

March 29, 2019

To: Commissioner Paasch  
cc: Commissioner Boice, Commissioner Gold  
From: Citizens supporting Floras Lake land swap  
Re: Response to Floras Lake Land Swap, questions of Commissioner Paasch

Commissioner Paasch, in a recent email you asked a small group of citizens who support the Floras Lake land swap to answer a question: *Why would you agree to let someone come in and "cherry pick" a small area of the prime frontage of the lake rather than look for a bigger result?*

Thank you for seeking our input. It is somewhat awkward that a few of us are coming together to respond to you as we have no official authority to represent our community. That said we do feel that the facts presented below and our vision for the area is in keeping with a strong consensus of North County citizens and others who favor the land swap.

The answer to your important question has several parts:

**1) First, neither we nor any of the experts hired by the county see this parcel as “prime frontage.”**

The 70 acres plus 20 acres has no road access; it is rough and very-windy land with no septic feasibility; it is bisected by wetlands and steep fjords that make access via the lake very difficult; it is highly prone to gorse infestation if the forest is opened up to roads or development.

The landowners and agricultural operations that surround the county's Floras Lake lands have access via private roads. As part of the research conducted for the Board of Commissioners (BOC) over the past 3 years, Curry County staff studied the deeds to each of these surrounding properties and confirmed there are no easements for public right of way. That means in order to obtain access, the county would need to purchase property or easements or to condemn land from 7-8 property owners in the Denmark Lane area or from Sea Winds Farms (cranberry farm). Thus far, property owners in this vicinity have repeatedly stated that they are not interested in allowing access through their private roads. Therefore, in order to obtain the legal rights to gain access across and through these private properties, the county government would have to take legal action against its own citizens to condemn property. It's important to note that Oregon law does not allow governmental entities to condemn property for conveyance of ownership to private parties (ORS 35.015). Moreover, rural citizens in general strongly oppose government taking of private property. This highly controversial action would likely result in expensive, protracted legal battles for the county and increased mistrust between rural citizens and county government.

One local resident who has past legal experience with property condemnation has suggested that if the landowners don't want to give access, the county's expense for attorney fees alone could easily exceed \$100,000 per landowner before the first shovel was pushed into the ground. This amount does not include the cost for experts, the costs for the payout to each land owner if condemnation was the result of litigation, nor the costs for attorney fees that can be awarded to

defendants in condemnation cases (ORS 35.015). In addition, the County would have to show that the property is essential to the furtherance of an important government action.

Even if you could obtain rights for road access through purchase, trade, or condemnation, the physical characteristics of the landscape in this area, which include wetlands and stream crossings, make road building extremely costly and therefore economically unfeasible. As part of research conducted for the BOC over the past 3 years, county staff asked the Curry County road master for a rough estimate for the cost to build a road into the eastern part of the 500-acre area—NOT including costs for obtaining right of way access, environmental permitting approvals, and for engineering, and he estimated \$650,000 (BOC meeting packet, Staff power point presentation, Sept. 27, 2017). Local ranchers with road building experience have said this estimate is low.

For these reasons, your assumption that Curry County could readily obtain access in a cost-effective manner is factually incomplete. It does not factor in the realistic, actual, and high costs of gaining access into this property.

The recent appraisal conducted by the county-selected, licensed appraiser Marineau Associates corroborates the finding that access to the 70 acres is not economically feasible. The appraiser found:

- *"significant wetlands are to the north, east and south of this site."*
- *"accessing the property from the east is not practical, as this route would require crossing significant wetlands with new road construction. In summary, road access is economically unfeasible and access by boat or by foot through the adjacent State Park are the only means of reasonable access to the property."*
- *property owner to the south does "not want to open up their property to outside access."*
- *"severe constraints and costs mitigate any merchantable timber value on this tract."*
- *"mostly marginal timber adjacent to the extensive slough or waterway areas, and in general, the subject site is a very poor site for the growing of timber"*

In addition, the land swap is consistent with the persistence of local agricultural operations, which are strongly supported by the community.

