

W-9.b

**COVER MEMO**

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**MEETING DATE:** April 28, 2004

**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works – Land Management Division

**PRESENTED BY:** Jeff Towery, Manager

**AGENDA ITEM TITLE:** ORDER / IN THE MATTER OF ENTERING INTO AN AGREEMENT FOR THE CLEAN UP OF PROPERTY LOCATED AT 80116 HWY 99, COTTAGE GROVE (20-03-09-02000), PAYMENT OF LIEN, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN THE AGREEMENT

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**I. MOTION**

ADOPT THE BOARD ORDER IN THE MATTER OF ENTERING INTO AN AGREEMENT FOR THE CLEAN UP OF PROPERTY LOCATED AT 80116 HWY 99, COTTAGE GROVE (20-03-09-02000), PAYMENT OF LIEN, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN THE AGREEMENT.

**II. ISSUE OR PROBLEM**

Shall Lane County enter into an agreement with Mr. Kuebler to affect the clean up and use of the property located at 80116 Highway 99, Cottage Grove (20-03-09-02000)?

**III. DISCUSSION**

**A. Background**

On April 1, 2004, Mr. Kuebler purchased the Saginaw Mobile Home Park. The County has been pursuing a compliance action and litigation related to the property for several years and in November, 2003, closed the Park, consistent with the Circuit Court Order won in March, 2002. Since that time, the County has maintained security for the property and incurred other costs associated with the closure.

**B. Analysis**

The County has several interests that could be met by entering into an agreement:

- Removal of nuisance materials
- Ensuring that there are no un-permitted occupancy or activities
- Recovery of incurred costs

The County has imposed fines and incurred costs that have been or will be authorized by the Court of nearly \$78,000. Mr. Kuebler has agreed to pay 90% of those costs in addition to cleaning the property and acquiring all permits and permissions necessary to operate a clean and safe mobile home park on the property. The attached agreement (Exhibit A to the Board Order) sets out the requirements that would result in clean up the park, application of building permits, electrical improvements and an agreement with DEQ for the septic system within six months. The park will not be

occupied until all applicable permits have been received. Mr. Kuebler will make payments to the County for 2 years, with the balance due at the end of that term. If Mr. Kuebler meets his obligations, the County will not issue any new fines for the existing conditions on the property and will not collect the interest due on its lien and expenses.

While several people or organizations have contacted the County expressing interest in owning the property at some point in the future, Mr. Kuebler has acquired the property and made an initial proposal that is consistent with the proposal under consideration.

**C. Alternatives**

1. Adopt the Board Order authorizing the County Administrator to sign the attached agreement.
2. Decline to adopt the Board Order and pursue additional clean up and/or foreclosure of the property.

**D. Recommendations**

Staff recommends that the Board support Option Number 1.

**F. Timing**

The agreement will be executed upon Court approval and will terminate 25 months from that approval.

**IV. IMPLEMENTATION/FOLLOW-UP**

Upon receiving Board authority, the agreement will be carried to the Court for approval. The agreement should be in place within 1-2 weeks of Board action.

**V. ATTACHMENTS**

Attachment A – Board Order with Exhibit A (Agreement)

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF ENTERING INTO AN AGREEMENT FOR THE CLEAN UP OF PROPERTY LOCATED AT 80116 HWY 99, COTTAGE GROVE (20-03-09-02000), PAYMENT OF LIEN, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN THE AGREEMENT

The Board of County Commissioners of Lane County orders as follows:

Whereas Mr. Daniel G. Kuebler on April 1, 2004, purchased certain property located at 80116 Highway 99, Cottage Grove (20-03-09-02000); and

Whereas said property is subject to a County lien, and is further subject to an injunction entered in Lane County's favor in Circuit Court case number 16-01-02834; and

Whereas Mr. Kuebler is desirous of affecting a clean up of the property and otherwise using the property in conformance with the applicable laws; and

Whereas Lane County is desirous of having the property cleaned up and used consistently with applicable laws; and

