



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

September 6, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Declaring a Local State of Emergency and Declaring Emergency Measures to Address Landslide Issues on Dickey Prairie Road

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Jeff Heinrich
 Assistants

Purpose/Outcomes	Declaring an Emergency and Imposing Emergency Measures
Dollar Amount and Fiscal Impact	Eventual costs associated with the emergency declaration are not presently known
Funding Source	County Road Fund, County General Fund
Duration	6 months unless extended
Previous Board Action	Policy Session- November 7, 2017 Declaration of Emergency- November 22, 2017 (expired May 22, 2018)
Strategic Plan Alignment	1. Build public trust through good government 2. Ensure safe, healthy and secure communities
Contact Person	Nate Boderman, Assistant County Counsel
Contract No.	Not Applicable

BACKGROUND:

Last fall, the Board passed a declaration of emergency related to the active landslide area impacting Dickey Prairie Road. That declaration expired in May 2018. While the road has held and construction is underway to remedy the issue, DTD staff is recommending that the Board reactivate the declaration of emergency as we approach the fall, which brings an increased chance for the landslide to move. The declaration of emergency will allow staff to respond quickly in the event there is further damage to the road, and will provide flexibility to ensure that the construction project is completed and access to Dickey Prairie Road can return to normal.

Dickey Prairie Road is a maintained County road located southeast of Molalla. In March 2017, after a prolonged period of heavy precipitation, cracks formed on the southbound lane of Dickey Prairie Road due to a landslide. The Department of Transportation and Development (DTD) immediately closed the damaged lane at the slide area because the road could not be traversed safely.

In July 2017, the cracks in the closed portion of Dickey Prairie Road started to grow substantially larger. The project engineering geologist determined that this slide shouldn't be moving that quickly during the dry summer months. This landslide has caused a retaining wall

that was holding up the road to fail. It was surmised that the cracks were growing during the dry season because the retaining wall was continuing to fail.

In August 2017, DTD held a public meeting to inform the residents that live on the south side of the landslide of the current situation. Dickey Prairie is a dead-end road and if the road became unpassable at this location, staff predicts that access to 14 residences will be cut-off.

In October 2017, DTD removed the failed lane that was being held up by the failing retaining wall. The lane was removed in attempt to retard the rate at which the wall is failing by removing the load the wall was supporting. DTD also removed asphalt from the open northbound lane and left gravel to make the remaining lane easier to maintain and to more quickly perform small interim repairs should the landslide cause damage to the only remaining open lane.

The County's consultant believes that a much larger and ancient landslide exists underneath the current landslide affecting Dickey Prairie Road. If the ancient slide underneath this landslide was to move, there is a strong possibility that there would be substantial damage to Dickey Prairie Road and that access to the residences on the south side of the slide would be cut off. If Dickey Prairie Road were to be substantially damaged, it would take an extended period of time before the road could be repaired to a condition to re-establish access to and from the residences on the south side of the slide area.

The County hired a consultant and contractor to design and build a new retaining wall to remedy the aforementioned issues. The remaining road surface area of Dickey Prairie Road has been removed for the construction. Construction activities require the road to be closed during the day while crews are working. The roadway surface is currently bare dirt and when the road is open to traffic, presents challenges to those residents that live on the road south of the construction area.

If Dickey Prairie Road becomes impassable, a detour route will need to be established quickly to provide access to the area south of the slide for residents and emergency services. Unfortunately, there are no existing public roads to use as an alternative access to the residences south of the landslide. The existing site terrain makes constructing a temporary detour close to the landslide unworkable.

The most practical detour route is to use an existing private logging road on Weyerhaeuser's property and to re-establish an abandoned logging road on other adjacent properties. The abandoned portion of the logging road crosses two private properties and land that is managed by the Bureau of Land Management (BLM). The portion of the abandoned road that crosses BLM will be relatively easy to re-establish because the road was used for a timber thinning operation about 5 years ago. The portion of abandoned logging road that crosses the 2 private landowners' properties will require more work to make the road passable by passenger vehicles. The intersection of the abandoned logging road and Dickey Prairie Road is blocked by a ditch and gravel berm. The intersection of the abandoned logging road and Weyerhaeuser's road is blocked by boulders.

Weyerhaeuser and the BLM are generally open to allowing the County to use their roads in an emergency. Preliminary indications are that the private landowners are amenable to the proposed use as well. If the abandoned logging road is improved to a condition that would allow use by passenger vehicles, access to the detour route would remain blocked until the route is needed.

DTD believes maintaining access for the residents and emergency service providers for the 14 residences on the south side of the landslide area is critical to the safety and welfare of people who live in this area. It is Staff's opinion that the existing condition of Dickey Prairie Road and the slide area meets the definition of an emergency in ORS 401 and Clackamas County Code Chapter 6.03 and that a declaration of an emergency is warranted. There are currently no feasible detours over publically-maintained lands that would provide alternative access in the event Dickey Prairie Road becomes impassable. DTD would like to expend road funds to have a detour route prepared and waiting should the need arise. Roads funds are restricted funds, and cannot generally be used to make improvements on private property. Pursuant to the authority in ORS 368.715 and County Code §6.03.060, in the event of an emergency, these restricted funds may be redirected for emergency use, which would include improving a detour route over private property temporarily open to public use where no other public road is available.

As noted above, a contractor is currently onsite attempting to construct improvements designed to stabilize the slide area. According to the construction contract, construction on Dickie Prairie Road is to be substantially complete on August 31, 2018. A number of issues have arisen and the contractor will not be able to make this deadline and could potentially take several more months to finish the project given the contractor's current rate of work. DTD staff is considering whether to substitute contractors or complete the work itself in order to complete the project prior to the onset of fall rains. Adverse weather could jeopardize the work done on the project to date and will present a travel risk for residents, guests and emergency services that rely on Dickie Prairie Road as the exclusive access to the homes south of the construction site.

RECOMMENDATION:

At the Board's direction, staff has prepared an emergency declaration and associated emergency measures for the Board's consideration.

Respectfully submitted,



Nate Boderman
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

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Emergency Measures to Address
Landslide Issues Affecting Dickey
Prairie Road



Resolution No. _____

Page 1 of 3.

Whereas, ORS 401.305 provides authority for Clackamas County to act as an emergency management agency, including authority to establish policies and protocols for defining and directing responsibilities during time of emergency; and

Whereas, Clackamas County has enacted a local ordinance (County Code Chapter 6.03) pursuant to the authority granted by ORS Chapter 401, that provides for executive responsibility in times of emergency and specifically delegates authority to declare a state of emergency to the County Chair, Vice-Chair (if Chair is unavailable), Remaining Board Member (if Vice-Chair is unavailable) and County Administrator or designee (if Remaining Board Member is unavailable); and

Whereas, both state law and the County Code define emergency as a manmade or natural event or circumstance causing or threatening loss of life, injury to persons, the environment or property; human suffering or financial loss to the extent that extraordinary measures must be taken to protect the public health, safety and welfare; and

Whereas, the following conditions have resulted in the need for a state of emergency:

A portion of Dickey Prairie Road has become compromised due to landslide activity and a failing retaining wall, which could ultimately result in the road becoming impassable thereby cutting off access to approximately 14 residences.

Whereas, the following damage to life and property can be expected from the above conditions:

Residents living south of the slide area would be cut off from access to the road system and emergency responders.

Whereas, the entire County is in a state of emergency and if not the entire County, an emergency is declared for the following area(s):

The Dickey Prairie Road slide area, located between the intersection of Dickey Prairie Road and S. Lais Road, and the terminus of Dickey Prairie Road.

Whereas, County Code Chapter 6.03 and ORS 401.309 authorizes certain actions to be taken during a state of emergency when necessary for public safety or for the efficient conduct of activities to minimize or mitigate the effects of the emergency; and

Whereas, ORS 401.165 provides that upon request of Clackamas County, the Governor may declare a state of emergency by proclamation; and

Whereas, a preliminary assessment of property damage or loss, injuries or death is set forth hereinabove;

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Resolution No. _____
Page 2 of 3

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Jim Bernard, Chair, on behalf of the Board of County Commissioners, formally declares a state of emergency for Clackamas County, effective as of the date and time set forth below, for the area described above.
2. Upon this declaration of a state of emergency, the undersigned official is empowered to assume centralized control of and have authority over all departments and offices of the County, and further, the County Department of Emergency Management is empowered to carry out the appropriate functions and duties identified in County Code Chapter 6.03 during times of emergency and shall implement the Clackamas County Emergency Operations Plan.
3. Incident Command shall take all necessary steps authorized by law to coordinate response and recovery from this emergency, including, but not limited to, requesting assistance from the State of Oregon. If this declaration is not ordered by a majority of the Clackamas County Board of Commissioners, it shall be taken before the Board at its next available meeting for ratification.
4. Emergency procurements of goods or services are authorized pursuant to ORS 279B.080, ORS 279C.335(6), ORS 279C.380(4), and Local Contract Review Board Rules C-047-0280 and C-049-0150.

IT IS FURTHER RESOLVED THAT:

5. The following measures are necessary, or may become necessary as determined by Incident Command, for public safety or for the efficient conduct of activities to minimize or mitigate the effects of the emergency (indicate selected measures):

_____ A. Establish a curfew for the area designated as an emergency area which fixes the hours during which all persons other than officially authorized personnel may be upon the public streets or other public places;

_____ B. Prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place within the area designated as an emergency area;

 X C. Barricade streets and roads, as well as access points onto streets and roads. In addition, prohibit vehicular or pedestrian traffic, or restrict or regulate the same in any reasonable manner in the area designated as an emergency area for such distance or degree of regulation as may be deemed necessary under the circumstances;

 X D. Evacuate persons from the area designated as an emergency area;

_____ E. Close taverns or bars and prohibit the sale of alcoholic beverage throughout Clackamas County or a portion thereof;

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Resolution No. _____
Page 3 of 3

F. Suspend standard competitive bidding procedures to obtain necessary goods, services and/or equipment, utilizing the procedures in the Clackamas County Local Contract Review Board Rules;

G. Commit to mutual aid agreements;

H. Redirect funds for emergency use;

I. Order such other measures as are found to be immediately necessary for the protection of life and/or property.

6. Emergency measures that are not selected in section 5 above may be implemented by Incident Command, provided however that such measures shall be taken before the Clackamas County Board of Commissioners at its next available meeting for ratification.

7. This declaration of emergency shall expire on June 6, 2018.

DATED this 6th day of September, 2018, at _____:_____ .m.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary