

# PUBLIC HEARING ROAD VACATION PORTION OF SCHIBEL ROAD

Cody Smith, P.E.  
County Engineer/Assistant Director  
Road Department



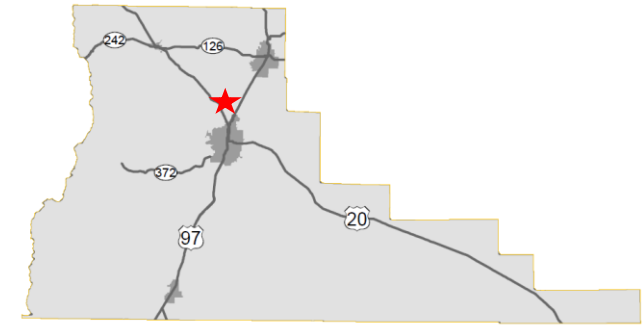
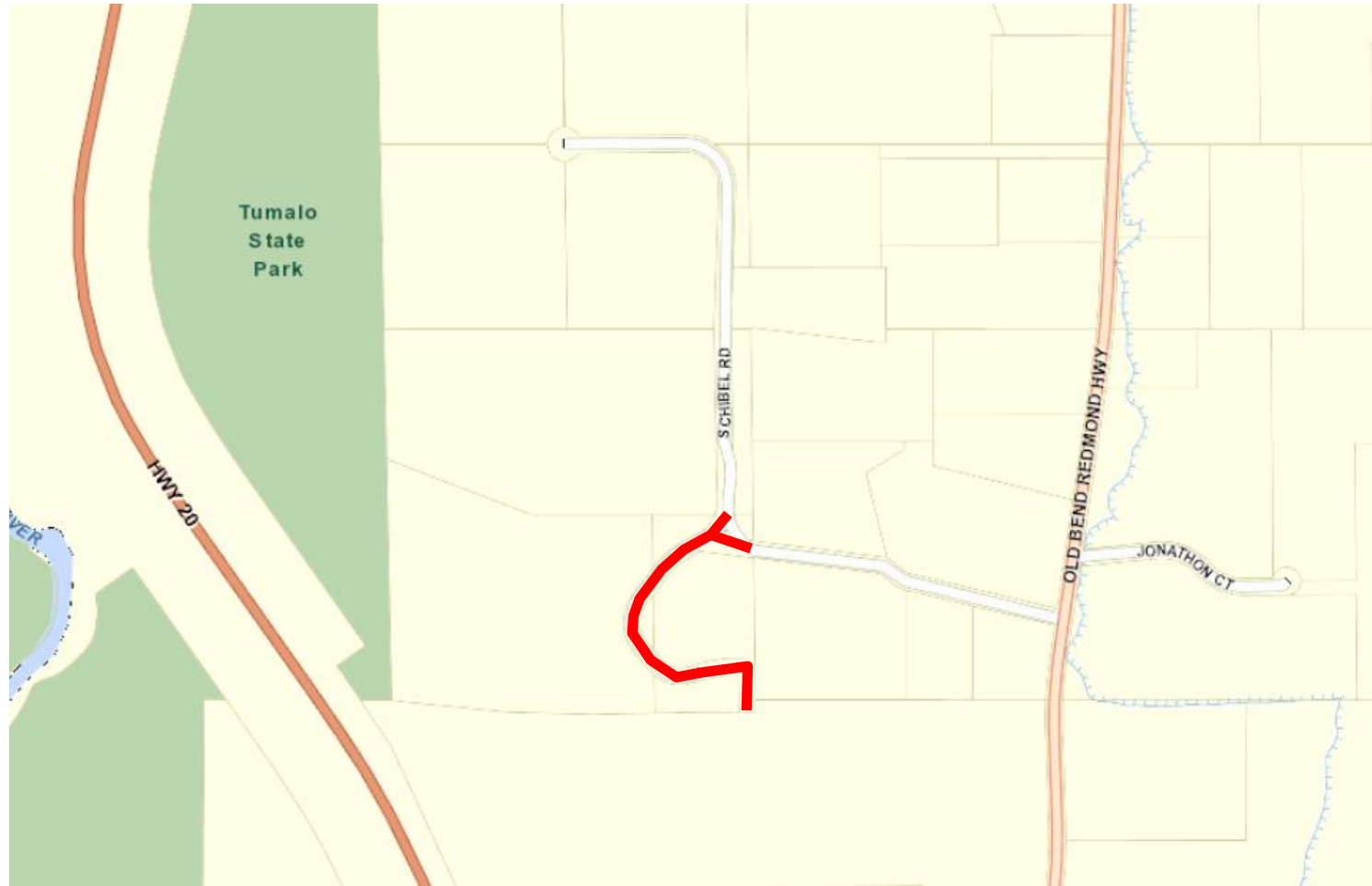
# Agenda

