T. 6.6.

AGENDA COVER MEMORANDUM

Memorandum Date: November 29, 2006

Agenda Date: December 13, 2006

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: DISCUSSION/IN THE MATTER OF DETERMINING IF DEED

CONDITIONS HAVE BEEN SATISFIED TO PREVENT REVERSION TO LANE COUNTY OF PROPERTY DEEDED TO THE PORT OF SIUSLAW (MAP # 18-12-22-00-00700, 40 ACRES NORTH OF

COUNTY TRANSFER STATION IN FLORENCE)

1. **PROPOSED MOTION:** No motion is proposed at this time.

2. **AGENDA ITEM SUMMARY:**

The Port of Siuslaw is requesting that a certain condition in the deed conveying 40 acres to them of County property in Florence be deemed to have been satisfied. The particular condition (condition #7 in the deed) provides for reversion of the property to the County if the property has not been improved with infrastructure as defined in the deed conditions within 10 years of its conveyance. Deeming the condition as being satisfied would remove the reversionary clause contained in the deed. Also, acknowledging that the deed condition has been satisfied would allow the Port to sell the property without compensating the County.

Property Management staff is of the opinion that the deed condition has not been satisfied by the Port.

3. <u>BACKROUND/IMPLICATIONS OF ACTION</u>:

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)

The Port has planned to expend additional funds and resources on the property. It is hesitant to do so given the possibility that the property could revert to the County in February, 2008.

Port Improvements and other work completed:

- Clearing, soil compaction, grading and erosion control. Installation of approximately 1,000 lineal feet of 12 inch storm drain, three storm drain manholes, pollution control manhole and storm drain outfall. The work encompasses an area of 12.6 acres of the 40 acres (no physical improvements have been made to the remaining 27 acres). Approximate cost of the improvements is \$500,000 (work was done in exchange for the Port allowing the property to be used as a fill site for the Florence Airport project).
- Secured frontage for Western property line along Rhododendron Dr. thereby providing better access for vehicles and utilites.
- Completion of a preliminary site plan in 2005 for streets, building sites and utilities.
- Effected the partition of the 40 acres from the adjoining County property
- Effected a rezoning of the property from Marine Industrial to Industrial which provides for a wider range of allowable uses.

The Port does not foresee any additional improvements to the property before February 2008 when it becomes subject to reversion to the County.

The Port is also in the process of obtaining Oregon Industrial Site Certification through the Oregon Economic and Community Development Dept.(OECDD). The Port has been awarded a \$15,000 grant and pledged \$5,000 of Port funds to complete studies and profiles needed to complete the certification process. Such a certification allows the State (and Port) to market the property as "ready for development".

The Port is working with the City of Florence on a transportation plan for Rhododendron Dr. and has budgeted \$10,000 for preliminary design.

Additional History:

The subject property is the Northerly 40 acre tract of the landfill property in Florence (the entire property was 120 acres). The subject property, together with the remainder of the property, was acquired through tax foreclosure in the 1920's. The Southern 40 acres served as a landfill until 1990. A transfer station is now located on the middle 40 acres. Also located on the middle 40 acres just North of the transfer station are the offices and facilities of the Florence Area Humane Society. The County leased an acre of land to the Humane Society in 1994.

The Port's 40 acre parcel has an assessed value of \$785,000.

In the late 1980's, the Port of Siuslaw had been interested in 80 acres of the landfill property for development as a marine industrial park. The Port commissioned a marketing study at that time to determine possible uses and the feasibility for development. In February, 1991, the County Commissioners issued Order no. 91-2-13-2. This order affirmed the County's support for the concept of development by the Port, in partnership with the County, of the Northern 40 acres of the landfill property as a marine industrial park and designated the property as an industrial facility pursuant to ORS 271.510 – 271.540.

In the fall of 1993, at a joint meeting of the Florence City Council and the Board of County Commissioners, development of the subject property was again discussed as private parties had begun showing a strong interest in acquiring the subject property from the County. At that meeting, the County requested that all interested parties - the City, the Port and private citizens, get together and discuss the matter to determine what would be the best use of the subject property for the citizens of Florence (which was determined to be development by the Port as an industrial park). In the spring of 1996, in conjunction with updating their comprehensive plan, the City of Florence with support from the Port, proposed changing the zoning of the subject property from marine industrial to industrial (industrial zoning provides for a greater variety of uses than marine industrial zoning). The matter of transferring the subject property was again discussed by the County Commissioners (the County also had to approve the zone change) who again affirmed their interest in transferring the property to the Port.

