

W. I. O. A.

**AGENDA COVER MEMORANDUM**

**Memorandum Date: February 27, 2008**

**Agenda Date: March 12, 2008**

---

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer 2

**SUBJECT:** IN THE MATTER OF AMENDING CONDITIONS INCLUDED IN A DEED THAT TRANSFERRED COUNTY OWNED PROPERTY TO THE PORT OF SIUSLAW BY EXTENDING THE DATE AT WHICH THE PROPERTY BECOMES SUBJECT TO REVERSION TO MARCH 1, 2009 (MAP # 18-12-22-00-00701, 40 ACRES NORTH OF COUNTY TRANSFER STATION IN FLORENCE)

---

1. **PROPOSED MOTION:** TO AMEND CONDITIONS INCLUDED IN A DEED THAT TRANSFERRED COUNTY OWNED PROPERTY TO THE PORT OF SIUSLAW BY EXTENDING THE DATE AT WHICH THE PROPERTY BECOMES SUBJECT TO REVERSION TO MARCH 1, 2009

2. **AGENDA ITEM SUMMARY:**

The Port of Siuslaw is requesting that a certain condition in the deed conveying 40 acres of County property to them be amended. The particular condition (condition #7 in the deed) provides for reversion of the property to the County in September, 2008 if the property has not been improved with infrastructure as defined in the deed conditions. The Port is asking that the time when the property would be subject to reversion be extended to March 1, 2009.

The Port is requesting the extension to provide additional time to bring a comprehensive proposal to the Board addressing the Port's development of the property, clarifying deed conditions and to further amend the deed conditions. The proposal would be forwarded to the Board by October 1, 2008.

It should be noted that the reversion date was initially believed to be in February, 2008 – ten years from date of transfer - however, the property wasn't officially transferred to the Port until September 11, 1998 after completion of a legal partition separating the 40 acres from adjoining county property.

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)

At a December 12, 2006 Board meeting the Board discussed the Port's request to deem that the Port had sufficiently developed the property to satisfy deed condition #4 thereby nullifying the condition providing for reversion of the property to the County (condition #7).

Based on information provided by the Port as to improvements they had made to the property the Board denied the Port's request to deem that deed condition #4 had been satisfied with the property consequently remaining subject to reversion.

The Board did approve negotiating with the Port to amend and clarify the deed conditions with direction that the deed restrictions could be extended 5 years and that at least 75% of the 40 acres be improved with infrastructure consisting of roads and provisions for water, power and drainage.

Until a letter received from Port Manager Mark Freeman dated November 12, 2007, the Port had not contacted the County since the December 12, 2006 Board meeting to address amending the deed conditions.

It should be noted that Tom Kartrude, who was the Port Manager at the time the property was transferred in 1998 as well as when the matter was again brought to the Board in December, 2006, left the Port in May, 2007 as his employment contract was not renewed. Mark Freeman is the current Port Manager and began his duties in September, 2007. The

Port's request to extend the reversion date is due in part to allow Mr. Freeman time to become acclimated to Port issues and the 40 acre parcel.

Prior to the December 2006 Board meeting the Port noted work it had done on the property as indicated below. Since that time the Port has secured "Industrial Site Certification" from the Oregon Economic and Community Development Dept. The designation certifies a site as being "shovel ready" meaning that most land use obstacles have been addressed. Such designated sites are also included in State sponsored marketing programs to foster economic development.

- 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 utilities.
- 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.

Additionally, the Port submitted documentation prior to the December 2006 Board meeting noting that it had spent \$7,600 in Port funds towards the property and secured improvements with an estimated value of \$488,600 by allowing the property to be used as a fill site during a construction project at the Florence airport.

In January, 2007 the Port secured a private fee appraisal of the property which valued the property at \$1,685,000.

## **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**

Granting an extension of the deed conditions will not put an undue strain on staff to draft a document amending the deed conditions.

Should no change to the deed conditions be authorized 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. The conditions prevented the Port from receiving a “windfall” if they sold the property without installing the required infrastructure and also provided for reversion of the property to the County after 10 years if the property remained in “essentially the same condition” as when it was first transferred.

Recent discussions with the new Port manager, Mark Freeman, indicate that the reversion provision in the deed conditions has become an obstacle to securing businesses to occupy the property. Mr. Freeman noted that he has received inquiries from businesses about locating on the property but the possibility of the property reverting to the County has prevented any from committing to the site. Mr. Freeman has also indicated that further clarification of what constitutes sufficient installation of infrastructure by the Port would be helpful.

The Port appears to be in a position where it will need a business that wishes to locate on the property, or portion thereof, to develop the infrastructure as opposed to the Port first installing infrastructure with Port funds. This would require that the Port either sell the property (or portion thereof) or enter into a long term ground lease. This is contrary to the existing deed conditions and would require the Port to pay the County the market value of the property.

