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AGENDA COVER MEMORANDUM

Agenda Date: September 15, 2004

DATE: September 1, 2004

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer

SUBJECT: REPORT ON DESIGNATING TAX FORECLOSED PROPERTY AS COUNTY PARKLAND

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1. **PROPOSED MOTION:** No motion is proposed. Staff seeks Board feedback and direction.

2. **ISSUE/PROBLEM:** The Board has requested a report on the feasibility of designating tax foreclosed property as county parkland, then selling the property with sale proceeds used for park purposes as required by statute.

   Issues to be addressed in the report include: the process for designating foreclosed property as parkland and disposing of such property (ORS 275.320 – .330); legality of doing so; overview of tax foreclosure program – how it is funded, disposition of revenues, management of properties, contributions to the General Fund; continued management of foreclosed properties not designated as parkland; how other counties are addressing the issue; possible strategies for maintaining funding for foreclosure program; effects on other taxing districts

3. **DISCUSSION:**

   3.1 Background

   ORS 275.320 – .330: ORS 275.320 provides for designating as county forest, park or recreation lands county property that has been acquired through tax foreclosure or otherwise. Such designation is accomplished by the passage of an Order by the Board. The statute also requires approval by a city's governing body should the property being designated as parkland be located within a city's corporate limits.

ORS 275.330 provides for the conveyance/alienation of designated county forest, park and recreational lands. For a conveyance to private parties (transfers to governmental entities will not be addressed) in counties with a population of less than 450,000 authorization is required from a majority of the electors of a county in an election <u>or</u> the county's governing body deems by Order after a public hearing that a sale is in the best interest of the public (no election required). Upon passage of such an Order a sale can be made either by public or private sale. The statute also requires that proceeds from any sale be used for the maintenance/improvement of existing parklands or for future acquisition of land to be set aside for park and recreational purposes.

The above statutes have their roots in statutes enacted in the 1930s. During that time, counties were acquiring through tax foreclosure cut over forest land and many other properties due to economic conditions. There was also a desire at the time to increase park and recreation lands. Statutes at that time did not provide a mechanism for counties to retain foreclosed property for use as park and recreation land. Statutes were enacted during this period to allow counties to accomplish this.

Once a foreclosed property is designated as parkland, the property loses its "foreclosure tag" and is no longer considered a tax foreclosed property. Consequently, moneys received from the sale of other tax foreclosed property cannot be used for their management, supervision or maintenance.

<u>Compatibility of Conversion and Sale with Statutes:</u> County Counsel is of the opinion that designating foreclosed property as parkland and subsequently selling it is consistent with statutes as they are currently written - regardless if the property does or does not have any inherent value as park or recreation land or is ever used for such purposes. While the original intent of the statutes may have been to provide counties with a means to increase recreation lands, a plain reading of the statutes provides for designating foreclosed property as recreation land and provides for selling such designated lands. The statutes do not indicate that such lands must be used as recreational lands for any specific period of time before being sold by a county.

<u>Overview of Tax Foreclosure Program:</u> Properties acquired by the county through tax foreclosure are managed by the Dept. of Management Services. The Property Management Officer is responsible for day to day administration of the program.

The tax foreclosure program is self funded through revenues received from the sale of tax foreclosed property. The program does not rely on the General Fund for funding (the program contributes funds to the General Fund as noted below). Statutes allow moneys received from the sale of foreclosed property to be used for the costs for management and supervision of foreclosed properties. Such costs include personnel costs for the Property Management Officer, office supplies and equipment, maintenance costs for properties, cleanup costs (environmental and solid waste), securing title reports and other professional services.

Tax delinquent properties are deeded annually to the county. Properties deemed as surplus to the counties needs are then sold (the county may retain properties for roads, parks, affordable housing purposes, etc.). The first step in the disposition process is to offer the properties at a public auction (Sheriff's sale). Generally, one such sale is held each year. Properties that have not sold at an auction can then be sold at private sale at any time.

During the past 5 years, an average of 17 properties have been deeded to the county annually (in the late 1980s and early 1990's 30 – 50 properties were being deeded to the county annually). Properties will be located anywhere within the county. Historically, most properties deeded to the county are unimproved (raw land). The county may receive 1-3 properties with houses or other improvements on them each year (some may have the former owners still in them and subsequently be sold back to them). Most improved properties received lie within a city's boundaries.