## **2) We don't view this land swap as letting just anyone in nor do we see the state "cherry picking."**

State Parks, aka Oregon Parks and Recreation Department (OPRD), is a responsible public agency with many units in Curry County that bring high value to our communities. Their parks are a chief draw for tourists seeking natural beauty, wildlife viewing, and outdoor adventure. These are tourists that North County businesses depend on. OPRD is an adjacent neighbor to the county property. This public agency has a strong track record and has earned trust in local communities in Curry County.

In order to move forward with a land swap, State Parks must meet the statutory requirement of providing *"an overwhelming public benefit to the Oregon State Park system, its visitors, and the citizens of Oregon...that is resounding, clear and obvious."* (SAR 736-019-0070) OPRD staff determined that swapping its Port Orford Cedar property for the county's 70-acre parcel can meet

this requirement. In this case, the benefit to state parks is also a benefit to our county as a whole and to the local community that cherishes and depends on the beauty of Floras Lake.

OPRD swapping for the entire 500 acres would be ideal, but ORPD staff has explained that, in this era of public agency cutbacks, they simply do not have the resources to manage and maintain the entire property and will not entertain such a swap.

It is our understanding that in developing this particular proposal for a land swap, OPRD and Curry County staff considered and evaluated different options, some of which did not work because of underlying restrictions or liability concerns. The current proposal is a practical and straightforward, fair-value swap that provides the county with a readily accessible property while also helping to conserve the scenic frontage of Floras Lake.

The final decision on the state side must be approved by the Oregon State Parks Commission, which, again, is constrained by the need to provide an "overwhelming public benefit" for state parks and for the citizens of Oregon.

### **3) Why not go for a bigger result?**

The “bigger result” has been chased for 25 years now and even more frequently over the past decade. Many "stones" —including possibilities for development, forestry, recreation, and conservation— have already been turned and deemed unfeasible. Nevertheless, newly elected BOCs often come in thinking there is a "pot of gold" to be had with this 500-acre parcel without specific detailed knowledge of the actual conditions of the landscape, its history, and the strong sentiment of the local community about Floras Lake —the very soul of the Langlois community.

At this point, different possibilities for the land have been considered methodically.

Development prospects are unfavorable —the area has no public road access, limited septic feasibility, no water (all water rights in the vicinity are already allocated), wetlands with standing water in winter, habitat for threatened coho and potentially endangered Western lily that would require special care and permitting, and intense public opposition to development of the lakefront. Regarding forestry, the area has no access and has been deemed to have marginal timber and timber growing prospects and deemed too small for carbon sequestration forest management. Regarding recreation prospects, one mountain bike trail developer has deemed it of insufficient interest for a destination trail system and the Curry County parks department deemed it unfeasible to develop for a campground owing to the wetland terrain and lack of access. Regarding conservation prospects, please see #6 below.

Although your need as a new commissioner to get up to speed is understandable, many people perceive that, with commissioners and staff frequently changing, evaluation efforts get dropped. Work that's been done gets lost and has to be redone by new staff—and the same fundamental discussions resurface over and over again. In short, on this issue, the external appearance is that of a very inefficient local government.

This time, previous county commissioners —starting with David Brock Smith, Susan Brown, and Tom Huxley through to the previous commission (Commissioners Gold, Boice, and Huxley)— opted to follow a path of transparency and of listening to public input. In 2015, the

Real Property Task Force recommended considering a land swap for the acreage south of Floras Lake. To follow up, in 2017 the County held a very well attended public meeting to consider options for the future of Floras Lake, including Forestry, Development, Conservation, and Recreation. The result was overwhelming public support for a conservation-recreation option, leading the county to take steps to realize this land swap.

The deal being offered is practical and efficient. The concern is that chasing a larger deal, once again, will take us backwards.

#### **4) This land swap deal may not come again**

You heard Mr. Havel from OPRD state that a deal with Curry County could be a trial or pilot project; and if it works well, perhaps there could be others in the future. He also mentioned OPRD has many other projects and priorities and with limited staff time needs to focus on deals that have a higher probability of getting done.

