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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

HEREDITARY CHIEF WILBUR SLOCKISH, a resident of Washington, and an enrolled member of the Confederated Tribes and Bands of the Yakama Nation,

HEREDITARY CHIEF JOHNNY JACKSON, a resident of Washington, and an enrolled member of the Confederated Tribes and Bands of the Yakama Nation,

CAROL LOGAN, a resident of Oregon, and an enrolled member of the Confederated Tribes of Grande Ronde,

CASCADE GEOGRAPHIC SOCIETY, an Oregon nonprofit corporation,

and

MOUNT HOOD SACRED LANDS PRESERVATION ALLIANCE, an unincorporated nonprofit association,

Plaintiffs,

v.

UNITED STATES FEDERAL HIGHWAY ADMINISTRATION, an Agency of the Federal Government,

Case No. 3:08-cv-1169-ST

DECLARATION OF MICHAEL P. JONES IN SUPPORT OF STANDING OF ALL PLAINTIFFS

**UNITED STATES BUREAU OF LAND
MANAGEMENT, an Agency of the
Federal Government,**

**ADVISORY COUNCIL ON HISTORIC
PRESERVATION, an Agency of the
Federal Government,**

and

**MATTHEW GARRET, in his official
capacity as Director of the OREGON
DEPARTMENT OF
TRANSPORTATION, an Agency of the
State of Oregon,**

Defendants.

1

2 I, Michael P. Jones, do hereby declare, under the penalty of perjury and the laws
3 of the United States of America:

4 1. My name is Michael P. Jones. I am 60 years old. I reside at First Log House
5 East Little Brook Lane in the Village of Rhododendron in the Mount Hood Area. I
6 have personal knowledge of all the contents of this affidavit.

7 2. I feel that it is essential that I relay the following facts that are pertinent to the
8 Hereditary Chief Wilbur Slockish, Chief Johnny Jackson, Carol Logan, Cascade
9 Geographic Society, and Mount Hood Sacred Lands Preservation Alliance vs. United
10 States Federal Highway Administration, United States Bureau of Land Management,
11 and Advisory Council on Historic Preservation case.

12 3. There has been a great deal of participation on my part and others concerning
13 the A.J. Dwyer Scenic Area, better known locally as the "Dwyer Memorial Forest"
14 since its preservation in the 1930s by the Dwyer family. Essential documentation

1 concerning heritage resources goes back to the 1980s.

2 4. The Oregon Department of Transportation, the Federal Highway
3 Administration, and the Bureau of Land Management were all aware for at least
4 thirty-three years that there were major concerns with this area that went far beyond
5 just the Oregon Trail and involved Native American cultural and religious sites, in
6 addition to burials. Yet, they chose to ignore these facts which lead to the destruction
7 of the Dwyer Memorial Forest and its related heritage sites.

8 5. I am the Curator of, and a member of, the Cascade Geographic Society, Inc. I
9 am also the Spokesperson of Citizens for a Suitable Highway. In addition, I am a
10 member of the Mount Hood Sacred Lands Preservation Alliance.

11 6. The Cascade Geographic Society, Inc., which I founded, began as a research
12 organization in 1979 for the study of cultural, historical, and natural resources of the
13 Cascade Mountain Range and all of the waters and lands that it influences. We
14 officially became a non-profit 501 (c)(3) educational organization through the State
15 of Oregon in 1986.

16 7. My job as Curator of the Cascade Geographic Society, Inc. is to document the
17 cultural, historical, and natural resources of the Cascade Mountain Range, with
18 emphasis on the Mount Hood Area. I also develop exhibits and educational materials
19 and programs to help facilitate the protection of these heritage resources.

20 8. I first learned about the Native American use of the Dwyer Memorial Forest
21 and the Oregon Trail segment through this area in 1979. Lutie Welch Bailey (the
22 Grand Daughter of Samuel Welch, who was an Oregon Trail guide, trading post
23 operator, and founder of the Village of Welches), Hallard Bailey (whose family

1 operated the Bailey's Mount Hood Cabins in Wildwood), Charlie Augustine (former
2 owner and operator of the Hoodland Telephone Company), Margaret Anne Fielding
3 (who owned an old homestead on the Barlow Trail), and Jim Rogan (a retired United
4 States Forest Service employee).

5 9. In the mid-1980s, I became a member of the Oregon Department of
6 Transportation's Citizen Advisory Council (CAC) for the proposed widening of East
7 U.S. Highway 26. The purpose was to study ODOT's proposed alternatives and either
8 support their options or come up with new ideas.

9 10. It was during my initial work with the CAC that it became very apparent that
10 the staff of the Highway Division had their minds already made up, they were not
11 listening to any alternative points of view and definitely had little or no concern about
12 the loss of cultural, historical, and natural resources in the project area. In fact, they
13 admitted that this was merely a process that they had to undertake in order to satisfy a
14 major requirement of the National Environmental Policy Act since this was a federal
15 highway and they were using federal funds; as well, they would be impacting Dwyer
16 Memorial Forest (which is on public land and within the boundaries of a federal park
17 operated by the Bureau of Land Management) on the north side of the Mount Hood
18 Highway, and Wildwood Recreation Area on the south side.

