



Land Acquisition Grant Program Title Guidance

Oregon Watershed Enhancement Board
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All title matters must be approved by OWEB prior to the release of OWEB funds.

Encumbrances. All grant agreements will require that the property or property interest acquired with OWEB funds be free of encumbrances that conflict with the purpose of the grant (e.g., mineral rights, see below). Furthermore, mortgages and liens must be paid off as to fee title acquisitions, or subordinated as to conservation easement purchases, at or before closing.

Mineral Rights.

If the OWEB Board awards conditional funding for the purchase of a property or property interest in which mineral rights are held by a party other than the proposed seller of the property (i.e., there is a split estate with regard to mineral rights), the grant agreement will require the grantee to make reasonable efforts to extinguish (see ORS 517.180) or acquire the mineral rights before OWEB funds are released.

If OWEB's grantee demonstrates that extinguishing or acquiring the mineral rights is not feasible due to the specific circumstances associated with those rights, OWEB may allow the grantee, at the grantee's expense, to contract for the services of an Oregon-licensed professional geologist or engineering geologist whose license is in good standing and who possesses the skills and experience necessary to: (i) assess the likelihood that the mineral resources, if any, associated with the mineral rights will be developed; (ii) describe the impacts, if any, that would result from the development of the mineral resources; and (iii) evaluate, with the assistance of other qualified parties as necessary, the likely effect, if any, of the impacts on the conservation values intended to be protected by the OWEB-funded acquisition project.

The objective of the Assessment is to conclude that:

- The probability of surface mining on the property that is the subject of the OWEB grant is so remote that it is negligible; and
- The exploration or extraction of subsurface resources associated with the mineral rights (e.g., oil, gas, coal bed methane or geothermal resource) through means other than surface mining (e.g., extraction wells) either: (i) is of such remote probability that it is negligible; or (ii) would likely be limited to activities that would not materially affect the conservation values that are intended to be protected by the OWEB-funded acquisition project.

The Assessment must contain and consider the following information at a minimum:

- The specific mineral right(s) severed from the surface estate as identified in the preliminary title report for the property that is the subject of the OWEB grant, including the current holder of the right(s);
- The aerial extent of the severed mineral rights on, and as applicable, adjacent to, the property that is the subject of the OWEB grant;
- The geologic characteristics of the overall geographic area considered by the assessment, along with the mineral commodities (fuel and non-fuel) typically associated with that geologic environment;
- The known presence of non-fuel mineral commodities (e.g., aggregate, gold, etc.) and fuel mineral commodities (e.g., oil, gas, coal bed methane) in the general vicinity of the property that is the subject of the OWEB grant;
- The most recent activity, if any, related to the mineral rights (e.g., title transfer, lease activity) or to the mineral commodities associated with those rights (e.g., seismic exploration);
- Historic and current exploration, mining and extraction activities near the property that is the subject of the OWEB grant, or elsewhere in the region, if relevant;
- Infrastructure that is available to develop and market the mineral resources or plans to develop the necessary infrastructure;
- The feasibility of obtaining permits and any other authorizations necessary to exercise the mineral right(s);
- Mitigation and restoration actions that will likely be required in association with the mineral resource development and how those requirements will relate to the conservation values intended to be protected by the OWEB grant; and
- Other reasonably necessary information to determine the probability of mineral resource development affecting the property that is the subject of the OWEB grant, and the likely impact of the resource development on the conservation values intended to be protected by the OWEB-funded acquisition project.

The report format: (i) can be flexible; (ii) must include a clear and concise conclusion regarding the probability, type, and extent of impact from mineral development on or under the property that is the subject of the OWEB grant; and (iii) should incorporate information obtained from reasonable literature reviews, as well as from consultation with knowledgeable individuals relative to the key matters addressed in the Assessment (e.g., real property, economic, ecological and permitting matters).

Water Rights. If an applicant is proposing to acquire fee property with appurtenant water rights, or a conservation easement with the authority to use appurtenant water rights, the use of those rights shall be consistent with the management goals and strategies identified in the management plan, including use of water for restoration or in-stream purposes. Applicants may be required to take specific actions necessary to comply with this expected outcome as a condition of a grant award.

Deeds and Conservation Easements.

Fee acquisitions require conveyance by statutory warranty deed and the grant of a standard form conservation easement to OWEB. Statutory warranty deeds must specifically cite encumbrances that affect the property. The conservation easement and statutory warranty deed OWEB requires

are available on the OWEB web site, at
http://www.oregon.gov/OWEB/GRANTS/Pages/acquisition_grants.aspx

Conservation easement acquisitions require the use of a conservation easement consistent with requirements provided for in OWEB's conservation easement guidance, available on the OWEB web site. The guidance is accompanied by an example easement.

Title Insurance. All grant agreements will require that the acquired property interest be insured in a manner and for an amount which sufficiently insures OWEB's investment in the property. All conservation easements to which OWEB is a party must include a provision that meets OWEB's requirements for resolving title defects. Title defect provisions are contained in the standard form and example conservation easements, available on the OWEB web site, at
http://www.oregon.gov/OWEB/GRANTS/Pages/acquisition_grants.aspx

Any questions should be referred to Miriam Hulst at 503-986-0026 or miriam.hulst@state.or.us.