

May 9, 2005

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Melissa Leoni, Grant Program Specialist

**SUBJECT: Agenda Item O: Land Acquisition Deferred Applications
May 25-26, 2005 OWEB Board Meeting**

I. Background

The Big Four Corners Tract A acquisition (z205-025) grant application was submitted in April 2004 and was deferred by the Board at the September 2004 Board meeting to allow staff to work with the applicants on unresolved due diligence issues. The Keizer Rapids (z205-173) and Luckiamute Riparian, Oak Woodland, Savanna and Grassland Conservation Easement (z205-174) acquisition projects were submitted in October 2004 and were deferred by the Board in March 2005 primarily for due diligence reasons.

The current status of the Big Four Corners and Keizer Rapids projects are described below. The applicants in the Luckiamute Conservation Easement project have been given until June 14, 2005, to submit the final easement appraisal so that staff can finish the due diligence review and prepare a recommendation for the September 13-14, 2005, Board meeting.

II. Deferred Acquisition Projects

A. Big Four Corners Tract A Acquisition (z205-025)

The Columbia Slough Watershed Council, in conjunction with the City of Portland, submitted a land acquisition grant application in April 2004 requesting \$200,000 from OWEB to assist in the purchase of a 44-acre parcel at the confluence of Big Four Corners. The Big Four Corners Area, where two branches of the Columbia Slough meet, is one of two core habitat areas in the Columbia Slough Watershed and is identified for protection because of its relatively large size and the diversity of the habitats that it encompasses.

This site is considered vital to Columbia Slough watershed recovery and has been identified as a high priority site for protection and restoration in the Columbia Slough Watershed Council's Action plan.

1. Ecological Value

The 44-acre parcel contains the last remnant of previously common Columbia Slough vegetation, including forested wetlands dominated by black cottonwood, Oregon Ash, willow, and Douglas hawthorn. The property also has a historic Oregon white oak grove and several meadow areas. This structurally diverse forest provides resting and nesting

habitat for raptors, woodpeckers and neotropical migratory songbirds. The federal and state listed yellow-breasted chat, an uncommon bird along the Columbia Slough, has been observed at this site. Other listed bird species reported on site include the willow flycatcher and the pileated woodpecker. Mammals, including the federal and state listed silver-hair bat and pacific western big-eared bat, have been reported along with deer, coyote and northern river otter. It is suspected, but not recorded, that the western pond turtle and the painted turtle have historically used this area.

The Willamette Regional Review Team noted that this area is one of the last sites in the Columbia Slough where habitat can be protected and restored, and the proposed acquisition is adjacent to existing protected land. The Team, however, felt the ecological value may not rate as high statewide due to its size and limited number of affected species, but agreed that “confluence areas” are very valuable for resource protection and are not often available for purchase.

2. Management

The City of Portland Parks will hold title and manage the Big Four Corners sites. The process to develop a long-term management plan includes creating a stakeholder group, full engagement and participation of the Columbia Slough Watershed Council (CSWC), coordination between CSWC, Portland Parks and Watershed Revegetation Program (WRP) on a planting plan, testing WRP/Parks methods for maintenance, and monitoring of the site.

3. Effect on the Local and Regional Community

The acquisition of this property will have a negligible effect on the local tax base, as the 2003-04 property taxes were only \$365.56. This taxation level is in part due to existing development restrictions on a majority of the property.

4. Appraisal, Title Report, and Option Agreement

The applicants are seeking \$200,000 in funding from OWEB towards the purchase of the property, which represents 33% to 50% of the cost of the property acquisition due to a purchase price that can range from \$400,000 to \$600,000 depending on whether the purchaser (City) receives private funding greater than \$200,000. The applicants have not secured match at this time for purchase of the property. They are seeking match funding from an anonymous source, which is still pending, and have City of Portland funds committed for purchase or restoration of the site.

An appraisal of the entire 44-acre property, both the vacant industrial land (approximately 4 acres) and wetlands/open space land (approximately 40 acres), was conducted in December 2004 by Kirk W. Shaeffer of Real Estate Analysis Northwest in Roseville, California. The appraisal concluded fair-market value estimates of \$250,000 for the vacant industrial land and \$358,000 for the wetlands/open space land for a total of \$608,000. OWEB's independent review appraiser has generally concluded that the appraisal complies with the USPAP standard, but is working with the appraisers to correct an error in the fair market value conclusion.

