

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: December 15, 2015 Time: 11:00 AM Length: 30 min.

Presentation Title: Tualatin River Dock Easements
Department: Business and Community Services - Property Resources Division

Presenters: Rick Gruen, Property Resources Mgr; Lindsey Wilde, Property Resources Agent

Other Invitees: Nate Boderman, County Counsel; Mike McCallister, DTD; Scott Caufield, DTD; Dan Chandler, County Admin.

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval of the draft Board Order for Tualatin River Dock Easements. The permanent, exclusive easements will provide the means for qualified upland property owners to build docks and gangways across county-owned tax foreclosed parcels along the Tualatin River.

EXECUTIVE SUMMARY:

Clackamas County owns significant sections of the bed and banks along the Tualatin River upstream and downstream of Stafford Road, and below the ordinary high water mark (submerged/submersible land). Most of the property was acquired through tax foreclosure many decades ago. These tax foreclosed properties have had little economic value for the County, but do provide value for habitat and recreation.

Some upland property owners have docks and gangways that sit on county-owned property. In some cases this presents permitting issues since the upland property owner can't apply for permits without either permission from the property owner or an ownership interest in the property.

In the past, the County has granted limited-term easements for docks and associated gangways. However, this creates an ongoing management issue as these limited-term easements expire. The Board of Commissioners has directed staff to identify and develop a long term solution. Staff from BCS, DTD, County Administration and County Counsel considered conveyances, licenses, leases or easements and determined it is in the best interest of the County and public to retain these assets but provide the means for granting a permanent easement for docks and gangways. The permanent, exclusive easements will contain restrictions on use and provide for a reversionary interest in the event of non-compliance. Staff has developed the necessary processes for adjoining property owners to seek land use approval, building permits and easements.

A sample easement template form has been prepared for informational purposes only. The draft Board Order for Tualatin River Dock Easements has been prepared for review and consideration of approval.

FINANCIAL IMPLICATIONS:

There will not be any significant financial gain from granting the exclusive easements on these parcels. Property Resources will seek to cover the administrative and recording costs associated with the exclusive easement. This would be in addition to any application fees related to land use and building permits. The applicant would also be responsible for the costs associated with providing a survey as part of the land use conditional approval and easement recording process.

LEGAL/POLICY REQUIREMENTS:

County Counsel has researched the legal requirements to grant an exclusive easement and structured the easement template to protect the County's legal interests including reversionary language for non-compliance. The Director and Deputy Director for Business and Community Services will have delegated authority to sign the exclusive easement on behalf of the County consistent with current Property Resources policy regarding the sale or transfer of tax foreclosed properties.

PUBLIC/GOVERNMENTAL PARTICIPATION:

BCC has previously discussed the dock compliance concerns at an April 15, 2014 study session.

OPTIONS:

1. Approve the draft Board Order for Tualatin River Dock Easements as provided in Attachment A.
2. Modify the draft Board Order for Tualatin River Dock Easements
3. Consider an alternative conveyance method

RECOMMENDATIONS

Staff recommends the Board of County Commissioners accept Option 1 and approve the draft Board Order for Tualatin River Dock Easements. Acceptance would provide the conveyance of a permanent, exclusive easement to qualified property owners to build docks and gangways across county-owned tax foreclosed parcels along the Tualatin River.

ATTACHMENTS:

Attachment A – Draft Board Order for Tualatin River Dock Easements
Attachment B – Sample Easement Template Form

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

YES

NO

START-UP EXPENSES AND STAFFING (if applicable):

N/A

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

The Property Resources division is not funded by the County General Fund. Property Resources will seek to cover the administrative and recording costs associated with the exclusive easement. This would be in addition to any application fees related to land use and building permits. The applicant would also be responsible for the costs associated with providing a survey as part of the land use conditional approval and easement recording process.

ANTICIPATED RESULTS:

A policy creating a permanent easement solution for the submerged/submersible tax foreclosed lands will, over time, lessen the amount of staff resources devoted to the issue.

COSTS & BENEFITS:

N/A

ATTACHMENT A

DRAFT BOARD ORDER FOR TUALATIN RIVER DOCK EASEMENTS

Whereas, Clackamas County owns much of the bed and banks of the lower stretch of the Tualatin River as a result of tax foreclosures many decades ago; and

Whereas, a number of upland property owners have long-existing docks on the river; and

Whereas, the Board of County Commissioners desires to create a way for owners to obtain proper building and land use permits for docks in the lower Tualatin River; and

Whereas, property owners need to be able to show a right to use the property in order to obtain land use approvals.

