

Memorandum Date: June 1, 2009
Order Date: June 24, 2009

W. H. B.

TO: Board of County Commissioners
DEPARTMENT: Public Works
PRESENTED BY: Frank Simas, Right of Way Manager
AGENDA ITEM TITLE: In the Matter of Authorizing the Sale of a Parcel of County-Owned Road Fund Real Property Identified as Lane County Assessor's Tax Lot 300 on Map 17-03-04

I. MOTION

Move approval of the Order

II. AGENDA ITEM SUMMARY

On May 6, 2009 the proposal from McKenzie River Trust (MRT) to purchase the above referenced county-owned surplus Road Fund property was brought before the Board for discussion. At the completion of the discussion, the Board directed Public Works to explore options under which Lane County could retain ownership of the property and McKenzie River Trust could manage the property for the preservation and enhancement of its habitat and natural resource values under some type of management agreement, conservation easement or other agreement.

Public Works staff has discussed this option with MRT and has received a letter from Joe Moll, Executive Director, stating the Trust's preference for ownership of the property rather than entering into a long-term less-than-ownership-interest agreement with the County. A copy of Mr. Moll's letter is attached and marked as "Attachment 1".

The reasons expressed in Mr. Moll's letter supporting a sale of the property to MRT are as follows:

- MRT only manages properties it owns outright and does not manage properties under conservation easements for management agreements
- A perpetual property right is required in order to justify the expenditure of time and MRT financial resources
- Potential environmental and land use permitting issues will be less complex due to a single ownership interest.
- County approval would presumably be required for any future restoration and enhancement work adding to complexity and expense.

Another reason that is not included in the letter is that the available funding source (Federal Energy Regulatory Commission relicensing of EWEB facilities on the McKenzie River) is intended for property purchase, not acquisition of lesser interests.

MRT representatives have met with a representative from CPM Development Corporation (formerly Egge Sand and Gravel) with regard to CPM's position regarding MRT's proposed purchase of the property. This is an important issue because the property on the north side of the present river channel could be accessed by a vehicle through CPM's property, if desired, and only with their permission. Also, CPM could potentially assert a legal claim to the property

on the north side of the river based on accretion to its existing ownership that would require the owner of the present County property to defend.

Dale Fortner, Environmental and Land Use Manager for CPM, was supportive of ownership by MRT, and he said that it would not cause a problem with CPM operations. He further indicated that CPM would possibly be willing to provide necessary access to MRT to support preservation and enhancement activity on the property. MRT has also met with representatives from the First Baptist Church and Camp Harlow regarding how stewardship activities regarding this portion of the McKenzie River might be incorporated in their camp and other programs.

Public Works staff was also contacted by a representative from Wildish Land Co. regarding possible purchase of the land. Wildish land adjoins this property on the downstream side and their representative stated that it is their policy to purchase adjoining land along river banks whenever it becomes available.

MRT has submitted an independent appraisal of the property showing an estimated value for the property of \$19,000. The appraisal has been reviewed by Public Works staff and found to be compliant with the requirements set forth in Uniform Standards of Professional Appraisal Practice (USPAP) and is reasonable as to its methodology and the value conclusion of the appraiser. MRT proposes to purchase the property from the County at the reviewed amount of \$19,000 under the provisions of ORS 271.300 and 275.030.

III. Financial and/or Resource Considerations

Because this property was originally purchased with Road Funds, any proceeds from its sale would go back to the Road Fund as required pursuant to Article IX, Section 3a of the Oregon Constitution relating to the use of tax revenues levied on the sale of motor fuels.

IV. Analysis

Sales of parcels such as the subject property are permitted pursuant to ORS 271.310 and 275.030. Because a portion of the land encompassed within the legal description is very likely under the jurisdiction and ownership of the Oregon Division of State Lands, it is recommended that the conveyance, if ultimately approved by the Board, be completed by Quitclaim Deed rather than Bargain and Sale Deed. The County and MRT would each pay one-half of the escrow fee; and title insurance, if desired, would be paid for by MRT. Sale of the property to MRT would be advantageous to Lane County for the following reasons:

- Future administration cost would be avoided by Lane County
- The objectives of MRT closely coincide with Lane County strategic goals to preservation and enhancement properties to maintain and improve their value as natural resource in perpetuity
- The proceeds from the sale could be used for other road-related purposes based on opinions from Lane County Legal Counsel and the Oregon Attorney General
- There are no other known sources of funding that would allow Lane County to undertake conservation activities on this parcel, particularly due to the lack of legal access road access

V. Alternatives/Options

1. Approve the Order and Resolution authorizing the sale of the above-referenced property to McKenzie River Trust, authorizing the execution of the attached Quitclaim Deed.
2. Direct staff to offer the property for sale in the manner provided under ORS 271.330 and 275.030.
3. Decline to sell the property and continue to hold it in surplus inventory.

