

REVIEWED
LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Vacating Butte Drive in Deschutes
County, Oregon

*
*
*

ORDER NO. 2021-016

WHEREAS, proceedings for vacating Butte Drive, depicted and described in Exhibit "A" attached hereto and by this reference incorporated herein, were initiated by the Board of County Commissioners pursuant to ORS 368.341 upon the owners of property abutting said portion of Cook Avenue filing a petition, attached hereto as Exhibit "B" and by this reference incorporated herein, and upon adoption of Resolution No. 2021-024; and

WHEREAS, said petition contains the acknowledged signatures of owners of one hundred percent of property abutting said portion of Cook Avenue and indicates said owners' approval of vacation; and

WHEREAS, upon request by the Board of County Commissioners, the County Road Official has prepared and filed with the Board a written report, attached hereto as Exhibit "C" and by this reference incorporated herein, concerning the proposed vacation pursuant to ORS 368.346(1); and

WHEREAS, said report contains the County Road Official's assessment that the proposed vacation is in the public interest; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That vacation of the property described in the attached Exhibit "A" is in the public interest:

Section 2. That the property described in the attached Exhibit "A" is hereby vacated.

Section 3. That the property vacated in Section 2 herein shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

Section 4. That the Deschutes County Surveyor is directed to mark the plat as provided in ORS 271.230.

Section 5. That this Order shall be recorded with the Deschutes County Clerk, and that copies shall be filed with the Deschutes County Surveyor and County Assessor.

Dated this _____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

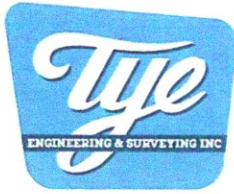
ANTHONY DEBONE, Chair

ATTEST:

PHIL CHANG, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner



TYE ENGINEERING & SURVEYING, INC.

725 NW Hill Street, Bend, Oregon 97703 • www.tyeengineering.com
Phone: 541-389-6959 • Fax: 541-385-1341

EXHIBIT "A"

ROAD VACATION

BUTTE DRIVE

LEGAL DESCRIPTION

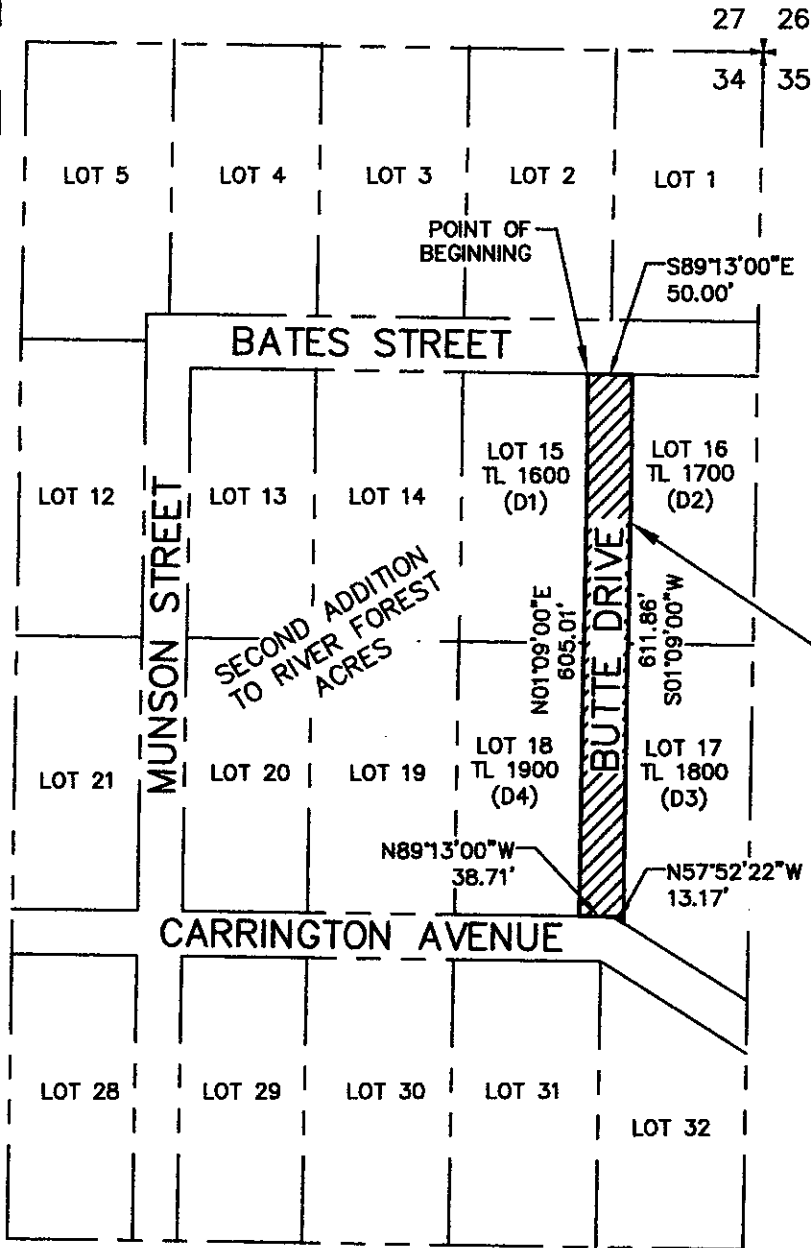
All of Butte Drive as dedicated in the plat of Second Addition to River Forest Acres, said plat filed with the Deschutes County Clerk's Office June 14, 1966, said plat further filed with the Deschutes County Surveyor's Office June 14, 1966 as file no. CS09339, being further described as follows:

