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## AGENDA COVER MEMO

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DATE: February 25, 2004

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Frank Simas  
Right of Way Manager

AGENDA ITEM TITLE: In The Matter of Relinquishing a Conservation Easement to the City of Dunes City in Connection with Construction of the Clear Lake Road Improvement Project and the Gibbs Creek Bridge Replacement Project.

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### I. MOTION

THAT THE ORDER BE APPROVED AUTHORIZING THE RELINQUISHMENT OF A CONSERVATION EASEMENT TO THE CITY OF DUNES CITY IN CONNECTION WITH THE CONSTRUCTION OF THE CLEAR LAKE ROAD IMPROVEMENT PROJECT AND THE GIBBS CREEK BRIDGE REPLACEMENT PROJECT IN ACCORDANCE WITH ORS 271.330 (1).

### II. ISSUE OR PROBLEM

The City of Dunes City has agreed to accept a conservation easement over a parcel of County-owned land in order to facilitate the fulfillment of wetland mitigation requirements in connection with the Clear Lake Road Improvement Project and the Gibbs Creek Bridge replacement project.

### III. DISCUSSION

#### A. Background:

Construction work on the Clear Lake Road Improvement Project from Mile Post 1.67 to Mile Post 4.23 is now underway, with completion scheduled for Fall, 2004. The road

segment to be improved includes the bridge over Gibbs Creek at Mile Post 3.1, and this structure is scheduled to be replaced under a separate contract to be let in 2005.

The road improvements and the bridge project together will impact a total of .34 acres of wetland as a result of the replacement of 6 culverts, the widening of the road to accommodate paved shoulders and the construction of the new bridge.

Normally, the U S Army Corps of Engineers and the Oregon Department of State Lands (DSL) require that this loss of wetlands be mitigated through the creation of new wetlands or enhancement of existing wetlands as a condition of their granting the permits necessary to do the work.

After an extensive search of the area, it was determined that there were no suitable sites for mitigation that were available for purchase by Lane County. During our discussions with the Corps of Engineers, they agreed that two sites that were not technically suitable for mitigation could be purchased by Lane County and protected in perpetuity in order to fulfill our obligations resulting from the filling of the .34 wetland acres.

The two subject sites are shown on the enclosed Assessor's map and aerial photograph. The fee-owned site is the most northerly of the two and was purchased from E. H. Robbins. This approximate 1.5-acre crescent-shaped parcel lies on the inside of a curve about 800 feet easterly of the intersection of View Terrace Road. The land slopes down from the road and is covered with brush and small trees. It is a portion of Tax Lot 19-12-24-00-00200.

In our discussions with the Corps of Engineers, we understood that the purchase of the property would be sufficient to fulfill our obligations, and we subsequently competed the purchase of a Conservation Easement on the southerly site and purchased the Robbins property in fee ownership. When the Permit was issued by the Corps on December 17, 2003, it contained an added requirement that both sites be protected in perpetuity through a Conservation Easement.

The Corps of Engineers is requiring that the title to the easement be held separately from the fee ownership interest in the property, so that the owner of the conservation easement would theoretically be the party to enforce the terms of the easement. The Corp's concern in this situation is that if Lane County were to encumber the County-owned property with only a unilateral covenant, at some future date the County would also have the ability to remove the covenant in order to allow development. This would be counter to the intent of the permit requirement that the sites be preserved in perpetuity.

In order to facilitate the construction of the road improvement and bridge replacement project, the City of Dunes City has agreed to accept the relinquishment of a conservation easement over the parcel that was purchased from Robbins. Lane County would retain the fee ownership interest in the property and it would be listed on the tax rolls as an exempt property by virtue of its public ownership.

Under the terms of the easement, the role of the grantee (in this case, Dunes City) of the easement is mostly passive, in that the existence of the easement restricts the fee owner (Lane County) from activities that would be counter to the intent of the conservation easement. The management plan for the property must be approved by DSL, and as currently proposed, the management role of the County will be limited to monitoring the property and possibly the periodic elimination of invasive weeds and grasses that would degrade the value of the land as a resource area.

**B. Analysis:**

The conveyance of the conservation easement will facilitate the intended use of the land to fulfill wetland mitigation requirements in connection with the above-referenced projects. This land is not needed for use by Lane County at the present time or in the foreseeable future for any purpose other than wetland preservation.

The City has agreed to accept the conservation easement, and relinquishment of the easement at no cost is permitted under ORS 271.330 (1), provided the property shall be used for not less than 20 years by the governmental body in the State of Oregon. The Conservation Easement document contains a permanent use restriction in accordance with the ORS requirements.

**C. Alternatives/Options**

1. Approve the relinquishment of the Conservation Easement to the City of Dunes City.
2. Reject the relinquishment as outlined above.

