



**Olympic Performance, Inc.**

## Oregon Soil and Water Conservation District (SWCD) Director Eligibility Review and Recommendations

### Background

Oregon has 45 Soil and Water Conservation Districts (SWCDs) throughout Oregon's thirty-six counties. SWCDs promote and assist with natural resource conservation within their district boundaries. Each district is governed by a five- or seven-member board of directors comprised of "Zone" directors and two "At-large" directors. Elections for SWCD directors occur every two years. The next General Election will be November 3, 2020. The election process is overseen by the Oregon Department of Agriculture Natural Resources Program.<sup>1</sup>

Rachelle Dixon, a citizen interested in becoming a district board member, raised a question regarding Soil and Water Conservation District director eligibility criteria. She worked with Representative Rob Nosse to develop House Bill 2958, which "Makes requirement that soil and water conservation district zone director own or manage 10 acres or more within district applicable only if majority of district lies within county that has population less than 50,000." Barbara Boyer, Chair of the Soil and Water Conservation Commission (SWCC), Chair and Zone 2 Director on the Yamhill Soil and Water Conservation District board, and member on the State Board of Agriculture, testified at a public hearing in front of the Agriculture and Land Use Committee requesting Representative Nosse table the proposed Bill OR HB 2958 and allow Barbara to form a workgroup to provide more clarity and information before submitting the legislation. His agreement triggered the formation of a workgroup to review the eligibility criteria.

The workgroup consists of:

Representative Rob Nosse

Barbara Boyer

Member of the State Board of Agriculture, Chair of the Soil and Water Conservation Commission (SWCC), Chair and Zone 2 Director of the Yamhill Soil and Water Conservation District (SWCD) Board member – located in McMinnville, Oregon

Gabrielle Rossi

Zone 1 Director of the East Multnomah SWCD – located in Portland, Oregon

Jan Lee

Member of the SWCC Advisors group and Executive Director Oregon Association of Conservation Districts (OACD), and At Large 1 Director of Clackamas SWCD Board member – located in Clackamas, Oregon

Stan Dean

Member of the SWCC, At Large 2 Director of Jackson SWCD Board member, – located in Ashland, Oregon

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<sup>1</sup> Based on "Elections"

<https://www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/Elections.aspx>

Tim Kerns

Member of the SWCC and Zone 3 Director for Baker Valley SWCD Board member –  
located in Haines, Oregon

Rachelle Dixon – attended part of the first meeting, Citizen Portland, Oregon

The workgroup was supported by:

Eric Nusbaum

SWCD Operations Specialist

Marganne Allen

SWCD Program Manager and Water Quality Program Manager

Sandra Hiatt

SWCD Grants Administrator

Stephanie Page

ODA Director of Natural Resources Program Area

Ron Sarazin (Consultant to the effort)

President, Olympic Performance, Inc.

### Current Soil and Water Conservation District Director Eligibility Criteria

Soil and Water Conservation District Director eligibility criteria is specified in ORS 568.520 *Oregon Revised Statute Related to SWCD Director Elections*. Relevant portions of ORS 568.520 are copied below.

- (1) The local governing body of the soil and water conservation district shall consist of a board of either five or seven directors elected or appointed as provided by law. To ensure proper representation of all the people in the district and to facilitate district functions, the State Department of Agriculture shall provide for the zoning of each district and shall provide each time directors are elected or appointed for the proper and equitable representation for each zone.
- (2) Two director positions shall be at-large positions. At-large directors must reside within the district and be registered voters.
- (3) Zone directors must own or manage 10 or more acres of land in the district, be involved in the active management of the property, reside within the boundaries of the district and be registered voters. Zone directors may either reside within the zone that is represented or own or manage 10 or more acres within the zone that is represented and be involved in the active management of the property. *An individual may also serve as a zone director when the individual, in lieu of the other requirements specified in this subsection, resides within the zone that is represented and indicates an interest in natural resource conservation as demonstrated by serving at least one year as a director or associate director of a district and having a conservation plan that is approved by the district. Candidates nominated for director from a specific zone shall be voted on by all electors within the district.*

## Workgroup Observations and Findings Regarding Eligibility Criteria

The workgroup met via video several times during April and May of 2020. Below are observations and findings, not listed in priority order.

### Ownership of land

- Ownership and management of land are two separate but related parts of the existing eligibility criteria.
- With ownership there is a question of whether ownership means a controlling interest or a partial interest.
- The statute does not specify the type of land that is owned. It could house an amusement park or be a parking lot. The predominant view of the workgroup generally is that soil and water issues will arise on any piece of land, so type probably does not matter.
- The statute does not specify if the total amount of land could be comprised by multiple separate parcels. Past practice has been to accept the summation of the acres of multiple parcels as qualifying. The predominant view of the workgroup was that this is a reasonable approach. .
- Owning property is an eligibility requirement for at least four official positions in Oregon including: irrigation districts, drainage districts, water improvement districts, and soil and water conservation districts (additional information is provided in the appendix).
- The predominant view of the workgroup was that land ownership should remain one path to SWCD Director eligibility, as it demonstrates knowledge and interest in soil and water issues.

### “Active management”

- The term *active management* implies the individual has significant or substantial influence in decision making regarding the land they are managing. That is, the individual has “skin in the game with actual on the ground knowledge of what is going on.” The predominant view of the workgroup was that further definition of the term active management and making the connection of the management actions to natural resources would be helpful
- If someone is actively managing property, the predominant view of the workgroup was that their land ownership percentage is not important. For instance, in the case of someone actively managing public land, the individual might have no land ownership but a strong role in property decision making.
- The predominant view of the workgroup was that active management of land should be one path to SWCD Director eligibility, as it demonstrates knowledge and interest in natural resource issues.

### The amount of land ownership or land actively managed

- The amount of land owned or managed that is needed to qualify was discussed. The predominant view of the workgroup was that in urban settings it makes sense that less land

should be required but defining how much less is complicated. Should it be based on available acres of land, population, or something else? Even the definition of urban versus rural based on zoning will be complicated and possibly inappropriate for some areas.

#### Potential of expanding eligibility based on additional pathways

- The goal of providing additional pathways to becoming a director is to create a larger pool of potential candidates for board membership while ensuring board members are focused on natural resources conservation.
- Three additional pathways (additional to land ownership or active land management) were discussed by the workgroup. Those new pathways options are to recognize: 1) a degree or work experience in natural resources, 2) public agency management experience or education or 3) experience in conservation outreach efforts. The workgroup did not have a predominant view on these additional pathways.
- For these additional pathways, the definition of qualifying degrees (e.g. would a general science degree be acceptable?) and the amount of work experience (e.g. is four years the right amount?) and the type of work experience (e.g. do you have to have a professional role or would a labor role be acceptable?) would need to be defined.
- There is also a question as to how these new pathways would work with the current Board positions. Would these pathways lead to at-large positions or a new type of position? If so, how many positions should be available to these paths?

#### Associate Director positions

- The predominant view of the workgroup was that holding an Associate Director or Director position for a year should continue to be a pathway to Director eligibility.
- The Associate Director position is helpful to most Boards, as it can provide additional expertise and viewpoints. It is a good way for someone interested in learning more about the Board activities to become formally involved.

Other topics not discussed in detail but recognized as important to consider include:

- Zones or no zones? How many?
- Should existing procedures for write-in candidates continue?
- Should existing procedures for appointment to vacancies apply?
- Should there be emeritus directors? If so, how many, and how long should their terms last?
- Should term limits be imposed? If so, how many terms should be allowed? If so, does a Board have the authority to waive term limits if there are no new candidates?
- Should the requirement of a conservation plan continue or not? If it continues, what is a conservation plan defined to be? Who reviews? Presently, each Board has liberty to define the scope of the plan and approve it. Should that continue?

- What is needed to encourage more diversity, equity, and inclusion for future Boards? Should there be new approaches embodied in statute, rule or policy? If so, what specific actions make most sense recognizing the need to reflect the demographic representation of the community served?
- Should translation services be provided? If so, how?

### Statute Versus Rules

The workgroup deliberated in general on whether the various possible changes could best be done through changes in statute or through rulemaking. The predominant view was that some options must be done via statute, but that others could be addressed by rulemaking.

### Illustrative Options Provided by Stan Dean

Stan Dean, member of the workgroup, provided the workgroup with several options that address various topics from the above observations and findings. They are included here not as recommendations, but as considerations.

#### Option 1A– Existing Statute

- Criteria remain as per ORS 568
- Clarify terms by rule

#### Option 1B – Existing Statute with Minimal Changes

- Add term limits to the statute to make the positions more accessible. Recognizing that it is often hard to find qualified candidates, include provisions that Boards have the authority to waive term limits if there are no new candidates.
- Delete the requirement for conservation plans

#### Option 2 – HB 2958

- Criteria per the house bill introduced in 2019.

#### Option 3A – Multiple Paths, No Zones

- Boards retain the option to have either 5 or 7 members
- All director positions have the same eligibility criteria
- Eligibility for every position can be met by any of the following paths:
  - Own or manage 10 acres or more of land
  - Expertise in natural resources issues and practices based on education and work experience
  - Expertise in public agency management based on education and work experience
  - Follow existing procedures for written candidates and appointment to vacancies by the governing Board. 568.530 and 568.560 (8) and (9)

- No path that allows time as an associate director to qualify
- Boards can appoint up to 5 associate / emeritus directors with 1-year terms

#### Option 3B - Multiple Paths, No Zones, Term Limits

- Same as option 3A but with term limits. Boards have the authority to waive term limits if there are no new candidates.

#### Option 4A – Multiple Paths, Zones, At-Large

- Boards retain the ability to have 7 or 5 positions
- 3 zone directors for 7 member boards and 2 for 5 member boards. These directors must own or manage 10 acres or more of land in their zone.
- 2 expert directors for 7 member boards and 1 for 5 member boards. These directors are eligible by any of the following paths:
  - Expertise in natural resources issues and practices based on education and work experience
  - Expertise in public agency management based on education and work experience
- 2 at large directors
- Follow existing procedures for write in candidates and appointment to vacancies by the governing Board. 568.530 and 568.560 (8) and (9)
- No path that allows time as an associate director to qualify
- Boards can appoint up to 5 associate/emeritus directors with 1-year terms

#### Option 4B - Multiple Paths, Zones, At- Large, Term Limits

- Same as option 4A but with term limits. Boards have the authority to waive term limits if there are no new candidates.

### Rulemaking Considerations Provided by Jan Lee

Jan Lee, member of the workgroup, provided a list of possible administrative rules to address various topics from the above observations and findings. They are included here not as recommendations, but as considerations.

- 1) Definition of “lands” as in the 10-acre minimum
  - a) We need to make it clear that lands, as used in the statute, can be either private or public as that opens the seat to more people.
- 2) Define management of land
  - a) Clear ownership of the land or a document from the corporation or major landowner is required for voting in other kinds of districts where land ownership is required.
  - b) But using the “management” definition we pick up not only farm managers, but working managers from Metro, State Parks, USFS forests, city parks, managers of multiple Christmas tree farms, etc., and very much broaden who can run and most of the land managers have natural resource skills and knowledge, as well as management and business skills.

- 3) Conservation plan
  - a) The way it is used now, it is any plan a district provides, fitting the circumstances of the landowner as it is not defined in statute. If that requirement remains, this flexibility is important so that a conservation plan is not too stringent and limits accessibility to a board seat. The rules might provide a board decision to waive for a person in an apartment building. Currently no one oversees what a conservation plan includes other than the local district board. It has been flexible to maximize inclusion.
  - b) While the best option might be to get rid of it entirely, that means opening the statute.
- 4) Associate director
  - a) Currently each district defines its own guidelines as to what constitutes an associate director—term, duties, etc. That seems to work well.
  - b) Attached are the associate director guidelines from Clackamas SWCD as an example. While there are no “official” requirements of an associate director, they are usually people who come forward with interest in the district’s work.
- 5) Zones
  - a) Zones are adopted officially by the district, generally at its formation, and it is a fairly official process to make changes, involving filing with the county and ODA and is not an easy fix to restructure the zones. Voters vote for every zone on the county ballot, regardless of their location.
  - b) When HB 2958 was initiated, SWCDs were unanimous in one aspect—they wanted to keep the zones.
- 6) Term Limits

I expect we will find term limits have to be legislatively enacted. If that is not the case, term limits could be developed by rule.
- 7) DEI issues
  - a) A working group with ODA oversight could develop a DEI policy that districts would adopt to encourage diversity, equality, and inclusion.
  - b) Because districts work with NRCS as a federal agency, they are already required to adopt the NRCS standards related to civil rights and non-discrimination. Each board member must sign the NRCS document annually and NRCS provides training around the program each year. DEI could be incorporated annually into the process by adding a policy statement covering anything not included in the NRCS form.
  - c) Translation services
    - 1) ODA may have resources.
    - 2) Local nonprofits in many areas have translators that can provide a program.
    - 3) NRCS may have access to those resources.

## Recommendations

The workgroup decided to suspend its effort and to make sure that directory eligibility criteria would continue to be evaluated. This was done because the issues and options are complex and adequate time is needed to thoroughly consider the matters. COVID-19 has hindered the

ability to fully consider the matters in a timely manner. Following are the recommendations for next steps:

- Hold off on introducing legislation in the 2021 session to allow more time to properly vet the issues.
- Refer the matter back to the Soil and Water Conservation Commission where it can be addressed in their planned comprehensive review of statutes related to Soil and Water Conservation Districts. Actively seek input into the discussions from diverse perspectives.
- Collect input from Soil Water Conservation Districts through the Oregon Association of Conservation Districts.
- After the foregoing, reconvene the work group to further vet the issues.



## Appendix A

*Provided by Jan Lee*

### **Districts Requiring Land Ownership for Voting and Election of Directors**

District statutory citations with land ownership requirements for serving on boards follows. These are just the special districts regarding water as I am not familiar with all the other districts who may have similar requirements. The four types of districts who require land ownership for election of directors and for voters are: 1) irrigation districts, 2) drainage districts, 3) water improvement districts, and 4) soil and water conservation districts.

Below is a brief discussion regarding constitutional validity of requiring land ownership for voting and election of Directors and 2019 ORS Citations for each of the four districts, followed by example of where land ownership is required for voting and election of Directors in Oregon.

#### Constitutional Validity

Constitutional validity of voting based on land ownership has been questioned. There is a court case decided in the U.S. Supreme Court in 1983 in favor of the Salt River Project in Arizona (irrigation delivery, power generation and drinking water purveyor) in which Salt River established weighted voting (more votes per acre of land owned versus one vote per landowner). That case provided the basis for ORS 545.007 cited below. That case and discussion regarding it are in the 1995 legislative archives for SB 263 from the Senate Water Committee file. More information can be obtained via a search from archives to find the 1995 legislative record for SB 263 and through FindLaw or a similar legal program to access the Supreme Court case.

#### 2019 ORS Citations

There are four types of districts that require land ownership for election of directors and for voters. There might be more, as this review is only of special districts regarding water in Oregon. The four types of districts are: 1) irrigation districts, 2) drainage districts, 3) water improvement districts, and 4) soil and water conservation districts.

#### **ORS Chapter 545 — Irrigation Districts**

**545.002 Definitions.** As used in this chapter:

- (1) "Board" or "board of directors" means the governing body of a district.
- (2) "District" means an irrigation district organized or operating under this chapter.
- (3) "Owner of land" or "elector" includes every person 18 years of age or older, whether a resident of the district or state or not, who is an owner or a vendee under a contract of purchase of land situated within the district and subject to the charges or assessments of the district. [Amended by 1993 c.771 §3; 1995 c.42 §2

#### **545.007 Voting rights.**

(1) In any matter requiring or allowing a vote of the owners of land or the electors of a district:

(e) An owner of land or elector may vote according to the total amount of acreage within the district owned by the owner or elector that is subject to the charges or assessments of the district on the basis of:

(A) One vote for up to 40 acres;

(B) Two votes for 40 acres or more but not more than 160 acres; and

(C) Three votes for more than 160 acres.

(f) When a district is divided into divisions under ORS 545.033 or 545.207 and voting is by the qualified electors within a division for a director from that division, an elector who is permitted under ORS 545.207 to vote in that division may cast the number of votes under subsection (1)(e) of this section that represents the total amount of eligible acreage owned by the elector within the whole district.

(2) The weighted voting provisions of subsection (1)(e) of this section do not apply in an election for the formation of a district and for its initial board of directors under ORS 545.041 and 545.043 (1). In such an election, each owner of land is entitled to cast one vote. [1995 c.42 §3; 1995 c.754 §3; 1999 c.452 §4]

*(Note: section [e] is the result of SB 263 in 1995 and supported by the Salt River Project case and was held as constitutional by the Governor's Counsel who oversaw constitutionality questions in 1995 and was asked at that time to assure the constitutionality of SB 263. The Salt River Project case was made of record.)*

#### **545.043 Qualifications of directors; terms of office; oath.**

(1) At the election for the organization of an irrigation district one director, who is a resident of Oregon and a bona fide owner, or a shareholder of a bona fide corporate owner, of land situated in the division, shall be elected from each division into which the district has been divided by the county court. If no division has been made, the directors shall be elected from the district at large. Terms of the directors so elected shall expire in one, two and three years, respectively, from the first Tuesday in January next succeeding their election. Their respective terms shall be decided by lot.

### **ORS Chapter 547 – Drainage Districts**

#### **547.105 Election of supervisors; qualifications and terms of office; quorum for transaction of business at owners' meetings.**

(1) Within 30 days after any drainage district has been organized under the provisions of the Drainage District Act, the county clerk of the county in which the petition was filed shall call a

meeting of the owners of land situated in the district for the purpose of electing a board of supervisors with three or five supervisors as determined by the owners of land within the district.

(2) The county clerk shall give notice of the meeting by publication in some newspaper published in each county in which lands of the district are situated, at least 10 days before the date of the meeting.

(3) The supervisors must be owners of land in the district.

(4)

(a) The owners, assembled at the place and time required by the notice, shall organize by the election of a chairperson and secretary of the meeting who shall conduct the election. Each owner is entitled to one vote in person or by proxy for each acre of land owned by the owner in the district. If an owner is not a natural person, the owner may appoint a designee, in a writing filed with the secretary, to exercise the authority of the owner, including the voting and serving as a supervisor of the district. The designee shall serve as a representative of the owner until the designee resigns, or the owner replaces the designee, in a writing filed with the secretary.

(b) Notwithstanding paragraph (a) of this subsection, at or before the organizing meeting, an owner that is not a natural person may appoint a designee in a writing filed with the county clerk.

(5) The three or five persons receiving the highest number of votes must be declared elected as supervisors. The supervisors shall determine the terms of their offices by lot. If three supervisors are elected, the supervisors shall serve, respectively, one, two and three years. If five supervisors are elected, one supervisor shall serve one year, two supervisors shall serve two years, and two supervisors shall serve three years. The supervisors first elected shall serve until their successors are elected and qualified.

(6) At a meeting of owners, owners that represent at least a majority of the acreage in the district constitute a quorum for the transaction of district business. In a year in which a quorum of owners is not achieved at the annual meeting called under ORS 547.110, owners representing at least 35 percent of the acreage in the district constitute a quorum for the annual meeting in the succeeding year. [Amended by 1959 c.379 §1; 2003 c.223 §1; 2015 c.544 §18]

**547.110 Annual meeting; election of supervisors; owners entitled to vote.** In the same month of each year after the election of the first board of supervisors, the board shall call a meeting of the owners of land in the district. The board shall give notice in the manner provided for in ORS 547.105. The owners shall meet at the time and place fixed by the board and elect one or two supervisors in the manner prescribed in ORS 547.105, who shall hold office for three years and until a successor is elected and qualified. However, after the report of the commissioners has been confirmed by the court under the provisions of ORS 547.235, only the owners, or the designees of the owners, of the

land having benefits attributed to the land are entitled to vote at the annual meetings held under the provisions of this section. [Amended by 1969 c.669 §14; 1991 c.459 §425b; 2003 c.223 §2; 2015 c.544 §19]

#### **ORS Chapter 552 – Water Improvement Districts**

##### **552.208 Election of first board of directors; number; qualifications; terms; change of number of directors.**

- (1) Electors of a district shall elect a board of directors whose number shall be fixed at five, seven or nine by the county board at the proceedings on formation. **Directors shall be owners of land within the district.** The directors need not reside within the district.

#### **ORS Chapter 568 – Soil and Water Conservation Districts**

##### **568.560 Number of directors; director qualifications; officers; election; terms; vacancies**

Excerpt for zone directors:

- (3) **Zone directors must own or manage 10 or more acres of land in the district,** be involved in the active management of the property, reside within the boundaries of the district and be registered voters. Zone directors may either reside within the zone that is represented or own or manage 10 or more acres within the zone that is represented and be involved in the active management of the property. An individual may also serve as a zone director when the individual, in lieu of the other requirements specified in this subsection, resides within the zone that is represented and indicates an interest in natural resource conservation as demonstrated by serving at least one year as a director or associate director of a district and having a conservation plan that is approved by the district. Candidates nominated for director from a specific zone shall be voted on by all electors within the district.

#### [Appendix B – Oregon Revised Statutes Related to Director Elections](#)

Attachment

#### [Appendix C – House Bill 2958](#)

Attachment