BEGINNING at the Northeast corner of Lot 15, Second Addition to River Forest Acres, thence along the southerly right of way line of Bates Street, South $89^{\circ}13'00''$ East 50.00 feet to the Northwest corner of Lot 16; thence along the easterly right of way line of Butte Drive and the west line of Lots 16 and Lot 17, South $01^{\circ}09'00''$ West 611.86 feet, more or less to the Southwest corner of Lot 17 and a point on the northerly right of way line of Carrington Avenue; thence along the northerly right of way line of Carrington Avenue North $57^{\circ}52'22''$ West 13.17 feet, more or less; thence continuing along said northerly right of way line North $89^{\circ}13'00''$ West 38.71 feet, more or less to the Southeast corner of Lot 18 and a point on the westerly right of way line of Butte Drive; thence along said westerly right of way line and the east line of Lots 15 and 18, North $01^{\circ}09'00''$ East 605.01 feet, more or less to the Northeast corner of Lot 15 and the POINT OF BEGINNING.



RENEWS: 12/31/21

ROAD VACATION – BUTTE DRIVE
 LOCATED IN THE NE 1/4 OF SECTION 34, T. 20 S.,
 R. 10 E., W.M., DESCHUTES COUNTY, OREGON



(D1)
 LOT 15 – TAX LOT 1600
 NICHOLAS & KAYLA ROTUNNO
 16377 BATES STREET
 BEND, OREGON 97707

(D2)
 LOT 16 – TAX LOT 1700
 PATRICK & DEBBIE SMITH
 16391 BATES STREET
 BEND, OREGON 97707

(D3)
 LOT 17 – TAX LOT 1800
 THOMAS WILKERSON REVOCABLE
 TRUST
 P.O. BOX 4839
 SUNRIVER, OREGON 97707

(D4)
 LOT 18 – TAX LOT 1900
 VINCE & JULIE BARGHIGIANI
 15940 NW RYEGRASS STREET
 PORTLAND, OREGON 97229

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR



OREGON
 May 12, 2010
 DIRK P. DURYEE
 65694PLS

RENEWS: 12/31/21



TYE ENGINEERING, INC.

725 NW HILL, BEND, OREGON 97703 (541) 389-6959

DATE: 03-30-2021

SCALE: 1"=200'

DRAWN BY: P.A.T.

JOB: 2662-WILKERSON

2662-02_Wilkerson road vacation.dwg

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

We, the undersigned (holding recorded interest or abutting the proposed property or owning improvements constructed on the proposed property for vacation), respectfully request the following described road be vacated.

Description of road to be vacated: All of Butte Drive as dedicated in the plat of the Second Addition to River Forest Acres (legal description attached.) Butte Drive, a 600 plus foot undeveloped easement running roughly north south between Bates Street and Carrington Avenue, was not improved due to a rock dome approximately 200 feet north of Carrington Avenue. The four lots overlaying the easement have access, with utilities from, Carrington Avenue or Bates Street.

