



## PROCEDURE FOR VACATION OF PUBLIC ROADS UNDER COUNTY JURISDICTION

DATE: July 21, 2022  
TO: All Interested Parties  
FROM: Cody Smith, County Engineer

Oregon Revised Statutes (ORS) 368.326 to 368.366 provide the legal procedure for Oregon counties to vacate public roads, public property, or other public property interest under their jurisdiction. Vacation of public road rights-of-way or appurtenant public easements (i.e., slope easements) under Deschutes County jurisdiction are administered by the Deschutes County Road Department. Generally, the procedure is used to vacate public road rights-of-way that are no longer required for public use upon request from one or more abutting or underlying property owners. The process for abutting property owners to request vacation of a public road right-of-way under Deschutes County jurisdiction is as follows:

### PETITION

A formal vacation request is made by one or more abutting or underlying property owners (“petitioners”) when they submit a petition package in a form acceptable to the Road Department. The petition form, which is provided by the Road Department upon request (sample form attached), must include the following:

- A written description of the reason for the requested vacation.
- The names and addresses of:
  - All persons holding any recorded underlying interest in the public right-of-way proposed to be vacated.
  - All persons owning any real property abutting the public right-of-way proposed to be vacated.
  - All persons owning any improvements existing within the public right-of-way proposed to be vacated.
- Notarized signatures by:
  - The owners of at least 60 percent of the land abutting the public right of way, or
  - 60 percent of the owners of land abutting the right of way.

Additionally, the following materials must accompany the completed petition form to provide for a complete petition package:

- Applicable Road Department vacation processing fee. The current fees (effective July 1, 2022) are as follows:
  - Road vacations that do not require a public hearing.....\$1,000.00
  - Road vacations that do require a public hearing.....\$1,600.00
- Legal description of the proposed vacation area on 8½ inch by 11 inch paper prepared, stamped, and signed by a licensed professional land surveyor.
- Map of the proposed vacation area on 8½ inch by 11 inch paper prepared, stamped, and signed by a licensed professional land surveyor.
- If the petition is for vacation of property that will be redivided in any manner, a subdivision plan or partitioning plan showing the proposed redivision.
- If the petition is for vacation of a public road right-of-way that will be realigned through a proposed land use action, a map and other relevant materials for the proposed land use action.
- Completed service provider consent forms from all affected utility service providers, irrigation districts, special road districts, and municipalities (see below for further information).
- Completed loss of access right consent forms with notarized signatures by all affected property owners (if applicable, see below for further information).

#### LOSS OF ACCESS RIGHTS

If a proposed vacation would deprive any property owner of legal access necessary for that property owner to exercise their property right, the petitioners must include completed loss of access right consent forms with notarized signatures from all affected property owners. A template loss of access right consent form will be provided with the petition form by the Road Department when requested (sample form attached).

#### SERVICE PROVIDER CONSENT

In addition to providing for public travel, public road rights-of-way also provide for utilities which operate within public rights-of-way under provisions in State law and County-issued permits, and the Road Department must ensure that affected utility service provider concerns are taken into consideration during vacation proceedings. Utility service providers include operators of transmission facilities for power, natural gas, domestic water, irrigation water, wastewater, telephone, internet, cable television, and other services.

Additionally, many public roads under the County’s jurisdiction exist within special road districts that provide for maintenance and improvement of public roads within their district boundaries.

Petitioners are asked to:

- Determine all utility service providers who either have facilities located within the proposed vacation area or whose service area includes the proposed vacation area. Petitioners can contact the Oregon Utility Notification Center at (800) 332-2344 to

determine which utility service providers have services areas that cover the proposed vacation area.

- Determine if the proposed vacation area exists within the boundaries of a special road district.
- Provide all affected service providers, including utilities and special road districts, with a service provider consent form (template consent form will be provide with the petition form, sample form attached) that will be completed by the service provider and returned to the petitioner(s).
- Include all responsive service provider consent forms with the submitted petition package.
- Upon request by an affected utility service provider, cause for an utility easement to be granted by the property owner with whom the vacated area will be vested (see below) and recorded in the Deschutes County Clerk's office to the satisfaction of the utility service provider.

