

**COMMISSIONERS' MINUTES
KITITITAS COUNTY, WASHINGTON
COMMISSIONERS AUDITORIUM
SPECIAL MEETING**

THURSDAY

2:30 P.M.

OCTOBER 7, 2010

Board members present: Chairman Mark McClain; Vice-Chairman Paul Jewell and Commissioner Alan Crankovich.

Others: Mandy Robinson, Deputy Clerk of the Board; Stephanie Happold, Deputy Prosecutor; and three members of the public.

SPECIAL MEETING

MAUGHAN PUBLIC ACCESS

COMMISSIONERS

At 2:30 p.m. **Chairman McClain** opened a Special Meeting to discuss with Mr. Maughan and Mr. Nelson (Encompass Engineering and Surveying) a concern they expressed through Public Works. He noted that Stephanie Happold had requested the meeting and would be giving a brief overview so the Board could give direction.

Ms. Happold indicated that Public Works had contacted the Prosecutor's Office to look into the concerns expressed. Her and Mr. Zempel met with Mr. Maughan and Mr. Nelson at Mr. Maughan's property to look at the roads in question. She indicated that Mr. Maughan and Mr. Nelson were here to give a more thorough historical background of the road and the public's use of them. She explained that the roads in question were shown on the map she presented to the Board. She explained that Mr. Maughan's property is a camping area where people can fish, float the river, have picnics, etc. It is right next to BLM's Umptanum recreation area. She indicated that all old surveys of the area have shown Mr. Maughan's property to be south of SR 821 and right up to the edge of the road. However a survey was done recently by the federal government that showed the old surveys were incorrect, and the BLM actually owned a sliver of land to the south of SR 821. Upon learning this, the BLM closed the western access road to Mr. Maughan's property and left the eastern road entrance open for property access. However, Mr. Maughan told the County staff that motor homes cannot turn onto the eastern access point, as it is too narrow and the oversized vehicles have always used the more open western access point.

Mr. Maughan asked the County to consider taking these roads on as County roads. He explained that in 1866, Congress enacted R.S. 2477 that granted rights-of-way over unreserved public lands for the construction of highways. R.S. 2477 was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976; however,

2010-10-07 MINUTES

APPROVED
11/2/2010

FLPMA explicitly preserved any rights-of-way that existed before October 21, 1976. Therefore any rights-of-way not in existence prior to October 21, 1976, must be obtained by the permitting process under FLPMA.

Ms. Happold explained that if the sliver of land was always BLM land, then this road could possibly be established as an R.S. 2477 right-of-way in Washington. She explained how State law is used in determining if there is an existence of a public right-of-way under this federal statute. She reviewed that Washington law has three requirements to assert a right-of-way's existence: 1. The right-of-way must have been across unreserved public lands; 2. The construction of the right-of-way must have been prior to the repeal of R.S. 2477; and 3. The right-of-way must be a public highway according to state law.

Ms. Happold presented the Board with a few questions to determine what direction the County would like to go.

The Board unanimously expressed their confusion over why this discussion was being held at all. They indicated that they felt they were all in support of the issue. They expressed their surprise being on the other side of the discussion, indicating it's usually the other way around.

Commissioner McClain questioned whether or not the fight in court would be worth it. Ms Happold explained that she has not finished reading all the case law, but up to the point that she is at this time, it seems like a very straight forward case. She explained that BLM hasn't been contacted yet and she was unclear if they will even contest it.

The Board expressed how important public access is, and briefly discussed the amount of affidavits they would need for Court.


Ms. Happold received full Board support to continue moving forward and to keep the Board informed throughout the process.

Meeting adjourned at 2:45 p.m.

DEPUTY CLERK OF THE BOARD


Mandy Robinson

KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON


Mark McClain, Chairman