

JUL - 7 2014

TASSI O'NEIL
COUNTY CLERK

#4516

**Oregon Watershed Enhancement Board
LAND ACQUISITION GRANT AGREEMENT**

THIS AGREEMENT is made and entered into by and between the State of Oregon, acting by and through the Oregon Watershed Enhancement Board, hereinafter referred to as “**OWEB**” and Tillamook County, hereinafter referred to as “**Grantee**,” collectively referred to as “**the Parties**” herein.

RECITALS

WHEREAS, under ORS 541.932, OWEB may fund projects involving the purchase of interests in land from willing sellers for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife.

WHEREAS, Grantee has proposed an acquisition project for OWEB funding and qualifies under ORS 541.932 as an entity that can hold an interest in land purchased with OWEB grant funds.

WHEREAS, the acquisition project proposed by Grantee is a component part of a larger restoration project being completed by Grantee (“the Restoration Project”).

WHEREAS, OWEB previously funded Grantee’s purchase of approximately 377 acres (“the Previous Purchase”), which will be included in the Restoration Project.

WHEREAS, Grantee also owns two properties totaling approximately 13 acres, called Goodspeed Park and the Brown property (collectively “Goodspeed Park and Brown”), both of which will be included in the Restoration Project.

WHEREAS, the three properties being purchased under this Agreement (collectively “the Property”) are adjacent to the Previous Purchase, with the three properties more specifically identified as the Jones, Diamond F, and Sadri properties.

WHEREAS, Grantee must acquire other property interests in the vicinity of the Property in order for the Restoration Project to succeed, with these property interests referred to as “the Allen and Gienger Properties”. Grantee will acquire the Gienger property with funding from a source other than OWEB, and will acquire the Allen property by exchanging a portion of the to-be-acquired Jones property for the Allen property.

WHEREAS, the Property, the Previous Purchase, Goodspeed and Brown, and the Allen and Gienger Properties are collectively referred to as the “Restoration Properties” herein.

WHEREAS, the Restoration Properties are depicted and inventoried on Exhibits A-1 and A-2, respectively and hereto, with the inventory including the owner and property interests that must be acquired in order for the Restoration Project to succeed.

NOW, THEREFORE, OWEB and Grantee agree to the following:

AGREEMENT

1. **Effective Date and Term.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). Unless otherwise terminated or extended, the Agreement term (the "Term") shall be ten (10) years, or until such time that Grantee has fulfilled all obligations under this Agreement to the full satisfaction of OWEB, whichever occurs sooner.

2. **Project and Project Purpose.** Grantee intends to acquire or has acquired fee title to the Property. The purpose of the project (the "Project Purpose") is to protect or restore certain conservation values associated with the Property (the "Conservation Values"), with the Conservation Values more particularly described in Grantee's grant application which is attached as **Exhibit B** hereto. The project and Project Purpose are referred to as "the Project."

3. **Conditional Grant Approval.** The OWEB Board conditionally approved the granting of up to \$1,620,152.00 (the "Grant Funds") to Grantee for the purpose of completing the Project in accordance with the terms and conditions of this Agreement. The disbursement of Grant Funds under this Agreement will be made in accordance with Section 6 below and is subject to certain conditions being fulfilled by Grantee, with those conditions more specifically described in **Exhibit C** hereto (the "Conditions"). Notwithstanding anything to the contrary in Section 13(K) herein, ongoing obligations of the Grantee, if any, agreed to in Exhibit C hereto, shall survive the expiration of this Agreement.

4. **Project Schedule.** The Project will be completed in accordance with the Project schedule attached as **Exhibit D** hereto (the "Project Schedule"). The Project Schedule specifies when key actions under this Agreement are to be completed, including the deadline for purchasing the Property ("the Closing Date"), the deadline for completing the management plan required under Section 8 of this Agreement (the "Management Plan Completion Date"), and the deadline for submitting a project progress report (the "Project Progress Report"). The Project Progress Report will include a description of Grantee's progress in implementing the management plan required under this Agreement; and Property management successes, challenges, and lessons learned. The Project Progress Report will include a certification by Grantee that the Property is being used in a manner that is consistent with the Project Purpose.

5. **Approved Budget.** Subject to other terms and conditions of this Agreement, the authorized Project costs under the Agreement will be as provided in the OWEB-approved budget attached as Exhibit E hereto (the "Approved Budget"). Grantee hereby commits to contributing match in accordance with OAR 695-045-0175.

6. **Disbursements.** OWEB shall disburse funds in accordance with the Approved Budget and subject to the following:

- A. All disbursements provided for herein, except for reimbursement of Management Plan costs, if any, will occur through the closing process (the "Closing").
- B. Total OWEB disbursements will not exceed the total Grant Funds.

- C. OWEB’s contribution to the purchase price of the Property will not exceed the amount specified in the Approved Budget or seventy-five percent (75%) of the OWEB-approved appraised value of the Property, whichever is less.
- D. Purchase price savings, if any, may be applied to the non-purchase price items specified in the Approved Budget, provided, however, that total OWEB contributions to non-purchase price costs will not exceed one hundred and ten percent (110%) of the Approved Budget as to those costs.
- E. Grant Funds disbursement will not occur until the Executive Director of OWEB (the “Director”) has reconciled conditionally approved funding with actual costs of the Project, as required under OAR 695-045-0195.
- F. The award of Grant Funds may be rescinded if the Property is not purchased, or is purchased before Grantee satisfies the Conditions.
- G. Upon OWEB approval of the Management Plan described in Section 8 below, Grantee will submit one invoice for reimbursement of actual Management Plan costs incurred by Grantee. Grantee costs must be documented with receipts, time and effort records and other appropriate documentation to support the reimbursement request to the satisfaction of OWEB. OWEB’s reimbursement will be subject to limitations provided for in this Section.
- H. Grantee shall not be entitled to receive payment under this Agreement from any other part of Oregon state government other than OWEB, and nothing in this Agreement is to be construed as permitting any violation of Article IX, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations to the State of Oregon.
- I. All disbursements by OWEB are contingent on OWEB having received sufficient funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OWEB, in the exercise of its reasonable administrative discretion, to make the disbursement.
- J. All disbursements by OWEB are contingent on Grantee’s being in compliance with all terms of this Agreement, including without limitation that all representations and warranties set forth in Section 10 are true and correct on the date of disbursement with the same effect as though they are made on the date of disbursement.

7. **Title Restrictions.** Unless otherwise agreed in writing between OWEB and Grantee, the conveyed Property will affect a property area substantially the same as the Property depicted on Exhibit A. Grantee shall provide to OWEB the legal description of the Property as soon as it is available to Grantee. In accordance with ORS 541.960 the Property shall be made subject to title restrictions that are consistent with the Project Purpose and give the OWEB Board the authority to approve, approve with conditions or deny the sale or transfer of the Property by Grantee. OWEB, at its sole discretion, will determine the sufficiency of title restrictions to be placed on the Property in fulfillment of title restriction requirements under ORS 541.960.

8. **Management Plan.** Grantee will complete a management plan for the Restoration Properties (the “Management Plan”) in accordance with the timeframe provided in **Exhibit D**. The Management Plan will be subject to OWEB approval, which will not be unreasonably withheld. The Management Plan is to be completed in accordance with OWEB’s guidelines for management plans. The Management Plan will: (i) address all relevant issues related to the restoration, protection or enhancement of the Conservation Values of the Restoration Properties, including issues, if any, related to the reserved rights of the underlying Property owner in the case of a conservation easement acquisition; and (ii) specifically describe intended monitoring and evaluation activities, along with the intended one-time or recurring schedule for those activities.

9. **Closing.** Unless otherwise agreed in writing, Closing shall occur on or before the Closing Date. OWEB may wire Grant Funds to an escrow agent with instructions for use of the funds in closing the purchase and providing for reimbursement to Grantee of authorized costs of the Project. Alternatively, at the sole discretion of OWEB, OWEB may release Grant Funds to Grantee in the form of a check. OWEB reserves the right, at its sole discretion, to require an escrow closing, with the closing to be completed in accordance with OWEB-approved closing instructions.

10. **Representations and Warranties of Grantee.** Grantee represents and warrants to OWEB as follows:

- A. **Organization and Authority.** In accordance with ORS 541.932 Grantee is eligible to hold title to an interest in property purchased with OWEB funds and is duly organized and validly existing under the laws of the State of Oregon. Grantee has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee, (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's Articles of Incorporation or Bylaws, and (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected.
- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **Use of Project Property.** Grantee fully understands that the Restoration Properties shall be used in a manner that is consistent with this Agreement and Article XV, Section 4(b) of the Oregon Constitution.
- D. **Review of Law.** Grantee has reviewed and understands the provisions of law applicable to this Agreement, including but not limited to ORS 541.932, ORS 541.960 and OAR 695-045-0010 through 695-045-0215.
- E. **No Agreements.** No agreements exist between Grantee and the seller or sellers of the Property Interest, in writing or otherwise, which will result in Grantee retaining or receiving any portion of the Grant Funds that are intended to be applied to the purchase price of the Property Interest under this Agreement.
- F. The warranties set forth in this Section 10 are in addition to and not in lieu of, any other warranties set forth in this Agreement or implied by law.

11. **Records Maintenance and Access.**

- A. **Access to Records and Facilities.** OWEB, the Secretary of State of the State of Oregon ("Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the Grant Funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, OWEB, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of OWEB and the Secretary to perform site reviews of all services delivered as part of the Project, subject to

OWEB-approved access limitations, if any, provided in the warranty deed or conservation easement associated with this Project.

- B. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date. If there are unresolved audit questions at the end of the six (6) year period, Grantee shall retain the records until the questions are resolved.
- C. Expenditure Records. Expenditure records shall be created and maintained in accordance with generally accepted accounting principles and in sufficient detail to permit OWEB to reconcile conditionally approved funding with actual costs of the Project as required under OAR 695-045-0195.

12. **Default, Remedies and Termination.**

- A. Default. Grantee shall be in default under this Agreement upon occurrence of the following events:
 - i. Key Grantee actions are not completed in accordance with the Project Schedule, with key Grantee actions to include, but not be limited to, completion of Grantee due diligence reviews in accordance with the Project Schedule, the purchase of the Property on or before the Closing Date, OWEB approval of the Management Plan on or before the Management Plan Completion Date and OWEB approval of Grantee's Progress Report provided for in this Agreement.
 - ii. Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by OWEB is untrue in any material respect when made;
 - iii. Grantee is not in compliance with the title restrictions imposed in accordance with Section 7 of this Agreement; or
 - iv. Any other significant breach of the terms and conditions of this Agreement.
- B. Remedies upon Default. If Grantee's default is not cured within a reasonable term, as defined by OWEB, or such longer period as OWEB may authorize in its sole discretion, OWEB may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to: (i) termination of this Agreement; and (ii) restrictions on Grantee relative to amendments to other existing agreements between OWEB and Grantee, and to new agreements between OWEB and Grantee.
- C. Termination.
 - i. OWEB may immediately terminate this Agreement by written notice to Grantee (a) upon Grantee's failure to remedy a default under this Agreement or (b) if OWEB does not obtain sufficient funding and expenditure authorizations to allow OWEB to meet its payment obligations under this Agreement.
 - ii. OWEB and Grantee may mutually agree to terminate this Agreement in writing.
 - iii. In the event of termination prior to the Closing, OWEB will have no further obligations or liabilities under this Agreement, including that it will not reimburse any Project costs incurred by Grantee. In the event of termination after Closing, OWEB may, at its sole discretion, elect not to reimburse Grantee for management planning costs incurred prior to the termination date.

13. **General Provisions.**

- A. ***Indemnification.*** *To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall indemnify, defend (subject to ORS Chapter 180), and hold harmless the State of Oregon and OWEB and their officers, employees, and agents from all claims, suits, actions, loses, damages, liabilities, costs and expenses of any nature, resulting from, arising out of or relating to the activities of the Grantee or Grantee's officers, employees, sub-contractors, or agents under this Agreement. Grantee's indemnification shall extend to any and all claims arising out of or relating to Grantees agreements with owners of the properties associated with this Agreement, including, but not limited to, losses or liabilities directly or indirectly related to a final decision by OWEB not to contribute funds to the purchase of the Property, or directly or indirectly related delays, if any, making a final decision to contribute funds to the purchase of the Property.*
- B. **Publicity.** Grantee shall make every effort to acknowledge and publicize OWEB's participation and assistance with the Project. Consistent with this requirement, Grantee shall provide notice on any technical, educational, or informational material pertaining to the Project that funding was provided by OWEB.
- C. **Amendments.** This Agreement may be amended or extended by the mutual agreement of the Parties. Any amendment or extension must be in writing, signed by the Parties.
- D. **Participation in Similar Activities.** This Agreement in no way restricts Grantee or OWEB from participating in similar activities with other public or private agencies, organizations, or individuals.
- E. **No Third Party Beneficiaries.** OWEB and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person, such as an underlying landowner, is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
- F. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or OWEB to the applicable Principal Contact at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of Grantee, or on the next business day, if transmission was outside normal business hours of Grantee. Any communication or notice given by personal delivery shall be effective when actually delivered.

OWEB:

Miriam Hulst, Acquisitions Specialist
Oregon Watershed Enhancement Board

Re: Grant No. 214-9903
775 Summer Street NE, Suite 360
Salem, OR 97301-1290
Phone: 503-986-0026
Email: Miriam.Hulst@state.or.us

Grantee:

Paul Levesque, Chief of Staff
Tillamook County
201 Laurel Avenue
Tillamook, OR 97141
Phone: 503-842-1809
Email: plevesqu@co.tillamook.or.us

- G. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between OWEB (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- H. Compliance with Law. Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (i) all regulations and administrative rules established pursuant to the foregoing laws, and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Grantee shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, alienage or citizenship. All employers, including Grantee, that employ subject workers who provide

services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

- I. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- J. Assignment of Agreement, Successors in Interest. Grantee shall not assign or transfer any interest in this Agreement without the prior written approval of OWEB.
- K. Survival. All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 10 (Representations and Warranties), 11 (Records Maintenance and Access), 13A (Indemnification), 13E (No Third Party Beneficiaries), 13K (Survival), 13L (Integration and Waiver), and 13M (Exhibits).
- L. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Grantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- M. Exhibits. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement by reference:
 - Exhibit A-1: **Property Map**
 - Exhibit A-2: **Property Inventory**
 - Exhibit B: **Grant Application**
 - Exhibit C: **Required Conditions**
 - Exhibit D: **Project Schedule**
 - Exhibit E: **Budget**
 - Exhibit F: **Oregon Prevailing Wage Law Requirement**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: This Agreement minus all exhibits, Exhibit C; Exhibit E; Exhibit D; Exhibit B; and Exhibit A.

Southern Flow – Landowner Preferred Alternative
214-9903
Tillamook County

IN WITNESS THEREOF: the Parties hereto have caused this agreement to be properly executed by their authorized representatives as of the day and year hereinafter written.

Grantee:

**State of Oregon, acting by and through its
Oregon Watershed Enhancement Board:**

By: Bill Baertlein
Name: Bill Baertlein
Title: Chair, Tillamook County
Board of Commissioners

By: _____
Executive Director

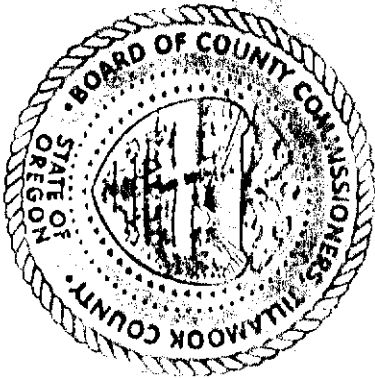
June 25, 2014
Date

Date

Approved for legal sufficiency
Oregon Department of Justice

By: Diane Lloyd

Date: June 13, 2014

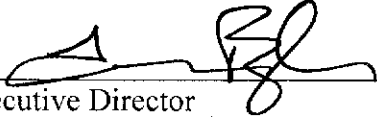


IN WITNESS THEREOF: the Parties hereto have caused this agreement to be properly executed by their authorized representatives as of the day and year hereinafter written.

Grantee:

**State of Oregon, acting by and through its
Oregon Watershed Enhancement Board:**

By: _____
Name: _____
Title: _____

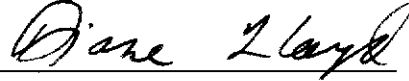
By:  _____
Executive Director

Date

6/25/14

Date

**Approved for legal sufficiency
Oregon Department of Justice**

By:  _____

Date: June 13, 2014

EXHIBIT A-1
PROPERTY MAP

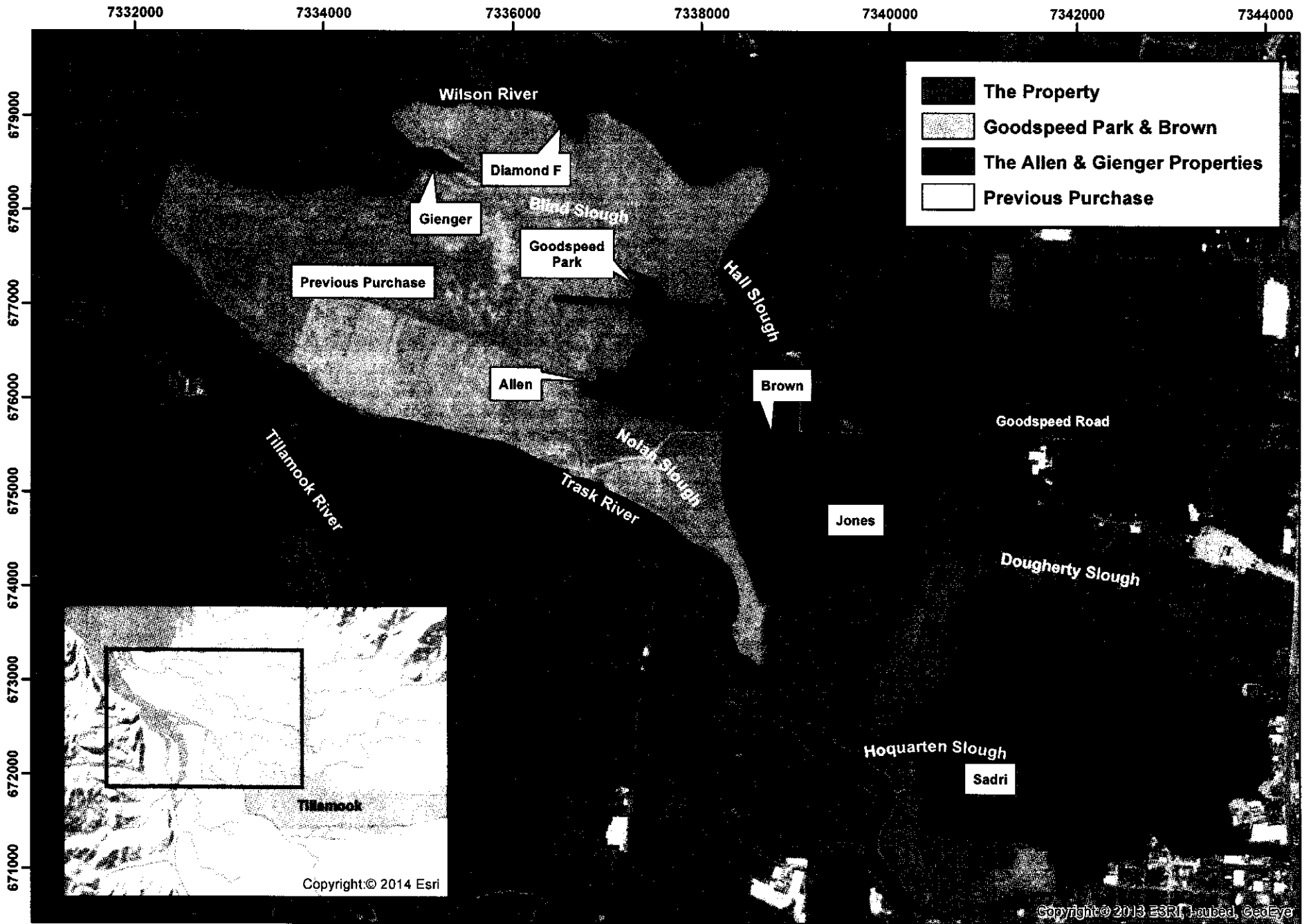
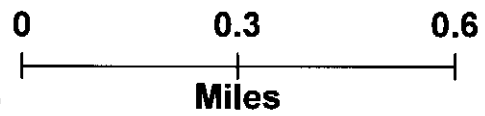


Exhibit A-1 Restoration Properties



This product is for informational purposes, and may not be suitable for legal, engineering or surveying purposes. This information or data is provided with the understanding that conclusions drawn from such information are the responsibility of the user.
 Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Int
 Created 5/5/14 with ArcGIS 10.2.2 by T. Wirth



EXHIBIT A-2

PROPERTY INVENTORY

Property Name	Township/Section/Range	Approximate Acreage	Comments
Jones	Tax Lot 1500 in Section 23 and the southern portion of Tax Lot 600 in Section 24 of Township 1 South, Range 10 West	53.61	Grant Funds will be applied only to the portion of the property located south of Goodspeed Road; the nonrestoration portion of property on Tax Lot 600 and 500 is approx. 21.23 acres
Diamond F	Tax Lot 401 in Section 14 of Township 1 South Range 10 West	1.48	Together with a 35' wide access easement that connects to Goodspeed Road
Sadri	Tax Lot 200 in Section 25 of Township 1 South Range 10 West	64.70	Acreage is the updated calculation from the County GIS office
Allen	Western portion of Tax Lot 700 in Section 23 of Township 1 South Range 10 West	3.73	Property is adjacent to the Previous Purchase mentioned below and will be acquired from the landowner through an equal area exchange with a portion of the non-restoration section (TL 500) of the Jones property mentioned above.
Gienger	Tax Lot 100 in Section 14 of Township 1 South Range 10 West	1.58	County to acquire this parcel using its own funds
Goodspeed Park	Tax Lot 300 in Section 23 of Township 1 South Range 10 West	0.8	County-owned
Brown	Tax Lot 1400 in Section 23 of Township 1 South Range 10 West	12.14	County-owned
Previous Purchase	Tax Lots 800, 801, 900, and 1400 in Section 23 and Tax Lots 100 and 200 in Section 22 of Township 1 South, Range 10 West	377.0	County-owned

EXHIBIT B
GRANT APPLICATION

EXHIBIT C

REQUIRED CONDITIONS

In addition to other requirements specifically provided for in the Agreement, the disbursement of the Grant Funds is further conditioned on:

1. **Standard Conditions.** Unless otherwise agreed by the Director, Grant Funds will not be disbursed under this Agreement until the following standard conditions have been fulfilled to the full satisfaction of the Director.
 - A. Grantee imposes title restrictions on the Property consistent with OWEB's standard form conservation easement, as it may be revised from time to time.
 - B. The Director approves of the legal and financial terms of the acquisition, including, but not limited to:
 - i. The acquisition agreement (e.g., option, purchase and sale agreement, etc.) and the agreement to transfer the Property to another party, if planned;
 - ii. The purchase price for the Property, which shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required, the Uniform Appraisal Standards for Federal Land Acquisitions;
 - iii. The Phase 1 Environmental Site Assessment, as well as additional investigative reports and action plans resulting from the Phase 1 Assessment;
 - iv. The Property survey, if required;
 - v. The baseline inventory completed for the Property;
 - vi. The water rights, if applicable;
 - vii. The access rights to the Property;
 - viii. The planning and zoning circumstances associated with the Property, as evidenced by the OWEB Land Use Information Form submitted with the grant application, as well as other information obtained during the OWEB due diligence review process;
 - ix. The legal description of the Property;
 - x. The warranty deed for a fee transaction, or easement for a conservation easement acquisition;
 - xi. The condition of title and the title insurance policy, including specific exceptions to the policy;
 - xii. The matching contribution;
 - xiii. Grantee's demonstrated compliance with applicable federal and state laws regarding relocation of displaced persons, including but not limited to requirements contained in ORS 35.510, as may be revised from time to time; and
 - xiv. Other conditions that the Director deems reasonably necessary as a result of OWEB due diligence review efforts after the Agreement has been signed by the Parties.

2. **Project Specific Conditions.** In addition to the above, Grant Funds will not be disbursed under this Agreement until the following conditions have been fulfilled by Grantee to the full satisfaction of the Director, and all property interests identified in Exhibit A-2 have been acquired by Grantee:
- A. Grantee has secured, and provided OWEB with copies of all options, option extensions, purchase and sale agreements or exchange agreements for the Allen, Diamond F, Gienger, Jones and Sadri properties in accordance with the Schedule provided in Exhibit D of this Agreement, all which: (i) sufficiently address the specific circumstances of the Project; and (ii) will result in an acquisition outcome acceptable to OWEB.
 - B. The Record of Decision is issued for the environmental impact statement being completed by FEMA.
 - C. Grantee satisfies all Standard Conditions above, except 1(B)(ii) and 1(B)(xii), as to the Allen and Gienger Properties.
 - D. Grantee agrees to grant OWEB an OWEB-approved conservation easement over the Property, the Previous Purchase, and the Allen and Gienger properties.
 - E. Grantee resolves, to the Director's satisfaction, title issues pertaining to:
 - i. Exceptions 10, 11, 12, and 14 of the preliminary title report for the Diamond F property, dated January 7, 2014;
 - ii. Exceptions 13, 14 15, and 16 of the preliminary title report for the Jones property, dated December 30, 2013;
 - iii. Exceptions 12 and 13 of the preliminary title report for the Sadri property, dated January 7, 2014;
 - iv. Exceptions 8, 9, 13, and 14, and Note F of the preliminary title report for the Gienger property, dated October 3, 2013; and
 - v. Exceptions 8, 15 and 16 of the preliminary title report for the Allen property, dated September 12, 2013;
 - vi. The 60 and 30-foot wide easements provided for in the Sadri vesting deed legal description; and
 - vii. The 35-foot wide easement provided for in the Diamond F vesting deed legal description.
 - F. Grantee's appraiser takes into consideration valuation impacts, if any, to the Jones property caused by Exception 13 of the preliminary title report for the Jones property, dated December 30, 2013.
 - G. Grantee's appraiser takes into consideration valuation impacts, if any, resulting from findings and decisions of the Department of Environmental Quality relative to the environmental condition of the Sadri property.
 - H. Grantee obtains a survey of all of the Restoration Property's boundary lines that abut private ownerships.
 - I. Grantee shares due diligence information with OWEB in a timely manner and does not accept title to the Diamond F, Jones, Sadri, Allen or Gienger properties without OWEB's prior written approval of the seller's warranty deed to Grantee.
 - J. Grantee signs a cooperative agreement, acceptable to OWEB, with one or more of its Restoration Project partners regarding the parties' roles and responsibilities for long-term stewardship of the Restoration Property.
 - K. Grantee demonstrates that the restoration as contemplated by the Project partners will not be hindered by any environmental remediation required for the Sadri property.

- L. Grantee agrees to ensure that the Restoration Property is restored to full tidal inundation by December 31, 2016.
- M. Grantee agrees that the use of revenue, if any, generated from the Property will be restricted to restoration or management of the Restoration Property, with priority placed on restoration and stewardship of tidal wetlands. Grantee further agrees that revenue-generating use authorizations on the Restoration Property, if any, will be terminated in a timeframe necessary for Grantee to accomplish the restoration specified in 2(L) above.
- N. Grantee agrees to decommission all infrastructure, including but not limited to the Jones well and manure tanks and the Diamond F septic tank, in accordance with all applicable laws, regulations, and ordinances.
- O. Grantee agrees that the management plan required by OWEB's standard form conservation easement will include: (i) an assessment, by an independent subject matter expert, of natural revegetation five years after completion of the construction portion of the restoration; (ii) active revegetation of any area of the Restoration Property the vegetation assessment determines is not regenerating robust native vegetation; (iii) invasive species control measures; and (iv) and all other management actions necessary to enhance and protect the Restoration Property's Conservation Values.
- P. Grantee acknowledges that if restoration designs determine that it is necessary to acquire any other property interest in order to accomplish the OWEB-required restoration of the Restoration Property, OWEB may apply any of the above funding conditions or other funding conditions to the property interests as determined by the Director to be necessary to ensure the soundness of OWEB's investment.

EXHIBIT D
PROJECT SCHEDULE

KEY GRANTEE ACTIONS	SCHEDULED COMPLETION DATE	Comments
Appraisals	<u>Diamond F:</u> 7/31/2014 <u>Jones:</u> 6/30/2014 <u>Sadri:</u> 1/31/2015 <u>Allen:</u> not required <u>Gienger:</u> not required	
Original acquisition or exchange agreements	<u>Diamond F:</u> submitted <u>Jones:</u> submitted <u>Sadri:</u> submitted <u>Allen:</u> 9/30/2014 <u>Gienger:</u> 9/30/2014	
Acquisition or exchange agreement extensions	<u>Diamond F:</u> 2/10/2015 <u>Jones:</u> 12/4/2015 (if needed) <u>Sadri:</u> 12/26/2014 <u>Allen:</u> TBD <u>Gienger:</u> TBD	
Acquisition or exchange agreement payments	<u>Diamond F:</u> 8/10/2014 <u>Sadri:</u> by 6/26/2014 <u>Jones:</u> No further payments <u>Allen:</u> TBD <u>Gienger:</u> TBD	
EIS Record of Decision issued	9/30/2015	Grantee to track progress so as to avoid complications resulting from ROD delay. ROD required in order to proceed with purchases.
Due Diligence Actions		
<ul style="list-style-type: none"> Title reports and write-ups 	<u>Diamond F:</u> 6/30/2014 <u>Sadri:</u> submitted <u>Jones:</u> submitted <u>Allen:</u> 12/31/2014 <u>Gienger:</u> 12/31/2014	
<ul style="list-style-type: none"> Title exceptions follow-up 	<u>All:</u> 5/1/2015	Some exceptions (e.g., deeds of trust) can be fully addressed only at closing.

<ul style="list-style-type: none"> Environmental site assessments and follow-up 	<u>Diamond F</u> : submitted <u>Sadri</u> : submitted (phases 1 & 2) <u>Sadri remediation plan</u> : 5/1/2015 <u>Jones</u> : submitted <u>Allen</u> : 6/30/2015 <u>Gienger</u> : 6/30/2015	OWEB has approved Diamond F, Sadri, and Jones ESAs. Grantee will update Jones ESA prior to closing.
<ul style="list-style-type: none"> Surveys, and resolution of any boundary encroachments 	<u>Diamond F</u> : not required <u>Sadri</u> : TBD, if necessary <u>Jones</u> : 9/30/14 <u>Allen</u> : 7/31/15 <u>Gienger</u> : not required	Surveys are required for Property boundaries that abut private property, and for the property line adjustment necessary for the Allen exchange.
<ul style="list-style-type: none"> Access 	<u>Diamond F</u> : 5/31/2014 <u>Sadri</u> : addressed in title write-up <u>Jones</u> : 5/31/2014 <u>Allen</u> : 6/30/2014 <u>Gienger</u> : 6/30/2014	To be addressed in title write-ups
<ul style="list-style-type: none"> Warranty deeds 	<u>All</u> : 6/30/2015	
<ul style="list-style-type: none"> OWEB Land Use Forms 	<u>All</u> : submitted	
Cooperative agreement for long-term stewardship	<u>All</u> : 10/31/2015	
Conservation easement template review	9/30/2014	Will cover Restoration Properties
Baseline inventory report	9/15/2015	Will cover Restoration Properties, and reflect conditions at closing
Expenditure and match documentation	11/1/2015	
Closing	12/31/2015	
Sadri remediation, if any	TBD	
Remove infrastructure	TBD	
Complete restoration to full tidal inundation	12/31/2016	
Management Plan	12/31/2017	

Project Progress Report	12/31/2022	
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EXHIBIT E

BUDGET

Budget Category	Amount
OWEB Funds	
Salaries, Wages and Fringe Benefits	\$0.00
Contracted Services	\$158,852.00
Travel	\$0.00
Supplies/Materials	\$2,800.00
Other	\$1,458,500.00
Categories Subtotal	\$1,620,152.00
Grant Total	\$1,620,152.00

EXHIBIT F
OREGON PREVAILING WAGE RATE LAW

Grantee may be required to comply with Oregon’s prevailing wage rate law. ORS 279C.800-279C.870. This law requires that entities using public funds for public works must pay not less than the prevailing rate of wage for an hour’s work, including fringe benefits, in the same trade in the locality where the work is performed. Contracts not exceeding \$50,000 are exempt from prevailing wage rate laws and nonprofit organizations are exempt for work other than construction. Public works is defined as including “roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest . . .” ORS 279C.800(6)(a). Construction is defined as “the initial construction of buildings and other structures, or additions thereto, and of highways and roads.” OAR 839-025-0004(5)

Failure to comply with prevailing wage rate laws could result in Grantee being liable to the workers affected in the amount of their unpaid minimum wages, including all fringe benefits, and in an additional amount equal to unpaid wages as liquidated damages.

Information regarding prevailing wage rate law can be found on the Bureau of Labor and Industries website at http://www.oregon.gov/BOLI/WHD/PWR/Pages/W_PWR_Pwrbk.aspx.