Whereas, Mr. Kuebler is seeking to enter into an agreement with Lane County (Exhibit A attached); and

Whereas the Board of Commissioners finds it to be in the best interests of Lane County to enter into said agreement, now therefore

It is hereby ordered that the County Administrator be authorized to sign the attached agreement and any future amendment or action substantially consistent therewith.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

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

APPROVED AS TO FORM

Date 4-14-04 Lane County

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

**AGREEMENT REGARDING LIENED PROPERTY  
(80116 Highway 99, Cottage Grove, Oregon 20-03-02-02000)**

**PARTIES:   LANE COUNTY  
              DANIEL G. KUEBLER**

**RECITALS:**

Whereas, Daniel G. Kuebler (Kuebler) owns real property located at 80116 Highway 99, Cottage Grove, Oregon (20-03-09-02000); and

Whereas, said property is subject to a lien of Lane County (County) in the base amount of \$57,330.00, reception number 2000-033870, Lane County, Oregon Records; and

Whereas an injunction has been entered in Lane County's favor regarding activities upon the property, Lane County Circuit Court case number 16-01-02834; and

Whereas, Mr. Kuebler and Lane County desire to have the property cleaned up, and used in conformance with applicable laws, the parties agree as follows, conditioned upon approval by the Lane County Circuit Court:

**1) Mr. Kuebler shall:**

- A) Clean all nuisance material (see LC 5.700) from the property within six months;**
- B) Apply for a building permit for the unpermitted building within 30 days;**
- C) Reach an agreement with Oregon Department of Environmental Quality regarding a Water Pollution Control Facility Permit for the on-site septic system within six months and have the approved plans for that system certified by a registered engineer;**
- D) Make electrical improvements sufficient to allow planned occupancy within six months;**
- E) Complete all required permits within 12 months;**
- F) Not allow any occupancy unless all applicable permits have been received;**
- G) Make payments to County of \$1,000 per month, commencing the first of each month. The entire amount due shall be paid within 24 months;**
- H) Agrees to indemnify, defend, and hold Lane County, its Commissioners, agents, officers, and employees harmless from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of the activities of, or failure to perform by Kuebler or his, employees, subcontractors, or agents under this agreement.**

2) Lane County shall:

- A) Cease incurring costs chargeable to the property;
- B) Not issue new fines for conditions presently existing on the site so long as obligations set forth in number 1 above are complied with.

3) The parties mutually agree that:

- A) Should those items in number 1, above, to be completed within six months be so completed, County will waive any interest accrued to that date. Further, the balance then due will be calculated as follows: \$57,330 lien amount plus, \$15,567.14 court authorized expenses, plus additional expenses as have been authorized by the Court which accrue up to 24 hours following Court approval of this agreement which shall not exceed \$5,000.00, times 90% of the three referenced figures;
- B) Mr. Kuebler shall be provided full and complete access to the site, and shall accept full responsibility for managing the site and affecting remediation there.

4) General Provisions:

- A) **Assignment; Successors in Interest.** Kuebler shall not assign or transfer any of his interest in this agreement without the prior written consent of County.
- B) **No Third Party Beneficiaries.** County and Kuebler are the only parties to this agreement and are the only parties entitled to enforce its terms. Nothing in this agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this agreement.
- C) **Governing Law; Jurisdiction; Venue.** This agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the parties that arises from or relates to this agreement shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- D) **Force Majeure.** Neither Kuebler nor County shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond either party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this agreement.

- E) Severability. The parties agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.
- F) Waiver. The failure of County to enforce any provision of this agreement shall not constitute a waiver by County of that or any other provisions.
- G) Merger Clause. THIS AGREEMENT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. KUEBLER, BY SIGNATURE, HEREBY ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
- H) Termination. This agreement terminates 25 months from the date of Court approval.

Lane County

DANIEL G. KUEBLER

by: \_\_\_\_\_  
Its:

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_