19 11. It became essential that there was an alternative voice, so I helped to found
20 Citizens for a Suitable Highway in 1985. This advocacy group came into existence
21 after the Oregon Department of Transportation announced that they were widening
22 East U.S. Highway 26 (also known as the Mount Hood Highway), from the Village of
23 Wildwood to the Village of Rhododendron.

1 12. The purpose of Citizens for a Suitable Highway was to protect the cultural,
2 historical, and natural resources that aligned the highway, as well as protecting fish
3 and wildlife and their habitats, scenic values associated with this roadway. In
4 addition, the group strived to maintain the livability of the Mount Hood Area, its
5 tourism and economics.

6 13. A major emphasis of Citizens for a Suitable Highway was to work on safety
7 issues associated with East U.S. Highway 26 and the proposed project. This is why
8 we were able to singlehandedly provide documentation to ODOT that required them
9 to lower the speed limit from the Village of Wildwood through the Village of
10 Rhododendron, in addition to installing better signage which made the Mount Hood
11 Highway safer.

12 14. The Mount Hood Sacred Lands Preservation Alliance was established in late
13 1990s. The founders were Chief Wilbur Slockish, Chief Johnny Jackson, Carol
14 Logan, and me.

15 15. The purpose of the Mount Hood Sacred Lands Preservation Alliance is to
16 protect and educate government agencies and the general public about the cultural
17 and religious sites of the First People that are in or are associated with natural
18 landscapes. This would be done by documenting the areas that have such sites,
19 through participation in the public involvement process and educational activities.

20 16. My main role in the Mount Hood Sacred Lands Preservation Alliance was to
21 monitor heritage areas that were usual and accustomed places where traditional
22 religious and cultural activities took place, which included medicine-gathering,
23 ceremonies, and burials. These included such places as: Enola Hill, Zig Zag

1 Mountain, Hunchback Mountain, North Mountain, Huckleberry Mountain, Flag
2 Mountain, and other geographic landscapes. In addition, sites along East U.S.
3 Highway 26 that were considered important, were also monitored: the Dwyer
4 Memorial Forest (also known as the A.J. Dwyer Scenic Area) in the Village of
5 Wildwood, Indian Meadow (also known as Pioneer Meadow) in the Village of
6 Rhododendron, Bear Creek in the Village of Faubion, and Owl Mountain (also known
7 as the Cedar Ridge) and Alderwood, which are both near the Village of Brightwood.

8 17. In my involvement with Citizens for a Suitable Highway I began working
9 with Carol Logan (Clackamas/Kalapooia/Chinook) and Rip Lone Wolf (Umatilla/Nez
10 Perce) because of the usual and accustomed places where traditional cultural and
11 religious practices had occurred and were continuing to take place by traditional
12 practitioners. These included the Dwyer Memorial Forest, Indian Meadow, and Bear
13 Creek.

14 18. In my work with Cascade Geographic Society, I had already developed a good
15 foundation of knowledge pertaining to the relationship of cultural sites to natural
16 landscapes. Because of this, both Carol Logan and Rip Lone Wolf, over time, openly
17 shared with me information about these traditional use sites. And, they were willing
18 to share because the proposed widening of the Mount Hood Highway threatened
19 some of these sites, such as the Dwyer Memorial Forest, Indian Meadow, and Bear
20 Creek.

21 19. Carol Logan and Rip Lone Wolf both identified Native American traditional
22 use sites and provided information concerning the cultural and religious uses of the
23 Dwyer Memorial Forest, Indian Meadow, and Bear Creek. They remained in the

1 background before, during and after the public involvement process, fearing that if
2 they testified publicly that these sites would be deliberately destroyed either by the
3 agencies involved or by those who supported the widening of the Mount Hood
4 Highway who seemed to have no concern for the cultural, historical, and natural
5 resources that were in the way.

6 20. There was a great emphasis by Carol Logan and Rip Lone Wolf that the
7 Barlow Trail, that segment of the Oregon Trail that crossed over Mount Hood, be
8 recognized as it should be, as a Native Trail that had been utilized at least 14,000
9 years, or since time immemorial, before the covered wagons of the white emigrants
10 came.

11 21. Every other Native American who worked with me on this project and others
12 were insistent that the Barlow Trail/Oregon Trail be acknowledged as what it
13 originated as --- a Native Trail. This meant everything about this historic path, even
14 related archaeological sites associated with the white travelers, should be protected.

15 22. In 1987, after appearing before the Oregon Highway Commission, who
16 requested that Rick Kuehn, who was the Region 1 Regional Engineer, and me try to
17 resolve this dispute. I suggested that we walk the entire project area to see how
18 cultural, historical and natural resources could be protected during construction
19 activities, as well as afterwards while conducting maintenance activities.

20 23. Kuehn agreed that walking the project area would help to facilitate our
21 negotiations. But, I had to agree not to waste any time arguing about the number of
22 lanes that ODOT should construct or about engineering designs. My role was to
23 identify specific sites or areas of critical concern, and his role was to determine what

1 was the best way to avoid them. I agreed with the conditions.

