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AGENDA COVER MEMORANDUM

Memorandum Date: August 13, 2008

Agenda Date: August 27, 2008

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: IN THE MATTER OF REMOVING THE CONDITIONS CONTAINED IN A 1998 DEED THAT TRANSFERED 40 ACRES OF COUNTY OWNED REAL PROPERTY TO THE PORT OF SIUSLAW; RECEIVING CONSIDERATION OF \$250,000 FOR SAID REMOVAL AND ESTABLISHING AN INDUSTRIAL DEVELOPMENT REVOLVING FUND PER ORS 275.318 (MAP # 18-12-22-00-00701, 40 ACRES NORTH OF COUNTY TRANSFER STATION IN FLORENCE)

1. **PROPOSED MOTION:** TO AUTHORIZE EXECUTION OF A QUITCLAIM DEED TO THE PORT OF SIUSLAW VOID OF ANY RESTRICTIONS OR CONDITIONS CONTAINED IN A 1998 DEED TO THE PORT OF SIUSLAW; TO ESTABLISH AN INDUSTRIAL DEVELOPMENT REVOLVING FUND PER ORS 275.318 AND DEPOSIT THE \$250,000 IN CONSIDERATION RECEIVED FROM THE PORT INTO SAID FUND.

2. **AGENDA ITEM SUMMARY:**

Pursuant to discussions between the County and the Port of Siuslaw an agreement has been reached to remove the conditions contained in a 1998 deed conveying 40 acres of County property to the Port. In consideration for the removal of the conditions the Port will pay the County \$250,000.

ORS 275.318 provides for depositing funds received from the "sale" of County property that is zoned for industrial use (which the Port property is) into an "Industrial Development Revolving Fund". The statute allows the funds to be disbursed, at the discretion of the Board, for a variety of uses to foster projects for economic development. If the funds from this transaction with the Port are not deposited in a "Development Fund" they would be disbursed to the taxing districts as the property was acquired through tax foreclosure.

3. **BACKGROUND/IMPLICATIONS OF ACTION:**

A. **Board Action and Other History**

In February 1998, pursuant to Order No. 98-2-3-2, the Board authorized the transfer of 40 acres of County owned property to the Port of Siuslaw (the property is North and adjacent to the closed landfill in Florence). The transfer was made without monetary consideration based on the Port's representation that it would develop the property, and that the property would be used for industrial purposes in an effort to bolster the Florence area economy.

To ensure that the Port would develop and use the property as stated, 11 conditions were included in the deed. Those conditions include:

- Property to be used for industrial purposes pursuant to ORS 777.250 (condition #1)
- Port to pay County market value of land if Port sells property or property is not used for industrial purposes (#2).
- Port may sell property without compensating County if property is improved with infrastructure capable of supporting further development with buildings and structures (#4)
- Infrastructure defined as provisions for water, sewage, drainage, roads, power and communications (#5)
- Property to revert to County if after 10 years property has not been improved with noted infrastructure and property remains in essentially the same condition as when transferred (#7)
- Deed conditions binding for 15 years (#8)

Of immediate concern to the Port is the provision in condition # 7 that the property would revert to the County if the property had not been improved with the required infrastructure within 10 years of the conveyance. The ten year anniversary of the conveyance will be on September 11, 2008.

There has been disagreement between the County and the Port on whether the deed conditions have been satisfied to the point to prevent reversion of the property to the County. The Board has not been convinced that the conditions have been met and therefore the property may be subject to reversion.

On July 22, 2008 the County Board and the Port Board met in Florence to discuss the matter. Discussion became focused on the County removing all deed conditions in consideration of a monetary payment by the Port to the County. No specific amount was agreed to at the meeting with compensation ranging from \$150,000 - \$300,000 being discussed (a 2007 fee appraisal valued the property at \$1.7 million).

The County Board provided staff with direction to proceed with a proposal to the Port for removal of the deed conditions in exchange for an immediate, one time payment of \$250,000. The proposal was presented to the Port. The Port Board, pursuant to Resolution No. 08-07-08A, affirmed its interest in the County's proposal subject to approval of the release document.