In August, 1997, Port Manager Tom Kartrude contacted the County to inform them that the Port had received a grant from the OECDD to revise and update a management plan for the subject property. Mr. Kartrude also expressed a desire to finalize details of conveying the subject property to the Port.

The matter was again discussed by the County Commissioners. The Board gave direction to County staff to finalize a conveyance agreement with conditions to insure that the subject property would be developed by the Port for industrial purposes and that the Port would bear all costs associated with the transfer.

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

Deeming that the Port has satisfied the deed conditions will not have an impact on the use of County financial resources.

Should it be deemed that the deed conditions have not been satisfied and the property reverts to the county and is subsequently sold, moneys from a sale would be disbursed to the taxing districts (the County would receive approximately 9% of sale proceeds).

E. Analysis

The deed restrictions were drafted based on representations by the Port that they wished to be the developer of the property to the point of installing infrastructure to support additional development by private parties.

To prevent the Port from receiving a windfall from a sale of the property without developing it or using it for the intended purpose, a condition was included in the deed requiring payment to the County of consideration received or the market value – whichever

was greater – of the land value (the Port would be able to recoup investments made to improvements).

The conditions provide for the Port being able to sell the property without compensating the County if the property has been improved with infrastructure capable of supporting further development of structures and facilities which can be used for the conduct of commerce pursuant to ORS 777.250 (industrial uses). "Infrastructure" is defined in the deed conditions as provisions for water, sewage, drainage, roads, power, communications and similar facilities. This would allow the Port to fully recoup investments made in infrastructure through the sale or lease of building lots and provide incentive for the Port to do so.

To date, no improvements have been effected to 27 of the 40 acres of the property. Improvements to the remaining 13 acres are comprised of clearing, soil compaction, erosion control and installation of 1,000 lineal feet of storm drain with 4 manhole covers. The property has not been improved with any roads, sewer or water lines, or provisions for power within the property.

Assistant County Counsel Marc Kardell has reviewed the matter and is also of the opinion that the improvements made by the Port do not meet the standard called for in the deed conditions.

A reversion clause was included after a period of ten years if the property was not improved with the required infrastructure. This provided incentive for the Port to proceed with development of the property and insured that the property would not remain unproductive as it would revert back to County ownership with the County then able to determine future disposition strategies.

If the Board deems that sufficient improvements have been made the reversion condition (condition #7) will no longer be in effect. Additionally, determining that sufficient improvements have been made would allow the Port to sell all, or portions of, the property without compensating the County (condition #4) provided the property continued to be used for industrial purposes for the remainder of the 15 year period for which the conditions are effective (February, 2013).

F. Alternatives/Options

1. Take no action which assumes the deed conditions have not been met. If the status of the property remains the same upon the reversion date (February, 2008), litigation may be required by the County to affirm the reversion. Similarly, the Port may initiate litigation to affirm that the deed conditions have been met or, pursuant to condition # 2, sell the property prior to the reversion date and compensate the County for the value of the land (the Port would be able to retain the value of the improvements it has made).

- 2. Take action to affirm that the Port has made the necessary improvements to the property to satisfy the deed conditions (a document noting such would be recorded in the deed records). This action would remove the reversion condition, which would allow the Port to continue to commit resources to further develop and market the property as the possibility of losing the property is removed. The Port would also be able to sell the property without compensating the County provided the property continued to be used for industrial purposes until February, 2013. In 6 years, after the deed restrictions have expired, the Port could sell the property without the requirement it be used for industrial purposes.
- 3. Amend the deed conditions to provide more time before the property reverts to the County. This can be done in combination with extending the period for which the property must be used for industrial purposes.
- 4. Amend the deed conditions to change the requirements for the Port to develop the property with infrastructure. If it is no longer feasible for the Port to be the prime developer, the deed conditions can be modified to reflect that. Such a modification may put the Port in the role of a marketing agent. If this occurs, the Board may wish to receive some compensation for the property.

V. TIMING/IMPLEMENTATION

The Port would like the matter resolved as soon as possible so it can decide how to proceed with the property

VI. RECOMMENDATION

It is recommended that a combination of Options 3 and 4 be pursued. Amend the deed conditions in a manner that would allow the Port to continue its efforts to attract businesses to the property while insuring that the property will be used for industrial purposes for a period of time and that the County will be compensated if it is not.