VI. RECOMMENDATION

Option 1.

VII. FOLLOW-UP

If approved, staff will place the executed Quitclaim Deed in escrow. Upon closing, the proceeds will be deposited in the Road Fund.

VIII. ATTACHMENTS

Attachment 1- Letter from MRT
Exhibit A – Quitclaim Deed

ATTACHMENT 1



May 28, 2009

Frank Simas, Right-of-Way Manager
Lane County Department of Public Works
Engineering & Construction Services Division
3040 North Delta Highway
Eugene, OR 97408

Re: Surplus County land near Armitage Park

Dear Frank,

Please accept this letter as a follow-up to our presentation to the Board of Commissioners during their May 6 work session. At that time, we requested that the County consider selling the 19-acre parcel downstream from Armitage Park to the McKenzie River Trust so that we could incorporate it into a floodplain enhancement program developed in technical team partnership with the McKenzie Watershed Council, ODFW, and EWEB. The Commissioners requested that we explore alternative scenarios such as collaborative management of the site with the County, a conservation easement, or other options that could be applied while the County still held title to the land.

We've explored those options both internally at the Trust and with our partners on the technical team, and collectively we've concluded that acquisition of the parcel by the Trust is still the best way to reach our goal of protecting and enhancing this reach of the McKenzie River.

The McKenzie River Trust only manages properties it owns outright. It does not, for example, manage property where it holds conservation easements. As you know well, land management alone is an expensive, time-consuming undertaking. Adding in a restoration or enhancement component to the equation often involves environmental permitting, interagency coordination and review, and tight grant funding cycles. With the limited pool of human and financial resources we have at our disposal, investments of time and energy need to be accompanied by assurances that the effort and expense made in the near term are not lost in the future under subsequent ownership or management. The Trust's impression is that the County's ability to dedicate financial and human resources to manage individual properties is severely limited at present and will be for the foreseeable future.

Managing the proposed arrangement between the County and the Trust would require significant time and resources, exclusive of on-the-ground management activities. In general, the need to coordinate extensive management details on a regular basis could put quite a burden on both County staff and MRT staff, as well as the partners with whom the Trust works on a regular basis. The potential need to seek Board of Commissioners approval for specific activities might also limit the kind of responsiveness that characterizes our current stewardship work.

Protecting Special Lands

1245 Pearl St • Eugene, OR 97401 • phone (541) 345-2799 • fax (541) 465-3876
mrt@mckenzieriver.org • www.mckenzieriver.org

ATTACHMENT 1

The possibility of the McKenzie River Trust holding a conservation easement on the property was also raised during the work session. Though on its face this may sound like a compelling alternative to fee title ownership, the reality is that it would add a layer of complexity to a parcel that needs a fair bit of active management and enhancement work. As an easement holder we would be in the position of ensuring that the County upheld its responsibilities to manage the property for its conservation values. As I noted above, we don't manage and usually don't even carry out restoration activities on easement lands.

Since the May 6 meeting we were able to visit with Dale Fortner, Environmental and Land Use Manager with Egge Sand and Gravel, the neighbor to the north of the property. Dale was encouraging that our ownership and management of the site would not cause a problem with their operations, and he indicated that they would probably be willing to provide land access to the property. We also discussed the possibility that we could even collaborate on the property's management. We have also now visited with the management team at Camp Harlow and the First Baptist Church to begin discussions about how stewardship activities on that reach of the river might be incorporated into their camp and other programs.

All in all we feel like our ownership of the property fits well with the Commissioners' interest in seeing that the world-class resource we have in the McKenzie River will provide benefits to the public for many generations. The Trust respectfully requests that the Board of Commissioners consider selling fee title interest in the property to the McKenzie River Trust for the appraised value of \$19,000.

Please let me know if you would like to discuss this further, have any questions about our intentions, or would like us to provide additional information about the collaborative effort that would go into management and enhancement of the property.

Best wishes,



Joe Moll
Executive Director

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

Resolution and Order No.

(**IN THE MATTER OF AUTHORIZING THE**
(**SALE OF A PARCEL OF COUNTY-OWNED**
(**ROAD FUND REAL PROPERTY IDENTIFIED**
(**AS LANE COUNTY ASSESSOR'S TAX LOT**
(**300 ON MAP 17-03-04**

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 sell the following real property, to wit: Lane County Assessor's Tax Lot 300 on Map 17-03-04 and as more particularly described on Exhibit "A"; and

WHEREAS, said real property was acquired by purchase using Road Fund monies and not by foreclosure; and

WHEREAS, said real property is not needed by Lane County for any public purpose now or in the foreseeable future; and