Reason for road vacation request: 55150 Butte Drive was originally 16394 Carrington Avenue, having been changed March 31, 2016, then was given an Access-Driveway Permit on 4/19/2016. The reason for these changes was a large rock dome along Carrington Avenue preventing access and utilities to lot 17. Using the Butte Drive easement as a driveway allowed the lot to be developed and a driveway was installed and paved in 2018. Since then, the driveway has been assumed to be Butte Drive which shows on maps as a through road. All four abutting owners would like to prevent any future misunderstanding of the purpose of this area and re-establish the adjacent private property boundaries for the exclusive use of the owners. Although Deschutes County has an ordinance prohibiting camping on county roads, and the chances are small it would happen, there has been a trailer parked on the easement in the past (2016) for several weeks. The adjacent lots are fully developed and Butte Drive has no future use.

Contact on this vacation was first made with the Road Department in April 2019 when the petitioner was told it wasn't worth pursuing due to future utilities and development needs. The power grid for this area runs north/south along Forest Lane and east/west along Bates Street and Carrington Avenue. Butte Drive has never had any utilities within the easement and since all four abutting lots are developed, will never have any utility easements.

After some reflection and a few cars trying to pass through Butte Drive the petitioner again made contact with the Road Department on April 15, 2020. On October 12, 2020 a response was received, this time saying the Road Department cannot recommend the Vacation of Butte Drive due to fire danger. (I believe between Covid 19, summer business and this being a low priority issue the response delay was understandable.) Just to clarify, my initial inquiries we made in regards to only the section of Butte Drive adjacent to my property (55150 Butte Drive.) This petition includes the whole of Butte Drive and is representing all four property owners with abutment to Butte Drive.





There are fire exits for River Forest Acres on the west end of Bates Street and off Forest Lane south both using secondary roads to access State Rec Road to the south or South Century Drive (42) to the north. Forest Lane also leads north to South Century Drive and can provide additional access north through River Meadows Subdivision. Developing Butte Drive to add to this exit grid provides no advantage to these routes. (Map attached)

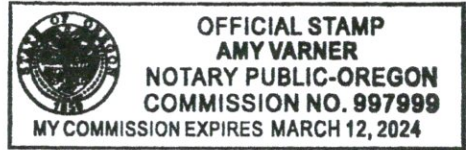
A Side Note: It may be necessary to return the address of 55150 Butte Drive to the original 16394 Carrington Street to eliminate confusion and remove Butte Drive from all maps.

Thank you for your time, Tom Wilkerson, lead petitioner



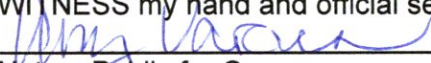
DATED this 20th day of March, 2021

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
Nicholas Rotunno		16377 Bates Street	Bend	OR. 97707
Patrick Smith		16391 Bates Street	Bend	OR. 97707
Vince Barghigiani		16382 Carrington Ave.	Bend	OR 97707
Thomas L Wilkerson		55150 Butte Drive	Bend	OR. 97707



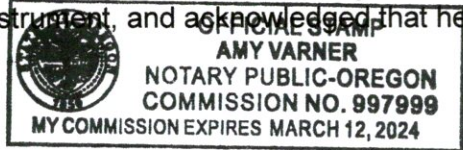
STATE OF OREGON)
 County of Deschutes) ss.

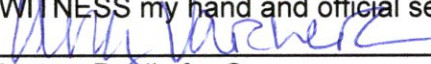
On this 20 day of March, in the year 2021, before me, a Notary Public, personally appeared Nicholas Rotunno personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: March 12, 2024

STATE OF OREGON)
 County of Deschutes) ss.

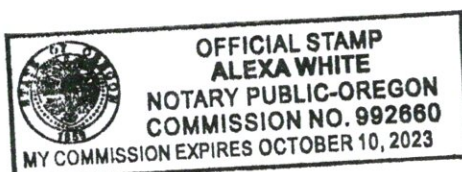
On this 22 day of March, in the year 2021, before me, a Notary Public, personally appeared Patrick Smith personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

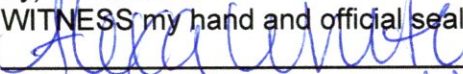


WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: March 12, 2024

STATE OF OREGON)
 County of Deschutes) ss.

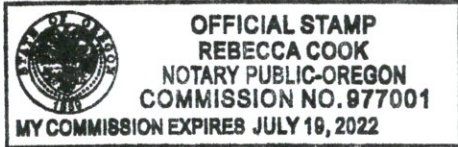
On this 25 day of March, in the year 2021, before me, a Notary Public, personally appeared Vince Barghigiani personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: 10/10/2023

STATE OF OREGON)
County of Deschutes) ss.

