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**MEMORANDUM**

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Date: March 30, 2006  
To: Board of County Commissioners, County Administrator  
From: Teresa J. Wilson, County Counsel  
Subject: Process for Formation of a New County



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**Facts:** Citizens are in the process of circulating a petition for the formation of Siuslaw County, splitting off a portion of western Lane County.

**Question:** What is the process involved in the formation of a new county?

**Answer:** The process is generally outlined by statutes, many of which have been in place without change since 1930. While there is a general outline, if the petition and vote is successful, much will end up being resolved through a negotiation and transition process with the new county.

**Discussion:** ORS Ch. 202 outlines the process for formation of new counties. I will simply highlight the guidance the statutes provide:

Petition Process to Election

1. ORS 202.020 requires that a petition to form a new county must be signed by a majority of the electors of the territory proposed for the new county. After the signatures are validated by the County Clerk the petition will come to the Board of Commissioners.
2. ORS 202.030 requires that the Board make findings that both the proposed and remaining counties meet the assessed value, area and population requirements of the Constitution. Oregon Constitution Article XV, Section 6 specifies that a county must have a minimum area equal to or greater than 400 square miles and a population equal to or greater than 1200 inhabitants. It says nothing about assessed value. I have researched earlier constitutions and statutes and can only locate one reference to an assessed valuation requirement. The 1930 Oregon Code, Section 26-201 required a new county have an assessed value of not less than \$2 million. Upon making the necessary findings, the Board calls for an election on the next available election date. It will be held for the electors registered within the territory of the proposed new county.

Post Election Proclamation; First Board and Officers of New County, if successful

3. ORS 202.050 provides that after the election, the County Clerk certifies the results to the Secretary of State, providing the name, territorial contents and boundaries of the new county and of the county affected by the change.
4. ORS 202.060 then provides that the Governor issues a proclamation declaring the new county formed.
5. ORS 202.100 provides that 30 days after the proclamation, the Governor appoints 3 electors to serve as the initial board – a county judge and two commissioners. These individuals will serve until successors are elected.

6. ORS 202.110 provides that the appointed Board will then appoint a Sheriff, County Clerk, Assessor, Treasurer and Surveyor. Any Justice of the Peace whose district is located within the new county will continue to hold office.

#### Transition

7. Public Buildings and Records - ORS 202.150 provides for the disposition of public property (real estate), records and tax liens. It states that all of the public buildings, records and other property of Lane County remain property of Lane County. If formed, Siuslaw County would need to pay Lane County for the value of any buildings owned by Lane County which are within the territory of Siuslaw.

8. Real Estate/Tax Records - ORS 202.160 addresses the transcription of real estate, court and tax records. This is one of the statutes that do not reflect current technology. Siuslaw County would be responsible for transcribing the records of deeds, mortgages and other instruments, probate and court records, and tax records, and for bearing the costs for doing so. Lane County would need to permit Siuslaw County access to our records to enable them to do this, at reasonable times.

9. Election Records - Under ORS 202.180, Lane County would transfer all registration cards, poll books, electors' lists and other election records relating only to precincts and electors within the new county's territory to Siuslaw County. There is no arrangement made for who bears the costs.

10. Money due from State - ORS 202.190 provides that if there are monies due from the State, they shall be paid to each county in proportion to the territory. Payment is made at the time payment is made to all other counties in the state.

11. Money due to State - ORS 202.200 indicates that taxes payable to the state shall be paid by each county in proportion to the taxable value of property within the county.

12. Apportionment of Indebtedness - ORS 202.210 provides a process for determining and apportioning indebtedness. Generally, the apportionment is based on the last assessed valuation. The two county boards are required to meet on the 3<sup>rd</sup> Monday that is 6 months after the Governor's proclamation, and ascertain the amount of the indebtedness "as near as may be." The starting spot is the total outstanding debt of Lane County as of January 1 following the election, less amounts due for rents, the value of all public buildings owned and remaining within Lane County, and the value of all public funds on hand belonging to Lane County (not including special funds—see below). This remainder is then proportionately divided. The two boards are required to fix that amount, and then Siuslaw County must assume the debt for what is owed to Lane County and make payment to Lane County.

13. Money in Special Funds and Property - ORS 202.220 specifies that all money belonging to special funds (fire, school, road) which belongs to districts in the new county, and property owned by districts in the new county shall be turned over in full. This "special funds" statute clearly applies to those funds which hold monies exclusively owned by districts. It does not apparently apply to what Lane County has labeled "special funds" as part of our budgeting process, i.e., those funds which contain general county road funds or other dedicated monies, as those monies are not owned by districts within the Siuslaw territory.

14. Funds in Excess of Indebtedness – ORS 202.230 provides that if there are funds actually on hand in excess of indebtedness described above, then, after making the deductions described above, Lane County shall pay over a “just proportion of such funds based upon the next last assessed valuations of [Lane County]” The two Boards are to determine this amount when they meet regarding the indebtedness.

15. Authority to Collect Revenue – Under ORS 220.250, after the two counties make the determination on what is owed, Lane County will not longer have any authority to collect past due revenue, including taxes or assessments, within Siuslaw County.

16. Redistrict – Under ORS 202.260, after the formation of the new county, Lane County must engage in a redistricting and fill any vacancies as provided for by law.

17. Statutory Description – ORS chapter 201 generally provides the legal description of each county. If the voters approve Siuslaw County, there will also need to be a legislative change to that chapter to revise the description of Lane County, and record the legal description of Siuslaw County.

18. Transfer of Employees – ORS 236.605-640 provides a complicated process regarding the transfer of employees when the duties of a public employer are transferred to another. Generally, the employees whose jobs might be affected by the transfer of duties have rights, including a right to the job with the new employer (Siuslaw County). In addition, the transferred employee is entitled to the same salary they had for at least 12 months with the new employer. The employers and two employers, as well as any affected labor unions, will need to work through how to deal with employment issues involved, including classifications, compensation, accrued leaves and benefits. The transferring employees are entitled to retain up to 80 hours accrued leave, payment for which would be made by Lane County to Siuslaw County. The new employer will need to determine benefits, hours and conditions of employment, which may well involve negotiation with any recognized collective bargaining unit that might be formed. Employment records will need to be transferred. In addition, the two employers will need to address by written agreement any unfunded liability or surplus that may exist with the PERS system for the affected employees.

As mentioned at the beginning, this simply lays out what the statutes describe as the process. Much administrative work would need to be done to determine and implement the details of what has been described in the statutes; if the proposal is successful, I anticipate there will also be other details where are not even covered by statutes that will be involved. Without spending much time, I can envision issues regarding whether inmates at the jail, youth in detention, or persons under supervision by parole and probation are affected; how mental health or public health patient’s treatment and records are handled; the impact on the agreement between the City of Florence and Lane County with respect to room tax contributions for the All Events Center is managed; the impact on citizens who are in the middle of any building, zoning or planning permit or Measure 37 process. What this all means is that if the proposal to form a new county is successful, there will need to be significant resources for both counties that are committed to a responsible transition.

cc: Department Directors