With considerable turnover of Curry County Commissioners and staff, with serious direction changes from one election to another, with work done by prior county staff completely lost when a new staff person comes on board, Curry County probably does not look to OPRD like a strong partner for considering any kind of real estate transaction. As we see it, we are fortunate to be in conversation with State Parks now and should nurture our relationship with this important agency with this first deal.

At this juncture, OPRD has recognized the county's positive public process over the past 2 years and has engaged in specific discussions with county staff over more than a year at the direction of the previous BOC and administrators. There will be little incentive for state parks to consider working with the county on such property matters in the future, let alone a larger deal, if this opportunity is lost.

To say no to either alternative presented by OPRD would waste all the cost and effort that went into the principled negotiations that yielded this practical and equitable proposal.

#### **5) People who support the Floras Lake land swap are not one group.**

The citizens who support the Floras Lake land swap include a diverse group:

- Residents of Langlois
- Residents of Curry County
- Residents of Oregon
- Lake-neighborhood residents and property owners
- Local business owners who benefit from lake-based recreation
- Curry County business owners that benefit from tourists
- Local farmers and ranchers
- Kalmiopsis Audubon Society, with 380 members throughout Curry County
- Lake recreationists (anglers, kayakers, wind-sport enthusiasts)

This aforementioned group includes members from all political parties, longstanding families, recent retirees, business owners, farmers, ranchers, wind surfers, and more. It includes people not

only from Langlois but from elsewhere in Curry County, the United States and around the globe who value the experience of recreating on this unique unspoiled coastal lake.

The breadth of interest and support for a conservation solution for the Floras Lake lands was clear at the Curry County Community Development Department public workshop in April 2017. Nearly 200 people, representing a diverse cross section of Curry County, contributed feedback. Citizens expressed overwhelming support for a conservation-recreation solution for the Floras Lake lands. Commissioner Boice, who attended, can verify the clear, unified passion of this diverse group.

For the entire community of Langlois, the lake is the only easy public access point to the beach, and so the view across the lake is enjoyed and cherished by residents and thousands of visitors to the lake and to Boice-Cope county campground.

**6) You wrote that: "the best value is to sell the entire lake property to best value it and provide future revenue for the County. Now, I am NOT saying to a developer...more to someone willing to conserve the entire property in perpetuity like a conservation easement company or a large publicly or privately held company looking to do good in an area like ours."**

We are relieved that you recognize the importance of conservation for this beautiful area. However, though what you are saying sounds good in theory, in reality, we regard it as less feasible.

For clarification, what you call "conservation easement companies" are also known as land trusts. Land trusts are traditionally non-profit organizations. In the past, before this land swap proposal, we reached out to several land trust and conservancy organizations to see if they would be interested in this property.

In 2011, we took staff from The Nature Conservancy on a tour of the property to see if they would be interested in purchasing the property or working on a land swap. We were told, and are generally aware that The Nature Conservancy is interested in much larger acreages that conserve whole ecosystems rather than small parcels like this 500 acres. In the past few years, we've also reached out to the Western Rivers Conservancy (based in Portland, OR) and the local Wild Rivers Land Trust (based in Port Orford). These smaller land trusts typically cannot afford to buy and hold properties; they can only consider conservation purchases of this type if there is a financial "exit" for them, which is to sell to a public agency, such as OPRD. Since OPRD is not interested in the whole 500 acres, these smaller land trusts cannot afford to buy the entire property outright. That said, the Wild Rivers Land Trust may still be able to engage in buying or holding conservation easements on the entire property or especially important portions of the property, such as the trail portion, the lake front, or riparian zone surrounding the coho streams, but only if purchase money could be obtained through grants or donations.

In years past, we were told repeatedly by the former county attorney that the property could not be sold without sharing the proceeds with all the local taxing districts. For that reason, it was always suggested to us that a land swap would be the very best solution so that the county could

obtain a revenue-generating property. That is a reason that citizens have worked toward a positive solution in this vein. (Current county staff has recently mentioned that the County is no longer interested in revenue-generating property but rather in liquidating its property in an effort to reduce the total number of properties held.)

