

## Section 13 – Vacation of Rights of Way

(orig. 12-21-10)

### A. Intent and Purpose

The right-of-way vacation process was created to provide consistent processing procedure for vacations. The process outlines time frames and expectations, providing the applicant with a clear understanding of the steps involved prior to being scheduled for the public hearings. The Director of Planning and Zoning may waive the time frames included in this process depending on Planning and Zoning staffing levels and the complexity of the proposal. (orig. 12-21-10)

### B. Application

1. Determination on whether land is eligible for a right-of-way vacation is based on the following table. (orig. 12-21-10)

Dedication Language on Recorded Document	Eligible for Vacation?	Requires Civil Action?
Dedicated to Jefferson County and accepted by the BCC	Yes	No
Dedicated to the Public and accepted by the BCC	Yes	No
Dedicated to the County or Public, but not accepted by the BCC. <b>Maintained by the County.</b>	Yes	No
Dedicated to the County or Public, but not accepted by the BCC. <b>Not maintained by the County.</b>	No	Yes
No dedication or dedicated to private property owners. <b>Maintained by the County.</b>	Yes – For that portion of the road that has achieved prescriptive ownership due to maintenance activities.*	Yes - For that portion of the road that has not achieved prescriptive ownership due to maintenance activities.*
No dedication or dedicated to private property owner(s). <b>Not maintained by the County.</b>	No	Yes

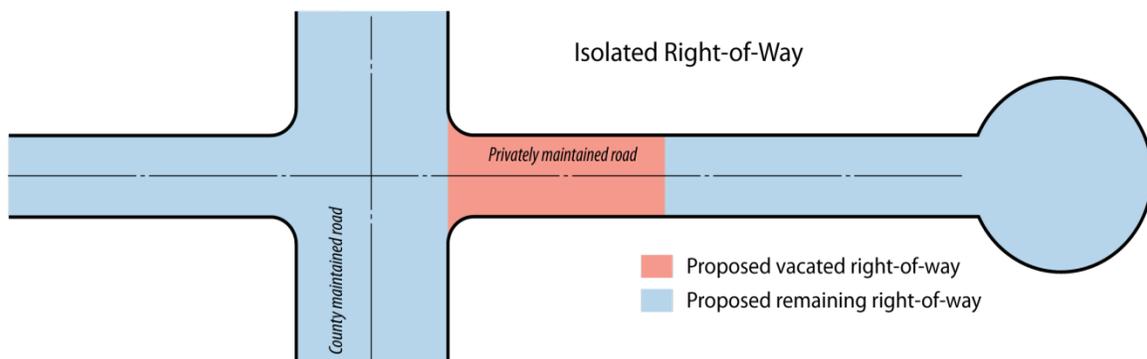
\* Prescriptive ownership includes the road surface and shoulders, along with areas used for drainage, routine maintenance, and the safe operation of the road. (orig. 12-21-10)

2. A nonrefundable processing fee in an amount established by the Board of County Commissioners is required for this process. (orig. 12-21-10)
3. Notification is required in accordance with the Notification section. (orig. 12-21-10)
4. The following procedure and requirements shall apply to Vacation applications. (orig. 12-21-10)

