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Memorandum Date: 01/02/2008  
Order Date: 01/09/2008

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**TO:** Board of County Commissioners  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** Oliver Snowden, Public Works Director  
**AGENDA ITEM TITLE:** Order/In the matter of authorizing the expenditure of County Road Funds on Barrett Creek Lane in accordance with ORS 368.031

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I. **MOTION**

Move approval of Board Order enacting the authorization of expenditure of County Road Funds on Barrett Creek Lane as a single project and one-time expenditure.

II. **AGENDA ITEM SUMMARY**

The Lane County Board of Commissioners, on December 5, 2007, authorized the filing of "suit to have Barrett Creek Lane... declared to be a public road and open to the public..."

The initiation of this authorization came from the Glenada sale and vacation of undeveloped rights of way. The Rosecrans family wanted those who take access off of Old Ferry Road to go around their property. They sent letters (the most recent dated November, 30, 2007) to the County and others stating that The County could no longer use Barrett Creek Lane as it passes over their property.

The Rosecrans acquired their property by Warranty Deed executed 2003. The County has aerial photographs dated back as far as July 11, 1953 showing the road in place. Several residences and several adjoining lots take access off of this road after it passes over the Rosecrans property.

The \$30,000 represented in the order is an estimate of the cost of the project and may be significantly more or less than that figure, depending largely on the litigation process.

### **III. BACKGROUND/IMPLICATIONS OF ACTION**

#### **A. Board Action and Other History**

On January 7, 2006 a public hearing was held in Florence regarding Lane County owned lands commonly known as the Glenada Dunes property. At the conclusion of that hearing, a motion was approved by the Board directing staff to enter into negotiations with the State of Oregon Department of Parks and Recreation for the sale of the property. Subsequent negotiations resulted in a Purchase and Sale Agreement to convey the Glenada Dunes property to the State of Oregon in two separate parcels, which was approved by Board of Commissioners Order 07-6-6-7. The vacation of affected portions of the plats and rights of way comprising the sale parcels was established as a condition of the sale.

On September 12, 2007 a Board of Commissioners work session was held regarding the proposed vacation. The Board agreed to hold a public hearing using the vacation limits as proposed and described in the attached Final Order of Vacation, and to provide certain easements to privately owned parcels directly affected by this vacation that are presently served by existing roadways.

In accordance with ORS 368.341, the Lane County Surveyor's Office initiated this vacation process by resolution with a public hearing. On October 17, 2007, Resolution, Notice of Hearing and Order Number 07-10-17-4 was passed by the Board of Commissioners which set a public hearing date of November 20, 2007 to consider the vacation proceedings herein proposed.

On December 3, 2007 the Lane County Surveyor's received a letter dated November 30, 2007 from the Rosecrans family stating their "formal protest for the vacation of the property outlined in [Lane County's Public] notice" and that they were "formally terminating the license to cross [their] property that was granted to Lane County by Certified Letter in October 2003."

On December 5, 2007 the Lane County Board of Commissioners through Board Order 07-11-20-11 ordered "that the Office of Lane County Counsel is hereby authorized to file in the Circuit Court of Lane County, in the name of Lane County, Oregon, suit to have Barrett Creek Lane as located in the Southeast One-Quarter (SE ¼) of Section 34, Township 18 South, Range 12 West of the Willamette Meridian, declared to be a public road and open to the public."

#### **B. Policy Issues**

Through Board Order 07-11-20-11 passed on December 5, 2007, the Board has established that it remains in the public interest for Barrett Creek Lane to stay accessible to the County and to the public.

Because the Board's intent is to have Barrett Creek Lane declared a Local Access Road (LAR) through litigation, use of County Funds is subject to the provisions ORS 368.031. Although the Board has authorized the use of County funds for administrative matters related to LARs, including the investigation of possible safety hazards, the \$30,000 estimated for the lawsuit exceeds what we would ordinarily spend on administrative activities related to a single road. In addition, the Board did not specify which funds should be used to pay for the litigation and support activities. Money could come from the Road Fund or the Parks Fund, from proceeds of the Glenada sale to State parks.

Regardless of which fund is used, under ORS368.031, the Board must enact an Order authorizing the expenditure of County funds and specifying that the work represents a one-time expenditure.