Now therefore, the Clackamas County Board of County Commissioners orders as follows:

1. The Director and/or Deputy Director of the Department of Business and Community Services is hereby authorized to grant easements over County owned portions of the bed and banks of the Tualatin River.
2. Easement shall be for the limited purpose of siting a private, noncommercial dock and walkway structure.
3. Easements shall only be granted for the amount of land reasonably necessary to accommodate a dock and walkway, and in a form approved by County Counsel.
4. Easements may only be granted when property owners have obtained necessary authorizations and building permits.
5. Easements may only be granted to the owner of the adjacent upland parcel.
6. Easements shall be exclusive in favor of the owner of the adjacent upland parcel.
7. The easement rights may be terminated by the County upon the occurrence of the following:
 - a) Violation of any applicable laws and regulations of any public authority affecting the Premises and the use.

- b) Placement of any sign or other device to the dock located on the Premises without the written consent of Grantor.
 - c) Interference with the full and free use by the public of all navigable waters near the Premises.
 - d) Use by any commercial operator of Premises or any structure located on the Premises.
 - e) Expansion of the dock beyond the boundary of the Premises.
8. Prior to any termination of easement rights, an owner shall have 30 days to cure the default which is the basis for termination, except that the easement may be terminated immediately where the owner has previously been provided notice for a similar default.
9. Applicants are responsible for any necessary survey and recording costs, and the County may charge fees sufficient to recover any costs involved in processing the easement, and additional fees to cover costs for after the fact permitting.

ADOPTED this _____ day of _____, 20_____.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

ATTACHMENT B – EASEMENT TEMPLATE (FOR INFORMATION ONLY)

MAIL TAX STATEMENTS TO:

AFTER RECORDING RETURN TO:

GRANTOR’S ADDRESS:

Department of Business and Community Services
Attn: Property Resources Division
150 Beaver Creek Road
Oregon City, OR 97045

GRANTEE’S ADDRESS:

Tualatin River Structure Easement

This easement agreement is made by Clackamas County, a political subdivision of the State of Oregon, (hereinafter referred to as “*Grantor*”) in favor of _____, (hereinafter referred to as “*Grantee*”).

Recitals

The Grantor is the owner of certain real property situated in the Tualatin River, Clackamas County, Oregon, more specifically described on Exhibit A, which is attached hereto and incorporated by reference herein (the “*Servient Estate*”);

The Servient Estate is adjacent to certain upland areas owned by Grantee, commonly known as _____ and more specifically described on Exhibit B, which is attached hereto and incorporated by reference herein (the “*Dominant Estate*”);

Docks and other structures on those areas of the Tualatin River in the immediate vicinity of the Servient Estate are encroachments onto lands owned by the Grantor; and

Grantor desires to provide an easement over the Servient Estate to the Grantee for the use, maintenance, and management of a private recreational dock.

Agreement

1. Grant of Easement

For value received, Grantor hereby grants an exclusive easement to Grantee for the construction, use, maintenance and management of a recreational dock under and upon the Servient Estate on the terms and conditions stated below. The size of the recreational dock and access structure shall not exceed 400 square feet in size. The specific location of the easement is depicted on Exhibit C, which is attached hereto and incorporated by reference herein (the "Premises").

2. Effective Date

This Easement shall become effective upon its recording in the real property records of Clackamas County, Oregon.

3. Scope of Easement

a. Permitted Use

Grantee shall use the Premises to maintain a private dock and for no other purpose. If this use is prohibited by law or governmental regulation, this Easement shall automatically terminate.

b. Restrictions on Use

In connection with the use of the Premises, Grantee shall:

- (1) Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Grantee's own expense, any failure of compliance created through Grantee's fault or by reason of Grantee's use.
- (2) Ensure that there is no unreasonable interference with navigation by any work or use authorized under this Easement.
- (3) Refrain from attaching any sign or other device to the dock located on the Premises without the written consent of Grantor.
- (4) Ensure that no attempt shall be made by Grantee to interfere with the full and free use by the public of all navigable waters near the Premises.

- (5) Maintain and operate the dock for private use only and not permit any commercial operator to use the Premises or any structure located on the Premises.
- (6) Not expand the dock beyond the boundary of the Premises, which is more specifically identified on Exhibit C.

4. Construction, Reconstruction and Maintenance

Grantee shall be responsible for the maintenance and upkeep of the private dock improvement referred to in Section 3, in a safe condition in accordance with all applicable laws, ordinances, rules, orders and regulations of any federal, state, regional, county or municipal entities having jurisdiction.

5. As-Is

Grantee accepts the Premises in its “As-Is” condition without any warranty or representation by Grantor as to the condition or fitness for any particular purpose. Grantee acknowledges that Grantor has no obligation to make any change or improvement to the Premises or to pay any cost, expend any funds or suffer any liability to make any change or improvement. All work done by Grantee within, on, under or adjacent to the Premises will be performed in a good and workmanlike manner in compliance with all governmental requirements. It is Grantee’s sole and exclusive responsibility to perform all work necessary or required by any governmental entity to permit Grantee’s activities on the Premises. Grantee agrees to indemnify, defend and hold Grantor harmless against any loss, liability, claim or damage resulting from work on, or use of, the Premises.

6. Loss or Damage

Grantee bears all risk of loss or damage associated with its use of the Premises.

7. Inspection of Premises

Grantor shall have the right to inspect the Premises at any reasonable time or times to determine whether Grantee is in compliance with the terms of this Easement.

8. Alterations

Grantee shall make no improvements or alterations on the Premises of any kind without first obtaining Grantor’s written consent. All alterations shall be made in a good and workmanlike manner, in compliance with applicable laws and building codes, and according to the necessary permits and inspections.

9. Taxes; Utilities

- a. **Property Taxes.** Grantee agrees to pay all real property taxes and special assessments levied against the Premises. As used herein, real property taxes

include any fee or charge relating to the ownership or use of the Premises. Grantee shall pay as due all taxes on its personal property located on the Premises.

- b. **New Charges or Fees.** If a new charge or fee relating to ownership or use of the Premises is assessed or imposed, then, to the extent permitted by law, Grantee shall pay such charge or fee.

10. Liability and Indemnity

Grantee shall indemnify and defend Grantor and its elected officials, officers, employees and agents from, and reimburse Grantor for, any cost (including but not limited to attorney's fees), claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Grantee on the Premises or any condition of the Premises including any cost (including but not limited to attorney's fees), claim, loss, or liability suffered directly or from a third-party claim for damage to the Premises or any other persons or property arising out of or related to Grantee's failure to comply with the terms of this Easement Agreement. Grantee shall not be required to indemnify Grantor under this section for any cost (including but not limited to attorney's fees), claim, loss, or liability that may be caused or contributed to in whole or in part by Grantor's own negligence. Grantor and its elected officials, officers, employees and agents shall have no liability to Grantee for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

Grantee also waives any claim against Grantor and its elected officials, officers, employees and agents for any and all damage or loss caused in connection with, or as a result of the denial of any permit or termination of this Easement, or due to any suit or proceedings directly or indirectly attacking the validity of this Easement or any part hereof, or as a result of any judgment or award in any suit or proceeding declaring this Easement null, void or voidable, or delaying the same or any part thereof from being carried out.

11. Default and Termination

Violation of any term of this Easement or the violation, revocation or cancellation of any required permit shall, upon thirty (30) days notice, terminate this Easement, unless Grantee cures the violation prior to the expiration of the thirty (30) day notice period described herein. This Easement may be terminated immediately, upon written notice, where Grantee has previously been provided notice for a similar default. Upon any termination of this Easement, Grantee shall have sixty (60) days after receipt of written notice from the Grantor to remove the dock, and all necessary incidents thereto.

12. Miscellaneous

- a. **Nonwaiver.** Waiver by either party of strict performance of any provision of this Easement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

- b. **Notices.** Any notice required or permitted under this Easement shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address provided in the header of this Easement Agreement or to such other address as may be specified from time to time by either of the parties in writing.
- c. **Succession and Assignment.** Subject to the termination provisions set forth above, this Easement shall be appurtenant to the Dominant Estate owned by Grantee and shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the parties, their heirs, successors and assigns.
- d. **Time of Essence.** Time is of the essence of the performance of each of Grantee's obligations under this Easement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Easement and to bind the party for whom such person signs to the terms and provisions of this Easement.

Grantor: Clackamas County
Business and Community Services

By: _____
Director

Grantee: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 20__ before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by _____, Director, on behalf of Clackamas County and Clackamas County Business and Community Services.

Notary Public for Oregon
My Commission Expires:_____

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 20__ before me the undersigned, a notary public in
and for such state, the foregoing instrument was acknowledged before me by
_____.

Notary Public for Oregon
My Commission Expires:_____

Exhibit A

Exhibit B

Exhibit C