2 24. So, several times, both of us walked the entire project area, which actually
3 began at the Salmon River Bridge (near the Village of Brightwood), through the
4 Village of Wildwood, through the Village of Wemme, through the Village of
5 Welches, through the Village of Zig Zag, through the Village of Faubion, and up to
6 and through the Village of Rhododendron. After each of our on-site deliberations, we
7 would sit down and go over our notes on how the sites would be protected while
8 allowing highway construction to take place.

9 25. Each time after walking the project area with Rick Kuehn, I would meet with
10 Carol Logan or Rip Lone Wolf. They would confirm whether or not what the
11 Regional 1 Engineer was proposing would preserve the usual and accustomed places,
12 and often times this meant going directly to the sites.

13 26. My work with Rick Kuehn resulted in the creation of the Highway 26
14 Widening Agreement in 1987. This protected the Dwyer Memorial Forest, Indian
15 Meadow, and Bear Creek, as well as other areas of critical concern along East U.S.
16 Highway 26 and their traditional cultural and religious sites.

17 27. It was during this time that I became friends with Larry Dick (Wasco Tribe),
18 whose Native name is Tuck-Lee Winch (“Tule Mat Man”), from the Confederated
19 Tribes of Warm Springs. He is a spiritual leader who is the nephew of Chief Nelson
20 Wallulatum, who works with traditional burials.

21 28. I went with Larry Dick to the Dwyer Memorial Forest, a traditional use area
22 that his people utilized. It was here that he confirmed that there were traditional
23 burials located here and pointed out some of the stone markers that identified the area

1 as a final resting placee.

2 29. We also went to two other traditional use sites of critical concern --- Indian
3 Meadow and Bear Creek. Here, he identified additional cultural and religious sites.

4 30. In 1990, I began working with Wilferd Yallup from the Yakama Indian
5 Nation, who eventually became the Chairperson of the Tribal Council. A cultural
6 practitioner, he took me to Enola Hill above the Village of Rhododendron, and along
7 East U.S. Highway 26 to the Dwyer Memorial Forest, Indian Meadow, and Bear
8 Creek where he identified traditional cultural and religious sites, including burials.

9 31. I worked very closely with Wilferd Yallup in monitoring traditional use areas
10 along the Mount Hood Highway and throughout the Mount Hood Area to insure that
11 road construction, logging, or development would not adversely impact or destroy the
12 site. At times he would assign people from the Yakama Indian Nation to work with
13 me.

14 32. On January 24th, in 1991, I rode in a vehicle with Wilferd Yallup from
15 Rhododendron to a meeting with representatives of the Oregon Department of
16 Transportation at the Region 1 Headquarters that was, at the time, on McLoughlin
17 Blvd. in Milwaukie, Oregon. The purpose of this meeting was to discuss traditional
18 use sites that were of concern to the Yakama Indian Nation.

19 33. As we drove down from Mount Hood to the meeting, Wilferd Yallup
20 explained that he was going to talk about something that he did not want to. But, he
21 felt that he had no choice if we were going to save the Dwyer Memorial Forest,
22 Indian Meadow, and Bear Creek. He did not tell me what he was going to reveal, only
23 that he would explain more to me after the meeting.

1 34. At the meeting were a few engineers and some members of ODOT's Cultural
2 Department from their office in Salem, Oregon. They were there to listen to Wilferd
3 Yallup and learn more about the traditional cultural sites along the Mount Hood
4 Highway.

5 35. After Wilferd Yallup had discussed the importance of preserving the cultural
6 sites associated with the Mount Hood Highway, a representative of ODOT placed a
7 large engineering map (with mile markers on it) on the table in front of him. He
8 quickly glanced down at what they had placed before him. It was the East U.S.
9 Highway 26 widening area whose improvements had concluded in 1988. Its details
10 revealed a landscape that stretched from the Salmon River Bridge, near the Village of
11 Brightwood, east to the Village of Rhododendron.

12 36. An employee for ODOT requested that Wilferd Yallup identify, on the map,
13 the areas that they should be concerned about. Without any hesitation he hovered his
14 hand over the map and came down in three areas --- the Dwyer Memorial Forest,
15 Bear Creek, and Indian Meadow.

16 37. Wilferd Yallup clearly explained to the ODOT representatives that these were
17 some of the main areas where there were cultural sites and burials. They appeared to
18 be surprised at his openness to point out the areas.

19 38. One of the ODOT cultural resource department employees requested that
20 Wilferd Yallup detail the locations of the burials. So, for a second time, this time
21 much slower, he identified Dwyer Memorial Forest, Bear Creek, and Indian Meadow
22 as having the graves of his people.

23 39. A couple of the Oregon Department of Transportation staff members quickly

1 put pencil marks on the map. They were exactly the areas that Wilferd Yallup had
2 identified --- Dwyer Memorial Forest, Bear Creek, and Indian Meadow.

3 40. Wilferd Yallup requested that ODOT “keep the highway out” of these areas.
4 The highway staff said that they would, especially the Dwyer Memorial Forest since
5 East U.S. Highway 26 had already been widened through this area. However, the
6 Mount Hood Highway had not been “improved” adjacent to Bear Creek and Indian
7 Meadow because of lack of funding, so there was time to plan around the resources in
8 these areas.