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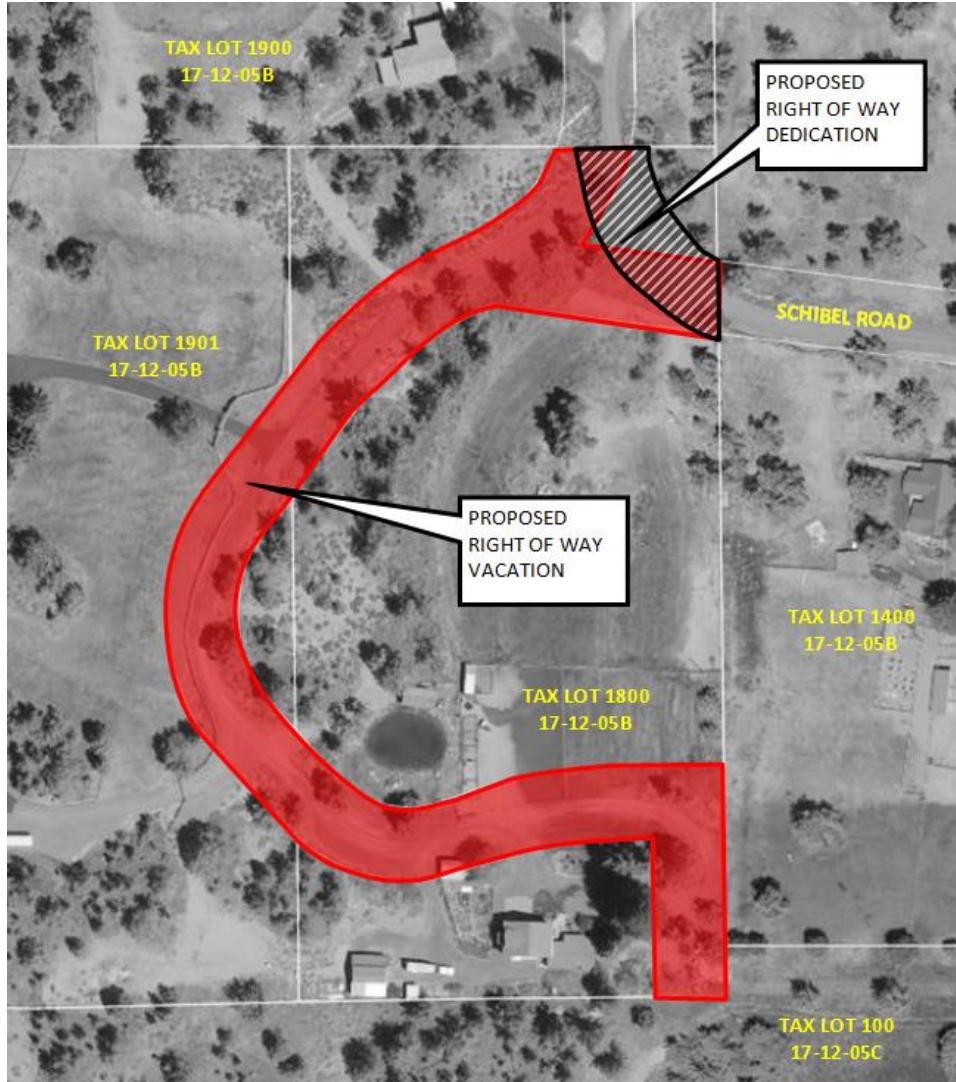
- Background Information
- Staff Findings
- Staff Recommendation
- Public Hearing



