



Oregon

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Oregon Watershed Enhancement Board

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MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Ken Bierly, Deputy Director
Miriam Hulst, Acquisitions Specialist

SUBJECT: **Agenda Item K: Land Acquisition Program
January 18-19, 2012 OWEB Board Meeting**

I. Introduction

This report requests Board action regarding the acceptance of land acquisition grant applications for the remainder of the biennium. It is recommended the Board approve a reduction in the current backlog of applications and direct staff to develop recommendations for the future structure of the program.

II. Current Situation

A. Accomplishments to Date

It has only been three years that OWEB has had a full time staff person to handle land acquisition transactions. In that time the staff person has closed 22 transactions averaging seven transactions per year, which is nearly double the previous pace. During this same period, staff have developed guidance materials for easements, management plans, appraisals, baselines, and Environmental Site Assessments (ESA). Staff have developed specific policy approaches to solve matters associated with both risk management and ESA application in agricultural lands to address conservation concerns that are unique to conservation transactions. In the same time, staff have reviewed 21 management plans and developed guidance for management plans. The accomplishments of OWEB acquisitions staff are substantial, and demonstrate a significant improvement in productivity for the program. However, current workload demand is above and beyond the capacity for one staff person to address in a timely manner..

B. Increasing Program Demand

Demand for acquisition grants has increased significantly in the last three years, from approximately four applications per grant cycle to approximately ten per cycle. In addition, OWEB committed to seven acquisitions through the Willamette and Deschutes Special Investment Partnerships (SIPs). Acquisition program staffing resources remained static (1.0 FTE) during this period of time.

Program demand has resulted in a due diligence backlog of more than \$7.2 million in applications, and a workload that is far too large for one full-time permanent position. The

acquisition program's staffing shortage has caused disappointment, frustration and confusion among applicants, and has also caused staff to forego important functions such as monitoring past investments.

C. Limited Funding

In addition to the program's workload concerns, with the expenditure of \$1,750,000 on acquisitions in September 2011, the investment in land and water acquisitions combined will be a larger percentage of available grant funds than in any previous biennium. At the same time, OWEB faces significant budget constraints this biennium which will force the Board to consider reducing funding for all or some program areas. Even with no further applications, this increase in spending on acquisitions contrasts with overall spending reductions currently affecting other program areas of the agency.

D. Current Backlog

Over the last six years, the Land Acquisition Subcommittee has approved numerous projects for consideration in the due diligence process. (Attachment A) As noted under Section VI of this memo, a number of these have not progressed and remain under consideration. There are nearly \$7.2 million in applications received in prior biennia pending due diligence consideration. In addition, OWEB has requested due diligence on two April 2011 submitted projects. An additional seven land acquisition and two water acquisition applications were received in October 2011.

Taken together, the full suite of applications pending due diligence has the potential to surpass OWEB's funding ability and would exceed staff capacity to manage the program.

E. Acquisition Process

The current land acquisition process has been identified by clients and staff as having too much work for the existing staff. A land acquisition work group was organized during conversations about the implementation of Measure 76. The work group identified two main issues: 1) OWEB holding conservation easements over acquired properties; and 2) the complex review process. Additional issues, including the level of risk for a public funder to take and the level of funding for land acquisitions were not addressed. In conversations with the Land Acquisitions subcommittee, they suggested increased involvement by the subcommittee in discussions regarding risk assessments.

III. Background: Water Acquisitions

While budgeted together and discussed alongside land acquisitions, water right acquisitions are very different from fee simple or conservation interest acquisitions in land. The administrative rules for funding water transactions do not include review by a Board subcommittee – which is a requirement for land acquisitions. The rules rely more on protecting water rights under state (Oregon Water Resources Department) authorities. As a result, water transactions require less staff time than land acquisitions.

IV. Summary of Next Steps

To address the issues outlined above, staff and the Land Acquisitions Subcommittee recommend the following. Details are outlined above and in the next sections:

- The OWEB Board accept an acquisitions program budget as outlined in the spending plan (Agenda Item E).
- The OWEB Board adopt a no-fund recommendation on projects identified under Section V of this memo.
- The OWEB Board direct staff not to accept any new applications for acquisitions until the April 2013 grant cycle in order to address current backlog.
- The OWEB Board direct staff to complete a program evaluation along with partners to improve operational efficiency and assess risk levels for OWEB investment in acquisitions.
- The OWEB Board consider having the Land Acquisition Subcommittee review water acquisition applications in the future to provide a consistent review of all acquisition proposals.

V. Reduction of the Backlog of Projects

Staff recommend four specific strategies to tackle the backlog of projects that the Land Acquisition Subcommittee have requested due diligence materials be submitted.

A. Develop a specific set of projects as priority so staff can focus effort on a limited number of projects at any one time. No more than three active projects at any one time will allow the current staff to focus on completing due diligence review and conservation easement negotiations. Staff have developed a schedule for the current list of projects through June of 2012 that will be updated monthly. (Attachment A)

B. Develop additional capacity through contracting in cooperation with the Coalition of Oregon Land Trusts (COLT) to provide additional due diligence assistance to land trusts and other applicants. A contractor familiar with OWEB requirements could add value and expedite the due diligence review in preparation of projects for a Board consideration. Staff have developed a contract solicitation and are prepared to advertise for contractors to provide qualifications and bids.

C. Request the Board direct staff not to accept any land acquisition applications, with the goal of addressing the current backlog prior to April 2013. This will allow staff to reduce the current backlog without taking on additional projects beyond those submitted in October 2011. OWEB staff has discussed this option with the acquisition subcommittee who supports the proposal. In addition, partners and potential applicants have been informed. The timeline for addressing the backlog will be reviewed on a regular basis by staff per Section V.A. above, and updates provided at Board meetings should the deadline need to be adjusted.

D. Request the Board to deny funding for seven projects that either have not had recent activity or do not compete well with more recent projects. The administrative rules that govern land acquisition (OAR 695 Division 45) has broad authority for the consideration of such grant applications. The Board's responsibility is specified in OAR 695-045-0070 "***The Board will make a funding decision on a land acquisition project grant application based on the evaluation criteria listed in Section 695-045-0040. This decision will be based on the information provided by the grant applicant, reviewers, Board Acquisition Subcommittee, and OWEB staff. The Board's decision will be made in the context of program budget and priority considerations.***"

This is the first time staff have recommended a no-fund decision by the Board for applications that have not completed due diligence review. The following applications are being recommended for a no-fund action.

- 1. OWEB Application #203-112 Yaquina Wetlands Acquisition.** This is a Coastal Wetlands grant application from 2002-2003. The federal grant was awarded in September of 2003. The federal grant of \$952,214 was awarded with a required state match of \$317,404. The Wetlands Conservancy obtained a bargain sale and OWEB awarded \$653,404 in federal funds and \$317,404 in state funds and acquired 407 acres (192 acres of wetland and 215 acres of forest buffer). The remaining \$298,810 of federal funds has been carried for the opportunity to acquire additional wetlands. While The Wetlands Conservancy has identified a number of potential properties, they do not have options on any of the properties.
- 2. OWEB Application #208-117 Yaquina II Wetlands Acquisition.** This is another Coastal Wetlands Acquisition grant. The federal grant of \$95,725 was awarded in December of 2007. The state match of \$46,250 has not been awarded. The Wetlands Conservancy has not applied for a state grant to match the federal funds. Recent conversations indicate the landowners of the properties involved are still interested; however there has not been effective action on the part of The Wetlands Conservancy to obtain purchase agreements or apply for the state matching funds.
- 3. OWEB Application #210-108 Bott's Marsh Acquisition.** This is a Coastal Wetlands grant awarded in January of 2009. The federal award was for \$950,000 with a state match of \$325,000. OWEB awarded \$70,000 of the federal grant to the Trust for Public Lands to complete due diligence for the property. The land in question is a controversial property that was identified for development in the comprehensive planning process in the 1970s and 1980s. The landowner has been frustrated over permitting requirements for development since that time. The land ownership is in transition and during the appraisal process it was discovered that the State of Oregon claimed ownership to a significant area of the property as filled state owned submerged lands. The applicant has not been able to resolve the complex issues surrounding the project and has not filed a grant application for the state match.
- 4. OWEB Application #209-106 North Nehalem Bay Protection.** This is one of two Coastal Wetlands grants awarded to OWEB in partnership with the Lower Nehalem Community Trust. The first grant was awarded in January of 2009 for \$629,665 of federal funds matched with \$468,812 of state funds. The Trust has acquired 16 acres with \$531,819 of federal funds and \$437,216 in state matching funds. The Trust has been looking for replacement properties for the use of the remaining \$55,193 of federal funds and \$31,596 of state funds. The federal application was quite specific and the replacement properties are all a significant distance from the north shore of the Nehalem.
- 5. OWEB Application #210-106 North Nehalem Bay Protection Phase II.** The second phase of the acquisition of wetlands fringing the north shore of the Nehalem was funded in January of 2010. The award of \$925,000 of federal funds to match \$583,761 of state funds was to complete the acquisition of fringing wetland properties

along the north shore of Nehalem Bay. The Trust acquired 19 acres with \$451,152 of federal funds and a match of \$275,000 of state Lottery funds. The Trust has been looking for replacement properties; however they have not found any along the north shore of the Nehalem.

6. **OWEB Application #208-111 Maxfield Creek Conservation Easement.** Greenbelt Land Trust applied in October of 2007 for a conservation easement on approximately 76 acres of property at the confluence of Maxfield Creek and the Luckiamute River in Benton County, Oregon. This project is adjacent to the 145 acre Thomas Paine Farms conservation easement, located to the south that was acquired by the Greenbelt Land Trust and funded by OWEB in January 2006. The Board Subcommittee requested due diligence in 2008. The Executive Director of the Greenbelt Land Trust has changed in the interim and the project has not been a high priority.
7. **OWEB Application #209-101 Necanicum Forest (Falleur Property).** The North Coast Land Conservancy submitted an application requesting \$1,314,960 (\$1,590,000 total project cost) to purchase three properties totaling 212 acres along the Necanicum River in Clatsop County in September of 2010. One of the properties (37 acres) was closed in July of 2011 for \$145,000. The North Coast Land Conservancy has an option to purchase an additional 117 acres. The North Coast Land Conservancy has been unable to obtain legal access other than foot path access to the property to date. The regional review team found the site to be an important riparian floodplain site and recognized the significance of the property as a freshwater link to the tidal conservation acquisitions in the basin. However, with the full extent of the property not being available, the value is diminished. The property does include riparian habitat along both sides of the Necanicum River. The North Coast Land Conservancy is strongly committed to the acquisition but does not have alternative funding.

Given other conditions, these projects could be managed. The Coastal Wetlands grants require coordination with the U.S. Fish and Wildlife Service, who have become more restrictive about the substitution of properties over the years. They now will only allow substitutions within the area of the original application. While the “area of the original application” is not clearly defined, it is clear when there are specific parcels proposed that others are not part of the proposal. At the very least there would need to be a reevaluation of the application once a replacement parcel is obtained.

The Wetlands Conservancy has communicated that the original parcels proposed for acquisition in grant application 208-117 are available and the North Coast Land Trust is anxious to pursue the acquisition of the Weyerhaeuser property. There are insufficient staff resources to add these to the list of projects without either putting them at the end or bumping other projects that are in the priority list. (Attachment A)

VI. Continuing Conversations about Process, Protection Tools and Priorities

Without a thorough look at and change to the approach OWEB manages land acquisition projects, the staff will soon be back in a backlog situation soon after additional applications are accepted. To avoid that situation, a broad conversation and difficult decisions need to be made. There are three major policy matters to be addressed to ensure both the state interest in the protection of the use of dedicated funds is protected and the conservation priorities are

effectively served. The three major areas needing consideration are: 1) evaluation of process efficiency and transparency, 2) consideration of risk to public funds use both in the short-term and long-term, and 3) consideration of refining conservation targets or scaling conservation targets to staff capacity.

A. Evaluation of Process Efficiency and Transparency

During the discussions following passage of Ballot Measure 76, many members of the Land Trust community opined that a more transparent or objective process could be employed for considering land acquisition applications. A structured conversation around this topic is critical to build confidence in the evaluation process and recalibrate the current process that is defined in administrative rules.

B. Consideration of Risk to Public Funds

Currently OWEB obtains a conservation easement for each fee acquisition funded by the program. The purpose of the conservation easement is to ensure the dedicated public funds provide the conservation benefits proposed in an application. It is agreed by all parties that a conservation easement is the strongest form of protection. A previous discussion with the Land Trust community has suggested a “streamlined” conservation easement. While such a document has not been produced, further discussion is necessary to consider alternative approaches with different levels of risk to the public funds. A wide range of discretion is available and policy options need to be thoroughly explored to focus on changes that balance risks and requirements.

C. Consideration of Refined Conservation Targets

An open solicitation for land conservation grants neither targets conservation objectives nor clearly identifies where investments may be the most strategic. Alternative offerings that highlight different eco-regions or conservation opportunity areas may warrant consideration. This topic has the potential to both refine the program and frustrate the Land Trust community. The depth and quality of the discussions necessary to adequately address this issue is significant. It took OWEB 18 months and two outside consultants to develop the prioritization system we have adopted by rule at this time. It will take a similar effort to make significant changes to it.

VII. Recommendations from Staff and the Land Acquisitions Subcommittee

A. The Board adopt a no fund recommendation for the state and federal funds involved in the following grant applications:

1. Application 203-112 Yaquina Wetlands Acquisition;
2. Application 208-117 Yaquina II Wetlands Acquisition;
3. Application 210-108 Bott’s Marsh Acquisition;
4. Application 209-106 North Nehalem Bay Protection;
5. Application 210-106 North Nehalem Bay Protection Phase II;
6. Application 208-111 Maxfield Creek Conservation Easement; and
7. Application 209-101 Necanicum Forest (Falleur Property).

B. The Board direct staff not to accept any new applications for land acquisitions prior to the April 2013 grant cycle to give staff time to address the current backlog.

- C. The Board direct staff to accept water acquisition applications but make funding recommendations within the budget adopted for the acquisition program (Item E-1 - Spending Plan).
- D. The Board direct staff completes a program evaluation along with partners to improve operational efficiency and assess risk levels for OWEB investment in acquisitions.

Attachment

- A. Land Acquisition Priorities 1-4-2012

Land Acquisition Priorities 1-4-2012

Project	Applicant	Effort/Focus
January		
Pitcher Property	Greenbelt Land Trust	RHD/Baseline/GA/Closing
Pond Property	Deschutes Land Trust	CE/GA/Baseline/Hearing/Closing
Ecola Creek	City of Cannon Beach	GA/Closing
Horseshoe Lake (3 properties)	Greenbelt Land Trust	CEs/Baselines/RHDs/Appraisals/Water/Access
February		
Horseshoe Lake (3 properties)	Greenbelt Land Trust	CEs/Baselines/RHDs/Appraisals/Water/Access
Coquille - Roseburg Resources	The Nature Conservancy	Site visit/Title/Option/Appraisal/ESA/CE/GA
October Application Review	7 applications	Evaluations and staff report
March		
Horseshoe Lake (3 properties)	Greenbelt Land Trust	CEs/Baselines/RHDs/Appraisals/Water/Access
Coquille - Roseburg Resources	The Nature Conservancy	Title/Option/Appraisal/ESA/CE/GA Title/Access/Reserved Rights/CE/baseline/GA/Appraisal?/ESA?
Cardwell Hills (2 properties)	Benton County	
April		
Coquille - Roseburg Resources	The Nature Conservancy	CE/Baseline/Hearing Title/Access/Reserved Rights/CE/baseline/GA/Appraisal?/ESA?/Hearing?
Cardwell Hills (2 properties)	Benton County	
Horseshoe Lake (3 properties)	Greenbelt Land Trust	Hearing/Closings
Miami- Crabb	The Nature Conservancy	CE/GA/Baseline
May		
Coquille - Roseburg Resources	The Nature Conservancy	Closing
Cardwell Hills (2 properties)	Benton County	Hearing/Closings
Miami - Crabb	The Nature Conservancy	Hearing/Closing
June		
Miami - Parks	The Nature Conservancy	CE/GA/Baseline
Big Creek	The Nature Conservancy	CE/GA/Hearing/Baseline
Pugh Property	The Nature Conservancy	Title/Option/Appraisal/ESA/GA/CE
Beyond June		
Miami - Parks	The Nature Conservancy	Hearing/Closing
Big Creek	The Nature Conservancy	Closing
Doher Property	The Nature Conservancy	CE/GA/RHD/Baseline/Hearing/Closing
Pugh Property	The Nature Conservancy	CE/Baseline/Hearing/Closing
Miami - 2 additional properties	The Nature Conservancy	Everything
Coquille - Bandon Biota (2 properties)	The Nature Conservancy	Everything
Tillamook Project Exodus (3-4 properties)	Tillamook County	Everything
Cardwell Hills (1 CE property)	Benton County	Everything
Bald Hill Farm	Greenbelt Land Trust	Everything