



Oregon

Tina Kotek, Governor



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MEMORANDUM

TO: ARE Committee of the OWEB Board
FROM: Sara O'Brien, OWEB Executive Director, and Renee Davis, OWEB Acquisitions and Special Programs Manager
SUBJECT: Foundational Questions re: OWEB Measure 76 (M76) Land Acquisitions Grant Program

Below is a summary discussion of foundational questions, related to both Constitutional and statutory language, that have been raised periodically for several years and highlighted during scoping for the M76 land acquisition modernization process. Based on partner feedback and the results of past program improvement efforts, which have struggled to resolve ongoing concerns, we believe it is important for the ARE committee—and, ultimately, the OWEB board—to discuss these foundational issues.

In each issue area, we believe there is a fundamental question that needs to be addressed at the board/agency- and/or enterprise-level, with policy guidance or direction from the OWEB board, in coordination with the Governor's Office, as appropriate. Discussions to address these questions should consider the language in the Constitution and statute, advice from legal counsel, historical context from the original drafters and proponents of the ballot measure language and other foundational documents, past experiences that have resulted in current program structure, and input from a diversity of OWEB partners, including but not limited to the land trust community.

Issue 1: Conservation easements vs. other instruments: Article XV Section 4b(2)(a) provides OWEB's constitutional mandate to fund long-term protection of lands and waters, among several other uses of the lottery-funded natural resources subaccount:

"(a) Acquire from willing owners interests in land or water that will protect or restore native fish or wildlife habitats, which interests may include but are not limited to fee interests, conservation easements or leases;"

This mandate is further elaborated in ORS 541.960, which states that, "Land purchased through a grant agreement with the Oregon Watershed Enhancement Board shall be subject to title restrictions that are consistent with the conservation purposes of the grant and give the board the authority to approve, approve with conditions or deny the sale or transfer of the land." This requirement was enacted with the express legislative intent of addressing concerns about the use of M66 funds to purchase private lands, which could then be sold and used for purposes other than the original conservation/watershed protection intent, without sufficient OWEB oversight.

Although ORS 541.960 is not specific as to type of title restriction instrument that can be used to meet this requirement, OWEB has consistently required a conservation easement held by OWEB for lands

purchased with OWEB grant funds (and a third party right of enforcement held by OWEB on conservation easements purchased with OWEB funding), even if the grantee is an organization such as a land trust, with a conservation mission, or a sovereign Tribal government. This approach has also been formalized in rule (Oregon Administrative Rules 695-045-0010 and 695-045-0206). OWEB has learned that other instruments are less likely to successfully protect the property in perpetuity, and that there are legal risks associated with deed restrictions or other instruments other than conservation easements. Conservation easements are specifically authorized by ORS 271.745, which provides that conservation easements can run with the land and survive transfer.

As an example, a similar conservation acquisitions program in Washington allows the use of a deed of right to protect land interests; however, Washington's relevant statute is much more comprehensive in the diversity of land protection instruments ("easement, covenant, restriction, or other right") that are specifically defined as constituting an interest in real property (RCW 64.04.130). This difference may impact the ability of other title restrictions beyond conservation easements in Oregon to survive transfer if challenged.

Despite multiple efforts over the years to simplify and streamline template conservation easement language in response to grantee concerns, some land trust partners continue to express significant concerns around both 1) detailed requirements in OWEB's example conservation easement language and 2) OWEB's sole use of conservation easements. Regarding the latter, some partners argue that for accredited land trusts or other institutions with a clear conservation mission, a deed restriction or similar tool should be sufficient to meet constitutional directives and the title restriction requirement in ORS 541.960 and would create far fewer barriers to participation. Some partners have also argued that a permanent grant agreement should be sufficient to meet OWEB's constitutional mandate, although this would not be consistent with the requirements of ORS 541.960.

Our understanding is that, historically, the decision to use conservation easements was based on this tool providing the greatest legal assurance, due to this instrument being specifically authorized by statute for this purpose and having withstood legal challenge to date. Given the broader language in Constitution and statute, a discussion among the ARE committee and, ultimately, the full board and Governor's Office, about risk tolerance and management is warranted.

It is important to also convey that federally-recognized Tribes have identified conservation easements (either easements per se, or the use of particular terms and restrictions in easements and management plans, or even title restrictions in general), as a significant concern for some Tribal governments interested in participating in this program. OWEB staff are currently exploring the potential for alternative approaches for transactions with tribal governments and plan to reconnect with interested Tribes in 2025 to share and discuss some specific options and considerations. That discussion also will include follow-ups regarding Tribal access for cultural uses to properties on which OWEB holds an easement.

Foundational question 1: Should OWEB allow the use of alternative land protection instruments, or continue to require the use of conservation easements to meet constitutional directives and statutory title restriction requirements?

Issue 2: Significant habitats: M76 constitutional language directs OWEB to use lottery funds in the natural resources subaccount to “secure long-term protection for lands... that provide significant habitats for native fish and wildlife” (Article XV, Section 4b(1)(b)), among other uses. OWEB’s interpretation and implementation of this language has been that lands protected under M76 land acquisitions grants should be either 1) of high existing habitat value, or 2) restorable and restored over a relatively short timeline (~10 years) to a desired future condition that aligns with #1. From the perspective of local partners, this interpretation has led to eligibility requirements, application processes, and funding conditions that are unreasonably burdensome (e.g., limiting eligibility for projects that protect habitat with more modest habitat values; requiring desired future habitat conditions without guaranteed funding from OWEB to achieve these conditions; requiring detailed management plan and approval by OWEB of these plans to reach those desired future conditions).

The ARE committee would benefit from a review of M66/76 history to better understand the historical context of “significant habitats,” relative to other Constitutional language (e.g., “Acquire from willing owners interests in land or water that will protect or restore native fish or wildlife habitats, which interests may include but are not limited to fee interests, conservation easements or leases”). In addition to this background information, the ARE committee may choose to review the 2004 board-adopted ecological priorities for the land acquisition program and consider if updates may be warranted to connect to current information about native fish and wildlife habitats (e.g., the State wildlife action plan maintained by ODFW).

Foundational question 2: Should OWEB’s land acquisition program incorporate an expectation of active restoration of properties acquired, or is a land transaction that solely protects land sufficient to meet OWEB’s interpretation of Constitutional and statutory requirements, even if existing habitat values are more modest, limited, or marginal?

Issue 3: Recreational access and working lands on M76 acquisitions: Constitutional language split M76 dedicated lottery funds between two separate subaccounts: 1) natural resources and 2) parks. The defined purposes of the natural resources subaccount (4b) focus on provision of habitat and water quality benefits, while the purposes of parks subaccount (4a) focus on provision of parks, natural areas, or outdoor recreational with a specific connection to human access and use: “...to meet the needs of current and future residents of the state of Oregon” and “to provide diverse and equitable opportunities for [residents] to experience nature and participate in outdoor recreational activities.”

OWEB has historically understood and interpreted this separation of subaccounts and purposes to mean that recreational access to lands protected under M76 acquisitions grants should be limited and carefully managed, with a strong focus on ensuring any human access does not endanger habitat, sensitive fish, wildlife, and plant species, or other natural resource values. A similar lens was applied to M76-funded conservation easements involving working lands, with the ultimate result being the legislatively directed creation of the Oregon Agricultural Heritage Program to provide separate, non-M76 funding for projects where working lands and habitat goals are in dual benefit (rather than habitat/water quality considerations being prioritized over all other uses). From the perspective of

OWEB partners, there has been a marked evolution in both public views and scientific research on how best to balance human access with natural resources values.

The ARE committee would benefit from review of historical context around the development of the M66/76 ballot measure. For example, this review could consider the separation between the natural resources and parks subaccounts in the Constitution and how that has informed eligibility in OWEB grants (e.g., M76 land acquisitions do not directly fund trails or other recreational infrastructure). In addition, it could help inform the committee's consideration about more nuanced issues such as expectations about the level of acceptable human use and associated effects—whether due to recreational access or working lands—on properties acquired with M76 funding. Along with ballot measure language and history, the committee will benefit from real-world examples through time described by staff, grantees, Tribes, and local partners. For example, some local partners have expressed frustration about and experienced challenges with aligning expectations—including recreational development and access and working lands uses—of other funding sources with restrictions required by OWEB to ensure protection of native fish and wildlife habitat.

Foundational question 3: In evaluating land acquisition proposals, agreements, management plans, and project outcomes, how should OWEB staff balance M76 purposes against other potential land uses, including in cases when multiple funders are involved in protecting, restoring, and managing an individual property?

Issue 4: Managing risk: OWEB's land acquisition grant-making processes have been designed with a strong risk-minimization lens, responding to a combination of staff's understanding that Constitutional language was intended to provide highly secure, long-term protections for significant habitat and challenges experienced with some past investments under both M66 and M76. Design decisions in this program may have also been driven in part by the close scrutiny the OWEB board, past legislatures, and other external partners have placed on some land acquisition projects over time.

Program processes and requirements were developed based on project learnings over the 25 plus-year time horizon of acquisition grants, including some challenges and project failures. These challenges, at times, compromised the ability of projects to deliver habitat protection for native fish and wildlife, which is the intent of M76 funding. From grantees' perspectives, OWEB processes—ranging from project soundness evaluations during grant application reviews to due-diligence completed after grant award to management planning processes—require grantees to invest substantial time and financial resources to address a large number of potential risks that vary in probability and potential impact to project success. And despite these very robust processes, at times the OWEB board raises flags about risk at time of board deliberation on grant awards and/or adaptive management of past projects, which can signal that even greater scrutiny is needed.

Given the current level of total conservation and restoration investment across the agency, and the inherent risks OWEB accepts as part of doing business in other program areas (e.g., wildfire impacts to restoration projects), it would be helpful for the ARE committee to advise and assist with a full board discussion on how this unique program should view, evaluate, and manage risk for land acquisitions, especially relative to the broader agency context. This discussion would aim to develop a clearer and

more shared understanding of the types and scales of risk at play in this program that invests in perpetual projects. The committee can explore 1) how the land acquisition program could gauge and manage risk in a way that aligns with the board's direction (e.g., review processes, grant agreement requirements), and 2) opportunities for distributing risk and shared responsibility for accountability of investments with land acquisition grantees.

Foundational question 4: How should OWEB board and staff, in partnership with other parts of the state enterprise and grantees, best understand, evaluate, and manage the risks associated with this program?

A look back: lottery funding and investments in Oregon's natural resources

Voter approval in 1998 of a citizen initiative dedicating 15 percent of the state's lottery receipts to parks and natural resources marked a historic shift in Oregon's approach to natural resource conservation.

Ballot Measure 66, approved with almost 67 percent of the vote, reversed the decline of what had long been viewed as one of the nation's best state parks systems, providing a stable and predictable flow of revenue into Oregon's state parks. The constitutional amendment also reserved 7.5 percent of the lottery receipts for efforts to improve the health of Oregon's watersheds. By establishing for the first time a dedicated source of state funding for conservation, Measure 66 launched an ambitious long-term investment program that has since pumped hundreds of millions of dollars into on-the-ground actions to improve water quality and habitat for Oregon's native fish and wildlife.

The 1998 ballot measure directed lottery dollars into the state's Parks and Natural Resources Fund only until 2014, when legislators were required to refer the original measure back to the voters for a decision whether to continue the funding.

Buoyed by the success of the program over its first decade and concerned about competing demands for limited state funding, conservationists and parks supporters asked Oregon voters to approve a new ballot measure in 2010 to extend the lottery funding beyond 2014. In July of that year, Oregonians for Water, Parks and Wildlife submitted more than 200,000 signatures – nearly double the number required – to put a revised measure on the November ballot.

The proposed constitutional amendment retained the basic structure of the 1998 measure – allocating 15 percent of the lottery's net proceeds with an even split between parks and natural resources – but more clearly defined the purposes of the funding. It also established minimum percentages for the amounts to be distributed through the state's grant programs. In both cases, the changes were intended to address issues that arose over the first decade of the program's implementation.

With voters and policy makers considering the implications of the new ballot measure, proponents set out to summarize their views on how the original Measure 66 had worked, and the strengths and weaknesses of the state's resulting conservation investment program. The primary focus of this paper is on the natural resources side of the Parks and Natural Resources Fund; although it will touch on some aspects of the parks funding, a more detailed analysis of those issues would be the subject of another paper.

Context for the original Measure 66

The 1998 ballot measure that directed lottery funding into the newly created Parks and Natural Resources Fund had its origins in two long-standing but separate issues. Conservationists, frustrated by more than a decade of bitter fighting over spotted owls, logging on public lands, and the decline of the state's signature salmon runs, wanted a more proactive approach to natural resource issues and a dedicated source of state funding for conservation. Parks advocates had been watching in dismay as Oregon's system of state parks, one of the best in the nation when it was funded with gas taxes as part of the state highway department, withered on declining general fund support.

The Campaign for Parks and Salmon, the coalition behind Measure 66, united these two sets of interests behind a hybrid funding mechanism intended to address both issues by carving out a fixed share of the state's growing lottery revenues. Although the language of the constitutional amendment addressed habitat conservation for a broad range of fish and wildlife and included beaches, historic sites and recreation areas under the parks umbrella, the campaign focused heavily on the two hot-button issues of the day: listing of coastal salmon under the federal Endangered Species Act, and impending closures of state parks.