B. Policy Issues

Pursuant to Lane Manual 21.425(1), it is the policy of the County to make land available to public agencies which can be used for public purposes within a reasonable amount of time as determined by the Board.

C. Board Goals

The initial transfer of the property was consistent with the Board's goals to;

1. Work for a strong regional economy to expand the number of family wage jobs available in Lane County;
2. Contribute to appropriate community development in the areas of transportation and land development.

D. Financial and/or Resource Considerations

If deposited into an Industrial Development Revolving Fund the funds received from the Port can be used at the discretion of the Board for economic development projects that are consistent with the provisions of ORS 275.318.

If the property was first converted to park land pursuant to ORS 275.330 and then sold again to the Port, the funds received would have to be used for park purposes.

If neither of the above options were pursued, funds would be disbursed to the taxing districts as the property was acquired through tax foreclosure.

E. Analysis

The deed conditions, particularly the reversion provision, have become an obstacle to securing businesses to occupy the property. There is also some room for interpretation of the deed conditions with respect to what constitutes sufficient improvement of the property with infrastructure to satisfy the deed conditions. If the County were to continue with a position that the deed conditions have not been satisfied it would likely require legal action through the courts to affirm the property's reversion to the County.

The impetus for transferring the property to the Port in 1998 without consideration was the Board's desire at the time to have the property continue to be a public asset while fostering

economic development for Western Lane County. Economic conditions have changed since the transfer and the deed conditions may be hindering development of the property as envisioned by both the Port and the County. By proceeding with the proposed removal of the restrictions in exchange for monetary consideration the property will continue to be a public asset, will allow the Port to better plan for development of the property and aggressively market the property and will allow the County to assist in economic development projects throughout the entire County with the funds received from the Port.

The removal of the deed restrictions is proposed to occur through execution of another Quitclaim Deed by the County, absent of the conditions and noting that the conditions in the previous deed are to be voided and the Port is to have title free and clear of those conditions. This process was proposed by the Port's attorney and was agreeable to Assistant County Counsel Marc Kardell.

ORS 275.318 provides for selling County owned property, by public or private sale, with or without public notice, provided the property is zoned for industrial purposes pursuant to an acknowledged comprehensive plan (which the property is). The statute also provides for the funds received from such a sale to be deposited in an industrial development fund. Monies from this fund can be used, pursuant to a Board Order, for the engineering, improvement, rehabilitation, construction, operation or maintenance of development projects that include manufacturing production, agricultural development, aquaculture development, convection centers and trade centers.

The statute does not require that any particular project be identified prior to depositing funds into the development fund. The Board, at a later date, can determine criteria for disbursement of the funds.

F. Alternatives/Options

1. Proceed with removal of the deed restrictions in exchange for \$250,000 with the Board executing a Quitclaim Deed void of the restrictions. Monies received to be deposited in a special fund per ORS 275.318 and be used for economic development projects as determined by the Board.
2. Convert the property to park land then transfer it back to the Port. Funds received from the sale of park land must be used for park purposes per statute. This alternative would require the Port deeding the property to the County, the County then designating the property as park land, a resolution by the City of Florence concurring with the park land designation and then holding a public hearing before authorizing the sale of the property back to the Port.
3. Reject any and all proposals to remove the deed restrictions with the intent to assert the County's reversion rights. If successful in anticipated legal action to assert reversion rights, the County could then sell the property and retain the entire

sale amount which could be used for the industrial fund or park purposes (if property was designated as park land before a sale).

V. TIMING/IMPLEMENTATION

The matter should be resolved prior to September 11, 2008 which is the 10 year anniversary of the initial transfer to the Port.

VI. RECOMMENDATION

It is recommended that Option 1 be implemented.

VII. FOLLOW-UP

Upon approval by the Board, the Quitclaim Deed will be executed and the funds received deposited in a special account pursuant to ORS 275.318.

Any necessary budget adjustments resulting from this transaction will occur in the first supplemental for FY 08-09.

VII. ATTACHMENTS

Board Resolution & Order
Quitclaim Deed Voiding Restrictions
1998 Deed and Conditions
Port Resolution 08-07-08A
ORS 275.318

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

RESOLUTION &
ORDER NO.