9 41. After the meeting with the ODOT cultural resources personnel, Wilferd told
10 me that he had no choice but to reveal the general location of the burial sites.
11 Although he was site-specific on the geographic areas, he did not physically show
12 them where the rock monuments and the burials were. To do so, he would have to
13 physically take them to these usual and accustomed places, which is something he
14 would never do.

15 42. Wilferd Yallup explained the following to me: “I gave the government
16 workers enough information to allow them to do their job and keep the highway away
17 from these sacred places. They can no longer claim they did not know what was there
18 because, as a leader and Elder of the Yakama Nation, I have now told them.”

19 43. Then Wilferd asked me to write what he said down, which I did. He then said
20 that he did not want me to forget this because there would probably be other hard
21 decisions to be made in the future concerning the sacred sites in the Mount Hood
22 Area.

23 44. In the month that followed this important meeting with the ODOT cultural

1 resource staff, Wilferd Yallup informed me that he had several follow-up telephone
2 conversations with Maxine Banks, who had been in attendance for the agency. She
3 was the one who initiated the calls and repeatedly asked him to clarify the Native use
4 of these sites, which he said he did.

5 45. If there was any doubt on the part of the ODOT prior to this meeting of
6 January 24th, 1991, about the use of the Dwyer Memorial Forest, Bear Creek, and
7 Indian Meadow as a usual and accustomed place for cultural and religious purposes,
8 as well as for burials, there now should have been none.

9 46. Through Wilferd Yallup, I also worked with other Elders who were enrolled
10 members of the Yakama Indian Nation, who were knowledgeable about the burials
11 and cultural and religious sites in the Mount Hood Area. They were especially
12 familiar about Enola Hill and the usual and accustomed places along East U.S.
13 Highway 26, in particular the Dwyer Memorial Forest, Bear Creek, and Indian
14 Meadow. Some of these individuals were: Walter Speedis, Bill Yallup, Lavina
15 Washines, Levi George, and Dave Blogett.

16 47. Members of the Confederated Tribes of Warm Springs also provided input
17 concerning the traditional cultural and religious sites in the Mount Hood Area. These
18 included Enola Hill and the usual and accustomed places along East U.S. Highway 26
19 such as Dwyer Memorial Forest, Bear Creek, and Indian Meadow.

20 48. Protection of these usual and accustomed places was critical to at least some
21 of the enrolled members of the Confederated Tribes of Warm Springs whose family
22 members utilized the sites or were, personally, still using it. These included the
23 Quayapalma sisters --- Sylvia Wallulatum, Nettie Shumaway, and Bernice Mitchell --

1 - who were Elders and important spiritual leaders that were descendants from Chief
2 Quayapalma.

3 49. Around 1991, Sylvia Wallulatum and Bernice Mitchell, who were
4 accompanied by a staff person from the Cultural Department of the Confederated
5 Tribes of Warm Springs, met with me at Indian Meadow. They confirmed the use of
6 this site by their family as a traditional use area that had burials. In addition, they
7 identified Bear Creek and the Dwyer Memorial Forest as a usual and accustomed
8 place where not only ceremonies were practiced, but also had final resting places.
9 This information was recorded by the staff person.

10 50. In addition, other enrolled members of the Confederated Tribes of Warm
11 Springs participated by providing information about the traditional cultural and
12 religious sites in the Mount Hood Area. These included Suzanna Santos and Milton
13 Sahme.

14 51. I began working with Chief Johnny Jackson and Wilbur Slockish [who was
15 not a Chief at the time], in the early 1990s. Both were the nephews [I learned many
16 years later] of Wilferd Yallup and Water Speedis. They had been asked by their
17 uncles to work with me on protecting cultural and religious sites in the Mount Hood
18 Area, including those associated with East U.S. Highway 26.

19 52. Chief Johnny Jackson and Chief Wilbur Slockish became active participants
20 with Citizens for a Suitable Highway. They wanted to make sure that the Highway 26
21 Widening Agreement of 1987 was honored by ODOT which insured the protection of
22 the Dwyer Memorial Forest, Bear Creek, Indian Meadow, and other usual and
23 accustomed places.

1 53. Throughout this time, I continued meeting with representatives from ODOT
2 on the protection of the Dwyer Memorial Forest, Bear Creek, and Indian Meadow.
3 Rip Lone Wolf was with me at most of these meetings. Since he was now working in
4 Nevada with the Shoshoni Tribe, he would come all this way to, as he would put it -
5 “... make sure they see a Native face standing next to you, because you are talking
6 about our usual and accustomed places.”

7 54. By the mid-1990s, Carol Logan regularly began working with Chief Johnny
8 Jackson, Chief Wilbur Slockish, and me on the protection of usual and accustomed
9 places that had been traditionally used for cultural and religious practices. Our work
10 focused on Mount Hood as well as other areas that had related heritage sites.

11 55. Chief Johnny Jackson, Chief Wilbur Slockish, and Carol Logan also began
12 working with the Cascade Geographic Society on our educational programs for the
13 public, including several of the classes I was teaching through Portland State
14 University. Their presentations were about fishing rights, the Native perspective
15 about the Lewis and Clark Corps of discovery, the Oregon Trail, and pioneer
16 settlement of the Old Oregon Country, as well as on sacred places and the
17 relationship between cultural sites and natural areas.

18 56. Over the years, our joint efforts in working towards the protection of usual
19 and accustomed places lead to the formation of the Mount Hood Sacred Lands
20 Preservation Alliance. The purpose was to protect traditional cultural and religious
21 sites, with emphasis on those places still being used today.

22 57. In 2007, word went out about the widening of the Mount Hood Highway
23 through the Village of Wildwood. Chief Johnny Jackson, Chief Wilbur Slockish,

1 Carol Logan, and myself were all prepared to participate in the Section 106 process in
2 determining the eligibility of any of the proposed project area, which included the
3 Dwyer Memorial Forest and the Wildwood Stone Pillars, for the National Register of
4 Historic Places. As interested parties with pertinent information, which ODOT was
5 well aware, our contributions to this process were invaluable.

6 58. When we were not contacted, we assumed that ODOT was preparing a draft
7 of the study, which interested parties could then provide input about. We believed
8 that we would have been interviewed first off-site and then on-site at the Dwyer
9 Memorial Forest. Also, because the Wildwood Stone Pillars were the property of the
10 Cascade Geographic Society, in which we had spent money for restoration and
11 maintenance, they would have to communicate with us to get its history.

12 59. In January of 2008, when we learned that ODOT had completed the Section
13 106 process and that we would have no input into the report, I immediately called the
14 Federal Highway Administration (FHA) in Salem. I was then directed to Jeff Graham,
15 who was in charge of the project on Mount Hood.

16 60. Jeff Graham said that he “knew all about me” and my work concerning the
17 Mount Hood Highway. This clearly made me an “interested party” and I should have
18 been contacted for the Section 106 process.

19 61. I first complained about ODOT’s public meetings, which did not have the
20 required thirty-day notices by the National Environmental Policy Act. Jeff Graham
21 acknowledged that that there should be a thirty-day notice for the meetings.

22 62. I then raised the issue about ODOT’s Section 106 report being biased because
23 it did not include any historical input from Chief Wilbur Slockish, Chief Jackson

1 Jackson, and Cultural Practitioner Carol Logan, not to mention me. This information
2 was critical in order to get a thorough analysis of the Dwyer Memorial Forest and its
3 cultural and religious use by Native Americans. Jeff Graham said that he would have
4 to speak with ODOT and he'd get back to me.

5 63. Jeff Graham of the FHA finally got back to me. After speaking with ODOT,
6 he decided that Chief Wilbur Slockish, Chief Johnny Jackson, Carol Logan, and my
7 input was of no concern. They did not need our input as "interested parties".

8 64. I explained to him that this historical report needed the input of two Native
9 American Chiefs and an Elder in order to get a better understanding of the cultural
10 and religious uses of the Dwyer Memorial Forest. He responded that they didn't need
11 to talk to the Chiefs because "we already know what they would say".

12 65. Next, I raised the question about the Wildwood Stone Pillars, which were
13 included in ODOT's Section 106 report. These are the property of the Cascade
14 Geographic Society and we should have been contacted to get their history.

15 66. In addition, Herb Forbes, Jr., had not been interviewed for the Section 106
16 report. He is the son of the stone mason who built the Wildwood Stone Pillars. His
17 father, Herb Forbes, Sr., later worked for the Oregon Highway Division, which he
18 retired from in 19??. By ignoring this history, the agency is ignoring part of their own
19 history, since his father had worked for them and had continued to maintain the
20 pillars.

21 67. If ODOT would have interviewed Chief Wilbur Slockish, Chief Johnny
22 Jackson, and Carol Logan for the Section 106 report, they would had learned that the
23 Wildwood Stone Pillars were more than just landmarks; a number of Native People

1 who utilized the Dwyer Memorial Forest placed offerings on their flat tops.

2 68. On January 29th, 2008, I faxed a memo to Rich Watanabe, the Area Manager
3 for ODOT concerning the Wildwood Stone Pillars. His agency was proposing to have
4 Portland General Electric, a utility company, move the landmarks; they are not a
5 moving company. Since the Cascade Geographic Society are the owners, we wanted
6 to approve any plans to insure that the pillars would not be damaged.

7 69. In the January 29th memo I wrote: We want to make sure that any plan that
8 includes moving the ‘Wildwood Stone Pillars’ is not only practical, but will not
9 adversely impact the landmarks’ on-going and future maintenance.”

10 70. All we had at this time was a map and two stakes on the ground where the
11 Wildwood Stone Pillars were to be moved. There was no relocation plan.

12 71. In this memo I identified two individuals that could assist with the
13 development of a plan for relocation of the Wildwood Stone Pillars. These were Todd
14 Iselin and Troy Awin.

15 72. Unfortunately, no one from ODOT responded to the memo. All we could hope
16 for was a workable plan.

17 73. On February 14th, 2008, Carol Logan and myself faxed a memo to Jeff
18 Graham. We requested that there be a “complete and accurate Section 106 process of
19 the National Historic Preservation Act” for the “Wildwood to Wemme Project that
20 had now been renamed “US 26: Salmon River Bridge to East Lolo Pass Road”. We
21 made this request “to insure that all heritage resources, whether they be historical,
22 cultural, or natural, be protected prior to, during, and after any and all highway
23 planning, construction, and on-going maintenance.”

1 74. On February 15th, 2008, Carol Logan and I faxed another memo to Jeff
2 Graham that contained documentation justifying a new Section 106b report. These
3 documents clearly revealed that the Dwyer Memorial Forest was part of a “Historic
4 District” that existed along the Mount Hood Highway.

5 The documents submitted were the following:

6 75. A transcript of the meeting held on January 24th, 1991, with ODOT where
7 Wilferd Yallup of the Yakama Indian Nation, identified on a map three major areas
8 along East U.S. Highway 26 that were cultural and religious sites, and also had
9 burials. These were the Dwyer Memorial Forest, Indian Meadow, and Bear Creek.

10 76. A letter from Leo Aleck, Secretary of the Yakama General Council, to the
11 Environmental Section of the Oregon Highway Department, dated January 17th,
12 1991. This document clearly stated their concerns that construction activities along
13 East U.S. Highway 26 would adversely impact or destroy cultural and religious sites,
14 including burials.

15 77. The document from the Cascade Geographic Society titled: “Draft Cultural
16 Resource Report: Pioneer Meadow Site (Rhododendron, Oregon --- Mt. Hood Area --
17 - Clackamas County)” --- dated February 8th, 1991.

18 78. A second document from the Cascade Geographic Society titled: “Draft
19 Cultural Resource Report: Bear Creek Site (Faubion, Oregon --- Mt. Hood Area ---
20 Clackamas County)” --- dated February 8th, 1991.

21 79. These documents showed that the Dwyer Memorial Forest was part of a
22 “historic district” as defined under Section 106 of the Historic Preservation Act. The
23 relationship between sites concerned Native American cultural use and burials, in

1 addition to the Oregon Trail.

2 80. Concerned about logging taking place in the Dwyer Memorial Forest and
3 elsewhere along East U.S. Highway 26, Carol Logan and I faxed another memo to
4 Jeff Graham, also dated February 15th, 2008. This one raised our concerns that
5 logging would begin before a determination could take place for a new Section 106
6 Review. We asked him to halt any tree removals, which his office could do, so we
7 could work through the “established system”.

8 81. In monitoring the Dwyer Memorial Forest, Carol Logan and I requested
9 protection of heritage resources while a determination for a new Section 106 Review
10 could be done. This was critical because of the vandalism that had taken place.

11 82. A Native American who utilizes the Dwyer Memorial Forest for religious and
12 cultural purposes discovered vandalism. “Stones that made up a monument associated
13 with American Indian graves had been carried off.” Not only was this on public land
14 within the boundaries of a federal park that’s within the project area, but also on
15 ODOT right-of-way.

16 83. We wrote that all the heritage resources in the project area were of concern,
17 including the Wildwood Stone Pillars. We asked, “What can be done to insure their
18 protection?” As the memo stated, there was a mistaken belief that if sites of concern
19 were eliminated, then the highway project could be put on the “fast track”. However,
20 no protection was instituted, and stones on another burial monument were also
21 removed.

22 84. On February 25th, 2008, I faxed a memo to Rich Watanabe, Area Manager for
23 ODOT, concerning the plans needed for moving the Wildwood Stone Pillars. This

1 was a follow up to my January 29th memo. It stated that the landmarks were the
2 property of the Cascade Geographic Society and were not “abandoned property” like
3 some individuals from his office were claiming. We had repaired the west pillar
4 several years ago when an intoxicated driver struck it; the repair was permitted
5 through his agency. In addition, we have continually maintained the landmarks.

6 85. Once again, if the Wildwood Stone Pillars were to be moved like ODOT
7 wanted, the Cascade Geographic Society needed a plan before any relocation should
8 take place. Their construction, as a hollow stack of mortared river rock to prevent
9 their destruction, called for a plan; these were Clackamas County Historic Landmarks
10 eligible for the National Register of Historic Places. There was no response.

11 86. I faxed a copy of my memo to Rich Watanabe to Jeff Graham concerning the
12 need for a plan on how to move the Wildwood Stone Pillars without adversely
13 impacting these historic landmarks. There was no response.

14 87. Around March 1st, 2008, in a conversation with Carol LeGard of the Advisory
15 Council on Historic Preservation, I learned that the Dwyer Memorial Forest should
16 put through a 4f process, which has greater protection for the site. I expressed my fear
17 of logging taking place, and the destruction of the burials.

18 88. On March 4th, 2008, logging began in the project area. There was no
19 protection in place for any cultural or historical sites, including the Oregon Trail and
20 its related archaeological resources, nor even the Wildwood Stone Pillars. It was
21 obvious that whatever survived the tree removal would be a miracle.

