



# Oregon

Theodore R. Kulongoski, Governor

## Oregon Watershed Enhancement Board

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August 25, 2010



## MEMORANDUM

**TO:** Oregon Watershed Enhancement Board

**FROM:** Melissa Leoni, Senior Policy Coordinator

**SUBJECT:** **Agenda Item J: Land Acquisition Administrative Rules  
September 14-15, 2010 OWEB Board Meeting**

### I. Introduction

This report seeks Board approval of proposed administrative rule amendments related to the administration of OWEB's land acquisition grant program.

### II. Background

The current administrative rules for land acquisition grants were adopted by the Board in September 2004 following an extensive rules development and public review process. Since that time, OWEB staff and grantees have identified a limited number of specific due diligence requirements or grant conditions that need to be revised in order to improve the acquisitions program. At the June 2010 Board meeting in Baker City, staff described the specific rules proposed for updating and requested Board authorization to begin rulemaking. The Board approved staff's request to begin rulemaking on the following Oregon Administrative Rules (OARs):

- Donation Disclosure – OAR 695-045-0120(2)(b) and (c).
- Appraisals and Environmental Site Assessments – OAR 695-045-0120(2)(d) and (f).
- Title Reports – OAR 695-045-0120(2)(e)
- Funds Recoverable for Property Misuse or Unapproved Conveyance – OAR 695-045-0140(4)(b) and 695-045-0150(4)

In preparation for the rulemaking process, staff discussed the rules proposed to be updated with OWEB's attorney at the Department of Justice, our review appraiser at the Department of State Lands (DSL), and environmental site assessment reviewers at the Department of Environmental Quality (DEQ). Staff also discussed these issues and possible solutions with a few land trust organizations that are active in our program.



### **III. Rulemaking Process**

After the June Board meeting, staff developed a draft set of rule revisions and convened a Rules Advisory Committee (RAC) to review and provide feedback on the proposed rule language. The RAC included the following representatives of OWEB's land acquisition grantees and due diligence reviewers:

Chuck Harman, DEQ  
Joe Moll, McKenzie River Trust  
Brad Nye, Deschutes Land Trust  
Frank O'Leary, Oregon Rangeland Trust  
Michael Pope, Greenbelt Land Trust  
Clara Taylor, DSL

The RAC met on June 21, 2010. Staff then edited the proposed rules based on the RAC's discussion and presented the revised rules to the Board Acquisition Subcommittee on July 1, 2010. Additional changes resulted from the Subcommittee discussion, which were presented to the RAC on July 14, 2010. Staff then made the rules available for public comment, which ran from August 1 to August 23, 2010. A public hearing was held on August 23, 2010 at the State Lands Building in Salem. OWEB received no public comment on the proposed rules.

### **IV. Proposed Administrative Rules**

The proposed amendments are limited to the rules described in the following sections and are designed to update requirements, provide clarity, reduce redundancies, and increase certainty for OWEB and its grantees.

Attachment A shows the public comment version of the proposed rules with the proposed amendments shown in tracked changes. No additional changes are recommended as a result of the public comment period.

#### **A. Donation Disclosure – OAR 695-045-0120(2)(b) and (c)**

This rule has been revised to specify that the seller or lessor must make the required donation disclosure statements. The rule currently requires a written statement as to whether or not the seller or lessor of the land interest is contractually required by the written option, purchase or lease agreement, or other related documents, to donate or transfer funds to the buyer, applicant, or a third party who has assisted with or facilitated the proposed acquisition. The rule also requires written disclosure of the amount of a donation if the amount exceeds 15 percent of the purchase or lease price. The rule currently does not state who must make the written disclosures.

#### **B. Appraisals and Environmental Site Assessments – OAR 695-045-0120(2)(d) and (f)**

This rule has been revised to give the OWEB Director the ability to request updated appraisal and environmental site assessment materials if, in consultation with OWEB's independent and third-party reviewers, the materials submitted by applicants are determined to be significantly out of date. These materials are submitted after the Board Acquisition Subcommittee recommends a due diligence review of the proposed project. The current rules allow OWEB to make investments using out of date appraisal and environmental due diligence materials, and do not give the Board authority to ask for updates.

**C. Title Reports – OAR 695-045-0120(2)(e)**

This rule has been revised to clarify when applicants must submit preliminary title reports. This rule currently results in unnecessary work and expense for grantees and OWEB. This revision enables staff and grantees to close transactions without unnecessary paperwork while providing staff with the information it needs to evaluate the proposed acquisition.

**D. Funds Recoverable for Property Misuse or Unapproved Conveyance – OAR 695-045-0140(4)(b) and 695-045-0150(4)**

These rules have been revised to cap the funds recoverable by OWEB at an amount equal to five times the grant or OWEB's percentage of the current value of the property interest. If a property interest acquired with Board funding is used in a manner that is not consistent with the purposes specified in the Constitution or is transferred without prior Board approval, the rules currently require OWEB funds to be repaid with interest due and payable from the effective date of the grant agreement. A number of grantees are concerned that a future repayment amount could far exceed the value of the property and put the grantee and its other conservation assets at risk. The proposed amendments reduce the financial uncertainty for grantees while retaining OWEB's ability for full repayment of public funds.

**V. Recommendation**

Staff recommend the Board approve the proposed administrative rules contained in Attachment A of this staff report.

Attachment

- A. Proposed OWEB Land Acquisition Grant Rules