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Via Email and U.S. Mail

Madison County Commissioners
PO Box 278
Virginia City, MT 59755
madco@madisoncountymt.gov

Re: Madison County Road #71 (Adobe Town Road)

Dear Commissioners,

My firm represents Public Land/Water Access Association, Inc. (PLWA). As you know, a locked gate is currently obstructing public access to County Road #71 (and the public lands it reaches). I write here to respectfully request that the Board of Madison County Commissioners comply with the mandatory provisions of §§ 7-14-2133 and 7-14-2134, MCA, and remove the unlawful gate.

There is no question that County Road #71 was duly established as a county road/public highway. I will not detail the history, which was well summarized in a 2019 Road Review Committee report. *See* Madison County Road Review Committee, *Adobetown Road County Road #71 Recommendations* (Sept. 9, 2019). I simply observe that the road dates back to the mid-nineteenth century and was twice declared a county road, first in 1871–1872 and again in 1916. Those proceedings—together with maps from 1870, 1885, 1888, 1950, and 1963 and the plat attached to the 1916 viewers’ report—make clear that a county road extends from S16, T6S, R3W, down to S27, T6S, R4W. That is, “the record taken as a whole shows that a public road was created.” *Letica Land Co., LLC v. Anaconda-Deer Lodge County*, 2015 MT 323, ¶ 15, 381 Mont. 389, 362 P.3d 614 (quoting *Reid v. Park County*, 192 Mont. 231, 236, 627 P.2d 1210, 1213 (1981)).¹

¹ And in any event, any defects regarding the creation or dedication of the road are also ameliorated by operation of Montana’s “curative statute,” which expressly recognized as public highways “[a]ll highways, roads, lanes, streets, alleys, courts, places and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property.” *See Garrison v. Lincoln County*, 2003 MT 227, ¶¶ 12–15, 317 Mont. 190, 77 P.3d 163 (2003).

Disputes about the precise location of a public road are insufficient to defeat the existence of a public roadway. *See Ashby v. Maechling*, 2010 MT 80, ¶ 29, 356 Mont. 68, 75, 229 P.3d 1210, 1216 (“Discrepancies in the description or location of a road in old county documents are not sufficient to turn a county road into private property.”). Nor is nonuse or a lack of maintenance sufficient to defeat the existence of a public road. Unless a county takes affirmative steps to abandon a road, it remains a public road. *See Letica Land Co. v. Anaconda-Deer Lodge County*, 2015 MT 323, ¶ 23, 381 Mont. 389, 362 P.3d 614; *McCauley v. Thompson-Nistler*, 2000 MT 215, ¶ 31, 301 Mont. 81, 10 P.3d 794 (“Mere nonuse or lack of maintenance by the county is not sufficient to indicate a clear intent to abandon a county road without preceding such by notice and a public hearing.”). In short, nothing that Madison County has done (or failed to do) has altered the nature of County Road #71.

Given County Road #71’s status, landowners along the road cannot maintain a gate impeding access. Moreover, Madison County cannot *de facto* abandon County Road #71 by refusing to require removal of the gate; rather, the County has an obligation to demand removal of the gate. *See* § 7-14-2133(1) (“When a county road becomes obstructed, the board of county commissioners ... **shall remove** the obstruction upon being notified of the obstruction.” (emphasis added)); § 7-14-2134(1)–(2) (providing that the road supervisor or county surveyor must give notice requiring any highway encroachment to be removed, and if any encroachment prevents the use of the highway for vehicles, the road supervisor or county surveyor “**shall immediately remove** the encroachment” (emphasis added)); *see also* § 7-14-2134(3) (“The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.”).

Madison County is the public entity delegated by the State of Montana to support and maintain public roads within Madison County. The County’s interests are the interests of the public. And the law is clear: Madison County, and thus the public, is entitled to use County Road #71. PLWA implores Madison County to take action and reestablish public control over this historic county road. Thank you for your consideration.

Sincerely,



Braden S. Murphy