Of the properties deeded to the county, approximately one-third will have significant value (greater than $15,000) due to improvements on them or their ability to be developed. The remainder will be of low value (small strips, land use obstacles, presence of hazardous materials). Often, one or two of the properties may have values exceeding $100,000. It is the sale of these higher value properties that provide the funding to manage remaining inventory and maintain the tax foreclosure program independent of General Fund assistance.

<u>Revenues:</u> Average revenues from sales/rentals of foreclosed property for the past 5 years is $210,000/year (from 1993-1996 revenues exceeded $400,000 annually with a high of $700,000 in 1996). This does not include interest earnings which averaged $6,000/year over the same period. Revenues for FY 04 were $158,000.

<u>Expenses:</u> Average program expenses for the past 5 years is $135,000/year. Expenses for FY 04 were $102,000. Budgeted expenses for FY 05 are $180,000.

<u>General Fund Portion of Expenses:</u> The average amount of the program's expenses directed towards the county's General Fund during the past 5 years is $110,000. Expenses included county indirect and overhead charges, IS charges and charges for County Counsel. Expenses directed to the General Fund for FY 04 were $75,000.

Distribution to Taxing Districts: ORS 275.275 requires that proceeds remaining after program expenses have been paid be distributed to the taxing districts in the same manner as property taxes (each district gets the same proportion of foreclosure proceeds as tax proceeds, i.e., Eugene would get 25%, Lane County, 9%). Average distribution to the taxing districts over the prior 5 years was $86,000/year (distributions exceeded $300,000 from 1993-1996).

The statute requires that all excess proceeds be distributed annually, on or before June 30th. Funds cannot be retained by the county and carried over to the next fiscal year.

Prior Designations for Parklands: Property Management staff is not aware of any prior Board actions designating foreclosed property as park and recreation land. Prior to offering property for sale, Property Management sends a list of those properties to county departments and divisions (roads, parks, surveyors, waste management) to see if there is an interest or need to retain a foreclosed property. Parks, in the past, has identified properties it has an interest in retaining for parks use or for trading for other property for parks use. An example is a large tract of property the county has acquired from a single land owner in the Glenada area South of Florence and West of Hwy. 101. The county had already owned adjoining property through previous tax foreclosures. The total county ownership is approximately 100 acres. The tract is bordered on the North by the Siuslaw River and on the West and South by Federal and State agencies (dunes, recreation lands). The county tract contains dune areas as well as wooded areas and may have development potential. The Parks Dept. has expressed an interest in this tract either for use as county parkland or to be used in exchange to acquire other property for park use (a parcel adjoining Armitage Park was identified for possible acquisition).

Other Counties: Staff is aware of one other county which has designated multiple foreclosed properties as parkland for subsequent sale without the properties themselves used, or intended to be used for park purposes. Josephine County, in cooperation with the City of Grants Pass through an intergovernmental agreement (IGA), has designated foreclosed property as parkland. The IGA provides for Josephine County to transfer county property designated as parkland to the City of Grants Pass. The city then is to sell the property with the proceeds to be used to purchase land for park purposes (a specific property was identified). Josephine County has also sold such designated land with proceeds being held by the county for park purposes.

3.2 Analysis

Issues to be considered if a policy of designating foreclosed property as parkland for subsequent sale is adopted include: types of properties to be designated; value of properties to be designated; funding level for foreclosure program; management of designated properties; sale process.

Value of Property to be Designated: The Board will need to determine at what value level foreclosed properties will be designated as parkland. Will it be at a certain/fixed dollar level. Will it be the total value of all foreclosed properties. Will it be at a level to maintain funding for management of remaining foreclosed properties, i.e., estimate the funding needed and the property needed to attain that funding and designate the remaining property as parkland. How much property is designated will be determined by the properties acquired each year through foreclosure as their total value will fluctuate from year to year.

Property Management and Parks staff could identify prospective properties for designation within parameters set by the Board. Costs will be involved in researching which properties to designate – title reports, legal lot verifications, field inspections, etc. It will need to be determined which program should fund such costs or if such costs should be shared.