The due diligence review of the title report in July 2004 identified a number of questions about existing easements and exceptions. Staff began conversations with the City of

Portland on these questions in August 2004. A response was received at that time, but it was not reviewed pending receipt of appraisal report and option agreement, which were received on March 23, 2005. Review by OWEB's attorneys revealed that the original concerns were not addressed adequately for the entire 44-acre property. Outstanding are answers to questions about whether the property is already subject to conservation and use restrictions, how levee, drainage, water quality protection and utility exceptions, among others, affect the property proposed for acquisition, and the current condition of potential groundwater contamination in the area of the acquisition.

5. Conclusion

While the Willamette Regional Review Team has concluded that the Big Four Corners Tract A acquisition has ecological value, staff recommend that the Board not approve funding for the project at this time. It appears to staff that existing zoning and other title restrictions already protect the 40 acres of wetland and open space, which are key to OWEB's interests. Also remaining are serious concerns among staff and OWEB's attorneys as to the extent of a groundwater contamination plume that was the subject of an Environmental Protection Agency consent order from 1996. Staff have requested additional information on title exceptions and a copy of a Phase I Environmental Site Assessment that was completed in December 2003 and will update the Board on the results of these efforts at the Board meeting.

B. Keizer Rapids (z205-173)

In October 2004, Marion County and the City of Keizer requested \$700,000 from OWEB to assist in the purchase of two parcels totaling 34 acres and optioned at \$1,700,000. In March 2005, the City of Keizer revised its acquisition proposal and requested that the Board defer its funding decision to allow staff the opportunity to review and evaluate the proposal.

Keizer is now requesting \$195,000 from OWEB to assist in the purchase of approximately 7.8 acres of riparian forest on the parcel located immediately adjacent to 85 acres currently owned and managed by Oregon State Parks (Beardsley Bar State Park). Oregon State Parks is committed to a 25-year lease with the City of Keizer for the Beardsley Bar property, but the language of the lease document is not yet final. The proposed Keizer Rapids Regional Community Park lies near river mile 80 of the Willamette River.

1. Ecological Value

The 7.8 acres of riparian forest is adjacent to and connected to substantial riparian forest on the Beardsley Bar property. This portion of the property is described as being undeveloped riparian floodplain characterized by a mixed-species riparian forest. The topography is hummocky, consisting of alluvial terraces and historic backwater channels. The property has 300 feet of river frontage with a steep (65% and greater slope) riverside bank. Dominant tree species include black cottonwoods and big leaf maple. White alder and a few Douglas fir are also present on the site. This area was logged approximately 50 years ago and conifer stumps suggest that conifers were once more present on the site. There is also a diversity of native shrub species and herbaceous ground cover. Invasive species, such as blackberry and reed canary grass are present on the eastern boundary of the riparian forest.

The draft management plan submitted with the revised application recommends removal and control of invasive species and planting of additional native shrubs in the riparian forest area of the properties. The revised proposal also states that use of this area would be limited to preserving and enhancing the habitat and forest type found on the site and for passive uses consistent with the preservation objective.

Members of the OWEB Willamette Regional Review met by conference call in late April 2005 to evaluate the ecological value of protecting the 7.8 acre riparian forest portion of the properties. The Team acknowledged limited regional significance of 8 acres, but also recognized that the area contains habitat of ecological value to wildlife, which connects to and buffers the existing riparian forest on the State Park property. The Team also noted that streambanks upstream of river bars are important for protecting the integrity of those bars. However, while backwater habitats are important for Willamette River fisheries, this property is disconnected from the Willamette due to significant flow modifications from upstream dam operations and revetments.

2. Management

Keizer will have primary management and maintenance responsibilities for the park, while Marion County will participate in the management plan, monitoring and evaluation of the property. The project will follow ecological guidelines for Oregon Parks and Recreation leased property and Marion County National Heritage Parks.

City officials have expressed a sincere commitment to natural resource protection and an interest in having OWEB's funding assist them in restricting future use to natural resource protection on the riparian forest areas of the proposed acquisition and State Parks property. The overall goal for the regional park is to provide for recreation and protect and preserve the natural qualities for public enjoyment.

While the Willamette Regional Review Team has acknowledged the existence of some ecological benefits on the 8 acres, primarily for wildlife, it also has expressed concern about effects from the passive uses that would be allowed. The Team is concerned that certain activities, such as rock or asphalt trails through the riparian forest and infrastructure development adjacent to the riparian forest, could harm what ecological values do exist.

