

Proposed OWEB Land Acquisition Grant Rule Changes July 26, 2010 Public Comment Draft

695-045-0120(2)

(b) A written statement, signed by the seller or lessor of the land interest, 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.

(c) Disclosure of the amount of a contractually required donation or payment is required after an initial staff recommendation has been made on the grant application. Disclosure of the amount is required only if the donation or payment will exceed 15 percent of the purchase or lease price for the land interest. Disclosure of the amount of a contractually required donation or payment exceeding 15 percent of the purchase or lease price must be made to the Board in writing, by the seller or lessor of the land interest, prior to the Board's consideration of the proposed funding request, or the grant application will not be considered for funding by the Board.

(d) A fair market value appraisal of the property interest to be acquired, completed within 1812 months prior to submittal of the application to OWEB, in a Self-Contained Appraisal Report form. Self-Contained Appraisal Report form is defined in the Uniform Standards of Professional Appraisal Practice (USPAP) 2010-2011 Edition as amended on January 1, 2010, and approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, or the current approved and adopted USPAP edition if the standards have been updated. Summary ~~or~~and Restricted Use appraisal reports will not be accepted. Summary and Restricted Use appraisal reports are defined in the USPAP 2010-2011 Edition, or the current approved and adopted USPAP edition if the standards have been updated. The appraisal must be prepared by an independent State Certified General Appraiser ~~certified, as defined by the State of Oregon~~ OAR 161-002-0000, who is experienced in appraisals of such properties.

(A) If the Board approves funding for the grant application, the Director may require the appraisal to be updated before the transaction closing if:

(1) The independent third-party State Certified General Appraiser contracted by OWEB to review the appraisal determines that changes in market conditions, as evidenced by market sales and real market value information, require an update of the appraisal; or

(2) The valuation date of the appraisal is more than 18 months prior to the transaction closing date or the date the buyer and seller commit to transfer the property at a certain price.

(B) OWEB will inform the applicant in writing that an update is required and the reasons for the update, and if applicable, include a written determination from the independent third-party State Certified General Appraiser.

(e) A preliminary title report for the property. If exceptions are listed on the title report, documentation explaining the exceptions, and a map locating the exceptions on the property. ~~A final title report must be submitted to OWEB within 60 days of closing.~~

(f) A phase one environmental site assessment (ESA) conducted by a qualified third party and complying, at a minimum, with American Society for Testing and Materials (ASTM) standard E1527-00 ~~published in July 2000.~~ published in November 2006, or the current equivalent ASTM standard if the standard has been updated. If a phase one environmental site assessment indicates that further investigation is necessary, OWEB staff may require later submission of a phase two environmental site assessment. If a phase two environmental site assessment indicates that further investigation is necessary, OWEB staff may require submission of additional assessment information. The Board may require remediation prior to the release of grant funds. ~~The~~ If the Board requires remediation, the remediation must be done under Department of Environmental Quality (DEQ) oversight and to DEQ standards. If the Board approves funding for the grant application, the Director may require the final environmental site assessment ~~report shall name OWEB as a to~~ be updated before the transaction closing if the date of the environmental site assessment is more than 18 months prior to the date of the transaction closing. The environmental site assessment update will include components determined by OWEB's independent third party beneficiary. ~~reviewer to be necessary to ensure the soundness of OWEB's investment.~~

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(4)(b) ~~In the event that~~ If a property interest acquired with Board funding is used in a manner that is not consistent with the purposes specified in section 4(b), Article XV of the Oregon Constitution, Board funds will be repaid ~~with~~ and the Board will release its interest ~~due and payable from the effective date~~ in the property. The repayment amount will be the greater of the ~~grant agreement at the rate provided for in ORS 82.010.~~ following:

(A) Board funds with interest due and payable from the effective date of the conservation easement, lease, or other form of covenant or deed restriction at the rate provided for in ORS 82.010. The required repayment will not exceed five times the Board funds; or

(B) The liquidation value, which takes into account both increases and decreases in the fair market value of the property over time. The liquidation value is calculated as the fair market value of the property at the time the liquidation value is to be determined, as if unencumbered by the OWEB conservation easement, lease, or other form of deed restriction, and unencumbered by any other lien or mortgage on the property; less the value (if any) of any capital improvements made to the property after the effective date of the conservation easement, lease, or other form of deed restriction, if the improvements are otherwise permitted pursuant to the conservation easement, lease, or other form of deed restriction; multiplied by the percentage that the consideration paid by OWEB for the conservation easement, lease, or other form of deed restriction bears to the fair market value of the property on the effective date of the conservation easement, lease, or other form of deed restriction.

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(4) Board funds will be repaid with interest due and payable from the effective date of the ~~grant agreement~~conservation easement, lease, or other form of covenant or deed restriction 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. The required repayment will not exceed the greater of five times the Board funds or the liquidation value. The liquidation value is calculated as the fair market value of the property at the time the liquidation value is to be determined, as if unencumbered by the OWEB conservation easement, lease, or other form of deed restriction, and unencumbered by any other lien or mortgage on the property; less the value (if any) of any capital improvements made to the property after the effective date of the conservation easement, lease, or other form of deed restriction, if the improvements are otherwise permitted pursuant to the conservation easement, lease, or other form of deed restriction; multiplied by the percentage that the consideration paid by OWEB for the conservation easement, lease, or other form of deed restriction bears to the fair market value of the property on the effective date of the conservation easement, lease, or other form of deed restriction.