**C. Board Goals**

Public use of Barrett Creek Lane has been in excess of 10 years and remains in the public interest for it to stay accessible to the County and to the public.

**D. Financial and/or Resource Considerations**

County staff estimates that the cost of executing this order is approximately \$30,000 including staff hours, resources, court fees, and other expenses. The total could be higher, depending on the progress of litigation.

If the County does not initiate the litigation, two outcomes are possible: a) the Rosecrans could block public access to Barrett Creek Lane and/or b) property owners who use Barrett Creek Lane could file suit to have it declared a public road by use.

**IV. ANALYSIS**

BO 07-11-20-11 authorizes filing a lawsuit to declare Barrett Creek Lane a public road and open to the public. To comply with ORS 368.031, the Board should adopt an order specifying that this is a one time expenditure and identifying which County funds will be used for the lawsuit and supporting activities. Choices are: Road Fund, Parks Fund, countywide indirect (County Counsel).

## **V. OPTIONS/ALTERNATIVES**

1. Adopt Board Order and specify that Road Funds will be used for the litigation.
2. Adopt Board Order and specify that Parks Funds will be used for the litigation.
3. Adopt Board Order and specify that litigation will come from County Counsel budget, which will eventually be distributed to all departments through the County indirect charges.
4. Rescind BO 07-11-20-11 and let the landowners who use Barrett Creek Lane litigate to have it declare a public road.

## **V. TIMING/IMPLEMENTATION**

Upon order of the board it is anticipated that the litigation process will commence immediately.

## **VI. RECOMMENDATION**

Option 1 or 2.

## **VII. FOLLOW-UP**

Staff will coordinate to implement the project, including filing suit and all other development of the litigation process.

## **VII. ATTACHMENTS**

— Board Order

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY  
STATE OF OREGON

ORDER NO.

(IN THE MATTER OF AUTHORIZING THE  
(EXPENDITURE OF COUNTY ROAD  
(FUNDS ON BARRETT CREEK LANE IN  
(ACCORDANCE WITH ORS 368.031

**WHEREAS**, Barrett Creek Lane between Old Ferry Road (a.k.a. Oregon Coast Highway) and Cherry Street is a road within Lane County and on December 5, 2007, the Board authorized the filing of suit to have Barrett Creek Lane declared to be a public road and open to the public; and

**WHEREAS**, the Rosecrans Family Joint Living Trust owns property at 5005 Barrett Creek Lane, over which the road travels in part; and

**WHEREAS**, the Rosecrans have by writing denied the County the use of Barrett Creek Lane as it exists on their property and have also denied other members of the public use of the road; and

**WHEREAS**, public use of Barrett Creek Lane has been in excess of 10 years and it remains in the public interest for it to stay accessible to the County and to the public; and

**WHEREAS**, it is estimated that up to \$30,000 will be expensed to address the adverse possession claim and further Board authorization will be required should expenses exceed \$30,000; and

**WHEREAS**, further Board approval is needed if additional expenses it is estimated that up to \$30,000 will be expensed to address the adverse possession claim; and

**WHEREAS**, funding necessary to pursue filing of the suit may come from either County Road Funds or Parks funding from the Glenada land sale. Use of County Road Funds must be in accordance with ORS 368.031; and

**WHEREAS**, ORS 368.031 prohibits the expenditure of County Funds on local access roads unless, 1) the County road official recommends the expenditure, 2) the public use of the road justifies the expenditure proposed, and 3) the Board enacts an Order or Resolution authorizing the work and designates the work to be either a single project or a continuing program; and

**WHEREAS**, the Board hereby finds that the County road official recommends the expenditure of County Road Funds and that the public use of Barrett Creek Lane does justify an expenditure of County Road Funds as a single project and a one-time expenditure; **NOW THEREFORE BE IT**

**ORDERED**, that the use of County Road Funds (Fund 225) in the amount not to exceed \$30,000 is authorized for Barrett Creek Lane, in accordance with ORS 368.031 and the recitals above.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Faye Stewart, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 1/4/08 Lane County

Jessica Spivey  
OFFICE OF LEGAL COUNSEL