

August 26, 2005

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Melissa Leoni, Grant Program Specialist

**SUBJECT: Agenda Item L: Other Business
Approval of Conveyance of “Peters” Tract to the City of Eugene from The Nature Conservancy -- West Eugene Wetlands Project I (200-100)
September 13-14, 2005 OWEB Board Meeting**

I. Introduction

This report seeks Board approval of a conveyance of “Peters” tract to the City of Eugene from The Nature Conservancy.

II. Background

The City of Eugene (Eugene) submitted an application in September 2000 requesting \$900,000 for acquisition of 317 acres as part of the West Eugene Wetlands Project (200-100). This project was recommended as a high funding priority by the regional review team due to the benefits to rare plant and animal species, wet prairie habitat, and the excellent track record of the strong partnership supporting this project. The acquisitions help to implement the West Eugene Wetland Plan. In January 2001, the OWEB Board awarded the grant to Eugene to enable the city to purchase the “Bertelsen” tract and reimburse The Nature Conservancy (TNC) for the purchase of the “Peters” tract. OWEB and the City of Eugene signed a grant agreement in August 2001 to provide funds for both tracts. Simultaneously OWEB and Eugene signed and recorded a conservation easement for the Bertelsen tract, while OWEB and TNC signed and recorded a conservation easement for the Peters tract.

In July 2005, Eric Wold from the City of Eugene contacted OWEB staff because TNC and Eugene were in discussion about how to better manage the Peters tract and had decided that they would like to convey the Peters tract from TNC to Eugene. By statute and administrative rule, the OWEB Board must approve any conveyance of an interest in land acquired in part with a grant from OWEB. (Attachment A) By administrative rule, the Board must use the following criteria to determine whether to approve a conveyance:

695-045-0150 Conveyance of Property Interest Acquired with Assistance of OWEB Funds

(1)(a) Whether the ecological benefits, effect on the local and regional community, and terms of the original acquisition supporting the Board grant award also support approval of the proposed conveyance.

(1)(b) Whether the proposed recipient of the interest in land has demonstrated its ability to hold and manage the interest consistent with the provisions of the original grant agreement and current OWEB rules, and

(1)(c) Whether the proposed recipient agrees to the material terms of the original grant agreement, and any new conditions reasonably set by the Board.

III. Discussion

The City of Eugene and The Nature Conservancy have provided responses to OWEB's conveyance criteria (Attachment B) and it appears that the ecological benefits and restoration needs of the property could be better addressed through Eugene's ownership of the Peters tract. The original grant application did reference the possible transfer of ownership only to better address the restoration needs of the tract, or to improve management efficiencies. This proposed transfer appears to address both of those conditions. The attached response states that there is no effect on the local and regional community, but TNC paid approximately \$400 in property taxes for the 2004/2005 year that will not be paid under Eugene's ownership. However, under city ownership, the land will be open to the public and will receive increased use through educational programs.

The proposed recipient of the interest has demonstrated an ability to hold and manage conservation properties. Eugene, TNC, the Bureau of Land Management, and McKenzie River Trust own and manage approximately 3,000 acres. Eugene has five full time equivalent staff dedicated to managing the West Eugene Wetlands, and hires up to 22 seasonal employees and several private contractors each year to augment that staff. Eugene was also the recipient of an additional acquisition grant in May 2002 that protected an additional 64 acres of wetlands in the West Eugene Wetlands project area. For those properties, as required by that grant agreement, Eugene and its partners have developed a comprehensive management plan to restore function and habitat.

Since Eugene was the original recipient of, and signatory to, the original grant agreement there will be no affect on the grant agreement by this conveyance¹. The property is permanently protected by an OWEB conservation easement that runs with the property in perpetuity regardless of ownership.

Finally, this conveyance only involves the transfer of title. No funds will change hands; therefore OWEB's profit rules in OAR 695-045-0150 do not apply.

IV. Recommendation

Staff recommend the Board approve the conveyance of the Peters tract from The Nature Conservancy to the City of Eugene.

Attachments

- A. Oregon Revised Statutes and Administrative Rules Related to Property Conveyance
- B. Response to OWEB Criteria by Eric Wold, City of Eugene, and Jonathan Soll, The Nature Conservancy

¹ Until 2002, grant agreements for land acquisition projects only were effective for five years. Therefore the agreement between OWEB and the City of Eugene expires on September 10, 2006. Land acquisition grant agreements, beginning in 2002, are now in effect for 20 years.

Oregon Revised Statutes and Administrative Rules Related to Property Conveyance

Oregon Revised Statutes

541.376 Title restrictions on land purchased through grant agreement.

(1) Land purchased through a grant agreement with the Oregon Watershed Enhancement Board shall be subject to title restrictions that give the board the authority to approve, approve with conditions or deny the sale or transfer of the land. Specifically, the board may require conditions on the sale or transfer to:

- (a) Ensure consistency with the intent of the original grant;
- (b) Ensure the ability of the party receiving the land through the sale or transfer to carry out the obligations under the grant agreement; and
- (c) Address the disposition of proceeds from the sale or transfer, including any provisions for repayment, with interest, of any grant funds.

(2) The board may not allow a sale or transfer that results in any profit to any person.

(3) The board shall, by rule, define “profit” for the purpose of not allowing sales or transfers and shall specify the process and criteria that the board will use in considering whether to approve, approve with conditions or deny a sale or transfer. [2001 c.645 §2]

Oregon Administrative Rule

695-045-0150 Conveyance of Property Interest Acquired with Assistance of OWEB Funds

(1) An interest in land acquired with the assistance of a grant from OWEB shall not be conveyed to another party without prior OWEB Board approval of the conveyance. The Board shall use the following criteria when determining whether to approve a conveyance:

- (a) Whether the ecological benefits, effect on the local and regional community, and terms of the original acquisition supporting the Board grant award also support approval of the proposed conveyance.
- (b) Whether the proposed recipient of the interest in land has demonstrated its ability to hold and manage the interest consistent with the provisions of the original grant agreement and current OWEB rules, and
- (c) Whether the proposed recipient agrees to the material terms of the original grant agreement, and any new conditions reasonably set by the Board.

(2) The Board shall not approve a conveyance that results in a profit to any person or entity.

“Profit” means, for purposes of this rule, the amount by which the price for the purchase of an interest in land in a subsequent conveyance exceeds the purchase price for the same interest in land at the time the Board funds were used, net of usual and customary closing costs and appraisal costs actually incurred by the seller. If there will be a profit from a proposed conveyance, the OWEB Board may make a finding that no profit will occur, and approve a subsequent conveyance, by requiring payment of the amount of the profit to the Board.

(3) The Board will consider approval of a transfer of an interest in land acquired with the assistance of a grant from OWEB at any regularly scheduled public business meeting once it has received sufficient information from the grantee to evaluate the proposed transfer according to the criteria specified in the rules.

(4) Board funds will be repaid with interest due and payable from the effective date of the grant agreement at the rate provided for in ORS 82.010 in the event that a property interest acquired with Board funding is transferred or assigned without the Board’s prior consent.

Attachment B

Response to OWEB Criteria relating to conveying title on Peters Tract
By Eric Wold (City of Eugene) and Jonathan Soll (The Nature Conservancy)
August 11, 2005

695-045-0150 Conveyance of Property Interest Acquired with Assistance of OWEB Funds

(1) An interest in land acquired with the assistance of a grant from OWEB shall not be conveyed to another party without prior OWEB Board approval of the conveyance. The Board shall use the following criteria when determining whether to approve a conveyance:

(a) Whether the ecological benefits, effect on the local and regional community, and terms of the original acquisition supporting the Board grant award also support approval of the proposed conveyance.

RESPONSE BY CITY OF EUGENE AND TNC: The terms of the grant award will be fully addressed by conveyance of the property from TNC to the City. The City was the grant award recipient, and acquired other properties with the same grant award. The ecological benefits and restoration needs of the site will be addressed sooner under ownership by City of Eugene, since the City has funding available to enhance the wetland functions on the site. We stated in our grant proposal that properties purchased under this grant agreement may be transferred to other members of the West Eugene Wetlands Partnership “ to better address the restoration needs of the Tract and/or to improve efficiency of management”. That is the main purpose for this conveyance. Finally, the effect on the local and regional community will not change with this conveyance.

(b) Whether the proposed recipient of the interest in land has demonstrated its ability to hold and manage the interest consistent with the provisions of the original grant agreement and current OWEB rules, and

RESPONSE BY CITY OF EUGENE AND TNC: The City of Eugene has a tremendous amount of experience in holding and managing property consistent with the provisions of the original grant agreement and current OWEB rules. In fact, the City of Eugene is currently managing several other properties purchased with funding from two different OWEB grant agreements.

Between the City, TNC, BLM, and McKenzie River Trust, we own and manage 3,000 acres of land. The City of Eugene has spent much more money, per unit area, than any of the other entities on land management. The City of Eugene also has more staff and equipment to use on wetlands restoration and management than the other entities. The City of Eugene has 5.0 FTE that work on managing the West Eugene Wetlands. We also hire up to 22 seasonal employees and employ several private contractors (e.g., to hand weed wetland sites) each year to augment our FTE.

(c) Whether the proposed recipient agrees to the material terms of the original grant agreement, and any new conditions reasonably set by the Board.

RESPONSE BY CITY OF EUGENE AND TNC: The City of Eugene agrees to the material terms of the original grant agreement.

(2) The Board shall not approve a conveyance that results in a profit to any person or entity.

RESPONSE BY CITY OF EUGENE AND TNC: No money will be transferred as part of this conveyance. Therefore, neither City of Eugene nor TNC will make a profit from this conveyance.