The Oregon Parks and Recreation Department, cut off from the gas tax revenues that supported it when it was part of the state highway department, was struggling to maintain state parks. No new state parks had been created since the early 1980s, and with a growing backlog of deferred maintenance, even the flagships of the state parks system were beginning to crumble into disrepair. Facing a major budget shortfall, the state parks commission authorized closure of 63 state park properties and early seasonal closures of 11 other parks, generating newspaper headlines across the state.

Declining salmon runs, and federal government proposals to impose protection for Oregon's coastal coho salmon under the Endangered Species Act and step up enforcement of the Clean Water Act, triggered even greater alarms. In a state where more than 25 percent of the population traditionally bought fishing licenses, habitat conservation was suddenly a major issue. The timber industry, already reeling from cutbacks in logging on federal lands and fearing additional restrictions, committed \$15 million in timber harvest taxes to support then-Gov. John Kitzhaber's Oregon Coastal Salmon Recovery Initiative. In the Republican-controlled legislature, bipartisan majorities backed the Democratic governor's broader effort to head off federal intervention through the Oregon Plan for Salmon and Watersheds, which sought to bring state agencies into alignment supporting the grassroots efforts of local watershed councils and soil and water conservation districts.

Against this backdrop of crisis and alarm, Oregon voters considered Ballot Measure 66 and said yes, by a margin of 2 to 1.

The 1999 Legislature sets the stage for implementation

Proponents of Measure 66 thought their victory would usher in a new era of expanded investment in state parks, watershed health, and habitat conservation. The governor, and legislators responsible for writing the implementing legislation and allocating the funding, had their own priorities.

Kitzhaber, and many legislators, had opposed the ballot measure as an intrusion on their power and responsibility to determine the state's spending priorities. The governor, passionate about conserving fish populations and committed to building a non-regulatory, community-based approach to salmon recovery and watershed improvement, wanted the lottery dollars to fund the Oregon Plan for Salmon and Watersheds. Legislators, led by a determined group of rural Republicans bent on warding off the heavy hand of federal regulators, were anxious to help private landowners avert land use restrictions triggered by endangered species listings and Clean Water Act requirements. Neither the governor nor the legislature considered increased investment in parks a high priority.

Not surprisingly, the initial allocation of the new Measure 66 funding in the state's 1999-2001 budget reflected legislative priorities, not those of ballot measure proponents. The legislature pulled all General Fund support from the Oregon Parks and Recreation Department, using the new lottery allocations to backfill the cuts. Legislators also backed out of the budget the funding for coastal salmon recovery efforts previously committed by the timber industry and replaced it with lottery dollars. The immediate net result for state parks was budget stability but not the big increase supporters had hoped for. On the natural resources side, there was substantial new funding for a grants program – derived primarily from the 65 percent reserved for “capital” project spending – but most of the non-capital funding was diverted to backfill cuts in general fund support for state agency programs.

The statutory changes adopted by the 1999 legislature to implement Measure 66 largely reflected the intent of the ballot measure but grafted the natural resource provisions onto the existing policy framework for the state's salmon recovery and watershed health programs. The Governor's Watershed Enhancement Board, a small grant-making agency established in the late 1980s by former Gov. Neil Goldschmidt, was renamed the Oregon Watershed Enhancement Board and given the responsibility for administering the natural resources funds placed in a new Restoration and Protection Subaccount.

The initial actions taken by the governor and the legislature in 1999 established both policies and public perceptions that had a profound influence on implementation of Measure 66 in the years that followed. Key factors included:

- **Use of lottery funds to backfill cuts in general fund support.** The governor and legislative budget-writers, always scrambling to find enough General Fund dollars to operate state government, immediately cut General Fund support for state parks and other natural resource agencies and shifted programs to lottery funding wherever possible. Subsequent budgets continued the pattern, effectively reducing the amount available for long-term investments in habitat conservation and parks.

- **Diversion of OWEB's non-capital lottery dollars to other agencies' operating budgets.** Measure 66 proponents had envisioned a single state agency (the Oregon Watershed Enhancement Board, as it turned out) presiding over a long-term investment program that included both capital and non-capital components. In practice, the ballot measure's requirement that two-thirds of the natural resource account be used for capital expenditures provided the only barrier to diversion of those funds to other legislatively determined priorities. Over the life of the program, more than two-thirds of the non-capital lottery funds were allocated to agencies other than OWEB. Most of these dollars were used for worthwhile activities, but the result was a severe shortage of OWEB grant funding for project planning, engineering, design and other activities needed to support an effective capital investment program.
- **A salmon-centric approach to OWEB's conservation investments.** Although the ballot measure provided funding for protection and restoration of habitats for a broad range of native fish and wildlife, OWEB began its existence with a strong focus on salmon and water quality. Legislative actions, through the implementing legislation and subsequent budgets, reinforced that direction, as did the inflow of federal grant dollars from the Pacific Coast Salmon Recovery Fund. The agency has broadened its scope substantially in recent years – investing in conservation of oak woodlands, prairies, sagebrush and other upland habitats – but OWEB continues to be seen by many legislators and stakeholders alike as primarily funding projects to benefit salmon and water quality.
- **Emphasis on voluntary, local efforts to improve watershed health.** The 1999 legislature's decision to link Measure 66 funding to implementation of the Oregon Plan for Salmon and Watersheds had a number of lasting effects. Implementation through community-based organizations – watershed councils, soil and water conservation districts, and more recently, land trusts – has been one of the hallmarks of the state's conservation investment program. The non-regulatory approach has made it possible to engage private landowners across the state. The focus on "ridgetop-to-ridgetop" watershed conservation has also accommodated a more holistic approach to conservation as OWEB has expanded its scope beyond its original focus on aquatic ecosystems. However, the bottom-up philosophy that has guided the watershed program since its early days has sometimes hampered OWEB's ability to take a more strategic approach to its investments.

Evolution of the OWEB grant program

When the 1999 legislature gave the Oregon Watershed Enhancement Board responsibility for administering the natural resource side of Measure 66 funding, ballot measure proponents had high hopes for the newly created agency. In retrospect, it is clear that some of those expectations were unrealistic.

OWEB's predecessor, the Governor's Watershed Enhancement Board, was a small agency with a \$2 million biennial budget up until the advent of the Oregon Plan in 1997. The board doled out most of its funding in small grants to private landowners doing small-scale projects to improve fish habitat by planting willows along streams, installing fences, and controlling erosion. Overnight, the newly reconstituted agency gained a 17-member board and a biennial budget of more than \$31 million. OWEB was built on the run – a brand new agency, with mostly new board members, dropped into the middle of an ongoing grants program, with a dramatically expanded mission and financial resources, much higher expectations and more intense public scrutiny.

Although OWEB's authorizing legislation directed the new board to establish "statewide and regional goals and priorities... for grant funding based on the Oregon Plan", the agency struggled with this issue for many years. Part of the problem lay in the Oregon Plan itself, which was strongest on how the state would approach watershed improvement and salmon recovery efforts and weak on where activities should occur. The Oregon Plan was essentially a compendium of different documents developed over the years. Elements included Kitzhaber's original Coastal Salmon Recovery Initiative and the subsequent steelhead supplement, the Willamette Restoration Initiative, local agricultural water quality management plans, and basin-wide targets for reductions in water pollution, followed later by recovery plans developed for salmon stocks listed under the federal Endangered Species Act. Most of these plans included long lists of generic recommendations for action but were less than explicit in identifying specific places and priorities.

Development of sophisticated computer mapping and data analysis technology (geographic information systems, or GIS) spurred private conservation organizations to undertake several large-scale conservation planning efforts in the 1990s. These efforts, including the Oregon Biodiversity Project and The Nature Conservancy's subsequent ecoregional assessments, mapped priority areas for conservation statewide, but the results were slow to take hold in state government.

OWEB lacked the staff to undertake its own planning efforts, and there was strong resistance in the late 1990s to the notion of top-down priority setting by state agencies in the realm of watershed health. Instead, consistent with the prevailing philosophy that local interests were the best judge of local priorities and how to address them, OWEB funded local assessments of watershed conditions statewide. These planning efforts often tended to identify the same generic set of factors affecting the health of aquatic ecosystems, with only the names of the rivers changing from study to study. However, the assessments did provide an organizing tool for new local watershed councils and helped raise awareness of the problems affecting fish habitat and water quality.

Watershed councils and conservation districts

With state encouragement, local watershed councils were created across much of the state in the late 1990s. Organizational efforts began earlier on the South Coast and in northeast

Oregon's Grande Ronde basin, where the state pilot-tested development of its watershed health program under Gov. Barbara Roberts. The watershed councils and the local soil and water conservation districts that had been established decades earlier to help implement federal Farm Bill programs became the state's primary vehicles for developing local partnerships and projects to carry out the Oregon Plan. By their nature, the soil and water conservation districts tended to focus on agricultural lands while the newer watershed councils focused on commercial forests and other lands. The legislature had historically provided General Fund support for the soil and water districts, and OWEB began using Measure 66 funding to provide base support for the watershed councils.

Although watershed councils and soil and water conservation districts worked well together in some areas, in other areas the relationships were more often marked by competition and distrust. Concerned about the political fallout, OWEB provided funding to the Oregon Association of Conservation Districts and a newly formed Network of Oregon Watershed Councils to build a more cooperative approach. By 2007, the two groups were working together to build legislative support for their work and OWEB's grant programs, and relationships at the local level improved significantly in most areas.

Despite the greater cooperation and increased financial support from OWEB and the legislature, watershed councils and conservation districts continue to function with widely varying degrees of effectiveness. Some watershed councils, especially those that have been around longer, have better developed organizational capacity, a more diversified funding base, pursue more ambitious agendas, and accomplish more sophisticated conservation work on the ground. Other councils struggle just to maintain a coordinator and gain buy-in from the local community. Soil and water conservation districts span a similar range in developmental terms: some high-functioning districts have their own tax base, while others have trouble generating any financial support beyond the base funding provided by the state.

Watershed enhancement grants

The number, scope, scale and sophistication of the projects funded by OWEB has increased over the years as grant applicants – watershed councils and conservation districts, local governments, tribes, land trusts and other non-profit conservation organizations – have gained more experience. In May 2001, OWEB awarded 60 restoration grants totaling \$2.6 million (an average of \$43,000). In March 2010, the board awarded 73 restoration grants totaling more than \$8.9 million (an average of \$122,000). In 2024, OWEB funded a total of 137 restoration projects totaling more than \$25.4 million (an average of \$185,316).

OWEB has experienced significant growth and diversification in its overall grants spending plan. Due to growth in lottery revenue and increased federal funds, OWEB awarded \$98.4 million in grants in the 2017-2019 biennium. During the 2021-2023 biennium, OWEB's grants spending plan grew to \$187 million. Also during the 2021-2023 biennium, OWEB processed 1,411 grant applications and opened 1,048 grant agreements for funded projects. As of January 2025, the

2023-2025 grants spending plan allocates \$205.847 million in grant funds from diverse sources, including lottery, lottery bond, federal, general, and other funds.

Historically, much of OWEB's grant funding has gone for road-related work to improve fish passage (often culvert replacement); instream work, such as placement of large wood, bank stabilization, and removal of push-up dams; and irrigation improvements to reduce water use and runoff. However, grant awards today also include large grants to restore estuary, deciduous and conifer forests, prairie, aspen and sagebrush habitats, in addition to more traditional stream restoration work.

OWEB's grant offerings and funding sources have diversified over time to meet natural resource priorities and address grantee/partner feedback. OWEB's offerings include restoration grants, but also reflect the needs of partners to conduct targeted engagement, plan and design projects, and monitor and evaluate project effectiveness.

Although most grant-funded projects continued to come out of the watershed councils and conservation districts, other local governments and non-government organizations increasingly looked to OWEB for help in funding large-scale habitat restoration projects. Some of OWEB's largest restoration grants had been awarded to Ducks Unlimited and The Nature Conservancy for projects to restore thousands of acres of wetlands. Other large grants had been awarded for dam removal projects on the Rogue and other western Oregon rivers. These large projects are typically partnerships involving multiple funders and a broad range of partners and often require significant investments in engineering, design and project management. Some watershed councils and conservation districts had the organizational capacity and experience to undertake these large restoration efforts, but most of their projects continued to be smaller in scale.

Land acquisition

One of the primary motivations for some of the original proponents of Measure 66 was to secure a source of state funding for conservation land acquisitions. The federal government had traditionally been the primary source for these kinds of projects, due largely to the influence of former Sen. Mark Hatfield and Rep. Les AuCoin. Hatfield and AuCoin both used their positions on the Senate and House appropriations committees to deliver millions of dollars in federal funding to buy lands for the Columbia River Gorge National Scenic Area, the Oregon Dunes National Recreation Area, the West Eugene Wetlands, and the Oregon Coast National Wildlife Refuge complex. But by the mid-1990s, Hatfield was preparing to retire, and he warned conservationists that they would need to look for a new source of funding for land acquisition.

During the campaign for Measure 66 and the following legislative session, proponents pushed hard to make funding for land acquisition a priority. The implementing legislation enacted in 1999 did include explicit requirements for land acquisition funding, but the politics of the day sent the opposite message. Republican legislators, who controlled the natural resource budget-

writing committee until 2007, were generally hostile to the notion of public and conservation land acquisitions. Part of the opposition was philosophical, but their concerns were also rooted in fears that taking natural resource lands out of production and putting them into conservation status would further undermine already weak rural economies.