3. Effect on the Local and Regional Community

The property is currently zoned Exclusive Farm Use. The lands surrounding the acquisition are in agriculture, gravel extraction, and medium density, single-family residences. Keizer will not continue to pay property taxes on all 34 acres of the two parcels, which amount to approximately \$1,650 per year.

No letters of support were submitted with the application, but letters have since been received from Senator Peter Courtney, President of the Senate, and Senator Charles Starr.

4. Appraisal, Title Report, and Option Agreement

OWEB funds are requested for approximately 23 percent of the \$855,000 appraised value of the property containing the riparian forest, or 100 percent of the appraised value of the 7.8 acres of riparian forest. The applicants have secured additional funding from an

Oregon Parks and Recreation Department Local Government Grant, Keizer System Development Charge funds, National Park Service Land and Water Conservation Fund, and Marion County for purchase of the two properties. The applicants need an additional \$400,000 to secure the funding necessary to acquire all 34 acres. A \$300,000 grant application has been submitted to the Oregon Marine Board, with a decision expected in August 2005, which would require the building of a motorized boat ramp on a portion of one of the properties.

John P. Totten of Totten & Company in Salem conducted the appraisals in November 2004. The appraisal of the "Charge" parcel, which contains the 7.8 acres of riparian forest, concluded a fair-market value of \$855,000 for the entire property with a fair-market valuation for the riparian floodplain acres of \$25,000 per acre. OWEB's independent review appraiser has concluded that the report complies with the Uniform Standards of Professional Appraisal Practice standards and the data supports the analyses, opinions, and conclusions reached and appears to be reasonable.

The option agreement does not indicate any conflict with OWEB's conservation purposes. The due diligence review of the title report and exceptions showed road and utility exceptions that affect the field and home site portions of the 17 acre property. The review also revealed a 1940 perpetual easement and right of way along the Willamette River held by the United States for bank protection and/or channel improvements by the Army Corps of Engineers. This easement gives the Corps a perpetual right to enter the area and to "construct, reconstruct, maintain, repair, operate, and patrol a bank protection and/or channel improvement and rectification project" including the removal of trees and other vegetation and the use of gravel, rock or earth from the property as necessary to construct or repair the project. OWEB's attorneys have recommended that this easement be extinguished; otherwise there is the potential that the conservation values protected through the acquisition could be diminished. Staff have contacted the Corps for additional information about the easement and how it might affect the ecological benefits of the acquisition and will update the Board at the meeting.

5. Conclusion

The Willamette Regional Review Team has concluded that the 7.8 acres of riparian forest do have limited ecological value for wildlife only if similar riparian forestlands on the State Park property (Beardsley Bar) are also protected and park development is limited. The Team recommends that the applicants develop interpretive materials and/or kiosks on the boundaries of any acreage protected with OWEB funds because of the educational value of this project. The Team also recommends that the applicants consider the use of boardwalks and/or low-impact trail construction techniques to minimize disturbance to the riparian forest. Similarly staff and the Team are concerned about potential impact from the proposed boat ramp upstream of the riparian forest and Beardsley Bar.

The City of Keizer and its partners have been very willing to work with OWEB staff to address the limitations of OWEB's acquisition funds and make this project a success for all involved. They have sincerely expressed a desire to protect the existing riparian forest in perpetuity and they have stated that they welcome OWEB's use restrictions and are interested in OWEB's involvement in the development of a management plan. While this commitment is laudable, there is some risk that OWEB staff will be put in the position of

having to reject park development proposals that we in good faith feel may affect the riparian forest.

Staff acknowledge that the applicants need funding from both OWEB and the Marine Board to close the current funding gap. The ecological values to be protected are less significant than we prefer. There may also be a risk that the ecological values may be affected by boat ramp construction and bank protection efforts. Staff recommends that the Board defer a funding decision on the Keizer Rapids Regional Park acquisition project until September 2005 to allow more time for staff and the applicants to understand the impacts from the bank protection easement, and for additional discussion between Keizer, OWEB, State Parks, and the Marine Board.

III. Recommendation

Staff recommend that the Board not fund the Big Four Corners Tract A acquisition (z205-025) project and defer a funding decision on the Keizer Rapids (z205-173) land acquisition project.