BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-05-21-08

IN THE MATTER OF THE LEGAL STATUS OF COLLARD LAKE ROAD, ROADS IN THE COLLARD LAKE ROAD SYSTEM AND EMERGENCY REPAIR OF COLLARD LAKE ROAD

WHEREAS, the following six subdivisions: Collard Lake Acres, Collard Lake Acres 1st Addition, Collard Lake Heights (formerly Collard Lake Acres 2nd Addition), Mercer Lake Heights, Mercer Lake Heights 1st Addition and Mercer Lake Heights 2nd Addition make up the Collard Lake Development; and

WHEREAS, the residences in the Collard Lake Development are accessed by Collard Lake Road, Collard Lake Way, Collard Loop, View Loop, Chapman Road, Ocean View Way and Ocean View Lane, collectively known as the Collard Lake Road System; and

WHEREAS, Collard Lake Road was dedicated to the public and accepted by the Lane County Board of Commissioners in 1965; and

WHEREAS, in December of 1968 the Lane County Subdivision Engineer stated in a letter to the Lane County Planning Commission that prospective buyers should be fully aware of the fact that Lane County will not accept responsibility for the maintenance of the roads in the Collard Lake Road System and recommended that fact be noted on the final plat; and

WHEREAS, the following note appears on the final Collard Lake Road plat: “Collard Road is a public road and not a County Road: See Deed Recorded 1-6-68, Reel 293D #87901 and Commissioners Jr. 1-6-65, Reel 25 page 562 pursuant to ROS 368.546 & 368.55”; and

WHEREAS, on February 18, 1976 the Lane County Board of Commissioners considered a request by Lane County Transportation Director Al Driver that Collard Lake Access Road, Collard Loop and Collard Lake Way be accepted as county roads; and

WHEREAS, Lane County Transportation Director Al Driver erroneously advised the Lane County Board of Commissioners that the roads in the Mercer Lake Heights Subdivision and 1st Addition were already county roads; and

WHEREAS, on February 18, 1976 the Lane County Board of Commissioners voted unanimously to accept Collard Lake Road into the county road system; and
WHEREAS, between 1976 and 1983 Lane County Public Works staff made efforts to obtain the necessary dedications from property owners adjacent to Collard Lake Road for Lane County to obtain the 50 foot right-of-way necessary to comply with ORS 368.415(1) [as amended by Oregon Laws chapter 229 §2 (1953)]; and

WHEREAS, Lane County Public Works staff obtained dedications from all property owners adjacent to Collard Lake Road for Lane County to obtain the 50 foot right-of-way to comply with ORS 368.415(1) except for 17-12-36-3, Tax Lot 3100; and

WHEREAS, the 1981 Oregon Legislature passed ORS 368.031 which created local access roads and limited a county’s ability to expend county funds on local access roads; and

WHEREAS, in March of 1983 a Resolution and Order to accept Collard Lake Road as a county road was prepared for presentation to the Lane County Board of Commissioners on March 3, 1983; and

WHEREAS, the March 1983 Resolution and Order to accept Collard Lake Road as a county road was not presented to the Lane County Board of Commissioners; and

WHEREAS, on August 16, 1983 the Lane County Board of Commissioners met and discussed an agenda item entitled, “Collard Lake Road”; and

WHEREAS, on September 13, 1983 the Lane County Board of Commissioners met and discussed an agenda item entitled, “Collard Lake Road and Local Access Road Funding Options” and directed staff to prepare a Board Order reflecting the Board’s September 13, 1983 discussion on this agenda item; and

WHEREAS, on September 28, 1983 the Lane County Board of Commissioners signed Board Order 83-9-28-23 entitled, “In the Matter of Providing One Time Emergency Maintenance on Collard Lake Road”; and

WHEREAS, Board Order 83-9-28-23 declared that Collard Lake Road was a local access road as defined by ORS 368.031, ordered that emergency repairs be done on a one-time basis and the benefitted property owners must use self-help to preserve the road’s condition; and

WHEREAS, the Lane County Public Works Department concluded the repairs ordered by Board Order 83-9-28-23; and

WHEREAS, on December 9, 1998 the Lane County Board of Commissioners signed Board Order 98-12-9-18 entitled, “In the Matter of Improving Collard Lake Road And Providing Continuing Maintenance”; and

WHEREAS, Board Order 98-12-9-18 declared that Collard Lake Road was a local access road as defined by ORS 368.031, ordered that emergency repairs be done and that there be a continuing program of limited maintenance on Collard Lake Road following the repairs; and

WHEREAS, the Lane County Public Works Department concluded the repairs ordered by Board Order 98-12-9-18; and

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WHEREAS, between 1998 and 2006 the Lane County Public Works Department performed limited maintenance on Collard Lake Road by paving, surface maintenance and vegetation maintenance as directed by Board Order 98-12-9-18 and the Public Works Director; and

WHEREAS, on April 5, 2006 the Lane County Board of Commissioners discussed an agenda item entitled, “Request to Add Collard Lake Road into the Lane County Road System and Make Repairs to Several Other Roads Adjacent to Collard Lake Road and Take These Roads into the Lane County Road System”; and

WHEREAS, the Lane County Board of Commissioners took no action on April 5, 2006 or at any time thereafter on the request; and

WHEREAS, between 2006 and 2015 the Lane County Public Works Department performed limited maintenance by on Collard Lake Road by vegetation management, small repairs, crack-sealing and ditch maintenance as directed by Board Order 98-12-9-18; and

WHEREAS, in February of 2019 in response to public comment requesting repairs be made to Collard Lake Road, the Lane County Board of Commissioners ordered that Lane County Counsel provide a legal opinion regarding the status of Collard Lake Road and that a work session be scheduled to discuss Collard Lake Road and options for the repair and maintenance of Collard Lake Road; and

WHEREAS, Lane County Counsel Stephen Dingle and Public Works staff prepared a memorandum detailing the history of Collard Lake Road dated April 16, 2019 which concluded that Collard Lake Road and all of the roads in the Collard Lake Road System are local access roads as defined in ORS 368.016 and not county roads as defined by ORS 368.001(1); and

WHEREAS, on April 16, 2019 the Lane County Board of Commissioners held the previously scheduled work session on Collard Lake Road which was attended by Collard Lake Development residents and attorney Fredrick Batson; and

WHEREAS, residents and Mr. Batson argued that Collard Lake Road had been accepted by the County as a county road on February 18, 1976 and Mr. Batson provided written arguments in favor of his position dated April 16, 2016 to each Board member; and

WHEREAS, the Lane County Board of Commissioners directed staff to return with a Board Order that addressed the following three items: (1) obtaining the final piece of right-of-way, 17-12-36-3 Tax Lot 3100, that would provide the County with a continuous 50 foot right of way adjacent to Collard Lake Road in the event that the Board may take future action on the status of the road (2) authorization to use County Road Fund resources to fund emergency repairs at two slides on Collard Lake Road, and (3) a specific definition of the term “limited maintenance” for future maintenance of Collard Lake Road; and,

WHEREAS, Lane County Counsel Stephen Dingle has provided a legal opinion in response to the arguments presented by Mr. Batson in his April 16, 2019 letter concluding the roads in the Collard Lake Road System are local access roads and not county roads; and
WHEREAS, the Lane County Board of Commissioners finds that there was an intent to take Collard Lake Road into the county road system in 1976 but the steps necessary to complete the legal process of accepting Collard Lake Road as a county road was never completed, and therefore Collard Lake Road and all roads in the Collard Lake Road System were dedicated to the public for road purposes but were never accepted into the county road system and therefore all roads in the Collard Lake Road System are local access roads; and

WHEREAS, Lane County staff shall identify and enter into negotiations with landowners for the purpose of securing any right of way needed for a continuous 50 foot right of way width; and

WHEREAS, ORS 368.016 provides that local access roads outside the city limits are subject to the jurisdiction of counties but counties are not liable for the failure to improve such roads; and

WHEREAS, ORS 368.016 provides that counties may expend county funds on local access roads if the work is an emergency; and

WHEREAS, the Lane County Engineer, Peggy Keppler has determined and recommends, that based upon the justified use by the public of Collard Lake Road, expending up to $75,000 for the following emergency repairs to be made to Collard Lake Road including removing trees and vegetation adjacent to the roadway and stabilizing the failed fill areas near mile posts 0.94 and 0.96; and

WHEREAS, the extraordinary circumstances that have caused the need for the emergency repairs described by the County Engineer constitute an emergency need for the repairs and the Lane County Board of Commissioners feels it is appropriate to make the emergency repairs as recommended by the County Engineer, Peggy Keppler; and

WHEREAS, Board Order 98-12-9-18 authorized a program of limited maintenance but did not define the term “limited maintenance”; and

WHEREAS, ORS 368.031(2)(c) permits the Lane County Board of Commissioners to authorize work on a local access road as a continuing program; and

WHEREAS, Peggy Keppler Lane County Engineer and as the county road official recommends the expenditure of county funds for limited maintenance of Collard Lake Road and that public use of the road justifies the expenditure for limited maintenance as permitted by ORS 368.031; and

WHEREAS, the Lane County Public Works Department and Orin Schumacher Lane County Roads Manager has recommended the following definition of limited maintenance: Annual road maintenance activities including roadside vegetation management, ditch maintenance and culvert maintenance. All other maintenance activities would be completed on as needed basis as determined by Roads Supervisor, including pothole repairs, crack-sealing, pavement patching and shoulder maintenance; and
NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That Lane County staff is hereby directed to take the necessary steps to secure the last remaining right of way dedications needed for a continuous 50 foot right of way width along Collard Lake Road, including the use of Eminent Domain if deemed necessary.

2. That as a result of the current emergency and the need for repairs, upon the recommendation of Peggy Keppler the County Engineer and based upon the finding that public use of Collard Lake Road justifies the expenditure of county funds in the amount estimated to be $75,000 for removal of trees and vegetation and stabilization of road fill failure areas near mile posts 0.94 and 0.96.

3. That based upon the recommendation of the Lane County Engineer and the Lane County Roads Manager and because the public use justifies the expenditure, that county funds be expended for limited maintenance of Collard Lake Road until March 1, 2020. Limited maintenance is defined as: Annual road maintenance activities including roadside vegetation management, ditch maintenance and culvert maintenance. All other maintenance activities would be completed on as needed basis, determined by Roads Supervisor, including pothole repairs, crack-sealing, pavement patching and shoulder maintenance.

ADOPTED this 21st day of May, 2019.

Peter Sorenson, Chair
Lane County Board of Commissioners