**D. Recommendations**

It is recommended that the Board approve this Order, and authorize the execution of the attached Conservation Easement.

**IV. IMPLEMENTATION/FOLLOW-UP**

Public Works Staff will transmit the signed document to the city for acceptance and recording.

**V. ATTACHMENTS:**

1. Conservation Easement
2. Map
3. Aerial Photo

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY  
STATE OF OREGON**

**ORDER NO.**

(IN THE MATTER OF RELINQUISHING A  
(CONSERVATION EASEMENT TO THE  
(CITY OF DUNES CITY IN CONNECTION  
(WITH CONSTRUCTION OF THE  
(CLEAR LAKE ROAD IMPROVEMENT  
(PROJECT AND THE GIBBS CREEK  
(BRIDGE REPLACEMENT PROJECT.

WHEREAS, Lane County has obtained a Removal/Fill permit from the U. S. Army Corps of Engineers in connection with construction in wetland and riparian areas concerning the above-referenced projects; and

WHEREAS, the conditions of said permit require that a parcel of County-owned land containing wetland and riparian areas be preserved in perpetuity through the recordation of a conservation easement; and

WHEREAS, the City of Dunes City has agreed to accept the relinquishment of a conservation easement to facilitate the construction of said projects; and

WHEREAS, said property is not needed for any public use other than for preservation of the existing wetland and riparian habitat; and

WHEREAS, relinquishment of said real property interest is permitted under the provisions of ORS 271.331(1) provided that said property shall be used for a public purpose for not less than 20 years; and

WHEREAS, the terms of said conservation easement require it to be used for a public purpose in perpetuity;

NOW THEREFORE, IT IS ORDERED that the Board authorize the relinquishment of said conservation easement to the City of Dunes City.

BE IT FURTHER ORDERED that the Board authorize the relinquishment to the City of Dunes City via the Environmental Conservation Easement attached hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Chair,  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3-5-04 lane county,

Man Full  
\_\_\_\_\_  
Clerk

After Recording Return to, and  
Send Tax Statements to:  
Lane County Public Works  
Right of Way Management Section  
3040 N. Delta Highway  
Eugene, Oregon 97408

## **ENVIRONMENTAL CONSERVATION EASEMENT**

**LANE COUNTY**, hereinafter called GRANTOR, for the true and actual consideration of 0 dollars grants to **CITY OF DUNES CITY**, a municipal corporation of the State of Oregon, hereinafter called GRANTEE, a permanent easement for Environment Conservation for the following described property:

A parcel of land lying in the Northwest one-quarter (NW ¼) of Section 24, Township 19 South, Range 12 West of the Willamette Meridian, Lane County, Oregon, and being all of that tract of land conveyed to LANE COUNTY, by that certain deed recorded October 9, 2003, Recorder's Reception Number 2003-098961, LANE COUNTY OREGON DEED RECORDS, being described as follows:

All that portion of the East one-half of the Northwest one-quarter (E ½ NW ¼) of Section 24, Township 19 South, Range 12 West of the Willamette Meridian lying westerly of County Road Number 1174.

The parcel of land to which this description applies contains 0.7543 of a hectare, more or less, exclusive of existing right of way.

The intent of this permanent easement is for the purpose of allowing the maintenance and protection of the natural environment of the land within the boundaries of said easement as a wetland conservation site. This use will not include drainage alterations, excavation and/or re-grading, or removal of trees, native wetland plants, or animal habitat.

This grant is conditioned upon the herein conveyed parcel being used for a public purpose in perpetuity.

## **RESTRICTIVE COVENANT**

The property described herein shall be subject to the following protective measures, except as provided in Reserved Rights below:

1. There shall be no destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation in the Protected Property, nor any disturbance or change in the natural habitat of the Protected Property in any manner, except to eliminate non-native species from the site or conduct other required maintenance.
2. There shall be no agricultural, commercial or industrial activity, including logging, undertaken or allowed in the Protected Property except for limited harvesting of seeds and other propagules; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.
3. No domestic animals shall be allowed to graze or dwell on the Protected Property.

4. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Protected Property.

5. There shall be no building of new roads or any other rights of way on the Protected Property.

6. There shall be no damming, dredging nor any activities or uses of the Protected Property detrimental to water quality, nor alterations to existing hydrology of the property.

7. There shall be no operation of dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles on the Protected Property.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary, the owners of the property reserve for themselves, their heirs, successors and assigns the following Reserved Rights; PROVIDED, however, that the exercise of such rights is not inconsistent with the conservation interests associated with the Protected Property.

#### **RESERVED RIGHTS**

1. The Protected Property may be used for limited harvesting of seeds and other propagules.

2. The right to limited foot access for inspection or educational purposes.

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 INTEREST TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN O.R.S. 30.930.