On this 24 day of March, in the year 2021, before me, a Notary Public, personally appeared Thomas L Wilkerson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal
Rebecca Cook
Notary Public for Oregon.
My Commission expires: 7-19-2022

I CERTIFY THAT THIS IS THE TRUE AND ORIGINAL PETITION CIRCULATED BY ME.

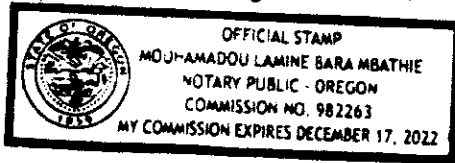
[Signature]
SIGNATURE
55150 BUTTE DRIVE
ADDRESS
TELEPHONE: 541-480-6135

DATED this 28th day of July, 2021

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
Kayla J Rotunno		16377 Bates Street	Bend	OR. 97707
Maryann C Sinkler	<u>Maryann C Sinkler</u>	16377 Bates Street	Bend	OR. 97707
Steven J Sinkler	<u>[Signature]</u>	16377 Bates Street	Bend	OR. 97707
Debbie J Smith	_____	16391 Bates Street	Bend	OR. 97707
Julie Barghigiani	_____	16382 Carrington Ave.	Bend	OR 97707

STATE OF OREGON)
 County of Clatsop) ss.

On this 29 day of July, in the year 2021, before me, a Notary Public, personally appeared Maryann C Sinkler personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

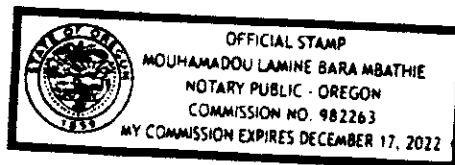


WITNESS my hand and official seal
[Signature]
 Notary Public for Oregon.
 My Commission expires: December 17 2022


STATE OF OREGON)
 County of Clatsop) ss.

On this 29 day of July, in the year 2021, before me, a Notary Public, personally appeared Steven J Sinkler personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal
[Signature]
 Notary Public for Oregon.
 My Commission expires: December 17 2022

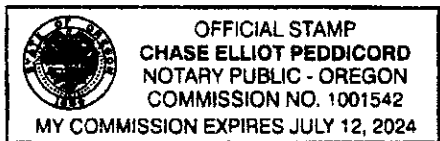


DATED this 28th day of July, 2021

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
Kayla J Rotunno	_____	16377 Bates Street	Bend	OR. 97707
Maryann C Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Steven J Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Debbie J Smith	_____	16391 Bates Street	Bend	OR. 97707
Julie Barghigiani		16382 Carrington Ave.	Bend	OR 97707

STATE OF OREGON)
) ss.
 County of Washington)

On this 31st day of July, in the year 2021, before me, a Notary Public, personally appeared Julie Barghigiani personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal
Chase Elliot Peddicord
 Notary Public for Oregon.
 My Commission expires: 07/12/2024


STATE OF OREGON)
) ss.
 County of _____)

On this ____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

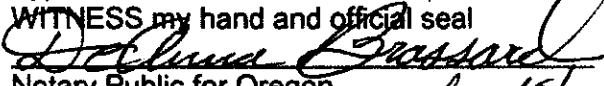
 Notary Public for Oregon.
 My Commission expires: _____

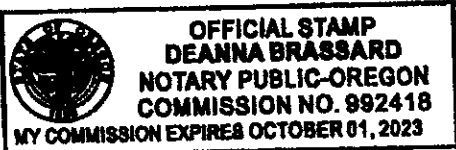
DATED this 28th day of July, 2021

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
Kayla J Rotunno	_____	16377 Bates Street	Bend	OR. 97707
Maryann C Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Steven J Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Debbie J Smith		16391 Bates Street	Bend	OR. 97707
Julie Barghigiani	_____	16382 Carrington Ave.	Bend	OR 97707

STATE OF OREGON)
 County of Deschutes) ss.

On this ²⁰²¹ 6th day of August, in the year 2021, before me, a Notary Public, personally appeared Debbie J Smith personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: Oct 1st, 2023 ²⁰²³



STATE OF OREGON)
 County of _____) ss.

