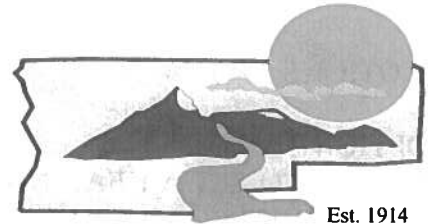


JEFFERSON COUNTY

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MEMORANDUM

DATE: May 19, 2022
FROM: Alexa Gassner, County Counsel
TO: Jefferson County Board of Commissioners
RE: Petition to Vacate a Portion of County Road No. 577

The Three Rivers Landowner's Association (TRLA) has filed a petition, through their attorney, Michael Peterkin, to vacate the portion of County Road No. 577 (CR577) that runs from the eastern boundary of TRLA to Lake Billy Chinook. The petition is attached as Exhibit A to Mr. Powlison's report for your reference. One hundred percent of abutting property owners indicated approval of the vacation in the exhibits to the petition. This Board may hold a hearing or proceed without a hearing pursuant to ORS 368.351.

ORS 368.356 requires the Board enter an order granting or denying the vacation petition. If the vacation is granted, the property upon which the road is located will be vested in accordance with ORS 368.366. If a vacation of this certain portion of CR577 is denied, the status of the road will not change from its current status absent further action by this Board or a court.

The only standard by which the Board has to determine whether to vacate the road is whether the proposed vacation is in the public interest (ORS 368.356(1)). Mr. Powlison's report concludes that vacation of CR577 is not in the public interest. If this Board denies the vacation petition, it may adopt the findings in Mr. Powlison's report. In the alternative, if this Board grants the vacation petition, it may adopt findings that vacation is in the public interest. Those findings may include:

- There is not present or future public need for the right of way as it does not integrate with the existing transportation system, nor does it provide access for any particular use.
- The right of way creates vehicular safety issues at the point which it intersects Lakeview Drive, after which the alignment of the right of way is in question.
- There will be no adverse impact to adjacent properties.
- The right of way is impacted by existing structures and the vacated land will be put to more productive use by the underlying property owner.
- The vacation of the right of way is supported by the Confederated Tribes of the Warm Springs Reservation as indicated in its letter dated February 16, 2016 as consistent with its wildlife, water quality and fish habitat management goals.



February 16, 2016

Jefferson County Board of Commissioners
c/o Barbara Andresen
66 SE D Street
Madras, Oregon 97741

Re: Petition for Vacation of County Road 577 within Three Rivers

Dear Board of Commissioners:

This office represents the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). The purpose of this letter is to comment on the Petition filed by Three Rivers Landowners Association ("Three Rivers LOA") seeking to vacate a road labeled as County Road 577 within the Three Rivers LOA boundary. The Tribe is a nearby property owner and, as it has testified numerous times before the County, has management responsibilities and federally protected interests in the vicinity of the petition. For the foregoing reasons, the Tribe believes that, from a resource management perspective, vacation of the road is in the public interest.

The Tribe is the political and legal successor to the tribal signatories of the June 25, 1855, Treaty with the Tribes of Middle Oregon, 12 Stat., 963 ("1855 Treaty"). In the 1855 Treaty, the Tribe reserved the right to hunt on all open and unclaimed lands in the lands it had ceded to the United States. The Treaty "secure[s]" the "privilege of hunting * * * on unclaimed lands, in common with citizens * * *." Hunting big game, in particular elk and deer, both on and off the Reservation is an important subsistence activity for tribal members. Conflicting uses, such as improved roadways and increased traffic, would degrade the range area critical for the health of these herds and could have significant environmental, economic, and social impacts to the Tribe.

It is more consistent with public interest goals embodied in wildlife management policies and programs to prevent further public access through this area. The area of the road in question is within the County's wildlife overlay (WA) zone and is adjacent to federal lands and near a location known for cross-river migration of the herds to and from tribal lands. The WA zone, the County's primary management tool to help prevent the further deterioration of big game habitat, given the range of the herds, works in concert with adjacent federal lands management and with tribal land management. Although the precise area in question is already disturbed with private area residential development, increased public vehicular access through the area via a public county road is inconsistent with management of the herds, the WA zone, and the land management policies for federal and tribal lands.

The Tribe also has direct interests in ensuring that development proposals do not adversely impact water quality or fish habitat in Lake Billy Chinook. It is the Tribe's understanding that if the road is not vacated, the adjacent property owner will seek to improve the road to gain access

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February 16, 2016

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to the Metolius arm of Lake Billy Chinook and also, perhaps, construct a parking area for such access. Lake Billy Chinook, which is directly adjacent to the Warm Springs Reservation, provides habitat for bull trout, steelhead, and other anadromous and resident fish species. As you are likely aware, bull trout and steelhead are two species listed as threatened under the Endangered Species Act (ESA). As a co-manager of these species along with ODFW, the Tribe seeks to facilitate the long term recovery of these species and to enhance habitat conditions for all aquatic species in the lake. This not only furthers natural resource goals, but helps to protect the Tribe's cultural and historic reliance on aquatic species for sustenance and for economic opportunities. Accordingly, water quality and the quality of riparian areas are extremely important to accomplish these goals. Improving and widening the road and increased vehicular and public access to the shoreline and parking areas nearby will result in increased run off, disturbance and degradation of vegetation and increased erosion within the riparian area which will adversely impact water resources and aquatic habitat. Accordingly, it would be inconsistent with public health and environmental quality policies to allow any future road development/public access connections in this area.

Finally, there are two archeological resources within the vicinity of this road area. Section 429.2 of the JCZO provides:

"Jefferson County shall refrain from dissemination of site-specific inventory information concerning identified archeological sites except as required by Oregon Public Records Law. Rather, Jefferson County shall manage development in these areas so as to preserve their value as archeological resources.

A purpose for this provision is to prevent the vandalism and/or theft of archaeological resources. The unfortunate fact is that disseminating site specific information can lead to such destructive acts and undermine preservation of these important cultural resources. Increased public access to areas where there are archeological resources also unfortunately inevitably increases public discovery of them and the increased likelihood of further disturbance.

The area of the road identified for vacation is in a sensitive resource area from a cultural resource, water and aquatic resource/riparian, and wildlife resource perspective. In each instance, increased public and vehicular access and ground disturbance is inconsistent with the management strategies for these resources. The public interest would be served by the vacation of this portion of the road. Conversely, the recognition and improvement of the road would necessarily be inconsistent with the public interest.

Regards,



ELLEN H. GROVER