VII. FOLLOW-UP

Property Management staff will proceed based on direction given by the Board.

VII. ATTACHMENTS

Deed Conditions
Letter from Port
Minutes from 2/3/98 Board Meeting
Order 98-2-3-2
Order 91-2-13-2
ORS 777.250
Tax Map; Aerial Photo (2004)

Exhibit "A"

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.



"Creating quality jobs and businesses through the development and application of Port facilities, resources and unique capabilities."

November 22, 2006

Mr. Jeff Turk Lane County Property Management 125 East 8th Avenue Eugene, OR 97401

Re: Port of Siuslaw 40-Acre Industrial Site

Dear Mr. Turk:

Thank you for agreeing to present our request for a release from Quitclaim Condition No. 7 to the Board of County Commissioners. Condition No. 7 is the provision that the property will revert to Lane County if it has not been improved with infrastructure and remains in essentially the same condition as it was on February 3, 1998. That deadline is just over a year away.

The Port has changed the condition of the property and has made infrastructure improvements that we believe justify releasing that condition of the transfer. We are requesting the release at this time because we are preparing to commit more public resources to marketing and developing the site, and seek the security that those additional investments will not be forfeited by the potential reversion.

As you know, the Port is working with the Oregon Economic and Community Development Department to obtain Oregon Industrial Site Certification for the parcel. Certification as a unique 'Project Ready' site will greatly enhance the marketability of the Pacific View Industrial Park starting in 2007. The Port has been awarded a \$15,000 grant and has pledged \$5,000 in matching funds to complete the remaining studies and profiles required to achieve certification. The 40-acre site is already part of the Florence Enterprise Zone and earlier this year was awarded E-Commerce Enterprise Zone status by the state. More information about the certification process and the value it will bring to this property is available online at www.oregon4biz.com/sites.htm.

The condition of the property has changed. At the time of the quitclaim it was noted that a significant limitation to development of the property was the lack of transportation access to Rhododendron Drive and the utility systems along that right-of-way. By means of a property

exchange and lot line adjustment completed in 2004, the Port has added direct frontage to Rhododendron Drive along the full western property line, along with tidelands and uplands of the Siuslaw River (and the right to lease the adjoining submerged lands) across the right-of-way. The Port is currently cooperating with the City of Florence on developing a Rhododendron Drive Integrated Transportation Plan that will provide for critical transportation access to this arterial roadway. The Port has budgeted \$10,000 to assist with preliminary design of the needed intersections and utility connections.

Significant infrastructure improvements have also been completed. A preliminary site plan for streets, development sites and major utilities was completed in 2005. Since then 30% of the parcel has been prepared for development by clearing, compaction and erosion control of future building sites. Over 1,000 linear feet of 12-inch storm drain, 3 storm drain manholes, one pollution control manhole and an engineered storm drain outfall have been constructed. The \$488,588 cost of these improvements was detailed in our prior submittal.

We certainly appreciate that additional changes are possible and that more improvements could be made, but we believe that over the next thirteen months funds invested in marketing outreach and access planning will yield better returns than expensive investments in infrastructure that may or may not be appropriate to future site uses. We do not anticipate having sufficient internal resources to fund major infrastructure construction over the next year, and no major grants for additional site construction have been awarded or committed. Frankly, we cannot project any more infrastructure improvements on the site before the reversion deadline.

The prospect of a Condition No. 7 reversion, in light of the already changed conditions and infrastructure already completed, puts the value of our pending certification and transportation planning investments at risk, and challenges the wisdom of our funding the joint OECDD-Port certified site marketing effort about to unfold. We believe we have been careful and prudent stewards of the property since the transfer, and are committed to attracting investment that will create jobs and return the parcel to the Lane County tax rolls. We are asking the Board of County Commissioners to encourage us to continue and expand our efforts by releasing Condition No. 7.

