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Memorandum Date: May 11, 2011
Order Date: May 25, 2011

TO: Board of County Commissioners
DEPARTMENT: Management Services
PRESENTED BY: Mike Barnhart, Financial Services Manager
AGENDA ITEM TITLE: IN THE MATTER OF WAIVING THE PROVISIONS OF LANE MANUAL 4.040(7)(E) AND AUTHORIZING AN OPERATING INTERFUND LOAN IN THE AMOUNT OF \$100,000 FROM THE GENERAL FUND TO THE TAX FORECLOSED PROPERTY PROGRAM IN THE MANAGEMENT SERVICES SPECIAL REVENUE FUND

I. MOTION

Move approval of order 11-05-25-XX waiving the provisions of Lane Manual 4.040(7)(e) and authorizing an operating interfund loan in the amount of \$100,000 from the General Fund to the Tax Foreclosed Property program in the Management Services Special Revenue Fund.

II. AGENDA ITEM SUMMARY

The Board of County Commissioners is being asked to support the authorization of an interfund loan to cover operational costs in the management of the Tax Foreclosed Property program. This will require the Board to waive the provisions of Lane Manual 4.040(7)(e) that establish a ceiling on the amount an interfund loan can be granted for.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Pursuant to ORS 275.275, state taxes, penalties, fees, and costs incurred in the management and supervision of real properties acquired through tax foreclosure are reimbursed from the proceeds of sale of such properties.

On April 28, 2004, Board Order 04-4-28-16 approved the addition of Interfund Loan Policies to Chapter 4 of the Lane Manual.

On August 27, 2008, Board Order 08-8-27-4 approved a land sale to the Port of Siuslaw for \$250,000 and established the Industrial Development Revolving Fund.

On May 20, 2009, Board Order 09-5-20-5 authorized an Operating Interfund Loan in the amount of \$75,000 from the General Fund to the Tax Foreclosed Property program in the Management Services Special Revenue Fund to cover a cash shortage.

On September 15, 2010, Board Order 10-9-15-2 authorized an Operating Interfund Loan in the amount of \$40,000 from the General Fund to the Tax Foreclosed Property program in the Management Services Special Revenue Fund to cover a cash shortage.

B. Policy Issues

Lane Manual 21.400 to 21.430 contains the County rules for managing tax foreclosed properties.

Lane Manual 4.040 contains the County rules for managing interfund loans. Specifically:

Lane Manual 4.040(2) states "Interfund loan requests must be reviewed and approved by the County's Finance and Audit Committee prior to taking a request for authorization to the Board of County Commissioners".

Lane Manual 4.040(3) states "Interfund loans must be authorized by an order of the Board of County Commissioners, which shall state the fund from which the loan is to be made, the fund to which the loan is to be made, the purpose for which the loan is made and the principal amount of the loan, along with a schedule for repayment of principal and interest, or a statement that interest is not applicable to the loan".

Lane Manual 4.040(9) states, "At no time shall a County fund carry a deficit fund balance at fiscal year end."

On April 21, 2011, the Finance and Audit Committee met and reviewed the negative cash position of the Tax Foreclosed Property program. The Committee unanimously agreed to support a request for an interfund loan from the General Fund to Tax Foreclosed Property program in the Management Services Special Revenue Fund.

C. Board Goals

This item supports the goal of providing efficient and effective financial and

administrative support and systems.

D. Financial and/or Resource Considerations

Interfund loans have the effect of reducing available cash in the lending fund and increasing available cash in the borrowing fund during the loan term. This interfund loan request seeks charging interest at the internal rate of return on the County's internal investment pool, which is currently 1.278%. If the loan is approved for one year, interest is estimated to be \$1,278 over the life of the loan.

E. Analysis

The Tax Foreclosed Property Program

In Oregon, counties acquire fee title to tax foreclosed properties. Most properties acquired through tax foreclosure are unimproved bare land without buildings, wells, septic systems or other improvements to the property. Many of the parcels are small or irregularly shaped with little use or value except to an adjoining owner. The county may acquire a few properties each year with houses on them and it is not uncommon for the county to transfer these to other governmental agencies or non-profit entities for affordable housing purposes.

