

metro 923680

Project No.: 201-180
Smith & Bybee Lakes Restoration
Ducks Unlimited, Inc.

OREGON WATERSHED ENHANCEMENT BOARD
WATERSHED IMPROVEMENT GRANT AGREEMENT

This grant agreement is between the Oregon Watershed Enhancement Board, hereafter called "Board," Metro, hereafter called "Landowner", and Ducks Unlimited, Inc., hereafter called "Grantee," in consideration of the mutual covenants contained herein. This agreement consists of the following, in descending order of precedence: this agreement less all exhibits; attached exhibits A, B, C, D, E, F, and G; and H. All are incorporated here by reference.

A. Authorization

This grant is authorized by ORS 541.351 to 541.401 and is subject to Oregon Administrative Rules 695-01-000 to 695-30-030 as such rules may periodically be amended by the Board.

B. Grant Award

The Grantee agrees to perform the work described in the grant application, approved by the Board and attached as Exhibit H, for the **Smith and Bybee Lakes Restoration Project**. In return, the Board agrees to provide up to a total of **\$180,000.00** according to the *Schedule For Release of Funds*, attached as Exhibit A.

The Grantee agrees that funds provided by the Board shall only be used for the purposes specified in the grant application or as detailed in Exhibit A.

C. Funding Conditions

The Board certifies that at the time this agreement is written sufficient funds are authorized for expenditure within the Board's current appropriation or limitation. Should a reduction in Oregon State Lottery revenues result in reduced funding to OWEB, this grant may also be reduced in accordance with Oregon Law. If grant funds are not disbursed prior to June 30, 2003, funding is contingent upon legislative approval of the Board's 2003-2005 biennial expenditure limitation.

It is mutually agreed that if sufficient funds are not appropriated for the project, this Grant shall be amended to reflect such reduction in funds including the work to be undertaken using available funds. Such amendment shall be mutually agreed to by all parties. In addition, any party to the agreement may upon thirty- (30) day's prior written notice to the other parties terminate this agreement if funding is reduced. Grantee shall not incur any new obligations under the agreement after the effective date of termination, and shall cancel as many outstanding obligations as possible. The Board shall reimburse Grantee for all project costs incurred prior to the date of termination and any non-cancelable project costs incurred by Grantee.

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As a condition for the disbursement of any Board funds, the Grantee agrees:

- (1) To provide a sign on the project site (if applicable) and notice on any technical, educational or informational material produced through this project that funding was provided by the Board.
- (2) To provide draft and final copies of any technical, educational or informational materials produced through the project for review by the Board's Program Manager prior to publication.
- (3) To submit written evidence that all applicable permits and licenses from local, state or federal agencies or governing bodies have been obtained or are not needed (see Exhibit B, *Permits and Licenses*).
- (4) To provide compliance monitoring of the project as described in Exhibit D.
- (5) To provide copies of landowner maintenance agreement (see Exhibit B).
- (6) To complete an Oregon Plan Watershed Restoration Project Reporting form (to be provided by the Board) Exhibit G.
- (7) To comply with the **Oregon Aquatic Habitat Restoration Guideline under the Oregon Plan for Salmon and Watersheds**.
- (8) To inform the Board's Project Manager of any address changes.
- (9) To adhere to the Project Implementation Conditions as described in Exhibit E.
- (10) To submit verifiable receipts and other accounting records throughout the project to document expenditure of grant fund installments, and to account for all other funding, in-kind contributions and donations in the project completion report.
- (11) To use funds disbursed to Grantee by the Board under this grant award only for "capital expenditures", as that term is defined ORS 541.351 (4) (Exhibit F).
- (12) To provide evidence satisfactory to the Board that the matching funds identified in the grant application have been received or secured.

D. Term of Agreement

This agreement shall become effective upon signature by all parties. Project completion/grant expiration shall be **December 31, 2002**. The completion report is due within 60 days following project completion. Monitoring is required for (1) year.

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E. Accounting for Funds Distributed

The Grantee shall account for funds distributed by the Board using generally accepted accounting practices sufficient to account for the income and expenses related to this project. The Grantee shall also account for all other funds expended, as well as in-kind services and donated materials. The Grantee further agrees to make such accounting records available to the Board, the Oregon Secretary of State's Office or their agents upon request.

F. Amendments

Any modifications of this agreement must be mutually agreed to in writing by all parties. Exhibit A, budget elements only, may be approved for change upon signature of all parties.

G. Assignment

The Grantee shall not assign or transfer its interest in this agreement without prior written approval from the Board.

H. Access to Project Sites

Landowner, upon prior request and at a mutually agreeable time, shall allow Board members and their representatives access to the project site to periodically monitor or evaluate the project.

I. Project Completion

Within 60 days after the completion of the project, the Grantee shall submit to the Board a final project report. The report will include the items included in *Project Completion Report Requirements* attached as Exhibit C.

J. Long-Term Maintenance of Project: Evaluation Reports

Projects funded by the Oregon Watershed Enhancement Board are intended to provide long term benefits to the watershed. The Landowner will provide necessary and normal maintenance to sustain the value of the project once it is completed. Grantee shall submit evaluation reports to the Board on the performance of the project each year for a period of 1 year due one year after submission of the project completion report. These reports will be in accordance with the *Monitoring Requirements*, attached as Exhibit D.

K. Termination of Funding

Any party may terminate this agreement:

- (1) At any time by mutual written consent of all parties;

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- (2) Upon written notice to a party for that party's failure to perform any other provision of this agreement;
- (3) Upon 30 days' written notice to the other parties for any other reason specified in writing;
- (4) Upon failure to provide a signed agreement within 12 months of the date of approval; or
- (5) At any time, upon written notice by the Board, and as provide in C above, should Board funding be reduced. The Board shall be responsible for determining project reductions.

Grantee shall not incur any new obligations after the effective date of termination and shall cancel as many obligations as possible. Full credit shall be allowed for Grantee's expenses and all non-cancelable obligations up to the effective date of termination. Within 30 days of termination, Grantee shall return to the Board any unspent funds provided by the Board under this agreement.

L. Compliance With Applicable Law

The Grantee and Landowner shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement.

M. Tax Compliance Certification

The individual signing on behalf of the Grantee and Landowner hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of Grantee and Landowner, has authority and knowledge regarding Grantee's and Landowner's payment of taxes, and to the best of her/his knowledge, Grantee and Landowner is not in violation of any Oregon tax laws.

N. Indemnity

The Grantee and Landowner shall save and hold harmless the State of Oregon and the Board, its officers, agents, employees and members, from all claims, suits, or actions of whatsoever nature resulting from, or arising out of, the activities of the Grantee, its agents or employees under this agreement. In any action to enforce this agreement, the prevailing party shall be entitled to reasonable costs and attorney fees.

Project Manager for the Grantee:

Steve Donovan
 Ducks Unlimited, Inc.
 1101 SW Tech Center Drive, Suite 115
 Vancouver, WA 98683
 360-885-2011

Project Manager for the Board:

Melissa Leoni
 Oregon Watershed Enhancement Board
 775 Summer Street NE, Suite 360
 Salem, OR 97301-1290
 503-986-0185

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THIS AGREEMENT, INCLUDING ALL MATERIALS INCORPORATED HERE BY REFERENCE, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THIS SUBJECT. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HERE REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE FAILURE OF THE BOARD TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY BOARD OF THAT OR ANY OTHER PROVISION. GRANTEE, BY EXECUTING THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED:

FOR THE GRANTEE:

Ducks Unlimited, Inc.

Date

FOR THE BOARD:

Ken Bierly
Ken Bierly, OWEB Deputy Director

8-3-01
Date

APPROVED FOR LEGAL SUFFICIENCY:

R. D. Wilt
Assistant Attorney General, Oregon Department of Justice

7/12/01
Date

FOR THE LANDOWNER:

Metro

Date

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EXHIBIT B

PERMITS, LICENSES & OTHER AGREEMENTS

Prior to the release of any Board funds, the Grantee must submit written evidence that the work under the Grant Agreement will comply with all applicable federal, state and local laws, as well as copies of all applicable permits, licenses and other agreements that have been obtained. If no federal, state or local permits are required; the Grantee will provide written notification that none are necessary.

The following are often required for projects involving waterway alteration or watershed enhancement (See Oregon Plan for Salmon and Watersheds, A Guide to Oregon Permits Issued by State and Federal Agencies, Spring 2000):

- Fill / Removal permit(s) from the Division of State Lands
- Water Right Permit(s)
- City or County Permit(s)
- Fill permit(s) from the Corps of Engineers
- Grazing Plan(s)
- Memorandum(s) of Understanding

In addition, prior to the release of any Board funds the Grantee must submit Landowner Agreement(s). A form of a Landowner Agreement is available from the Board. Such Agreement(s), shall include (but are not limited to):

- Landowner's certification that they own the land where the work will be carried out;
- Landowner's agreement to allow Grantee to carry out the work, or portion of the work on the Landowner's property;
- Landowner's agreement to allow maintenance of the work over a time period consistent with the Grant application;
- Landowner's agreement to allow access for inspection and evaluation, and acknowledgment that information relating to the work is a public record.

Confirmed ownership w/ Jo Price 8/24/01 - he checked (TL) ^{tax lot} in DRC database - metro owns WCS land, as well as adjacent lot to west - emg

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EXHIBIT D

COMPLIANCE MONITORING REQUIREMENTS

For monitoring purposes, Grantee shall provide photos of all elements of the project (i.e., fencing, planting or structures) taken before and after implementation and each subsequent year. Photo points shall be set up and photographs taken prior to beginning work, at the completion of the work and again each year to show changes occurring as a result of implementation of the project. Photographs should be taken with the same focal length lens at the same time of year.

Monitoring Report Guidelines:

Monitoring photographs are intended to show the compliance of the project with the Board funding decision. In addition, the Grantee shall provide any additional information collected during the 1 year period immediately following the completion of the project which document other conditions in the project area as specified in the application. The Monitoring Report should also include the following:

- 1) A description of any maintenance performed.
- 2) An accounting of any costs associated with maintenance and monitoring.
- 3) An assessment of whether the project continues to meet the goals specified in the grant agreement.
- 4) A summary of any public awareness or educational activities related to the project, including identification of any tours or presentations and copies of newspaper or other media coverage about the project.

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EXHIBIT E

PROJECT IMPLEMENTATION CONDITIONS

During the implementation of the project, the Grantee shall notify the Board's Project Manager when:

- 1) Final project design is developed and initial construction is scheduled.
- 2) Initial construction is scheduled for a site review with the contractor.
- 3) Any change or modification of the project is proposed.
- 4) Final completion review of the project is required. The Board's Project Manager will approve project completion including the review and approval of all documents, permits, invoices, etc. The Board's Project Manager may inspect the project site and request a written notification that project components are installed according to **Oregon Aquatic Habitat Restoration Guideline** standards and guidelines.