

# ***Insurance and Risk Management : Protecting Your Council***

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# Agenda

- Discuss the concepts of Risk Management
- Discuss the ways in which Risk Management techniques can protect your Council and District
- Discuss new OWEB insurance requirements effective January 1, 2017 (upcoming OWEB webinar)
- How and where Risk Management and OWEB requirements intersect
- Available resources

# Risk Management

- **Definition: The process by which organizations evaluate and assess uncertain but potential future loss events. Managing uncertainty!**
  - Protects reputation and mission
  - Protects people
  - Protects property
  - Protects public
  - In some cases protects environment

# What Makes Sense for your Council or District

- We evaluate “risk” every day
- Often we don’t take adequate time to address “risk” or hazards associated with small and large grant projects
- No form for identifying risk or mitigation of risk...until recent OWEB insurance changes
- Where do we start to manage uncertainty?

# Key Components Risk Management

- Identify Risk
- Qualify Risk: Probability of Risk
- **Manage Risk:**
  - Avoidance: Do we have resources/expertise to take on the identified risk?
  - Transfer Risk (contractual relationship, insurance requirements)
  - Risk Mitigation (safety policies and procedures)
  - Acceptance (contingency plans)
- Regularly Monitor
- Poll Question

# Managing Risk: Avoidance

- Can you eliminate the risk entirely?
- Examples of Avoidance of Risk:
  - City/School elects not to hold a particular event due to associated risk
  - Watershed elects not to have an outdoor school due to inherent risk associated with dealing with minor children
  - Manufacturer elects NOT to make a part integral to the operation of an aircraft
  - Non-Profit organization makes to decision to cancel fire works display due to high fire danger

# Managing Risk: Transfer of Risk

- The common forms of “Risk Transfer” are
  - Contractual relationships with contractors or independent contractors
  - Purchase of Insurance

# Transfer of Risk (Contracts)

- ***One of the most important functions***
- ALWAYS have a contract between parties
- ALWAYS require specific insurance limits
- ALWAYS require an Additional Insured endorsement for both ongoing operations, completed operations and pollution liability-if applicable
- ALWAYS require Workers' Compensation before the start of the project
- ALWAYS require a waiver of subrogation (general liability and Workers' Comp)
- ALWAYS require the other party's insurance be primary
- Indemnification/Hold harmless clause-ALWAYS



# Transfer of Risk (Contracts)

- If the other party is providing a professional service, ALWAYS require professional liability coverage
  - Proof of coverage for professional liability is sufficient
- Have attorney and/or agent review contracts
- Insurance another form of risk transfer
  - Sufficient limits
  - Property coverage
  - Specialty coverage (i.e. pollution liability)

# Transfer of Risk (Contracts)

- What does it mean to require the subcontractor name the Council/District as an “additional insured”
  - “Additional Insured” is special status on an insurance policy
  - Contractors or independent contractor’s insurance policy comes in to protect the Watershed and provides costs to defend the Council/District if the contractor is negligent
  - May provide and extend important coverage to the Watershed which is not something the Council/District would ordinarily need to purchase i.e. pollution liability
- Contractual Risk Transfer is a common process

# Transfer of Risk (Contracts)

- The process of transferring risk and the protection this provides your Council, is only as good as the contract developed ***prior to the start of job***; and, the diligence in making sure the contractor complies with all insurance requirements set forth in the contract.

# Transfer of Risk (Insurance)

- Insurance will not cover everything
  - Staff time not covered
  - Momentum of program/mission compromised
  - Reputational loss
- OWEB will require a completion of a risk assessment form for certain activities/contract to address:
  - Appropriate **coverage** that the Council or District carriers
  - Sufficient **limits** carried by both Council and Contractor

# Managing Risk: Risk Mitigation

- Does your Council or District have appropriate policy and procedure in place to mitigate risk?
  - Safety policy dealing with work place injury
  - Employment policy dealing with managing employees hire/fire/discipline
  - Abuse policy: procedure to report incidents to Board and State regarding alleged incidents of sexual abuse of minor children
  - ***Procedures in place to make sure contracts and risk transfer measures are always followed within established protocol by your Watershed***
  - Process of annual review to capture new and emerging risk, i.e. Cyber Liability, drones

# Managing Risk: Risk Mitigation

- Engage Insurance agent in annual review of insurance program
- Ask about available risk management resources:
  - Online tools offered by insurance carriers
  - Site visits by insurance carrier
  - Tools available for contract review
- Insurance agent is best resource regarding new and emerging risk

# Managing Risk: Acceptance

- Has your organization made any contingency plans?
- Continuity planning in the event of a disaster:
  - Who will notify employees, board, public, insurance agent?
  - Simple phone tree
  - Designated person to interface with media and public
  - Alternate locations for operation
  - What tools/resources will you need?

# Assessing Risk: Key Questions

- What is the scope of the contracted activity/program
- What functions are necessary to deliver or accomplish this activity or service?
- When and where will the service or activity take place?
- Who will be performing the service or activity?
- Will the contractor have interactions with others, i.e., public, staff, etc.?
- Will there be any hazardous materials; earthmoving; work near wetlands, water or ESA species
- Has your standard Request for Proposal changed to meet the new OWEB insurance requirements?
- Poll question



# New OWEB Insurance requirements

**General Insurance Requirements - No additional risk assessment is needed**

<b>Table 1. Insurance Types and Coverage Amounts required for all grantees regardless of the project type</b>		
<b>Insurance Type</b>	<b>Minimum Amount</b>	<b>When Required</b>
General liability	\$1,000,000 per occurrence, \$2,000,000 aggregate	All grantees receiving project funds from OWEB regardless of project type or complexity.
Auto liability	\$1,000,000 combined single limit	All grantees receiving project funds from OWEB regardless of project type or complexity.

Table 1

# New OWEB Insurance requirements

- Not specifically required but equally important are:
  - Directors & Officers Liability for Non-Profit organizations: Protects Board
  - Workers' Compensation Coverage: Protects employees and is required by the State of Oregon if you have W-2 employees
  - Property Coverage: Optional

# New OWEB insurance requirements

**Table 2. Insurance Types and Coverage Amounts required depending on the project type**

<b>Insurance Type</b>	<b>Minimum Amount</b>	<b>When Required</b>
Pesticide and herbicide applicator limited pollution coverage	\$500,000 per occurrence, \$1,000,000 aggregate	All projects when grantee employees are applying pesticide and herbicides.
Professional liability	\$500,000 per occurrence with \$1,000,000 aggregate	All projects when grantee employees have a professional license and are doing work that falls under that license.
Abuse or Molestation Coverage	\$100,000 per occurrence and \$300,000 aggregate	All projects when grantee employees or volunteers for the grantee are working with children.

# New OWEB Insurance Requirements

## Table #3

<b>Table 3.</b>
<b>Project type</b>
Working with hazardous materials (not including materials used in the normal operation of equipment such as hydraulic fluid)
Earth moving work around the footprint of a well
Aerial application of chemicals
Transporting individuals on the water
Removal or alteration of structures that hold back water on land or instream including dams, levees, dikes, tidegates and other water control devices (this does not include temporary diversion dams used solely to divert water for irrigation)

Table 3

# Table #3 Projects

- OWEB will require the DAS Risk Assessment Tool be completed with any project listed in Table #3
- If the DAS Risk Assessment, once completed, doesn't indicate the need for additional insurance, then no additional action is needed
- If the DAS Risk Assessment shows additional insurance is needed beyond the standard requirements, this will compel the purchase of additional insurance by the Council or by the Contractor

# Table #3 Projects

- What if the work or activity will be done entirely by a specialty contractor?
  - Does the DAS Assessment Tool still need to be completed? Yes
  - Does the Council/District need to purchase additional insurance? It depends.

# Department of Administrative Services

## Risk Management

- DAS Risk Management Tool helps:
  - To determine if the Council/District needs any additional insurance or higher levels of insurance based on the risk assessment of a project (damage to property, bodily injury to employees, or bodily injury to a third party)
  - Assists in determining the appropriate limits the Council should require a Contractor to carry.
- ***DAS assessment tool is now required for any activity listed in Table #3 above***

# What Makes Sense?

- State of Oregon Risk Assessment Roadmap:
  - Not a perfect tool but will assist a Council/District in going through a risk management process to make sure adequate levels of insurance are purchased
  - When to use? Any project involving activities listed in Table #3
  - Who should be involved in the risk assessment process?
    - Key individuals/Executive Director
    - Board Members
    - Insurance Agent?
    - Attorney?



# Large Construction Projects/Grant Project/DAS Risk Assessment

## Risk Management

- Engineering, permits and permissions land owners
- Contracts and additional insured certificates
- Risk assessment of site? Who has access? Any sign posted needed for public?
- Employee Safety-Safety Handbook-Safety Committee Meetings
- DAS Risk Assessment Tool likely required

## Insurance

- Commercial General Liability-Limits sufficient?
- Performance Bonds
- Loggers Broad form property damage liability?
- **Pollution Liability-specialty policy?**
- Workers' Comp-Who is managing the project?

# Small Grant Projects/Tree Planting

## Risk Management

- Permissions obtained landowners?
- Contracts and additional insured certificates with any subcontractors?
- Risk assessment of site
- Employee Safety-Safety Handbook
- Volunteer Safety/Waivers signed
- Pesticide/herbicide application?/DAS Assessment Tool if aerial spraying

## Insurance

- Commercial General Liability-Limits sufficient?
- Pesticide/herbicide applicators license if work done by employees-plus limited pollution liability
- Volunteer Handbook-Volunteer accident policy?
- Workers' Comp-Who is managing the project?

# Driving Exposure

## Risk Management

- Who is driving company vehicles? Authorized list
- Who is using personal vehicles for business purposes? List
- Were motor vehicle records checked at time of hire and found to be acceptable?
- Have motor vehicle records been checked regularly since?
- Automated Reporting System, Oregon DMV

## Insurance

- Commercial auto liability policy in place?
- Sufficient limit corresponding with exposure?
- Umbrella policy needed?
- Discussion with insurance agent needed?

# Volunteers

## Risk Management

- Activities clearly defined?
- Volunteer Handbook in place?
- Volunteer Coordinator?
- Risk assessment of activities, personal protective equipment, etc.
- Waiver ALWAYS signed?

## Insurance

- Commercial General Liability-extends to volunteer activities
- Volunteer accident policy-optional
- Workers' Compensation-Who is managing volunteers? Are volunteers covered by your Workers' Comp policy?

# Outdoor School-Minor Children

## Risk Management

- Activities clearly defined and signed permission from parent /guardian?
- Waiver ALWAYS signed?
- Formal abuse policy in place with annual training and full background checks all employees and volunteers?

## Insurance

- Commercial General Liability-limits identified for abuse coverage?
- Review limits annually: Are they sufficient for exposure?

# Premises / Property

## Risk Management

- Inventory and valuation of business property
- Trip hazards corrected
- Smoke/fire alarms, fire extinguishers in working order
- Ergonomic Workstations
- Safety drills: fire, EQ

## Insurance

- Sufficient property limits reviewed annually
- Property that is regularly offsite-is it properly insured?
- Have you purchased coverage for earthquake?
- What about business interruption and extra expense?

# Special Events

## Risk Management

- Details of special event: activities; estimate of attendees; will alcohol be served?
- Food and alcohol service contracted out? Additional insured certificates?
- Will venue require insurance certificate? If so what limits?
- Safety of attendees
- Transporting individuals on water/DAS Assessment tool needed

## Insurance

- Is there automatic coverage under current liability policy? Liquor Liability?
- Will current liability limits satisfy venue?
- Is a special event policy needed?
- Will the venue require participants in sports activities to be covered?

# Professional Liability Exposures

## Risk Management

- Professional liability exposures: Engineer, architect, etc.
- Professional liability service to others? Fiscal agent?
- Entering into contracts where you or other party is providing a service for a fee, specialized area of education and knowledge
- DAS Risk Assessment Tool may required depending on project

## Insurance

- Does current policy allow professional liability exposure?
- Professional liability coverage/Errors & Omissions
- All commercial general liability policies contain an exclusion for professional liability claims



# Employee Safety

## Risk Management

- On the job exposures driving; out in remote areas; lifting, etc.
- Safety Committees-OSHA requires employers who have 10 or fewer employees to hold safety meetings
- Starts at hiring: interviews; references; background checks, clearly defined job descriptions
- Safety policy/procedure

## Insurance

- Workers' Compensation
- OR-OSHA requirements
  - Safety Meetings/Committee
  - OSHA 300 log/summary
  - PPE
  - Globally Harmonized System/Hazard Communication Program
- Safety policy template available

# Protecting Board and Mission

## Risk Management

- By-Laws
- Regular Board meetings, minutes posted, etc
- Public Meeting Laws
- Roles and responsibilities of board members defined

## Insurance

- Directors' & Officers Liability coverage
- Employment Practices Liability coverage
- Crime Coverage
- Cyber Liability Coverage: data breach of personal information (name, address, email address and other personal information)

# Resources:

- SAIF: <http://www.saif.com/>
  - Safety Culture Spectrum
  - Online tools, resources
- State of Oregon
  - <http://www.oregon.gov/das/Risk/Pages/index.aspx>
- SDAO: <http://ref.sdao.com/bestpractices/bp.pdf>
  - On line library of resources to include manuals, etc.
  - On line Risk Management section
- OR-OSHA: <http://orosha.org/>
- Insurance Agent

**Thank you!**

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