

**ORDINANCE NO. 1977**  
**(An ordinance vacating a 16' strip of 8<sup>th</sup> Street between Portway Avenue and  
Riverside Drive)**

**WHEREAS**, the City currently has an 80' public dedicated right-of-way on 8<sup>th</sup> Street between Portway Avenue and Riverside Drive;

**WHEREAS**, the City Council on June 22, 2009 voted to allow the application of the vacation of the right-of-way to go to public hearings;

**WHEREAS**, the Planning Commission and the City Council of the City of Hood River have, in accordance with the procedures set forth in Chapter 271 of the Oregon Revised Statutes and Title 17 of the Hood River Municipal Code, considered the application of the Port of Hood River to vacate the right-of-way;

**WHEREAS**, the City Council made findings of fact and conclusions of law in accordance with Title 16 of the Hood River Municipal Code and Oregon Revised Statutes Chapter 271 with respect to the vacation request, which are attached as Exhibit A;

**WHEREAS**, the City Council incorporates by reference the findings of fact and conclusions into this Ordinance as if fully set forth herein;

**WHEREAS**, the vacation will not substantially affect the market value of the abutting properties and will increase the market value of the Port of Hood River and Hood River Distillers properties;

**WHEREAS**, notice of the proposed vacation has been duly given as required by ORS 271.110 and HRMC Chapter 17.09 (see Exhibit A);

**WHEREAS**, the public interest will not be prejudiced by the proposed vacation because there is sufficient remaining right of way to construct the street to City standards;

**WHEREAS**, it is in the best interests of the City of Hood River to vacate the right-of-way described on Exhibit A because;

**WHEREAS**, the proposed vacation is consistent with the City's Comprehensive Plan as set forth in Exhibit A; and

**WHEREAS**, the City Recorder filed a certificate showing that all city liens and taxes have been paid on the right-of-way to be vacated in the office of the City Recorder, as shown on Exhibit B.

**NOW, THEREFORE**, the City of Hood River ordains as follows:

1. The public right-of-way described in Exhibit A is vacated.

2. The Port of Hood River shall obtain a survey of the portion of 8<sup>th</sup> Street to be vacated and provide it to the City for preparation of the vacation map. The Port shall file a certified copy of the ordinance and map vacating the street. The costs of preparing the ordinance and map shall be deducted from the deposit for costs.
3. The Port of Hood River shall grant the City a public utility easement on the City's Public Utility Easement form. The easement shall meet all requirements of the City's form and of the City's Engineering Standards Section 4.1B, and may include any modifications approved by the City Attorney, The vacation is effective upon the City's acceptance of the easement and the recording of the easement in the deed records of Hood River County. The Port of Hood River shall cause the easement to be recorded.
4. Title to the vacated 16' shall attach to the lands bordering 8<sup>th</sup> Street as provided in ORS 271.140.

Read for the first time: August 10th, 2009

Read for the second time and passed: August 24, 2009, to become effective thirty (30) days hence.

Signed this 24 day of August, 2009.

  
\_\_\_\_\_  
Arthur Babitz, Mayor

ATTEST:

  
\_\_\_\_\_  
Jennifer McKenzie, City Recorder

# CITY COUNCIL AGENDA ITEM COVER SHEET

**Meeting Date:** August 10, 2009

**Subject:** Property owner initiated street vacation

**Background:** The Port of Hood River (Port) and Hood River Distillers (HRD) have requested a street vacation of the east 16' of the 80 foot right-of-way of 8<sup>th</sup> Street between Portway and Riverside Drive. The City of Hood River is the third property owner on this portion of 8<sup>th</sup> Street.

The purpose for the vacation is to allow the Port and HRD an additional 16' of land for building(s).

The average right-of-way for an industrial street in the Transportation System Plan is 40'-70'. The result of this street vacation would be a 64' right-of-way. The City has sanitary sewer and water within the 16', however, the Port and HRD will grant an easement back to the City.

The Planning Commission conducted a public hearing on August 3<sup>rd</sup> on the street vacation and recommend approval with no changes to the application (4-0).