22 89. As logging was continuing in the project area long the Mount Hood Highway,
23 on March 5th, 2008, I faxed a letter to Carol Legard of the Advisory Council on

1 Historic Preservation, demonstrating the concern for the cultural and religious sites
2 associated with East U.S. Highway 26. Writing for the Yakama Indian Nation, where
3 both Chief Johnny Jackson and Chief Wilbur Slockish were enrolled, was from Leo
4 Alex, the Secretary of the General Council.

5 90. The General Council was concerned about the “usual and accustomed places”
6 that would be destroyed because of road construction proposals. The letter was dated
7 January 17th, 1991, over seventeen years before this document was faxed to the
8 Advisory Council on Historic Preservation.

9 91. “We have received information about your road plans,” wrote Leon Aleck for
10 the General Council. “{Many of our tribal members still utilize this general area for
11 cultural purposes. This makes me concerned about your plans, knowing such
12 construction does much damage known to be sacred grounds. In these grounds are
13 many natural foods and medicines. There may very well be some traditional use
14 areas, too.”

15 92. On March 6th, 2008, I sent an “Urgent Fax Memo” to Carol Legard, wanting
16 the Advisory Council on Historic Preservation to be aware that the Dwyer Memorial
17 Forest was eligible for designation under Section 4(f) of the Department of
18 Transportation (DOT) Act of 1966 and set forth in Title 23 U.S.C. Section 138, that
19 applies to Federal-Aid Highway Programs like this current construction project.

20 93. On April 29th, 2008, I sent a memo to Linda Price of the Clackamas County
21 Historic Review Board to evaluate Oregon Trail sites, the Dwyer Memorial Forest,
22 American Indian usual and accustomed places, and the Wildwood Stone Pillar, all of
23 which would be adversely impacted or destroyed by the current widening of East U.S.

1 94. Highway 26, for their eligibility for the National Register of Historic Places.
2 Testimony and pertinent information that ODOT refused to be gathered during the
3 agency’s Section 106 process, would be provided. Chief Johnny Jackson, Chief
4 Wilbur Slockish, Carol Logan, Herb Forbes, and I would testify and provide
5 documents from our archives.

6 95. The Clackamas County Historic Review Board could hear testimonies to
7 determine the historical significance of these heritage resources, which was allowed
8 under Clackamas County Ordinance 707.03. Linda Price decided the Board would not
9 get involved because this was a federal matter, since the East Highway 26 project was
10 a federal highway funded with federal money, and a major portion of the resources
11 that were of concern (i.e., the Dwyer Memorial Forest) were located on federal land
12 that was part of the Wildwood Recreation Site, which is a federal park.

13 96. On September 17th, 2008, I faxed a memo to Rich Watanabe, Area Manager
14 for ODOT, still concerned that we had not yet received “any written plans”, whether
15 they be “formal or informal” for the relocation of the Wildwood Stone Pillars.

16 97. Also, damage to the concrete cap of the East Pillar was discovered. This
17 occurred during the falling of trees to clear a path for the roadway, in which ODOT or
18 their contractor did nothing to protect either one of the pillars that made up the
19 historical landmark. Cascade Geographic Society wanted to know what the plans
20 were to repair the landmark. No response.

21 98. The following day, even more damage was discovered to the East Pillar. With
22 no protection, it was struck by heavy equipment, which was doing more clearing for
23 the roadway.

1 99. On September 18th, 2008, another memo was faxed to Rich Watanabe, the
2 Area Manager for ODOT, concerning the continued damage to the Wildwood Stone
3 Pillars. The Cascade Geographic Society was fearful that the agency’s lack of
4 concern for the historical landmark meant that they would be destroyed. We
5 requested that they take immediate and reasonable steps to protect the historical
6 landmarks.

7 100. The Cascade Geographic Society instructed ODOT and their contractor to
8 wrap both pillars with orange construction fencing and to place an orange cone on the
9 top of each pillar so those operating heavy equipment could see them. Much to our
10 surprise, they did do this.

11 101. In addition, we requested that both pillars be surrounded by barricades and,
12 when heavy equipment was working nearby, to have a person act as a “spotter”. They
13 chose not to do this.

14 102. On September 16th, 2008, still another memo was faxed to Rich Watanabe,
15 We discovered damage this time to the West Pillar. Like the other landmark, this was
16 to its concrete cap.

17 103. The Cascade Geographic Society wanted to know what ODOT was going to
18 do to protect the Wildwood Stone Pillars. Again, there was no response.

19 104. On September 28th, 2008, I discovered still more damage to the West Pillar.
20 This time it was to one of the stone faces and was so severe it could easily collapse
21 the entire landmark.

22 105. That day, still another memo, labeled “Extremely Critical Fax/Memo #1”,
23 was faxed to Rich Watanabe of ODOT. The Cascade Geographic Society wanted to

1 know why we were not notified that there was more damage to our property. We
2 wanted to know how his agency was going to insure that all of the pieces of the
3 landmark would remain intact until it could be moved (which would now be even
4 more difficult)? And, whose insurance would be covering all of the damages? We
5 received no response.

6 106. All of the damages to the Wildwood Stone Pillars were unnecessary and
7 avoidable. These were historical landmarks that needed to be protected for future
8 generations.

9 107. That same day, September 28th, 2008, I sent a second memo to Rich
10 Watanabe, labeled “Extremely Critical Fax/Memo #2”. The Cascade Geographic
11 Society had to take immediate action to protect our property.

12 108. We were notifying ODOT that we had contacted A-Win Masonry, from
13 Vancouver, Washington, which had repaired the East Pillar for Cascade Geographic
14 Society several years ago when it was damaged, to review the integrity of the now-
15 severely damaged landmark. We had also asked him to determine how it could be
16 repaired and how it could be successfully relocated.

17 109. A third memo, labeled “Extremely Critical Fax/Memo #3”. was also faxed
18 same day, to Rich Watanabe. The Cascade Geographic Society had discovered that
19 two forms had been made that were ready to have concrete poured so that the
20 Wildwood Stone Pillars could be moved. We were concerned because we had seen no
21 plans and didn’t believe that they existed.

22 110. On September 26th, 2008, we received a voice message from Kyle Crate,
23 Project Manager for the “U.S. Highway 26: Salmon River Bridge to Lolo Pass Road”

1 project. He informed us that there were no written plans for moving the Wildwood
2 Stone Pillars but they were going to be relocated to the concrete forms in the near
3 future; and that ODOT was preparing a response to my memos concerning the
4 landmarks. We never received any such response.

5 111. A short time after this, A-Win Masonry was hired by ODOT to assist in
6 relocating and repairing the damaged Wildwood Stone Pillars. Because he had
7 worked on the pillars before, he knew more about their construction than anyone.

8 112. A-Win developed a plan to move the Wildwood Stone Pillars, which was
9 approved by the Cascade Geographic Society. A short time after this, the landmarks
10 were relocated and repairs were made.

11 113. During the time that repairs were being made to the Wildwood Stone Pillars,
12 I visited A-Win almost every day. In early August, one of the construction workers
13 bragged about people working on the highway project finding artifacts. I was told that
14 pottery, old tools, square nails, and other items, including an old coin from the 1800s
15 (that was referred to as a “tax coin”), that were said to be from “the days of the
16 Oregon Trail” were found during construction activities.

17 114. In addition, I was told that even bones were found scattered. I asked if these
18 were animal or human? They said that they didn’t know.

19 115. All the artifacts, I was told, were taken home by members of the road
20 construction crew. I gave my card and requested to see the artifacts that had been
21 found that day or any other time from that site. I was not shown anything, nor did
22 anyone communicate with me afterwards, although they had my contact information.

23 116. I asked the two construction workers if they had been told anything about the

1 area that they were widening the highway through, and they said that they knew
2 nothing. The coin that was found had an 1850 date on it, so people just assumed that
3 that it and the other artifacts were associated with the Oregon Trail.

4 117. I was appalled. With all of the concerns about this area raised by Chief
5 Wilbur Slockish, Chief Johnny Jackson, Carol Logan, and me, regarding the Native
6 American use of the project area, those working on the road construction had not
7 been informed that artifacts could be discovered which would be protected by federal
8 law when on federal land, which would be the Dwyer Memorial Forest; and if
9 discovered on private land, they would be protected under Oregon State law.

10 118. As for the bones that were said to be discovered by the construction workers,
11 this is of real concern. ODOT should have made it clear that we had made claims that
12 the Dwyer Memorial Forest had burials and if any bones were discovered, they
13 needed to be contacted so an archaeologist who specialized in the identification of
14 human remains could make an official examination. Those who were building the
15 road could not determine whether they were animal or human.

16 119. The highway construction continued. There was nothing that we could do but
17 watch and hope that some of the heritage resources would survive.

18 120. The campground the burials occupied was covered over with a huge mount
19 of dirt. Initially, it had small trees planted on it but they died, and in their place grew
20 non-native Scotchbroom.

21 121. Where East Wemme Trail Road, the Native Trail that became known as the
22 Barlow Trail/Oregon Trail, once entered the traditional campground, it was now
23 impassible. The west side of Dwyer Memorial Forest, was now blocked by a metal

1 barricade; and where it had recently had entered on the east, a guardrail had been
2 erected.

3 122. I first visited the Dwyer Memorial Forest in 1979 where I learned about its
4 Native American and Oregon Trail history. In the mid-1980s I began working
5 through the established system to preserve it. In 2008, I witnessed with great personal
6 pain, suffering and sadness its destruction.

7 123. If the Court were to order appropriate relief in this matter, it would go a
8 significant way in remedying the severe damage that has been done as a result of the
9 U.S. 26: Wildwood-Wemme Highway Widening Project.

10

11 Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the
12 foregoing is true and correct.

13 Executed on this 7th Day of May, 2012.

14

Respectfully Submitted,

15

16

17

/s/ Michael P. Jones.

18

MICHAEL P. JONES

CERTIFICATE OF SERVICE

I certify that on May 7, 2012, I filed electronically the foregoing *Declaration of Michael P. Jones in Support of Standing of All Plaintiffs*, and served the same electronically upon the counsel of record via the Court's electronic case filing system:

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DATED May 7, 2012

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