IN THE MATTER OF REMOVING THE CONDITIONS CONTAINED IN A 1998 DEED THAT TRANSFERED 40 ACRES OF COUNTY OWNED REAL PROPERTY TO THE PORT OF SIUSLAW; RECEIVING CONSIDERATION OF \$250,000 FOR SAID REMOVAL AND ESTABLISHING AN INDUSTRIAL DEVELOPMENT REVOLVING FUND PER ORS 275.318 (MAP # 18-12-22-00-00701, 40 ACRES NORTH OF COUNTY TRANSFER STATION IN FLORENCE)

WHEREAS pursuant to Order No. 98-2-3-2 the Board authorized the transfer of 40 acres of County owned real property to the Port of Siuslaw without monetary consideration with said transfer effected by a deed recorded September 11, 1998 on Reel 2462, Reception No. 9872710 in the Deed Records of Lane County; and

WHEREAS said deed contained 11 conditions to the transfer and provided for amending those conditions upon mutual consent of the parties; and

WHEREAS both Lane County and the Port of Siuslaw agree that it would be in the public's best interest to remove the 11 conditions contained in the 1998 deed thereby allowing said Port to better proceed with developing the property for industrial purposes and enhance economic development for Western Lane County and

WHEREAS the Port of Siuslaw, pursuant to Port Resolution No. 08-07-08A, has agreed to remit to Lane County \$250,000 as consideration for the removal of said deed restrictions and

WHEREAS, said real property is zoned for industrial purposes under an acknowledged comprehensive plan and

WHEREAS, ORS 275.318 provides for depositing monies received from the sale of such industrially zoned property into an Industrial Development Revolving Fund and

WHEREAS ORS 275.318 allows monies from said Revolving Fund to be used for, inter alia, engineering, improvement, rehabilitation, construction, operation, maintenance and planning costs for manufacturing, agricultural development, improved utilization of natural resources, convention facilities and trade centers, and transportation development projects pursuant to an Order by the Board authorizing disbursement of said funds

IT IS HEREBY ORDERED that pursuant to ORS 275.318 the Board, in consideration of \$250,000 received from the Port of Siuslaw, shall execute a Quitclaim Deed to said Port for property identified in attached Exhibit "A"; that said Quitclaim Deed shall be void of any conditions or restrictions on said property and that the Quitclaim Deed shall note the County's intention to convey title free and clear of the conditions contained in the 1998 deed to the Port of Siulsaw as recorded on Reel 2462, Reception No. 9872710 in the Deed Records of Lane County.

IT IS FURTHER RESOLVED & ORDERED that pursuant to ORS 275.318 an Industrial Development Revolving Fund be established for Lane County and that the monies received from the Port of Siuslaw be deposited in said Fund.

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 2008.

Faye Stewart, Chair, Board of County Commissioners

APPROVED AS TO FORM

Date 8-14-08 lane county



OFFICE OF LEGAL COUNSEL

IN THE MATTER OF REMOVING THE CONDITIONS CONTAINED IN A 1998 DEED THAT TRANSFERED 40 ACRES OF COUNTY OWNED REAL PROPERTY TO THE PORT OF SIUSLAW; RECEIVING CONSIDERATION OF \$250,000 FOR SAID REMOVAL AND ESTABLISHING AN INDUSTRIAL DEVELOPMENT REVOLVING FUND PER ORS 275.318 (MAP # 18-12-22-00-00701, 40 ACRES NORTH OF COUNTY TRANSFER STATION IN FLORENCE)

EXHIBIT "A"

PROPERTY BEING TRANSFERRED TO PORT OF SIUSLAW

The Southeast quarter of the Northwest quarter of Section 22, Township 18 South, Range 12 West of the Willamette Meridian, all in Lane County, Oregon (portion of map # 18-12-22-00700)

QUITCLAIM DEED

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Order No. _____ of the Board of County Commissioners of Lane County, releases and quitclaims to:

Port of Siuslaw, a municipal corporation

all its right, title and interest, including the release of those conditions contained in that certain deed between Lane County and the Port of Siuslaw as recorded on Reel 2462R, Reception No. 9872710 in the Deed Records of Lane County, in that real property situated in Lane County, State of Oregon, described as:

The Southeast quarter of the Northwest quarter of Section 22, Township 18 South, Range 12 West of the Willamette Meridian, all in Lane County, Oregon (portion of map # 18-12-22-00700)

It is the intention of this deed to supersede that certain deed as recorded on Reel 2462R, Reception No. 9872710 in the Deed Records of Lane County thereby conveying Lane County’s right, title and interest to the herein real property free and clear of any and all of the restrictions and conditions contained in said deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007

The true and actual consideration for this transfer is: \$250,000.00

LANE COUNTY BOARD OF COMMISSIONERS

This space reserved for recording sticker

STATE OF OREGON)
) ss
COUNTY OF LANE)

On _____, 2008 personally appeared _____,
_____, _____, _____,

_____, County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:

After recording, return to/taxes to:
Port of Siuslaw

My

Notary Public for Oregon
Commission

Expires

PO Box 1220
Florence, OR 97439

9872710

9872710

COPY

QUITCLAIM DEED

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Order No. 98-2-3-2 of the Board of County Commissioners of Lane County, releases and quitclaims to:

Port of Siuslaw, a municipal corporation

all its right, title and interest in that real property situated in Lane County, State of Oregon, described as:

The Southeast quarter of the Northwest quarter of Section 22, Township 18 South, Range 12 West of the Willamette Meridian, all in Lane County, Oregon (portion of map # 18-12-22-00700)

SUBJECT TO THE CONDITIONS NOTED ON ATTACHED EXHIBIT "A"

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

The true and actual consideration for this conveyance is: Use of the property for industrial development

LANE COUNTY BOARD OF COMMISSIONERS

Tara Cooper
Ellie Sundt
Cristy Wealdreyer
[Signature]

APPROVED AS TO FORM

Date 1/27/98 Lane County

[Signature]
OFFICE OF LEGAL COUNSEL

STATE OF OREGON)
) ss
COUNTY OF LANE)

8942SEP.11'98#02REC 10.00
8742SEP.11'98#02PFUND 10.00
8742SEP.11'98#02A&T FUND 20.00

On February 3, 19 98 personally appeared the above named County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:

Tarra Withers
Notary Public for Oregon

After recording, return to/taxes to:
Port of Siuslaw
PO Box 1220
Florence, OR 97439

My Commission Expires 11-04-01



CONDITIONS FOR CONVEYANCE OF COUNTY PROPERTY TO THE PORT OF SIUSLAW

1. The property herein has been conveyed to grantee for the purpose of grantee developing and using the property in a manner consistent with ORS 777.250.
2. Should grantee sell, transfer or otherwise convey any, or all, of its interest in the property, or develops, uses, or causes the property to be used in a manner not consistent with ORS 777.250, grantee shall pay grantor the greater of any consideration received for the property by grantee or the fair market value of the property. Payment shall be based on the unimproved value of the property.
3. The fair market value of the property shall be determined by an independent appraiser, paid for by grantee, as of the date of any transfer, sale, conveyance or change in use of the property not consistent with condition #1 above. The appraiser shall be selected by grantee from a list prepared by grantor with a minimum of three appraisers reasonably qualified to perform the appraisal. Grantee shall make payment to grantor pursuant to condition # 2 above within thirty (30) days of the appraiser's report.
4. Grantee may sell, transfer or otherwise convey any, or all of its interest in the property without compensating grantor provided that the property has been improved with infrastructure capable of supporting further development of the property with buildings, structures and other facilities and improvements which can be used for the conduct of commerce consistent with ORS 777.250. Grantee will continue to be subject to condition #2 above if the sale, transfer or conveyance results in the property not being used pursuant to ORS 777.250.
5. Infrastructure shall be defined as provisions for water, sewage, drainage, roads, power, communication and other similar facilities.
6. A sale, transfer or conveyance of the grantee's interest in the property shall include, but not be limited to, sales by contract, assignments, purchase option agreements, partnership agreements, foreclosure, condemnation and leasehold agreements.
7. The property shall revert to grantor if, after a period of ten years has expired from the date of transfer, the property has not been improved with the infrastructure noted in condition #4 and the property remains in essentially the same condition as it was on the date of transfer of the property by the grantor to the grantee.
8. These conditions shall be binding for a period of 15 years from the date of transfer by grantor to grantee.
9. These conditions shall expire immediately upon payment to the grantor of the greater of any consideration received by grantee from a sale, transfer or conveyance of grantee's interest in the property or the fair market value of the property.
10. These conditions may be amended by mutual consent of the grantor and grantee with any amendments being duly recorded in the deed records of Lane County.
11. Notwithstanding conditions 2 and 4, grantee may trade a portion of the Northwest corner of the herein conveyed property for an approximately 100 foot x 200 foot area of land located West of, and adjacent to, the Southern boundary of the herein conveyed property and extending across Rhododendron Drive to the Siuslaw River. Grantee (Port of Siuslaw) shall pay to grantor (Lane County) the difference in value, if any, between the exchanged properties if the value of the herein conveyed property is greater than that of the property for which it is being exchanged. The terms and conditions above shall immediately attach to any property acquired by grantee (Port of Siuslaw) in this manner with the terms and conditions above immediately expiring on the portion of the herein conveyed property used for an exchange.