**Suggested Motion:** I move that we read Ordinance 1977 by title only during the regular meeting.

**Alternatives:** Don't vacate.

**Fiscal Impact:** Negligible. The Port, unless they sell the parcel to a private party is a non taxed entity. Hood River Distillers will pay taxes on the additional square footage; however, in both cases the structures built will be taxable.

**BEFORE THE CITY OF HOOD RIVER  
HOOD RIVER, OREGON**

In the matter of a request by )  
Port of Hood River to vacate )  
The east 16' of 8<sup>th</sup> Street between  
Portway and Riverside Drive)  
File #200-13)  
July 27, 2009)

**STAFF REPORT**

**I. BACKGROUND INFORMATION:**

- A. **REQUEST:** A request by Port of Hood River to vacate the east 16' of 8<sup>th</sup> Street between Portway Avenue and Riverside Drive. **See Attachment "A" Port's application.**
- B. **APPLICANT:** Port of Hood River.
- C. **PROPERTY LOCATION:** 3N 10E 25 – 8<sup>th</sup> Street is located between Riverside Drive and Portway Avenue on the east side of the City's waste water treatment plant.
- D. **HISTORY:**
1. Council voted to process the application on June 22, 2009.
  2. Notice of public hearing mailed July 10, 2009.
  3. Notice of public hearing published in the Hood River News July 22/29, 2009.
  4. Notice of public hearing posted on site in two places on Planning Commission public hearing scheduled City Council public hearing scheduled on July 17, 2009.
  5. Public hearing before the Planning Commission August 3, 2009.
  6. Public hearing before City Council August 10, 2009.
- E. **ORDINANCE APPROVAL CRITERIA:**
1. HRMC, Section 16.08.060 – Replatting and Vacation of Plats
  2. Goal 12 – Transportation and City of Hood River's Transportation System Plan
  3. ORS 271 - Use and Disposition of Public Lands Generally; Easements
  4. HRMC, Section 17.09.040 – Quasi-Judicial Actions

**II. FINDINGS OF FACT AND CONCLUSIONS**

- A. **Hood River Municipal Code (HRMC), Chapter 16 – Land Divisions 16.08.060**
1. **Replatting and Vacations.** Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners as appearing on the deed.  
**City Council Packet**

**Finding:** Because this is a vacation of a street and this provision states that street vacations are to be made in accordance with ORS Chapter 271, the applicable property owner signatures for this vacation are those required by ORS Chapter 271.

2. **Procedure.** All applications for a replat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition. The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process.

**Finding:** This provision is complied with by processing the application in accordance with the criteria in Title 16 and as a quasi-judicial action.

3. **Basis for Denial.** A replat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.

**Finding:** Based on the findings under Transportation System Plan of this report II. (B) the street vacation will not destroy any public rights to public uses on the subject property.

4. **Recording of Vacations.** All approved plat vacations shall be recorded in accordance with the Filing and Recording requirements of this title (Section 16.08.040) and the following procedures:
  - a. Once recorded, a replat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
  - b. Vacations shall also divest all public rights in the streets, alleys, and public grounds, and all dedications lay out or described on the plat.

**Finding:** This standard shall be complied with if the street vacation is approved by imposing a condition of approval requiring recording of the approved vacation plat. The decision approving the vacation shall have the effect described in this section.

5. **After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.

**Finding:** This is a street vacation to which this standard does not apply.

6. **Vacation of streets.** All street vacations shall comply with the procedures and standards set forth in ORS Chapter 271.

**Finding:** As of the date of this staff report, this street vacation complies with ORS Chapter 271.

**B. Goal 12 - Transportation and the Transportation System Plan (TSP)**

**Findings: When reviewing the application and visiting the site, staff believes the following questions should be addressed prior to recommending approval:**