On this ____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

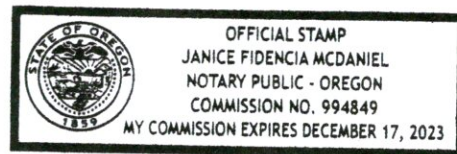
WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: _____

DATED this 28th day of July, 2021

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
Kayla J Rotunno	<u>Kayla J. Rotunno</u>	16377 Bates Street	Bend	OR. 97707
Maryann C Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Steven J Sinkler	_____	16377 Bates Street	Bend	OR. 97707
Debbie J Smith	_____	16391 Bates Street	Bend	OR. 97707
Julie Barghigiani	_____	16382 Carrington Ave.	Bend	OR 97707

STATE OF OREGON)
)
 County of Deschutes) ss.



On this 6 day of August, in the year 2021, before me, a Notary Public, personally appeared Kayla J Rotunno only personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal
Janice McDaniel
 Notary Public for Oregon.
 My Commission expires: 12-17-2023

STATE OF OREGON)
)
 County of _____) ss.

On this ____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

 Notary Public for Oregon.
 My Commission expires: _____



MEMORANDUM

TO: Board of County Commissioners

FROM: Cody Smith, County Engineer, Deschutes County Road Department

DATE: August 23, 2021

SUBJECT: Road Official's Report
Vacation of Butte Drive in Section 34, Township 20 South, Range 10 East

Background:

Deschutes County Road Department has received a petition to vacate the public right of way for Butte Drive. Petitioners for the vacation are:

- Thomas L. Wilkerson (Chief Petitioner), sole trustee of the Thomas L. Wilkerson Revocable Trust, owner of Tax Lot 1800 on Assessor's Map 20-10-34A (Lot 17; 55150 Butte Drive, Bend, Oregon)
- Nicholas C. and Kayla J. Rotunno and Steven J. and Maryann C. Sinkler, owners of Tax Lot 1600 on Assessor's Map 20-10-34A (Lot 15; 16377 Bates Drive, Bend, Oregon)
- Patrick D. and Debbie J. Smith, owners of Tax Lot 1700 on Assessor's Map 20-10-34A (Lot 16; 16391 Bates Drive, Bend, Oregon)
- Vince and Julie Barghigiani, owners of Tax Lot 1900 on Assessor's Map 20-10-34A (Lot 18; 1632 Carrington Avenue, Bend, Oregon)

These tax lots comprise all of the abutting or underlying properties to the subject right of way.

The subject right of way was established in 1966 by the *Second Addition to River Forest Acres* plat (Deschutes County Official Records Document No. 1966-000010). The right of way is 50 ft. in width and connects Bates Road to Carrington Drive. The northerly portion of Butte Drive adjacent to Tax Lots 1600 and 1700 consists of a cinder road providing access from Bates Street to those adjacent lots. Within the southerly portion of Butte Drive adjacent to Tax Lots 1800 and 1900, a paved driveway approach exists providing access from Carrington Drive to Tax Lot 1800. Approximately 70 ft. north of the northern terminus of the paved driveway approach, a large rock outcropping exists which prevents vehicles from driving through on Butte Drive between Carrington Drive and Bates Street. Utilities located within the right of way of Butte Drive appear to consist of power and communication facilities providing service to the adjacent lots. Butte Drive exists within the River Forest Acres Special Road District, but the District does not maintain the road.

The Petitioners have requested the vacation for the following reason:

"55150 Butte Drive was originally 16394 Carrington Avenue, having been changed March 31, 2016, then was given an Access-Driveway Permit on 4/19/2016. The reason for these changes was a large rock dome along Carrington Drive preventing access and utilities to lot 17. Using the Butte Drive easement as a driveway allowed the lot to be developed and a driveway was installed and paved in 2018. Since then, the driveway has been assumed to be Butte Drive which shows on maps as a through road. All four abutting property owners would like to prevent any future misunderstanding of the purpose of this area and re-establish the adjacent private property boundaries for the exclusive use of the owners...there has been a trailer parked on the easement in the past (2016) for several weeks. The adjacent lots are fully developed and Butte Drive has no future use."