As a result, OWEB approached requests for land acquisition grants with caution. The first project the board funded, providing partial funding in 1999 for acquisition of Whalen Island on Sand Lake in Tillamook County, was non-controversial. But in 2003, when OWEB staff had worked with local land trusts to secure \$1.7 million in federal funds to buy coastal wetlands in Lincoln and Clatsop counties, Republican legislators applied the brakes. Ways and Means Committee leaders refused to let OWEB accept the federal grants, relenting only after months of delay as part of a session-ending deal with the governor and Senate Democrats. Republican legislators retaliated in 2004 when OWEB went to the legislature's Emergency Board requesting permission to accept millions of dollars in federal salmon restoration funding. OWEB got the money, but only after the agency's executive director agreed to resign. The message was not lost on anyone in state government, and the chilling effect on land acquisition grants persisted long after the legislators involved had moved on.

Over its first decade, OWEB had only spent about 10 percent of its grant money on land acquisitions. Continuing nervousness over political considerations led the board to pass on a request from The Nature Conservancy for funding to add to its holdings on Zumwalt Prairie in northeast Oregon. Protection of the mile-high grasslands – the largest remaining bunchgrass prairie in North America – had long been among conservationists' top priorities for biodiversity protection, and OWEB had helped fund acquisition of the original 27,000-acre preserve in 2000. But OWEB had an informal policy of not funding acquisitions opposed by local governments, and the conservancy withdrew its request in 2006 when it became clear that Wallowa County officials would attempt to block it.

By the end of the decade, changing political dynamics and real estate markets had combined with growth of the state's land trust community to generate a major increase in requests for OWEB land acquisition funding. In its April 2010 grant cycle, OWEB received requests for more than \$10.3 million for land deals. The agency was ill-prepared to meet the demand, with a single staff position already overwhelmed dealing with \$5 million worth of pending projects and little in-house expertise in the complexities of real estate business. OWEB's acquisition subcommittee turned away all but two of the 10 new requests, and grant applicants were left fuming.

Non-capital grants

The robust funding available to OWEB for capital grants for restoration and land acquisition had never been matched on the non-capital side of the grants program. With most of the Measure 66 non-capital funding allocated to other agencies, OWEB had relatively limited funds available for technical assistance, outreach, education, monitoring and evaluation needs. Federal salmon recovery grants helped fill some of the gaps, but only a portion of the work funded by OWEB is

salmon-related, and non-capital funding for terrestrial conservation efforts, public education and outreach, and project monitoring and evaluation remained inadequate.

The above material is a slightly modified version of an unfinished 2010 document prepared for Defenders of Wildlife and the Campaign for Water, Parks and Wildlife. The following section, added in 2025, is based on campaign documents and other internal working materials from 2008-2011. – Bruce Taylor

Renewing Oregon's Parks and Natural Resources Fund

By early 2008, some of the original proponents of Measure 66 were already looking at ways to revise and make permanent the state's 15-year commitment of lottery funds to conservation and parks.

With the constitutional sunset date only five years out, a team formed by The Nature Conservancy, Trust for Public Land, and Defenders of Wildlife began assessing political support and policy options for a permanent renewal. Without early action, voters would have faced a straight up or down vote on renewal, with no changes to the original ballot measure.

When statewide polling in 2009 indicated strong support among voters despite challenging economic conditions, the group began laying the groundwork for a campaign to put a new measure on the ballot in 2010.

Working with an expanding circle of stakeholders and supporters, the three key partners set out not just to make Measure 66's funding permanent but also to try to remedy some of the shortcomings that had become apparent over the first decade of implementation.

In addition to permanent funding, the biggest problems the new measure's proponents sought to address included:

- For lack of a better term, "legislative mischief," or the tendency among legislators and other interests to want to divert the dedicated lottery funds to other purposes, either to backfill general fund budget cuts in other programs in hard times, or earmark funding for favored projects or programs legislatively, bypassing the independent OWEB grant-making process.
- OWEB's inability to fund the non-capital costs of delivering a major capital investment program. (This was a direct result of the legislature's initial use of most Measure 66's 35 percent non-capital funding to fill budget holes in other agencies' programs, a practice that continued long after the budget crisis of the day had passed.)

- OWEB's lack of investment in land acquisition. Backers viewed land protection as a key element in any effective large-scale conservation strategy. Protection of relatively intact ecosystems is far cheaper than restoration in the long run. Acquisition of lands and conservation easements by qualified conservation buyers also provides long-term security for restoration investments where protection is not otherwise assured.
- The continued perception, both within OWEB and among legislators, stakeholders, and other interests, that Measure 66's natural resources funding was primarily intended to support salmon recovery efforts.
- The lack of strategic focus inherent in an investment program driven by bottom-up local priorities.

Although voter support for renewal of Measure 66 appeared strong in the proponents' polling, it soon became clear that the only viable route to getting a new constitutional amendment on the ballot was an initiative petition. Neither the governor nor legislative leaders had any interest in advancing a legislative referral to the November 2010 ballot, and other powerful interests were already signaling their likely opposition to permanent allocation of lottery funds to parks and natural resources.

In August 2009, leaders of the Campaign for Water, Parks and Wildlife announced their plans to pursue a ballot initiative that would require petitions signed by more than 110,000 voters.

In drafting the proposed ballot measure, the proponents needed to balance their desire for changes with the political imperative to keep things simple and present the measure as a straightforward reauthorization of a popular and successful program. Any ballot title (the summary voters see on their ballot) that said "Creates new..." was viewed as a more difficult sell.

They also needed to consider their immediate policy objectives and ambitions within the context of a permanent change to the constitution that would be hard to amend in the future. Permanence meant that they would need to design a constitutional framework that could continue to be effective even as conservation needs and public priorities evolved over time.

The final version of what became Ballot Measure 76 retained the basic structure of the original measure, making permanent the 15 percent allocation of lottery revenues and maintaining the 50/50 split between parks and natural resources.

The primary change on the parks side was a requirement to allocate at least 12 percent of that portion of the funding to grants to expand local and regional parks, with provisions to increase the local share if lottery revenues increased by more than 50 percent in the future.

Major changes to the Natural Resources Fund

On the natural resources side, Measure 76 retained the original 65/35 funding split but eliminated the capital/non-capital distinction. Instead the measure divided the funding into two pots, requiring at least 65 percent to be devoted to grants for on-the-ground conservation projects, leaving up to 35 percent available for allocation by the legislature to state and local programs that support implementation of the state's conservation strategies, including OWEB's own operational funding.

As with the parks funding, Measure 76 also addressed future revenue increases, requiring at least 70 percent of funding to be allocated to grants if lottery revenues grew by more than 50 percent.

Redefining the funding allocation served to address two of the proponents' primary concerns. Eliminating the capital/non-capital distinction gave OWEB the flexibility to offer a grants program that could fund the full range of activities needed to implement the measure's conservation priorities. And by restricting the grants to "entities other than state or federal agencies for projects that achieve the outcomes" defined in the constitutional amendment, the measure would also limit the legislature's ability to divert funding to other programs and purposes.

However, recognizing that state programs and priorities would evolve over time, the drafters left the governor and the legislature with discretionary authority over the use of the 35 percent non-grant funds, within some broadly defined parameters. In general, the non-grant funds were intended to support planning and delivery of what was envisioned as a long-term conservation investment program.

The drafters of Measure 76 also sought to provide a more nuanced, and clearer, definition of the purpose of the natural resource funding, which Measure 66 simply described as "financing the restoration and protection of wild salmonid populations, watersheds, fish and wildlife habitats and water quality."

The new ballot measure instead framed the constitutional sideboards in terms of intended outcomes and permissible uses of the funding, including restoration of natural watershed functions; long-term protection and restoration of lands and waters that provide significant habitat for native fish and wildlife; and an explicit commitment to biodiversity conservation ("maintain the diversity of Oregon's plants, animals and ecosystems").

The new language eliminated any constitutional reference to salmon, targeting the conservation focus to biodiversity and habitat for native fish and wildlife. The reference to water quality explicitly limited the funding to actions that would restore "natural watershed functions and streamflows."

Measure 76's backers emphasized land protection's importance by listing acquisition first in the section describing permissible uses of the natural resources fund. Some members of the

campaign coalition wanted to require a minimum percentage of the funding to be devoted to land acquisition, but the group ultimately concluded it was inappropriate to prescribe a fixed level of spending in a permanent constitutional measure.

The proponents viewed the Oregon Department of Fish and Wildlife's recently completed state wildlife action plan, the Oregon Conservation Strategy, as the primary roadmap for Measure 76's overarching habitat conservation priorities. Modeled after the broad-scale biodiversity conservation planning efforts pioneered by the Oregon Biodiversity Project and The Nature Conservancy's more detailed ecoregional assessments, the Oregon Conservation Strategy used GIS-based analysis to identify priority habitats, geographies ("conservation opportunity areas"), and "species of greatest conservation need." It encompassed both the priorities of the original Oregon Plan for Salmon and Watersheds and ODFW's new Nearshore Strategy, which focused on marine systems.

Unable to reference that plan in the constitutional language, the drafters instead included provisions alluding to "state conservation strategies or plans to protect or restore native fish or wildlife habitats" and, echoing the Oregon Conservation Strategy, efforts to "[r]emedy the conditions that limit the health of fish and wildlife, habitats and watershed functions in greatest need of conservation."

Although barely touched on in the ballot measure itself, Measure 76's drafters also sought to resolve unanswered questions around OWEB's role in funding public education and outreach. Many stakeholders viewed these efforts as critical components of the state's efforts to build public awareness and support for conservation work.

Measure 66 explicitly authorized use of lottery funds for "watershed and riparian education efforts." But OWEB struggled to meet the demand for education and outreach grants, which were competing with on-the-ground restoration projects for the limited pot of funding.

Larger political forces were also coming into play, as legislators and other interest groups started looking at Measure 66 funding to make up cuts in state support for Oregon's much loved Outdoor School program. The Oregon Education Association had already signaled its likely opposition to renewal of Measure 66 because it shrank the pool of lottery funds potentially available to support local schools' budgets.

Measure 76's drafters took a very narrow approach, limiting public outreach-related grants to those necessary for implementation of eligible acquisition and restoration projects.

They provided somewhat more flexibility for the 35% of funding available for allocation by the legislature. Those funds, according to the ballot measure, could be used to:

"[s]upport local delivery of programs or projects, including watershed education activities, that protect or restore native fish or wildlife habitats or watersheds."

By requiring a direct linkage to implementation of on-the-ground conservation work, the proponents hoped to head off any future legislative efforts to divert the funds to other education budgets.

As it turned out, their concerns about other interests having designs on competing uses for Measure 66 lottery funds were confirmed in 2010 when the Oregon Education Association and some of its legislative allies started actively working to impede Measure 76 proponents' efforts to get their proposal on the ballot.

The Campaign for Water, Parks and Wildlife was well on its way toward securing the signatures needed to qualify its measure for the November 2010 election when, in the middle of that year's legislative session, the House speaker, Rep. Dave Hunt, summoned Defenders of Wildlife's lobbyists to his office. Hunt bluntly told them that their coalition, which had already spent \$1 million working to get the initiative on the ballot, should abandon its campaign.

A few weeks later, just days before the end of the legislative session, Hunt unveiled two new competing constitutional amendments he intended to have the legislature refer to the November ballot. One would have capped lottery revenues allocated to parks and natural resources at their current level. The other included both the cap and provisions to ratchet down the percentage allocation whenever the state's general fund revenues showed a decline.

The legislative counsel who drafted the proposals warned in a letter to Hunt that a legislative referral of linked and competing ballot measures might "lead to sufficient confusion in the minds of electors to be seen by the courts as an unconstitutional interference with the initiative process."

Measure 76 proponents pushed back with all the political support they could muster, and the legislature adjourned with no action on the issue.

Four months later, Measure 76 passed with more than 69 percent of the vote, including majorities in every county across the state.

Public Comment



COALITION OF OREGON LAND TRUSTS

2540 NE MLK JR BLVD, PORTLAND, OR 97212 • 503-719-4732 • OREGONLANDTRUSTS.ORG

June 3rd, 2025

To: OWEB Acquisitions & Restoration Committee

From: The Coalition of Oregon Land Trusts (COLT)

RE: Measure 76 Land Acquisitions Grant Program

Members of the OWEB Acquisitions & Restoration Committee:

Thank you for the opportunity to share some comments as this Committee continues its work to modernize the Measure 76 land acquisitions program. The Coalition of Oregon Land Trusts (COLT) is a membership organization representing 32 land trusts, soil and water conservation districts, and conservation organizations working across Oregon to protect our habitat and natural spaces – for all people, forever. Collectively, our members have protected more than 782,860 acres of land across our state.

COLT members are key partners in delivering on OWEB's mission to "protect and restore healthy watersheds and natural habitats that support thriving communities and strong economies." Land trusts are formed to protect land forever in a legally binding way and their work is guided by the Land Trust Alliance's standards and practices. The purpose of these standards is to ensure that land trusts have a strong foundation and to manage the risk associated with purchasing, owning, and stewarding land in perpetuity. This means the investments OWEB makes in these projects will be durable over time. Oregon's community of land trusts is one of the strongest in the nation and their staff comprise experienced real estate, stewardship, and restoration professionals.

The value of the land acquisitions grant program for COLT members and their work across the state cannot be overstated. We have an opportunity to modernize this land acquisition program to be a national model for funding projects that will



24 MEMBER ORGANIZATIONS: Blue Mountain Land Trust • Center for Natural Lands Management • Columbia Land Trust

Deschutes Land Trust • Ducks Unlimited • Forest Park Conservancy • Friends of the Columbia Gorge Land Trust

Greenbelt Land Trust • Klamath Lake Land Trust • Lower Nehalem Community Trust • McKenzie River Trust

North Coast Land Conservancy • Northwest Rangeland Trust • Oregon Agricultural Trust • Oregon Desert Land Trust

Pacific Forest Trust • Southern Oregon Land Conservancy • The Conservation Fund • The Nature Conservancy in Oregon

The Trust for Public Land • The Wetlands Conservancy • Willowa Land Trust • Western Rivers Conservancy • Wild Rivers Land Trust

8 ASSOCIATE MEMBER ORGANIZATIONS: Black Oregon Land Trust • Cerro Gordo Land Conservancy • Clackamas Soil & Water

Conservation District • East Multnomah Soil & Water Conservation District • Helvetia Community Association

Tualatin Soil & Water Conservation District • View the Future • Yamhill Soil & Water Conservation District

benefit fish and wildlife and provide climate resilience and natural climate solutions to Oregonians.

However, as time has gone on, COLT members have found themselves in a tough position with this program. There is a growing need for additional funding for land acquisition projects - around \$100 million in demand from a recent survey of our members. Land prices only continue to rise while OWEB land acquisition funding has remained flat. The complexities of navigating the program has led to reluctance among some COLT members to apply for program funds, resulting in missed conservation opportunities and unused program funding.

The issues that COLT members experience in working with OWEB's Land Acquisition Program have been fairly consistent over time. Collectively, we have an impactful opportunity in front of us to build trust among OWEB staff and applicants and to continue to fund high quality projects, while creating efficiencies in the process so that public funds are spent wisely and more effort is put towards good conservation work on the ground. **COLT is hoping for several high level outcomes at the end of this process:**

- OWEB staff trust land trusts to create and manage successful projects over the long term,
- COLT members regain trust in OWEB's ability to efficiently and fairly administer the land acquisition program,
- OWEB staff and programs trust that land trusts are built to successfully manage the risks of conservation land ownership in perpetuity, so that OWEB can reduce its own efforts to manage risk in the grant process,
- There is more flexibility available to COLT members to use their expertise and best judgment in the long term care of conservation lands, and
- OWEB customer service is more collaborative and focused on the positive possibilities of projects.

Timeline of COLT/OWEB Conversations

COLT and OWEB collaboration to improve delivery of the land acquisition grant program stretches back many years, and is always grounded in a strong desire to maintain and improve our partnership in delivering on the ground conservation outcomes.

We remain thankful to OWEB leadership and staff for their continued dedication to this program and our members, and feel it's important to ground the ARE Committee in the history of these conversations.

- **2017:** Solid Ground Consulting interviews COLT members and OWEB staff on the M76 acquisition program and provides recommendations on match funding requirements, the application review process, increased transparency, supporting post-acquisition success, and OWEB capacity (*Appendix A, B*).
- **2018:** In response to the Solid Ground memo, OWEB convenes the Land Acquisition Rules Advisory Committee (RAC) to suggest improvements.



- **2021:** Oregon Consensus conducts a third-party assessment to improve collective understanding of how the entities can work better together. Recommendations include facilitated Zoom sessions to process ideas and brainstorm solutions (*Appendix C*).
- **2021- 2022:** COLT/OWEB form an Application Advisory Group to improve the granting process and the conservation easement template.
- **2022:** OWEB Grants Committee contemplates removing Land Acquisition from the Focused Investment Program (FIP) list of eligible activities. OWEB Grants Committee does not end up removing LA as eligible grants and agrees to use existing capacity to review grants.
- **2024:** Governor Kotek sends mandate to OWEB to modernize the Land Acquisition grant program, COLT hosts listening sessions with OWEB staff and OWEB forms ARE Committee.

Much of this collaboration has led to program shifts, increased transparency, and positive change. In your meeting packet, members of the ARE Committee received a memo with foundational issues developed from our listening sessions over 2024-2025, because despite the commitment on both sides to improve program delivery, barriers remain, and much of the feedback over the years has not changed.

There are clear themes that pervade, especially around risk management, the level of scrutiny on land acquisition vs restoration, and a desire for trust and partnership.

2017 Solid Ground Consulting Memo Feedback (Appendix A, B)

- **Complexity and scrutiny:** “The level of complexity an OWEB-funded project has throughout its life, not just through acquisition but afterwards, is a barrier. OWEB is much more in the details; they have a lot more comments on management plans in their review process. Any time any of our stewardship staff asks for approval, it’s a complex, heavily scrutinized process. OWEB is heavily risk-averse, taking every opportunity to ensure they are handholding every process.”
- **Risk Tolerance:** Land trusts report that OWEB is considerably more hands-on after the acquisition is complete than other agency funders are. The conservation easement is “more cumbersome,” the management plan “more detailed than any other agency we work with.” Land trusts want OWEB to strike a balance: “accept a reasonable amount of risk and give up a reasonable amount of control.”
- **True Partnership:** “It feels like OWEB isn’t working with us on this. We’re okay with having to jump through some hoops, but at the end of the day, we want it to be a partnership. We want to feel like we’re partners helping OWEB implement their objectives.”

2021 Oregon Consensus Feedback (Appendix C)

- **Complexity and scrutiny:** No land trust interviewed believes the constitutional mandate from Measure 76 is a barrier to success. More so than



legal constraints, they perceive agency culture, and relational and procedural issues as primary challenges to successfully completing an acquisition through the program. The trusts need to better understand OWEB's considerations for making recommendations for funding acquisitions, which includes clarity on all aspects - legal, policy, cultural- that guide OWEB decision making on acquisitions grants.

- **Risk Tolerance:** Land trusts want OWEB to show more risk tolerance and willingness to fund projects that allow for different approaches to restoration and offer multiple benefits, and to maximize the use of the acquisitions tool to meet its own mandates.
- **True Partnership:** Relationally, land trusts are looking to be in a collaborative partnership with OWEB in determining, together, acquisitions that are a good fit to meet shared missions. They want to feel that both entities are coming from a place of possibility - "getting to yes"- rather than obstacles - "reasons to say no". They want to be recognized and trusted for their acquisitions expertise, as reputable conservation stewards, and as on the ground partners to OWEB.

The other theme that pervades these reports and conversations from both land trusts and OWEB staff is a deep desire to improve outcomes and understanding, mutual respect and working collaboratively towards better partnership.

- **Land trusts:** All interviewees agree that OWEB and land trust missions are well aligned with regards to conservation goals. OWEB staff are viewed as 'strong partners', 'capacity builders', 'excellent technical resource', 'reasonable' and 'demanding but fair' (Oregon Consensus, 2021, Appendix C).
- **OWEB:** OWEB wants land trusts to understand the high level of scrutiny required of the program to assure the public that their investments are going to the intended use and that there will be a long term benefit to native species. They want to be trusted as technical experts and fair administrators of grant funds. They want land trusts to understand the complexities of making determinations on recommendations to fund an acquisition. However, within that, OWEB also wants to find ways to be more flexible, approachable, and easy to work with. Ultimately, OWEB wants to work in positive partnership and collaboration with land trusts to meet shared missions, and make sound investments in acquisitions that meet the specific mandated purpose of protecting habitat for native fish and wildlife. (Oregon Consensus, 2021, Appendix C)

Measure 76 Land Acquisition Program Panel

Land acquisition is front and center in the Measure 76 constitutional language by design, "Measure 76's backers emphasized land protection's importance by listing



acquisition first in the section describing permissible uses of the natural resources fund” (ARE Committee Memorandum, May 2025).

Land trusts in Oregon have been a key implementer of these funds, and as of 2021, land trusts received 77% of the total acquisition funding awarded, generated 79% of the program’s matching funds, and accounted for 90% of the acres protected under the program (Executive Summary, 2017, Appendix A).

We are grateful to see the ARE Committee beginning these deep discussions with a grounding in the purpose and intent of Measure 66 and 76 funds from the ballot measure authors, and **we offer the following questions for the Committee to contemplate during this discussion:**

Administration of the Measure 76 land acquisition program has been described by COLT members as restrictive, arduous, and complex. OWEB’s interest is rightly in ensuring that public investments are meeting the intentions of Measure 76 language.

- OWEB holds a conservation easement on lands purchased with OWEB grant funds, which creates additional complexity and costs in securing lands through the program. Did Measure 76 authors envision OWEB needing to hold long term interests in a property or the applicant?

Land prices are rising, demand for land acquisition funding is growing, while OWEB funding for land acquisition has remained stagnant.

- What funding split did Measure 76 authors envision for the restoration and acquisition funds? In OWEB’s proposed 2025-2027 spending plan, \$8.5 million is dedicated to land acquisition vs \$49 million for restoration.

Land trusts and OWEB staff have grown in capacity and expertise since the passage of Measure 76. Land trusts are built to manage and steward properties in perpetuity and take on the risks associated with acquisitions and restorations.

- How do we better balance the need for due diligence with the growth in expertise of the land trust community over the decades since Measure 76 was passed?

We want to continue to emphasize our dedication to this partnership and collaborations with OWEB, and our shared commitment to delivering on the ground conservation impact.

We value the agency’s commitment to this process, and thank each of you here today for your time discussing these important topics. Together we can continue to provide benefits to nature and people that are durable and impactful.



Sincerely,



Joe Buttafuoco
Executive Director
Coalition of Oregon Land Trusts



Joe Moll

written comment

I am attaching two staff reports on applications for a land acquisition project in the Siuslaw Estuary, first proposed in 2016 and then again in 2021. Comparing the reports and considering the ultimate protection of land, the increased cost over time, and additional complicating factors should provide good food for thought relative to OWEB expectations for desired future conditions, organizational capacity, and risk management.

- [217-9904 North Fork Siuslaw evaluation 2016.pdf](#)
- [OWEB Siuslaw evaluation 2021.pdf](#)

October 2016 OWEB Grant Cycle Land Acquisition Application

Application No.:	217-9904		
Project Name:	North Fork Siuslaw		
Applicant:	McKenzie River Trust	Region:	North Coast
Basin:	North Coast	County:	Lane
OWEB Request:	\$500,675.00	Total Cost:	\$667,928.00

Application Description

McKenzie River Trust (MRT) is requesting funds for the purchase of a 250-acre diked agricultural property on the North Fork Siuslaw River, near the City of Florence, in Lane County. The application states that MRT wishes to buy the property in order to preserve the opportunity to restore the property to tidal wetlands. The application states that restoring the property to tidal wetlands would benefit OWEB priority species such as Chinook and coho salmon.

REVIEW

Project Soundness

Reviewers felt that overall, the acquisition component of the project appears to be relatively straightforward and is a good match for MRT, which is an accredited land trust with a staff that is experienced in acquiring properties for conservation. The application states that the property is near land already protected by MRT, and that acquisition of the property is consistent with MRT's strategic conservation plan for the Siuslaw Basin.

Reviewers noted that MRT has a signed option agreement that terminates in December 2018, and that the option provides MRT with adequate time to complete due diligence for the acquisition. In addition to typical due diligence necessary for any sound acquisition, MRT would need to address: (i) potential boundary line uncertainties stemming from the movement of waterways on and adjacent to the property; (ii) the property's derelict mobile home, removal of which is necessary and may raise asbestos, and septic and other utility-related concerns; (iii) powerlines and associated easements which could hamper later tidal wetland restoration; (iv) maintenance obligations and costs associated with the bridge and the road and levee that serve the property and two adjacent properties; and (v) a deed of trust which must be removed from the property's title upon purchase of the property by MRT.

Although MRT's ability to complete acquisition of the property appears good, the long-term soundness of the project caused significant concerns for reviewers. Reviewers felt that based on an October 3, 2016 memo from MRT regarding MRT's perspectives on organizational liability, it's reasonable to conclude that MRT is generally uncomfortable assuming risks associated with tidal wetland restoration. Nonetheless, the property requires tidal wetland restoration to restore its former function and benefit OWEB priority ecosystems, species, and plant communities. MRT has not collected sufficient data about the property's restoration potential to understand the specific restoration risks associated with the property and assure reviewers that it will proceed with the restoration in a certain timeframe. Risks include but aren't limited to neighbors objecting to increased flooding on or adjacent to their properties, community opposition to the project, and

permanent and potentially significant maintenance costs associated with surrounding infrastructure including that which provides access to the property and the neighboring properties. Similar risks have resulted in MRT delaying and canceling other projects, including the Waite Ranch project (Grant No. 211-102), which MRT committed to restore to tidal wetlands.

In light of these circumstances, reviewers felt the only sound outcome of the project at this time is land banking the property for future restoration initiatives. Reviewers noted that given MRT's long option period, MRT may have time to withdraw the application and gather data necessary to assure reviewers that the property will be restored to certain conditions in a definitive and reasonable timeframe, thereby meeting OWEB's acquisition principle of investing in naturally functioning ecosystems.