WHEREAS, McKenzie River Trust has received funding in connection with Federal Energy Regulatory Commission relicensing of Eugene Water and Electric Board's Relicensing facilities on the McKenzie River to be used for purchase of properties along the McKenzie River for the preservation and enhancement of habitat and resource values; and

WHEREAS, McKenzie River Trust has agreed to purchase the above-referenced real property for \$19,000; and

WHEREAS, the Board finds it is in the public interest to sell said property to the McKenzie River Trust, and such sales are permitted pursuant to ORS 271.300 and 275.030; **NOW THEREFORE**,

IT IS HEREBY RESOLVED AND ORDERED that the property be sold to McKenzie River Trust and that the Board authorize the execution of the Quitclaim Deed in connection with said sale; and

IT IS FURTHER RESOLVED that upon close of escrow and receipt of the proceeds, they be deposited in the Road Fund.

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

DATED this _____ day of _____, 2009.

APPROVED AS TO FORM:

Date: _____

Peter Sorensen, Chair
Board of County Commissioners

Lane County Office of Legal Counsel

Exhibit "A"

Real property in the County of Lane, State of Oregon, described as follows:

ALL THAT PORTION OF LOTS 5 AND 6, SECTION 4, TOWNSHIP 17 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN LYING SOUTHERLY OF THE SOUTHERLY LINE OF THE TRACT OF LAND DESCRIBED IN THAT CERTAIN CONTRACT AND AGREEMENT FROM ELSIE SMEED BRECHTEL TO NEILS O. EGGE AND ELSIE M. EGGE, HUSBAND AND WIFE, RECORDED APRIL 01, 1958, RECEPTION NO. 35532, LANE COUNTY OREGON DEED RECORDS, IN LANE COUNTY, OREGON.

ALSO BEGINNING AT A POINT ON THE MEANDER LINE OF THE LEFT BANK OF THE ABANDONED CHANNEL OF MCKENZIE RIVER, SAID POINT BEING SOUTH 88° 53' 50" EAST 546.63 FEET FROM THE CORNER TO SECTIONS 4, 5, 8 AND 9, TOWNSHIP 17 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN, AND RUN THENCE NORTH 88° 53' 50" WEST 275.30 FEET TO THE MEANDER POINT ON THE RIGHT BANK OF SAID ABANDONED CHANNEL; THENCE NORTH 75° 17' 05" WEST 280.22 FEET TO THE WEST LINE OF SAID SECTION 4; THENCE NORTH 0° 12' 53" WEST 281.10 FEET TO THE MID-CHANNEL LINE OF SAID ABANDONED CHANNEL; THENCE ALONG SAID MID-CHANNEL LINE AS FOLLOWS: NORTH 63° 33' WEST 67.03 FEET, NORTH 16° 52' WEST 269.57 FEET, NORTH 7° 52' 50" WEST 295.58 FEET, NORTH 0° 22' 20" EAST 402.07 FEET, NORTH 2° 21' 20" EAST 296.49 FEET; THENCE NORTH 66° 21' 20" EAST 213.78 FEET TO A POINT ON THE LEFT BANK OF SAID MEANDER LINE; THENCE ALONG SAID LEFT BANK AS FOLLOWS: SOUTH 4° 12' 50" WEST 383.80 FEET, SOUTH 0° 12' 53" WEST 660.0 FEET, SOUTH 25° 33' 30" EAST 143.37 FEET, SOUTH 76° 01' 50" EAST 238.75 FEET, SOUTH 26° 57' 20" EAST 552.56 FEET TO THE PLACE OF BEGINNING.

EXCEPTING FROM THE ABOVE DESCRIBED PARCELS ALL THAT LAND CONVEYED TO THE CITY OF EUGENE, A MUNICIPAL CORPORATION BY AND THROUGH AND FOR THE USE AND BENEFIT OF THE EUGENE WATER & ELECTRIC BOARD, AS DESCRIBED IN THAT BARGAIN AND SALE DEED RECORDED DECEMBER 16, 1982, RECEPTION NO. 82-37844, OFFICIAL RECORDS OF LANE COUNTY, OREGON.

Tax Parcel Number: 0145035

After Recording Return to, and
Send Tax Statements to:
McKenzie River Trust
1245 Pearl Street
Eugene, OR 97401

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

QUITCLAIM DEED

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Order No. _____ of the Board of Commissioners of Lane County, hereinafter called GRANTOR, for the true and actual consideration of **\$19,000.00 dollars**, does hereby release and quitclaim to McKenzie River Trust, an Oregon nonprofit corporation hereinafter called the GRANTEE, all its rights, title and interest in that real property situated in Lane County, State of Oregon, described as follows:

See Exhibit "A" attached hereto and incorporated herein by reference

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES 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 FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____ day
of _____, 2009.

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

STATE OF OREGON)
) ss.
County of Lane)

On _____, 19____, 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: _____

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