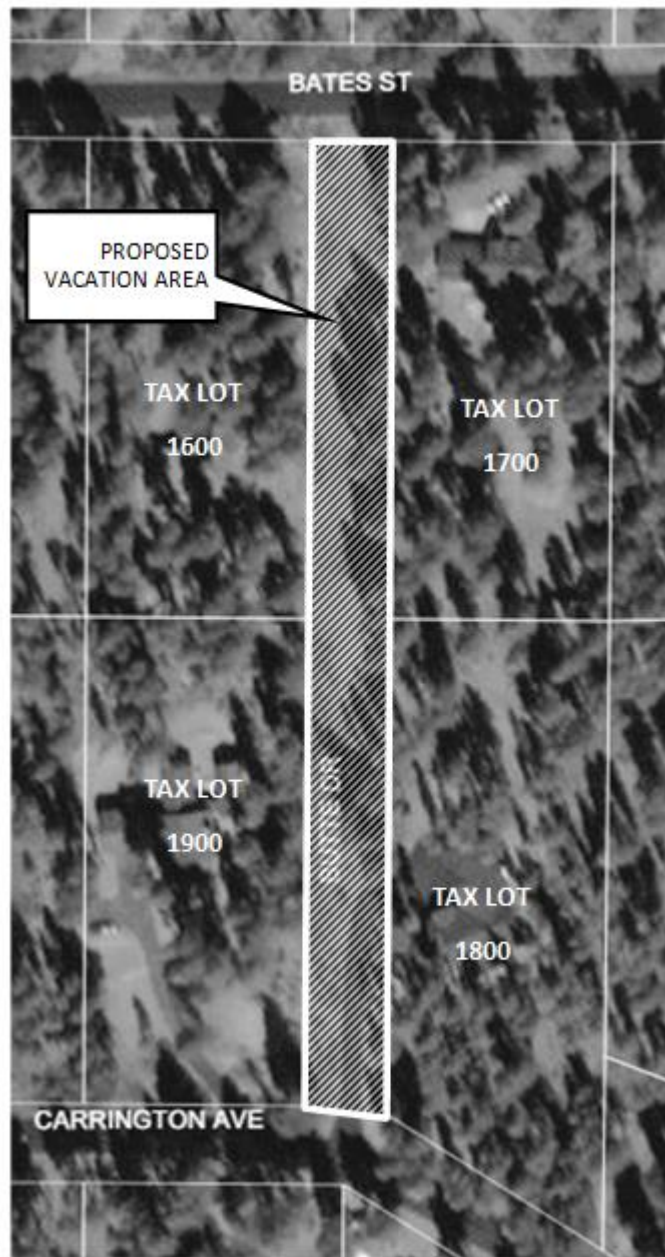


Figure 1 –Aerial Photo of Proposed Vacation Area

The petition included service provider consent forms from the following service providers, who indicated the following:

- *River Forest Acres Special Road District* – Consents to the proposed vacation
- *Midstate Electric Cooperative* – Does not have existing facilities within the area proposed for vacation; consents to the proposed vacation

The Road Department mailed preliminary notices of the proposed vacation to affected property owners, utilities, and agencies. The following notified parties did not provide a response:

- *Patrick D. and Debbie J. Smith*
- *Thomas Wilkerson Revocable Trust*
- *Vince and Julie Barghigiani*
- *Nicholas C. and Kayla J. Rotunno, et al*
- *River Forest Acres Special Road District*
- *Bend Broadband*
- *Midstate Electric Cooperative*
- *Deschutes County Community Development Department*
- *Deschutes County Legal Counsel*

Findings:

Based upon the submitted petition materials, responses to the preliminary notices, and the Road Department's research of the subject right of way, the Road Department finds that:

- The subject right of way was dedicated to the public on the *Second Addition to River Forest Acres* plat recorded as Document No. 1966-000010 in the office of the County Clerk, Deschutes County, Oregon (ORS 368.326).
- The proposed vacation will not deprive access to any owners of a recorded property right (ORS 368.331).
- The petitioners, who represent 100 percent of the owners of property abutting the subject right of way, have submitted a complete petition and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS368.351).
- The subject right of way does not appear to contain any utilities or other facilities, other than private utility services for the adjacent properties.
- The subject right of way does not appear to be needed for current or future public use.

Recommendation:

Based on the above findings, the Road Department has determined that the proposed vacation is in the public interest. The Road Department recommends that the Board of County Commissioners approve the vacation of the right of way of Butte Drive as described in proposed Order No. 2021-016 subject to the following conditions:

1. No opposition to the vacation is reported to the County prior to vacation order presentation to the Board of County Commissioners.
2. The vacated property shall vest in the rightful owner(s) holding title according to law pursuant to ORS 368.366 (1)(c).

This report is made pursuant to ORS 368.326 through 368.366, concerning the vacation of county property.