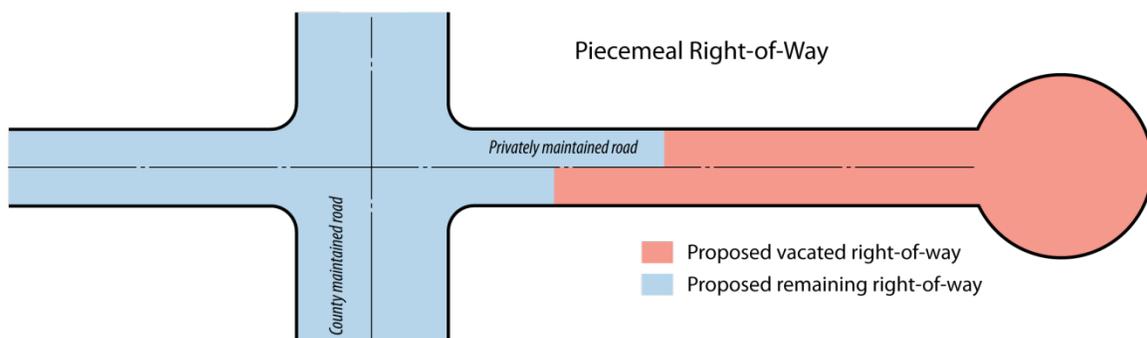
### C. Criteria

1. A vacation may not eliminate the only physical or legal access for any property. The following may be required in order to ensure that access is maintained. (orig. 12-21-10)
  - a. Private access easements. (orig. 12-21-10)
  - b. Merger(s) of property under the same ownership. (orig. 12-21-10)
  - c. Dedication of additional right-of-way. (orig. 12-21-10)
2. A vacation may not eliminate the only physical or legal rights to utilities for any property. The following may be required in order to ensure that the legal rights to utilities are maintained. (orig. 12-21-10)
  - a. Utility easements. (orig. 12-21-10)
  - b. Dedication of additional right-of-way. (orig. 12-21-10)
  - c. Reservation of easements for existing utilities. (orig. 12-21-10)

3. The County may assign the vacated property to a private maintenance association. The entity must provide a statement in writing that it is willing to take over maintenance and ownership of the vacated property. (orig. 12-21-10)
4. Mergers may be required to combine parcels affected by the vacation. The Case Manager may make mergers a requirement if they are needed to maintain legal access for all parcels. If required, the mergers will be a condition of the vacation approval. (orig. 12-21-10)
5. Vacation requests shall not negatively impact the existing or planned street/road system. If negative impacts are created, then traffic information and mitigation improvements may be required. (orig. 12-21-10)
6. Construction plans for improvements required to maintain acceptable service, or to mitigate negative impacts, must be submitted in accordance with the Land Development Regulation and Transportation Design and Construction Manual. (orig. 12-21-10; am. 11-24-15)
7. Vacation requests shall not create a circulation system that is non-compliant with the Land Development Regulation, unless an Alternative Standard/Requirement has been granted. (orig. 12-21-10; am. 12-09-14)
8. Reimbursement costs will be required for vacation requests that involve right-of-way that was previously purchased by the County. (orig. 12-21-10)
9. Vacation requests that create isolated right-of-way (as shown below) are not permitted. (orig. 12-21-10)



10. The "piecemeal" vacation of right-of-way (as shown below) is discouraged and shall be reviewed on a case-by-case basis. (orig. 12-21-10)



**D. Procedure**

If the applicant complies with all given time frames, submits a complete application and complies with all requirements of this Regulation, the estimated time to reach the public hearing phase of the process is 79 calendar days from the date of the 1st Referral. (orig. 12-21-10)

Process Steps		Processing Time Frames
Optional Pre-Application Review Process or Meeting with Staff		Prior to Process
<b>Steps prior to 1st Referral</b>		
Sufficiency Review	7 calendar days	
Formal Application	3 calendar days	
<b>Process from 1st Referral to Public Hearing</b>		
1st Referral	14 calendar days	79 Days to tentatively scheduled hearing if processing time frames are met.
Forwarding 1st Referral Comments	5 calendar days	
Response 1st Referral	14 calendar days	
Submittal of Revised Documents	3 calendar days	
2 <sup>nd</sup> Referral	7 calendar days	
Forwarding 2 <sup>nd</sup> Referral Comments	5 calendar days	
Hearing Documents	10 calendar days	
Hearing Preparation	21 calendar days	
<b>Public Hearing and Post Hearing Review</b>		
Planning Commission Hearing	Time varies based on PC and BCC actions; and applicant meeting approval conditions	
Board of County Commissioners Hearing		
Post Hearing Review		

Prior to submitting an application for this process, it is recommended that the applicant go through the Pre-Application Review Process, as identified in the Pre-Application Review Process Section. The Pre-Application Review Process will help identify the key issues that will need to be addressed during the process and will also help to establish the specific submittal requirements. The specific submittal requirements can also be established by obtaining an appointment with Staff to discuss the proposal. (orig. 12-21-10)

**Steps Prior to 1st Referral**

1. Sufficiency Review: The applicant shall submit all documents as identified in the Submittal Requirements Section for review by Staff. (orig. 12-21-10)

Staff shall have 7 calendar days to review this submittal. (orig. 12-21-10)