Types of Property to be Designated: Does the Board wish to include foreclosed property that is within the corporate limits of a city? Improved properties within a city's limits generally have the most value of properties acquired through foreclosure. Designating a property as parkland which lies within a city requires approval of the city. This adds additional time and complexity to accomplishing the task.

Should it be assumed that properties that are known to be contaminated with hazardous materials, or reasonably expected to be, should not be designated as parkland? The county has a defense against liability for property acquired through tax foreclosure which contains hazardous materials. Such a defense may be lost when a property is designated as parkland. Also, securing environmental audits to determine levels of contamination and performing remediation of contaminated, tax foreclosed property are legitimate expenses that can be paid with foreclosure sale proceeds. Once a property is designated as parkland foreclosure funds cannot be used for these expenses.

Should only those properties deemed to be the most marketable (likely to sell at an auction or shortly thereafter) be designated and exclude those that may take longer to sell such as properties with access or title issues or those of value to an adjoining owner?

Management of Designated Property: As noted, once a property is designated as parkland tax foreclosure funds cannot be used to pay for management, supervision, maintenance and other costs the property may incur. It is assumed that designated property will be managed by the Parks Division. This may only be an issue for those properties that do not sell relatively quickly and remain in inventory for some period of time. It may be possible for the Dept. of Management Services to continue managing designated properties charging the Parks Dept. for services provided.

Management and Funding of Foreclosure Program: Assuming not all current and future foreclosed properties, will be designated as parkland there will be a property inventory that will require management and will incur expenses. If sufficient revenues are not received from the sale of foreclosed property, funds to operate the program will need to come from other sources.

Designation/Sale Process: Using the assumption that properties will first be offered at a public sale, properties that have been identified for designation as parkland can first be forwarded to the Board for approval of such designation. Subsequent to the approval a public hearing can be held to authorize selling the designated properties. Concurrently, an Order can also be forwarded to the Board authorizing a public sale to include any properties approved for sale at the public hearing as well as other surplus county property. Public notice of a sale must be published in a newspaper of general circulation within the county once a week for four weeks prior to the sale date.

After a public sale, designated properties that did not sell can then be sold via private sale. Unless otherwise directed, it is assumed that the Parks Division would be responsible for sale negotiations, drafting any sale agreements and performing any other tasks needed to sell a property or reimbursing other county divisions or departments to do so.

ORS 275.330 does allow designated parkland to be sold at private sale without first being offered at a public sale. As an alternative to offering properties at a public sale, the Board could designate properties as parkland then hold a public hearing to authorize a sale of the properties. The Parks Division, or other designated division, could then negotiate a sale with any private party.

Risks: If a policy of designating foreclosed property as parkland and then selling it is pursued, distributions of sale revenue from foreclosed property to taxing districts will be reduced. It is possible that a taxing district would take exception to such a policy and challenge the county's policy through legal action or seek relief through the legislature by amending statutes.

If sale revenue from foreclosed property not designated as parkland does not meet projections, the program may have a shortfall in meeting budgeted expenses.

A property designated as parkland may incur unexpected expenses or issues which delay or prevent a sale. These expenses would need to be paid by the Parks Division.

3.3 Alternatives/Options

A. Continue current policy of not designating foreclosed property as parkland.

B. Proceed at a measured pace by first designating only one or two properties as parkland with those parcels lying outside of a city's limits. This will provide the Board and staff with the experience of implementing the policy and to review procedures for future designations.

C. Retain as foreclosed property a value sufficient to cover program expenses and designate as parkland remaining property that meets parameters for such designation as dictated by the Board (such as inside or outside a city's limits, marketable title and projected to sell quickly).

3.4 Recommendation

If the Board chooses to pursue a policy of designating foreclosed property as parkland, it is recommended that alternative B is followed.

3.5 Timing

A sale will be needed this fiscal year by the Property Management Division to dispose of surplus property and obtain revenue for program expenses. The Board needs to provide direction on whether to proceed with such a sale and not designate property as parkland to be included at this time or to hold a sale which will include property designated as parkland.

4. **IMPLEMENTATION/FOLLOW-UP:** Staff will implement policy as directed by the Board.

5. **ATTACHMENTS:**

No Attachments: