

W. H. C.

**AGENDA COVER MEMORANDUM**

**Agenda Date: March 9, 2005**

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**DATE:** February 23, 2005

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer 2

**SUBJECT:** IN THE MATTER OF PROVIDING DIRECTION TO STAFF FOR AGREEMENTS WITH THE DEPT. OF ENVIRONMENTAL QUALITY AND SEQUENTIAL BIOFUELS CONCERNING THE ENVIRONMENTAL CLEANUP, LEASE AND SALE OF TAX FORECLOSED PROPERTY LOCATED AT 86714 MCVAY HWY., EUGENE

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1. **PROPOSED MOTION:** No motion is proposed. Staff is seeking the Board's direction in proceeding with agreements with the Dept. of Environmental Quality (DEQ) and SeQuential Biofuels (SQ), a private, for profit firm, concerning tax foreclosed property.
2. **ISSUE/PROBLEM:** Pursuant to previous Board action, the county has applied for a cleanup grant from the EPA for contaminated property located at 86714 McVay Hwy (near LCC). Property Management staff has also been negotiating lease, purchase and cleanup agreements with the DEQ and SQ. An issue with the DEQ has arisen concerning their desire for a \$50,000 contribution by the county for cleanup of the property in the event the EPA grant is not awarded. This commitment is outside the parameters presented to the Board when the matter first was presented.
3. **DISCUSSION:**

3.1 Background

The county acquired property at 86714 McVay Hwy. in September, 2004 through tax foreclosure. The property was formerly used as a gas station and has been identified as

containing hazardous material in the form of petroleum products. DEQ has estimated that cleanup costs could exceed \$200,000.

Grant funding up to \$200,000 is available from the Environmental Protection Agency (EPA). The grant is available only to the county and requires a 20% match (\$40,000). The grants are awarded on a competitive basis.

SQ, which markets and distributes bio-diesel fuel, was interested in purchasing the property for its operations. SQ offered to contribute \$50,000 to the cleanup which would cover the county's 20% match requirement for the EPA grant. The county would then transfer title to SQ upon closure of the grant (up to two years). The DEQ was agreeable and was willing to enter into a Prospective Purchaser Agreement with SQ. The agreement would allow SQ to occupy the property while cleanup actions were taking place and would absolve SQ from liability for the existing contamination.

The Board was agreeable to the idea and in November, 2004 authorized submittal of the grant application to the EPA. Approval was given with the understanding that agreements would be negotiated with SQ for the lease/purchase of the property and with DEQ.

Two related issues have come up during negotiations – having SQ occupy the property before it is known if the grant will be awarded (awards will be made in May or June) and how to proceed in the event the EPA grant is not awarded to the county.

The DEQ wishes to proceed with cleanup activities if the EPA grant is not awarded. The DEQ is willing to contribute \$50,000 for the cleanup from its Orphan Site fund. The DEQ wants a commitment for a \$50,000 contribution from the county as well before it will enter into an agreement with SQ which would allow them to occupy the property before grant awards are made (SQ would still contribute \$50,000).

The funding for the county's contribution can be taken from the tax foreclosure budget which is a non-general fund program.

In the event the EPA grant is not awarded, \$50,000 in grant money may also be available to the county from the Oregon Economic and Community Development Dept. (OECDD). The OECDD grant does require a 20% match from the county. The OECDD grant, if secured, would be in addition to the county's \$50,000 contribution.

### 3.2 Analysis

Funding Availability: The foreclosure program is funded from revenue from the sale of tax foreclosed property. Funds received in excess of program expenses are distributed to the taxing districts annually pursuant to ORS 275.275. Funds are not eligible to be carried over

therefore the foreclosure program begins each fiscal year with a zero balance for revenues. Expenses, however, can be carried forward. If expenses exceed revenue in any given year, revenue from foreclosure sales in future years can be used to repay prior year's expenses.

Currently, there are not sufficient funds in excess of program expenses to contribute towards cleanup of the property. It is anticipated that sufficient funds, or a portion of the \$50,000 cleanup contribution, will be available by the end of this fiscal year when additional revenue from property sales is realized. The DEQ has indicated that it would be agreeable to the county making payments over the anticipated two year cleanup period (i.e., \$25,000/year).

Staff cannot guarantee foreclosure funds would be available given the uncertainty of how many properties may be foreclosed upon in any given year and the value of those properties.

If \$50,000 Contribution is Approved: If the Board approves contributing \$50,000 towards cleanup of the property, county staff, the DEQ and SeQuential will continue to finalize agreements that would allow SeQuential to occupy the property before the status of the EPA grant is known (much of the agreement's terms have been worked out). Approval of the contribution would also ensure that cleanup work on the property will occur in the event the EPA grant is not awarded, that the property is returned to the tax roll and is being used productively. It is anticipated that agreements would be finalized and approved by the parties by the middle of April.

If \$50,000 Contribution is Not Approved: Agreements would not be finalized at this time and SeQuential would not occupy the property until the status of the EPA grant is known. If the grant is awarded, then the parties would proceed with finalizing agreements, occupying the property and initiating cleanup actions.

If the EPA grant is not awarded, the county could apply for the \$50,000 OECD grant (which would require a \$10,000 match from the county) to be used for cleanup activities. The DEQ however, has not yet indicated that it would proceed with its \$50,000 contribution in the absence of an additional \$50,000 contribution from the county's budget.

If the EPA grant is not awarded and the OECD grant is not awarded and the county does not provide a funding contribution, the prospective agreements become moot and no cleanup actions will be taken. Given that cleanup costs exceed the value of the property, selling it for even minimal consideration would be difficult. The property would remain in county inventory. The county could again apply for EPA grant funding in the following grant cycle (November, 2005) with award decisions being made in May, 2006.

### 3.3 Alternatives/Options

1. Approve the concept of contributing \$50,000 of county funds for cleanup activities contingent upon \$25,000 being available from this year's foreclosure budget. It is anticipated that the remaining \$25,000 would be available during the ensuing two budget cycles ('06 & '07). Availability of the initial \$25,000 may not be known until June 30<sup>th</sup> and the status of the EPA grant would likely be known by then. This alternative would not expedite SeQuential occupying the property as soon as possible but would ensure cleanup activities do occur.
2. Approve the concept of authorizing the \$50,000 contribution at this time. Foreclosure funds would be directed towards cleanup activities over the next 2 years. This alternative assumes the full amount would become available during that time from foreclosure revenues or that General Fund moneys would be available if foreclosure revenues fell short during that period. This alternative would allow SeQuential to occupy the property as soon as agreements are finalized and ensure cleanup of the property in the event the EPA grant is not awarded.
3. Do not authorize a \$50,000 contribution. The involved parties would then wait until the status of the EPA grant is known in May or June before finalizing agreements and initiating cleanup activities. SeQuential's development of the property and start of business operations would be delayed.
4. Do not authorize a contribution. If the EPA grant is not awarded, apply for the OECDD \$50,000 grant (requires a \$10,000 match from the county) and negotiate with DEQ and SeQuential to proceed with their \$50,000 contributions for cleanup activities (up to \$160,000 would be available). If the OECDD grant is not secured, no cleanup activities would occur and the property would remain in county inventory.

### 3.4 Recommendation

It is recommended that alternative 1 be pursued.

### 3.5 Timing

None.

4. **IMPLEMENTATION/FOLLOW-UP:** Staff will proceed based on the Board's direction.
5. **ATTACHMENTS:** No attachments.