

OREGON INTERNATIONAL PORT OF COOS BAY  
Coos Bay, Oregon

SPECIAL COMMISSION MEETING

Thursday, March 12, 2009

Immediately following Executive Session which starts at 5:30 p.m.

Port of Coos Bay Conference Room, 125 Central Ave, Third Floor, Coos Bay OR 97420

**ATTENDANCE:**

Commission: David Kronsteiner, President; Caddy McKeown, Vice President; Brady Scott, Treasurer; Commissioner Jerry Hampel; Dan Smith absent

Staff: Jeffrey Bishop, Executive Director; Mike Gaul, Deputy Executive Director; Donna Nichols, Director of Finance and Administration; Aaron Simons, Marina Facilities Manager; Kerry Lewis, Port Receptionist; Mike Stebbins Port Counsel; Andrea Wall, Executive Assistant; Martin Callery was absent.

Media and Guests: Gordon Young, Channel 14; Alexander Rich, The World; Erica Rush, KCBY; Ken Messerle, Coast Consulting, Chris Claflin, OECDD; Janet Rubin, Ticor Title; John Griffith; Camby Collier, Jody McCaffree

**CALL TO ORDER:** The President called the meeting to order at 5:40 pm and stated that there was no need for an Executive Session.

The President then requested the audience to introduce themselves before turning the meeting over to the Executive Director and Port Counsel.

Mr. Bishop, Executive Director, said that his position as a professional real estate person requires that he brief the Commissioners of the risk involved in the purchase of the railroad. He proceeded with a Pro-forma Analysis as his presentation of the purchase of 111 miles of rail line from Central Oregon and Pacific Railroad.

Coos Bay Rail Link

- The Proposed Rail Line will be called the Coos Bay Rail Link
- Name focuses on the purpose of the rail line as a vital link to the Port and region
- Name is selected on the basis of the body of water and in attempt to develop brand image
- Port has hired consultants to draft a business plan for the operation of the Link
- Port will focus on the capital asset and the private sector to focus on the operational issues

Non-Financial Interests

- Over 700 employed by the shippers on the line
- With multipliers those shippers represent over 2,000 jobs
- 2,000 jobs represent @2,000 families or at 4 people per household over 8,000 people

Financial Risk Model

- Preliminary pro-forma financials assumed Port operates railroad as base case
- Preliminary pro-forma identifies a substantial operating loss to be absorbed by the shippers in a per car surcharge
- Port has hired consultants to prepare business plan
- Port will issue RFQ for interim operator - probably on a cost plus basis
- Port will issue RFQ for a multi-year contract for an operator on the line - proposals will be evaluated against the base case business plan

Institutional Structures - Shipper Involvement

- Port will manage the asset with open books but with aggregated shipper information
- Shippers will play a key role in management of the line participating in monthly and/or quarterly meetings

Institutional Structures – Oregon Department of Transportation

- ODOT Rail will be consulted and will participate in the selection of a contract operator
- ODOT Rail Division will participate in shipper meetings

Pro-Forma Analysis

- Two fold analysis – with and without LNG
- Assumes line is operated by Port (since we have not selected an operator yet)
- Assumes disposition of the line at the end of ten years (standard assumption for investment real estate) but does not require disposition
- Does not include shipper surcharges, which mitigates negative cash flows

Disposition Assumptions

- Purchase Price is \$16,585,760 (did not include cost of bridge removal)

Mr. Bishop said that he just heard from the STB today and they have denied our motion to re-consideration so this is the final price of the line.

- Price was set on November 2008
- Using same formula that STB used in setting the price based on data from February 2009 today's price would be \$17,562,897. so we have gained almost \$1 million worth of equity.
- Bridge removal costs are estimated at \$7,758,400
- Today's value would be \$9,804,497
- Disposition Price is today's value adjusted for Time Value Money (TVM) less the outstanding mortgage balance or \$7,629,733

Time Value of Money Analysis without LNG

<u>Period</u>	<u>Cash Flow</u>	<u>Disposition</u>
0	(\$736,633.73)	
1	(\$562,537)	
2	(\$1,029,008)	
3	(\$834,609)	
4	(\$642,739)	
5	(\$489,734)	
6	(\$284,787)	
7	\$7,982	
8	\$235,566	
9	\$388,604	
10	\$500,000	\$7,629,733
NPV @ 5% =	\$1,354,856	
IRR =	9.11%	

## Time Value of Money Analysis with LNG

<u>Period</u>	<u>Cash Floor</u>	<u>Disposition</u>
0	(\$736,634)	
1	(\$562,537)	
2	(\$1,029,008)	
3	(\$834,609)	
4	(\$642,739)	
5	\$1,671,591	
6	\$1,950,916	
7	\$2,321,205	
8	\$2,629,454	
9	\$2,844,136	
10	\$3,019,858	\$7,629,733
NPV @ 5% =	\$11,110,701	
IRR =	31.75%	

### Disclaimer

- The facts contained herein, while not guaranteed, are from what staff considers to be reliable sources.
- Financial projections represent a rough order of magnitude for evaluation purposes only.
- As with all investments, past performance of real estate investments are not necessarily indicative of future performance.

President Kronsteiner questioned losses Mr. Bishop referred to. Cash was less than any participation from the shippers; if we were to assume that, do we have cash to cover those deficits? Mr. Bishop said no. Commissioner McKeown interjected and asked if this was the same presentation as shown before. Mr. Bishop stated it reflects the outcome of our negotiations with the RR on the CMA and we are not allowed to discuss what that outcome was because we had to sign an NDA (Non-disclosure Agreement). Then Mr. Bishop continued with the answer to the President's question saying we have to rely on the agreements we have in place with the shippers, otherwise we would incur a substantial operating loss. That is why Mr. Bishop felt it was critical to get those agreements in place before the Board made their decision. He thinks those cash flows are covered. When the presentation on the business plan was made, it did not include a large amount of money for capital; capital would have to be done through grants. When you look at the disposition price, it is less than the mortgage balance, and you have a deferral on the loan which doesn't kick in until later on in the performance. The mortgage balances are included in that performance and it alleviates the debt if you were to sell at that time. The per car surcharge from the shippers is paid into an escrow account. At the end of the year there is a settlement whereby if a loss is incurred, then the escrow account pays off the loss. If the loss is less than the escrow fund, then the escrow fund sends money back to the shippers.

President Kronsteiner asked if the charge for the cars were already established. Mr. Bishop said that the maximum charge per car was established and that will be paid into the escrow fund. We won't have access

to the escrow fund until the end of the accounting period and then we will look at it and see the actual operating loss was if there is one. President Kronsteiner asked where the interim the cash flow would come from? Mr. Bishop said that it remains to be seen; that is because we have not determined the basis of the business relationship between the Port and the operator. Nor has it been decided whether the operator will interface directly with the shippers and the UP railroad and pay the Port something in the event they realized a profit; there may be a lease payment. Those operating structures have not been established yet; that will come when we get to the point of selecting an operator.

President Kronsteiner asked how much faith do we have that these operators will remain in business. Mr. Bishop said that the amount of operating loss is in direct proportion to the volume. If you are not shipping on the line, you are not incurring a loss. If the shipping goes way down, the interesting thing about volume and cost is that there is a linkage, and it is not until you get to a certain volume on a certain size train before it really starts to affect you positively on the performance. If you don't have any shipping, you are not losing any money.

Commissioner Scott asked if we have a negative gross margin. Mr. Bishop said not entirely. It is scaleable.

Mr. Bishop then introduced Mike Stebbins, Port Counsel to go over the agreements.

Mr. Stebbins said that to deal with the \$16,585,760 purchase price, you will be signing an asset purchase agreement with CORP and a number of related documents and then you will be doing a separate deal with the State for the \$12 million plus loan.

The asset purchase agreement is just what it says it is. In relationship to that, you have Quit claim deeds from the Coos, Lane and Douglas counties. These deeds transfer the real property to us. Associated with that there are deeds of reconveyance that are taking care of some security interests that financial institutions have had on that property for loans. There is a bill of sale covering the personal property that comes with the real property. There is an assumption agreement where the Port is assuming some CORP obligations covering certain contracts that go along with operation of the line. Finally there are the opinions of the various lawyers which are necessary and also some other requirements like non-foreign seller certification.

Mr. Stebbins then switched to the financing contract with the State which includes promissory notes and three separate trust deeds to cover the three county's lands. We are giving the State Trust Deeds for those lands. There is a certificate of indemnification regarding hazardous substances; and a reimbursement request to be executed by the Port. The whole deal will close tomorrow in all three counties.

Commissioner McKeown asked if we were finished dealing with the STB on the purchase issue. Mr. Bishop said, yes as far as this transaction but now that we own a railroad, we would continue to deal with the Surface Transportation Board.

Commissioner Scott asked if we were being asked to indemnify RailAmerica for anything. Mr. Bishop said we were asked to but it was removed from the agreement.

President Kronsteiner asked how attachment "F" from the State loan turned out. Mr. Stebbins said it turned out as well as it could under the circumstances; it is not a deal breaker. Everyone is happy enough and STB requirements have been met.

Donna Nichols asked Mike Stebbins if we needed to do an approval on Resolution 08/09-10. He said yes and then read the Resolution in its entirety.

**OREGON INTERNATIONAL PORT OF COOS BAY  
RESOLUTION FY08/09-10**

A RESOLUTION OF THE OREGON INTERNATIONAL PORT OF  
COOS BAY TO AUTHORIZE PURCHASE OF COOS BAY RAILROAD  
LINE AND TO DELEGATE AUTHORITY TO EXECUTE PURCHASE  
DOCUMENTS.

WHEREAS, the Oregon International Port of Coos Bay (the "Port") is a Port, as that term is defined in ORS 777.760; and,

WHEREAS, the Port finds that provision of viable rail service is a necessary transportation service for the development and facilitation of international trade and commerce, as well as the import and export of goods and service, within the Port district and the State of Oregon; and,

WHEREAS, the Port finds that the Port has been authorized to purchase the former Coos Bay Line of the Central Oregon & Pacific Railroad, Inc. (the "Coos Bay Line") by written decision of the Surface Transportation Board dated October 31, 2008 (the "STB Order"); and,

WHEREAS, the Port has been presented with a form of Asset Purchase Agreement and a form of deeds that have been negotiated by Port staff for the purpose of implementing the STB's Order, which forms have been duly executed by the Central Oregon & Pacific Railroad; and,

WHEREAS, the Port finds that it is in the public interest to purchase the Coos Bay Line in accordance with the STB Order.

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE OREGON INTERNATIONAL PORT OF COOS BAY as follows:

Section 1 Purpose

The purpose of this Resolution is to authorize the Port to purchase the Coos Bay Line from the Central Oregon & Pacific Railroad ("CORP") in accordance with the terms of the Asset Purchase Agreement (including exhibits) dated March 12, 2009, and to accept the conveyance of the real property comprising the Coos Bay Line in accordance therewith.

Section 2 Purchase Authorized

- a. The Board of Commissioners for the Port does hereby approve the Asset Purchase Agreement (including exhibits), a true copy of which is attached hereto as Exhibit A.
- b. The Board of Commissioners for the Port does hereby accept the deeds from CORP for the conveyance of certain real property located in Coos, Douglas and Lane counties, true copies of which are attached as Exhibits B-1, B-2, and B-3.

c. The Board does hereby delegate authority to the Commission President to sign and execute the Asset Purchase Agreement, the deeds, all other documents necessary to affect the purpose of this resolution.

ADOPTED AND APPROVED at a Special Meeting of the Board of Commissioners of the Oregon International Port of Coos Bay, Oregon, held this 12th day of March, 2009.

OREGON INTERNATIONAL PORT OF COOS  
BAY, OREGON

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David Kronsteiner, President

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Catherine (Caddy) McKeown, Vice President

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Daniel Smith, Secretary

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Brady Scott, Treasurer

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Jerry Hampel, Commissioner

Upon a motion by Commissioner Scott (second by Commissioner McKeown) the Board of Commissioners approved Resolution 08/09-10 to authorize purchase of Coos Bay Railroad Line and to delegate authority to execute purchase documents.

Mr. Bishop offered the Commissioners his congratulations!

The meeting continued with a discussion of the swing bridge repair. Several years ago there was an accident where a barge hit the bridge. Since then the Port has been in a relationship with CORP discussing the repair of that bridge. The tug company put money into an escrow account to pay for repairs once the final agreement was reached between CORP and the barge company. One last repair has not been completed; there was some controversy over materials that were used. Treated material was used originally on the bridge and was no longer allowed. The inferior material was not acceptable because it was susceptible to a boring worm. The only option that was structurally as strong as the treated wood was plastic; however, it was more expensive. As a result, we have been at somewhat of an impasse. CORP and the Port's attorneys finally came to terms today. The proposal is to provide us with funds necessary to install the plastic material. CORP will also pay for the engineering and fund a contingency fund in the

event some expenses are incurred in excess of the bid price from the contractor. Mr. Bishop said that he tentatively gave them an OK so he needs ratification tonight of his OK.

At this point Mr. Gaul stepped in to give the Commissioners some history of the bridge accident. He said the East end of the bridge was struck on July 1, 2003 by a Foss tug and barge and then on November 11, 2005 the West end was struck by a Brusco Tug and Barge. Under the lease agreement with the UP and CORP for the operation of the railroad, the responsibility for those repairs were CORPs. The Port has been working through the issues for settlement every since. In December of 2007, a settlement was reached between Foss, CORP and the Port that identified the repairs to be made. Foss put \$1,663,000 into an escrow account for the east end repairs. The west end repairs were treated separately. CORP entered into settlement with Brusco for the west end repairs in 2005, but they only made temporary repairs. We have been having discussions to make sure final repairs are made under that responsibility of that contract. CORP will put \$151,000 (materials) in escrow for the bridge repairs; \$8,000 for engineering oversight, \$20,000 for contingency for a total of \$179,000. Knutson will now enter into a contract that was required in our December agreement so he can complete the work. The east end work is now complete. With ratification, Knutson can move forward with his contract and we can get the west end done. The west end repair work consists mainly of piling work but now it has to go to the fettering systems which has to go to the plastic because you can't use creosote in the water anymore. The locking mechanism at the west end needs some work and then there is the tying all of it into place.

Commissioner Hampel asked if all of that work was included in the contract with Knutson. Mr. Gaul said under the agreement in December for \$1.6 million, Knutson contracted to do it. Under that same agreement, it says that Knutson will contract to finish the west end repairs, but there have been ongoing discussions of what that cost should be. If CORP had done permanent repairs in 2005, they could have probably done it for \$90,000 but because of time and changes in environmental rules, it is now going to cost quite a bit more. CORP is committed to move forward now and Knutson will sign a contract for the west end repairs shortly.

The President asked about the engineering services. Mr. Gaul said that the engineering itself was already done; this \$8,000 was for the oversight or quality control of the work. The President also said that he had some concern that the correct plastic was used. He has had some experience with it and would like to have it checked to make sure we are getting the right plastic. He said that there was a lot of plastic that was thought to be correct however it wasn't. Mr. Gaul said he would check it out.

Mr. Bishop said that we needed a motion to ratify. He gave the OK because it was an issue with the purchase of the railroad. He said that CORP just wanted to wash its hands of the whole thing and Mr. Bishop wanted to be sure to get these repair contracts settled before the final sale of the line so CORP would complete their responsibilities.

Upon a motion by Commissioner McKeown (second by Commissioner Scott) the Board of Commissioners ratified the Executive Directors decision to accept the settlement proposed by CORP for the rail bridge collision incident.

Commissioner McKeown asked if our \$8 million made it through the Omnibus bill . Mr. Bishop said yes, but we have not received clarification notification from ODOT of when we will receive the \$7.2 million. Mr. Bishop continued and said we have two loans from the state, a \$7.2 million and one for \$5.6 million. We will be paying off the \$7.2 million almost immediately. Mr. Bishop also commented that we have several applications out for the stimulus money. One with ODOT and one is with EDA. A presentation

was made to ODOT for \$33 million, but we do not anticipate getting that much. We are looking at the next ConnectOregon if it should happen and there is a bill in legislature that could provide some direct funding. We will definitely pursue the transportation bill; we are waiting to see how well we do in the stimulus arena before we continue with the RIFF loan.

More discussion followed regarding the RIFF loan and if we would shrink the amount or not; and how it would be used. Mr. Bishop said that there was not much money in the performa for debt service and we did not want to take on a lot of debt right now. This loan was more for an opportunity that might come through so we would have a funding source to pursue it.

Commissioner Scott asked what Mr. Bishop's best case/worst case scenario was for reopening the line. He said that his thought was 9 - 18 months but that will be directly dependant on how successful we are in developing capitol sources.

Commissioner McKeown asked about the selection of an operator. Mr. Bishop said that there were still a lot of questions. There are two paths, one we lease out the line to someone which would remove us from the common carrier obligation and the Port would just own an asset. We would transfer the common carrier obligation to the lessee and they would manage it. In that scenario, at some point in time, we would expect some money to come back to the Port based on volume. The problem with that is it would be a taxable enterprise. If we contract our common carrier obligation to an operator there may be some tax savings. They would have to pay income tax on the profit, but the Port would not have to pay property tax. Mr. Bishop said it was a very complex issue that would have to be brought before the Commission later, maybe this fall sometime. He did say that we have obligations as of Saturday as far as the common carrier obligation and we have devised a plan on the non-embargoed section. We have talked to CORP about the obligation and there is also another short line in the area. We have also considered an embargo on that section. Mr. Bishop did say that the Port will have to embargo the portion that CORP embargoed until it is repaired; however, this is a very legitimate embargo. There are two tunnels that the FRA has deemed not available for use so the embargo is valid. We have agreements with the shippers for the non-embargoed portion. Because of the economy, all of the shippers are willing to be patient until the repairs are done except one and they only have two cars a month. We are working on an agreement with them. Mr. Bishop also said one shipper is excited about increasing the volume if we are willing to make a spur to his business; so there is opportunity.

**COMMISSION COMMENTS:** There were no more comments

**NEXT MEETING DATE** - Thursday, March 19, 2009

**ADJOURN:** The Special Meeting was adjourned at 6:20pm

By: \_\_\_\_\_  
David Kronsteiner, President

By: \_\_\_\_\_  
Dan Smith, Secretary