IN WITNESS WHEREOF, the undersigned have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

STATE OF OREGON     )  
                                  )     ss.  
County of Lane        )

On \_\_\_\_\_, 20\_\_\_\_\_, personally appeared \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

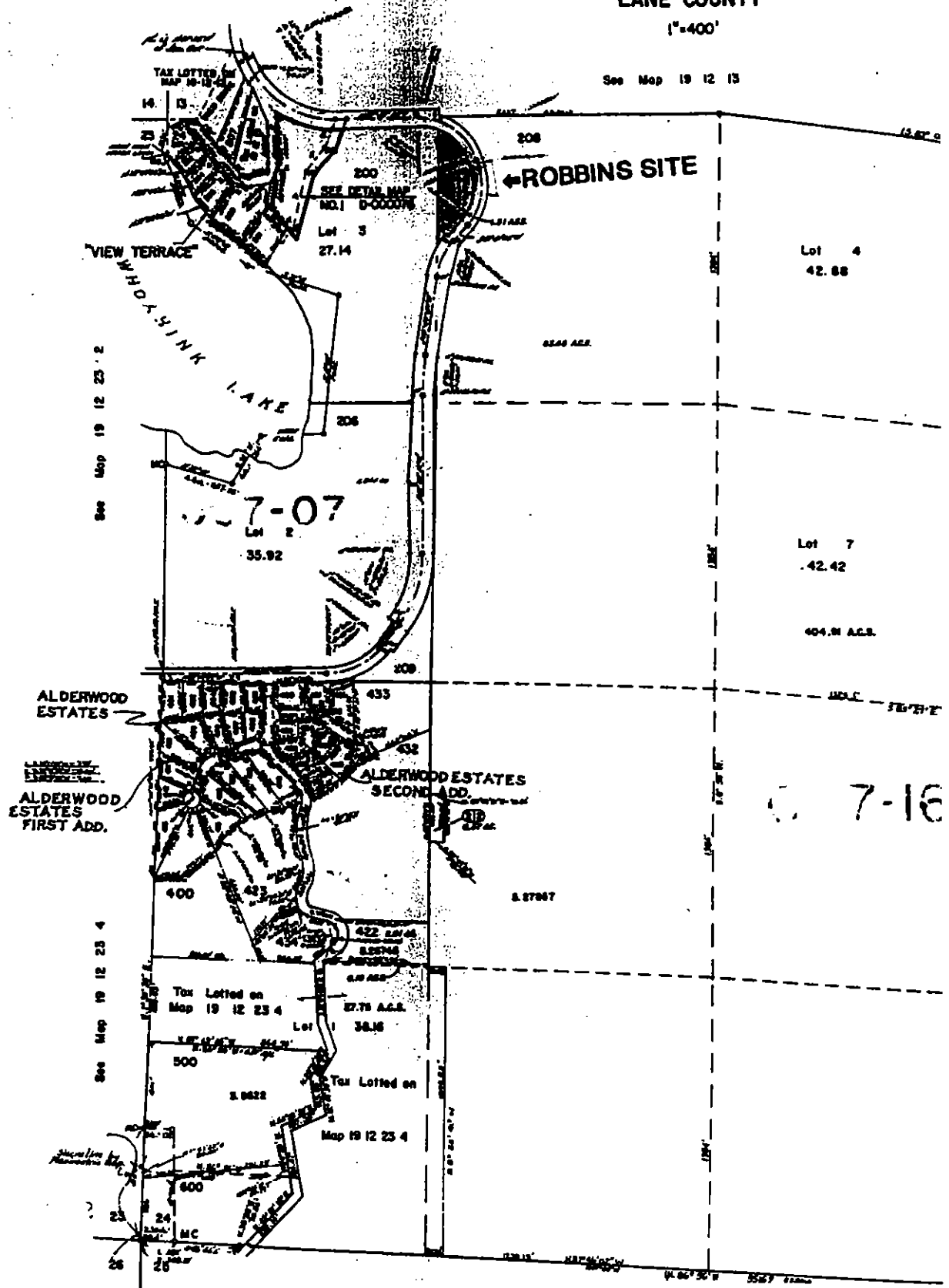
who, duly being sworn, did say that they are members of the Board of Commissioners of Lane County, Oregon and that said instrument was signed and sealed in behalf of Lane County by authority of its Board of Commissioners; and they acknowledged said instrument to be its voluntary act and deed. Before me:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

Section 24 T.19S. R.12W.W.

LANE COUNTY

(1"=400')



See Map 19 12 25 2 2

See Map 19 12 25

1 S. 86° 04' E'  
2 S. 87° 04' E'

LOCATION MAP