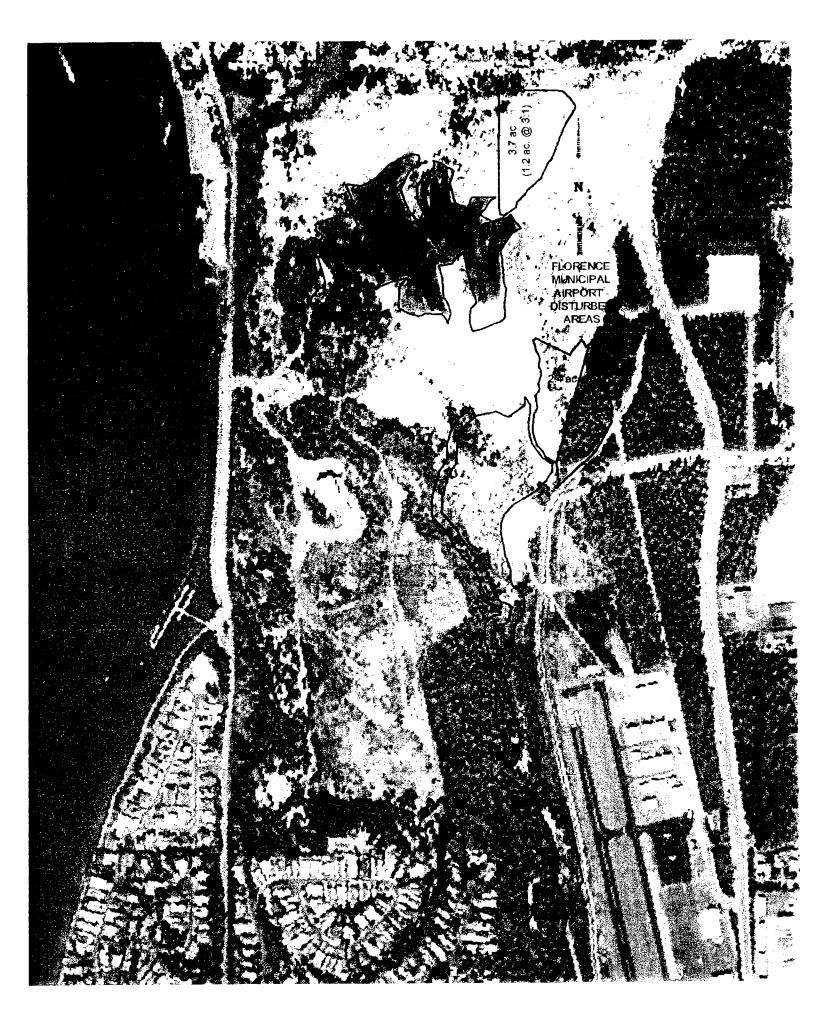
We would certainly appreciate your support on this matter.

Respectfully.

Tom Kartrude

Port Manager

Cc: Board of County Commissioners



8. MUMAN RESOURCES AND MANAGEMENT SERVICES

a. DISCUSSION AND ORDER <u>98-2-3-2</u>/In the Matter of Authorizing the Conveyance of County Owned Real Property to the Port of Siuslaw (a 40 Acre Portion of the Florence Landfill, Map #18-12-22-00-00700).

Chair Cornacchia read the Order into the record. Jeff Turk, Lane County Property Management Officer, provided background on the item. (See material on file). Turk reported that the transfer was so the Port of Siuslaw could develop the property for commercial use, or pay the market value if it were sold for development. He noted a restriction, which states that for 15 years the property has to be used for industrial purposes, as defined by the Port's statutes.

Dumdi asked if all parties were agreeable to the terms of the conveyance. Turk replied affirmatively. Dumdi introduced Tom Kartrude, Manager, Port of Siuslaw, Leonard Van Curler, President of the Port Commission, and Brian Cole, Port Board member.

Cornacchia asked for a quick summary of what Port of Siuslaw officials had planned for the property. Kartrude reported that the property represents an ideal opportunity to compliment development of adjoining commercial industrial property by the City of Florence. Kartrude reported that the Oregon Economic Development Department had granted the Port funds to complete the application, surveying, partitioning and final planning.

Weeldreyer asked if the building site was located on an old landfill. Turk replied negatively.

MOTION: Approval. Dumdi MOVED, Weeldreyer SECONDED.

Green commented positively about the conveyance, and asked to be kept posted on development. Kartrude agreed.

Sorenson asked about the fair market value of the land. Turk said his estimate was \$500,000.

VOTE: 5-0.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE CONVEYANCE OF COUNTY OWNED REAL PROPERTY TO THE PORT OF SIUSLAW (A 40 ACRE PORTION

98-2-3-2

OF THE FLORENCE LANDFILL, MAP #18-12-22-00-00700)

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to convey the following real property which was acquired through tax foreclosure, to wit:

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"

WHEREAS the Port of Siuslaw wishes to acquire said property, without monetary consideration, for industrial development purposes and

WHEREAS said real property is owned by Lane County and not in use for County purposes, and conveyance of said property to the Port of Siuslaw for industrial development would benefit Lane County and its citizens and

WHEREAS the Board of County Commissioners has reviewed the matter and is fully advised of the premises

IT IS HEREBY ORDERED that pursuant to ORS 275.318 the real property be conveyed to the Port of Siuslaw without monetary consideration, that the Quitclaim Deed, together with substantially similar conditions of conveyance attached thereto, be executed by the Board and that the County Administrator is authorized to execute partition documents and other documents necessary to effect the conveyance

IT IS FURTHER ORDERED that the conveyance is contingent upon the Port of Siuslaw taking reasonable actions and bearing all costs to effect said conveyance

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

DATED this 3rd day of February 98

APPROVED AS TO FORM

OFFICE OF LEGAL COUNSEL

hair, Board of County Commissioners

FEB 0 9 1998

IN THE MATTER OF AUTHORIZING THE CONVEYANCE OF COUNTY OWNED REAL PROPERTY TO THE PORT OF SIUSLAW (A 40 ACRE PORTION OF THE FLORENCE LANDFILL, MAP #18-12-22-00-00700)

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER No.

)In the Matter of Cooperating with the Port)of Siuslaw on the Construction of a Marine)Related Industrial Park on County Property)in the City of Florence

91-2-13-2

WHEREAS, Lane County owns about 120 acres of property in the City of Florence at Map Number 1812220001000; and

WHEREAS, County staff have recommended to the Board that about 40 acres of the northern part of the parcel are excess to the county's needs; and

WHEREAS, the Board has been approached by the Port of Siuslaw with the desire to form a partnership for the creation of a marine-related industrial park on this county property; and

WHEREAS, increasing job opportunities throughout Lane County is in the public interest; NOW, THEREFORE, IT IS HEREBY

ORDERED as follows:

- 1. County land at Map Number 1812220001000 is hereby designated as an industrial facility under ORS 271.510 to 271.540.
- 2. The Board of Commissioners agrees with the general concept of a partnership with the Fort of Siuslaw for development of a marine-related industrial park on about 40 acres of this county property.
- 3. The Board of Commissioners agrees with the general concept of using its Road Fund to finance eligible road-related activities associated with the construction of the industrial park.
- 4. The Board of Commissioners desires that any industrial park sited on this county land be constructed and operated in a manner that meets or exceeds all existing local, state, and federal laws, rules, and regulations for protection of the environment.
- 5. That the Port of Siuslaw is invited to make a more firm proposal to the County for use of the land as an industrial park.

DATED this _____ day of February, 1991.