# Background Information



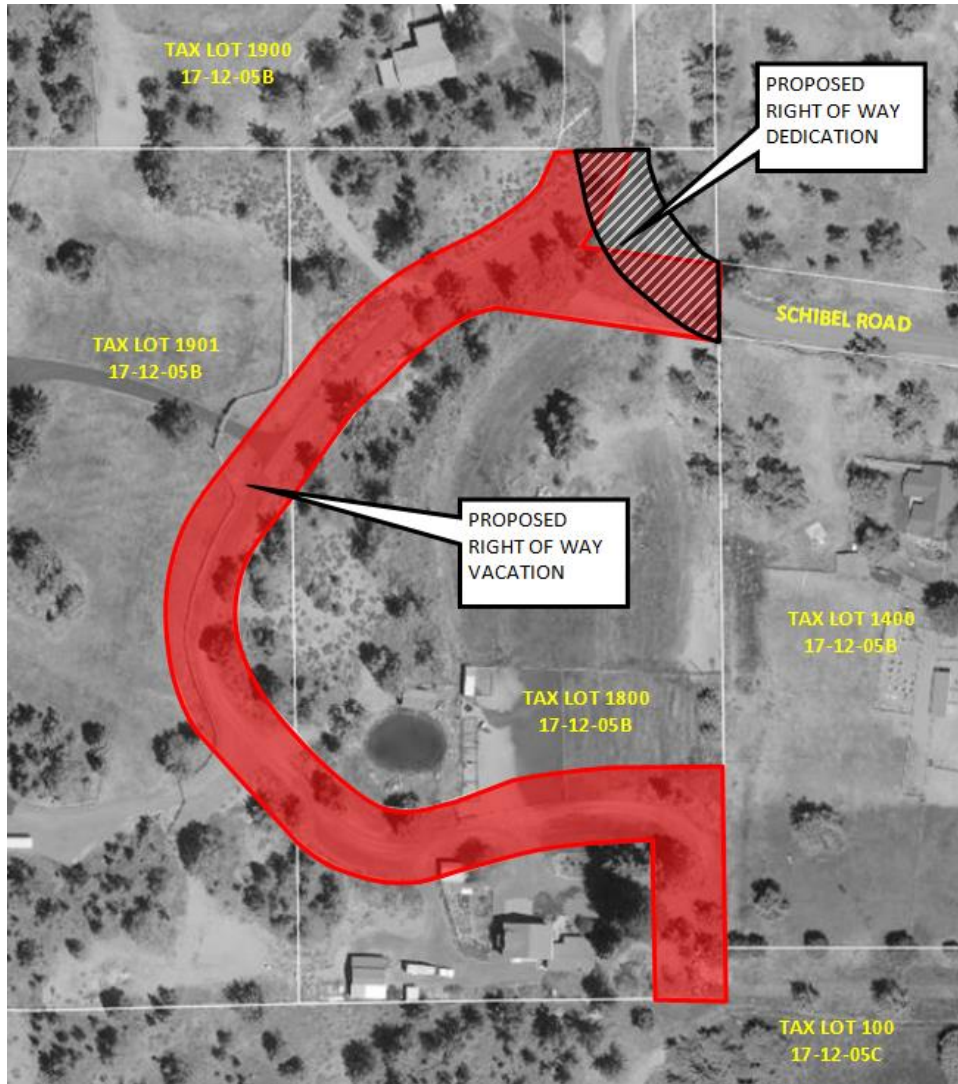
# Background Information



- Petitioners (as Abutting Property Owners per ORS 368.336)
  - Jeffrey and Kathryn Gates, owners of Tax Lot 1800 on Assessor's Map 17-12-05B (Chief Petitioner);
  - Marlene Wheeler Rennie, owner of Tax Lot 1901 and joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B; and
  - Terry A. Rennie, joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B.
- Abutting Property Owners, Not Petitioners
  - John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C



# Background Information



- Schibel Road

- Right of Way Width = 60 feet
- Local Access Road, various width pavement constructed by property owners.
- Created in 1994 by Dedication Deed (Deed No. 1994-46818). Chief Petitioners (Gates) were joint grantors of the dedication
- “Y” intersection right of way does not coincide with the as-travelled roadway. Chief Petitioners have provided offer to dedicate new right of way for northern Schibel Road alignment to coincide with as-travelled roadway.
- Proposed vacation would effectively landlock Tax Lot 1901, potentially depriving the owners of that property of access necessary for the exercise of their property right. Submitted petition included a loss of access consent form signed by the property owners.



# Background Information

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Petitioners provided the following reasons (in bold italics) for the proposed vacation:

- 1) Invalid Dedication due to Restrictions and Reservations –Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991. The Deed of Dedication was accepted in 1994 by Deschutes County. The 60 foot width encroaches upon the septic system that was approved by Deschutes County.***



# Background Information

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## Staff Response:

- Dedication of the subject portion of Schibel Road was valid, includes valid offer of the dedication by the owners and acceptance by the County governing body at the time of dedication
- It does appear that a portion of the disposal field and reserve area for the subject property's onsite wastewater system may exist within the proposed vacation area. Additionally, an outbuilding and a portion of a livestock corral also appear to exist within the proposed vacation area.
- Staff note that, while this situation encumbers both the public right of way and the underlying property, it does not invalidate the public road dedication.



# Background Information

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- 2) *Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 3) *Decades old trees and landscaping would be lost.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.





# Background Information

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- 4) Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.***

Staff Response: Road Department records indicate that no County-funded maintenance or improvement of the subject portion of Schibel Road has ever occurred; however, Road Department staff note that County-funded maintenance of a local access road is forbidden under state law and that absence of County-funded maintenance is not indicative of a necessity to vacate the public's interest in a property.



# Background Information

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- 5) The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.***

Staff Response: John Kevin O’Leary, owner of Tax Lot 100 on Assessor’s Map 17-12-05C, has indicated to Road Department staff that he has interest in using Schibel Rd for future access. Nonetheless, Road Department staff believe that, generally, the subject right of way has only been used to access Tax Lots 1800 and 1901 as indicated by the Petitioners. The primary access to Tax Lot 100 on Assessor’s Map 17-12-05C is from Old Bend Redmond Highway.



# Background Information



# Background Information

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- 6) *Traffic will increase, and no traffic study has been done that we know of.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 7) *Safety of the young children living on Schibel Road is a concern of the parents and neighbors.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.



# Background Information

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**8) *It is not in the General Public's best interest.***

Staff Response: The Board of County Commissioners will make this determination.



# Background Information

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- 9) Induced to sign dedication under false pretenses. We were told we could remove the southern portion of the dedication with a “single item deletion.”***

Staff Response: Current Road Department staff have no knowledge of the requirements or circumstances under which the subject right of way was dedicated in 1994. Road Department staff note that Jeffrey and Kathryn Gates, Chief Petitioners and owners of Tax Lot 1800 on Assessor’s Map 17-12-05B, were partial grantors for the 1994 dedication deed.



# Background Information

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***10) Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.***

Staff Response: The primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.



# Background Information

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- Service Providers
  - Avion Water – consent to the vacation
  - Central Electric Cooperative – consents to the vacation subject to easement granted by underlying property owners





# Public Comments

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- No written comments received by Road Department to date (8/9/2023) in response to hearing notice.
- Verbal comments provided by Terrie and Marlene Rennie (both petitioners) on 8/9/2023 in support of vacation.



# Findings

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- The proposed vacation area was dedicated to the public by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818 (ORS 368.326).
- Owners of a recorded property right that would potentially be deprived of access necessary for the exercise of that property right with the proposed vacation have consented to the proposed vacation (ORS 368.331).



# Findings

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- The Petitioners, who represent the owners of more than sixty (60) percent of property abutting the subject right of way, have submitted complete petitions and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS368.351).
- As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing (ORS 368.346).



# Findings

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- The subject right of way does not appear to be necessary for current or future public use.
- The subject right of way appears to coincide with onsite wastewater system components, an outbuilding, and other private property improvements for Tax Lot 1800 on Assessor's Map 17-12-05B.



# Recommendation

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- Road Department recommends:
  - **The proposed vacation is in the public interest.**
  - Board of County Commissioners adoption of a pending vacation order (Order No. 2023-017) that will be subject to the owners of Tax Lot 1800 (Gates) executing a dedication deed for the existing as-travelled north alignment of Schibel Road.



# Public Hearing

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- At this time, I request that the Board chair open the public hearing.
- After public testimony has been given today, I request that:
  - The Board Chair close the public hearing
  - The Board deliberate on the Road Department's recommendations

