

CONSERVATION INCENTIVES WORK GROUP

REPORT TO THE SEVENTY-SECOND LEGISLATIVE ASSEMBLY

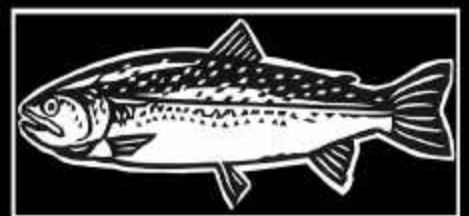


PRESENTED BY

THE OREGON DEPARTMENT OF AGRICULTURE

AND

THE OREGON DEPARTMENT OF FORESTRY



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To the Members of the Seventy-Second Legislative Assembly:

Oregon is a state that defines itself by the natural resources and natural beauty that typifies its landscape. Oregon also defines itself by the proven willingness of its citizens to make extra efforts, individually and collectively, to maintain and enhance the natural resources that support their livelihood and surround their lives. We see such efforts exemplified in our watershed council activities, our farm and forest practices, and the individual efforts of landowners who voluntarily work to improve their lands to support fish, wildlife, and other natural resources.

These efforts have often been made in isolation from one another, sometimes being frustrated by a lack of coordination or support from the very state that benefits from them. While advances have been made by individuals and groups working collaboratively to make wise and efficient decisions about conservation efforts in the state, it has become increasingly clear that a more comprehensive and coordinated approach will lead to greater benefits for all involved — especially those landowners who seek to take voluntary steps to conserve natural resources on their private property.

In 2001, the Legislature made a concerted effort to shape policies and laws that would be conducive to voluntary conservation efforts by private landowners. House Bill 3564 — approved by an overwhelming majority — recognized conservation as a legitimate land use and declared it to be state policy to use incentives to encourage sustainable management of private lands to maintain their long-term ecological, economic, and social values.

The 2001 legislation reflected a growing recognition of the important role of private landowners and "working landscapes" in sustaining the natural systems that support much of Oregon's economy and its quality of life. It also reflected the political realities that currently frame on-going conflicts over natural resources in Oregon.

For conservation interests, HB 3564 represented an acknowledgment that traditional regulatory and land acquisition strategies alone were inadequate to address the state's conservation needs. Commodity production and development interests also saw value in the legislation given the need for a more proactive and comprehensive approach to dealing with endangered species, water quality, and other environmental issues that show no sign of going away anytime soon.

Both sides agreed on the importance of providing incentives for voluntary action by private landowners willing to take action to conserve soil, water, fish, wildlife, and habitat. A growing number of Oregon landowners want to manage their property for wildlife habitat but face significant financial disincentives under existing tax laws. Other landowners are willing to undertake conservation measures but need financial incentives to make such work economically feasible. And for landowners who are already managing their lands in a sustainable manner, incentives can serve as rewards for good stewardship.

With support from key legislators, a diverse coalition of groups and agencies united behind HB 3564, making it one of the few major conservation bills signed into law by Governor Kitzhaber in 2001.

An important component of HB 3564 directed the state Departments of Forestry and Agriculture to coordinate an interim study process and report back to the 2003 Legislature with recommendations for improvements to existing incentive programs.

In May 2002, the two state agencies (joined by the Oregon Department of Fish and Wildlife, the Oregon Watershed Enhancement Board, and the nonprofit organization Defenders of Wildlife) convened the Conservation Incentives Work Group — more than 40 individuals drawn from a broad cross-section of stakeholders and state and local government. Aided by professional facilitation funded by the state's Public Policy Dispute Resolution Program, participants painstakingly worked through a long list of issues in several dozen meetings over the following eight months.

Some of the questions yielded straight forward answers. For instance, the group agreed that incentive programs should target a number of needs — soil, water, fish, wildlife, and habitat conservation are all legitimate objectives for state policy.

Other issues proved more difficult. Does Oregon need a formal overall conservation strategy to guide investments in incentives? Should incentives be targeted to geographic priorities and, if so, by what criteria? Should incentives reward compliance with existing standards or only extra efforts? How should incentives be financed? What are the appropriate roles of the public and private sectors? What is the role of local government and special districts?

The group's work was hampered by some very real constraints. The serious fiscal problems confronting state and local governments in Oregon suggested that revenue neutral proposals would be most viable. State and federal agencies alike lacked the capacity to staff new or expanded programs. There is no consensus on how best to deliver technical assistance to landowners. The state has never made a formal commitment to a comprehensive strategy or goals that could guide conservation investments. And the biggest single source of funding for conservation incentives on private lands — the 2002 Farm Bill administered by the U.S. Department of Agriculture —

had just been subjected to a major overhaul, presenting considerable but somewhat undefined opportunities for cooperative and coordinated conservation efforts between the state and federal government.

The Work Group's final recommendations are contained in two separate pieces of legislation to be introduced in the 2003 legislative session. Some of the key recommendations are:

- Rework the existing Wildlife Habitat Conservation and Management Program to address tax and policy issues that have limited its effectiveness. This program, administered by the Department of Fish and Wildlife, allows owners of farm and forest lands to manage their land for habitat conservation without incurring higher property taxes.
- Expand and improve the state's stewardship agreement program to reward rural landowners who adopt land management plans that provide conservation benefits above what is required by law.
- Clarify tax status and other technical issues related to conservation easements.
- Create a new income tax credit program for landowners who adopt and implement conservation plans that include measures that go beyond what is required by law.
- Encourage development of a coordinated conservation strategy to guide state investments in incentives and natural resource management.
- Explore further how the availability and delivery of technical assistance to landowners can be coordinated and improved.

Collectively, these measures will significantly improve and expand the suite of incentives the state of Oregon offers landowners who voluntarily invest in conservation of important natural resources. But, clearly, much remains to be done.

The state of Oregon needs to develop a coordinated conservation strategy to provide a solid policy foundation for future management of all of the state's natural resources. To be effective, most incentives must provide landowners some economic benefit, which in turn requires a revenue source. Without additional public investment, the effectiveness of incentive programs will remain limited. We also need to clearly establish the regulatory baseline for all landowners to be able to target incentives effectively. Achieving the goal of a streamlined, coordinated technical assistance program will require much more work. Additional work will also be required to increase coordination with federal programs to improve efficiency and effectively leverage state resources.

The 2001 Legislature's adoption of HB 3564 reaffirmed the state's proactive approach to addressing conservation needs. The recommendations of the Conservation Incentives Work Group represent an important next step in that process. The significance of this approach should not be underestimated. It goes to the heart of the relationship between government, private landowners, and natural resources in Oregon. Engaging private landowners in voluntary efforts to manage land, water, and natural resources "to meet human and ecological needs in a sustainable manner" is a major task. Changes of this magnitude will take time. It will be up to the 2003 Legislature to move this process forward by helping Oregonians in their efforts to conserve and enhance the natural resources that make Oregon a great state.

The following individuals participated in the Work Group as representatives of their organizations and provided input to this report.

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EXECUTIVE SUMMARY

As part of legislation enacted into law in 2001 related to conservation incentives for private landowners (HB 3564), the Oregon Legislature directed the Oregon Department of Agriculture and the Oregon Department of Forestry to review state statutes, rules, policies and programs that affect landowner decisions to implement conservation strategies. The agencies were directed to complete this review in consultation with other relevant state agencies and public and private organizations. The legislation also directed the Departments of Agriculture and Forestry to report to the Seventy-Second Legislative Assembly on recommended changes to state statutes, rules, policies, and programs.

In May 2002, the Departments of Agriculture and Forestry convened the Conservation Incentives Work Group (the "Work Group"). The Work Group was assisted by professional facilitators, paid for by a grant from Oregon's Public Policy Dispute Resolution Program, and consisted of a diverse set of representatives from numerous stakeholder groups. As directed by HB 3564, the Departments of Agriculture and Forestry, through effective use of the Work Group, developed recommendations for improvements to incentive programs and particular regulatory schemes that will encourage landowners and businesses to voluntarily invest in the improvement of natural resources to maintain

the long-term ecological, economic, and social values that certain private lands provide to the state of Oregon.¹ This is the report of those recommendations.

OBJECTIVES AND GUIDING PRINCIPLES

In formulating its recommendations, the Work Group agreed on the following objectives and principles to guide its work:

- To maximize landowner participation in conservation programs, landowners should have a full range of incentive programs from which to choose;
- To maximize landowner participation in conservation programs, the programs need to be simple, support landowner and public objectives, and offer a sufficient benefit or enticement;
- The state should be strategic in how it uses its limited conservation resources by linking incentive programs to statewide, regional, and local plans;

¹ Although the Work Group examined certain land use regulations that impact landowner incentive programs, the Work Group did not undertake a comprehensive analysis of the state's land use program to identify all potential regulatory disincentives.

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- Recommendations for program changes should avoid a significant increase in government spending or agency workload, to the greatest extent possible;
- Recommendations for program changes that may potentially impact how property is assessed for tax purposes should be revenue neutral; and
- Recommendations for program changes should further improve, where possible, the conservation efforts addressed in HB 3564.
- Clarify that the program is an independent special assessment program, relocate it to ORS Chapter 308A, and place the burden of verifying eligibility on parties other than county assessors.
- Address property taxation issues such as the assessment of homesites and a landowner's exposure to back taxes when entering the program from another special assessment category or when exiting to another special assessment category.
- Improve program application requirements and build consistency with other programs.

MAJOR RECOMMENDATIONS

The report includes details about the following recommendations. To facilitate the enactment of many of such recommendations, members of the Work Group have prepared proposed legislation that will be introduced in the 2003 legislative session.

THE WILDLIFE HABITAT CONSERVATION AND MANAGEMENT PROGRAM

- For purposes of determining which lands are eligible to participate in the program, include lands zoned as forestland, distinguish between lands within and outside urban growth boundaries, and provide for local government discretion to add additional lands.
- Enable counties to opt in and out of the program at their discretion.
- Clarify that the ability to have a dwelling on land subject to a wildlife habitat conservation and management plan is governed by laws and regulations independent from the program's statutes and that participation in the program does not make it easier or more difficult for a landowner to gain approval for a dwelling.

CONSERVATION EASEMENTS

- Provide a special assessment for land subject to a conservation easement with eligibility dependent on the conservation purpose and other characteristics of the easement (rather than criteria applicable to other special assessment categories).
- Pursue opportunities for Soil and Water Conservation Districts to hold conservation easements.

STEWARDSHIP AGREEMENTS

- Revamp Oregon's existing stewardship agreement program, which currently applies only to forestlands.
- Alter the program to apply to all rural lands and to focus on rewarding landowners who enter into land management plans which provide for conservation benefits above what is required by law.
- Alter the program such that the Department of Forestry and the Department of Agriculture can enter into stewardship agreements with landowners (either jointly or independently). Direct the agencies to

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engage in coordinated rulemaking with the involvement of the Department of Fish and Wildlife.

THE CONSERVATION INCOME TAX CREDIT

- Create a program under which a landowner can obtain an income tax credit equal to 50% of out-of-pocket expenditures or forgone income resulting from compliance with the terms of a conservation easement, stewardship agreement, wildlife habitat conservation and management plan, or other plan that prescribes management activities that exceed legal and regulatory requirements.

ADDITIONAL WORKING GROUPS

- Convene a working group to study the potential for the state to partner with the U.S. Fish and Wildlife Service and other interested parties to provide regulatory certainty to landowners under the federal Endangered Species Act and other statutes.
- Convene a working group to address how the availability and delivery of technical assistance to landowners can be coordinated and improved.

I. INTRODUCTION

A. HB 3564

On June 18, 2001, the Oregon Legislature enacted House Bill 3564. The legislation recognizes the key role that private lands play in any strategy to preserve and protect natural resources in Oregon. Section 2 of HB 3564 sets forth the following findings:

(1) The Legislative Assembly finds that it is in the interests of the people of this state that certain private lands be managed in a sustainable manner for the purpose of maintaining the long-term ecological, economic and social values that these lands provide.

(2) The Legislative Assembly declares that it is the policy of this state to encourage landowners to manage private lands in a sustainable manner through tax policy, land use planning, education and technical and financial incentives.

(3) The Legislative Assembly further declares that it is the policy of this state not to impose additional taxes on property, commodities or income if a landowner voluntarily foregoes, limits or postpones economic uses of private land for conservation purposes.

(4) As used in this section, "conservation" means the management of land, water and natural resources for the purpose of meeting human and ecological needs in a sustainable manner.

To give concrete meaning to these findings and declarations of policy, the Oregon Legislature amended various provisions of the Oregon Revised Statutes ("ORS") and gave the following directives to the Departments of Agriculture and Forestry in Section 17 of HB 3564:

(1) The State Forestry Department and the State Department of Agriculture shall, in consultation with relevant state agencies and other public or private organizations, review state statutes, rules, policies and programs that affect landowner decisions to implement conservation strategies.

(2) The review conducted under subsection (1) of this section shall include:

(a) Establishing a statewide strategy for the implementation and coordination of incentives, regulatory disincentives, expedited permit processes and related taxes.

(b) The development of a stewardship agreement program for rural lands that establishes a baseline management standard for landowners and a voluntary higher standard that provides natural resource benefits and regulatory certainty for landowners.

Section 18 of HB 3564 requires that the results of such a review be presented to the legislative assembly that convened at the beginning of 2003:

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(1) The State Forestry Department and the State Department of Agriculture shall report to the Seventy-second Legislative Assembly on recommendations for improvements of incentives and existing regulatory schemes that will encourage landowners and businesses to voluntarily invest in the improvement of natural resources.

(2) The report created pursuant to this section shall include, but not be limited to, recommendations on statutory changes, regulatory relief, expedited permit processes and tax incentives.

B. THE CONSERVATION INCENTIVES WORK GROUP

In May 2002, the Department of Forestry and Department of Agriculture convened a Conservation Incentives Work Group (the "Work Group") to comply with HB 3564's directive to consult with other entities. A steering committee was formed that included those two agencies, the

Oregon Department of Fish and Wildlife, the Oregon Watershed Enhancement Board, and the nonprofit organization Defenders of Wildlife (due to its significant involvement in the passage of HB 3564).

Work Group members represented a wide spectrum of stakeholder groups, including farmers, ranchers, small woodlot owners, foresters, local governments, conservation organizations, land trusts, private landowners, the Oregon Departments of Fish & Wildlife, Land Conservation and Development, Water Resources, and Revenue. Given the focus on how to best provide assistance to rural landowners, other important participants included representatives of the federal Natural Resources Conservation Service (an agency within the U.S. Department of Agriculture), soil and water conservation districts, local watershed groups, and the Oregon State University Extension Service. For additional details about how the Work Group functioned, see Appendix A.

II. OREGON'S EXISTING INCENTIVE PROGRAMS

Oregon's existing incentive programs that relate to natural resources conservation on privately-owned lands can be grouped into four categories: (1) property tax benefits; (2) income tax credits; (3) "stewardship agreements"; and (4) conservation incentives funding. Various governmental agencies also provide technical assistance (including education and conservation planning) to landowners, as discussed further in Section VIII.

A. PROPERTY TAX BENEFITS

Consistent with the emphasis of Oregon's land use system on protecting farm and forest lands, Oregon assesses such lands at reduced levels for property tax purposes. To maintain such assessments, landowners must manage their properties in ways that further and do not preclude these economic uses, thus creating the prospect of financial consequences for landowners if they fail to meet such criteria.

The Wildlife Habitat Conservation and Management Program (the "Habitat Program") was created to remove a disincentive for private landowners who desire to provide wildlife habitat on their properties instead of, or in addition to, farming and growing timber. Under the program, land subject to a wildlife habitat conservation and management plan (approved by the Department of Fish and Wildlife) is assessed for property tax purposes at the value that would apply if the land was being farmed or used for commercial

forestry. Commercial resource activities may continue on the land as long as they are compatible with wildlife objectives of the plan. Further discussion of the Habitat Program and suggested improvements are included in Section IV.

For certain lands, the state goes beyond providing a special valuation for property tax purposes. Under the Riparian Lands Tax Incentive Program, riparian lands (up to 100 feet from a stream) in certain areas of the state can be *exempt* from property taxation if a landowner agrees to comply with a riparian management plan and riparian management agreement approved by the Department of Fish and Wildlife.²

The other conservation tool that falls within this category is the conservation easement. Unlike other conservation mechanisms addressed in this report, conservation easements are not, *per se*, a state program. Instead, a conservation easement is essentially a contract permitted under state law by which a landowner and another entity agree to limit how the landowner's property can be used so that conservation objectives are furthered. As discussed in greater detail in Section V, conservation easements fall into the tax benefit category because the Oregon Legislature has

² See generally ORS 308A.350 to 308A.383. This program has been relatively ineffective and under-subscribed due to the fact that an exemption from taxes for property that has already been granted a low assessed value does not provide a sufficient incentive for landowners to enroll in the program and be bound by a riparian management plan and agreement.

OREGON'S EXISTING INCENTIVE PROGRAMS

expressed its intent that land which becomes subject to a conservation easement should not necessarily lose an existing special assessment for property tax purposes.

B. INCOME TAX CREDITS

In contrast to Oregon's incentive programs that impact the amount of property taxes paid by landowners (thus having a localized financial impact on county government and special districts with a local tax base), other incentive programs provide a means by which landowners can reduce their state income tax burden. Because such programs have a statewide financial impact, they are particularly appropriate to accomplish land management objectives that benefit *all* Oregonians rather than just local areas.

Beginning in 2004, the Riparian Lands Tax Credit Program will be available to Oregon farmers. Through this program, farmers can receive a state income tax credit equal to 75% of the market value of crops forgone when riparian land (up to 35 feet from a stream) is voluntarily taken out of farm production.³ The purpose of the program is to encourage taxpayers to voluntarily remove riparian land from farm production and employ conservation practices that minimize contributions to undesirable water quality, habitat degradation, and stream bank erosion.⁴

Oregon also currently offers a tax credit for expenses incurred by a landowner in establishing trees on underproductive land. The Underproductive Forestland Tax Credit Program allows a landowner to claim a state income tax credit equal to 50% of reforestation project costs actually paid or incurred by a landowner to reforest underproductive Oregon forestlands.⁵ Although benefits to wildlife and to other natural resources may result from the reforestation work encouraged by the program, the purpose of the program is to increase the state's timber supply.⁶

Inspired by the two existing models of incentive programs that employ state income tax credits, the Work Group sought to create a new incentive program that would target wildlife habitat and other natural resources beyond riparian buffers adjacent to farming operations. Because the conservation of such habitat benefits all Oregonians and, accordingly, any associated financial impact should not be borne primarily by local governments, the Work Group proposes a new income tax credit program to provide incentives to landowners. As discussed in Section VII, the proposal combines the approach of the Riparian Lands Tax Credit Program (i.e., credit for forgone income) and the Underproductive Forestland Tax Credit Program (i.e., credit for out-of-pocket expenditures) and applies to conservation activities on lands managed in compliance with specified land management plans.

C. STEWARDSHIP AGREEMENTS

Pursuant to ORS 527.662, a landowner can enter into a "stewardship agreement" with the Department of Forestry. Under this agreement, the landowner manages his property in accordance with the provisions of a stewardship plan developed in cooperation with the Department. As reflected in current statutes, the purpose of the program is to provide a means by which the Department can implement more efficiently the provisions of the Oregon Forest Practices Act while also allowing a landowner to choose how he will further the restoration and enhancement of forest resources. Stated another way, stewardship agreements are intended to provide "responsible and knowledgeable forest landowners with an opportunity to plan and implement forest management strategies with reduced oversight and regulation" and to provide "an incentive for forest landowners to provide for enhancement and restoration of fish and wildlife habitat, water quality and other forest resources."⁷

³ ORS 315.113.

⁴ ORS 315.111.

⁵ ORS 315.104.

⁶ The same holds true for the Oregon Forest Resource Trust, which provides direct payments to cover the cost of reforestation activities by landowners with under-producing forestlands.

⁷ ORS 527.662(2).

OREGON'S EXISTING INCENTIVE PROGRAMS

Unfortunately, the stewardship agreement program has essentially been unused, most likely because the program does not offer a sufficient enticement for landowners to participate. A discussion of how the stewardship agreement program can be improved is included in Section VI.

D. CONSERVATION INCENTIVES FUNDING

Various state and federal agencies provide financial incentives to private landowners to improve water quality, restore and enhance fish habitat, and improve land management practices. In addition, Oregon has a Flexible Incentives Account that was created specifically to fund conservation activities by private landowners.

HB 3564 created the Flexible Incentives Account in the State Treasury (separate and distinct from the General

Fund). Funds in the account are continuously appropriated to the Oregon Watershed Enhancement Board "to assist landowners in the implementation of strategies intended to protect and restore native species of fish, wildlife and plants and to maintain long-term ecological health, diversity and productivity in a manner consistent with statewide, regional or local conservation plans."⁸

Although the Flexible Incentives Account has, to date, never had any funds, it is unique in that it can serve as a repository for funds provided by federal, state, regional, or local governments for the purposes set forth in the preceding paragraph. The Oregon Watershed Enhancement Board may also accept private funds in the forms of gifts, grants, and bequests for deposit into the account.

⁸ HB 3564, Section 13.

III. OBJECTIVES AND GUIDING PRINCIPLES FORMULATED BY THE WORK GROUP

In approaching the task of evaluating and improving Oregon's existing range of incentive programs, the Work Group formulated objectives and guiding principles. Such objectives and principles were designed to ensure that recommendations by the Work Group are fiscally responsible and politically viable, while also being well-designed to make incentive programs workable, efficient, and effective for landowners in Oregon.

The review of Oregon's incentive policies and programs by the Departments of Agriculture and Forestry, as mandated by HB 3564, also presented an opportunity to identify any policy changes that were needed to complete the work begun by HB 3564 and to address any unintended consequences of that legislation. The Work Group made a concerted effort to take full advantage of this opportunity.

A. TO MAXIMIZE LANDOWNER PARTICIPATION IN CONSERVATION PROGRAMS, LANDOWNERS SHOULD HAVE A FULL RANGE OF INCENTIVE PROGRAMS FROM WHICH TO CHOOSE.

The Work Group recognized that there is significant variation among private landowners regarding their ownership objectives and the degree to which they are willing to accept restrictions on the use of their property and to tolerate the involvement of another party as part of an incentive program. For instance, some landowners may not be willing

to encumber their property with permanent restrictions to further conservation goals, but may be willing to test certain management practices for a period of time. Likewise, some landowners may feel comfortable working with government agency personnel and do not object to periodic monitoring, while others are distrustful of government and prefer to accept minimal technical assistance from agency personnel or prefer to work with non-governmental conservation professionals.

To encourage participation in incentive programs by the greatest number of landowners, the Work Group sought to provide a spectrum of incentive programs, including:

- **Technical assistance to landowner** (landowner seeks advice from state or other party (short of a plan) to enable completion of self-prescribed conservation plan or goals)
- **Conservation or stewardship plans** (assistance in formulating natural resource objectives for a landowner's property; landowner compliance is voluntary)
- **Direct financial assistance** (e.g., cost-sharing, direct reimbursement of expenses, and grants)
- **Income tax credits** (for conservation achieved in compliance with government incentive programs or plans)

OBJECTIVES AND GUIDING PRINCIPLES FORMULATED BY THE WORK GROUP

- **Wildlife Habitat Conservation and Management Plan or Stewardship Agreement** (agreement with the state to take certain affirmative land management actions)
- **Conservation easement** (acquisition of particular property rights by government or other entity)
- **Acquisition of fee simple title** (purchase of all property rights by government or other entity)

B. TO MAXIMIZE LANDOWNER PARTICIPATION IN CONSERVATION PROGRAMS, THE PROGRAMS NEED TO BE SIMPLE, SUPPORT LANDOWNER AND PUBLIC OBJECTIVES, AND OFFER A SUFFICIENT BENEFIT OR ENTICEMENT.

While these principles may seem obvious, they provided useful reminders to the Work Group to avoid any tendency to make programs overly complicated or to assume that landowners will participate in a program simply because it is "on the books" or because it allows landowners to maintain the special property tax assessment they already enjoy. Most incentive programs require a significant investment of time by a landowner and are designed to encourage a landowner to engage in practices beyond what is otherwise required by law. Information shared with the Work Group demonstrated that many landowners need tangible benefits for their participation such as direct compensation, income tax relief, or regulatory certainty. Although today's fiscal environment may make such rewards currently difficult, the statutory framework to provide such rewards in the future should be constructed now.

C. THE STATE SHOULD BE STRATEGIC IN HOW IT USES ITS LIMITED CONSERVATION RESOURCES BY LINKING INCENTIVE PROGRAMS TO STATEWIDE, REGIONAL, AND LOCAL PLANS.

In recognition of the limited resources available to the state to encourage conservation through incentive programs, the importance of producing tangible conservation benefits, and the fact that opportunities for conservation are not uniform across the landscape, a

recurring theme in the discussions of the Work Group was the importance of the state strategically linking incentive program eligibility to locations that are designated as priority conservation areas in statewide, regional, or local plans. Such a strategy will help ensure that government resources are used most efficiently and effectively.

Although Oregon is well-known for its commitment to land use planning, local comprehensive plans have not typically addressed habitat and water quality issues. The Oregon Plan for Salmon and Watersheds was one of the first attempts by state government to develop a coordinated approach to conservation and restoration across ecological and jurisdictional boundaries. However, the plan is not spatially explicit. More recently, the State Board of Forestry has acknowledged the need for a more comprehensive statewide conservation plan to focus efforts on areas and resources of highest priority.

Ideally, a statewide conservation plan would involve multiple resource agencies, as well as the private and non-profit sectors, and would address the full range of habitats, species, and other important natural resources across all land uses. An opportunity to take such an approach has recently been provided to Oregon and other states by the United States Congress.

In the appropriations bill for the U.S. Department of Interior and related agencies that set forth 2002 funding levels, Congress included \$80 million for wildlife conservation grants to states. In order to be eligible for such grants, a state must first develop or commit to develop by October 1, 2005, a comprehensive wildlife conservation plan "[t]hat considers the broad range of [each state's] wildlife and associated habitats, with appropriate priority placed on those species with the greatest conservation need"⁹ Through the Director of the Oregon Department of Fish and Wildlife, Oregon has made a commitment to the federal government to complete such a plan by October 2005. Through this action, the state will now have a funding source to support a truly strategic approach to statewide conservation efforts.

⁹ Public Law 107-63 (Appendix A).

OBJECTIVES AND GUIDING PRINCIPLES FORMULATED BY THE WORK GROUP

D. RECOMMENDATIONS FOR PROGRAM CHANGES SHOULD AVOID A SIGNIFICANT INCREASE IN GOVERNMENT SPENDING OR AGENCY WORKLOAD, TO THE GREATEST EXTENT POSSIBLE.

In conducting its work, the Work Group was keenly aware of the fiscal challenges currently faced by the state. During the eight months that the Work Group held regular meetings, the governor of Oregon convened multiple special sessions of the Legislature to address repeated and chronic budget shortfalls. Fiscal forecasts for early 2003 continue to show diminished revenues.

Given the fiscal difficulties faced by the state, significant cuts in agency budgets are likely. Cuts in the budgets of natural resource agencies will exacerbate the current situation in which agency personnel are hard-pressed to meet the current demands of administering incentive programs. Because of this, the Work Group looked for solutions that require the least possible amount of public funding or agency staff attention and that integrate state resources to get a more streamlined and efficient system of encouraging and enabling conservation by private landowners.

E. RECOMMENDATIONS FOR PROGRAM CHANGES THAT MAY POTENTIALLY IMPACT HOW PROPERTY IS ASSESSED FOR TAX PURPOSES SHOULD BE REVENUE NEUTRAL.

Like the state government, local governments and special districts that rely on property tax revenue are strapped financially. Their Work Group representatives expressed that they must oppose any legislative proposals related to incentives that have the potential to reduce property tax revenues. This emphasis on "revenue neutrality" is particularly

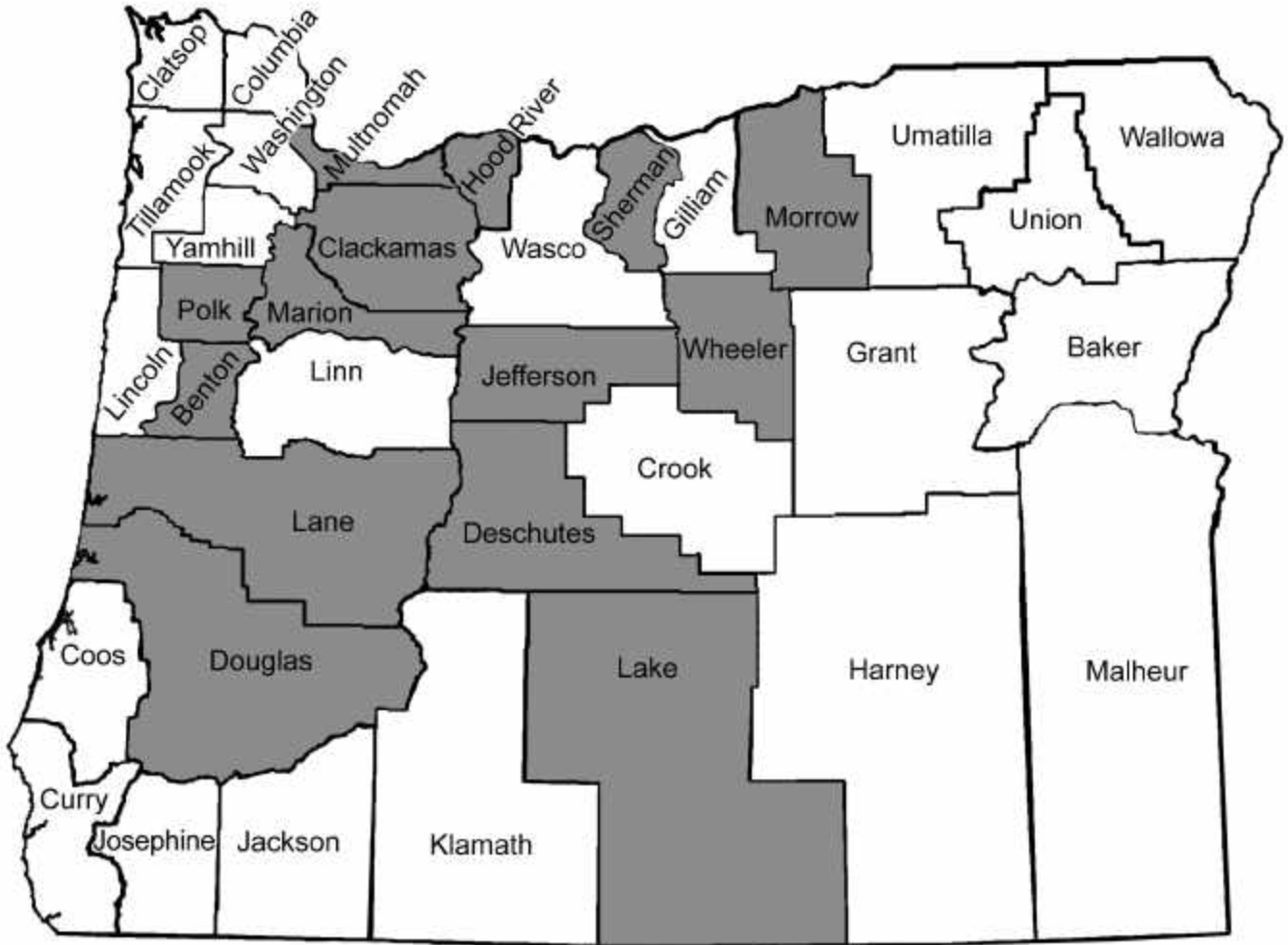
significant given that one of the primary mechanisms available to the state to encourage private landowners to conserve natural resources is through property tax special assessments.

In light of today's fiscal realities, the Work Group agreed that this report should not consist of proposals for numerous new incentive programs. Instead, wherever possible, an effort has been made to improve the ability of existing programs and resources to encourage sound natural resource management. Likewise, the Work Group sought to ensure that its proposals are revenue neutral or involve a minimal fiscal impact on state and local governments. Finally, where feasible, the report includes recommendations for how to reduce the time and resources required of government personnel to administer incentive programs.

F. RECOMMENDATIONS FOR PROGRAM CHANGES SHOULD FURTHER IMPROVE, WHERE POSSIBLE, THE CONSERVATION EFFORTS ADDRESSED IN HB 3564.

HB 3564 addressed a variety of issues relevant to conservation by private landowners in Oregon. The bill sought to remove particular disincentives under Oregon law that had prevented or discouraged landowners from engaging in conservation. The Work Group continued down this path and took a comprehensive look at many Oregon statutes and agency administrative rules to identify disincentives, as well as inconsistencies and confusion surrounding existing incentive programs. The Work Group also went a step further and crafted proposals for new conservation incentive programs, as discussed below.

**FIGURE 1. WILDLIFE HABITAT CONSERVATION AND MANAGEMENT PROGRAM
COUNTY PARTICIPATION AS OF JANUARY 1, 2003**



- Participating counties:
 Benton, Clackamas, Deschutes, Douglas, Hood River, Jefferson, Lake, Lane, Marion, Morrow, Multnomah, Polk, Sherman, Wheeler
- Non-participating counties:
 Baker, Clatsop, Columbia, Coos, Crook, Curry, Gilliam, Grant, Harney, Jackson, Josephine, Klamath, Linn, Malheur, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Yamhill

IV. THE WILDLIFE HABITAT CONSERVATION AND MANAGEMENT PROGRAM

The Wildlife Habitat Conservation and Management Program (the "Habitat Program") was created to remove a disincentive for private landowners who desire to provide wildlife habitat on their properties instead of, or in addition to, farming and growing timber. Under the program, land subject to a wildlife habitat conservation and management plan (approved by the Department of Fish and Wildlife) is assessed for property tax purposes at the value that would apply if the land were being farmed or used for commercial forestry. Commercial resource activities can continue on the land as long as those activities are compatible with the plan.

The program originally began as a pilot in 1993 in Marion and Polk counties. In 1997, the program was expanded to all Oregon counties, although the program was limited to properties in farm use and mixed farm and forest use zones. In 2001, as a result of HB 3564, the program was expanded to cover certain forestlands (i.e., those lands receiving a forest special assessment for property tax purposes). Additionally, HB 3564 clarified that landowners who enter into a wildlife habitat conservation and management plan do not lose their existing special assessment or face additional taxes by virtue of entering into such a plan.

In addition to these improvements to the Habitat Program by HB 3564, one provision of that bill had an unintended, negative effect. In an effort to encourage counties to focus on and implement the program, the bill gave counties until January 1, 2003, to decide whether to participate in the

program. Out of abundance of caution, and due to the inability of counties to withdraw from the program after January 1, 2003, more than half of Oregon's counties (22) elected to opt out of the program in 2002. (*See Figure 1, facing page.*) The net result is that a viable program improved by other provisions of HB 3564 now has reduced relevance to land conservation in Oregon – a situation that the Work Group sought to rectify.

In addition to this challenge, the Work Group identified a number of other problems in the Habitat Program statutes, as well as matters that need further statutory clarification. To the extent that confusion surrounds the Habitat Program, much of the confusion can be attributed to the fact that the program combines concepts and terms of art from the realms of tax law, land use regulation, and resource and wildlife management.

A. CLARIFY WHICH PROPERTIES ARE ELIGIBLE TO PARTICIPATE IN THE PROGRAM

As noted above, the Habitat Program currently applies to properties located in exclusive farm use zones and mixed farm and forest use zones. It also applies to properties receiving a forestry special assessment. However, there is currently no distinction between properties located within and outside urban growth boundaries. Likewise, the current statutes do not provide counties with the discretion to make

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lands eligible for the program that are not listed in the statute, such as lands in non-farm or non-forest zones.

After lengthy discussion, the Work Group reached a consensus regarding how eligibility criteria should be changed to enhance the Habitat Program. The Work Group's recommendations reflect a balance struck between making the program available to as many landowners as possible while also providing enough flexibility and discretion to counties to allow them to protect their revenue base and, accordingly, be willing to remain in the program (or, if they have already opted out of the program, to opt back in).

The Work Group, with the exception of the Special Districts Association of Oregon (as explained below), recommends that the statute be amended so the Habitat Program's eligibility criteria are structured as follows:

- First, allow a county to opt in and out of the program at its discretion,¹⁰ with some safeguards and assurances built into the statutes for landowners who have begun but not completed the process of preparing wildlife habitat conservation and management plans.¹¹
- Second, if a county is participating in the program, it must recognize certain properties as eligible if they are located *outside of an urban growth boundary* and within resource zones.¹² Such properties consist of all

¹⁰ HB 3564 only permitted a county to opt out of the program by the end of 2002 and, if it later opted back into the program, it could never opt out again. As noted above, 22 counties opted out of the program in 2002.

¹¹ Applications for special assessment under the Habitat Program must be filed with the county assessor by April 1 of each year. The Work Group recommends that, from the time a landowner receives certification from the county that the landowner's property is eligible for the program (see Section IV(C)), the landowner has, at a minimum, until the first succeeding April 1, plus two years, to file an application for special assessment with the county assessor, regardless of whether the county has opted out of the program since providing to the landowner a certification that the landowner's property is eligible.

¹² There is a precedent to draw a distinction, for purposes of eligibility for a state incentives program, between lands outside an urban growth boundary and inside an urban growth boundary. See ORS 308A.359 (Riparian Lands Tax Incentive Program). Likewise, there is also a precedent for giving discretion to local governments regarding lands within an urban growth boundary. ORS 308A.360.

parcels located within exclusive farm use zones, mixed farm and forest use zones, and forest use zones.¹³

- Third, *outside of an urban growth boundary*, a county has the discretion to deem properties eligible for the program that are not in exclusive farm use zones, mixed farm and forest use zones, or forest use zones. A county may designate additional rural land use zones in which properties are eligible or it may designate specific geographic areas based on the presence of significant wildlife habitat (e.g., oak savanna). For such additional lands to be eligible for the program, the county must designate the lands as eligible through a resolution or other formal process. As part of such process, the county must give notice to any special district with a tax base that would be impacted.¹⁴
- Fourth, *within an urban growth boundary*, the same types of properties can potentially be eligible as outside of urban growth boundaries. In selecting any or all of such lands, the county would need to go through

¹³ As noted above, HB 3564 expanded the program to apply to forestlands. However, the statute was drafted in such a way that "forestland" was defined in terms of whether the property was assessed for forest use rather than zoned for forest use. See ORS 215.800(1), 215.801(3). This is in contrast to other portions of the statute that focus on lands *zoned* for exclusive farm use and mixed farm and forest use. For consistency and clarity, the Work Group recommends that the eligibility of forestlands be determined by zoning rather than assessment. This can be accomplished by having the program apply to properties located within areas "zoned for exclusive farm use, mixed farm and forest use, or forest use under a land use planning goal protecting agricultural land or forestland."

Another reason to shift to a definition of forestland based on zoning is to provide additional peace of mind to counties regarding potential revenue impacts of the program. Stated simply, if forestland is defined in terms of land that is specially assessed for forest use, the land base that fits into such category can expand over time as additional landowners decide to stock their properties with the requisite number of trees and tree species to qualify for such an assessment. In contrast, if forestland is defined based on zoning, the only way for additional land to fall within the category is through the expansion of forest zones by government action.

¹⁴ The Special Districts Association of Oregon objects to the ability of counties to designate additional lands as eligible for the Habitat Program without the consent of any special districts with a tax base that would be impacted.

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the affirmative steps described in the preceding paragraph, as well as obtain the approval of affected cities and any regional planning agency.¹⁵

B. CLARIFY THE PROVISIONS REGARDING DWELLINGS

ORS 215.804 currently addresses the issue of how a dwelling may be established on lands subject to a wildlife habitat conservation and management plan. Although this section fulfills the important purpose of making clear that participation in the Habitat Program does not foreclose the possibility of having a residential dwelling on the property, it has generated significant confusion. First, some counties have interpreted provisions of the section to apply to wildlife habitat conservation and management plan proposals that do not even involve a dwelling. Second, the section attempts to address in an overly succinct manner a very complicated issue under Oregon land use law: whether a dwelling is allowed on a particular parcel of resource lands. This has left some people with the erroneous impression that different dwelling standards apply to lands subject to a wildlife habitat conservation and management plan and that it is easier to obtain approval for a dwelling under the Habitat Program.

¹⁵ The Work Group acknowledges that, if a county does not choose to apply the Habitat Program to lands within an urban growth boundary, only the open space special assessment program could potentially serve as a state incentive program to encourage habitat conservation. However, for all intents and purposes, that program is not a practical means to motivate landowners to conserve habitat. Enrollment in the program involves the somewhat laborious process of obtaining approval by the county board of commissioners. In addition, provisions regarding back taxes applicable upon exiting the program (that are not applicable to other special assessments) likely dissuade those landowners that desire eventually to sell or develop the land. Specifically, if a landowner were to eventually take his land out of the program, he would face back tax liability for *all* years his land was enrolled in the program, while other assessments have a five- or ten-year maximum period of back tax exposure. Moreover, such deferred taxes compound at an 8% interest rate. These problems with the open space program, combined with the fact that it does not involve the participation or oversight of the Department of Fish and Wildlife or other natural resource professionals, led the Work Group to not focus on the program as an effective means to conserve wildlife habitat or other natural resources.

To address these problems, the Work Group recommends that the Habitat Program statutes be amended such that they do not attempt to set forth the criteria that govern whether a particular dwelling is allowed. Stated simply, the Work Group recommends that the statutes state that lawfully existing dwellings can remain on parcels subject to a wildlife habitat conservation and management plan, and a new dwelling can be allowed if the dwelling complies with all applicable requirements under the county's acknowledged zoning ordinance. Likewise, the statutes can make clear that participation in the Habitat Program does not make it easier or more difficult for a landowner to obtain approval for a dwelling.

C. CLARIFY COUNTY AND LANDOWNER INVOLVEMENT IN APPLICATION PROCESS

The administrative rules for the Habitat Program currently require a landowner to submit a proposed wildlife habitat conservation and management plan to the applicable county planning department. OAR 635-430-0050. The intent behind this requirement was to have the county verify that the property is eligible for participation in the Habitat Program based on the property's zoning or tax assessment status. Problems have arisen, however, because not all counties have undertaken the necessary review and, accordingly, the Department of Fish and Wildlife has approved plans on properties that were ultimately determined to be ineligible.

The Work Group recommends that application requirements be changed to require that the landowner, as an initial step in the habitat planning process, be responsible for obtaining certification by the county that a property is eligible. The landowner would then be required to submit that certification to the Department of Fish and Wildlife, and eventually to the county assessor, along with the other required application materials.

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D. PROPERTY TAX ISSUES

1. CLARIFY HOW TO ASSESS HOMESITES

The Work Group recommends that participation in the Habitat Program have no effect on the assessment of homesites. As such, homesites with dwellings that are receiving a farm or forest special assessment and then are enrolled in the Habitat Program should maintain their special assessment. This will ensure that there is no penalty for a landowner enrolling in the Habitat Program. Homesites with dwellings that are not receiving a special assessment should be assessed at market value upon entering the program.

For new homesites (i.e., no dwelling has been constructed yet), the Work Group recommends that the homesite be specially assessed if it is approved as a farm use dwelling or forest use dwelling. Otherwise, the new homesite should be assessed at market value.

2. WHAT HAPPENS TO A PROPERTY'S OPEN SPACE POTENTIAL ADDITIONAL TAX LIABILITY WHEN IT MOVES INTO HABITAT PROGRAM ASSESSMENT OR BACK OUT?

When a property receives an open space assessment, the owner receives a tax savings based on the difference between the property being assessed at its full market value and its value as open space. Importantly, if property is eventually taken out of open space assessment, the owner must pay back the tax savings realized for *each* year the property was in open space assessment. This is in contrast to other special assessment designations for which there is a maximum five- or ten-year period of potential additional taxes, as well as uniform provisions for how those potential additional taxes dissipate over time when land moves into another special assessment category.

The Work Group examined the hypothetical situation in which land under open space assessment for a lengthy period of time is enrolled in the Habitat Program and then subsequently taken out of Habitat Program. The Work Group was concerned that the owner of such lands could reduce or eliminate the open space potential additional tax liability by

jumping back and forth between open space assessment and Habitat Program assessment. The Work Group recommends that the law be structured such that open space potential back taxes are not due upon enrollment in the Habitat Program but that such potential tax liability does not diminish during the time the property is in the Habitat Program (nor does it continue to accrue interest). As such, if the property is later taken out of the Habitat Program, the potential open space tax liability is the same as when the property entered Habitat Program status.

3. ORS 215.236 REQUALIFICATION ISSUE

ORS 215.236 provides for the disqualification of property from exclusive farm use and forest use special assessment as a result of the construction of a non-farm dwelling on land that is generally unsuitable for farming or timber production. The statute further provides that property that has been disqualified may not requalify for special assessment unless, when combined with another contiguous lot or parcel, it constitutes a qualifying parcel. ORS 215.236(5).

In the context of the Habitat Program, the issue is whether ORS 215.236(5) must be satisfied before the property can move into special assessment under the Habitat Program. The Work Group recommends that a property not have to meet the requirements of ORS 215.236(5) given that valuable wildlife habitat (or the potential for valuable wildlife habitat) is likely to exist around non-farm dwellings in EFU zones. Moreover, as explained above, the property owner would not receive a windfall because the homesite would continue to be assessed at full market value even after the property is enrolled in the Habitat Program.

4. REMOVE THE OVERLAPPING PROPERTY TAX CRITERIA

Currently, a property in Oregon can have multiple, overlapping designations that have a bearing on how it should be specially assessed for property tax purposes. This situation has created difficulties for county assessors and confusion for landowners as they attempt to satisfy special assessment criteria.

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The Work Group recommends addressing these problems by clarifying in the statutes that "wildlife habitat special assessment" is a category independent from all other special assessment programs and that, once a property is under wildlife habitat special assessment, no other special assessment criteria are relevant. Likewise, the Work Group recommends that existing, confusing references to open space assessment be eliminated from the Habitat Program statutes. Finally, as explained below in the context of conservation easements, the Work Group recommends that the law be written to allow county assessors to rely on certifications from the Department of Fish and Wildlife that a landowner is in compliance with a habitat plan and, accordingly, in compliance with the applicable special assessment criteria.

5. CLARIFICATION OF VALUATION FOR SPECIAL ASSESSMENT

As with other special assessment programs, there are two primary options for calculating a property's value: (1) for farm use, under ORS 308A.050 to 308A.128; or (2) as forestland, under ORS 321.354 or 321.812. The Work Group proposes that a property in the Habitat Program that *was* specially assessed during the previous assessment year would continue to be valued as farm or forestland, whichever is applicable. For property in the Habitat Program that *was not* specially assessed during the previous

assessment year, a similar approach would be taken: i.e., land would be valued as forestland if it meets relevant stocking and species standards; if it does not meet those standards, it would receive a farm use valuation.

E. GENERAL REPACKAGING OF THE HABITAT PROGRAM TO ORS CHAPTER 308A

Given that the Habitat Program is a property tax program, the Work Group recommends that the statutes relating to the Habitat Program be moved from ORS Chapter 215 to ORS Chapter 308A so that all statutes relating to special property tax assessments are in the same portion of the Oregon Revised Statutes. This will assist assessors in administering the program and landowners seeking incentives for their conservation work.

F. GENERAL CLARIFICATION REGARDING APPLICATION PROCESS AND REQUIREMENTS

In addition to addressing the issues discussed above, the proposed statutory amendments also propose somewhat ministerial changes to the Habitat Program statutes. Such changes are designed to make the program consistent with how other special assessment programs are administered and to clarify details regarding how a landowner is to prepare and submit an application for the program.

V. CONSERVATION EASEMENTS

Unlike other conservation mechanisms addressed in this report, conservation easements are not, *per se*, a state program. Instead, a conservation easement is essentially a contract permitted under state law by which a landowner and another entity (usually a nonprofit land trust or government agency) agree to limit how the landowner's property can be used so that conservation goals are furthered. Specifically, ORS 271.715(1) defines "conservation easement" as "a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property."

In many states, conservation easements are used as a means to prevent urban or suburban development from spreading onto resource lands. In Oregon, our land use system already provides some protection to farm and forest lands that would otherwise be under significant development pressure. Conservation easements, therefore, are often used in Oregon to help achieve other ends, such as the conservation of natural resources on farm and forest lands or substantial additional protection of farmland from development. Conservation easements are particularly well-suited for such a role, given that they can be crafted to allow for continuing economic uses of land while simultaneously

achieving conservation objectives such as the maintenance or improvement of wildlife habitat.

Another key reason why conservation easements fill an important niche in Oregon is their ability to provide *permanent* protection of natural resources while maintaining the land in private ownership and not requiring a sale. As such, conservation easements provide an excellent alternative to the outright acquisition of property, which can be inordinately expensive and, depending on the buyer, remove land from private ownership (an important consideration given the large percentage of Oregon in public ownership). Through federal income tax deductions and estate tax ramifications, conservation easements also provide real incentives to landowners to engage in conservation without financial cost to state and local governments. Finally, given that conservation easements are one of the primary tools used by nonprofit land trusts to protect land in Oregon, these instruments allow significant conservation to take place *without government involvement*. By one estimate, approximately 15,000 acres of land in Oregon are currently protected through the use of conservation easements by land trusts.¹⁶

Although conservation easements do not constitute a state incentive program, *per se*, Oregon laws do have a

¹⁶ Susan Walsh, *Land Acquisition Survey (draft)*, The Nature Conservancy, Oregon Chapter, 2002. The survey also reflects that the total number of acres under conservation easement (by private and public entities in Oregon) is roughly 40,000 acres (which represents less than one-tenth of one percent of the state's land mass). See Appendix B for a summary of the survey's results by county.

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significant bearing on whether private landowners are inclined to donate or sell conservation easements. In particular, the extent to which a landowner can obtain or retain a special assessment for property tax purposes after granting a conservation easement is a major factor in the landowner's decision-making process. A landowner who currently enjoys a farm or forest use special assessment on his land will likely be reluctant to place a conservation easement on his land if, in doing so, he will lose his special assessment status and will face not only possibly higher property taxes but also liability for years of deferred taxes. As explained below, current statutes fail to provide the kind of assurances that landowners need to feel comfortable that they are not risking serious property tax consequences by granting a conservation easement, thus creating a situation in which few conservation easement transactions are being consummated in the state.

In HB 3564 (and later codified as ORS 308A.740), the 2001 Legislature declared: "it is in the interests of the people of this state that certain private lands be managed in a sustainable manner for the purpose of maintaining the long-term ecological, economic and social values that these lands provide." The Legislature further declared that it is the policy of the state to encourage such management through tax policy and that additional property tax should not be imposed if a landowner voluntarily forgoes, limits, or postpones economic uses of private land for conservation purposes.

Consistent with these declarations, the Legislature sought to make explicit that a landowner who enters into a wildlife habitat conservation and management plan or executes a conservation easement, would not be penalized by an increase in property taxes. Specifically, the Legislature adopted Section 3 of HB 3564 (now codified at ORS 308A.743), which reads as follows:

(1) Land that is specially assessed under ORS 215.800 to 215.808, 308A.050 to 308A.128, 308A.300 to 308A.330, 321.257 to 321.390, 321.705 to 321.765 or 321.805 to 321.825, or land that is exempt from property tax under

ORS 308A.350 to 308A.383, may not be disqualified from the special assessment or exemption, and may not be subject to additional taxes under ORS 308A.700 to 308A.733, if the property owner has:

- (a) Entered into a wildlife habitat conservation and management plan, as described in ORS 215.800 to 215.808, approved by the State Department of Fish and Wildlife; or*
 - (b) Executed a conservation easement, as defined in ORS 271.715, or a deed restriction and the land:
 - (A) Is managed in compliance with the conservation easement or deed restriction; and*
 - (B) Continues to meet the requirements for special assessment or exemption. The existence of the conservation easement or deed restriction may not cause the disqualification of the land from special assessment or exemption or preclude the disqualification of the land from special assessment or exemption for some other reason.**
- (2) A property owner who executes a conservation easement may convey the easement to a land trust or other qualified entity without a loss of benefits under this section.*
- (3) In order for land to be subject to this section:*
- (a) The conservation easement, deed restriction or wildlife habitat conservation and management plan must be recorded in the records of the clerk of the county in which the land is located; and*
 - (b) A copy of the conservation easement, deed restriction or wildlife habitat conservation and management plan, along with the property tax account number for the land, must be sent to the county assessor.*

Pursuant to this language, if a landowner enjoys a special tax assessment, he will not lose that assessment simply by virtue of entering into a wildlife habitat conservation and management plan or conservation easement. However, if

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the landowner has a conservation easement, he is at risk of losing the assessment if he does not manage his land in accordance with the terms of the easement or does not continue to meet the requirements for the assessment.

The Work Group has determined that this language has created three primary problems for landowners and county assessors:

- First, the language essentially creates an "overlay" of assessment requirements on top of existing assessment criteria. For instance, for a landowner who has traditionally enjoyed a farm use special assessment and recently entered into a conservation easement, an assessor must now determine whether the farm use special assessment criteria are satisfied and determine whether the landowner is complying with the terms of the conservation easement. As such, the assessor must now apply two sets of criteria.
- Second, it is unclear how assessors must balance the two sets of criteria. For instance, if a conservation easement on forestland limits timber harvest on the property, how severe can such a limitation be before the assessor must conclude that the land no longer meets the requirements for forest use special assessment? Is it enough for the conservation easement to allow some harvesting of trees, even if only for purposes of maintaining or improving wildlife habitat, or must the land be "held or used for the predominant purpose of growing and harvesting trees of marketable species" as arguably required by ORS 321.358(3)(c)?
- Third, given that a landowner can lose his special assessment if an assessor deems that a conservation easement is incompatible with the criteria for the special assessment, the statute fails to provide any real assurances to the landowner that he will not be penalized for entering into such a conservation instrument. In short, the statute undermines the state's policy to not impose additional taxes on a landowner who

voluntarily forgoes, limits, or postpones economic uses of private land for conservation purposes.

The Work Group, with the exception of the Oregon Farm Bureau and the Oregon Cattlemen's Association, recommends a two-pronged approach to address these issues:

A. PROVIDE SPECIAL ASSESSMENT FOR LANDS SUBJECT TO A CONSERVATION EASEMENT INDEPENDENT OF OTHER SPECIAL ASSESSMENT CATEGORIES.

The Work Group recommends that a conservation easement special assessment be available to lands subject to a conservation easement that cannot qualify under another special assessment law. Like the special assessment that applies to lands subject to a Wildlife Habitat Conservation and Management Plan,¹⁷ the conservation easement special assessment would have criteria that are independent from other special assessment categories and the law would no longer require that the land subject to a conservation easement also be managed to continue to meet the requirements for other special assessment programs (as currently mandated by ORS 308A.743(1)(b)(B)). If, prior to the conservation easement, the land was in a special assessment program (such as for farm or forestland), the land would roll into the new conservation easement special assessment without any deferred taxes coming due. Likewise, the applicable criteria for the previous assessment category would no longer be relevant.

The question remains as to what criteria a property subject to a conservation easement should meet in order to qualify for special assessment. Consistent with the existing requirement of ORS 308A.743(1)(b)(A), a basic criterion should be that the land is managed in compliance with the terms of the conservation easement. In addition, the easement should meet additional, substantive criteria that

¹⁷ In general, the Work Group recommends that many of the "fixes" related to wildlife habitat special assessment (e.g., related to homesites, dwellings, etc.), as detailed above, also be applied in the context of conservation easement special assessment.

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ensure that public objectives and purposes are achieved through the easement.

The Work Group recommends that Oregon incorporate the thorough and well-developed set of standards set forth at Section 170(h) of the federal Internal Revenue Code. Those standards determine whether a property interest, such as a conservation easement, is a "qualified conservation contribution" and, therefore, deserving of a federal income tax deduction. By building these standards into the criteria for conservation easement special assessment, Oregon would only provide the conservation easement special assessment to lands that are burdened by a *permanent* conservation easement and satisfy one or more of the following conservation purposes:

- (1) The preservation of land areas for outdoor recreation by, or the education of, the general public,
- (2) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (3) The preservation of open space (including farmland and forest land) where such preservation is--
 - (a) For the scenic enjoyment of the general public, or
 - (b) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy,and will yield a significant public benefit, or
- (4) The preservation of an historically important land area or a certified historic structure.¹⁸

B. PLACE THE BURDEN OF VERIFYING THAT A LANDOWNER HAS MET THE APPLICABLE SPECIAL ASSESSMENT CRITERIA ON PARTIES OTHER THAN COUNTY ASSESSORS.

When a landowner enters into a conservation easement or wildlife habitat conservation and management plan, he is entering into a contract with an entity that has the resources and legal duty to ensure that the landowner complies with the terms of the contract. For instance, a conservation easement can be between a landowner and a government entity (federal, state or local) or a non-profit land trust (which, under law, must be qualified to monitor and enforce the easement in perpetuity). Likewise, a wildlife habitat conservation and management plan is between a landowner and the Department of Fish and Wildlife.

The involvement of these entities provides the necessary assurances that conservation activities are occurring on the land and will continue. For instance, under current law,¹⁹ an application for a special assessment by a landowner with a wildlife habitat conservation and management plan must include a certified copy of a declaration by the Department of Fish and Wildlife that the land is subject to a wildlife plan approved by the Department and that the plan is being implemented.

The Work Group proposes amending the law to take advantage of the safeguards inherent in conservation easements and wildlife habitat conservation and management plans and, as such, reducing the workload burden on county assessors. Specifically, the Work Group proposes that, after receiving an approved wildlife habitat conservation and management plan and the required certification from the Department of Fish and Wildlife, assessors can lawfully assume that the landowner remains in compliance with the criteria of the plan unless notified otherwise by the non-landowner party to the plan (e.g., the Department of Fish and Wildlife). Likewise, once an assessor receives a written certification from the non-landowner party to the easement

¹⁸ 26 USC 170(h)(4)(A).

¹⁹ ORS 215.808(5)(d).

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(e.g., land trust, government agency) that the landowner is in compliance with the terms of the easement and the easement satisfies the assessment criteria described above, assessors can lawfully assume that the landowner remains in compliance with the criteria of the conservation easement special assessment until notified otherwise by the non-landowner party.²⁰

C. THE DEED RESTRICTION ANOMALY

The above discussion focuses on how to "fix" ORS 308A.743 as it relates to conservation easements. The recommendation is, essentially, to eliminate ORS 308A.743 given the confusion it creates for landowners and assessors regarding conservation easements and the fact that it takes a roundabout approach to clarifying that wildlife habitat special assessment is an independent assessment program.

However, ORS 308A.743 also includes language related to the property tax ramifications for land burdened by a deed restriction (which, presumably, restricts use of the land in ways that further conservation). The statute provides that a landowner with a deed restriction will not face additional tax liability if the land is managed in accordance with the deed restriction and continues to meet the requirements for special assessment or exemption.

Unlike conservation easements and wildlife habitat conservation and management plans, there is no guarantee that a reliable third-party will be available to ensure that a landowner is complying with a deed restriction. For instance, a deed restriction could be put in place by a developer with conservation motives before it transfers the land, yet that developer (or, possibly, surrounding landowners with the right to enforce the deed restriction) may not have the interest or resources to ensure that the buyer of the land complies with the deed restriction.

Because of this limitation, and the fact that there are no statutory criteria regarding what type of deed restriction is adequate to receive a conservation-type special assessment, the Work Group does not make the type of recommendation regarding deed restrictions as it does for conservation easements and wildlife habitat conservation and management plans. Moreover, given that, even in the absence of ORS 308A.743, a property with a deed restriction can maintain special assessment if it continues to meet the requirements for that special assessment category, the Work Group concludes that there is no purpose served by retaining the provisions of ORS 308A.743 that pertain to deed restrictions.

D. AMEND THE DEFINITION OF "HOLDER" FOR PURPOSES OF CONSERVATION EASEMENTS

As noted above, the definition of "conservation easement" is expressed in terms of "a nonpossessory interest of a *holder* in real property" imposing certain limitations or affirmative obligations on a landowner.²¹ Under ORS 271.715(3), "holder" is then defined to mean:

(a) *The state or any county, metropolitan service district, city or park and recreation district acting alone or in cooperation with any federal or state agency, public corporation or political subdivision;*

(b) *A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or*

(c) *An Indian tribe as defined in ORS 97.740.*

²⁰ The legislation proposed by members of the Work Group recommends that the non-landowner party to a conservation easement have an obligation to provide periodic certifications (e.g., every three years, or more frequently if requested by the county assessor) to the county assessor that the criteria for conservation easement special assessment continue to be satisfied.

²¹ ORS 271.715(1) (emphasis added).

CONSERVATION EASEMENTS

1. THE FEDERAL GOVERNMENT AS A HOLDER OF CONSERVATION EASEMENTS

Absent from the above definition of "holder" is the federal government. Although this absence does not affect the legal ability of the federal government to hold conservation easements, it does affect the ability of landowners who donate easements to the federal government to enjoy certain benefits provided under state law to landowners who donate to "holders" listed in ORS 271.715(3).

ORS 271.785 states:

For the purpose of taxation, real property that is subject to a conservation easement or a highway scenic preservation easement shall be assessed on the basis of the real market value of the property less any reduction in value caused by the conservation easement or a highway scenic preservation easement. Such an easement shall be exempt from assessment and taxation the same as any other property owned by the holder.

Under the provisions of this statute, a landowner can receive property tax benefits beyond the reduced value of his land if he donates a conservation easement to an entity that (1) is a "holder" under state law; and (2) enjoys an exemption from property taxes on real property that it owns. Essentially, the landowner vicariously enjoys the holder's exemption from property taxes on the property value conveyed by the easement.

To better explain the significance of this statute, an illustration may be helpful:

A landowner donates a conservation easement to a county as part of the county's open space program. The easement conveys 50% of the value of the property. Pursuant to ORS 271.715(3), the county is a "holder" of the conservation easement. Furthermore, as a government body, the county is exempt from taxation on the property it owns.

Under ORS 271.785, the property is assessed at its real market value less any reduction in value caused by the

conservation easement. Because the easement conveyed 50% of the value of the property, the value of the property for property tax purposes has been reduced by 50%. However, that still leaves the issue of the taxes due on the conservation easement, the responsibility for which is typically allocated (under the negotiated terms of an easement) to the landowner rather than the holder of the easement. In this instance, because the county is a "holder" and is exempt from property taxes, ORS 271.785 allows the landowner to enjoy vicariously the county's exemption and he does not have to pay any property taxes on the value of the conservation easement.

With this illustration in mind, it becomes clear how significant it is for an entity to be deemed a "holder" under ORS 271.715(3) if it is also exempt from property taxation. The federal government is exempt from property taxation, but it is not considered a "holder" under ORS 271.715(3). As such, a landowner who donates a conservation easement to the federal government will likely not enjoy the benefit of being exempt from property taxation on the value of the easement.

The Work Group was prepared to recommend that the definition of "holder" be broadened to include any government entity with the authority to hold real property – an approach taken by other states based on the wording of Section 1 of the Uniform Conservation Easement Act. Such a change would help to ensure uniform tax treatment of landowners who donate conservation easements to government entities. However, due to opposition to such a proposal from the Oregon Farm Bureau and the Oregon Cattlemens Association, the Work Group has opted not to recommend this change to the law.

2. SOIL AND WATER CONSERVATION DISTRICTS AS HOLDERS OF CONSERVATION EASEMENTS

While the Work Group considered recommending statutory changes to allow the federal government to be a holder of conservation easements so that landowners could maximize their property tax benefits, the Work Group considered recommending that Soil and Water Conservation

CONSERVATION EASEMENTS

Districts ("Conservation Districts") be added to the definition of holder so that they would have the legal authority to enter into conservation easement transactions and, therefore, could facilitate significant conservation on the ground. To understand the significance of adding Conservation Districts to the definition of holder, some background about them and the role they play in Oregon's agricultural community is warranted.

According to the Department of Agriculture, a Conservation District "is legally defined as a subdivision of state government, but it functions as a local unit, led by a locally elected board of directors who serve without pay. By law a Conservation District is a municipal corporation, and must abide by laws that pertain to local governments fitting this classification."²² The Department of Agriculture provides administrative oversight to the 45 Conservation Districts in Oregon. The state also provides some funding to Conservation Districts to cover administrative costs and to fund technical assistance to private landowners. Other funds are obtained from government grants, including from state and federal natural resource agencies.²³

Allowing Conservation Districts to hold conservation easements would likely have a significant impact on the conservation of natural resources in the state, particularly on farm lands. This is due to the fact that Conservation District personnel have extensive on-the-ground contacts with local landowners and provide them with technical assistance, often in regard to federal incentive programs administered by the USDA Natural Resources Conservation Service and the federal Farm Services Agency. As part of this process, landowners often build strong relationships with Conservation District personnel, grow to trust them, and may accept the idea of entering into a conservation

easement with a Conservation District while simultaneously remaining skeptical or uneasy entering into that type of transaction with a more traditional government agency or a land trust.

One context in which it could prove particularly valuable for Conservation Districts to be able to hold easements relates to the Conservation Reserve Enhancement Program ("CREP"), a federal incentive program administered by the Farm Services Agency that targets environmental effects related to agriculture. In Oregon, the program has been developed to improve the water quality of streams that provide habitat for threatened or endangered fish. In exchange for landowners removing certain lands from agricultural production, the program provides financial benefits such as land rental payments and cost-share assistance to improve riparian habitats.

The program is administered through contracts with landowners of 10 to 15 years in duration. A growing concern is how to ensure that environmental benefits continue beyond the term of such contracts. One solution is to place a conservation easement on the property that will protect the restored or improved riparian habitat in perpetuity. Given the fact that a landowner who participates in CREP will likely have significant interaction with Conservation District personnel over the term of the CREP contract, and Conservation District personnel will likely be aware of the environmental benefits provided by particular parcels enrolled in the program, Conservation Districts would seem to be a natural choice to hold conservation easements in this context. The Work Group recommends that this option be further explored and that opportunities be pursued to allow Conservation Districts to hold conservation easements.

²² This information is from the Department of Agriculture, Natural Resources Division's webpage that provides questions and answers regarding Conservation Districts. See <http://www.oda.state.or.us/nrd/swcd/q&a.html>.

²³ Id.

VI. STEWARDSHIP AGREEMENTS

Under ORS 527.662, a landowner can enter into a "stewardship agreement" with the Department of Forestry. Under this agreement the landowner manages his property in accordance with the provisions of a stewardship plan developed in cooperation with the Department. The purpose of the program is to provide a means by which the Department can implement more efficiently the provisions of the Oregon Forest Practices Act, primarily by spending less time regulating those landowners who routinely meet or exceed requirements under the Act.²⁴ Stated another way, stewardship agreements are intended to provide "responsible and knowledgeable forest landowners with an opportunity to plan and implement forest management strategies with reduced oversight and regulation" and to provide "an incentive for forest landowners to provide for enhancement and restoration of fish and wildlife habitat, water quality and other forest resources."²⁵

The stewardship program has essentially been unused,²⁶ most likely because the program does not offer a sufficient enticement for landowners to participate. The lack of benefits provided to the landowner is especially sig-

nificant given that the program has a built-in disincentive in the form of a public review process for any stewardship agreement. Given these problems with the existing program, the challenge to the Work Group was to revamp the program so that it provides real rewards to landowners that enter into land management plans which exceed land management standards already required by law.²⁷

Unlike its treatment of other incentive programs, HB 3564 gave particular instructions vis-à-vis the stewardship agreement program. As noted above, Section 17 of HB 3564 set forth this goal:

The development of a stewardship agreement program for rural lands that establishes a baseline management standard for landowners and a voluntary higher standard that provides natural resource benefits and regulatory certainty for landowners.

²⁴ A participating landowner is not inspected on an operation-by-operation basis. He is also exempt from the normal Notification of Operation process. In short, the landowner has very little interaction with state foresters or the Department of Forestry.

²⁵ ORS 527.662(2).

²⁶ Since the program's inception, only one landowner has entered into a stewardship agreement with the Department of Forestry.

²⁷ The importance of a viable stewardship agreement program has increased as the majority of counties have opted out of the Habitat Program in 2002. Assuming that a significant number of those counties do not opt back into the Habitat Program, the stewardship agreement program could serve as a substitute mechanism to integrate habitat conservation objectives with agricultural and forestry practices. For stewardship agreements to fill this void, it would be ideal for the Department of Fish and Wildlife to be part of the stewardship agreement program. However, due to fiscal and workload concerns, the Department of Fish and Wildlife cannot fully participate in a stewardship program at this time.

STEWARDSHIP AGREEMENTS

Based on this directive, and the fact that the current program has not met expectations and addresses only forest lands, the Work Group sought to accomplish the following objectives regarding the stewardship agreement program: (1) apply the program to "rural lands" by expanding the program beyond forest lands and by empowering the Departments of Forestry and Agriculture to enter into stewardship agreements with landowners;²⁸ (2) build a framework to provide substantive incentives for landowners to go significantly above and beyond land management standards otherwise imposed by law; (3) explore the potential for the program to provide "regulatory certainty" to participating landowners; and (4) provide a vehicle to coordinate incentive programs and regulatory compliance with various statutes.

As emphasized earlier in this report, the Work Group was keenly aware of the difficult fiscal situation faced by Oregon's state government and that it is unlikely that government funding for conservation programs will be materially increased in the 2003 legislative session. Notwithstanding this reality, the Work Group recommends that the stewardship agreement program be reformed to provide the potential for the state to provide strong inducements for landowners to manage their natural resources for the benefit of all Oregonians. Specifically, the Work Group recommends that the stewardship agreement program statute be amended to provide benefits that include:

- (a) Expedited permit processing;
- (b) Regulatory certainty;
- (c) Priority consideration for cost-share assistance or other financial incentives and technical assistance; and
- (d) Government certification that certain land management practices have been implemented.

Given the mandate of HB 3564, the Work Group made sure to include regulatory certainty as one of the benefits that the stewardship agreement program could offer. Nevertheless, the Work Group struggled with how a state program could provide the type of regulatory certainty desired by most rural landowners. Based on information presented to the Work Group, most landowners are concerned about regulatory enforcement or increasingly stringent standards under *federal* statutes such as the Endangered Species Act and the Clean Water Act, rather than under state laws such as the Forest Practices Act or the Agricultural Water Quality Program (commonly referred to as "Senate Bill 1010"). The Work Group concluded that, unless the federal government partners with the state, there really is no way for the state to provide the regulatory certainty sought by landowners.

Fortunately, the U.S. Fish and Wildlife Service ("USFWS") has expressed an interest in partnering with the state to test such an approach. Specifically, USFWS is willing to pilot this concept in partnership with the state to focus on how to protect the remnants of oak savanna habitat in Oregon, which exist primarily in the Willamette Basin. USFWS is interested in using its Safe Harbor Agreement Program and/or its Candidate Conservation Agreement with Assurances Program to target species that typically inhabit oak savanna habitat.²⁹ Through these programs, USFWS

²⁸ The Work Group envisions a program in which the Departments of Forestry and Agriculture, either individually or jointly, can enter into a stewardship agreement with a landowner, depending on each agency's authority over the property and its uses. In the case of stewardship agreements involving more than one agency, the Work Group hopes that the agencies can work together to expedite regulatory procedures and pool resources to ensure that landowners have what they need to expeditiously achieve their land management goals.

To instigate the process of the agencies working together in this program, the legislation proposed by members of the Work Group directs the agencies, in consultation with the Department of Fish and Wildlife, to engage in coordinated administrative rulemaking to develop the nuts and bolts of the program. The legislation also encourages the agencies to coordinate their efforts with other state and federal agencies to help build the stewardship agreement into a tool that can cut through the regulatory morass that landowners often face.

²⁹ The Safe Harbor Agreement Program and the Candidate Conservation Agreement with Assurances Program take essentially the same approach to protecting species on private lands. The

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hopes to assist landowners in taking steps to maintain and improve such habitat by providing assurances to landowners that they will not face additional restrictions, mitigation requirements, or "take" liability under the Endangered Species Act if they comply with the terms of the programs.

To take advantage of this opportunity, the state could enter into an agreement with USFWS, under which USFWS would issue a permit to the state to implement the Safe Harbor Agreement Program and/or Candidate Conservation Agreement with Assurances Program in certain counties or statewide. The Work Group recommends that the state

convene a working group to explore how the state can take such an approach and work with USFWS and other federal agencies to conserve key natural resources while simultaneously providing regulatory certainty to Oregon landowners. That working group could also explore how to best utilize Oregon's stewardship agreement program to assist in such endeavors, such as using stewardship agreements to coordinate, facilitate, and memorialize a landowner's compliance with the requirements of myriad state and federal incentive programs and regulatory requirements.

fundamental difference between the programs is that the Safe Harbor Agreement Program applies to species already listed under the Endangered Species Act as threatened or endangered, while the Candidate Conservation Agreement with Assurances Program applies to species that have not yet been listed but have been identified as species of risk or species of concern.

VII. INCOME TAX INCENTIVES

Beginning in 2004, the Riparian Lands Tax Credit Program will be available to Oregon farmers. Through this program, farmers can receive an income tax credit equal to 75% of the market value of crops forgone when riparian land (up to 35 feet from a stream) is voluntarily taken out of farm production.³⁰ The purpose of the program is to encourage taxpayers to voluntarily remove riparian land from farm production and employ conservation practices that minimize contributions to undesirable water quality, habitat degradation, and stream bank erosion.³¹

Oregon also currently offers a tax credit for expenses incurred by a landowner in increasing the amount of timber growing on underproductive land. The Underproductive Forestland Tax Credit Program allows a landowner to claim a tax credit equal to 50% of reforestation project costs actually paid or incurred by a landowner to reforest underproductive Oregon forestlands.³² Although incidental benefits to wildlife may result from the reforestation work encouraged by the program, the program is not designed or administered as a means for the state to increase or improve wildlife habitat.³³

Because income tax credits provide an alternative to the use of the property tax system to reward landowners, and due to the limits of existing income tax credit programs to protect wildlife habitat beyond riparian buffers adjacent to farming operations, the Work Group formulated a proposal for a new income tax credit program. The proposal combines the approach of the Riparian Lands Tax Credit Program (i.e., credit for forgone income) and the approach of the Underproductive Forestland Tax Credit Program (i.e., credit for out-of-pocket expenditures). Unlike these programs, however, each of which only applies to agricultural lands or forest lands, the proposed Conservation Income Tax Credit Program would apply to all rural lands.

The concept behind the proposed program is simple: a landowner who voluntarily incurs out-of-pocket expenditures while engaging in conservation activities not otherwise required by law on his land, or loses the opportunity to earn income on some of his land because he has voluntarily taken it out of production for conservation purposes, is eligible for a tax credit equal to 50% of such expenditures or forgone income. To ensure that the tax credit will encourage necessary and effective land management activities, the proposal links the tax credit to a landowner's participation in a formal state program (conservation easement, Habitat Program, or stewardship agreement program) or other formal government plan that prescribes

³⁰ ORS 315.113.

³¹ ORS 315.111.

³² ORS 315.104.

³³ The same holds true for the Oregon Forest Resource Trust, which provides direct payments to cover the cost of reforestation activities by landowners with under-producing forestlands.

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conservation activities that exceed what is required by law.³⁴

Another quality-assurance mechanism built into the proposed tax credit program is the requirement that the non-landowner party under the particular conservation program or plan must provide certain certifications before a landowner can receive a tax credit for costs paid or incurred. For instance, if a landowner were to incur expenses in order to comply with a wildlife habitat conservation and management plan under the Habitat Program, a prerequisite to the tax credit would be a certification by the Department of Fish and Wildlife that the work undertaken by the landowner was pursuant to the terms of the plan, not otherwise required by law, in furtherance of conservation, and that the costs appear to be reasonable. Likewise, if a landowner undertook a conservation project consistent with a conservation easement held by a land trust, the land trust would need to provide similar certifications (in conjunction with a state agency) for the landowner to be able to claim the tax credit. Similar certifications would also be required before a landowner could receive a tax credit for the value of forgone crops or a forgone timber harvest.³⁵

In addition to providing a built-in monitoring and quality-assurance mechanism, the linkage between the proposed tax credit and other conservation programs and plans provides a means for the state to encourage enrollment in such programs. Specifically, the linkage allows the state to draw attention to the Habitat Program, conservation easements, and the stewardship agreement program, and gives it the ability to entice landowners into those programs with financial rewards that go beyond special assessments for property tax purposes.

The Work Group acknowledges that, unlike most of its other recommendations in this report, the Conservation Income Tax Credit Program would have some revenue impact on the state.³⁶ To help alleviate such a concern, and to further the overall objective of strategically directing the state's limited conservation resources, the Work Group recommends that eligibility for the program not only be limited to lands enrolled in particular conservation programs but also be limited to lands that are described or identified as priority conservation areas in statewide, regional, or local plans. As discussed earlier in this report, few of such plans currently exist but are likely to be developed in the next few years.

³⁴ Given the wide array of federal conservation programs available to Oregon landowners, and the fact that such programs often operate on a cost-share basis whereby the landowner must pay for some of the cost of conservation activities, the proposal is structured to create the potential for a landowner to seek a tax credit for participating in such programs or complying with an approved conservation plan (such as those approved and administered by Soil and Water Conservation Districts and the Natural Resources Conservation Service).

³⁵ Pursuant to ORS 315.113(11), the Department of Revenue has the authority to adopt administrative rules that prescribe procedures for identifying forgone crops and for establishing the market value of forgone crops for purposes of the Riparian Lands Tax Credit Program. To date, the Department has not developed such rules, presumably because the Riparian Lands Tax Credit Program is not yet available to landowners (it applies to tax years beginning on or after January 1, 2004). The Work Group anticipates that similar rules would need to be developed for the proposed Conservation Income Tax Credit Program and could be developed in conjunction with rules promulgated for the Riparian Lands Tax Credit Program.

³⁶ Due to wide array of issues that the Work Group needed to address regarding how incentive programs function and can be improved, it had minimal time to explore potential ways to generate revenues to fund incentive programs. One idea that the Work Group discussed briefly was to "capture" some of the value bestowed upon parcels as they are brought inside urban growth boundaries and then to use that money to help fund incentive programs and natural resource conservation in Oregon. In addition to time constraints, another reason why the Work Group opted not to explore this concept further is because other government entities are further along the learning curve. Specifically, Metro Regional Parks and Greenspaces, the City of Portland, the City of Oregon City, and the Tualatin Hills Parks and Recreation District commissioned a study of an "urban area inclusion fee" and other techniques to finance the conservation, restoration, and protection of natural areas in the Portland Metro region. See *Implementation Strategies for Natural Area Protection Incentives*, prepared by ECONorthwest, Davis, Hibbits & McCaig and Winterbrook Planning, February 2002.

VIII. TECHNICAL ASSISTANCE

A recurring and dominant theme in the Work Group's discussions was the need for adequate technical assistance for landowners. Such technical assistance goes beyond assisting with the complex scientific and regulatory requirements imposed on landowners as they attempt to implement particular conservation practices; it also involves being a landowner advocate and helping landowners to navigate the process of identifying relevant incentives, meeting their objectives, and obtaining government assistance.

The Work Group identified a wide and often confusing array of federal, state, and non-government programs designed to provide assistance and incentives to landowners to improve and conserve the natural resources on their land. Most often, individual programs are developed for particular purposes that are independent of other programs and efforts. Making sense of these programs is a daunting task for the layperson and accessing incentive benefits through many of the programs is often too time-consuming for landowners who already have full, busy lives. As such, optimal enrollment of landowners requires individuals whose job it is to know the available incentive programs and for those individuals to have the skills, interest, and time to market those programs to landowners and assist landowners through the entire process (i.e., *identification* of relevant incentive programs, *application* for incentive benefits, and *implementation* of conservation practices).

Today, limited assistance to landowners for conservation is provided in various forms by a wide variety of entities including, but not limited to, Soil and Water Conservation Districts, Watershed Councils, OSU Extension Service, state and federal resource agencies, the USDA Natural Resources Conservation Service, Councils of Government, Resource Conservation and Development offices, county natural resources planners, and Clean Water Services in the Portland metropolitan area. (*See Figure 2, on next page.*) The strategies and ability to provide conservation assistance to landowners vary among these organizations.

State and federal agencies have been pursuing partnerships for many years in an attempt to coordinate resources and technical support to landowners. This includes the Oregon Conservation Partnership,³⁸ the Oregon NRCS Technical Advisory Committee, and the Oregon Plan for Salmon and Watersheds, which has created a partnership of all of the state agencies with links to the federal agencies and local conservation groups. These cooperative efforts have brought significant new resources to local

³⁸ The Partnership is made up of the USDA Natural Resources Conservation Service, the Oregon Soil and Water Conservation Commission, the Oregon Association of Conservation Districts, the Oregon Association of Resource Conservation and Development Area Councils, the Oregon Department of Agriculture (Division of Natural Resources), the Oregon Watershed Enhancement Board, and the OSU Extension Service.

TECHNICAL ASSISTANCE

**FIGURE 2: PARTIAL LIST OF SOURCES OF TECHNICAL ASSISTANCE TO LANDOWNERS
AND TYPE OF FUNDING SUPPORT**

Agency or entity	Source of funding
Oregon Department of Fish and Wildlife	General Fund, Measure 66 (lottery)
Oregon Department of Forestry	General Fund, harvest tax and federal programs
Oregon Department of Agriculture	General Fund, Measure 66 (lottery) and federal funds
Natural Resources Conservation Service	Federally-funded program
Oregon State University Extension Service	General Fund, federal funds, counties
Soil and Water Conservation Districts and Watershed Councils	Oregon Department of Agriculture and Oregon Watershed Enhancement Board (grants)
Private entities	Grants and private funds
Division of State Lands - wetlands	Common School funds and federal funds
Natural Heritage Program	General Fund

TECHNICAL ASSISTANCE

communities. The Oregon Plan has invested more than \$4.8 million for watershed technical specialists and watershed council support for each of the last two biennia. Even with this level of investment there are significant limitations to the provision of technical assistance to Oregonians in their local communities.

In 1999, the Oregon Conservation Partnership, with the USDA Natural Resources Conservation Service as the lead, conducted an in-depth workload analysis to determine the actual need for technical assistance by landowners. The workload analysis was part of a nationwide effort to develop a uniform estimate of staffing resources needed to address the nation's natural resources conservation workload. Estimates of workload were made to the county level and can be summarized by any combination of counties.

In 2002, the Healthy Streams Partnership conducted a statewide survey to better understand the need for technical assistance in implementing the Oregon Plan. The partnership will be providing a report of this survey to the 2003 Legislature.

The conclusions from this survey were similar to those of the workload analysis conducted by the Oregon Conservation Partnership. In sum, they are:

- Technical assistance for conservation projects is a critical component of Oregon's efforts to address conservation needs, water quality issues, and wildlife goals.

- Existing local staffs are not sufficient to fill the wide range of needed technical assistance.
- There are not enough local, state, and federal technical assistance providers to meet demand.

Based on the collective experience of its members, the Work Group agrees with these conclusions and recommends that support to state agencies for the provision of technical assistance be increased significantly or, at a minimum, not reduced.

Given the importance of adequate technical assistance to landowners, the Work Group also recommends that the state convene a diverse and representative working group to address how the delivery of technical assistance to landowners can be coordinated, increased, and improved. One opportunity that such group could explore is how Oregon can build on ongoing efforts by the USDA Natural Resources Conservation Service to roll out the new Technical Service Provider program under the 2002 Farm Bill (by which the technical assistance capabilities of NRCS will be significantly augmented by certified natural resource professionals in the private sector).

IX. CONCLUSION

The recommendations contained in this report, together with the legislation proposed by members of the Work Group, will take Oregon to the next level of support for private landowners who seek to engage in voluntary natural resources conservation. Adoption of the recommendations will remove many disincentives currently faced by landowners interested in conservation and will diversify the array of incentives available to them as they weigh the costs and benefits of engaging in conservation. The accomplishment of these objectives meets the charge given to the Departments of Forestry and Agriculture by the Legislature in HB 3564.

This report also identifies some of the next steps that Oregon will need to undertake if it wants to embrace fully voluntary private lands conservation as a means to cope with persistent natural resource challenges:

- A comprehensive review is needed to identify and assess the state's conservation needs, and to coordinate the development, dissemination and implementation of a comprehensive statewide conservation strategy to define priorities and address ecological goals while enhancing economic and social conditions.
- Stable and adequate funding is needed to fund state incentive programs, provide technical assistance to

landowners, and allow innovative mechanisms such as the Flexible Incentives Account to function.

- Significant opportunities and funding for private lands conservation provided by the 2002 Farm Bill, new U.S. Fish and Wildlife Service landowner assistance programs, and other federal initiatives should be fully explored, facilitated, and utilized by the state.
- The potential for incentive programs to provide landowners with regulatory certainty under state and federal regulatory schemes should be further explored.
- Efforts to define acceptable regulatory demands that the state makes on landowners should be undertaken to clarify when incentive programs should come into play and how incentives might address increasing demands for landowner compensation.

The formulation of incentives policy is a task that is well served by an incremental and adaptive management approach. The Work Group believes that it has significantly advanced the ball through this report and the associated legislation, but also acknowledges that much work remains to be done. Its members remain committed to making future assessments of Oregon's incentive policies and to suggest additional improvements.

APPENDIX A: WORK GROUP INFORMATION

Professional Facilitation: Given the diverse make-up of the Work Group, each meeting of the full group was professionally facilitated by impartial mediators whose services were made possible by a grant from the state's Public Policy Dispute Resolution Program. The facilitators drafted summaries of each meeting to capture the major areas of discussion, tentative agreements, and the range of views on issues discussed. Work Group members offered corrections to draft meeting summaries that were, in turn, revised into final summaries. These final meeting summaries represent the views and the discussions at the particular time of each meeting. They may reflect tentative agreements that were not, ultimately, adopted by the Work Group as final recommendations.

The Work Group agreed that the facilitators would help draft a "Report to the Legislature" to outline the issues discussed, the areas in which there was consensus, and any remaining issues on which consensus was not reached. Members had the opportunity to review and sign off on this report and are free to supply any alternative views directly to the Legislature or others.

Meetings: The Work Group met as a large group nine times from May 2002 through January 2003. The facilitation team developed Work Group meeting agendas with input from the Steering Committee and other members. (The Steering Committee, which managed the administrative needs of the Work Group, was comprised of representatives from the following agencies and organizations: Department of Agriculture, Department of Forestry, Department of Fish & Wildlife, Oregon Watershed Enhancement Board, and Defenders of Wildlife.) At each

Work Group meeting, time was allocated to provide a blend of the technical information necessary to inform policy-making, as well as a discussion of the various interests and underlying needs that each of the members or their groups brought to the table.

Small Groups: To increase efficiency, the Work Group broke into smaller groups to address topic areas included in HB 3564 or identified by the larger group. Smaller groups each met an additional four to eight times between the regular Work Group meetings. Small group members provided technical expertise and, in regard to each small group's assigned topic, explored prominent issues and problems, potential solutions, pros and cons associated with the options identified, and potential links to federal conservation programs. Small groups reported back to the large group at Work Group meetings. The small group topic areas were:

- Wildlife Habitat Conservation and Management Program
- Conservation Easements
- Stewardship Agreements
- Barriers to Existing Programs
- Tax Incentives; and
- Technical Assistance

As a first step, the Work Group reviewed Oregon's existing incentive programs. Once this was accomplished, the group looked to improve those programs, create additional low or no-cost programs, and identify other areas for future development.

APPENDIX B: CONSERVATION EASEMENTS IN OREGON

	LAND TRUST	LOCAL	STATE ³⁹	FEDERAL ⁴⁰	TOTAL ACREAGE/COUNTY
Baker				1035	1035
Benton	191.5			531	722.5
Clackamas	42.5				42.5
Clatsop	854				854
Columbia				151	151
Coos	63			400	463
Crook					0
Curry	468				468
Deschutes	163				163
Douglas	50				50
Gilliam					0
Grant					0
Harney				2808	2808
Hood River					0
Jackson	2300				2300
Jefferson					0
Josephine	184				184
Klamath	3045			10,215	13,260

³⁹ Conservation easements held by the Oregon Department of Fish and Wildlife.

⁴⁰ Conservation easements under the Wetlands Reserve Program and those held by the U.S. Fish and Wildlife Service.

APPENDIX B: CONSERVATION EASEMENTS IN OREGON

	LAND TRUST	LOCAL	STATE	FEDERAL	TOTAL ACREAGE/COUNTY
Lake				2615	2615
Lane	362				362
Lincoln	7359			65	7424
Linn				350	350
Malheur			82	81	163
Marion	18			225	243
Morrow	30				30
Multnomah	9	47		130	186
Polk				873	873
Sherman					0
Tillamook	180				180
Umatilla					0
Union				1928	1928
Wallowa					0
Wasco	16				16
Washington				25	25
Wheeler					0
Yamhill	11			352	363
TOTAL	15,346	47	82	21,784	37,259

Susan Walsh, *Land Acquisition Survey (draft)*, The Nature Conservancy, Oregon Chapter, 2002.
Table created by Jenne Reische, Defenders of Wildlife.