1. **How is 8<sup>th</sup> Street between Riverside and Portway classified in the TSP?**  
Neither street is listed in the TSP, however, both serve industrial uses, and the standard is the Commercial/Industrial Streets and Urban Collector 60'-70' (Attachment "B").
2. **What is the current right-of-way?**  
80'
3. **What is proposed right-of-way? Will it comply with an industrial street standard?**  
64' – yes (see #1)
4. **Why the reduction?**  
The Port is planning to construct a building on the corner of 8<sup>th</sup> and Portway, and want to use the area to expand the proposed parking lot.
5. **If the 16' is vacated, who gets the land? Why not the City's waster water treatment plant (WWTP)?**  
The Port of Hood River and Hood River Distillers receive the 16' as they are the adjacent property owner, not the WWTP.
6. **Are there city utilities within the 16' area? What happens if the vacation is approved?**  
There are several utilities in this 16' strip of land. As a condition of approval, the Port and Hood River Distillers shall grant a public utility easement to the City for the vacated area.
7. **There are several trees within the 16' proposed for dedication, what will happen to them? Can the City require replacement of the trees if the vacation is approved?**  
As part of the pre-application for the Port's Halyard Building, the trees are slated for removal for construction of the parking lot. As a condition of site plan review, however, under "Natural Features" the trees can be required to be replaced as part of a parking strip or elsewhere on the building site.
8. **Does this street vacation affect the City's ability to install sidewalk within the 8<sup>th</sup> Street ROW adjacent to the WWTP?**  
It does not, for two reasons. First, the physical street was not centered in the right-of-way when constructed, and is much closer to the WWTP than the Port's property leaving insufficient room for sidewalk. Second, the actual "works" of the WWTP are directly next to the fence adjacent to the right-of-

way, and the City Engineer does not support sidewalk construction so close to the sewer treatment area.

9. **Will the vacation affect future city standard improvements of Riverside Drive adjacent to the Hood River Distillers?**

The City Engineering Department has already reviewed the improvement plans for both Riverside Drive (approved) and Portway Avenue (under review) and there are sidewalk connections already designed for the north and south ends of 8<sup>th</sup> Street, therefore, the street vacation will not effect the ability to construct full street improvements on Portway, Riverside, or 8<sup>th</sup>.

As such, the requested street vacation complies with the City's TSP and Transportation Goal.

C. **ORS Chapter 271 - Use and Disposition of Public Lands Generally; Easements**

**ORS 271.080: Vacation in incorporated cities; petition; consent of property owners.** This provision allows any person with any interest in any real property in the City desiring to vacate all or part of any street to submit a petition containing the request. This provision requires the petition to contain "the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby."

**Finding:**

The City is an affected property owner with property fronting on 8<sup>th</sup> Street the entire length from Portway to Riverside Drive. The City's consent to the vacation would not be determined until a hearing on the proposed vacation was held, so the petition is accepted without the requisite 2/3 consent. If the City Council approves the vacation, a condition stating that the Council's approval constitutes the City's consent will be included to satisfy this criterion.

**ORS 271.090: Filing of petition; notice.** This provision requires the petition to be filed with the City Recorder or other recording officer of the City. For purposes of street vacations, the Planning Assistant is the recording officer.

**Finding:**

The petition was filed with the Planning Department, who found the petition consistent (subject to the considerations set forth above) and notified the petitioner of the public hearing dates.

**ORS 271.110: "Notice shall be given as provided in [.]"** ORS 271.110 requires publication of notice once each week for two consecutive weeks prior to the hearing, and requires the notice to "describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered."

**Finding:** Notice was provided on July 22<sup>nd</sup> and July 29<sup>th</sup> in the format required above. The subject area was posted on July 17, 2009 in accordance with ORS 271.

**ORS 271.120: Hearing; determination.** “At the time fixed . . . for hearing the petition and any objections filed thereto . . . the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such . . . street. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition.”

**Finding:**

Staff has found that the public interest will not be prejudiced by approving the proposed vacation based on the findings above under Transportation System Plan II. (B). The area proposed to be vacated is not needed for the 8<sup>th</sup> Street right of way because 8<sup>th</sup> Street is an 80’ right-of-way, and the standard from the TSP is between 60’-70’ for an Urban Commercial/Industrial street. In addition, protection of the public interest is addressed by the provision in HRMC Section 16.08.060(C) that requires the vacation to be denied if “it abridges or destroys any public right in any of its public uses, improvements, streets or alleys[.]” As stated above, the proposed vacation does not abridge or destroy any public right in the street.

The applicant submitted the written consent of a number of the affected property owners; with the City’s approval, requisite consents will be present.

**271.130 Vacation on city governing body’s own motion; appeal.**

**Finding:** Not applicable.

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**Finding:** The vacated land will be attached to the Port of Hood River and Hood River Distiller’s ownerships adjacent to the 16’ strip of land.

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the



cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**Finding:** The Port will pay for any costs associated with the vacation application.

**271.160 Vacations for purposes of rededication.**

**Finding:** Not applicable.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**Finding:** Not applicable, the City does not have its own street vacation provisions.

Based on the above findings of fact, staff finds that the requirements of ORS 271 are met.

**D. HRMC 17.09.040 QUASI-JUDICIAL ACTIONS**

This application has been processed as a quasi-judicial action pursuant 17.09.040 review procedures as evidenced in I. (D) History of this staff report.

**III. RECOMMENDATION AND CONDITIONS:** Based on the above findings and conclusions, staff recommends that the Planning Commission recommend approval of the proposed vacation with the following conditions of approval:

1. The applicant shall obtain a survey of the portion of 8<sup>th</sup> Street to be vacated and provide it to the City for preparation of the vacation map. The applicant shall file a certified copy of the ordinance and map vacating the portion of 8<sup>th</sup> Street. The costs of preparing the ordinance and map shall be deducted from the deposit for costs.
2. The vacation is for the portion of 8<sup>th</sup> Street
3. Title to the vacated 16' street shall attach to the lands bordering the street contiguous to the 16' portion (Port of Hood River and Hood River Distillers) as provided in ORS 271.140.
4. The ordinance approving this vacation shall not be passed until the City Recorder has filed a certificate showing that all city liens and all taxes have been paid on the lands to be vacated (ORS 271.130(4)).

**PLANNING COMMISSION DECISION:** Planning Commission recommends \_\_\_\_\_ of the street vacation. Commissioner \_\_\_\_\_ moved and Commissioner \_\_\_\_\_

seconded a motion to recommend \_\_\_\_\_ of the street vacation based on the above findings of fact and subject to the conditions of approval. The motion passed with a \_\_\_\_\_ vote.

**APPROVED BY THE CITY OF HOOD RIVER PLANNING COMMISSION THE \_\_\_\_\_ DAY OF August, 2009.**

\_\_\_\_\_  
Kate McBride, Chair

Attest:

\_\_\_\_\_  
Cindy Walbridge, Planning Director

**CITY COUNCIL DECISION:** Councilor \_\_\_\_\_ moved and Councilor \_\_\_\_\_ seconded the motion to \_\_\_\_\_ the street vacation based on the above findings of fact and subject to the conditions of approval. The motion passed with a \_\_\_\_\_ vote.

**APPROVED BY THE CITY COUNCIL the \_\_\_\_\_ day of \_\_\_\_\_, 2009.**

\_\_\_\_\_  
Arthur Babitz, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer McKenzie, City Recorder

In addition to the deposit for costs described above, a non-refundable application fee is required to be submitted as part of a complete application.

### CITY OF HOOD RIVER STREET VACATION APPLICATION

Submit the completed application **WITH TWELVE (12) ADDITIONAL COMPLETE COPIES** and appropriate fees to the City of Hood River Planning Department, 301 Oak Ave. (P.O. Box 27), Hood River, OR 97031. Please note the review criteria attached to this application. If you have any questions, please contact the Planning Department at (541) 387-5210.

**APPLICANT:**


Name: Port of Hood River

Address: 720 E. Port Marina Drive  
(physical) Hood River, OR 97031

(mailing) P.O. Box 239  
Hood River, OR 97031

(email) www.portofhoodriver.com

Telephone: 386-1645 Cell Phone: (541) 380-0109

Signature: 

**STREET INFORMATION:**

Township 3N Range 10E Section 25DB Tax Lot(s) 111\_400

Current Zoning: LI

Street Location (name and cross streets) 8th Street-- South from Port Way Ave.

Note: The City of Hood River and Port of Hood River own more than two-thirds of the area of the real property affected by this vacation. In accordance with advice given by City Attorney Alex Sosnkowski to Port Attorney, Jerry Jaques, since the City cannot grant consent to the vacation prior to going through the City Vacation process, City consent is not attached in Exhibit B.

A

BEFORE THE CITY COUNCIL OF THE CITY OF HOOD RIVER

In the matter of the vacation )  
Of a portion or all of ) VACATION PETITION  
8th street / avenue )

Pursuant to ORS 271.080, the undersigned petitioner(s) request the City Council of the City of Hood River to vacate that portion of 8th street / avenue described on the attached Exhibit A. (Attach a map showing proposed portion of street to be vacated).

The purpose for which the vacated ground is proposed to used is: Create  
setback area for construction of a light industrial building  
by the Port of Hood River. The Port will grant the City  
an easement for utilities within the vacated area.

The reason for the vacation is: Vacation will allow the Port to  
construct a larger light industrial building than can be  
built on the Port's lot currently.

The consents of all abutting owners are attached on Exhibit B. The consents of the owners of not less than two-thirds in area of the real property affected by this vacation are also attached on Exhibit B. (See ORS 271.080(2) to determine the real property affected by the vacation). See "Note" on Street Vacation Application regarding consent of two-thirds of area affected by this  
Petitioner(s): vacation and abutting property owners, affected by City of Hood River ownership.

  
(Signature)

  
(Signature)

Name: Michael McElwee  
Address: 720 E. Port Marina Drive  
Hood River, OR 97031

Name: Lynda M. Webber  
Address: 660 Riverside Dr.  
Hood River, OR 97031

Attach: Exhibit A – map  
Exhibit B – consents of abutting and affected property owners

**Exhibit B**  
**Consent of Abutting and Affected Property Owners**

By executing this document, we, the owners of all the property abutting on that portion of \_\_\_\_\_  
8th \_\_\_\_\_ Street / Avenue to be vacated as described in the  
petition, consent to the vacation of such ground.

Name of abutting owner:

Signature: *Lynnie M. Hinkle* Address: 660 Riverside Dr.  
Printed Name: Hood River Distillers, Inc. Hood River, OR 97031

Description of abutting lot:

Township 3N Range 10E Section 25DB Tax Lot(s) 400

Name of abutting owner:

Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Description of abutting lot:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot(s) \_\_\_\_\_

Name of abutting owner:

Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Description of abutting lot:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot(s) \_\_\_\_\_

Name of abutting owner:

Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Description of abutting lot:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot(s) \_\_\_\_\_

Name of abutting owner:

Signature: \_\_\_\_\_ Address: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Description of abutting lot:

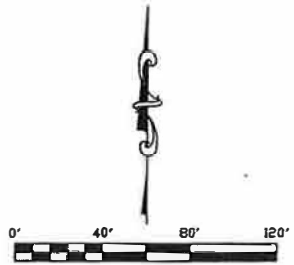
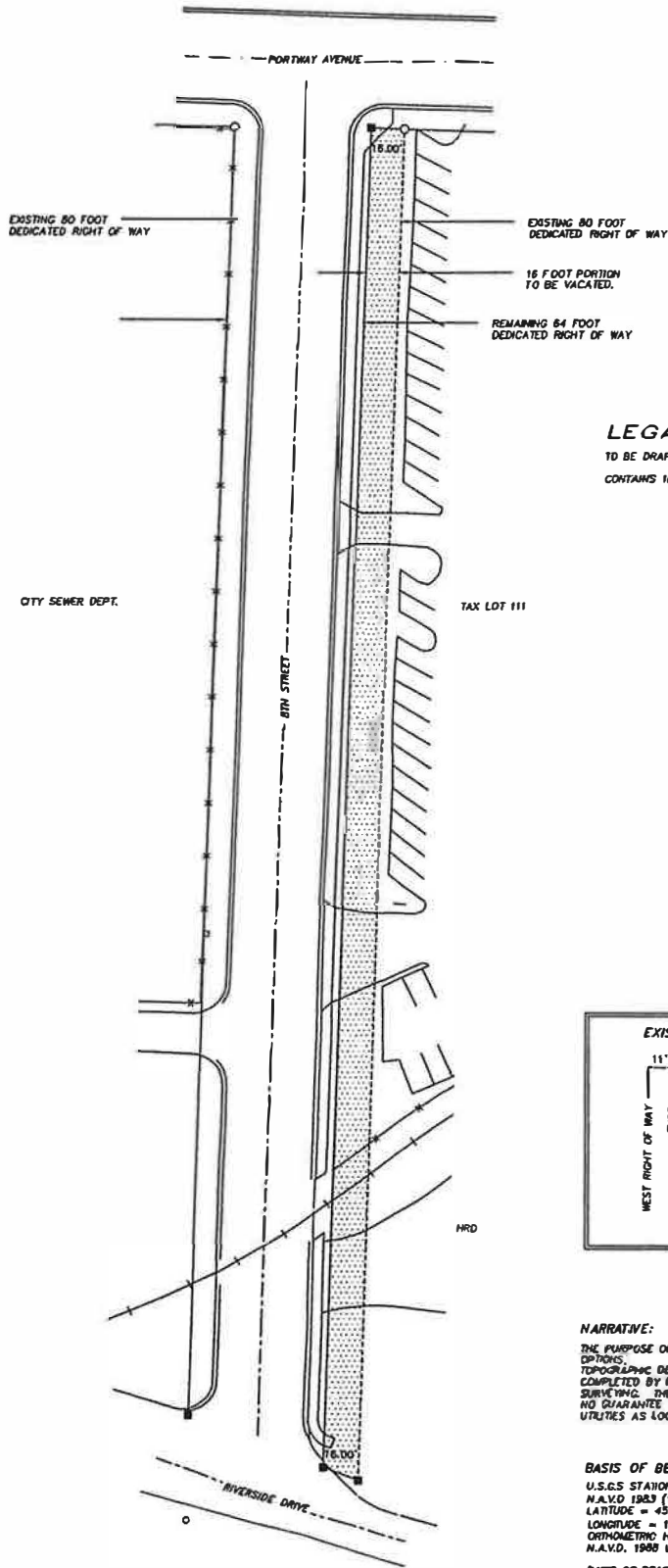
Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot(s) \_\_\_\_\_

Per ORS 271.130(3)

I certify that all City liens and all taxes have been paid on the lands to be vacated.

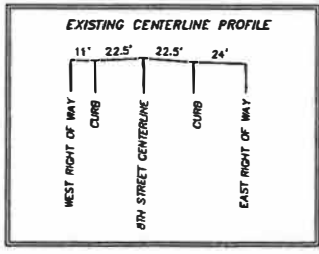
\_\_\_\_\_  
Date

\_\_\_\_\_  
City Recorder for the City of Hood River



VACATION MAP  
for  
THE PORT OF HOOD RIVER

LEGAL DESCRIPTION  
TO BE DRAFTED  
CONTAINS 10,195 Sq.Ft. MORE OR LESS



**NARRATIVE:**  
THE PURPOSE OF THIS MAP IS TO DETERMINE ROAD WIDTH OPTIONS. TOPOGRAPHIC DATA WAS COMPLETED BY AERIAL SURVEY COMPLETED BY DAVID SMITH AND ASSOCIATES AND TERRA SURVEYING. THE UTILITIES SHOWN WERE FIELD LOCATED. THERE NO GUARANTEE TO THE COMPLETENESS OF UNDERGROUND UTILITIES AS LOCATES WERE RELIED ON FOR POSITION.

**BASIS OF BEARING AND VERTICAL DATUM:**  
U.S.G.S STATION POWDER-2  
N.A.V.D 1983 (1988 ADJUSTMENT)  
LATITUDE = 45°42'39.37105" (N)  
LONGITUDE = 121°32'59.76083" (W)  
ORTHOMETRIC HEIGHT OF 102.630 METERS (336.74')  
N.A.V.D. 1988 USING THE 1999 GEOID FOR THE U.S.  
  