The Port, if unable to develop the property with its own funds, would then be acting in a role that is more of a “marketing agent” than an owner/developer. The Board may then need to decide whether it wishes to further amend the deed conditions to provide for this and if the County should be compensated for doing so.

**F. Alternatives/Options**

1. Amend the deed conditions to extend the date to when the property is subject to reversion to March 1, 2009. In concert with this, condition #8 should also be

amended to extend through March, 1 2014 the period for which the deed conditions are binding (conditions are currently binding for a 15 year period from date of transfer).

2. Take no action to amend the deed conditions. Property would then be subject to reversion on September 11, 2008.

Exercising the County's reversion rights may require litigation should the Port disagree with the action. The Port, as provided in the deed conditions, could sell the property before the reversion date. In that instance the deed conditions provide for the County to receive the market value of the land with the Port able to recover the value of any improvements it has made.

3. Amend the deed conditions in another manner as directed by the Board.

#### **V. TIMING/IMPLEMENTATION**

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

#### **VI. RECOMMENDATION**

It is recommended that Option 1 be implemented. It is also recommended that the County Administrator be authorized to execute an amendment document.

#### **VII. FOLLOW-UP**

If the extension is approved, Property Management staff will draft an amendment to the deed conditions. Staff will also work with the Port to bring a comprehensive proposal to further amend the deed conditions by October 1, 2008.

#### **VII. ATTACHMENTS**

Board Order  
Current Deed Conditions  
November 12, 2007 Letter from Port  
Tax Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AMENDING CONDITIONS INCLUDED IN A DEED THAT TRANSFERRED COUNTY OWNED PROPERTY TO THE PORT OF SIUSLAW BY EXTENDING THE DATE AT WHICH THE PROPERTY BECOMES SUBJECT TO REVERSION TO MARCH 1, 2009 (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 property to the Port of Siuslaw 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 as noted in Attached Exhibit "A" and provided for amending those conditions upon mutual consent of the parties; and

WHEREAS said parties wish to amend said conditions,

IT IS HEREBY ORDERED that deed condition No. 7 be amended to reflect a reversion date of March 1, 2009; that deed condition No. 8 be amended extending to March 1, 2014 the period for which the conditions are effective and that the County Administrator is authorized to execute an amendment document to be recorded in the Deed Records of the County.

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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Faye Stewart, Chair, Board of County Commissioners

APPROVED AS TO FORM

Date 2-29-08 Lane county



\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

IN THE MATTER OF AMENDING CONDITIONS INCLUDED IN A DEED THAT TRANSFERRED COUNTY OWNED PROPERTY TO THE PORT OF SIUSLAW BY EXTENDING THE DATE AT WHICH THE PROPERTY BECOMES SUBJECT TO REVERSION TO MARCH 1, 2009 (MAP # 18-12-22-00-00701, 40 ACRES NORTH OF COUNTY TRANSFER STATION IN FLORENCE)

**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.



# **PORT OF SIUSLAW**

**Serving Western Lane County and The Central Oregon Coast**

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

**RECEIVED**

**LANE COUNTY COMMISSIONERS**  
1870

**12 November 2007**

**Lane County Board of Commissioners  
125 East 8<sup>th</sup> Avenue  
Eugene OR 97401**

**Re: 40 Acre Industrial Site adjacent to Pacific View Business Park**

**Commissioners,**

**This letter is in regard to the Pacific View Industrial Park property gifted to the Port of Siuslaw by quitclaim deed on 3 February 1998. The Port seeks to move forward with marketing and other efforts geared toward development and we wish to settle all contractual obligations stipulated in the nearly ten year old agreement.**

**After a six week interim transitional period, I became the new Port of Siuslaw Manager on 1 September 2007. As economic development is one of the tasks of a Port District, I seek to create jobs and revenue that will benefit the Port, the City of Florence, Lane County and the State of Oregon. My goal is to create new revenue streams that can benefit public and private entities as well as diversify the economic development of western Lane County.**

**In my short time here, I have proactively contacted and conveyed information about this property to two entities who, if they locate in Florence, will add to the tax base, provide further economic spin off opportunities for future development, and potentially cut operating expenses for the Port, the City of Florence and Lane County. I am interested in designing a marketing plan for this property and wish to settle any uncertainties which might exist at this time.**

**On 26 October 2007, the Port of Siuslaw secured the "shovel (or "project") ready" designation from the State of Oregon. This coveted status is a culmination of recent efforts as well as work going back a number of years. This status, in tandem with a site that has been upgraded and is wide open for development, is advantageous in that it allows a wide range of businesses to relocate to Florence and further develop the site(s) as they see fit. The site is large enough to allow for relocation/expansion of operations and to invite the addition of complementary business operations.**

1499 Bay Street, P.O. Box 1220, Florence, OR 97439 • Phone: 541-997-3426 • Fax: 541-997-9407  
E-mail: [port@portofsiuslaw.com](mailto:port@portofsiuslaw.com) • [www.portofsiuslaw.com](http://www.portofsiuslaw.com)



The Port has shepherded nearly \$500,000 worth of site improvements that include grading, cleaning and compaction. This allows for provision of an access road linking the existing cul de sac at the "top" of the property and Rhododendron Drive, as well as specific site designations. Port and City of Florence funding is in place to improve the intersection near the lower part of the property and improve access for business and public entities.

