

December 26, 2006

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Lori Warner-Dickason, Policy Specialist

**SUBJECT: Agenda Item F: Deferred Acquisitions
January 24-25, 2007 OWEB Board Meeting**

I. Introduction

This staff report provides an update on four land acquisition grant applications and requests approval of one application, all of which were previously deferred by the Board.

II. Background

Land acquisition grant applications often require more time to fully evaluate and prepare a funding recommendation than is available in the regular 21-week grant cycle. At the time of writing this staff report, only two of the four land acquisition projects deferred at previous Board meetings will be ready for consideration at the January 2007 Board meeting. The description and current status of each project is briefly described below.

III. Status of Previously Deferred Acquisition Projects

A. Svensen Island (206-259)

The grant application was submitted on October 24, 2005, by the Columbia Land Trust and requests \$120,000 toward acquisition of 253 acres of diked island habitat within the Columbia River Estuary. This application was withdrawn by the applicant.

B. Pilcher Creek (206-339)

The Rocky Mountain Elk Foundation submitted an application on October 24, 2005 requesting \$250,000 toward purchase of a conservation easement on a 138-acre parcel on Pilcher Creek in the North Powder River Watershed. At the March 2006 Board meeting, the Board deferred consideration of this application pending review of due diligence materials. Due diligence materials have not been submitted.

C. Sandy River (207-072)

The Western Rivers Conservancy (WRC) submitted an application on April 24, 2006 requesting \$727,500 (\$970,000 total project cost) to purchase fee title on 30 acres along the Sandy River near Zigzag. The WRC proposes to purchase the property and hopes to transfer ownership to the City of Portland Water Bureau (Water Bureau) to manage the property.

1. Ecological Benefits

The application states that about 18 acres of the property include priority ecological systems, including riparian forest and shrublands, freshwater aquatic beds and freshwater wetlands. The parcel contains nearly one-half mile of Sandy River frontage. A black cottonwood-red alder/salmonberry rare plant community has been observed on the site. This reach of the Sandy River is a low-gradient, unconfined channel and had been designated as primary anchor habitat for winter steelhead and spring Chinook by the Sandy River Basin Partners. Priority species that are expected to benefit from protection and restoration of this site include coastal cutthroat trout, Coho salmon, steelhead trout, olive-sided flycatcher, willow flycatcher, Cope's giant salamander, red-legged frog and Townsend's big-eared bat. The application states that four of OWEB's seven conservation principles are addressed by the project. These include protecting a large intact area, securing a transition area protecting it from development, improving connectivity of habitat, and complementing an existing network of sites in the basin.

The Willamette Basin Regional Review Team (RRT) concluded that the property has unique attributes for a rural residential environment and provides valuable and rare habitat for winter steelhead and spring Chinook. The low gradient nature of this reach of the Sandy River provides off channel habitat and floodplain connection that will benefit a variety of species. They confirmed that the habitats on the site could support the extensive list of species cited in the application. The RRT thought the project meets three of the four conservation principles listed in the application, including securing a transition area protecting it from development, improving connectivity of habitat, and complementing an existing network of sites in the basin.

The Board Acquisition Subcommittee asked the RRT to address how future recreational use of the property may affect the ecological values of the parcel. The RRT noted that there is currently little evidence of recreational use, except for foot trails on the parcel. They recommend that the management plan include provisions to address future public access and a plan to monitor public use.

2. Capacity to Sustain the Ecological Benefits

The application states that fee title ownership of the property will be held by the Water Bureau. The Water Bureau has expressed a strong interest in accepting the management responsibilities for the property; however, at the time of this staff report, future fee title ownership has not been confirmed. In the event that OWEB funding is made available and the Water Bureau is not ready or does not want to take title, WRC will take fee title ownership. WRC owns and manages lands as an interim owner on a regular basis. Information on the capacity of the WRC to sustain the ecological benefits was not included in the application.

The application described the capacity of the Water Bureau to own and manage the property to sustain the ecological benefits. The Water Bureau owns and manages thousands of acres of forest and riverfront land in the nearby Bull Run River watershed. Management responsibilities will be shared by the Water Bureau, the Sandy River Basin Watershed Council (SRBWC) and the local neighborhood association. WRC plans to establish an endowment through foundation grants and individual donors.

3. Educational Benefits

The property will not be closed to the public, but there will be no signs or other methods to encourage public use. The SRBWC may use the site for demonstration purposes. The RRT evaluated the educational benefits of the project. They concluded that the site could serve as an excellent example of a variety of habitats and features that benefit fish and wildlife. Association with the SRBWC will provide many opportunities for watershed education.

4. Partners, Project Support and Community Effects

Partners for the project include the SRBWC, the neighborhood association, the Sandy River Basin Partners, and potentially the Water Bureau should they decide to take ownership. The Sandy River Basin Partners includes representatives from Portland General Electric (PGE), NOAA Fisheries, U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service (USFS), Oregon Department of Fish and Wildlife (ODFW), Metro, Multnomah County, Clackamas County, Northwest Steelheaders, Department of Environmental Quality (DEQ), and the Bureau of Land Management (BLM).

Letters of support were received from USFS, Oregon Trout, Mt. Hood National Forest, Water Environment Services, BLM, ODFW, Oregon Natural Resources Council, and the SRBWC.

The property is zoned RR (recreational resort). Taxes for 2005-2006 totaled \$1,541.36. WRC plans to exercise their tax exempt status and not pay taxes on the property.

5. Legal and Financial Terms

OWEB funds were requested for 75 percent of the purchase price of the property. The original application lists the Water Bureau and WRC as providing the 25 percent match. At the time of writing this staff report, it was confirmed that WRC would be providing the 25 percent match.

The Land Acquisition Subcommittee and OWEB's legal counsel questioned whether this project was part of the habitat conservation plan for the Water Bureau's incidental take permit, which is currently being developed. WRC confirmed that this project will not be used as a conservation measure in the habitat conservation plan and therefore will not be used to mitigate for any adverse effects of the Water Bureau's future operations.

The legal review of the title report and exceptions and the option agreement did not identify concerns or issues. The option to purchase the property expires on May 15, 2007.

OWEB will be the holder of a conservation easement to protect OWEB's investment in the property. The applicant has proposed OWEB's standard language for the easement, which prohibits future partition, construction or commercial activities in perpetuity. The applicant will develop a management plan to address restoration activities and public access.

An appraisal of the property was completed on November 25, 2005. The appraisal concluded a fair-market value of \$900,000. OWEB's independent review appraiser has concluded that the report complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and the market value is supported.

A Phase I Environmental Site Assessment (ESA) of the property was completed on May 10, 2006. Review by DEQ indicated that the report meets the American Society for Testing and Materials (ASTM) practice. DEQ agrees with the conclusion that the ESA has not revealed evidence of recognized environmental conditions as identified by the ASTM Practice.

6. Conclusion

The Willamette Basin RRT concluded that the project has high ecological and educational benefit and meets three of OWEB's conservation principles. The Board Acquisition Subcommittee and staff concur with this assessment. The uncertainty over future ownership surfaced late in the application process. Because WRC may hold title to the property for an unspecified length of time, staff and the subcommittee thought it would be appropriate to evaluate WRC's capacity to manage the property. Staff and the Board Acquisition Subcommittee recommend that the project be deferred for Board consideration pending receipt and review of additional information from the applicant.

D. Tenmile Creek Corridor Easement Project (206-058)

The McKenzie River Trust (MRT) requests \$810,112 from OWEB to assist in the purchase of conservation easements on 231 acres in the Tenmile Creek Watershed. Tenmile Creek drains directly to the Pacific Ocean in Lane County, roughly ten miles south of the community of Yachats.

The project includes five parcels along Tenmile Creek. Three of those parcels are proposed for OWEB funding and include the Radtke/Wedekind parcel (88 acres), Willer/Clement parcel (25 acres), and the Shotpouch Foundation parcel (120 acres). Conservation easements will also be purchased on 215 acres on two adjacent parcels using funds from other sources. The total cost of the project is \$1.9 million.

1. Ecological Benefits

Two priority habitats are involved in the Tenmile Creek Corridor Easement Project: Sitka spruce forest and lowland riparian woodland and shrubland. Some of the priority fish and wildlife species that would benefit include: Bald Eagle, Marbled Murrelet, Townsend's Big-Eared Bat, White-footed Vole, Chinook Salmon, Coho Salmon, Chum Salmon, Steelhead, Band-tailed Pigeon, Olive-sided Flycatcher, Willow Flycatcher and Red-legged Frog. The North Coast Regional Review Team (RRT) agreed that the priority habitats and species in the application were listed appropriately.

The U.S. Forest Service (USFS) has classified Tenmile Creek as a Tier 1 Key Watershed and its Watershed Analysis (Cummins/Tenmile) ranks it as having the highest production potential for salmonids of all the streams in the area because of the high quality habitat along the main riparian corridor. The project lies within the MidCoast Watersheds Council's area and complements the Council's restoration activities. The RRT agreed

that the proposed project complements the adjoining two wilderness areas and they recognized that the Tenmile Basin itself is extremely important.

The application identifies three of OWEB's Conservation Principles as applying to the project: (1) Protect a large, intact area; (5) Protect a site with exceptional biodiversity value and; (7) Complete or complement an existing network of sites in a basin or region. The North Coast RRT agreed that these three Conservation Principles applied to the proposed acquisition project.

The Board Acquisition Subcommittee asked the RRT to specifically address whether all the properties have the same ecological values and vulnerabilities and whether the described risk of logging on steep slopes applies only to the USFS Late Successional Reserve (LSR) lands or the properties described in the application. The RRT's response to those questions is more fully explained in the RRT Evaluation document, but, in general, the RRT concluded that the properties all share the same ecological values and vulnerabilities and that the steep slopes exist on all the properties as well as on the surrounding USFS lands. The valley is relatively narrow and the surrounding hills rise steeply immediately from the valley floor.

2. Capacity to Sustain the Ecological Benefits

The MRT will hold and maintain the conservation easements. The MRT has operated as a non-profit land conservation group since 1991 and has helped to protect over 2000 acres of property in Lane and Douglas Counties. The MRT has four full-time staff and, whenever it acquires a conservation easement, it secures funding for a dedicated stewardship endowment. The anticipated endowment for the easements proposed in the application is \$117,000.

The proposed project is described as an effort to permanently protect the majority of the remaining private land in a high priority watershed. Objectives for future management include control of invasive weeds, thinning of dense populations of hardwoods to accelerate late successional characteristics, restoration of floodplain habitat, creation of snag habitat, and recruitment of large wood. The management plan will be finalized after the easement is in place. In part because of the uncertainty over management goals and the draft nature of the attached easement, the North Coast RRT questioned the ability of the proposed easements to successfully protect and manage the ecological values of the properties. Since then, the easement has been reviewed and revised by legal counsel to clarify any ambiguities that may have existed in the draft.

3. Educational Benefits

MRT anticipates including the Tenmile Creek project in its ongoing efforts to educate supporters and the general public about its conservation activities. While public access has not been written into any of the draft conservation easements, possibilities for access have been discussed. One of the parcels, currently owned by the National Audubon Society, has been used for student and citizen education programs, and the applicants are hoping that additional funding can be secured to expand some of those components to the other parcels.

The Oregon Department of Fish and Wildlife continues to use Tenmile Creek as one of its salmon life-cycle monitoring stations and has been collecting data at this site for roughly 17 years. The North Coast RRT felt that the educational values of the project are good due to the ongoing nature of this effort.

4. Partners, Project Support and Community Effects

The application describes that the total property taxes paid to Lane County for all the properties, including those not proposed for OWEB funding, in 2004 was \$1,927.43. Since the properties will remain in private ownership and will continue to pay property taxes, there should be no impact on the local tax base.

The project is supported by the Lane County Commission; MidCoast Watersheds Council; Steven P. Smith, U.S. Fish and Wildlife Service; Native Fish Society; Steven Johnson, ODFW Research Biologist; Jane Lubchenco, Distinguished Professor of Zoology at Oregon State University; Dr. J. V. Ward, Professor Emeritus of Aquatic Ecology at Swiss Federal University; Matt Hunter, Oregon Important Bird Area Coordinator; Kim Nelson; Oregon State University; and the landowners.

A majority of the private landowners in the watershed are interested in protecting and preserving the existing conditions and functions of the Tenmile Creek watershed and have come together to work with the Trust on conservation easements. There have also been significant investments by the USFS in restoration and enhancement activities in the watershed, including large wood placement on 3.5 miles of the stream. The watershed contains significant acreage of public lands that are accessible for public recreation. The applicants feel that conservation of existing conditions will enhance the recreation values of the public lands.

5. Legal and Financial Terms

The conservation easements for the three properties were appraised at \$816,000. The property owner of the Willer/Clement parcel wants to reserve the right to construct a residence on a 2.3 acre portion of the parcel in the event it is ever allowed by Lane County. To account for this reserved right, the value of the easements was adjusted to \$810,112.

The applicant is requesting 100 percent of the purchase price of the easements for the three properties. MRT proposes using the appraised value of the easement on the other two parcels as match for the OWEB grant. OWEB funds are requested for 47 percent of the \$1.9 million appraised value of all five of the conservation easements. The applicants have secured funding from the U.S. Fish and Wildlife Service Landowner Incentive Program (LIP) and landowner bargain sales.

A legal review of the title reports, exceptions to the title reports and the option agreements has been conducted. These documents meet legal sufficiency pending removal of some of the exceptions in the preliminary title reports. OWEB would be listed as an additional insured in the title insurance.

MRT will hold the conservation easements on the three parcels, with OWEB having third party right of enforcement. The easements have been reviewed for legal sufficiency and

meet OWEB's requirements. Each of the easements have a provision for the development of a management plan to address future restoration activities, timber management for ecological functions and other activities that may influence the conservation values of the properties.

A Phase I Environmental Site Assessment (ESA) of the properties was conducted in June 2005 by OMNICON Environmental Management in Elmira. Review by the Oregon Department of Environmental Quality concurs with the ESA's findings of "no recognized environmental conditions" on the properties.

6. Conclusion

The Tenmile Creek Corridor Easement Project is viewed favorably by staff, the Board Acquisition Subcommittee, and North Coast Regional Review Team. The initial application included two parcels owned by the Pine Tree Conservation Society and National Audubon Society. Staff have worked with the MRT to revise the application to remove those two properties, which are no longer proposed for OWEB funding. At the September 2006 Board meeting, the application was deferred pending resolution of the valuation and conservation easement issues. Those issues have been resolved satisfactorily. Staff and the Board Acquisition Subcommittee believe this project is a good investment and recommends that the Board provides funding to purchase the conservation easements.

IV. Recommendation

Staff recommend the Board:

- A. Defer consideration of the Pilcher Creek project (Application No. 206-339) until the due diligence items are submitted and reviewed.
- B. Defer consideration of the Sandy River project (Application No. 207-072) pending receipt and review of additional information regarding the capacity of Western Rivers Conservancy to manage and sustain the ecological benefits of the property.
- C. Award \$810,112 in capital funds toward the purchase of conservation easements for the Tenmile Creek project (Application No. 206-058).