BASIS OF BEARING OF THE SURVEY IS OREGON STATE PLANE,  
NORTH ZONE (3601), GRID BEARINGS & INTERNATIONAL FEET.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
**FOR REVIEW**  
  
OREGON  
December 30, 2003  
EOLC # 048-208  
72306  
Expires: December, 2009

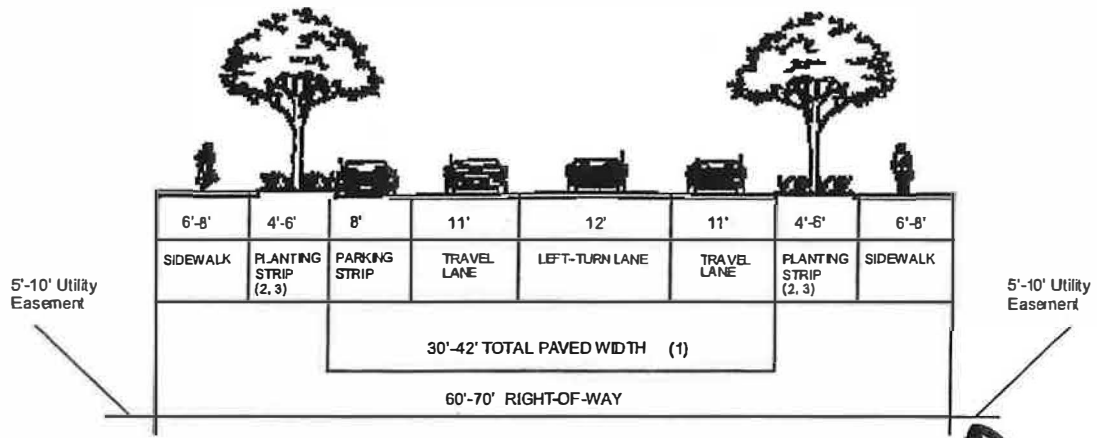
**TERRA SURVEYING**  
  
DATE: MAY 7, 2009  
SCALE: 1" = 40'  
PROJECT: 209027/VACATION  
P.O. BOX 617  
HOOD RIVER, OREGON 97031  
PHONE & FAX: (541) 386-4531  
terra@tgsurvey.net

- LEGEND:**
- FOUND MONUMENT OF RECORD
  - CALCULATED, NOT FOUND OR SET
  - ( ) DIED OR PLAT CALL

JMW

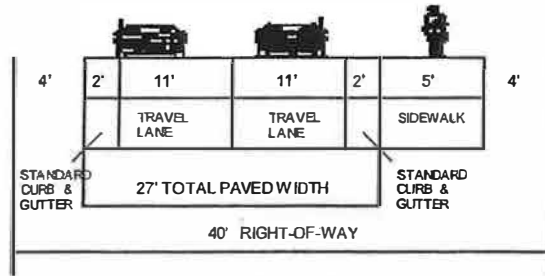
## Commercial/Industrial Streets and Urban Collector Diagram

### COMMERCIAL / INDUSTRIAL STREETS AND URBAN COLLECTOR

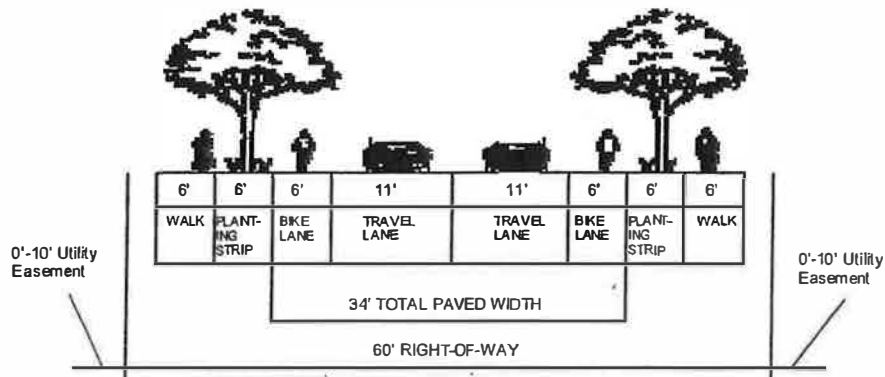


1. 42' Total Paved Width with center turn lane.
2. 4'-6' wide planting strips with 6' sidewalk.
3. 4'-6' wide tree wells with 8' sidewalk.

Urban Commercial / Industrial Streets



Urban Industrial Streets



Urban Collector

1. A planter strip is required on all new streets.
2. Width of curb is included in planter strip width.
3. Street trees and streetlights shall be located within the planter strip.

B