APPROVED AS TO FORM

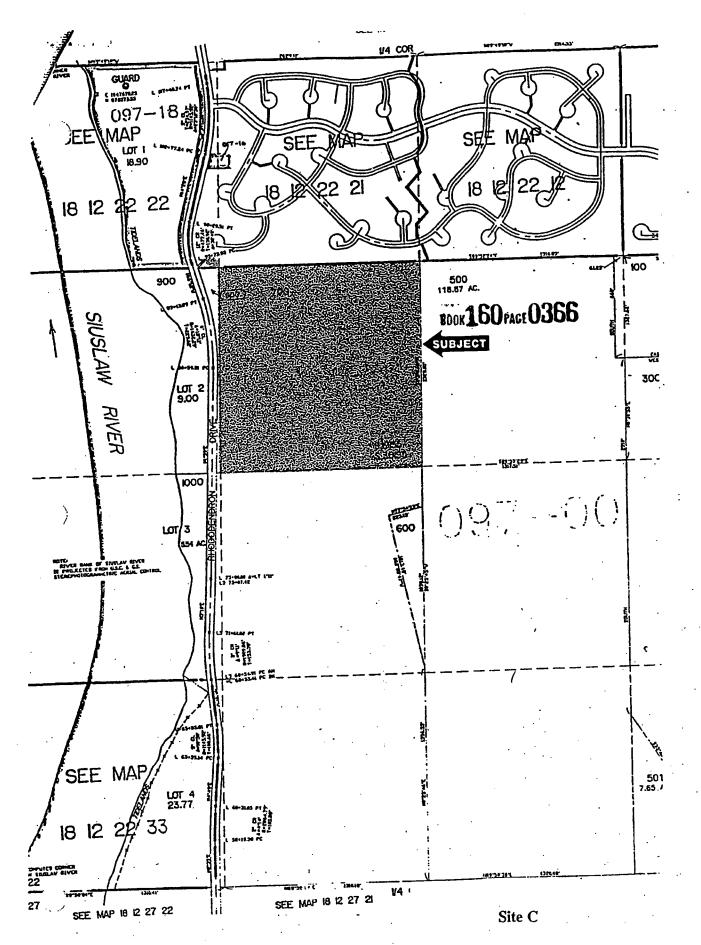
Chairman Lane County Board of

Commissioners

OFFICE OF LEGAL COUNSEL

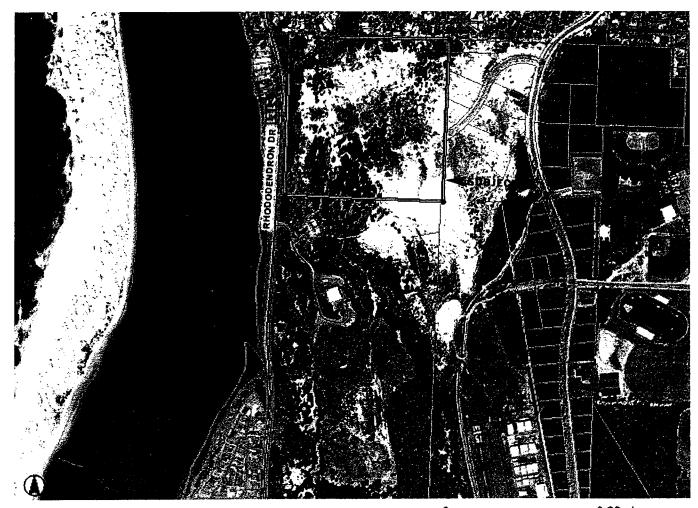
In the Matter of Cooperating with the Port of Siuslaw on the Construction of a Marine-Related Industrial Park on County Property in the City of Florence

- 777.250 Port powers with respect to development and use of its lands; industrial or research and development parks; sports, recreation, convention, trade show facilities. (1) A port may construct buildings or other improvements and acquire personal properties including but not limited to machinery and equipment considered necessary whether or not now in existence or under construction, suitable for use by any industry for the manufacturing, refining, processing or assembling of any agricultural, mining or other products or by any commercial enterprise in storing, warehousing, distributing or selling or servicing any products of agriculture, mining or industry or by any profit or nonprofit enterprise for research and development. The port has full power to lease and sell the buildings, improvements and personal property, together with the lands upon which they are situated, whether held by the port in its governmental capacity or not.
 - (2) In addition, a port may:
- (a) Acquire and develop land, or develop land already owned, as the site for an industrial or research and development park, including as a part of such development provisions for water, sewage, drainage, roads, transportation, power, communication or other similar facilities which are incidental to the development of the site;
- (b) Develop the site pursuant to a comprehensive plan in a manner compatible with other uses in the area in which the industrial or research and development park is located and adopt regulations necessary to implement the plan;
- (c) Lease, sublease or sell tracts of land within an industrial or research and development park as building sites to any industry or commercial enterprise or profit or nonprofit enterprise described by this subsection; and
- (d) Charge and collect fees for services made available within the industrial or research and development park.
- (3) A port may acquire, construct, maintain or operate sports, recreation, convention and trade show facilities.
- (4) For revenue bonding purposes under ORS 777.560 to 777.590, projects undertaken under this section shall be classified as either:
- (a) Sales, if the port is to sell outright or by conditional sale its interest in the property, or, if by contract the port's title to the property is retained for a limited term only;
- (b) Leases, if the port is only to rent, lease, sublease or charge a user fee for the property with the intention of retaining title to, or possession of, the property for its future benefit and use; or
- (c) Loans, if the port is to lend the proceeds of such revenue bonds and has no ownership interest in the property. [1971 c.728 §27 (enacted in lieu of 777.130); 1979 c.109 §2; 1979 c.407 §1a; 1983 c.459 §15; 1987 c.103 §2; 1997 c.171 §22]



Map 18-12-22 Index, TL 700

ArcIMS Viewer Page 1 of 1



Lane County Public Works

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