Tax foreclosed properties to be sold to the public are first offered for sale at a public auction. Such properties are sold on an "as is, where is, with all faults" basis and conveyed with a Quitclaim Deed. No warranties or guarantees are made by the County. It is the buyer's responsibility to thoroughly investigate a property prior to purchasing it.

Properties that do not sell at a public auction can then be sold at a private sale. Private sale offers are forwarded to the Lane County Board of Commissioners for acceptance or rejection.

In general, proceeds from the public or private sale of tax foreclosed property are used in the following order:

1. Pay penalties and fees associated with the foreclosure proceedings.
2. Pay all costs and expenses for the maintenance and supervision of Tax Foreclosed Property program.
3. Pay local improvement liens, if any.
4. Distribute the balance of proceeds to governmental units using the current tax and interest distribution schedule. Distributions are to be made by June 30th each fiscal year.

Accounting Structure

ORS 275 does not specifically state which type of accounting fund the tax foreclosed property activity should be recorded in. However, the statute often refers to sales proceeds refunding and reimbursing the "county general fund" for costs and expenses incurred in maintaining and supervising such properties.

For at least the last 20 years, the County's Tax Foreclosed Property program has been operated out of a special revenue fund. In years 2006 and prior the program was managed out of Fund 228, but was moved to Fund 268 in 2007 to enhance fiscal accountability within departments.

Therefore, even though a special revenue fund is used to manage the Tax Foreclosed Property program, the General Fund is ultimately responsible for unreimbursed operating costs of the program.

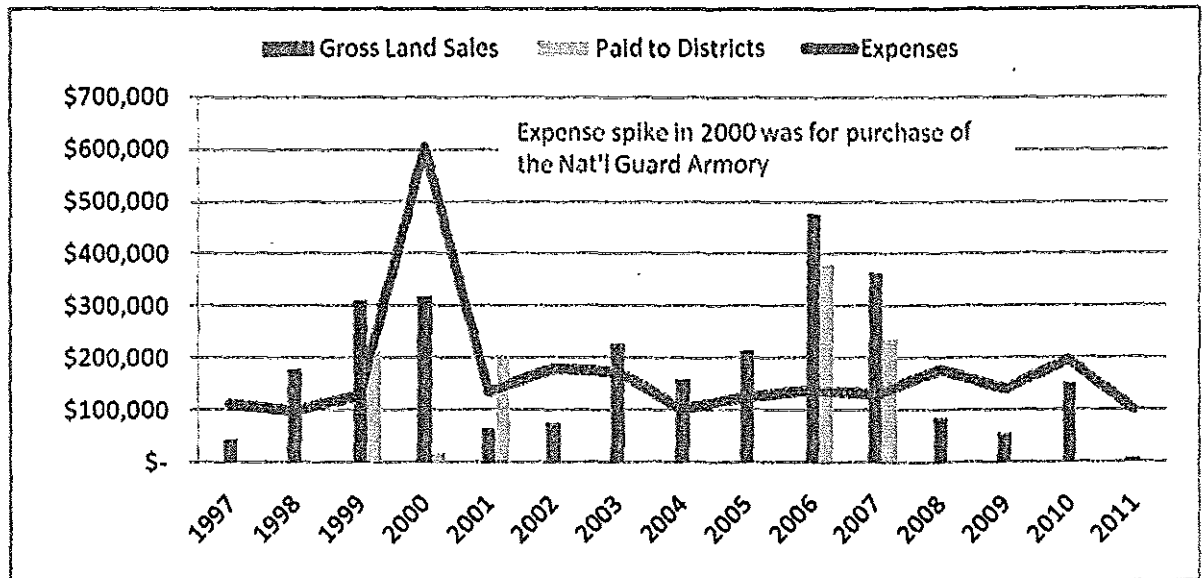
Negative Cash Projection

Over the last three years, sales proceeds from tax foreclosures have been lower than budgeted and insufficient to cover operating costs. The result has been negative cash flow for the last three years. In order to keep enough cash in the fund to pay expenses, the General Fund has been providing operating loans in each of the last two years.

