Oregon Conservation Easement Assessment Project
A report on conservation easements as a land use tool in Oregon
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Conservation easement on a century farm in Northeastern Oregon. Photo by Rick McEwan.

Prepared for and supported by:
Executive Summary

Oregon has a long and pioneering history in protecting natural resource lands from development through comprehensive land use planning and regulation. Statewide, over 90% of Oregon’s private farm and forest land-base is protected from conversion to non-farm and forest uses that threatens other parts of the country. It is largely in response to such threats of conversion that conservation easements have become a vital tool in many states to protect farms, forests, habitat, and open space.

Conservation easements have been used to great effect in other states; as of late 2014, there were over 100,000 conservation easements protecting over 22 million acres across the country.\(^1\) However, by comparison, conservation easements have seen relatively limited use in Oregon to conserve the state’s rural landscapes. According to the best information available, Oregon ranks 40\(^{th}\) nationally in the number of easements and 36\(^{th}\) in the number of acres protected by them\(^2\). Given Oregon’s national reputation in progressive land use and conservation policy, this disparity is a conspicuous anomaly.

As this paper examines, the reasons for Oregon’s position nationally are varied and complex, but come down to two essential facts about the state. First, Oregon’s comprehensive land use program, while effective in protecting rural lands from subdivision and rampant development, also limits the range of development rights that would normally be the focus of a conservation easement. This has the potential to limit the appraisable value of conservation easements and thus the incentives available for landowners, particularly when compared with other states. Second, to date Oregon has had limited publicly-funded or publicly-supported conservation easement programs, either locally or statewide, creating nominal awareness of and support for conservation easements in general. This is in part a reflection of the efficacy of the land use program, but also provides a window of opportunity. Taken together, these two factors help explain why Oregon currently does not have extensive conservation easement programs, and the necessary financial incentives for landowners, that are seen in other states across the country.

That being said, easements are being used to conserve habitat, open space, and working farms and forests throughout Oregon, and interest in how better to employ them strategically to complement the land use system is increasing by various agencies and organizations. In response to this increased interest, a diverse coalition of special districts, land trusts, a land trust support service provider, and a grassroots advocacy organization have partnered through the Oregon Conservation Easement Assessment Project (OCEAP) to create this report, which examines the use of easements in light of Oregon’s land use program and strategizes ways to increase available incentives.

Extensive research has produced no single “solution” for increasing the financial incentives for landowners in Oregon interested in selling or donating conservation easements, particularly on working farms and forests. There are, however, a variety of tools, programs, and considerations, many gleaned from other states, which agencies and organizations interested in conservation easements could use to achieve this purpose in Oregon. The paper summarizes a range of such options for consideration.

This paper, then, provides an overview of a complex topic. Accordingly, this document is just a starting point for a broad discussion about increasing the strategic use of conservation easements in Oregon. Moreover, the legal principles discussed in this document are presented in a summary fashion and should not be relied on, in anyway, as a substitute for independent legal advice.

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1 According to information from the National Conservation Easement Database (http://conservationeasement.us/) retrieved December 26\(^{th}\), 2014
2 Ibid.
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Project Summary

Problem statement

To date, the use of conservation easements in Oregon has primarily focused on preserving open space, habitat for fish and wildlife and recreational lands. Compared with other states, conservation easements have seen limited use as a tool for protecting Oregon’s working landscapes, including farm, forest and ranch lands (“working lands”).

For the purpose of our research and for this document, a conservation easement is a legal instrument for acquiring property rights for the purpose of protecting conservation values. The instrument is a legal agreement between a landowner and a qualified “holder” of the easement, usually a nonprofit land trust or government agency, which permanently limits uses of the land or, in some instances, imposes affirmative obligations to protect its conservation values. The land remains in private ownership, and may be sold, transferred, and managed in accordance with the terms of the easement. In Oregon, conservation easements are enabled through state statutes ORS 271.715-271.795. While there are some “termed” easements of limited duration, our research focused on permanent conservation easements, which is a necessary condition for most tax incentives available for donated easements around the country.

A key incentive for landowners to grant conservation easements to a qualified holder is often a monetary or tax incentive associated with the easement value. The traditional valuation process for conservation easements is determined by the property’s loss of development value or other values that are being permanently retired through the easement. Oregon’s land use planning program (“Land Use Program”) helps contain urbanization within urban growth boundaries (UGBs), and the vast majority of the state’s agricultural and forestlands are located outside these UGBs in areas zoned for limited development. However, since these land use laws strictly limit development in these rural lands, the development of conservation easement programs has not been a high priority by state agencies or conservation partners. Without developed conservation easement programs, there remains substantial uncertainty as to how to craft conservation easements that establish an adequate monetary incentive that can be identified through established appraisal methods.

As Oregon continues to see pressures on its rural lands from low-density development, fragmentation, population growth, succession challenges and other factors, there is growing interest around the state in using conservation easements as a complement to the land use program. This interest creates an opportunity to better utilize existing financial incentives, or develop new ones, that will facilitate increased use of easements in Oregon as a strategic tool to conserve the state’s valuable resource lands. This report is an initial examination of how easements can better support the goals of the Land Use Program to protect working lands, open space, and natural areas (collectively “resource lands”), and for land trusts to meet their conservation goals.

Summary of Project Purpose

The primary purpose of the Oregon Conservation Easement Assessment Project (OCEAP or the “Project”) is to evaluate the applicability and limitations on the use of conservation easements within the Oregon context in light of the state’s the Land Use Program and the limited public funding available for easements and acquisitions. From this, the Project aims to identify the most useful incentives – existing and potential - for conservation easements in Oregon, and suggest strategies to increase their
use in the state, particularly with regard to working lands. The findings and recommendations of the Project have been prepared for the review and potential implementation by the Project partners and the varied stakeholders in land conservation in Oregon such as landowners, land trusts, local and regional governments and agencies, as well as for related service providers such as attorneys, appraisers, ecosystem services experts, land use planners, etc.

**Conservation Easements in Context with the Land Use Program**

One defining characteristic that sets Oregon apart from other states is its Land Use Program, which protects rural lands through a state-wide regulatory system that was first enacted by the state legislature in 1973 through its seminal Senate Bill 100. This comprehensive land use planning system, through its state mandated development restrictions and minimum lot size requirements, is effective in protecting working lands across the state, and, for the most part, avoiding conversion of rural land to other uses and keeping development pressures controlled within urban growth boundaries (UGBs).

The amount of land protected from extensive development through the Land Use Program is impressive. For example, about 26% or 16.3 million acres of Oregon’s 63 million acre land base are private agricultural lands that are protected through the rules and regulations promulgated under the state-wide planning Goal 3 (Agricultural Lands), with about 15.5 million of these acres being zoned for Exclusive Farm Use (EFU), the highest level of agricultural land protection. This constitutes 55% of all private lands in Oregon. Moreover, about half of Oregon’s land base or 30.5 million acres is forestland, where approximately 10.6 million acres are privately held. Similarly, these private forestlands are protected through the rules and regulations pursuant to the statewide planning Goal 4 (Forest Lands). Thus, approximately 27 million acres of private land in Oregon or 43% of the state’s entire land mass receive open space protections through the Land Use Program.

98% of all private land that was in forest, agricultural, and range uses in Oregon in 1974 had remained in these uses by 2009\(^3\). This constituted a mere 2% shift in land uses on private land toward more developed uses between that period, representing 616,000 acres that changed from forest, agricultural and range uses to low-density residential or urban uses. During this period the population of Oregon increased by approximately 1.5 million people, or 40%. In comparison during that same period, Washington lost 1,157,000 acres to more developed uses, or about 4% of the state's private land.\(^4\) This is a testament to the effectiveness of the Land Use Program in limiting urban sprawl into rural lands, despite significant population increases. However, it also shows that rural lands are still at risk. Either by population and development growth or through potential changes in the legal framework of the Land Use Program (e.g. a property rights initiative similar to Ballot Measure 37 or legislative erosion or reversal of the program), the risk is still significant.

While not without its critics, the Land Use Program is reasonably well supported by the citizens of the state of Oregon, as it contains urban sprawl, helps keeps farm and forest lands intact, and preserves the scenic landscapes of our beautiful state. Moreover, the open space protections provided through conservation easement programs in other states, while effective, may be often in a piece-meal, fragmented fashion versus the comprehensive nature of Oregon’s regulatory framework.

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\(^4\) *Land Use Change on Non-Federal Land in Oregon and Washington* (US Forest Service, Oregon Department of Forestry), September 2013, page 5.
Accordingly, the Land Use Program and its smart growth policies are nationally recognized for being on the forefront of state-directed land use systems due to their effectiveness with managing human impacts on rural lands. For example, an article recent published in Land Lines (Lincoln Institute of Land Policy) states:

“[although] simple in structure, and frequently challenged in the courts and at the ballot box, the Oregon system has a reputation as one of the most, if not the most, effective land use systems in the United States”\(^5\).

Population Growth is a Looming Problem

Despite the protections afforded by the Land Use Program, Oregon’s population will significantly increase in the next fifty years, and with it will come greater development pressure on rural lands. A 2014 report estimated that the population in Oregon will grow by 3.0 million people from 2009 to 2065 – a 76% increase – and used GIS modeling to project how much land would be needed to accommodate population growth.\(^6\)

Assuming the existing land use restrictions are in place, the study estimates that 0.28 acres per person of agricultural, forest, ranch, and resource land will need to be converted to residential or urban use, which amounts to 845,860 acres. This is recognized by the report as a middle ground between a grow-up scenario (0.02 acres/person; 66,737 acres converted) with tightened land use regulations assumed and a grow-out scenario (0.51 acres/person; 1,520,419 acres converted) where the land use laws are loosened.

Another crucial finding from the study, and one particularly relevant for developing conservation easement programs in the state, is that growth generally follows existing development. Thus, rural areas most at risk to development are those that are in close proximity to urban areas, such as the Portland Metropolitan Area (“Metro”) or in sought-after recreation areas that are desirable for vacation homes such as the coast, the Hood River area, or Central Oregon. While just a model, it is instructive to show that additional farm, ranch and forestlands will likely be converted to other uses in the near future, despite our protective land use laws.

Limitations to Oregon’s Land Use Program in Protecting Rural Lands from Conversion

To provide further context for the use of conservation easements in Oregon, another brief discussion of some of the components of the Land Use Program is in order. Despite the success of the Land Use Program, it is not without its shortcomings that translate into various forms of “leakage” of development onto working lands in Oregon. For example, there are competing statewide planning goals between urbanization requirements under the planning system and goals for the agricultural and forestland protection. With the requirement that local governments demonstrate a 20-year supply of developable land in their UGBs\(^7\), growth boundaries periodically expand to accommodate this projected growth. The best soils are meant to be given a lower priority for development, but the realities of urban growth sometimes take precedence. The recent definition and adjustment of the

\(^6\) Forests, Farms and People: Projecting Future Conversion of Resource Land to Developed Uses (Oregon Department of Forestry, March 2014)
\(^7\) ORS 197.296: Factors to establish sufficiency of buildable lands within urban growth boundary
urban and rural reserves in the Portland metropolitan area\(^8\) will help with this problem by designating areas for future urban expansion and setting aside the most productive farmland from development for at least 50 years. Other cities in Oregon may hopefully follow this example.

In addition, since the Land Use Program has been in place, legislative amendments, court cases, and ballot initiatives have carved out exceptions that permit some development on rural lands, which, to some commentators, strain the over-arching goals of the Land Use Program and its original intent. For example, there are currently over 50 allowed and conditional uses in exclusive farm use zones under Oregon Revised Statute (ORS) 215.283, and over 40 authorized uses on forestlands under Oregon Administrative Rule (OAR) 660-006-0025. Many permitted uses in ORS 215.283(1) require a nexus with farming such as “farm stands” to sell farm products, farm dwellings under certain conditions, wineries, farm crop processing facilities, irrigation facilities, and buildings customarily used in conjunction with agricultural use. Others do not, such as the allowance for churches and church cemeteries, utility facilities necessary for public service, and operations for the exploration of minerals, oil and gas. Moreover, under ORS 215.283(2), certain non-farm uses may be established on EFU lands with the approval of the jurisdictional governing body, such as mining aggregate and other minerals, private parks and campgrounds, golf courses on land not determined to be high-value farmland, destination resorts, and commercial utility facilities for power generation to name some of the most significant. There are statutes that address other non-farm uses such as Lot of Record dwellings, dwellings not used in conjunction with farming, youth camps, and outdoor mass gatherings. In short, it’s a complex system with many intricacies.

Furthermore, in relation to the land uses in Oregon, according to the Department of Land Conservation and Development (DLCD) there are over 6,000 new rural home site authorizations pursuant to Measure 49, enacted as ORS 195.300 to ORS 195.336, across the state. In November 2004, Oregon voters approved Measure 37, a property rights initiative that entitled an owner of private property to receive just compensation when 1) a land use regulation is enacted after the owner or a family member became the owner of the property, and 2) if the regulation restricted the use of the property and reduced its fair market value. In lieu of compensation, the government responsible for the regulation could choose to remove, modify or not apply the regulation. The amount of claims made and the resulting proposed development in rural areas under Measure 37 significantly threatened the underpinnings of the Land Use Program. In response, the voters passed Measure 49 in 2007, which modified and curtailed Measure 37 to still provide just compensation for the burdens associated with the Land Use Program while retaining Oregon’s protections for resource lands. In general, under its express option, Measure 49 limits the number of lots, parcels or dwellings that may be approved on contiguous property owned by a claimant to three, where prior to enactment of the land use regulation that has prohibited the establishment of such a lot, parcel, or dwelling the claimant lawfully was permitted to establish the requested number of lots, parcels or dwellings on the property. These approvals typically would not proceed under the current Land Use Program, but for Measure 49. These home site authorizations are still subject to a county development application approval process. Nonetheless, these Measure 49 claims still pose a significant magnitude of development threat that could occur on rural lands in the near future.

A major concern of many people in the conservation community is that, when compared to conservation easements, the restrictions under the Land Use Program are not permanent. Such laws and rules are potentially subject to legislative or administrative revision, or even reversal in the future.

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8 House Bill 4078 from the 2014 Session
While conservation easements can be extinguished through eminent domain, they do provide a foundation for perpetual conservation that bolsters and complements the Land Use Program.

Despite having shared interests, there also has been an apparent legal and cultural separation in Oregon between the practitioners in the Land Use Program and those in the land conservation community. Originally, some key players in the land use planning community have been leery of conservation easements, in part because they felt the comprehensive planning system would adequately take care of sprawl and that the use of easements could provide a slippery slope argument for property rights advocates to challenge the planning program. Moreover, land trusts in Oregon historically have had a geographic and environmental focus, versus an anti-sprawl one.

However, this past dialectic perhaps is changing. Several long time professionals in the Land Use Program interviewed for this Project mentioned the need to use conservation easements as a strategic tool to complement the program. Moreover, to further its goal of natural resource, farm and forest land protection, DLCD in its draft strategic plan dated November 2014, recommends using with stakeholders “alternative (non-regulatory) methods that complement the existing land use program to ensure a sustainable land supply for Oregon’s agricultural and forest industries.” According to staff at DLCD, the “non-regulatory methods” include conservation easements and transfer of development rights.

**Conservation Easements as a Strategic Tool to Support the Land Use Program**

Taking into consideration the growing interest in conservation easements, the shortcomings of the current Land Use Program, and the development pressure from population growth, there is an opportunity to use conservation easements more frequently and effectively as a strategic tool to help support the goals of the Land Use Program to protect resource lands, as well as for land trusts and public agencies to achieve their conservation goals at the same time.

**Impetus for the Project**

In October 2012, the Land Trust Alliance conducted a working session on “Working Lands Conservation”, where a group of conservation stakeholders in Oregon met to discuss and propose programs and incentives for the conservation of working lands and natural areas in the context of Oregon’s Land Use Program. This work session was in response to the land trust community’s collective understanding that easements in Oregon were under-utilized, and the state did not have incentive programs in place to facilitate their use.

In an unrelated effort, in 2014, Friends of Family Farmers, a nonprofit organization that supports Oregon’s sustainable family farmers and ranchers, conducted listening sessions with farmers and ranchers across the state for the purpose of discovering the barriers to operating a successful farm business. Throughout the state, participants identified the protection of farmland, financial assistance for new and young farmers to purchase land, and financial burdens related to land succession as priority issues. The use of conservation easements was specifically mentioned as a potential tool to help achieve greater farmland protection in thirteen out of the twenty-five listening sessions.

Among other factors, the 2012 work session, the listening session series in 2014, growing interest among some Soil and Water Conservation Districts to hold easements, as well as the continued work of land trusts around Oregon all spawned the impetus for this Project. The Project partners include the Coalition of Oregon Land Trusts (COLT), East Multnomah Soil & Water Conservation District (EMSWCD),
the Land Trust Alliance, Friends of Family Farmers (FoFF) and Clackamas County Soil and Water Conservation District.

**Key Questions Addressed**
The fundamental questions addressed by the Project are:

- How does the Land Use Program impact the appraisal of conservation easements and the donations for state and federal income tax purposes?
- In what circumstances can conservation easements be effectively used with existing development rights and non-farm uses on land zoned for farm use?
- How can agricultural conservation easements be implemented by using current funding sources such as the federal Farm Bill programs?
- What parts of programs in other states can be successfully implemented in Oregon to improve the use of conservation easements, based on our unique land use planning system?
- Are there alternative methods for valuing conservation easements and compensating landowners for them that could be applicable in Oregon?
- What are the potential funding strategies and administrative policies that can be proposed to increase the effectiveness of conservation easements in Oregon?
- What further information, policy changes or coalition building would contribute to the use of conservation easements to protect Oregon’s undeveloped landscapes, including working lands?

**Sources of Information**
This report and its findings are based on an extensive review of relevant literature, applicable laws, and information received from interviews with over 20 stakeholders composed of members from the land trust community, appraisers, lawyers, ecosystem services experts, land use planners, and other government employees. This paper is researched and written by Wm. F. (Fritz) Paulus, Attorney at Law, and Alejandro Orizola, L.L.M. Please see the appendix for a list of interviewees, the respective biographies, and an extensive bibliography.

**The Intention is to Foster Discourse**
The report itself does not explicitly commit to any policy recommendations, but merely presents options for success and discusses the benefits and costs of those options, based on the extensive research of the topic. Since there will undoubtedly be differing opinions among people concerned about Oregon’s farm, forest and natural resource lands about what the correct approach should be, along with what is politically feasible, this paper leaves the prioritization and recommendations of these options to the end users. The paper is not intended to be an edict or proclamation. Instead it is intended to spark a discourse and conversation among interested parties in the community about what the best pathway is to make conservation easements more effective in Oregon. Below is a summary of the major findings and options for success.

**Conservation Easements in Oregon Compared with Other States**
The interest in conservation easements arose as part of the environmental movement in the early 1970’s. To address the demand for protecting lands through conservation easements, the creation of a statutory framework was necessary, as these legal instruments typically were not used or recognized at common law. To accomplish this, the Uniform Conservation Easement Act was approved in 1981 and recommended for enactment in all 50 states by the National Conference of Commissioners on Uniform State Laws. The federal government allowed the donation of a conservation easement to be considered
a tax-deductible charitable gift, first temporarily in 1976 (26 USC §§ 170(f)(3)(B)(iii) and (iv), as enacted by Pub L 94-455, § 2124(e) (1976)), and then permanently in 1980 (26 USC §§ 170(f)(3)(B)(iii) and 170(h), as enacted by Pub L 96-541, § 6(a)-(b) (1980)). This significant incentive has caused the use of conservation easements to proliferate across the country. According to the National Conservation Easement Database (NCED, ), as of October 2014, 105,884 recorded easements protect over 22 million acres on private and public lands in the United States. The NCED lists only voluntarily reported conservation easements, which are generally submitted by grantee organizations. Thus, actual numbers should be larger, because it is reasonably assumed that not all easements are reported to the NCED.

In Oregon, there are over 460 conservation easements, protecting 156,500 acres, according to the Coalition of Oregon Land Trusts (COLT), the state’s association of land trusts and a partner to this Project. COLT’s statistics show higher numbers than the NCED and will generally be relied on as more accurate than the NCED for Oregon. The federal government holds 252 of these easements, with wetland protection on private lands through the Natural Resources Conservation Service (NRCS) being the predominant easement type. Land trusts hold approximately 189 easements and the remainder is largely held by state and local government agencies.

In comparison, according to the NCED, California has approximately 2,860 easements protecting over 1.5 million acres, which ranks third in the nation for acres protected. In Washington, there are approximately 3,500 easements protecting 322,800 acres. The state with the largest amount of land protected though conservation easements is Maine with over 2.3 million acres. Montana is listed a close second also with 2.3 million acres, Virginia is ranked fourth at about 1.1 million acres, and New York comes in fifth with just over 1 million acres. Oregon ranks thirty-sixth out of the 50 states in acres protected under conservation easements. As for rankings by the number of easements, Minnesota is first with 12,316, Pennsylvania is second with 7,725, New Jersey is third at 6,311, Massachusetts is fourth with 6,151 and Virginia is fifth with 5,916. Oregon comes in ranked fortieth with 422 easements as reported to the NCED.

### Table 1. Top five states for acres under conservation easements and Oregon

<table>
<thead>
<tr>
<th>State</th>
<th>Acres under Easements*</th>
<th>National Ranking*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>2,358,742</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
</tr>
<tr>
<td>Montana</td>
<td>2,356,899</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
</tr>
<tr>
<td>California</td>
<td>1,525,848</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
</tr>
<tr>
<td>Virginia</td>
<td>1,074,622</td>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
<tr>
<td>New York</td>
<td>1,018,560</td>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
<tr>
<td>Oregon</td>
<td>192,306</td>
<td>36&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

*According to information on NCED retrieved December 26<sup>th</sup>, 2014.

### Table 2. Top five states for number of conservation easements and Oregon

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Easements*</th>
<th>National Ranking*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>12,316</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>7,725</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
</tr>
<tr>
<td>New Jersey</td>
<td>6,311</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6,151</td>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
<tr>
<td>Virginia</td>
<td>5,916</td>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
<tr>
<td>Oregon</td>
<td>433</td>
<td>40&lt;sup&gt;th&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

*According to information on NCED retrieved December 26<sup>th</sup>, 2014.
While Oregon’s statistics show reasonable success with implementing conservation easements, their use in the state is definitely less robust when compared to other states. The lack of easements with a reported purpose of farm, ranch and forest land protection in Oregon in the NCED, compared to other states, also supports the underlying assumptions that this discrepancy is largely due to the protections afforded to farm and forest lands through the Land Use Program. Nonetheless, when considering the 27 million acres of farm and forestland protected through the Land Use Program, despite the absence of a state-supported conservation easement program, Oregon’s record on conservation with regulations and through easements is impressive.

Limitations to the Utilization of Easements in Oregon: Appraisal Valuation

Easement Value

In general, the traditional valuation process for a conservation easement is determined by the property’s loss of development or other economic value that is restricted through the easement. Since Oregon’s land use program limits development on resource lands through zoning regulations, it can be more challenging to identify development rights that are readily appraisable. If there is no obvious residential development right, such as a Measure 49 claim, a Lot of Record dwelling, or some other allowable residence, the development rights remaining may be too limited or speculative to create market value that is comparable to the compensation afforded by other states, or that is readily appraisable using traditional methods. This can make conservation easements less financially attractive to landowners when compared to their value in other parts of the country.

Even if development “rights” might exist under Oregon law, such as the permitted exceptions in ORS 215.283, there is often no absolute right to build, as these “rights” typically need approval through a county planning process, subject to overarching state law, to be exercised. Stated another way, these rights are more “penumbral” – implied rather than absolute – in nature. Even if these “rights” were authorized, it is generally a case-by-case basis as to whether a market exists for them. For instance, a home site approval in a remote area in Oregon may indeed be possible, but the market may be less than active for that home site. Moreover, although conservation easements are most often in perpetuity, professional practices require appraisers to focus on current zoning and market value. Thus, appraisers are generally unable to factor in perpetual restrictions unless present day or reasonably foreseeable development rights are being relinquished. Consequently, unless the conservation easement extinguishes actual development rights and/or some resource production value, landowners often do not have much of a financial incentive to either sell or donate a conservation easement on resource lands.

In general, our research indicates that low density residential development through dwelling approvals on farm and forest lands and Measure 49 home sites are the most prevalent development rights that often can be readily appraised on rural lands in Oregon. Several interviewees also expressed concern that cumulative effects of low density residential development on resource lands can be detrimental because 1) it reduces the availability of economically viable large tracts of land for farming and timber management through fragmentation; 2) accepted farm and forest practices often conflict with residential uses and other commercial activities; 3) it jeopardizes the viability of vendors that sell goods and services that support farms and forestlands 4) it disrupts wildlife habitat and migration corridors; 5) it causes depletion of aquifers due to residential wells that are exempt from typical water permitting requirements, and; 6) it causes greater carbon emissions due to increased commuting. “Shadow
conversions”, where a farm dwelling is approved on EFU land but the landowner does not intend to farm, exacerbate this problem.

Working forest easements that reduce harvest levels, eliminate development potential, impose stricter ecological-based management requirements, and protect riparian buffers have seen fairly limited use in Oregon to date, but present an opportunity where easement value could be appraised with the help of a qualified forester and appraiser. This approach has been used in other states such as in California by the Pacific Forest Trust and shows promise if funding were more readily available. However, one interviewee familiar with forest issues suggested that this approach might not provide enough incentive to institutional timber owners, such as Timber Investment Management Organizations (TIMO), Real Estate Investment Trusts (REIT) and corporation entities that hold large tracts of industrial forest lands in Oregon, because the incentive payments might not meet the expectation of value due to the fiduciary duty owed to investors and shareholders. Another consideration is that these entities are often holding timberland for some speculative development purpose and since appraisals generally cannot take into account speculative value, corporations and investment firms holding timberlands will have less financial incentive to grant conservation easements. Further exploration with the timber management community is needed to better understand these issues.

Conservation Easement Appraisals in Oregon

In Oregon and in most states, appraisers must comply with Uniform Standards of Professional Appraisal Practice (USPAP). Most government funded easement programs apply these standards as a minimum requirement. The typical manner to appraise a conservation easement is the “before and after” valuation method, which is accomplished by calculating the value of the property before the granting of the conservation easement (the “before value”) and deducting from it the value of the property after the granting of the conservation easement (the “after value”). The difference in value between the “before value” and “after value” is the market value of the conservation easement. Since this method actually involves two different appraisals within one appraisal, it adds complexity in the appraisal process compared to a regular appraisal.

Moreover, federally funded acquisitions may require compliance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), commonly known as the "Yellow Book". A main difference between regular USPAP and the UASFLA is the requirement that the appraisal must consider the “larger parcel” to be appraised, that is, lands adjacent to the subject parcel that the seller also owns, the value of which might be affected if an easement is placed on the subject property. Section 170(h) of the Internal Revenue Code and the corresponding U.S. Treasury Regulations also provide additional appraisal requirements if an income tax deduction is sought for a donated conservation easement as a qualified conservation contribution.

A federal charitable contribution is not deductible unless it is substantiated in accordance with the Internal Revenue Code and applicable regulations. The Treasury Regulations authorized under IRC §170(f)(11)(H) set forth strict requirements on how to appraise a conservation easement for federal charitable tax deduction purposes. Conservation easements having a fair market value greater than $5,000 must be substantiated by a “qualified appraisal” prepared by a “qualified appraiser.”

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9 IRC § 170(f)(11)(C)–(E); Treasury Regulation § 1.170A-13(c)(3),(5)
In determining the fair market value of an easement, appraisers must first rely on sales prices of comparable easements if a substantial record of such sales exists. In most cases, due to the unique nature of conservation easements, this type of market-place sales data do not exist in Oregon. Consequently, the fair market value is typically determined by calculating the difference between the fair market value of the property as a whole before it is encumbered with the easement and the fair market value of the property after the granting of the easement (i.e. the before and after method as mentioned above).

A before and after valuation must consider not only the current use of the property, but an objective assessment of how immediate or remote the likelihood is that the property, absent the easement, would in fact be developed. Furthermore, there may be instances where granting a conservation easement may have no material effect on the value of the property or may enhance, rather than reduce, its value. In those instances, no deduction will be allowed. These requirements can make appraising conservation easements a challenging task, particularly in light of Oregon’s land use laws.

Based on the interviews conducted for the Project, there is a limited pool of appraisers who are qualified and/or interested in appraising conservation easements in Oregon. Usually, conservation easements are tailor-made to suit the property characteristics, the land trust’s conservation goals, and landowner’s needs. This includes the need to address the Land Use Program’s complex system of defining property rights, particularly residential development rights. Thus, there is often limited uniformity with the terms and an appraiser has to start fresh with each transaction, which adds more complexity in the appraisal process. Lastly, appraisers typically are risk-averse and the current system makes the appraisal of conservation easements too risky for some practitioners because of potential liability, especially regarding appraisals for federal tax purposes. In part because there have been no significant prior attempts to create a statewide, publicly-funded conservation program specific to easements in Oregon, new programs are needed to test new ways to address these factors, build a foundation for identifying readily appraisable development rights, and thereby establish meaningful incentives for landowners.

Financial Incentives Currently Available in Oregon

Several federal and state incentives are currently available to landowners to permanently convey conservation easements to qualified holders in Oregon. Although not necessarily exclusive from each other, for purposes of the Project the programs can be broken down into two different categories: tax incentives and purchase of development rights (PDR) programs. Tax incentive programs are further broken down into income, estate, and property tax incentives. PDR programs are voluntary acquisition programs that fund the purchase of easements from willing landowners. A summary of the most prevalent incentives is as follows:

Tax incentives

- Federal and state income tax deduction for charitable donations — As mentioned above, under IRC § 170(h), Congress allows donations of conservation easements to qualified organizations to be considered deductible charitable contributions for federal income tax purposes if particular

10 Treas Reg § 1.170A-14(h)(3)(i)
11 Ibid.
12 Treas Reg § 1.170A-14(h)(3)(ii)
13 Ibid.
criteria are met. And like all charitable contributions, a comparable tax deduction is also allowed for state income taxes as well.

• **Federal and state estate tax benefits** – In general, the restrictions imposed by conservation easements may reduce the fair market value of inherited property, thus lowering state and federal estate tax liability. IRC 2031 (c) provides an additional estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a “qualified conservation easement” donated during the lifetime of a decedent or through post-mortem election by the heirs. That exclusion is capped at $500,000 and is further reduced if the easement lowered the land’s value by less than 30% at the time of the contribution.

• **State property tax special assessment** – Under ORS 308A.450 to 308A.465, Oregon provides for a conservation easement special assessment similar to that for farm or forest property tax special assessments. The effect is to lower property taxes on lands encumbered by conservation easement lands. However, given that most properties subject to a conservation easement special assessment are often already under a similar preferential assessment for farm or forest use, the end result, in terms of incentives for conservation-minded landowners, is relatively marginal. The biggest incentive, in that instance, is that the change from one special assessment category to the conservation easement special assessment does not trigger a penalty or different tax rate.

**Purchase Programs**

Currently there are a variety of different purchase programs on a federal level and just a couple at the state level. The ones introduced below, and explored more fully later in this paper, are considered most relevant for application and use in Oregon regarding the conservation of resource lands.

• **Federal purchase programs**
  
  o **Farm Bill** – The US Department of Agriculture National Resources Conservation Service (USDA/NRCS) Agricultural Conservation Easement Program (ACEP), funds conservation easements on private lands up to 50% of the total easement value. The ACEP programs are in two categories: the Wetlands Reserve Program (WRP) that focuses on the protection of wetlands, and the Agricultural Land Easements program (ALE) that protects agricultural lands by limiting non-agricultural uses. ALE requires at least a 50% cash match from the grantee for each project.

  o **Bonneville Power Administration**
    
    ▪ The Bonneville Power Administration (BPA) and the other federal agencies that operate the Federal Columbia River Power System (FCRPS) are legally responsible to mitigate for impacts the FCRPS has caused to fish and wildlife populations. Consequently, BPA purchases land and conservation easements with local partners for this purpose on an on-going basis.
    
    ▪ Within Oregon, the Willamette Wildlife Mitigation Program is a component of the above effort that addresses the impacts to fish and wildlife habitat caused by acquiring or protecting at least 16,880 acres in the Willamette Valley by 2025.

  o **Forest Legacy Program** – This USDA Forest Service program assists states and private forest owners to maintain working forestlands threatened with conversion to non-forest uses related to urbanization, rural residential development, parcelization and other
development pressures. The Forest Service will fund up to 75% of project costs, with a 25% match requirement from non-federal sources. Currently only public entities (federal, state or local government) are qualified to hold easements funded under FLP.

- **Oregon-based purchase programs**
  - **OWEB** – The Oregon Watershed Enhancement Board’s (OWEB) Land Acquisition Grant Program funds the acquisition of conservation easements across the state for its constitutional mission to maintain and restore watersheds and habitat for native fish or wildlife. Most of OWEB’s funds originate from state lottery proceeds, but OWEB also receives some federal dollars as well. Since its inception in 1999, OWEB has spent $40 million on land protection, amounting to the conservation of 60,000 acres. $6 million of these funds were spent purchasing 20 conservation easements, resulting in 17,000 acres protected.

  - **Clean Water State Revolving Fund** – Administered by Oregon Department of Environmental Quality (DEQ) using federal Environmental Protection Agency (EPA) funds, this program provides low-cost loans to public agencies and non-profits for the planning, design or construction of projects aimed to prevent or mitigate water pollution. While more geared toward funding infrastructure, this program has possible application in the use of conservation easements for watershed protection. While this is an existing state funding source, it has not yet been used to purchase a conservation easement in Oregon.

  - **Soil and Water Conservation Districts** – Out of the state’s 45 conservation districts, 12 have taxing authority, creating in some cases significant revenue for the district. Some SWCDs are exploring using these funds to purchase, receive, and/or hold conservation easements. As most conservation districts have close relationships with the agriculture community in their area, SWCDs could play an important role in increasing both the stature of and funding for easements. As of this writing, we do not know of a conservation district that has purchased a conservation easement, though a few have received donated easements.

The effectiveness of the most relevant incentives is more fully discussed below. A brief overview of some other conservation programs employed in different states will also be considered for context in relation to the existing incentive programs and for consideration of whether such other programs could be implemented in Oregon. Some emerging programs such as DLCD’s Transfer of Development Rights (TDR) Program and the Enhanced Easement Incentive will also be considered. From this comparison and overview of incentives, the paper identifies modifications that can be made to existing incentives and proposes new state incentives to increase the use of conservation easements in Oregon.
Project Findings: Tools and Resources for Incentivizing Conservation Easements

Strategic Considerations in Acquiring Easements to Maximize Incentives

Focus efforts to maximize incentives

To address the current valuation problem on resource lands in Oregon, it is recommended that conservation efforts focus on identifying the existing development threats to these lands. As existing rights to development pose imminent threats, it is easier to quantify them for the purpose of a conservation easement and hence to compensate the landholder for the value of that exchanged right; as a general rule, the higher the compensation for the easement (often correlated with development potential), the greater the financial incentive for the landholder. To that end, organizations and agencies interested in preserving rural lands from development could:

- **Focus attention on particular areas of high-value farmland** that is especially vulnerable to conversion noted by the interviewees, such as Willamette Valley farmland, the Hood River Valley, the Metolius River area, the southern coast, Portland Metro area, and the Medford-Ashland-Jacksonville area. It is in these highly desirable areas for low density residential development that easements will most likely be able to capture more appraisal value, thus creating more financial incentives for the landowner.

- **Identify properties in high conservation interest areas that have discernible residential development rights** associated with them. Particular focus could be given to, 1) Measure 49 rights, which can be researched through the DLCD website and might be more of an “absolute” right than a farm dwelling or forest dwellings that hypothetically could be approved through ORS 215.283 or OAR 660-006-0025; 2) “shadow conversion,” which may include grandfathered non-farm dwellings and instances where a farm dwelling is approved, but the landowner does not intend to farm (i.e. Oregon’s south coast ranch land with ocean views); 3) legal non-farm dwellings (this can include legal lot line adjustments that concentrate properties with lower quality soils in reconfigured lots in order to get building authorization); 4) lots of record; 5) farm-dwellings on undeveloped parcels in EFU zones; and 6) undeveloped land in Rural Residential zones that could be used in conjunction with farm land.

- **Focus attention on important farmlands that are threatened by aggregate mining** in the Willamette Valley, such as Grand Island in Yamhill County. State law has recently changed to make it more difficult to mine gravel on EFU designated lands, however this is still a concern. Further exploration of this topic is recommended.

- **Find market value for other discernable permitted and conditional uses on EFU lands** under ORS 215.283, such as utilities (e.g. wind turbines), private parks and camps, wineries, and mass gatherings. Additional applications for the use of easements could be to protect lands from destination resorts and golf courses on non-high value farmland.
• **Explore using more working forest conservation easements**, a relatively untapped opportunity in Oregon. With the amount of private forest land in the Oregon, the state’s conservation ethic, and our multitude of rivers and streams, giving an incentive for landowners to go above the basic requirements of the Oregon Forest Practices Act seems like a promising path to pursue for conservation organizations. Pacific Forest Trust is actively working with these types of easements in California and is currently negotiating with an Oregon timber company that has holdings in that state. They also hold at least one working forest easement already in Oregon. Also, some Oregon land trusts such as the McKenzie River Trust and the Southern Oregon Land Conservancy have already been using this form of easement to protect working forests.

**Other Strategic Considerations for Conservation Entities**

• **Shift strategic goals and presentation of land trusts from a strict natural resource conservation position to one that includes the protection of the long-term productivity of landscapes.** Along with facilitating relationships with farmers and ranchers, this will also help align land trusts with the statewide land use goals.

• **Consider the creation of a new, statewide land trust with the specific purpose of protecting, agricultural and forestlands.** The expected effect of such a strategic shift would be to include working lands preservation into the context with natural resource area protection and to help create vibrant rural communities in Oregon.

• **Support the capacity of Soil and Water Conservation Districts (SWCDs) to hold easements.** Some Oregon SWCDs already have a great deal of experience in holding conservation easements, and SWCDs in general have the ability to perform effective outreach to the farming and natural resource community. Partnership opportunities between land trusts and SWCDs should be explored to improve land trust connections to the farming communities and for land trusts to assist SWCDs with the capacity and expertise transact and hold easements.

• **Focus on farmland protection in Rural Reserves near urban areas in the Portland metro area.** Growth management is a political process. Since the Land Use Program is reasonably effective in protecting farm and forestlands, it is wise for land trusts and other conservation entities not to intentionally disrupt the land planning process and interfere with foreseeable urban growth boundary decisions. However, one esteemed interviewee suggested a strategy to focus a conservation easement program on working lands recently designated as Rural Reserves outside the Metro Urban Growth Boundary (UGB). These lands are off-limits for urban development for 50 years and represent a core-base for agriculture in the region. An easement program could protect these lands in perpetuity, which is an admirable goal that supports current land use policy. Additionally, the concept of Rural Reserves is being considered by other communities in the state, such as the Medford-Ashland area; thus this farmland protection strategy could be replicated elsewhere. There still is the problem of ascertaining appraisable development rights on these lands. As detailed below, in 2006, Metro, the regional government for the Portland-area, considered a similar farmland protection strategy in conjunction with an urbanization gains tax.

• Given that there are mutual interests between the state’s regulatory programs and conservation entities, it is recommended to **explore the need for land trusts to engage with state and local authorities to integrate and shape their goals into land use planning goals.** A good opportunity is to seek funding and provide assistance to update agricultural, forest, and natural
Some general factors in determining the feasibility of options to improve incentives

The motivation for landowners to convey conservation easements is generally based on their conservation ethic, the financial incentives available, or regulatory compliance. Despite the existence of some financial incentives in Oregon for landowners, the majority of the interviewees for the project felt that these existing mechanisms were insufficient, and that limitations for their use need to be addressed. In the context of “forever-wild” type conservation easements, the resource value of the conservation easements can be readily appraised as evidenced by the large number of the federal WRP easements in the state. Valuing and establishing incentives for conservation easements on working lands, however, has not been extensively tested and there is a need to develop pilot programs to experiment and develop workable solutions.

Many interviewees observed that PDR programs for conservation easements are a presumably more attractive financial incentive to a typical landowner, particularly for working lands owners, versus tax incentives. One contributing factor is that farmers working the land are often “land rich and cash poor.” Thus, income tax incentives are sometimes less attractive to many owners because they have less adjusted gross income that can be offset with a charitable tax deduction or a tax credit. However, this problem can be minimized if tax credits are transferrable for sale, or if the federal income tax incentives can be increased as is currently proposed in Congress. These considerations will be further addressed below.

Conservation easements may also become more important to landowners who wish to meet or gain safe harbor from more stringent environmental regulations, such as water quality regulations or conservation planning around threatened or endangered species. This is a scenario currently being explored by agencies and partners regarding the potential listing of the sage grouse in eastern Oregon.

Notwithstanding the above, there is still a core of conservation-oriented landowners that are inclined to use conservation easements without adequate financial incentives. In these instances, the property owner has a conservation ethic or personal connection to the land that overshadows monetary considerations. In fact, the majority of conservation easements across the country have been donated by landowners, who in turn may or may not take advantage of existing tax incentives from their donation. It is presumed that these types of easement conveyances will continue into the future.

Discussion of Potential Tools and Options for Oregon

Discussion of programs used in other states.

Other states have successful incentive programs to encourage or generate the demand for the donation or sale of conservation easements. These programs can be grouped into the following categories: income tax credit (e.g. State of Colorado), government run PDR (e.g. Maryland Agricultural Land Preservation Foundation (MALPF) and Skagit County Land Legacy Program (SFLP)), farmland mitigation (Vermont’s 250 Act, the city of Davis, California), farmer support services (e.g. Vermont Housing and Conservation Board’s Farm and Forest Viability Program), and state grant programs (e.g. State of Washington Wildlife Recreation Program (WWRP) and California’s Sustainable Agricultural Land Conservation Program (SACLCP)). These will be discussed below.
Income tax credits for the donation of conservation easements have been successfully used in 14 other states. A good summary of these programs can be found in *State Conservation Tax Credits, Impact and Analysis* prepared by the Conservation Resource Center in 2007. State programs vary, but the general rule is that the credit will be established according to a percentage of the appraised fair market value of the donated easement or some predetermined cap on value, whichever is less. The key for success is to establish credits that are transferable and/or refundable and able to be carried-forward to future tax years. The transferability overcomes the aforementioned common problem that farmers and ranchers are often “land rich and cash poor,” and therefore have little tax liability from their farming operations.

Colorado has one of the most successful conservation credit programs. Some highlights of that program are as follows:

- Donations must meet the IRC § 170(h) requirements for eligibility, qualified holders, and the IRS appraisal standards, which is typical for this type of program.
- A credit is worth 50% of the appraised donation value with a maximum credit of $375,000.
- Credits are limited to one per year. A second credit might not be applied until the first one is fully utilized, even if it was transferred to a third party.
- Credits are transferable and can be carried forward for up to 20 years when the credit exceeds its tax liability for that reported tax year.
- The credit also passes to the decedents’ estate upon death of the taxpayer.
- Credits are refundable, but limited to $50,000 per donation each tax year and conditioned upon surplus state revenue. This cap is also applied to multiple taxpayers claiming the similar credit.
- The credit is available to Colorado taxpayers that are resident individuals, C corporations, trusts, estates and members of pass through entities who receive the credit from such an entity.
- In order to avoid the creation of entities for the sole purpose of receiving tax benefits (i.e. married couples, members of pass-through entities, joint tenants and other ownership groups), entities qualified to hold benefited donated easements must have fulfilled a two-year waiting period.
- As of January 1, 2014, credits must be pre-approved through a certification process conducted by a state agency to determine the credibility of the appraisal and an oversight commission to determine if the donation is a qualified conservation contribution.
- The total amount of credits granted each year on a first come, first served basis is $45 million.

Some of the recognized benefits of Colorado’s conservation tax credit programs include economic compensation for protection of land for landowners, advancing conservation goals without direct expenditure of public funds, and that the public may enjoy the protected open space. Since conservation tax credit programs are not part of the legislative budgetary process, they are not typically as subject to legislative wrangling as other funded programs. However, state tax credit programs decrease the funding pie for already strained government coffers. Consequently, other traditional users of government funding such as schools and public safety could be resistant to a tax credit that they perceive will siphon away public funds from their piece of the budgetary pie. To help combat this problem and remedy budgetary shortfalls, Colorado in 2010 set an aggregate limit on the total dollar amount of tax credits available for each year, currently set at $45 million.

Much like the federal system, the downside of the conservation tax credit programs is the administrative costs related to program oversight, compliance review, and enforcement. Similar to
PDRs, tax credit programs face oversight and compliance challenges including abuse of the program with conservation easements that lack a clear conservation purposes, over-valuation of the donation, and inadequate holders. Some of the proposed solutions to deal with those challenges include improving the planning and design of the program, establishing certification processes and standards (pre grant of the credit), and auditing (post grant of credit) and screening transactions to secure sound agreements. In response to past abuses concerning over-valuation of easements and easements that lacked a valid conservation purpose, Colorado amended its program in 2014 to require a certification process prior to the granting of a conservation tax credit.

Transferable tax credits, such as energy tax credits, have been used in Oregon with some success, but not without controversy. Consequently, a precedent does exist for their use in Oregon and lessons could be learned from previous mistakes. The interviewees consistently stated that purchase programs were better than donation-based programs for the main reason that most people cannot substantially benefit from a tax deduction. However, a transferrable tax credit program could overcome that hurdle. Since the proposed Federal Enhanced Easement incentive (mentioned below) allows for a carryover of the income tax deduction associated with a qualified conservation easement donation and increases the amount of the deduction for typical farmers and ranchers, it would address many of the issues problematic with the current federal tax incentive.

**Government-run Purchase Development Rights Programs: Skagit County Farmland Legacy Program and Maryland Agricultural Land Preservation Foundation**

Purchase of Agricultural Conservation Easement (PACE) programs, which is a specific form of a PDR program, have been implemented at national, state and even at local or regional levels. Across the country, the presence and relevance of PACE programs has been significant. According to the American Farmland Trust’s Farmland Information Center, 27 state-sponsored PACE programs (with 4 more states having authorized such programs, but not yet implemented them) have protected over 2.4 million acres of farmland, with over $3 billion of program funds spent to date.

The Skagit County Farmland Legacy Program (SFLP) is a county-run PACE program that purchases conservation easements on agricultural lands zoned for 40-acre minimum lots. While smaller than Oregon’s 80-acre minimum for EFU zoned land, it provides some similarities to our situation in this state. Stated simply, the goal of the SFLP is to keep agricultural land in agricultural use in perpetuity. One “development right” for a home site is typically associated with the 40-acre zoning. It appears that this right is more absolute than farm dwelling approvals in Oregon, similar to a Measure 49 right.

The SFLP uses its eligibility criteria (e.g. soil quality, size of parcel, proximity to urban area, scenic and environmental values, financial and discretionel considerations) for prioritization of acquisitions. Purchase price is factored in with the eligibility criteria in a formula that helps the governing board select projects that provide the most impact at the lowest cost. The easement contract also includes an affirmative obligation to farm.

The SFLP formerly used a presumptive pricing formula based on paying $50,000 per home-site plus $150.00/acre for the farmland. Now it uses an USPAP appraisal process, typical of government funders, which yields closer to $100,000 to $150,000 per home site. The SFLP program is funded by a county property tax levy called the Conservation Futures Fund (CFF), the Washington Wildlife and Recreation Program (WWRP, see discussion below), which is sourced from state general obligation bond funds, and the USDA-NRCS ACEP-ALE funds. Appraisals and closing costs are paid out of the CFF.
The authority for a local government to establish a CFF is granted pursuant to Revised Code of Washington (RCW) 84.34.230. Skagit County adopted its CFF by Ordinance No. 16380. A property tax levy established under this ordinance is the source of the dedicated county’s CFF funds.

Theoretically, a CFF based on a “local option” property tax levy could be created in Oregon; however, its effectiveness is expected to be limited, due to property tax limitations established through ballot Measures 5 and 50. Passed in 1990 through a voter approved initiative, Measure 5 constitutionally limits property taxes on individual to one-half of a percent or $5 per $1,000 of assessed value for public school taxes and one percent or $10 per $1,000 of assessed value for general government taxes. If either the school or general government taxes exceed these limits, each corresponding taxing district will have its tax rate reduced proportionately until the tax limit is reached. This reduction in taxes caused by the Measure 5 limitation is called “compression.” Under Measure 50, passed in 1997, assessed values for property taxes were reduced to 90% of the 1995-96 values and it limited the annual growth of assessed value to just 3%, excluding future improvements to the property.

Consequently, adding a CFF local option levy to the exiting property tax base will cause that fund to proportionally share with other taxing entities if the general government taxation limitation is already met. This competition for local government funds could make establishing a CFF politically challenging, but not insurmountable. However, in jurisdictions that have not exceeded their Measure 5 limitation, a CFF could be added without compression and any resulting proportionate sharing. Thus, SWCDs and other local government entities that are considering developing a conservation easement program and creating a property tax levy to fund its operations should consider this issue carefully. However, it is worth noting that property tax bond levies are exempt from the Measure 5 limitations and are worthy of consideration. Metro’s Natural Areas Program is funded in this manner and provides a good model to emulate if a community is considering a bond program to fund a conservation program.

Another attractive innovative farmland protection program in Skagit County is the “39 and 1 seg” option under Section 14.16.860 of the Skagit County planning code. This allows a landowner to segment off one separately conveyable one-acre home site per forty acres in exchange for the county receiving an agricultural conservation easement on the remaining 39 acres. This is a non-monetary exchange between and county and the landowner. However, it does promote more fragmentation of ownership in resource areas, which creates problems as previously mentioned.

The Maryland Agricultural Land Preservation Foundation (MALPF) purchases and holds easements that restrict development in perpetuity on high value farmland and woodland. The MALPF uses a uniform easement template, and according to its 2013 Annual Report the program has protected approximately 285,902 acres with $618 million. The purchase price to be paid is either the price offered by the seller or the price as determined by the difference between market value and agricultural value, whichever is lesser. The latter method is a slightly different application of the traditional before and after test. The “before” value is determined using a traditional real property appraisal method that is paid for by the MALPF. The “after” value is the agriculture value calculated using a formula that measures the productivity of land by the amount necessary to rent the applicant’s farmland. Since Maryland’s valuation process does not use the IRS appraisal process, these easement payments are not eligible for ACEP-ALE matching dollars. It is therefore not recommended for Oregon.
A silver lining is that the MALPF program has a competitive selection process that might be worth replicating. Properties are ranked by a variety of factors such as minimum lot sizes, permitted uses, soil productivity, and location in relation to water and service area plans and funds are allocated according to ranking scores and the available funds for that period. If a property did not receive funding in the first round of offers, the applicant can choose to go for a second round where a discount formula is applied. The formula is the result of a ratio of the applicants asking price divided by the fair market value of the property. This is a type of bargain sale arrangement that does not involve a donation. Stated another way, by setting his own price, a landowner might make his property more competitive for selection compared to other properties competing for limited funds. This is a form of price discovery that could be employed in an easement acquisition program.

**Farmland Mitigation Programs: Vermont’s 250 Act and City of Davis, California**

Conservation easements can be used as a tool through a regulatory approval process to mitigate the impact development can cause to farmland by protecting farmland elsewhere. The most common use of environmental mitigation measures has been for wetlands and several jurisdictions have expanded its use to farmland mitigation. Jackson County, Oregon considered amending its comprehensive plan to incorporate this type of system. Farmland mitigation programs in the State of Vermont and the city of Davis, California provide good illustrations on how a mitigation mechanism could work in the context with conservation easements. These programs are triggered by land use approvals and might be relevant in the context of our Land Use Program.

Vermont’s 250 Act requires a quasi-public judicial review of environmental consequences of subdivisions and development, including considerations of farmland conversion for the protection of prime agricultural soils. The approval process involves an alternatives feasibility analysis, which includes mitigation measures. For projects within designated growth centers, suitable mitigation will be an “off-site” mitigation fee paid into a special fund (Vermont Housing and Conservation Trust Fund) created for preserving prime agricultural soils according to USDA classifications. The amount of the fee is determined by using a formula that considers in part, the number of acres affected and the recent per acre cost of purchasing a conservation easement that protects a similar type of soil in same geographic area. For projects outside designated growth centers, suitable mitigation will be provided on-site to preserve prime agricultural soils. The number of acres to be mitigated is defined according to a formula that considers among other things the acreage affected and other soil features such as location, accessibility, water sources, existing wetlands, etc. Additionally, the prime agricultural soils preserved by the Vermont Housing Conservation Board pursuant to these mitigation rules, are required to be encumbered by a conservation easement conveyed to a qualified holder.

In Davis, California, municipal ordinances set mitigation requirements to permanently protect two acres of farmland for every acre of agricultural land converted to other uses, when there is an application for a zoning change from agricultural uses to any non-agricultural zoning or use. In some cases, a factor will be applied when circumstances warrant a greater ratio. Conservation easements are accepted as a measure to comply with the mitigation requirements.

Finally, it is worth mentioning the payment-in-lieu of mitigation program in Oregon that funds the Wetland Mitigation Fund (WMF). This program gives project developers an opportunity to pay a compensatory amount when other methods of mitigation are not available or are not adequate for certain small wetland impacts (under 0.2 acres). The amounts paid are kept in an interest-bearing account generating a revolving fund (the WMF) administered by the Department of State Lands, which
will fund eligible projects with a primary purpose of increasing wetland functions or acreage required to mitigate those impacts, including the purchase of land or easements (as long as they have a water improvement element). This type of payment-in-lieu program also could be employed in the context of a farmland mitigation program.

**State Grant Programs: Washington Wildlife Recreation Program and California’s Sustainable Agricultural Land Conservation Program**

Created in 1990, and recognized under the Revised Code of Washington (RCW section 79A.15), the Washington Wildlife Recreation Program (WWRP), is currently the largest funding program for local parks and other outdoor recreation activities in the state. Administered by the Recreation and Conservation Funding Board, the WWRP funds a broad range of land protection and outdoor recreation projects, such as parks, trails, water access, farmland preservation, habitat conservation, and construction of outdoor recreation facilities. To date it has awarded over $650 million in grants.

The source of the funds comes from the sale of general obligation bonds in an amount that is determined by the state legislature according to a list of ranked projects submitted by the governor through the Recreation and Conservation Office. Currently, the efforts of conservation stakeholders in Washington, especially the Wildlife Recreation Coalition (non-profit created by the governor and the legislature to provide oversight and leverage funds for the program,) are to obtain approximately $97 million for proposed projects from the 2015-2017 state budget.

Depending on the category of the project, a cap on funding might exist (i.e. local parks acquisition projects are capped for a grant up to $1 million, while farmland preservation and natural areas have no cap). Applicants including local agencies, special purpose districts, and non-profits are expected to provide matching funds for at least 50% of the total cost of the project, while state agencies are not required to do so.

Eligible projects include land acquisitions, which include both the purchase of perpetual interests in the property as well non-perpetual interests with a minimum of 50 years; and farmland preservation, which, along with land acquisitions, includes ecological enhancement and restoration activities and farm stewardship plans.

During 2014, California’s Strategic Growth Council began the implementation of a new public funding program for conservation in the state, the Sustainable Agricultural Land Conservation Program (SACLP). The SACLP is expected to provide funds for conservation in relation to the reductions in greenhouse gas (GHG) emissions associated with the protection of agricultural lands.

The program is meant to prevent the increase of GHG emissions by preventing developments that are likely to expand and be vehicle-dependent, and by promoting more limited and smart growth developments by funding plans, conservation acquisitions and management incentives.

SACLP funds will be invested in three possible categories: sustainable agricultural land strategy plans, agricultural conservation easements, and land management incentives. Only the first 2 categories will be available for the first stage of the program. SACLP is expected to complement already existing farmland protection in the state such as the Land Conservation Act, and the California Farmland Conservancy Program.
The agricultural conservation easement category is created in order to permanently protect relevant and critical agricultural lands, and it is available for a broad range of applicants, including cities, counties, non-profits, conservation districts, etc., and it will provide matching funds up to 50% of the total easement purchase price. Some costs concerning easements, such as surveys and title reviews, are recognized as eligible projects under the strategy plans category. For Fiscal Years 2014-2015 an amount of $3,750,000 was allocated in the state budget for agricultural conservation easement acquisitions.

Funding eligibility for easements is defined according to criteria matching Assembly Bill 32 goals, such as carbon sequestration potential and energy efficiency in agricultural operations. Some of the most specific criteria relate directly to the property (i.e. size capable of maintaining commercial agriculture activity, threat of conversion to non-agricultural use) and some with jurisdiction where it is located (i.e. consistency with city or county general plan). All grant applications must be accompanied by an appraisal prepared by an independent and certified appraiser retained by the applicant. This appraisal must be done under the before and after valuation method.

In addition to SACLP, California has an existing land protection program through its Division of Land Resource Protection (DLRP). SACLP was focused on in this paper because it is an emerging program with a nexus to GHG emission mitigation and specifically provides for agricultural conservation easements. Resources did not permit further exploration of the DLRP’s California Farmland Conservancy Program and Land Conservation (“Williamson Act”) Programs. Nonetheless, OCEAP partners should study these DLRP programs further to see what components of those programs involve conservation easements and what could be implemented in Oregon.

What can Oregon use from these other state programs?

As mentioned above, a tax credit program could be perceived as potentially taking funds away from other essential government services and could meet political resistance. Moreover, successful conservation credit programs are typically based on fair market appraisals. With little statewide experience with easement appraisals on working lands as well as the potential limitation of easement value due to the Land Use Program restrictions discussed above, it is unclear how effective a tax credit program would be in Oregon. Waiting to see how the Federal Enhanced Easement Incentive (discussed further below) plays out would be wise, because those enhancements to the federal tax benefits will somewhat address the land rich and cash poor concerns. Possibly there is a place for conservation credits in Oregon but the above factors need to be considered before heading forth on such a serious undertaking.

Due to some similarities with the minimum acreage requirements with Oregon, further consideration of the Skagit model should be explored. The prioritization system for selecting easements by the Skagit program is worth further consideration as well.

The concept of a mitigation program to compensate for farmland lost to development intellectually has merit. Oregonians value farmland for a variety of reasons. This is embodied in our Land Use Program. However, the current system fundamentally allows for planned growth and resource extraction (e.g. in the case of aggregate mining) to legally convert farmland to other uses. A mitigation program could help provide further protections of farmland and working lands conservation easements could play an

14 AB 32, California Global Warming Solution Act of 2006
important role in this process. More research is needed to better understand how it might be implemented in Oregon. Further exploration is also in order with Jackson County to learn about its process in considering the subject and why it chose to not adopt a farmland mitigation program at this time.

The Maryland program has some similarities to the Skagit program and it is not necessary to repeat them here. One important factor of the MALFP is the competitive bidding process, where landowners can set a lower price than market value to make their easement more attractive for funding. Skagit employs a similar approach, as well. Possibly this could be employed with the use of conservation easements. The pilot TDR program with Measure 49 rights in Oregon (mentioned further below) might incorporate something similar and could be used as a test case for this concept.

It is fairly evident that other neighboring states, such as California and Washington, have funds for land conservation and the purchase of conservation easements that are larger than those exist currently in Oregon. If California and Washington have done it, certainly Oregon can as well. Thus, expanding the existing funding amounts and mechanisms in Oregon would be advised.

**Improvements to Existing Programs Available in Oregon**

**Federal Income Tax Incentives**

Probably the most familiar incentive is the federal tax deduction under Internal Revenue Code § 170(h), discussed briefly above, which allows for donations of conservation easements to be considered deductible charitable contributions for federal income tax purposes if certain criteria are met. A detailed description of these criteria, as found in of IRC § 170(h), is beyond the scope of this paper. What is important to mention here is that the law and the accompanying Treasury Regulations have been a powerful incentive to promote private land conservation through the use of conservation easements. This fact is exhibited by the prodigious growth in the number of easements recorded and acres protected since § 170(h) became permanent law in 1980. Despite its success, the deduction “has been criticized as wasteful, inefficient and subject to abuse”. The main concerns cited are the potential lack of long-term enforcement, the possible inadequacy of a public benefit, the prospect of overvaluation, and the lack of control through the budget process. Another concern is that the deduction can be costly to the federal government. From 2005 to 2011 the approximate number of conservation easement donations reported on individual returns averaged 2,706 per year with an average donation value of $500,000. Consequently, the IRS has set very strict requirements to overcome some of the objections to the deduction and to make certain the public interest is protected in the process. Landowner compliance with § 170(h) can be costly and approval of the tax deduction is not certain. IRS also has requirements and penalties associated with overvaluation, which make appraisers cautious when performing appraisals of conservation easements.

Treasury Reg. §1.170A-14(h)(3)(ii) demonstrates one of the problems of appraising conservation easements that is relevant to resource land in Oregon:

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15 Important Lessons to be Learned from Recent Federal Tax Cases, Land Trust Alliance Rally 2014, Nancy A. McLaughlin and Stephen J. Small, page 13.
16 Ibid.
“The fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property’s potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property”.

The “how immediate or remote the likelihood” the property would be developed requirement hinders providing development value on many rural lands in Oregon. Based on the federal government’s concerns cited above and its size in relation to Oregon, which is a relatively small state as population goes, it does not seem reasonably feasible to carve out an exception to the valuation requirement due to Oregon’s unique Land Use Program. Consequently, it seems best to work within the system.

**Federal Estate Tax Benefits Under §2031**

The donation of a conservation easement also can be an effective means to reduce estate taxes on inherited lands. Two federal estate tax benefits come into play. First, Internal Revenue Code § 2055(f) allows donations of qualifying easements to be deducted from the taxable value of an estate. Secondly, Section 2031(c) provides an estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a "qualified conservation easement." That exclusion is capped at $500,000 and is further reduced if the easement reduced the land’s value by less than 30% at the time of the contribution. Retained development rights are fully subject to the estate tax.

To qualify under Section 2031(c), an easement must meet all the requirements of a "qualified conservation contribution" under section 170(h). However, easements solely for the purpose of historic preservation under section 170(h) do not qualify for the benefits under Section 2031(c). Additionally, Section 2031(c) requires that an easement must prohibit all but *de minimus* commercial recreational activities, which is not intended to include hunting or fishing activities.

To realize these tax benefits, the landowner could have donated the easement during his lifetime or made this donation by through a provision in his will. Additionally, § 2031(c) provides that the heirs of the estate have the option to donate a conservation easement over the inherited land after the death of the decedent. This post-mortem election allows heirs to make estate-planning decisions after a person dies, which provides for increased flexibility in this process.

Taken together, 2055(f) and 2031(c) create a powerful incentive for conservation. These estate tax incentives are in addition to the income tax benefits received for a donated easement pursuant to Section 170(h), which must be taken during the lifetime of the donor. Section 2031(c), on its face is a bit complicated, but the IRS has confirmed the operation of Section 2013(c) in letter rulings and in practice. It is unclear how much this incentive is utilized in Oregon. Further exploration and networking with the estate planning and agricultural communities is needed to fully reap the benefits Section 2055(f) and 2031(c) can provide for conservation in Oregon.

**USDA/NRCS ACEP-ALE**

There is a misperception at the federal level that Oregon’s land use laws have largely eliminated the need to avail itself of federal funding, such as with ACEP-ALE and the Forest Legacy Program. Oregon’s
Technical Advisory Committee (OTAC) to the NRCS is providing evidence to inform NRCS that development threats do exist to resource lands within the state. A couple of interviewees mentioned that the uncertainty, cost, and need for matching funds were hindrances to participating in federal funding programs and getting option or purchase agreements from landowners with this funding contingency.

The USDA/NRCS Agricultural Conservation Easement Program (ACEP), particularly the Agricultural Land Easements program (ALE) funds conservation easements that protect agricultural lands by limiting non-agricultural uses. The ALE is a federally funded PACE program. In 2014, there was $1.8 million allocated to Oregon for the entire ACEP program, compared to the $22.3 million allocated for California. Washington, over the years, has also received roughly ten times the funding Oregon has for ACEP programs. In addition, the Oregon ALE applications for 2014 were less than robust. Of the five ALE applications that were received, apparently none were funded: two requested cancellations, two were deferred to FY 2015, and one was cancelled due to ineligibility.

In addition to the typical appraisal problem for conservation easements on Oregon resource lands, one limiting factor is the availability of non-federal match funds, which are set at 50% of the total easement value, a portion of which can be a donation by the landowner by selling below fair market value. Appraisals for ACEP-ALE can follow either the USPAP or federal “yellow book” requirements. This flexibility may eliminate some of the complexity with the appraisal process. However, the appraisal problem still is present in Oregon. Lastly, the conservation entity must fund the appraisal, title review and closing costs, which can be significant.

Finding or creating a state-sponsored match fund, using OWEB or some other source, for these projects could help jump-start the use of the ACEP-ALE program. During the 2015 Legislative session, the governor’s office considered a proposal to that would issue bonds to raise funds for farm and forestlands protection, which would be a good fit for ACEP-ALE match. However, the proposal evolved more into a broader conversation (see page 29 below). Other funding ideas cited below are a possibility. SWCD’s with a tax base also provide a good opportunity for providing the non-federal match if the right project presents itself.

Oregon needs some successful ACEP-ALE projects that can demonstrate to NRCS that working lands easements are viable and worthy of funding in the state. Conservation entities should continue to work with OTAC and NRCS to find and promote the projects with the greatest success for funding in Oregon. This should be a high priority, because if ALE conservation easements cannot be secured it furthers the mistaken notion that Oregon does not need working lands easements and thus it will be difficult to arouse interest with decision makers that it deserves additional funding. Perhaps the SWCDs can partner with land trusts on this effort to secure several projects that protect threaten farmlands. The gravel-mining example mentioned above might be a possibility for properties that have Measure 49 rights.

More funds specifically devoted to easements on working lands was consistently cited by interviewees as the main obstacle to increasing their use in the state.

Oregon Watershed Enhancement Board (OWEB)

On a state level, OWEB is the only program for funding the acquisition of conservation easements in Oregon. The majority of OWEB funds come from a percentage of state lottery revenues, as codified
through Measure 76 in Oregon’s Constitution. OWEB also receives some funds from the federal Pacific Coast Salmon Recovery Fund for restoration and protection of salmon habitat. OWEB has not historically focused on working lands, and most of their funds have been directed to restoration projects versus land acquisitions. However, OWEB commissioned a policy analysis in 2011, *A Policy Analysis of the Role of Working Land Conservation Easements Using Dedicated Lottery Funds, James Fox, Ph.D.*, to analyze the role of working land conservation easements in achieving OWEB’s constitutional mission of protecting and restoring Oregon’s watersheds, fish and wildlife habitat, and biodiversity. That report made favorable recommendations for OWEB to proceed with more working lands easements. Nonetheless, the use on working lands might be limited due to the constitutional parameters in Article XV, Section 4b, which specifies that OWEB’s lottery funds shall be used to:

a) Protect and improve water quality in Oregon’s rivers, lakes, and streams by restoring natural watershed functions or stream flows;
b) Secure long-term protection for lands and waters that provide significant habitats for native fish and wildlife;
c) Restore and maintain habitats needed to sustain healthy and resilient populations of native fish and wildlife;
d) Maintain the diversity of Oregon’s plants, animals and ecosystems;
e) Involve people in voluntary actions to protect, restore and maintain the ecological health of Oregon’s lands and waters; and
f) Remedy the conditions that limit the health of fish and wildlife, habitats and watershed functions in greatest need of conservation.

The above-mentioned report recommended that OWEB adopt a policy that allows for continuing the funding of acquisition of conservation easements on working lands, stating that:

“**While the protection of farm, ranch and forest land is not specifically a part of OWEB’s constitutional charge, many of these lands contain important plant, fish, and wildlife habitats and other ecological values that OWEB is charged with restoring and protecting. Agricultural and forest landowners will be key partners in developing and achieving conservation goals as OWEB works to accomplish its mission of restoring and protecting high priority habitat, water quality, and other watershed functions and processes**”.

Due to OWEB’s limited constitutional mandate it is unclear whether that policy recommendation, if approved, would result in OWEB funding more working lands easements. Consequently, a state funding source separate and distinct from OWEB should be considered. Nonetheless, it is recommended that land trusts attempt to utilize OWEB’s land acquisition program more fully with working forest easements and on hybrid working lands easements that provide farmland and natural area protections. It is assumed that working forest easements should fall under the constitutional parameters of the OWEB funding guidelines, because improved forest management above industrial standards could result in watershed enhancement. If something similar to the original Working Forest and Farms Finance Initiative (SB 204) is funded in a future state budget, OWEB funding allocations for conservation might grow significantly. See discussion below for more information.

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17 A Policy Analysis of the Role of Working Land Conservation Easements Using Dedicated Lottery Funds, James Fox, Ph.D., 2011
New or Expanded Programs

Transfer of Development Rights

This type of program transfers the rights to develop a property from high priority areas, also known as “sending areas,” to other areas identified by the local authorities or communities as “receiving areas,” that is, areas that are more suitable for that potential development. This type of program has been successfully implemented in other states.

DLCD is piloting a TDR project to allow counties to authorize the transfer of Measure 49 rights to receiving areas in unincorporated rural communities and exception lands near urban growth boundaries. In the 2009 regular legislative session, Senate Bill 763 authorized local governments to develop and adopt TDR programs and House Bill 2228, for that same legislative assembly, established a pilot program to be managed by the Oregon Land Conservation and Development Commission (LCDC). During the 2011 regular legislative session an amendment of the program passed (House Bill 2132), increasing the existing incentives for the program. The TDR program is also a component of DLCD’s draft strategic plan where it intends to “explore alternative (non-regulatory) methods that complement the existing land use program to ensure a sustainable land supply for Oregon’s agricultural and forest industries.” DLCD is developing a website that will allow the public to search Measure 49 claims by location and ecological attributes to the property. This will give developers and conservation organizations a tool to target development rights for transfer and properties in need of protection. Conservation easements are being proposed as a component of some Measure 49 transfers, especially on larger parcels and for ones that may receive bonus credits due to higher ecological attributes on the subject property. COLT has been an active participant in the rules advisory committee charged with creating the program.

If the program comes to fruition, the TDR purchases would be funded by developers and/or conservation organizations. Land trusts could enter into agreements where developers purchase Measure 49 rights on target properties and the land trust gets to hold a conservation easement on the subject property. Alternatively, land trusts could take the lead and purchase Measure 49 rights from landowners on targeted properties and then either retire those rights or could sell them to developers. A private foundation could be approached to give seed money to start a revolving fund for such a purpose. Money could be borrowed from the revolving fund to purchase these development rights and replenished when sold. The purchase of the Measure 49 rights might not require a typical real property appraisal, because the sending and receiving area will generate its own market from these rights.

However, some communities might not want to receive extra density. That is a fundamental problem with TDR programs. Whether the TDR program for Measure 49 right will be successful remains to be seen. Nonetheless, it is a promising program for land conservation in the state and COLT should remain an active partner in its creation.

Federal Enhanced Easement Incentive

On July 12, 2014 the U.S. House passed bill 277-130 to reinstitute the Enhanced Easement Incentive, originally passed by Congress in 2006 and extended three times since then. This enhanced incentive raises the maximum federal tax deduction a donor can take for donating a conservation easement from 30% of their Adjusted Gross Income (AGI) in any year to 50%, allowing qualified farmers and ranchers...
to deduct up to 100% of their AGI. In addition, it increases the number of years over which a donor can take deductions from 6 years to 16 years. As the Land Trust Alliance reports, the enhanced incentive increased donated easements nationally by a third, demonstrating its efficacy as an incentive for landowners.

On December 16th, 2014 in the final days of the 113th Congress before year-end, the U.S. Congress passed a one-year extension bill (H.R 5771). However, such an extension expired once again on December 31, 2014. If the Enhanced Easement Incentive Act is passed into law again, the generous incentives in this legislation could help alleviate the “land rich, cash poor” problem cited above.

However, it should be noted that apparently when the Enhanced Easement Incentive was previously in effect it did not cause a significant increase in donated conservation easements in Oregon. Nonetheless, this is still an important piece of legislation for the reasons stated above. The reasons for the limited number of donated easements under the incentive should be explored further. Making permanent the Enhanced Easement Incentive will be a priority for the Land Trust Alliance in 2015. If the legislation passes to either extend or make permanent the incentive, COLT and the land trust community should implement an outreach program to help promote its use in Oregon and seek donations of conservation easements on working lands in the targeted areas described above and to protect natural areas across the state.

**Clean Water State Revolving Fund (SRF)**

The EPA Clean Water State Revolving Fund (SRF) provides low-cost loans to public agencies and nonprofits for the planning, design or construction of projects aimed to prevent or mitigate water pollution. The Department of Environmental Quality (DEQ) administers the program in Oregon. There are several benefits of the SRF program versus using traditional grant funds. First, a SRF loan can cover 100% of the project costs with no match requirement. Secondly, SRF loans are issued at below market rates (0% to less than market), offering borrowers significant savings over the life of the loan. Financing a project with an SRF loan means fewer federal requirements than most federal grant programs. Plus, the SRF program staff is experienced in helping applicants through the loan application process.

While the SRF is primarily focused on infrastructure projects, it has been used to fund nontraditional projects, such as wetland construction to treat effluent and in one case the purchase of a conservation easement for water quality protection purposes. In that instance, the SRF program in Ohio loaned $110,000 to The Nature Conservancy for the purchase of a 154-acre conservation easement along Brush Creek, a significant statewide water resource that is known to contain four endangered aquatic species. The wetland construction project mentioned above was in Mt. Angel, Oregon and a few other nontraditional waste-water treatment projects have been funded in Oregon.

The Oregon DEQ has not yet made a loan to help purchase a conservation easement through the SRF, but it does have potential in the context of water quality protection projects. Additional efforts should be made to contact DEQ program staff to explore the possibilities of using the SFR and a SFR loan application should be submitted for the purchase of a conservation easement by an applicable holder to create a test case for the use of the SFR program.
**Oregon Working Farms and Forest Initiative**

In January 2015, Governor Kitzhaber introduced new conservation finance program that included $30 million of new funding to retain and create jobs in Oregon through a Working Forest and Farms Finance Initiative. The amount would have been split between Business Oregon to administer low-interest loans and loan guarantees for farm, ranch and forest owners; and OWEB to administer a grant program for projects that protect farm, forest and ranch lands and achieve conservation benefits. The OWEB program would have provided a new funding source for permanent working land easements.

Several political obstacles prevented the new easement program from advancing during Oregon’s 2015 legislative session. However there remains strong interest to continue the conversation about a new state program to support the conservation of working lands. At the time of this paper’s publication, Governor Kate Brown is supporting a bill (**SB 204**) that includes a new task force on “Working Farms and Forest Task Force” that includes the objective:

> “Study and evaluate potential voluntary tools for state government to help private landowners maintain land as active working farms or forests while incentivizing and supporting conservation benefits on those lands, including but not limited to long-term stewardship contracts, working land easements, tax incentives, grants and loans, and other available programs.”

If the task force is formalized through the adoption of SB 204, the research in this paper will provide committee members with a comprehensive look at easement programs in other states and opportunities for Oregon.

**Habitat mitigation opportunities**

Programs where regulatory mandates for habitat mitigation can be satisfied with the use of conservation easements have a great potential and some success cases can be referred to, most importantly the Bonneville Power Administration (BPA) and its Fish and Wildlife Program. BPA and other federal agencies involved in the operation of the Federal Columbia River Power System (FCRPS) are required by federal law to mitigate for the negative effect the FCRPS has on the fish and wildlife populations. Land protection measures through property acquisitions in fee and the use of conservation easements are important tools funded by BPA for this purpose.

One specific programs under BPA is the Willamette Wildlife Mitigation Program (WWMP), which was created within the framework of the 2010 Willamette Wildlife Mitigation Agreement between BPA and the state of Oregon (through its Department of Fish and Wildlife (ODWF)) for the development of a 15-year program to mitigate for the effects of the construction, inundation and operation of hydroelectric projects in the Willamette Valley. The goal is to protect at least 16,025 acres by 2025. BPA has other funding mechanisms than the WWMP. Conservation organizations in the state have been successful in tapping into funds from these programs to purchase conservation easements and to acquire lands in fee title. Along with periodical reviews of the terms of the agreement (every 5 years), BPA is committed to continuously provide funds for ODWF operation and maintenance of the mitigation projects funded...
under the Willamette Wildlife Mitigation Agreement. These future funds will be available between the 2026 and the 2043 fiscal years.

Due to BPA’s mitigation requirements with the FCRPS, such as WWMP and others through its Fish and Wildlife Program, that are legally mandated, it is reasonably assumed that BPA mitigation funds will remain to be available in the future and that conservation entities should continue to employ them.

Mitigation requirements for other utilities and hydropower facility operators also provide continuing opportunity for a source of funds for conservation. The 2004 relicensing agreement for Portland General Electric’s Pelton Round Butte Project Dam provides another good example. This agreement established a series of conditions for long-term protection, mitigation and enhancement measures. One of the most relevant consequences is the creation of the Pelton Round Butte General Fund, for a total of $21.5 million, where conservation easements are one of the project categories to be funded.

**Forest Legacy Program (HR 4551)**

Established in 1990, the Forest Legacy Program (FLP) is administered by the USDA Forest Service, and it is focused in the support of timber sector jobs and sustainable forest operations while protecting natural resources. The FLP assists states and private forest owners to maintain working forestlands threatened with conversion to non-forest uses related with urbanization, rural residential development, parcelization and other development pressures, by complementing private, federal and state funds on conservation by either supporting the acquisition of fee title or conservation easements. The funds can be executed either by the individual states (“State Grant Option”) or by the USDA Forest Service (“Federal Option”). The Forest Service will fund up to 75% of project costs, with the 25% left to come from non-federal sources. The non-federal cost must budget into the project the value of the land or interest in land and costs associated with program implementation. For purposes of the amounts required for the funding, qualified appraisers shall comply with the federal “Yellow Book”. To this date it has led to conserve over 2.2 million acres of working forests lands in the nation.

Oregon entered the program in 2001, but it did not receive state legislative authority to implement it until 2007. Notably, on entering the program, the Assessment of Need required to obtain the funds recognized that the statewide land planning system already granted protection for commercial forestlands, despite there still being development pressures as noted above. Accordingly, the US Forest Service reports that from all states receiving FLP funding, Oregon ranked second to last in funding received and is the state with least amount of protected acres (25 acres) as of January 2012.

Under the FLP, holders are currently limited to governmental agencies. Conservation stakeholders have pushed to change the law to allow for state agencies to partner with qualified non-profits to hold FLP funded easements. During May of 2014, H.R. 4551 was introduced into Congress as the Forest Legacy Management Flexibility Act to make minor changes that would allow the above-mentioned partnerships with land trusts. Although the bill has not yet passed from the House, as of this writing, progress has been made in obtaining bi-partisan sponsorship from many U.S. representatives.

**Thinking Outside the Box – Alternative Methods of Compensation**

Some promising alternative methods for compensating landowners include pricing through set values, ecosystems services payments, and reverse auctions. However, these are all emerging concepts in Oregon.
Establishing a set per acre value to address the perpetuity issue

To address the issue of quantifying the value of the penumbral rights that will be retired through a conservation easement in perpetuity, perhaps there needs to be a mechanism established outside the typical appraisal process that could arrive at a presumptive value for agriculture land around the state, and create the necessary incentive for landowners to permanently encumber their property with working lands easements. This would need to be a state sponsored program or one supported by a private foundation that does not rely on matching federal funds or tax incentives. For example, South Carolina, through its conservation tax credit program, bases the ceiling price for its credit value at a set value of $250/acre.

One arrangement for Oregon could be for conservation organizations to pay the appraised value or presumptive value, whichever is greater. In that scenario, there could be instances where the presumptive value is greater than the appraised value for a lower value easement. A panel of experts familiar with agricultural lands and scholars, such as an agricultural professor from Oregon State University, could be the right fit to create a legitimate, defensible value. A couple of interviewees mentioned this approach. It could be worth pursuing in a pilot program to see if it might be feasible. This approach could be coupled with ecosystem services or reverse auction methods mentioned below.

It would be helpful to interview members of the farming community to determine the demand and pricing that would be the correct incentive for landowners to grant conservation easements. More investigation is needed and a cost-benefit analysis should be done to determine if pursuing such a program is worth the effort.

Ecosystem Services

Ecosystem Services payments have promise but the concept is still emerging in Oregon. Payments to landowners are typically derived from the allocation of value in quantifiable financial metrics (monetary units) for the protection and ecological enhancement of some of the natural resources on their properties. Regulation and the need to mitigate for a permitted ecological harm is the driver for an ecosystem services program. The state of Oregon has been working on the creation of a market for these types of services for years through its Ecosystem Services Market Group (the “Group”). The Group presented its recommendations in 2010 advocating for the creation of statewide standards for ecosystem services. Also, it was recommended to use ecosystem services as tools for natural infrastructure instead of engineered infrastructure for development, and finally to consider these type of services in land-use planning decisions.

The only active “market” for ecosystems services in Oregon is for water temperature reduction in the Tualatin River Basin and the Rogue River Basin in the Medford area. In the Tualatin example, Clean Water Services, a water resources management utility, is mitigating for temperature increases in the Tualatin River due to effluent discharge, by planting trees and vegetation to shade and cool the riparian areas in the Tualatin Basin. Landowners are provided annual rent payments and the leased riparian areas are planted with native vegetation.

There is interest by interviewees and stakeholders of this project to further study the possibility of developing a funding strategy where multiple ecosystem services payments could be bundled to fund conservation easement acquisitions in Oregon. Funds would be obtained and allocated according to the type of ecosystem services provided and to the benefits generated. Ecosystem services can also be in
the form of an annual payment for several years. This type of revenue stream is often attractive to a landowner versus a lump sum.