State law does not require that all of the steps above be completed by the petitioners; however, the Road Department strongly encourages that petitioners complete these steps to ensure that service provider concerns are addressed prior to initiation of vacation proceedings. Generally, Deschutes County does not reserve utility easements with vacations, as termination of those easements would require additional legislative action by the County. If service provider concerns are not addressed prior to vacation proceedings, the Road Department will not be able to recommend to the Board of County Commissioners that the proposed vacation is in the public's interest, which will result in the matter being adjudicated in a public hearing.

### SIGNATURES

Acceptable petitions must include notarized signatures by either:

1. the owners of at least 60 percent of the land abutting the public right of way, OR
2. 60 percent of the owners of land abutting the right of way.

All owners of an abutting property whose names appear on the current deed for that property must sign the petition in order for that property to be included in the total percentage under Item Number 1 above (for example, if John and Jane Doe jointly own an abutting property, they must both sign the petition).

For abutting properties owned by a trust, all trustees must sign the petition as trustees for that property to be included in the total percentage under Item Number 1 above. Trustee signatures can be substituted by authorized representative signatures if the trust document or a power of attorney document is submitted with the petition that provides for the authorized representative's signature on one or more trustees' behalf.

Electronic petitioner signatures can only be accepted using in-person electronic notarization or remote online notarization.

### ROAD DEPARTMENT PROCESSING

Upon submission of a complete petition package by the petitioner(s), the Road Department will process the petition package as follows:

- Verify the names, addresses, and signatures on the petition form.
- Forward the legal description and map prepared by a licensed professional land surveyor to the County Surveyor's Office for review.
- Research the abutting and underlying properties and the established right of way.
- Conduct a field inspection of the area proposed for vacation.
- Send notice of the proposed vacation to affected property owners, service providers, and municipalities.
- Prepare a road official's report, which will include a summary of the matter, findings, and a recommendation as to whether or not the vacation is in the public's interest.
- Present a resolution to initiate vacation proceedings to the Board of County Commissioners for consideration.

A recommendation by the Road Department to the Board of County Commissioners that a proposed vacation is in the public's interest is typically based on the following findings:

- In regards to abutting property owner consent:
  - The Petitioners, who represent 100 percent of the owners of property abutting the subject right of way, have submitted a complete petition; or
  - Upon notice, abutting property owners who are not parties to the petition have not provided comments in opposition to the proposed vacation to the Road Department.
- In regards to loss of access rights:
  - No owners of a recorded property right would be deprived of access necessary for the exercise of their property right with the proposed vacation if implemented; or
  - Owners of a recorded property right who would be deprived of access necessary for the exercise of their property right with the proposed vacation if implemented have consented to the vacation.
- In regards to utilities, the area proposed for vacation
  - Contains no utilities; or
  - Contains utilities within existing easements created by separate instruments that will not terminate upon vacation of the public right-of-way; or
  - Upon notice, no utility service providers have provided comments in opposition to the proposed vacation to the Road Department.

Additional findings for Road Department recommendation that a proposed vacation is in the public's interest may include:

- No public road improvements exist within the proposed vacation area.
- The proposed vacation would provide for development of the abutting properties in accordance with state and local law.

#### VACATION PROCEEDINGS WITHOUT PUBLIC HEARING

Vacation proceedings occur during regularly-scheduled Wednesday meetings of the Board of County Commissioners. When all of the following items have occurred, vacation proceedings typically occur during one Board of County Commissioner's meeting without a public hearing:

- The Petitioners, who represent 100 percent of the owners of property abutting the subject right of way, have submitted a complete petition.
- The Road Department has recommended that the proposed vacation is in the public's interest.
- The County has not received any adverse comments from interested members of the public regarding the proposed vacation.

When no public hearing is required, the time between the Road Department's receipt of a complete petition package and the completion of vacation proceedings is generally six to eight weeks.