Although a road design has been drawn up and potential lots platted out, this configuration may not work to the advantage of a particular customer(s) who may be desirous of an altogether different set up. Thus, the site is "perfect" in that certification has been conveyed and it is a "clean sheet of paper" for the customer.

Storm water drainage systems have been installed, water and sewer are available for any needs, installed telecommunication infrastructure would be current state of the art, and Central Lincoln PUD will provide for any electrical requirements. This infrastructure and present condition is available to serve the business customer who wishes to come in and build on this property. This site has been improved and is capable of, and provisions have been made for, supporting further development. It is my desire to proactively pursue tenants/developers for this site.

In addition to the recently earned "shovel ready" status, the Port has had work done to the site that benefits the City of Florence and the Municipal Airport. The grading work done has allowed safer operations for the airport and enhanced the potential future uses of the airport.

With the work performed over the years and the recently certified "shovel ready" status conveyed by the State, it is apparent the site has been substantially altered and is not "essentially the same condition" as it was nearly ten years ago. The Port has satisfied condition number seven mentioned in exhibit A of the deed and requests a satisfaction document be recorded to release the Port from this provision.

Enclosed with this letter is a summary of improvements made to this site. The Port wishes to move forward with development, remove any clouds over the land so that we may devote time and resources to this property, and asks that the Board of Commissioners consider this background and grant our request.

Sincerely,

  
Mark Freeman  
Port Manager

## **Summary of improvements made to the Pacific View Industrial Park property**

1. On 26 October 2007, Governor Kulongoski's Economic Revitalization Team certified the Port of Siuslaw Industrial Park Site, under authority of ORS 284.565 & 285B.283. This certification determines the site is ready for commencement of improvements in not more than 180 days after a business takes steps to acquire the land and to build and operate at the site. The Pacific View Industrial Park has been certified consistent with two industry-type profiles: Food Processing and Campus Industrial/Electronic and Computer Assembly.

Oregon Certified Industrial Sites assure developers that:

- The site is immediately available;
  - All utilities are in place or plans, including cost and source of funds, are complete to extend lines to the site within 180 days;
  - The site is physically developable, including: no flood hazards, no easements or rights-of-way interferences, and the topography is suitable for construction or can be made so within 180 days;
  - The site is technically developable, including: proper zoning, outright permitted uses, DEQ approved environmental assessments, DSL approved wetlands delineations and mitigations, compatible with surrounding uses, and aerial photos and maps are available;
  - The site has no major transportation impediments;
  - Construction can begin in 180 days or less;
  - All information about the site is verified and readily available to developers.
2. When the property was conveyed to the Port of Siuslaw in 1998, Lane County estimated its value at \$400,000 - \$500,000. In 2007, following improvements made by the Port, the property was assessed at \$1,685,000.
  3. In July 2007, the City of Florence verified that water service is currently available at the Port's Industrial site. The City further specified peak flow volume available, water system capacity, water pressure, size of water lines serving the site, and that adequate service exists for fire suppression needs.
  4. In July 2007, the City of Florence verified that the Port's Industrial Park is within the City's wastewater treatment service area and that sewer service is currently at the site. The City further specified peak sewerage flow volume available at/away from the site, total sewer capacity, and sewer line size.
  5. As part of the state Certification process, Central Lincoln PUD verified that electrical power was currently available to the Industrial site without improvements.

6. In 2006 the Port of Siuslaw completed improvements to the Industrial site that resulted in drainage and road improvements, in addition to creating pads suitable for the construction of buildings and other improvements.
7. The Port improved over 30% of the Industrial site (12.6 acres) by clearing, soil compaction, grading and erosion control. The Port also installed approximately 1,000 lineal feet of 12" storm drain, 3 storm drain manholes, 1 pollution control manhole, and a storm drain outfall. Total cost of improvements was \$488,588.
8. The Port of Siuslaw secured 682' of frontage access to Rhododendron Drive along the full western property line, providing improved vehicle and utility access, as well as Siuslaw River-front access for marine industrial development options. This additional property also provides deeded uplands and tidelands, and the right to lease adjoining submerged lands.
9. The Port completed a preliminary site plan for streets, building sites and utilities.
10. The Port of Siuslaw completed partition of the Industrial Park site from the adjoining County property.
11. The Port completed rezoning of the Industrial site from Marine Industrial to Industrial, improving the range of possible industrial uses for the property.
12. The Industrial site is part of the Florence Enterprise Zone and in 2006 was awarded E-Commerce Enterprise Zone status by the state.