Ecological Outcomes

Reviewers thought that restoration of the property could result in valuable improvements in fish and wildlife habitat and water quality in an estuarine area that has a significant network of protected lands. They noted that the current condition of the property is poor and that, without restoration, acquisition of the property will not meaningfully advance OWEB's land acquisition principles and priorities, such as protecting large, intact properties and exceptional biodiversity. Reviewers disagreed with the application's statement that the project will stabilize an area on the brink of unrecoverable ecological degradation, and noted that many other factors are likely to influence ecological outcomes in the Siuslaw River estuary.

Reviewers noted that the application does not clearly state which OWEB priority terrestrial species will benefit if the property is restored. Reviewers also stated that very young coho tend to prefer habitats with limited tidal exchange, and therefore the property might currently be used to a small extent by the youngest coho, and restoration of the property might reduce such use. Reviewers also pointed out that the application states that restoration of the property will result in tidal marsh, but that in light of the property's obvious subsidence, a significant portion of the property could be tidal mud flat upon restoration. Reviewers stated that consistent terminology is important with regard to the expectations of project funders as well as to adjacent property owners, some of which have expressed reservations about restoration of the property and how it might change the landscape and hydrology.

Reviewers felt that the need to maintain the access road, and therefore the levee on which the road is built, could present potential challenges for full tidal wetland restoration of the property. Reviewers stated that as much dike as possible needs to be removed for the sake of ecological benefits, and that a reduced ecological effect may result if dike removal is limited, although it's hard to know without adequate data for the property. Reviewers noted that the application summarizes the potential for multiple restoration actions which will require technical assessments, but does not suggest relative costs, or clear funding sources or timeframes for the suite of assessment actions that will likely be required. Costs of such assessments can be high, as MRT has experienced with regard to its Waite Ranch property.

- Needs and opportunities: 10 points awarded out of 15 possible points
- Results and Benefits: 10 points awarded out of 25 possible points
- Conditions and Function: 3 points awarded out of 10 possible points

Community Benefits and Impacts

The application states that the property will be an integral part of the existing network of conservation lands in the lower Siuslaw River estuary, which provides significant scenic and recreational resources to the population of the City of Florence and surrounding communities. The application states that the property will be managed for, among other things, water quality protection, scenic viewshed protection, and compatible recreational values. The application does not elaborate on compatible recreation, or whether the property will be open to the public. The application does state, however, that the property is on the Siuslaw River water trail and in a stretch of the river that is popular with recreational boaters and anglers. The application also states that over time, economic activity will be generated in the form of contracts for work on the property.

The application indicates that MRT pays taxes on all of the land it owns. Taxes for the property are approximately \$2,480.00 per year.

Organizational Capacity

MRT is an accredited Land Trust and has the demonstrated qualifications to acquire the property. However, one of MRT's key transaction negotiators is leaving the organization for a new job.

A portion of the organizational capacity analysis is the organization's demonstrated track record and history with projects. In this case, MRT has a project that is nearly identical to the one being proposed. As noted above, significant questions exist regarding MRT's capacity and commitment to proceed with restoring the property to tidal wetlands. As with Waite Ranch, restoration of the property is necessary in order to benefit OWEB priority ecosystems, species, and plant communities. And like Waite Ranch, MRT did not establish a solid understanding of the risks and expense of restoring the property before proposing to purchase it.

A \$50,000 technical assistance grant from OWEB, which MRT has signaled it will apply for in order to assess the property's potential for restoration, is unlikely to provide adequate funds for the work that is needed. MRT has spent much more than \$50,000 in an effort to develop a design for restoring Waite Ranch. MRT has also signaled that it wishes for OWEB to apply to the U.S. Fish and Wildlife Service (USFWS) for a Coastal Wetlands grant for eventual restoration of the property. However, it is uncertain whether OWEB would feel comfortable doing this, or USFWS would fund another grant for use by MRT, in light of MRT having cancelled a recent Coastal Wetlands grant in reaction to community concerns about a tidal wetland conservation project, and having not restored Waite Ranch which is also the subject of a Coastal Wetlands grant. Further, MRT has not calculated, and demonstrated the ability to afford, the potentially expensive infrastructure upkeep costs associated with the property.

Lastly, in light of MRT having unmet obligations for restoring Waite Ranch, it would be prudent and reasonable for OWEB to require MRT to make significant progress toward tidal wetland restoration on Waite Ranch, and thereby gain valuable experience, before granting MRT more funds for the purchase of property that could pose the same challenges as Waite Ranch.

- 6 points awarded out of 10 possible points

Public Review

OWEB staff conducted a public hearing regarding the proposed acquisition on December 21, 2016 at the Florence City Hall. The hearing focused on the public's view of the project's benefits, and questions and concerns about the project, summarized as follows:

Project Benefits

- The property is located in an area with other conservation lands, including a nearby Wetland Reserve Enhancement Program parcel which has been the subject of passive restoration.
- The property is rearing habitat for juvenile salmonids.
- The property's return to tidal wetlands is inevitable because the dikes are old and expensive to fix, and therefore, it would be challenging to find someone who wants to try maintaining the property as a farm.
- It is important to purchase the property before the opportunity is lost.
- The project will result in good recreational and economic benefits, and will help with floodwater retention.
- Stopping grazing on the property will eliminate a source of manure and carcasses to the water.
- The property's varied elevation provides opportunities to restore several wetland types.

Project Questions or Concerns

- Access needs to be maintained in good condition for any vehicle, for the benefit of neighboring properties. The access easement indicates a "reasonable road."
- The dike that the access road is built on will need shoring up.
- Some attendees indicated that there should be the possibility of public access and hunting on the property because there are fewer places to hunt now. Conversely, the neighbor would prefer that the property not be publicly accessible, in part because access would entail use of a privately maintained road.
- There is a need to inform the public, and neighbors, about the relationship between restoration, climate change and sea level rise.
- The change in hydrology on, and appearance (view) of, the property and neighboring properties could be difficult to accept.
- There is a change happening, from a farming mentality to an environmental mentality.

Summary

Total Score: 29 points awarded out of 60 possible points. Reviewers felt that while the proposed project could lead to later restoring the property to tidal wetlands, MRT has not committed to restoration, and without restoration, acquisition of the property will not meaningfully advance OWEB's land acquisition principles and priorities. Reviewers noted that MRT has not collected sufficient data about the property's restoration potential to understand the specific restoration risks and costs associated with the property and assure OWEB that it will proceed with the restoration in a certain timeframe. The risks likely to be posed by restoring the property are similar to risks that have resulted in MRT delaying and canceling other projects. Reviewers felt that until MRT succeeds in finding a path to restoring Waite Ranch, MRT does not have the demonstrated track record of success in tidal wetland restoration. Reviewers also noted that MRT has not calculated, and demonstrated the ability to afford, the potentially expensive infrastructure upkeep costs associated with the property.

Reviewers felt that from a transactional standpoint, acquisition of the property would pose several yellow flags (concerning, but likely resolvable in OWEB's granting timeframe) identified as: (i) title exceptions, including power lines that could later complicate any restoration efforts, costs and obligations of maintaining access to the property and neighboring properties, and costs of removing

the mobile home and any related infrastructure; and (ii) boundary uncertainties that would need to be resolved with a survey.

Staff encourage MRT to continue working to achieve the Waite Ranch restoration goals, and use the lessons learned there to assure the Board that if it funds the North Fork Siuslaw project in a future grant cycle, MRT would restore the property to tidal wetlands in a certain timeframe. Staff also encourage MRT to conduct planning and design work for the North Fork Siuslaw project before resubmitting any application for acquisition funds for the property, to ensure that challenges such as those MRT encountered at Waite Ranch do not prevent MRT from restoring the North Fork Siuslaw property to tidal wetlands.

Staff Recommendation

Based on the evaluation above, staff do not recommend the Board award funding for the North Fork Siuslaw project.

SPRING 2021 OWEB GRANT OFFERING

LAND ACQUISITION APPLICATION

Application No.:	221-9903-19500		
Project Name:	Siuslaw (Large)		
Applicant:	The Nature Conservancy	Region:	North Coast
Basin:	North Coast	County:	Lane
OWEB Request:	\$433,673 Lottery and \$490,000 Coastal Wetlands		
Total Cost:	\$1,320,243		

APPLICATION DESCRIPTION [PROVIDED BY THE APPLICANT]

The subject property sits on the North Fork Siuslaw River approximately three to five miles from the confluence with the main Siuslaw. The property is 247 acres in size and is bordered by the North Fork of the Siuslaw River along approximately 2.6 miles of the western edge. It is the second largest unprotected property remaining in the Siuslaw estuary, and the largest remaining diked pasture in the estuary.

The property is disconnected from the river by a series of levees and tide gates and has been maintained for agriculture for most of the last century. Agricultural management, levee maintenance and the resulting land subsidence will continue if no action is taken.

The acquisition represents an opportunity to radically change the ecological trajectory of the property. Once acquired, the McKenzie River Trust, with the assistance of TNC and members of the Siuslaw Coho Partnership, will immediately begin working to realize the vision outlined in the Restoration Feasibility Assessment. This includes re-creating tidal hydrology on a majority of the property and will result in lateral connection of approximately 236 acres. As lateral floodplain connectivity is restored and secondary channels reform, habitat complexity and diversity will increase - creating conditions for diverse estuarine flora and fauna including critical juvenile nursery habitat benefitting multiple anadromous species.

There is broad support for the project among conservation partners in the area. IN addition to TNC, the core partners for the project include those participating in the Siuslaw Coho Partnership:

- Siuslaw Watershed Council
- Siuslaw SWCD
- USFS
- BLM
- Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians
- Confederated Tribes of the Siletz Indians
- MRT
- ODFW

REVIEW

ECOLOGICAL OUTCOMES

The Siuslaw (Large) project will protect and restore an array of diverse estuarine habitats, including critical habitat for juvenile salmon. Estuaries are one of the most ecologically rich and important habitat types in Oregon and have been significantly impacted through historical land use practices. The Siuslaw estuary has lost nearly 67% of its tidal wetlands over the last century, and this project represents a unique opportunity to return tidal influence and estuarine function to a relatively large area. The property is notable for its size, its location within an existing network of conserved lands, and its restoration potential.

Priority Location and Habitat

The parcel has been identified by numerous local and regional assessments as a high priority for acquisition and restoration. The site is located within a larger complex of conserved properties, and its acquisition will tie together a network of high-quality estuarine habitat that will add to the overall health and resilience of the Siuslaw estuary. The property itself constitutes a significant portion of the estuary on the North Fork Siuslaw and is a collaboration with a willing landowner who recognizes the challenges of continuing agriculture activities in a rapidly subsiding former tidal wetland. Physical processes will be restored in this tidal system among an atmosphere of local cooperation and support.

Restoration of estuarine habitat is an identified priority by restoration practitioners and conservation planners along the coast. There are limited sites of this size available in Oregon estuaries that are suitable for habitat restoration. Restoration of both this specific site and the proposed habitat type is an identified priority by the Siuslaw Coho Partnership. The site was also highlighted as a priority for restoration by recent technical assistance work on landward migration zones that was partly funded by OWEB.

Restoration Opportunity

Restoration of this property will restore tidally influenced habitat managed to preserve and improve natural habitat function. Site conditions at this property were identified by the landowner to be unsuitable for agriculture, presenting an opportunity to restore high priority estuarine habitat with a willing landowner. Dike and tide gate removal are proposed and will be among the most beneficial restoration actions for the site. The applicants are proposing significant increase to tidal exchange in both the northern and southern portions of the property and habitat quality is likely to be immediately improved as a result. The desired marsh surface elevation and channel network formation may take a long time to develop, but the information in the application provides confidence that the project team aims to restore hydrologic processes to the greatest extent possible. Restoration of tidal flows will allow the site to begin accumulating sediment that will help buffer the effects of sea level rise on estuarine habitat.

The preliminary restoration approach is appropriate for the site and is likely to achieve the desired future conditions. The conceptual design is informed by site specific data and hydrologic modeling that was completed as part of a 2018 Restoration Feasibility Study, which was a comprehensive effort that included a study of the trajectory of habitat function in recently restored properties nearby. The study indicates that restoration on the site is feasible given the site constraints and outlines the key habitat types that can be restored.

Some concerns with the proposed restoration were identified during review. The description of expected changes to the existing dike footprint lacked detail, especially how the project partners might address stabilizing the locations where the length of dike will remain after restoration. The proposed timeline in the application also may be overambitious for a complex estuarine restoration project of this nature, given that similar restoration efforts have taken extended periods of time to implement and stabilize. Despite these concerns, the application provided evidence that the project team has conducted appropriate due diligence, understands the complexities involved, and is poised to design and implement a successful restoration project.

Benefits to Fish, Wildlife, and Watershed Function

The ecological benefit possible with this project is contingent on the successful restoration of tidal hydrology. Restoration of the proposed 236 acres of estuarine habitat, once completed, could provide immediate benefits to a large variety of fish and wildlife species, water quality parameters, and native wetland plant communities. The trajectory in the estuary will also be improved for long term ecological benefits such as carbon sequestration, flood storage, and combatting sea level rise. Restoration of tidal connectivity will result in the proliferation of tidal marsh and swamp plant communities, which will contribute to increased biodiversity and foster the growth of native plants with valuable cultural impact.

The habitat improvements that will result from the successful restoration will increase winter rearing habitat within the Siuslaw estuary, which is a primary limiting factor to ESA-listed Oregon Coast coho salmon. The expected ecological benefits will also be significant to a wide variety of other aquatic species, including Chinook salmon and steelhead.

PROJECT SOUNDNESS

The acquisition is a complex transaction that involves, among other things, the proposed use of USFWS Coastal Wetlands funds. Coastal Wetlands funds require:

- i) MRT to be added to the OWEB-TNC grant agreement;
- ii) OWEB to obtain USFWS approvals including approval of the appraisal and a notice of federal participation; and
- iii) TNC to comply with USFWS's due diligence timing requirements which are more stringent than OWEB's.

Additional transactional matters that will need to be addressed if the project is funded include:

- i) the transfer of title from TNC to MRT, necessitating a conveyance agreement, an additional deed, and additional title insurance;
- ii) land use approval necessary to separate the property being purchased from land being retained by the seller;
- iii) the need to confirm that existing utility lines and utility easements will be addressed in a manner that allows for the restoration described in the grant application;
- iv) unclear access rights and obligations of the party that owns the property, other parties, and the public;
- v) the need to confirm that all adjacent property owners, including all parties that have rights to use access roads on the property, support the restoration described in the grant application, including road relocation, if any, necessary to accomplish the restoration; and
- vi) intended access rights of the seller to land the seller is retaining.

The application reasonably demonstrates, despite the transaction's complexities, that the acquisition team has the requisite experience to complete the acquisition in a sound and timely manner; however, the application did not provide clear information about team member roles. If the application is awarded funding, an MOU will be necessary to establish roles and responsibilities for the transaction, property transfer, restoration, and long-term management phases of the project. There is also a need to establish an understanding about MRT's intentions to be the long-term owner of the property.

The application states that TNC intends to purchase the property before the end of OWEB's due diligence period. If the application is awarded funds, it will be important to establish an understanding with TNC that if it closes the transaction without OWEB funds, it will:

- i) coordinate with OWEB to ensure approval of certain transaction items in advance; and
- ii) not transfer the property to MRT until TNC and OWEB are ready to proceed with the grant funds as a reimbursement, at which time TNC will grant OWEB the conservation easement, record the notice

of federal participation, and convey the property to MRT. TNC will also need to understand that closing in advance of receiving OWEB's funds does not guarantee OWEB's funds will later be released.

Reviewers identified long-term soundness concerns related to MRT's plans for a stewardship fund. The stewardship fund appears to not be secured and the application does not indicate what amount needs to be secured to return enough income each year to cover the estimated stewardship expenses. If the application is awarded funding, this information should be required, along with evidence that the fund will be in place by closing or a specific timeframe soon after.

COMMUNITY BENEFITS AND IMPACTS

The application states that acquisition and subsequent restoration will provide permanent protection to a critical piece of Siuslaw River estuary ecosystem and will contribute to the recovery of Chinook, Oregon coast Coho and the health of other native salmonid populations. This will benefit recreational and commercial anglers and the local economy as a result. Tidal restoration will help slow velocities and reduce downstream flooding. In addition, MRT has memoranda of agreement with both the Confederated Tribes of the Siletz and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, and protection and restoration of the property will benefit several culturally significant species for the Tribes.

A public hearing was held July 13 to provide an opportunity for public comment on the application. Four members of the public attended, with one, the current landowner, providing comment, stating that when he bought the property 15 years ago, he did not envision restoring wetlands. He found that the property is challenging to work for agricultural purposes and is best suited to being wetlands.

ORGANIZATIONAL CAPACITY

The Nature Conservancy has the necessary expertise to complete this transaction and the staff will work closely with MRT staff throughout the process. After the completion of the purchase the property will be transferred to MRT. MRT, accredited since 2015, is following best management practices in accordance with the accreditation. The proposed property aligns with the mission of the organization and is consistent with its conservation strategy. MRT does have several outstanding reports associated with the Waite Ranch property.

MRT is a member of the Siuslaw Coho Partnership, which has been involved in the development of the project and will be involved in the long-term stewardship of the property. The application indicates the intent to hire a Central Coast Conservation Program Manager; follow-up information indicates this position has been hired. The addition of this position will increase the capacity of MRT and enable the organization to provide for the long-term stewardship and management of this property. The application clearly articulates the proposed stewardship costs and but does not provide information on how the organization will secure and maintain an adequate stewardship fund.

SUMMARY

In a previous application submitted by MRT for this project, the evaluation noted that uncertainty regarding the hydrologic impacts of needed restoration on neighboring properties, and therefore the potential to achieve restoration, rendered the application premature. In this application, TNC has partnered with MRT, who led a comprehensive feasibility study that answers the questions posed in the previous evaluation and determined that restoration of tidal wetlands is feasible at the site. Opportunities for tidal restoration at this scale are rare and worthy of OWEB investment. TNC has been a leader in tidal restoration on the Oregon Coast and MRT has extensive habitat restoration experience. If the project is funded, it will be important for TNC and MRT to clearly delineate the roles of each organization in a Memorandum of Agreement regarding the proposed restoration.

STAFF RECOMMENDATION

Staff recommend the Board award \$1,320,243 pending receipt of \$490,000 in Coastal Wetlands funds from the US Fish and Wildlife Service, or, if the Coastal Wetlands application is unsuccessful, receipt of secured match funds from another eligible source, for the project in accordance with OWEB's standard grant agreement for land acquisition, including project-specific conditions specified in the grant agreement. Staff will consult with TNC to finalize project-specific conditions, which will be provided to the Board at its October 2021 meeting.

Finding a Path to Full Utilization of OWEB Acquisition Funding

Partners for Oregon's Future

The members of the Coalition of Oregon Land Trusts (COLT) and the Oregon Watershed Enhancement Board (OWEB) share a common purpose to protect and restore habitat in a manner consistent with community needs and local economies. These organizations are partners, working together for the future of Oregon.

This is particularly true when it comes to land acquisition programs. Since the inception of OWEB, the members of COLT have been OWEB's primary partner in the acquisition and protection of habitat across the State, receiving 77% of the total acquisition funding awarded by OWEB. COLT members have used these funds efficiently, generating 79% of the program's matching funds, and accounting for 90% of the acres protected under the program. In turn, since the inception of its acquisition program in 2000, OWEB funding has accounted for 33% of the acres acquired by COLT members.

An Evaluation of Factors Leading to Unspent Funds

Given this partnership, when COLT saw funds allocated to acquisition had not been fully utilized in the past 3 grant cycles (see table), an effort was launched to determine why.

Biennium	Budgeted (millions)	Unspent (millions)	Unspent (%)
2011-2013	\$6.65	\$2.98	44.8%
2013-2015	\$8.00	\$1.06	13.3%
2015-2017	\$7.50	\$3.31	44.1%
TOTAL	\$22.15	\$7.35	33.2%

The evaluation included:

1. A review of funding awarded in other acquisition programs (to determine demand);
2. A survey of COLT's member organizations;
3. Interviews with four COLT member organizations with recent OWEB applications;
4. Interviews with the two administrators of the OWEB acquisition program.

The data reviewed indicate that there is a strong demand for land acquisition funding in the State. Some reference points:

- In 2015 and 2016, land trusts completed a total of 36 acquisition projects in Oregon (including 5 donated), with four funded through OWEB;
- In 2016, a single program of The Nature Conservancy (Conserving Nature's Stage) received \$8 million in applications, including an overall match of 1 to 5;
- The Willamette Wildlife Mitigation Program received \$22 million in applications for acquisitions in 2016 and \$18 million in 2017.

Given the ample demand for acquisition funds, the survey of COLT members and the interviews focused on identifying: 1) barriers to utilization of OWEB acquisition funds; and 2) recommendations to increase fund utilization and strengthen the OWEB/COLT partnership.

Results and Recommendations

Increase Clarity - Despite OWEB efforts to provide written guidance and criteria for many aspects of the acquisition program, COLT members expressed uncertainty regarding several aspects of the program. Comments focused around:

- Determinations on organizational capacity;
- Requirements to demonstrate a “clear path to restoration” in management plans;
- What can be counted as matching funds and if the Willamette Wetland Mitigation Program can be used as match.

In addition, several respondents requested formal feedback on unsuccessful applications. Specifically, they are interested in: what factors led to denial; what point in the process this factor was identified; and at what level the determination was made.

- Recommendation #1 – Increase Clarity with Written Guidance: Issuance of additional written guidance addressing the application components listed above would help eliminate ongoing confusion among grant applicants.
- Recommendation #2 – Add a Formal Question and Response Phase: It is recommended that applicants be given an opportunity to respond to concerns raised during the formal grant review process when the concern will likely form the basis of denying the grant. This should be a single response opportunity afforded to all grants facing denial.
- Recommendation #3 – Increase Feedback to Applicants: Formal written feedback on applications will benefit both the applicants (better informed) and OWEB (better applications submitted). Feedback should identify factors leading to denial.

Policy Changes - COLT members suggested that OWEB policy provide greater flexibility in several aspects of the acquisition program, including:

- Due diligence requirements;
- Match requirements;
- Alterations to management plans.

Survey results also suggested the creation of a “special circumstance” process to allow for applications outside the normal cycle. This will provide an opportunity for high quality projects where the landowner has limited flexibility to wait for closing.

- Recommendation #4 – Establish a Workgroup for Continuous Improvement: Given that these topics will require evaluation of the pros and cons of multiple options, it is recommended that OWEB convene a standing workgroup, with representatives from applicant groups, for ongoing improvement of the process. The group would report recommendations and status of improvements to the OWEB Board annually.

Risk Tolerance - Finally, several COLT members commented that the requirements for the OWEB acquisition program are more extensive than other grant programs. Comments indicate that this is reflective of a low tolerance for risk in the program.

- Recommendation #5 – Conduct a Risk/Benefit Analysis: OWEB is careful to ensure sound use of taxpayer funds to achieve the highest possible conservation benefit. However, the desire for certainty may result in missed opportunities. It is recommended that OWEB benchmark the level of risk tolerance in the acquisition program against other OWEB grant programs and similar programs in other states. It is also recommended that OWEB complete a risk/benefit analysis to determine if additional risk can be accepted without sacrificing conservation outcomes.

Partnership Approach – The members of COLT and OWEB are partners working together to achieve conservation goals in Oregon through land acquisition. However, survey results leave a clear impression that the process and interactions with OWEB staff do not feel like a partnership. **In a telling statistic, 69% reported being discouraged from applying after initial discussions with staff.*** Respondents stated the discouragement was based on a variety of factors, including concerns about land trust technical or organizational capacity or the amount of matching funds already secured; as well as procedural hurdles such as the high levels of due diligence required for OWEB acquisition projects. These technical factors leading to discouragement are compounded by a lack of certainty about when recommendations provided by staff are required and when they are staff preferences. **In the end, this left respondents feeling that rules were being applied in an arbitrary or inconsistent manner, and with a bias toward project denial.**

However, potentially the strongest factor leading to discouragement is that the feedback from OWEB staff often emphasizes why the project should not be funded, rather than providing guidance on strengthening the project. This perceived predilection toward finding problems rather than solutions, paired with concerns about inconsistent project requirements, has led several respondents to seek OWEB funding only as last resort. Simply stated, COLT members are looking for a partner in achieving conservation, and instead feel as untrusted agents contracted to do the work of the State.

- Recommendation #6 – It is recommended that COLT and OWEB leadership explore opportunities to strengthen the partnership-based relationship, in which there is a cooperative effort to find the best in projects, as well as the best of projects, to achieve shared goals. Many of the efforts outlined under recommendations #1 - #5 will aid in solidifying the partnership. However, shared trainings, job swaps and other efforts to gain the perspective of the other partner many also be of assistance.

* Responses represent some applicants' experience over multiple applications.

SOLID GROUND CONSULTING MEMO

To: Kelley Beamer
From: Allison Handler, Solid Ground Consulting
Date: March 28, 2017
Subject: Memo on OWEB's Land Acquisition Program

Background

Solid Ground Consulting conducted interviews with the two administrators of OWEB's land acquisition program, with administrators of agencies in other states that provide funding for conservation land acquisition, and with four COLT member organizations. Solid Ground also developed and distributed an online survey for COLT members, to which 16 organizations responded. The following notes distill the most important points from this stakeholder input.

OWEB Process Overview

OWEB allocates a total of \$7.5 million per biennium for land acquisition and water rights acquisition (a combined pool of funds). The agency funds land trusts and in some cases municipalities to purchase land fee simple; less commonly, the agency funds the purchase of conservation easements ("easements are harder to fund because eased lands often don't meet the high bar of our program for ecological function – they may be used for grazing or agriculture."). OWEB is aware that a considerable proportion of that funding is left on the table each year: "We had \$7.5 mm in the line item; we have four acquisitions pending and several water rights acquisitions pending. Even if we funded all of them we have more than enough money left over."

Preapplication. A preapplication consultation up front is a required part of OWEB's process. Staff have found this to be a helpful addition to the process, providing an opportunity for staff to help land trusts understand the various elements of the agency's review process, identify ways to strengthen an application, and head off projects staff believe will not succeed.

Review. The review process is thorough, and comprises five elements:

- ***Project soundness review*** examines the project from a real estate transaction perspective. OWEB won't pay more than appraised value for a property, and won't contribute more than 75% of a project's full costs. This includes an assessment of the applicant's capacity to carry it through to closing and beyond (if an organization has LTA accreditation, that makes the capacity analysis easier) as well as title and other technical aspects of the transaction.
- ***Ecological outcomes review*** ensures the project complies with the requirements / minimum thresholds for protecting watershed function that are set by OWEB's funding sources (Measure 76 lottery funds or Pacific Coastal Fisheries). Ecological review, conducted by volunteer reviewers, looks at the substance of the ecological outcomes the project is designed to achieve.
- ***Community benefits review*** ensures that public funds are invested in projects that provide appropriate public benefits.

- **Land management plan** ensures everyone has clear goals for the management of the property. This is to make sure the applicant has long-term ability to manage their obligations
- **Public review** gives the public a chance to express concerns and ensure the public sees benefits in the project. Because of the public review, OWEB can anticipate how a project will be received in the community before the board makes its decision.

Recommendation and approval. Staff recommendation to the Board is based on this multi-level review. Within 18 months of approval, an applicant must close on its deal. The 18-month time frame was chosen with the help of a stakeholder committee, and facilitates agency planning for its own capacity because there is more predictability about when applicants will come in for funding.

Land management. OWEB's program guidelines include a 20-year project management guideline. Within that time frame, the project sponsor must conduct and complete its restoration activities.

OWEB Staff Input

OWEB staff noted that the evaluation criteria have become more transparent. They also noted that OWEB now funds due diligence – although only if a project closes. “If they choose their project wisely and close successfully, we can fund the due diligence. What it means is that people are no longer pitching aspirational projects – they are pitching strong projects.” The agency has been able to compress its time frame for making a grant agreement, to give applicants a certain level of confidence about their potential for approval even while doing their due diligence: “Now, they have that commitment going in. The grant agreement outlines very specific steps and requirements that they’ll need to comply with to be approved. All of that is very clear and up front. They have 18 months to close, and we establish a schedule that lays out the steps.”

Staff noted the following challenges:

- **Ensuring OWEB's investment results in the most ecological value.** “Sometimes it's unclear the magnitude of what might be needed in restoration to get the property into shape worth investing in. We have a TA offering for an applicant to get assistance in developing a restoration plan. We are considering making that available for acquisitions for title projects – we are hoping to make that part of our offering for the solicitation this fall.”
- **Lack of clarity about expectations regarding land management plans.** OWEB's grant agreement stipulates a deadline for preparation of the land management plan. The agency provides guidance for developing a management plan (via the OWEB website), and samples for similar projects. “There is a tendency to underestimate how hard it is to develop a management plan. It can become a problem for us if it doesn't get addressed and we're not sure we'll get the ecological value out of the property that we thought we would.”

- **Concern about land trust capacity.** OWEB is particularly sensitive to the capacity question in parts of the state where there are interested landowners but little or no land trust capacity, such as in eastern Oregon.
- **Certain technical limitations regarding the match requirement.** OWEB requires a 25% match for acquisitions. Sources that can be used as match include private funds, Endangered Species Recovery funds (section 6), and US Fish and Wildlife Service Coastal Wetlands Program. OWEB's mitigation policy prohibits OWEB from funding mitigation actions and from using mitigation funds (such as BPA's Willamette Wildlife Mitigation Program funding) as match. While "nothing in policy or rule prevents BPA funding from being used to match OWEB's funds, BPA can't count OWEB's funds as an offset to BPA's mitigation obligation. OWEB investments cannot be used to generate mitigation credits." OWEB recognizes that this "puts a dent into the interest from Willamette Valley land trusts." If an acquisition project proposes using both OWEB and WWMP funds, there would have to be non-mitigation funds in the mix as well to satisfy OWEB's 25% match requirement. With all that said, OWEB is predisposed to have land trusts "capitalize on BPA's Willamette mitigation funds because BPA doesn't need match." (BPA likes match, but doesn't require it.)

OWEB staff noted that "for any project expense that applicants could ask OWEB to cover but don't ask it to cover, and for which they are able to secure funds from another source, that other funding source can be used for match. They could come from a foundation, agency, or charitable donation from the seller to the land trust."

OWEB encourages greater communication from land trusts. Staff said that they feel land trusts are good partners: "By and large the folks that come to us understand our mission."

COLT Member Input: Interviews and Survey

Solid Ground interviewed four COLT members: Columbia Land Trust; (Dan Roix); Greenbelt Land Trust (Claire Fiegenger); McKenzie River Trust (Alayna DuPont); and North Coast Land Conservancy (Jon Wickersham). Sixteen COLT member groups participated in an online survey, including these four organizations plus the following: Blue Mountain Land Trust, Blue Mountains Conservancy, the Conservation Fund, Friends of the Columbia Gorge, Klamath Lake Land Trust, Lower Nehalem Community Trust, Southern Oregon Land Conservancy, The Nature Conservancy, Trust for Public Land (Oregon Chapter), Wallowa Land Trust, The Wetlands Conservancy, and Wild Rivers Land Trust

Strengths

- OWEB staff are very detail-oriented
- The preapplication consultation was a good addition to the process. It gives project sponsors a chance to vet ideas, get early feedback, and adjust their thinking or their project if appropriate.
 - "OWEB was very helpful. We stayed in touch with them throughout the application process." "OWEB staff have made themselves available for questions any time we have reached out. "

Concerns

Bureaucracy. OWEB may be overly involved and restrictive when land trusts develop their land management plans. In at least one case, a land trust agreed to an accelerated time frame for restoration that proved unrealistic and untenable once new information surfaced, but OWEB has held the organization to its accelerated time commitment – and staff recommended not funding that land trust’s next application because the land trust hadn’t fulfilled this obligation. Several organizations said that they have decreasing appetite for seeking OWEB funding (a “last resort”).

- “There is a lack of clarity on what are the guidelines of the program – the things you must do – and what is staff’s opinion. It feels less about ensuring a great project, and more about making sure you don’t finagle your way out of being inside the lines.”
- “OWEB essentially dictated to us – it was strange to have pushback from someone who had visited the property only once and who was telling us how to manage it.”
- “Their restrictions, the level of detail they get into on how we’ll manage the property, are heavy-handed. We must always consult with OWEB on the property; that makes it hard for us. We’ve started to turn to OWEB as a last resort; which is terrible, we should be able to use it as match for federal grants, but we’re now looking for ways to not use it. That’s not good.”
- “Land acquisitions are tough and land trusts are all at different levels of expertise. We’re all learning the best and safest way to manage risk. OWEB may experience some frustration with some groups that don’t have as much experience with certain components of real estate or understand the requirements OWEB has. If they are funding projects at a high level, they need some degree of certainty that the land trust can perform its obligations.”
- “OWEB is somewhat like a last resort because it’s such an arduous process. The littlest things that should be easy to resolve through conversation aren’t easy. It can take a lot of time and a project can bog down during planning and due diligence, and even after acquisition, in terms of OWEB’s desired future conditions.”
- “The level of complexity an OWEB-funded project has throughout its life, not just through acquisition but afterwards, is a barrier. OWEB is much more in the details; they have a lot more comments on management plans in their review process. Any time any of our stewardship staff asks for approval, it’s a complex, heavily scrutinized process. OWEB is heavily risk-averse, taking every opportunity to ensure they are handholding every process.”
- “We wish OWEB took a more relaxed approach to their desired future conditions. As land trusts with an interest in getting the best ecological outcome, having a program that is cranking down on that stuff feels unnecessary.”
- “We’re not saying they should get rid of their regulations. It’s more the way information is communicated. It’s unrealistic expectations on the process (OWEB’s level of involvement) and the deliverables (e.g., they wanted us to restore a tiny parcel they were going to fund; it was unclear why that was so critical when we are doing restoration on thousands of other acres).”

Consistency. Land trusts said that the scoring criteria remain unclear and feel subjective.

- “OWEB always seems to rank your organizational capacity – I don’t know how, it always seems subjective, I don’t know how they evaluate or who determines how sound an organization is, but we got a mid-level score and we don’t know why.”
- The struggles have been with consistency. You get into a lot of fine level details and it’s hard to know if those details are recommendations from the staff, requirements of the grant program, or it’s like ‘that would be nice to have this information.’”
- “We put in an application that was not funded. We still do not feel satisfied as to what criteria we didn’t meet to make this project. It’s not clear, even for the projects that were funded, how decisions are made. Whether we are funded or not, understanding why means that we can bring stronger projects. Absent that, we are left guessing, which wastes time.”

Up front due diligence. Without the confidence that a project will be approved on its ecological merits, land trusts are reluctant to spend a substantial amount of money on due diligence.

- “It’s hard to do lots of the due diligence up front because you’re out the money if you don’t get the grant to reimburse you. A standard yellow book appraisal costs \$10,000. On a forest project, it’s hard to get a restoration feasibility without having a forester out there. It’s part of the business: you need to put money up to go after the grants. If we want to go after something, we need to have some skin in the game, but we could be out \$20,000 pretty quick, between getting an appraisal, timber cruise, etc. If the project on its own ecological merits were good, they should approve that – and then do due diligence.”

OWEB staff capacity. In exchange for OWEB funding to buy a property in fee, land trusts must grant OWEB a conservation easement on the property, which OWEB is obligated to monitor in perpetuity. OWEB’s staffing structure may be inadequate to manage a “never-ending portfolio” of projects.

- “Seemed that the staff was a gatekeeper instead of a consultant.”
- “The early intake call usually goes well. But as the project develops, staff becomes less supportive. Certain staff seem overburdened by title issues and therefore discourage projects.”
- “Feels like it’s asking a person to have a skill set that is unrealistically broad” – from technical real estate transactions to depth of understanding of ecological functions and outcomes.

Communications. Some land trusts mentioned a desire for greater clarity, accuracy, and completeness of information from OWEB.

- “Initially, we were told that for funding in the Willamette Valley land trusts couldn’t apply to OWEB until they had secured WWMP funds. That’s not true. To prevent land trusts from being misinformed or dissuaded from applying, OWEB is working to clarify what policy actually is.”
- “In a recent meeting with OWEB it came out that OWEB has communications dollars for landowner outreach that land trusts can use. We thought only watershed councils could use that pot of funds, because it had been communicated to us [with that limitation], but

it turns out that we can apply for it. It's another example of how land trusts have incomplete information about what's available to be funded through OWEB."

Match requirement. Land trusts noted that there are very few sources for matching funds, and confusion about what's allowed and why.

- "OWEB put a lot of thought into the application but ideas on matching funds are limited. Having to bring in 25% of the land cost is a major problem for small communities."
- "For match, you have to get 25% of the purchase price, which is different from 25% of the appraised value, or the project cost. For some reason, landowner contributions are disallowed. If the landowner is willing to do a bargain sale and donate 25% of the value, why is that money less good than someone else donating 25% of the value?"

The remainder of this memo offers some of the insights that emerged in our conversations with other state agencies.

Other State Agencies that Fund Land Acquisition

State agencies that fund conservation acquisitions (fee title and easements) vary in their funding sources, program structure, and program requirements. We talked with program administrators from two agency funding programs, and with a respected land trust leader in another state, to understand how their programs operate. We asked those individuals for any advice they would provide to the director of COLT and to OWEB regarding the agency's land acquisition program.

State of Washington: Recreation and Conservation Office – Allison Greene

RCO funds fee acquisitions and easements, but in separate program areas: it has a farmland preservation program, a habitat account, and a riparian account. Each funding program area, with its pot of money, has a volunteer committee of statewide experts that scores and ranks projects. RCO staff has no say at the committee level and does not make a recommendation to the review committee at all. Staff will alert the sponsor of weaknesses in applications, but it is the land trust's decision to make changes or to apply, and the committee's purview to approve.

Staff is involved at the front end only. Staff reviews each project for eligibility to ensure it can move forward; staff tries to conduct a site visit to identify possible red flags. Staff's job is to help with the technical aspects – both for the applicant and for the review committee. In this way, staff's role is entirely separate from that of the people who judge the ecological merits of a project.

Most due diligence information is not required by RCO but is appreciated by the review committee to help assess overall cost. RCO requires a title report before closing, but not before an organization submits its application. There is much greater transparency in RCO's process: all of RCO's materials are available to the public.

RCO requires a third-party easement holder, and generally tries to monitor all its projects every five years. Staff juggles many different types of monitoring due to the nature of recreation work.

Colorado: Great Outdoors Colorado – Amanda Hill

Great Outdoors Colorado (GOCO) is a lottery-funded program, like OWEB. GOCO offers but does not require a preapplication consultation for many of its programs, and few organizations take advantage of this option. Its application review process – with all materials available to the public – uses a combination of weighted peer review and staff scoring. Staff makes a recommendation to a committee composed of a board subgroup, who then makes a recommendation to the full Board. Staff score and peer review group score are equally weighted. GOCO noted that there can be a significant difference between the peer score and the staff score, because the staff makes site visits while the peer reviewers do not. Any such differences are carefully addressed in the peer review and with the Board. In its application process, GOCO also provides multiple opportunities for revision and response.

GOCO's process requires very little up front due diligence expense for sponsors: GOCO requires a title commitment and letter of intent from landowner to ensure there is an actual project with a willing landowner. Other than that, the due diligence is completed after the grant award is made.

After closing, GOCO's role is very limited. GOCO has no enforcement capacity. For conservation easements, it requests notice for violations and notice and approval for amendments.

California: Northcoast Regional Land Trust – Michael Cipra

California has largely ceased to fund land acquisitions because of the cost per acre. Mike focused on the political side of the equation, and the time his organization has spent cultivating key relationships with agencies and policymakers. His main advice was to cultivate political "champions":

- "Embrace the fact that it's a politically influenced process. I would try to draft a champion or two on the decision-making body – someone who cares about the set of resources you are conserving with your acquisition, or who is from that area, or both, and try to work with them and the staff person. A champion or two – if someone speaks out strongly – means a lot. Peers respect each other, and if they carry the conversation when the doors close and you're not there, that will count a lot."

Options and Recommendations

Match: OWEB's match requirements are an area of confusion for COLT members, particularly concerning BPA mitigation funds. This is both an issue of greater transparency / clarity and potentially an area that OWEB might consider revisiting.

- *Recommendations:* Consider a donated match (e.g., bargain sale value). Provide clarity on the ability to use BPA funds in an OWEB-funded land acquisition. Eliminate or reduce the cash match (e.g., allow staff or other resources to be used).

Application Review Process: GOCO and RCO take a different approach from OWEB in reviewing applications. At GOCO, the peer review board (comparable to RCO's volunteer committee) and the staff each score an application, and the scores are equally weighted. At

RCO, staff has no say at the committee level; staff's area of responsibility lies in the relatively informal preapplication consultation process to address technical issues. This part of their process is entirely separate from the people who are judging the ecological merits of an application. Both GOCO's and RCO's processes provide greater distribution of power than OWEB's, which relies heavily on staff recommendation in considering whether to fund an application.

Recommendations:

- OWEB should revisit its existing process, and create greater separation between the technical issues of an application and the review of a project's ecological merits.
- A site visit should be required with every application to give OWEB staff a sense for the land and the proposed project.
- To the extent possible, OWEB should seek to minimize up-front due diligence costs before a project has had sufficient review for the land trust to have some level of confidence in the potential for funding approval.
- Applications should be allowed to roll over to the following year if OWEB is over-subscribed.
- A shorter grant cycle would facilitate the potential for acquisitions to be funded as opportunities arise.

Transparency: OWEB staff views the agency's grantmaking process as transparent at multiple levels – to project sponsors and the public alike – and indicated that their evaluation criteria “have become more transparent.” These views did not appear to be shared by COLT members. COLT members have expressed a desire for targeted, specific feedback from OWEB, and clarity on OWEB's selection criteria. By comparison, GOCO provides written comments on applicants at both levels of review, regardless of whether the application is recommended for approval nor whether it is approved; this provides further opportunities for applicants to respond and revise.

Recommendations:

- There is a need for clearly defined criteria and benchmarks from OWEB, particularly concerning OWEB's expectations for land trusts' organizational capacity.
- Land trusts should hear consistent messages from all staff.
- Whether applications are successful or unsuccessful, but particularly if they are unsuccessful, land trusts need clear and consistent feedback from OWEB as to why. This will help them strengthen future applications.

Supporting post-acquisition success: Once an acquisition is funded, the clock begins ticking for planning, funding, and completion of restoration work. OWEB should support the success of the acquisitions in which they have invested. This addresses the agency's interest in buying long term ecological values.

Recommendation:

- Prioritize restoration grants on properties where OWEB has invested in acquisition.

Program expectations: Land trusts report that OWEB is considerably more hands-on after the acquisition is complete than other agency funders are. The conservation easement is “more cumbersome,” the management plan “more detailed than any other agency we work with.” Land trusts want OWEB to strike a balance: “accept a reasonable amount of risk and give up a reasonable amount of control.”

Recommendations:

- Place more trust and confidence in the ability of professional land trusts to complete acquisitions and manage their land.
- Build greater flexibility into the program. For example, with BPA’s WWMP, there is a process for amending a project budget: a project sponsor submits a request, BPA reviews it, and if it’s within reasonable parameters, they approve it. OWEB could revise its guidelines to foster that kind of flexibility.
- Relating to the required OWEB easement, consider using a deed restriction instead, or following the State Parks model for local government.
- Grants requiring reimbursement if the ecological threshold is not met.

OWEB capacity: A critical takeaway from the input we received from Oregon land trusts is that the program and workload will continue to grow. On a practical level, because every acquisition that OWEB funds brings with it perpetual obligations to monitor, OWEB’s staff is constantly adding to its own plate. If the staff capacity is static, that presents a conundrum for the agency, and may pose a barrier to the agency’s (or its staff’s) interest in funding acquisitions – out of pure self-preservation.

Recommendation:

- OWEB should place more trust and investment in the implementing entities – the professional land trusts. Specifically, those that are accredited by the Land Trust Accreditation Commission should receive a greater level of confidence and possibly an expedited process.

Closing Thoughts

Land trusts want a true partnership with OWEB. Public statements from OWEB leaders affirm the agency’s sense of partnership. Yet, at the project level, particularly in land acquisitions,

- “OWEB treats land trusts and other grantees as agents, not partners. OWEB acts as though it is acquiring a property and that the grantee is simply implementing an acquisition on behalf of the state. This is obviously incorrect, both legally and in spirit. Yet at the same time, OWEB often burdens land trusts with high levels of risk, e.g., in spending money on project development prior to an OWEB approval. This often puts land trusts in a lose-lose position of being unable to act quickly and/or negotiate creatively with sellers, but also being forced to take financial risks they find unacceptable.”
- “It feels like OWEB isn’t working with us on this. We’re okay with having to jump through some hoops, but at the end of the day, we want it to be a partnership. We want to feel like we’re partners helping OWEB implement their objectives.”



OWEB/COLT Issue Resolution re Land Acquisitions Program Assessment Report March 9, 2021

Introduction

In OWEB's over 20 years of existence, the members of COLT have been OWEB's primary partner in the acquisition and protection of habitat across the State, receiving 77% of the total acquisition funding awarded by OWEB. COLT members have used these funds efficiently, generating 79% of the program's matching funds, and accounting for 90% of the acres protected under the program. In turn, since the inception of its acquisition program in 2000, OWEB funding has accounted for 33% of the acres acquired by COLT members (as of 2017).

Complexity pervades land acquisition projects. Recognizing that different approaches can be pursued toward the same conservation objective, OWEB and COLT are looking at how different approaches can be resolved in a meaningful way to lead to successful project completion, as well as lend to positive relationships between the partner entities.

OWEB enlisted Oregon Consensus¹ (OC) to conduct a neutral, third party assessment with a stated goal to help improve collective understanding of how the entities can work better together, starting with a clear understanding about how OWEB's investments can best meet both land trust priorities and the agency's funding requirements. OC is Oregon's statewide collaborative governance and public policy dispute resolution program housed at Portland State University in the Hatfield School of Government. 15 interviews were conducted between January and February 2021, and brief follow up zoom calls were conducted for each entity to hear a high level briefing of the findings. The following report summarizes the assessment findings and offers process suggestions for helping the entities address issues and lend support to collective understanding and positive partnerships moving forward.

What is working well?

All interviewees agree that OWEB and land trust missions are well aligned with regards to conservation goals. OWEB staff are viewed as 'strong partners', 'capacity builders', 'excellent technical resource', 'reasonable' and 'demanding but fair'. COLT land trusts are viewed as important partners in land conservation and, like SWCDs and Watershed Councils, strong community advocates for OWEB and its mission.

¹ <https://oregonconsensus.org/>

Several shifts in recent years in the way OWEB does business were identified as positive improvements, including:

- + Pre-application consultation process
- + Reimbursing up front feasibility/appraisal costs
- + OWEB team approach to process - different staff with specific expertise assigned to different phases, plus added capacity through contracting due diligence services
- + More flexibility around match requirements

What do the entities need from each other?

This assessment revealed that land trusts are seeking more flexibility (particularly in due diligence), transparency (particularly in ecological review), process streamlining, and predictability with regards to the grant process. They want OWEB to show more risk tolerance and willingness to fund projects that allow for different approaches to restoration and offer multiple benefits, and to maximize the use of the acquisitions tool to meet its own mandates. Relationally, they are looking to be in a collaborative partnership with OWEB in determining, together, acquisitions that are a good fit to meet shared missions. They want to feel that both entities are coming from a place of possibility - “getting to yes”- rather than obstacles - “reasons to say no”. They want to be recognized and trusted for their acquisitions expertise, as reputable conservation stewards, and as on the ground partners to OWEB.

OWEB wants land trusts to understand the high level of scrutiny required of the program to assure the public that their investments are going to the intended use and that there will be a long term benefit to native species. They want to be trusted as technical experts and fair administrators of grant funds. They want land trusts to understand the complexities of making determinations on recommendations to fund an acquisition. However, within that, OWEB also wants to find ways to be more flexible, approachable, and easy to work with. Ultimately, OWEB wants to work in positive partnership and collaboration with land trusts to meet shared missions, and make sound investments in acquisitions that meet the specific mandated purpose of protecting habitat for native fish and wildlife.

No land trust interviewed believes the constitutional mandate from Measure 76 is a barrier to success. More so than legal constraints, they perceive agency culture, and relational and procedural issues as primary challenges to successfully completing an acquisition through the program. The trusts need to better understand OWEB’s considerations for making recommendations for funding acquisitions, which includes clarity on all aspects - legal, policy, cultural- that guide OWEB decision making on acquisitions grants. Next, they need to engage with OWEB about whether there is room for more flexibility in funding projects to reduce the number of perceived missed opportunities the land trusts see on the ground when an application does not get funded or a project does not make it all the way to closing.

OWEB would like to understand what if anything they can do to foster a better experience for the land trusts in the acquisition process, and level-set an understanding with the COLT members about OWEB's role in the broader world of acquisitions.

Together, the entities need clarity and shared understanding on how they want to work together in partnership and how to make best use of the OWEB acquisitions grant program.

Process considerations and suggested next steps

To assist in bridging gaps in understanding, support joint problem solving, and invite opportunities to strengthen collaborative relationships between OWEB and COLT members, a series of facilitated discussions is recommended. Below is a proposed outline, which should be discussed and refined by all respective parties to initiate the next step.

2-3 Facilitated Zoom Sessions:

1) Information and perspectives exchange:

- OWEB staff interpretation of constitutional mandate reflected in statute and rule, particularly how acquisitions are considered distinct (or not) from other grant areas like restoration.
- Legal, policy guidance regarding funding conditions (including Oregon 'legal sufficiency' rule for public contracts OAR 137-045-0015)
- What is OWEB's big picture objective for the acquisitions program and how does that fit within the broader OWEB mission? How well do you think you are doing?
- What is the process OWEB uses, internally, to get to a recommendation to fund/do not fund? E.g. how does OWEB weigh applications to determine which projects get recommended for funding, if more applications meet the goals for long term restoration of habitat for native fish and wildlife than can be funded?
- What is DOJ's role in advising the agency on legal sufficiency and project soundness?
- Dialogue about risk and risk analysis, and how determinations are made about whether to move forward: What risk analysis is done on both sides to determine whether OWEB grant funds are a good fit for the project?
 - Using concrete examples, discuss OWEB and COLT perspectives on 'gray areas' of risk: clear path to restoration, cost-benefit, project complexity, novel legal issues, working lands, public access, and impacts from increased competition or staff 'do not fund' recommendations.
 - How do land trusts determine whether to apply for an OWEB grant? How are land trusts impacted when a 'do not fund' recommendation is given on an application?

- Where do COLT members want to see more 'risk tolerance' from OWEB?
Is that possible?

2) Process ideas and solutions brainstorm:

- OWEB Board role, guidance and involvement in acquisitions process: opportunities for a well informed board and areas where Board guidance would be helpful in creating certainty
- Issue resolution process, post-award to closing, when an impasse arises between land trust applicant and OWEB staff or DOJ legal advice
- Specific ways to build in more transparency in ecological review, and distinguish this from transaction feasibility review
- Opportunities to access different funding sources from OWEB to get to a successful acquisition - including technical assistance, stakeholder engagement, and restoration grants
- Explore flexibility or different approaches to fund more projects, or look at a clearer ranking of qualified projects.

Additional Assessment Findings

Issues raised that have the potential for further collaborative engagement between the entities, but might not require third party facilitation, include:

- Options to streamline application process
- Capacity support needs
- Best practices gleaned from other funders to help improve OWEB service

In addition, COLT members raised a number of technical questions which could be answered separate from a facilitated session. Specific questions are captured in the bulleted list below:

- Legal, policy requirements for: conservation easement on the property, OWEB as third party right of enforcement
- Clarify specific changes to match requirements and other recent rule changes that resulted in substantive shifts to program guidelines
- OWEB guidance on DEI lens for acquisition decisions
- Ecological review process structure and criteria
- In addition to the constitutional mandates specific to OWEB out of Measure 76, what state laws and rules guide legal sufficiency reviews of acquisition applications (i.e. OAR 137-045-001)?
- What does the legal team on land use and business transactions typically look for during your high level review up front? What about due diligence near closing? Those things that you look for with every agreement or transaction?

- What are some novel characteristics of a grant agreement that might raise a red flag for DOJ (e.g. layered conservation easement), requiring a need to slow down or pivot away from closing?

Conclusion

Both entities have expressed a desire and willingness to improve their partnership work around land acquisitions, through learning, dialogue, and joint problem solving. The expressed hope from COLT members is to transform the assessment and facilitated process into actionable shifts that create more certainty and ease for the land trusts. For OWEB, the hope is for a shared understanding of the appropriate role OWEB plays in the broader world of land acquisitions, and a better working relationship with COLT members. Through this process of direct, open exchanges with an eye toward clarity and healthy partnerships, the entities will make progress toward meeting these goals.