Staff will review the sufficiency application to determine if the submittal documents are complete. Following this review, Staff will prepare a letter explaining any deficiencies in the submittal documents. The letter will include a referral matrix that identifies the referral agencies that will require referral documents. The response from Staff will also include a request for the applicant to submit the notification documents that are required to be mailed when the case is sent out on the 1st Referral. The applicant shall revise the submittal information as may be required to comply with County standards and then submit the Formal Application. (orig. 12-21-10)

2. Formal Application: The applicant shall submit all documents as identified in the Staff response to the Sufficiency Review. (orig. 12-21-10)

The Case Manager shall have 3 calendar days to refer the application and referral fees to County divisions/departments and other agencies. A submittal package that is not complete in terms of the type and quantity of documents required will not be sent out on referral. (orig. 12-21-10)

**Process from 1st Referral to Public Hearing**

3. 1st Referral: The referral agencies shall have 14 calendar days to respond in writing to the application. An extension of no more than 30 calendar days may be agreed to by the applicant. (orig. 12-21-10)

Notification is required at the time of the 1st Referral in accordance with the Notification section. (orig. 12-21-10)

The Case Manager will tentatively schedule the Planning Commission hearing and the Board of County Commissioners' hearing when the application is sent out on the 1st Referral. The Planning Commission hearing will be tentatively set to the first available hearing date after 79 calendar days from the date of the 1st Referral. The Board of County Commissioners hearing

will be scheduled for the first available hearing date after 19 calendar days from the Planning Commission hearing. (orig. 12-21-10)

4. Forwarding 1st Referral Comments: The Case Manager shall have 5 calendar days, after the end of the referral period, to provide the applicant with a Staff response inclusive of other referral agency responses. If the Case Manager indicates that the application is in substantial conformance with all applicable regulations and that only minor revisions to the documents are required, the application may proceed directly to the Hearing Documents phase of the process. Under this circumstance, the application will be scheduled for a hearing date earlier than that tentatively scheduled at the time of the 1st Referral. (orig. 12-21-10)
5. Response to 1st Referral: The applicant shall have 14 calendar days to address, in writing, any issues identified by the Case Manager or any referral agency and resubmit revised documents for the 2nd Referral. The applicant will be deemed to have consented to a later hearing date, than the tentatively scheduled hearing date, if the resubmittal is not received within the 14 calendar day period. (orig. 12-21-10)

The applicant shall have a maximum of 120 calendar days to respond to the referral comments, or the application will be considered withdrawn. The applicant will then have to file a new application with the required fee and documents. The Director of Planning and Zoning may extend this 120 calendar day maximum response deadline for additional 120 calendar day periods if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10)

6. Submittal of Revised Documents: The Case Manager shall have 3 calendar days to refer the revised documents and referral fees to County divisions/departments and other agencies. A submittal package that is not complete in terms of the type and quantity of documents required will not be sent out on referral. (orig. 12-21-10)
7. 2nd Referral: The referral agencies shall have 7 calendar days to respond in writing to the 2nd Referral. (orig. 12-21-10)
8. Forwarding 2nd Referral Comments: The Case Manager shall have 5 calendar days after the end of the referral period to provide the applicant with a Staff response inclusive of referral agency responses. The response from the Case Manager will include an opinion as to whether or not the case should proceed forward to hearing or if revised documents should be submitted for a subsequent referral process. (orig. 12-21-10)

If the applicant has not consented to a later hearing date based on the time frames of this Regulation and chooses to move forward to the tentatively scheduled hearing, the applicant shall submit the Hearing Documents as requested by the Case Manager in accordance with the Hearing Documents phase of the process. (orig. 12-21-10)

9. Response to 2nd Referral Comments: The applicant shall have a maximum of 120 calendar days to respond to the referral comments, or the application will be considered withdrawn. The applicant will then have to file a new application with the required fees and documents. The Director of Planning and Zoning may extend this 120 calendar day maximum response deadline for additional 120 calendar day periods if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10)
10. Additional Changes: For the 3rd Referral, and for any subsequent referrals thereafter, the Case Manager shall have 3 calendar days to refer the revised documents and referral fees to County divisions/departments and other agencies. A submittal package that is not complete in terms of the type and quantity of documents required will not be sent out on referral. (orig. 12-21-10)