Through our research on other land swaps with counties in Oregon, we discovered (and shared with previous Curry County staff) the possibility that a property could be designated as park or forest land and then be sold without financial obligation to the taxing districts. This would work for a purchaser that could continue the aims of the park or forestry designation. However, such a transaction would clearly not be legitimate if the property were then soon afterward sold for any different use.

If there is a private buyer interested in purchasing this property, we would strongly encourage the county and buyer to work with the Wild Rivers Land Trust to put a conservation easement on the lake front to preserve its scenic values into the future and on the coho spawning stream frontage to help conserve that threatened species. There could be tax advantages for the buyer for such conservation easements on the property.

If there were a private buyer, or consortium of buyers, interested in purchasing this whole property, we still think that it makes sense for the westernmost 70 acres to be swapped with OPRD because it would serve to provide an important buffer for an existing trail right at the property line and would provide public access for that portion of the property nearest to Floras Lake State Natural area.

It should be noted that any private buyer would face the same hurdles of access to this property, including the prohibition on condemnation for the conveyance to private parties (ORS 35.105), and Curry County would remain embroiled in future conflicts about land use through permitting processes if a strong conservation easement is not put into place.

**7) You suggested that this deal is good only for a few people in the local area and not for the whole county. We disagree.**

This transaction provides direct financial benefit to Curry County by providing a Hwy 101 property that can be readily used to generate revenue or for other useful public purposes.

This transaction also provides many indirect benefits to the county:

- Conserving the beautiful Floras lake lakefront, which is a draw to tourists at Boice-Cope county park and campground, a consistent, revenue-generating facility for the county
- Resolving a long-standing issue that repeatedly consumes county money and staff time with only unfinished, failed outcomes
- Attracting new residents and young people to settle in Langlois and bring their talents to Curry County

This deal is positive for the state parks system because it provides a buffer for an existing trail along the property line—and that benefits the county in the long-term.

The property already provides direct and indirect benefits —as it is—to Curry County by conserving the scenic lakefront for the enjoyment of visitors and residents, by buffering agriculture from the lake, by providing habitat for birds, fish, and wildlife, and by being part of the reason there are high value homes and recreation facilities along the lake that generate tax revenue for the County and business income for the area.

For the handful of Floras Lake residents, this deal would change nothing except maintaining permanently the green space that already exists. This might slightly move the needle on some property values, but that would certainly never qualify as a windfall, as has been suggested, and that is not the motivation of local residents' support of this landswap that has broad benefits for the community.

According to the 2007 county-sanctioned report regarding the Floras Lake-Cape Blanco Airport area, independent consultant John Irwin found: "The region's natural beauty and associated assets has a potential return well beyond that of development..." and that "tourism is now the world's largest industry, with nature tourism the fastest growing segment!"

For all these reasons, it is in the best interest of all Curry County citizens to resolve this matter by taking advantage of ORPD's practical and publicly supported land swap now on the table.

It makes little sense to dedicate more Commissioner time, more county staff time, and more of the county's limited treasury to reevaluating this opportunity when prior packets of information presented to prior BOCs uniformly over the years clearly point to the highest and best use of this property for Curry County —to preserve the green space by going forward with a land swap. Rather, we urge you to end a tedious cycle of repetition and to preserve a unique property in perpetuity while freeing county resources for the more-pressing issues facing our local government.

Thank you for considering our informed view on this matter. We will happily address any further questions you may have.

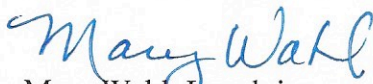
Sincerely,



Bob Morrow, Langlois



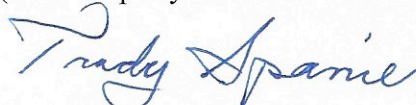
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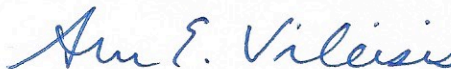
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