



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Simpson, Helgeson, Manning, Mital, and Brown  
FROM: Karl Morgenstern, Property Management & Facilities Supervisor  
DATE: August 25, 2016  
SUBJECT: The Nature Conservancy Confluence Property Status  
OBJECTIVE: For Information Only

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## **Issue**

The Board has requested an update on The Nature Conservancy (TNC) and their future plans at the confluence property upstream of EWEB's planned future Alternate Water Source intake site.

## **Background**

EWEB has acquired land on the Willamette River below the confluence of the Middle Fork and Coast Fork Willamette Rivers for an intake for an Alternate Water Source (AWS). Upstream of the intake site there are multiple ownerships with The Nature Conservancy (TNC), Friends of Buford Park, Oregon State Parks, and Willamalane Parks that provide watershed protection of this area. TNC plans to divest from this ownership following completion of the restoration work currently underway. This provides opportunity for EWEB to be more engaged in who and how this property is managed in the future.

## **Discussion**

The original planning for the TNC Confluence Preserve (since purchasing the property in 2010) was to divest of the Preserve after TNC completed the restoration work. TNC anticipated taking 10-15 years to complete all the floodplain and upland restoration at the site putting divestment somewhere in the 2020-2025 timeframe. TNC has had excellent partner and funding support to date for the restoration work and are on track to complete all restoration by 2021. TNC will continue monitoring the restored areas beyond the 2021 date to satisfy commitments to various funders, but do not see this activity restricting handoff of the property to a new owner. The property will remain closed to the public for general access through the completion of floodplain restoration activities.

There are currently no long-term stewardship funds set aside in an escrow-like account that a future owner could access. TNC is currently using approximately \$2.5 million in Bonneville Power Authority (BPA) settlement funds to fund most stewardship activities. TNC is using many other sources of funding (totaling approximately \$5.5 million) to support the various restoration actions, including: NOAA Restoration Center Salmon Recovery Funds, Meyer Memorial Trust, Wildlife Conservation Society, Collins Foundation, Portland General Electric, and Oregon Watershed Enhancement Board (OWEB) Focused Investment Program funds.

The TNC Confluence Preserve is secured for long-term water quality and riparian protection under two highly restrictive conservation easements (one held by BPA and the other held by OWEB).

TNC entered into a conservation easement on October 29, 2010 with BPA and OWEB as part of the legal transactions associated with the property acquisition. The conservation easement was deeded by TNC to BPA in perpetuity, for the purpose of protecting the Conservation Values associated with the site. The Conservation Values are defined in the conservation easement and summarized below.

The Conservation Values of the Protected Property, comprising of approximately 1,271 acres, meet the broad definitions of values provided by certain statutes, because they are “significant natural, aesthetic, scientific and educational” values that are part of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem” as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code; and “natural, scenic, or open space” values, as those terms are used in Oregon Revised Statute § 271.715; and include important species, habitat, and other important ecosystem attributes protected under the ESA, NMFS’ Willamette Biological Opinion, the Council’s Program, and the Oregon Conservation Strategy. The Conservation Values of the Protected Property that either existed or currently exist specifically include the following, recognizing that such Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change:

The property consists of six miles of river frontage at the confluence of the Middle and Coast Forks of the Willamette River, three miles of riparian corridors and interior streams, and more than 500 acres of native Willamette Valley upland prairie and oak habitats. The Property supports native priority ecological systems and at-risk plant communities, such as riparian forests and shrublands, western Oregon upland prairie and oak savanna, oak woodland, freshwater aquatic beds, freshwater emergent marsh, and western Oregon wet prairie. The Property also supports habitat for several native and federally-listed species such as Chinook salmon and steelhead, and Oregon chub, as well as habitat for state-listed species of concern such as the northern red-legged frog, Townsend’s big-eared bat, and Oregon vesper sparrow. The Fish and Wildlife Service has also identified the Property as critical habitat for bull trout. The Property provides opportunity to improve riparian forest habitats and floodplain function by re-connecting side channels between the Coast and Middle Forks of the Willamette River. Floodplain restoration of the Property would improve back water habitat for anadromous fish, water quality, and reduce downstream flood impacts.

Permitted and prohibited uses in the conservation easement that have relevance for short- and long-term management actions are summarized below.

*Permitted Uses:* The Conservancy:

- Shall preserve and protect the Conservation Values of the property in perpetuity;
- Shall develop a Property Management Plan that may include plans for restoring the property, will not impair any of the conservation purposes, and will fully protect the Conservation Values in perpetuity;
- May use the property for recreational and educational uses that do not impair the Conservation Values;
- May sell, exchange, or otherwise convey its interest in the property, pursuant to easement stipulations; and

- May limit public use as needed to protect the Conservation Values, to protect public safety, and to be consistent with the scope and scale of planned management of the property.

*Prohibited Uses:* The following uses are strictly prohibited on the property except as permitted upon approval of the Management Plan:

- All residential, commercial, or industrial uses of the property;
- Division, partition, subdivision, or *de facto* subdivision;
- Erecting any building, billboard, or sign;
- Excavating, dredging, or removing loam, gravel, soil, rock, minerals, sand, hydrocarbons or other materials;
- Otherwise altering the general topography of the property, including the building of roads, ditches, dikes, levees, berms, and flood control work, except for that work tied to restoration or habitat improvement projects; and
- Any other use that has a material negative impact on fish or wildlife habitat.

*Exceptions:* Several exceptions terms are enumerated in the easement. Relevant exceptions include:

- Right of the State of Oregon to the river bed below the ordinary high water mark for both the Middle Fork and Coast Fork of the Willamette River;
- Right of way to transmission lines, pipelines, and associated access roads for BPA and several other utility companies;
- Reciprocal road use between TNC and Lane County.

EWEB has made initial contact with TNC and other partners to begin conversations around what future ownership and other needs are for long-term stewardship of this area that is directly upstream of the AWS intake. At this time, EWEB plans continued engagement with TNC, McKenzie River Trust, Willamalane Parks, Oregon State Parks, Lane County and others to select the best steward for the site following TNC's divestment. This will be an ongoing discussion and analysis over the next 3-4 years to determine the appropriate organization(s) to take over management of the Preserve once TNC is no longer the landowner. For any transition/transfer to take place, each Board from TNC, OWEB, BPA and ODF&W must sign off on the chosen landowner based on their current and future capacity and past experience with conservation land management.

In recent discussions with TNC around potential opportunities for EWEB involvement, there appears to be a funding deficit for supporting riparian planting along the Middle Fork Willamette in 2018 and 2019. This aligns with the potential opportunity to use Pure Water Partner (PWP) restoration funding from existing partners for this work as EWEB expands source protection efforts upstream of the AWS intake.

### **Recommendation**

This is for information only.

### **Requested Board Action**

No action is requested at this time.