	2011 (Projected)	2010	2009	2008
Beginning Cash Balance	(118,107.71)	6,697.90	16,533.63	101,650.72
Net Fund Operations	(18,022.28)	(49,805.61)	(84,835.73)	(85,117.09)
Interfund loans granted	40,000.00	-	75,000.00	-
Interfund loans repaid	-	(75,000.00)	-	-
Ending Cash Balance	(96,129.99)	(118,107.71)	6,697.90	16,533.63

As evidenced in the above chart, an interfund loan was required in 2009 to boost cash above zero. In 2010 negative cash was reported which caused a budget violation. In 2011, negative cash is again anticipated.

An analysis of Net Fund Operations is provided here:



As can be seen (with the exception of the spike in 2000), expenses (red line) have been relatively stable over the past 15 years at between \$100,000 and \$200,000 annually.

However, gross land sales (purple line) fluctuate wildly from year to year. In years where there were large land sales, money was redistributed out to the taxing districts (green line) as required by Statute. Since 2008, land sales have not been sufficient to cover expenses, resulting in a negative cash position.

Industrial Revolving Fund

The Industrial Revolving Fund was created by the Board of County Commissioners in accordance with ORS 275.318 to hold money from the sale or lease of county real property located in an area planned and zoned for industrial use. The disposition of monies received must be expended only for the engineering, improvement, rehabilitation, construction, operation or maintenance of development projects authorized by ORS 271.510 to 271.540 and 280.500.

This fund has only received one land sale since inception - \$250,000 on September 2, 2008. At this time only one project has been funded:

- Ice plant installation and equipment at the Old Town wharf

The cash balance in the Industrial Revolving Fund program is \$199,251 as of April 30, 2011.

On one hand, if the Industrial Revolving Fund was never created, there would have been a sizable operating profit in 2009. On the other hand, if other land sales had developed the over the last three years, the Fund would not be in its current precarious condition. Therefore, although it is not fair to state the Industrial Revolving Fund created the current negative cash position, it is fair to state the Industrial Revolving Fund has contributed to the current size of the negative cash balance.

Interfund Loans

Over the past two years, the negative cash position of the Tax Foreclosed Property program has been covered by the use of interfund loans.

In the immediate case, an interfund loan to the Tax Foreclosed Property program would be considered an "Operating Interfund Loan", defined as a loan made for the purpose of paying operating expenses. This kind of interfund loan:

- Shall be budgeted and repaid no later than the end of the fiscal year subsequent to the period in which the loan was made;
- If not repaid in the same fiscal year in which it is made, the full repayment of the loan shall be appropriated as a budget requirement in the subsequent fiscal year;
- Is required to be assessed interest, unless otherwise stated in the adopting order.
- Is granted only after it has been demonstrated that reasonable consideration was given to other potential resources available to the fund and when the loan is required to meet a pressing need or to take advantage of a special opportunity.
- May not exceed the greater of:
 - 40% of available unrestricted fund balance of the borrowing fund. (\$175), or
 - 20% of annual "total revenue" plus "other financing sources" of the borrowing fund (\$30,000).
- Made only if there is a likely expectation that the Tax Foreclosed Property program will have the ability to repay the loan. In other cases, the use of an interfund transfer should be considered for appropriateness.

Conclusions:

Two issues arise when contemplating an interfund loan for the Tax Foreclosed Property program:

1. The APM restricts the loan to a maximum of \$30,000.

As the APM is written, we cannot loan \$100,000 to the Tax Foreclosed Property program because that amount exceeds 20% of total annual revenue plus other financing sources. If the Board chooses, it could waive the computation of the maximum loan amount per APM 4.040(7)(e) and authorize a \$100,000 loan.

2. An interfund loan is only appropriate if the Tax Foreclosed Property program has ability to repay the loan.

Waiving the maximum limit in number 1 above is appropriate if the Tax Foreclosed Property program is expected to receive land sales in the future that would afford the program the wherewithal to repay the interfund loan. Unfortunately, this has been management's position for the past two years and we have not yet seen a sufficient revenue stream to support that claim.