RESOLUTION NO. 08-07-08A

A RESOLUTION AUTHORIZING DEVELOPMENT OF AN AGREEMENT WITH
LANE COUNTY TO PROVIDE UNENCUMBERED OWNERSHIP OF THE PACIFIC
VIEW INDUSTRIAL PARK PROPERTY

WHEREAS, the Port of Siuslaw desires to acquire free and clear ownership of the approximately 40 acre property known as Pacific View Industrial Park (PVIP);

WHEREAS, the PVIP property deed currently has conditions which prevent the Port from possessing free and clear ownership of the property;

WHEREAS, negotiations with Lane County regarding the deed conditions have resulted in a proposal to offer free and clear ownership of the PVIP property to the Port in consideration of a payment of \$250,000;

BE IT RESOLVED the Port of Siuslaw Board of Commissioners affirms its interest in accepting the County's proposal, pending a mutually agreeable payment price, and contract for deed transference, and necessary procurement of funds.

ADOPTED by the Port of Siuslaw Board of Commissioners 7th day of August
2008.



President



Secretary

275.318 Sale or lease of land located in industrial use zone; Industrial Development Revolving Fund; use of proceeds of sale. (1) When the governing body of a county sells or leases real property acquired in any manner by the county, if that property is located in an area planned and zoned for industrial use under an acknowledged comprehensive plan of the county, the governing body may order all the moneys paid to the county under the terms of the sale be deposited with the county treasurer and credited to a special fund created by the governing body and designated the Industrial Development Revolving Fund of the county.

(2) The county treasurer shall disburse the moneys in the Industrial Development Revolving Fund of the county only upon the written order of the county governing body and only for the purposes set forth in subsection (3) of this section.

(3) Moneys in an Industrial Development Revolving Fund created under this section by a county governing body shall be expended only for the engineering, improvement, rehabilitation, construction, operation or maintenance, in whole or in part, including the preproject planning costs, of any development project authorized by ORS 271.510 to 271.540 and 280.500 that is located in the county and that could directly result in one of the following activities:

- (a) Manufacturing or other industrial production;
- (b) Agricultural development or food processing;
- (c) Aquacultural development or seafood processing;
- (d) Development or improved utilization of natural resources;
- (e) Convention facilities and trade centers;
- (f) Transportation or freight facilities; and
- (g) Other activities that represent new technology or types of economic enterprise the county governing body determines are needed to diversify the economic base of the county.

(4) If moneys from the sale of county property located in an area planned and zoned for industrial use are not credited to the Industrial Development Revolving Fund of the county, those moneys shall be distributed as provided in ORS 275.275.

(5) The governing body of a county may sell, lease or convey the real property described in this section, including any part thereof or interest therein, at public or private sale, with or without advertisement, and do all acts necessary to the accomplishment of the sale, lease or conveyance. [1983 c.494 §1]