The referral agencies shall have 7 calendar days to respond in writing to the 3rd Referral, and for any subsequent referrals thereafter. (orig. 12-21-10)

The Case Manager shall have 5 calendar days after the end of the 3rd Referral, and for any subsequent referrals thereafter, to provide the applicant with a full Staff response inclusive of referral agency responses. The response from the Case Manager will include an opinion as to whether or not the case should proceed forward to hearing or if revised documents should be submitted for a subsequent referral process. (orig. 12-21-10)

The applicant shall have a maximum of 120 calendar days to respond to the referral comments, or the application will be considered withdrawn. The applicant will then have to file a new

application with the required fees and documents. The Director of Planning and Zoning may extend this 120 calendar day maximum response deadline for additional 120 calendar day periods if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10)

11. Hearing Documents: The hearing documents shall be comprised of the vacation graphic, legal description and other final documents as identified by the Case Manager. (orig. 12-21-10)

If the applicant has not consented to a later hearing date based on the time constraints of this process, the applicant shall have 10 calendar days to address, in writing, any issues identified by the Case Manager or any referral agency and submit the hearing documents for the tentatively scheduled hearings. The applicant will be deemed to have consented to later hearing dates if the hearing documents are not received within the 10 calendar day period. (orig. 12-21-10)

The applicant shall have a maximum of 120 calendar days to respond to the referral comments or to submit the hearing documents, or the application will be considered withdrawn. The applicant will then have to file a new application with the required fee and documents. The Director of Planning and Zoning may extend this 120 calendar day maximum response deadline for an additional 120 calendar days if, in his/her opinion, the delay in response is for good cause. (orig. 12-21-10)

12. Hearing Scheduled:

- a. Planning Commission Hearing: If the applicant has consented to later hearing dates based on the time frames of this Regulation, the Planning Commission hearing will be scheduled for the first available hearing date after 21 calendar days from the submittal of the hearing documents. (orig. 12-21-10)
- b. Board of County Commissioners Hearing: The Board of County Commissioners hearing will be scheduled for the first available hearing date after 19 calendar days from the Planning Commission hearing. (orig. 12-21-10)

13. Hearing Preparation:

- a. Revisions to Documents Prior to Hearing: To ensure completeness and to allow adequate public review, no substantial revisions or additions, except in response to a Staff request or those specifically requested by the Planning Commission, may be made to any application or supporting documents within 21 days prior to any hearing. (orig. 12-21-10)
- b. Notification: Notification of the scheduled hearings is required in accordance with the Notification Section. (orig. 12-21-10)

#### **Public Hearings and Post Hearing Review**

14. Planning Commission Hearing: The Planning Commission shall review the application and the Staff report, receive testimony and evidence on the application, and shall recommend approval, conditional approval, or denial of the application to the Board of County Commissioners. The Planning Commission may continue the request for no more than 40 calendar days without the consent of the applicant. The continuance of a request shall be to a date certain. (orig. 12-21-10)
15. Board of County Commissioners Hearing: The Board of County Commissioners shall review the application, the Staff report and the Planning Commission recommendation, receive testimony and evidence on the application, and shall approve, conditionally approve or deny the application. The Board of County Commissioners may continue the request for no more than 40 calendar days without the consent of the applicant. The continuance of a request shall be to a date certain. (orig. 12-21-10)
16. Post Hearing Review: The applicant shall comply with all conditions of approval within 180 calendar days from the approval date by the Board of County Commissioners. If the applicant does not comply with the conditions within this timeframe, the approval shall be automatically rescinded. The Director of Planning and Zoning may extend this 180 calendar day recordation deadline for additional 180 calendar day periods if, in his/her opinion, the delay is for good cause. (orig. 12-21-10)

The Case Manager shall have 7 calendar days to review all documents submitted by the applicant for compliance with the approval conditions. If the revisions have been made in accordance with the approval conditions, the Case Manager will take the necessary steps to finish the application process. If additional revisions are required to meet the approval conditions, the Case Manager will return a letter to the applicant identifying the revisions that must be made in order to comply with the approval conditions. (orig. 12-21-10)

If the application needs to return to hearing for a non-substantial change that does not materially affect the content of the approved application, then the Director of Planning and Zoning may allow the application to proceed directly to a hearing before the Board of County Commissioners' without a hearing before the Planning Commission. (orig. 12-21-10)