F. Alternatives/Options

Financial Services has identified the possible alternatives/options:

1. Waive the provisions of Lane Manual 4.040(7)(e) and authorize a \$100,000 interfund loan from the General Fund to the Management Services Special Revenue Fund bearing interest at the County's internal rate of return payable in full at June 30, 2012.
2. Authorize a \$30,000 interfund loan from the General Fund to the Tax Foreclosed Property program in the Management Services Special Revenue Fund bearing interest at the County's internal rate of return payable in full at June 30, 2012, and transfer \$70,000 from the General Fund to the Management Services Special Revenue Fund.
3. Do not authorize an interfund loan, but transfer \$100,000 from the General Fund to the Tax Foreclosed Property program in the Management Services Special Revenue Fund.
4. Ask County Counsel to review the ORS and current County policies to determine if reserves in the Industrial Revolving Fund can be loaned or transferred to the Tax Foreclosed Property program in the Management Services Special Revenue Fund.

5. Close the Tax Foreclosed Property program in the Management Services Special Revenue Fund and transfer the operations to the General Fund.
6. Do not authorize an interfund loan or a transfer to the Tax Foreclosed Property program in the Management Services Special Revenue Fund and instruct staff to seek alternative financing.

IV. RECOMMENDATION

Financial Services recommends Option 1 because we still believe sales of tax foreclosed properties will be sufficient in future years to repay the loan. However, if the Board plans to direct significant future sales of tax foreclosed property into the Industrial Revolving Fund, we recommend Option 2 or 3 to keep the fund solvent and not burden it down with interfund loans it cannot repay. Option 4 must be researched before any recommendation is made. We do not recommend option 5 due to the restricted nature of tax foreclosed property sale receipts.

V. TIMING/IMPLEMENTATION

If Option 1 is approved, a \$100,000 will be loaned to the Tax Foreclosed Property program in the Management Services Special Revenue Fund on June 30, 2011. A supplemental budget will be requested to reflect the loan and subsequent repayment.

VI. FOLLOW-UP

None.

VII. ATTACHMENTS

Order No 11-05-25-XX

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER AND RESOLUTION) IN THE MATTER OF WAIVING THE PROVISIONS OF
) LANE MANUAL 4.040(7)(E) AND AUTHORIZING AN
) OPERATING INTERFUND LOAN IN THE AMOUNT OF
) \$100,000 FROM THE GENERAL FUND TO THE
) TAX FORECLOSED PROPERTY PROGRAM IN THE
) MANAGEMENT SERVICES SPECIAL REVENUE FUND

WHEREAS, ORS 294.460 allows loans from one County fund to another and requires an ordinance or resolution authorizing the loan; and

WHEREAS, Lane Manual 4.040(7)(e) provides that interfund loans may not exceed the greater of 40% of available unrestricted fund balance of the borrowing fund or 20% of annual "total revenue" plus "other financing sources" of the borrowing fund, which computes out to be approximately \$30,000; and

WHEREAS, the Management Services Special Revenue Fund experienced a cash shortfall at June 30, 2011 and anticipates adequate revenue to cover the shortfall in fiscal year 2012; now therefore

IT IS HEREBY ORDERED AND RESOLVED that the Board of Commissioners waive the provisions of Lane Manual 4.040(7)(e) for the purposes of this interfund loan, and authorize the Director of Management Services to affect an interfund loan pursuant to ORS 294.460 (the "Loan") to provide operating funds to the Tax Foreclosed Property Program, subject to the following:

1. The Loan will be made from the General Fund in the principal amount of \$100,000.
2. The Loan is an operating loan and must be repaid in full no later than June 30, 2012.
3. The Loan will bear interest at the County's internal rate of return. Accrued interest is due and payable in full on June 30, 2012.

Adopted this 25th day of May, 2011

Faye Stewart, Chair
Board of County Commissioners

APPROVED AS TO FORM

Date 5-17-11 Lane County

OFFICE OF LEGAL COUNSEL