#### VACATION PROCEEDINGS WITH PUBLIC HEARING

When any one of the three items above have not occurred, a public hearing is required. The public hearing date is set with a resolution adopted by the Board of County Commissioners during a regularly-scheduled Wednesday meeting. The public hearing date is scheduled a minimum of 20 days after the resolution is adopted to provide sufficient time for the Road Department to issue notice as required under State law. The public hearing will occur during a subsequent regularly-scheduled Wednesday meeting of the Board of County Commissioners.

When a public hearing is required, the time between the Road Department's receipt of a complete petition package and the completion of vacation proceedings can be twelve weeks or more.

#### VACATION ORDER

Upon completion of vacation proceedings, the Board of County Commissioners will adopt an order to either vacate the subject right-of-way or to deny the proposed vacation. The vacation order will be recorded with the Deschutes County Clerk's Office.

#### VACATION OF COUNTY ROADS WITHIN CITY LIMITS

Vacation of county roads within the limits of an incorporated city require intergovernmental vacation proceedings, where by one of the following processes must occur:

- The city must conduct separate vacation proceedings in addition to the County vacation proceedings; or
- The County and city must conduct joint vacation proceedings; or
- The city governing body must adopt an order or resolution concurring with the findings of the County's vacation proceedings; or
- The County and city must conduct jurisdictional transfer proceedings to transfer jurisdiction of the right of way from the County to the city, then the city conducts vacation proceedings.

The process used will be established by both the city and County prior to initiating vacation proceedings.

#### VESTING OF VACATED PROPERTY

When a public road right-of-way under County jurisdiction is vacated, the vacated property vests as follows according to State law:

- If the County holds title to the property in fee, the property shall vest in the County.
- The vacated property shall vest in the rightful owner holding title according to law.
- Unless otherwise described above, vacated property shall vest in the owner of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property.

State law does authorize the Board of County Commissioners to determine the vesting of property in a vacation order. Vesting in a manner other than those described above requires consent by the rightful owner holding title according to law and the abutting property owners given explicitly in writing with notarized signatures in the submitted petition package.

#### EXAMPLE DOCUMENTS

Example forms are attached. To receive actual forms for a petition package submittal or for further information, please contact the Deschutes County Road Department at 541-388-6581 or [road@deschutes.org](mailto:road@deschutes.org).

**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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Located in \_\_\_\_\_, Deschutes County.

Reason for road vacation request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE ZIP
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



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: \_\_\_\_\_

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.

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\_\_\_\_\_  
Notary Public for Oregon.  
My Commission expires: \_\_\_\_\_

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  )    ss.  
County of \_\_\_\_\_ )

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  )    ss.  
County of \_\_\_\_\_ )

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WITNESS my hand and official seal  
\_\_\_\_\_  
Notary Public for Oregon.  
My Commission expires: \_\_\_\_\_

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

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**ADDRESS**

**TELEPHONE:** \_\_\_\_\_



**VACATION LOSS OF ACCESS CONSENT FORM**

I, *<Type Property Owners Name>*, am the owner of Tax Lot *<Type Tax Lot Number>* in Deschutes County, Oregon. The proposed road vacation of some portion of *<Type Road Name>* will deprive me of access to a public road necessary for the exercise of my recorded property right.

According to Oregon Revised Statutes 368.331:

**368.331 Limitation on use of vacation proceedings to eliminate access.** *A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner.*

I hereby give the Board of County Commissioners of Deschutes County, Oregon consent to proceed with the proposed road vacation of some portion of *<Type Road Name>*.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*<Type Property Owners Name>*

STATE OF OREGON                                 )  
  )  
County of Deschutes                             )      SS.

The foregoing instrument was acknowledged before me by \_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
MY COMMISSION EXPIRES: \_\_\_\_\_

**SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION**

\_\_\_\_\_, as Chief Petitioner, intends to submit a petition for Deschutes  
(Chief Petitioner's Name)

County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider, \_\_\_\_\_  
(Service Provider Name)

- Does not have existing facilities within the area proposed for vacation.
- Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, \_\_\_\_\_  
(Service Provider Name)

- Consents to the vacation of this section of public right of way.
- Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.
- Does not consent to the proposed right of way vacation for the following reason:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name of Service Provider Representative

\_\_\_\_\_  
Representative's Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date