-maintained mileage to Fisher Road over the years affected the segment north of State Hwy 36.

From the end of county maintenance, the road physically continues for about 100 yards to a steep embankment at the Van Duzen River. It is not possible for vehicles to traverse the embankment to gain access to the river bar. Due to the road not being passable a short distance beyond the end of county maintenance, Public Works placed a k-rail concrete barrier across the road where county maintenance ends.

**Historic Conditions:** Evidence indicates that at one time Fisher Road did at one time extend to the river and continued from the south side of the river. This portion of Fisher Road was never included in the County Maintained Road System. When Fisher Road did connect to the river bar, it was a popular destination for fishing.

In 2016, the United States Environmental Protection Agency filed a complaint against Jack Noble for violations of the Clean Water Act for using heavy equipment to build roads, levies, berms and groins in the Van Duzen streambed, altering its banks and the course of the river without permits. These violations were remediated by Mr. Noble per the terms of a consent decree. Fisher Road washed out sometime between 2016 and the present by erosion of the Van Duzen River. Removal of the rock slope protection most likely caused the road to be washed out within a year or two. Recent attempts to reestablish Fisher Road north of its previous location resulted in a grading violation issued by County Code Enforcement which has since been cleared.

**Public Interest:** Support for the vacation is mixed. There has been support for the vacation of Fisher Road by neighbors and users of the road. These residents have witnessed some users of the road dumping household and hazardous waste in close proximity to the river. In addition, discharge of firearms and campfires have been noted.

There are also residents who would like to see the road remain in the County Maintained Road System. People still park at the end of the county-maintained road and traverse the applicant's private property on foot to fish in the Van Duzen River. Jack Noble does not support the vacation as he believes it will terminate access to properties across the river; even though there is no deeded right of way and that the road leading to the riverbed is washed out.

Since the county-maintained portion of Fisher Road terminates on the Patton's property and does not extend to the riverbed there is no legal access to the riverbed, or to any properties across the river. Individuals using the road may be able to present to the court an argument of right of way by prescription or implied dedication. However, such claims may prove to be difficult to perfect in court with the road not being passable.

**Requested Action:** The proposed vacation is being processed via Summary Vacation Procedures set forth in California Streets and Highways Code Section 8334. Section 8334 states a legislative body of a local agency may summarily vacate: an excess right of way of a street or highway not required for street or highway purposes; and a portion of a street or highway that lies within property under one ownership and that does not continue through such ownership or end touching property of another.

The Humboldt County Planning and Building Department has found the proposed vacation to be of a “minor” nature and is, therefore exempt from a Planning Commission Report for Acquisitions, Dispositions and Abandonments pursuant to the Government Code section 65402(a). They determined that the right of way or property was not acquired for use other than street purposes; that this portion of Fisher Road is already established and is used as a means of private access to APN’s 204-111-006, 204-241-008, 204-251-008, and 204-251-012; that the street is not identified in the circulation element of the General Plan; that there is no reference to Fisher Road in the Trails Plan or the old Carlotta - Hydesville Community Plan that this vacation would impact; and that no property will be landlocked as a result of the vacation.

The proposed vacation has been reviewed by the Public Works Environmental Services Division and has been determined to have no significant environmental effect and, therefore, is not subject to the California Environmental Quality Act.

The Pacific Gas and Electric Company has a power line that runs through the Patton/Beard property. PG&E requested that a public utility easement be reserved for their benefit in the resolution.

Public Works has no objection to the proposed vacation and requests that your Board take the recommended actions.

FINANCIAL IMPACT:

The petitioners of the vacation paid the required vacation fee therefore, no costs were incurred to cover staff time associated with the vacation. The funding to cover staff time related to the proposed vacation has been included in the approved fiscal year 2022-23 Road Fund budget units 1200-325 and 1200-322. As a result, the recommended actions will not impact the Humboldt County General Fund.

STRATEGIC FRAMEWORK:

The recommended actions support the Board of Supervisors’ Strategic Framework by providing for and maintaining infrastructure.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose not to approve the requested vacation. However, this alternative is not recommended as denying the proposed vacation will result in the required ongoing maintenance of the road to include any measures to protect the road from the ongoing encroachment of the Van Duzen River.

ATTACHMENTS:

1. Resolution to Summarily Vacate a Portion of Fisher Road (4G070) south of State Highway 36 in Hydesville
2. Easement deed from Patton to County for the newly constructed turnout on Fisher Road
3. Letter from Kelly Patton and Shelby Beard agreeing to construct the turnout if the vacation is

approved

4. Encroachment Permit to construct the turnout
5. Letter from Stanley and Marta Holcomb
6. Letter from Dan Skaggs
7. Exemption from Planning Commission Report for Acquisitions, Dispositions and Abandonments Pursuant to Government Code Section 65402(a)
8. CEQA Determination Form
9. Diagram showing Fisher Road

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A