Because this concept is emerging, it is recommended that COLT members stay abreast of the topic and make a concerted effort to network with the entities working in the ecosystems services community, such as the Willamette Partnership or the Fresh Water Trust. That way, the conservation partners can become early adopters and possibly shape the funding of ecosystem services markets in a manner that it is most favorable to the goals of the land trust community. One suggestion is to have a COLT member become a committee member, advisory board member, or board member of the Willamette Partnership or the state ecosystems Group. The Willamette Partnership indicated a willingness to have that happen.

**Reverse Auction - Price Discovery**

A “reverse auction” is a competitive bidding system where multiple sellers compete to sell goods or services to a single buyer. This has an effect for sellers to bid for lower prices, therefore helping to efficiently allocate limited budgets. There are also additional benefits in reducing administrative costs and uncertainty for landowners by price discovery. The cut-off price of a reverse bid is set by the buyer and is based on the budget available and what the buyer is willing to pay. This approach is traditionally used in environmental trading markets such as water quality and greenhouse markets. There are federal experiences with a pilot program for the Wetlands Reserve Program, and on a local level with its use by the Deschutes River Conservancy to discover water rights lease prices.

This could have an application in the context of pricing permanent conservation easements on working lands where appraised value is difficult to determine, particularly with the value of the “penumbral” development rights. A uniform conservation easement would need to be used for consistency and transparency. A test case would be interesting to attempt. Eventually, the market value for the easement would be established and an auction might not be needed each year.

**Caveat about alternative compensation methods**

If implemented correctly, the alternative compensation methods would hopefully capture value from property that is otherwise difficult to quantify. While not a problem now, one fear is that it would inflate property values and cause the price of farming and conservation to increase. A hypothetical example of this is in an ecosystem services context where payments for a variety of ecological attributes could add up to more than what the property is worth. In that case the sum of the parts would be greater than the whole. In the end we will not know what the impact would be until more of these alternative methods are fully implemented.

Using alternative compensation methods would also require legislation and rulemaking if state government funding were involved. With regard to the federal ACEP-ALE program, alternative methods of compensation used in conjunction with that program would be problematic, too, because ACEP-ALE requires a traditional fair market appraisal. For these and other reasons, pursuing alternative compensation methods should be a low priority when compared to other avenues.
Support Programs

Continued education for appraisers

Continued education of appraisers in Oregon about conservation easements is a good first step to improve the appraisal process in Oregon. The project partners should consider hosting an annual workshop for appraisers on the subject with a nationally recognized instructor. If this were coordinated with the appraiser’s professional body, appraisers could also receive continuing education credits.

Recent examples of conservation easement appraisals and considerations could be considered. For example, EMSWCD’s appraisal in 2014 of a proposed conservation easement on its Oxbow Farm determined that the easement terms about limiting the potential building footprint reduced the home site value of a trophy home by 24%. This type of appraisal technique would be a good case study to examine.

Having an attorney present at the workshop and give updates about IRS rules and regulations for conservation easement appraisals would be helpful too. Appraisers attending the workshop perhaps could be listed on the COLT website as a person familiar with conservation easement appraisals and this could be a good marketing tool for them with landowners.

Establish a network of conservation professionals

In addition to a workshop for appraisers, consider creating a network of Oregon Conservation Professionals that includes appraisers, attorneys, and accountants who are interested in the use of conservation easements. These people all work together at some point in the process of easement donation or purchase. The goal of the network would be to provide easement holders and prospective landholders with a list of recommended professionals, increase the collective knowledge of interested professionals in the state about the use of conservation easements, and provide a forum for people to discuss these issues.

Ideas About New Funding Sources

In General

Funding for conservation programs in other states come from a variety of sources, such as direct appropriations, bonds, tax deferral withdrawal fees, recording fees, check-off boxes on tax forms, gambling revenue, license plates, property taxes, and real estate transfer taxes to name the most common. Other sources include mitigation fees, private contributions, lawsuit settlement funds, tobacco settlement funds, bottle bills revenues, municipal landfill fees, interest in securities, and cigarette taxes.

Possible Sources in Oregon

The following potential funding sources for conservation easements are worth exploring: a local sales tax for food and beverages similar to Ashland, issuance of general obligation bonds, allocating a portion of withdrawal penalties for farmland property tax assessment deferrals for farmland protection, special vehicle license plate program for resource land protection, and an urbanization gains tax for rural land brought into the UGB.
Local Sales Tax

Ashland's 5% sales tax collected on all prepared food and beverages sold in the city is an interesting example of a potential funding source found on a local level. Accordingly to the city website “this tax was established in 1990 and is one of the few voter approved sales taxes in Oregon.” One fifth of the tax is used to purchase open space for parks and the balance is used to offset the costs associated with the building of the new wastewater treatment plant. Voters renewed the tax in 2009, and it is extended until December 31st, 2030.

The tax is embodied in city Ordinance 2716, S1, 1993 and Ordinance 2991, 2009. The authority to create such a local tax derives from the city's broad municipal home rule powers contained in the article 2, section 1 of the city's charter, which is further supported by state case law in City of Beaverton v. International Association of Firefighters,20 Or.App.293; 531 P 2d 730, 734 (1975). The specific provisions regarding the above mentioned tax are incorporated and detailed in the city's Municipal Code under title 4 (Revenue and Finance) section 4.34 (Food and Beverage Tax). Similar authority has been cited in Ashland for taxing the sale of medicinal and recreational marijuana.

Public Bonds

General obligation bonds are issued as payment obligations by public agencies to finance projects, which are backed by the full faith and credit of the issuer and that are payable in a pre-defined amount of time. The Washington RCO program is funded through general obligation bonds and the land conservation programs through the State of California's Division of Land Resource Protection are funded in a similar fashion. In general, this type of debt financing presents the advantage of generating available funds immediately for use despite the mid and long-term payment obligation by the state and taxpayers. Moreover, programs funded by bonds have dedicated funds that cannot be used for another purpose. On the other side, bonds present the risk of potentially translating into tax increases to pay for the resulting interest payments. Additionally, it needs to be taken into consideration that most jurisdictions will subject the approval of such instruments to a vote, therefore making them politically sensitive.

Urbanization Gains Tax

In 2006, Metro, the regional government for the Portland-area, considered a farmland protection strategy in conjunction with an urbanization gains tax. The recommendations to the Metro Council are captured in the Fair Growth and Farmlands Project Committee final report of April 18, 2006. The proposed windfall tax would pertain to properties that were brought into the UGB and increased in value by the government “giving” through an urban zoning designation, adding substantial value to their undeveloped lands. The proceeds for the tax would be used largely to fund the resulting urban infrastructure, but a portion of the funds was proposed to be used for farmland protection through the acquisition of conservation easements. In the end, the urbanization gains tax was not enacted and presumably met political resistance. Metro at the time suggested focusing on purchasing Measure 37 (precursor to Measure 49) rights through negotiated conservation easements using a similar willing seller approach as the Metro natural areas acquisition program. This is similar to the recommendation of focusing on Rural Reserve lands as mentioned above.
Penalties for Withdrawal from Farm and Forest Special Assessment Status

Penalties occur when properties that are enrolled in preferential property tax assessment program are converted to uses inconsistent with the program or when landowners choose to withdraw from it before a certain time. In general, the amount of the penalty will vary and it can be in the form of a percentage of the fair market value of the property or as a portion of the tax saving that has to be recaptured.

Oregon has set this penalty in the form of an additional property tax to be paid at the next assessment period. ORS 308A.703 establishes that following a disqualification from a special assessment according to that section (e.g. exclusive and non-exclusive farm use farmland, forestland, wildlife habitat, and conservation easement special assessments), an additional “back tax” is owing equal to the difference between the taxes assessed against the land and the taxes that otherwise would have been assessed, but for the preferential assessment, for each of the years to be determined according to law. For example, 10 years would be the timeframe for the back taxes calculation for disqualified exclusive farm use land that remains outside the UGB and 5 years if it does not remain outside the UGB; or 5 years for a conservation easement special assessment property when not in an exclusive farm use zone and it remains outside UGB. When that conservation easement special assessment property is located in an exclusive farm use zone and it remains outside UGB the term will be of 10 years, and 5 years if it is brought into UGB by the time of disqualification.

Between 2007 and 2013, between $981,200 and $3,336,000 per year has been paid in penalties, with an average of $2,070,500 per year, or $4,141,000 per biennium. Currently, these penalties are collected and distributed in the same manner as other ad valorem property taxes. State legislation would need to be passed to dedicate a portion of these funds to farm or forestland conservation in the county where the taxes were levied. Directing penalty fees in this manner makes sense because the properties were in farm or forest use and the fees could be used to protect farmland elsewhere. It is a form of mitigation as previously discussed above. Moreover, it is also a form of the urbanization gain tax discussed above because farmland that is converted to urban uses would be subject to this penalty if a special assessment were in place. Since this is an existing mechanism, passing legislation to direct a portion of these funds to farmland preservation might be an easier policy initiative to undertake versus creating something new and potentially cumbersome, such as an urbanization gains tax.

Specialty License Plate for Farmland Protection

Another potential new source of funding could come from a specialty license plate dedicated to working farmland protection in Oregon. Currently there are a number of different plates, such as the wine country, Crater Lake, salmon, and Pacific Wonderland to name a few. For example, according to the Oregon Department of Transportation, the projected revenue from salmon license plates for the 2015-2017 is a total of $946,138, which translates to net transfers of $468,848 to both OWEB and Oregon Parks and Recreation Department as beneficiaries. A percentage of the specially plate funds could go to the purchase of working lands conservation easements and other funds could go to farmer assistance programs like the one in place in Vermont and further detailed below. This could be a match source for ALE, as well. The one downside to this approach is that there are several other specialty plates, which might further dilute the effectiveness of a newly added program. Additionally, this type of program would require legislative approval, so the cost of political capital needs to be considered. Lastly, it takes sponsorship from an agency or other group to guarantee a certain number of license
plates in the initial onset of a program. These hurdles could be overcome as it seems reasonable to expect that the farming and conservation communities would be interested in endorsing such a program.

**Additional Considerations for Appraisals**

The real property appraisal standards and processes are venerable and time-tested. Consequently, it is not reasonable to carve out an exception for conservation easements in the traditional appraisal process. One must accept the fact that conservation easements will mostly likely need to be appraised on a case-by-case basis using the existing USPAP rules and other applicable standards mentioned above.

A uniform conservation easement that COLT members could agree upon, particularly for working lands easements, similar to standardized forms in the real estate business, may help streamline the appraisal process.

**Other market incentives**

The TDR program being piloted by DLCD is a market incentive program that can be used in collaboration with existing regulatory tools. Please see discussion above. Other market incentives could include farmer assistance programs. Several interviewees suggested this. Eco-marketing of products grown and raised on properties that are protected by conservation easements is another market incentive. This is similar to “Salmon Safe” products.

They provide attractive and sufficient non-cash benefits to farmland owners to continue their farming practices. A good model is found in Vermont Housing and Conservation Board’s Farm and Forest Viability Program which provides assistance for landowners in the form of business planning, enterprise analysis, financial record keeping and management, marketing and sales, etc. As detailed previously in this document, a similar approach was initially proposed in Oregon with the Working Forest and Farms Initiative (see page 29 above). The 2015-2017 Governor’s Budget originally considered a proposal for a multi-biennial funding source to provide landowners access to private capital, support communities by securing and improving its resources, generate economic activity and create new jobs in the state, and to obtain conservation benefits related with water quality, wildlife habitat, etc.

A requirement of public financing of farm properties could be that the recipients grant a working lands conservation easement on the agricultural land that received financial assistance. In 2013 the Oregon Legislature created Oregon’s first financing program specifically for beginning farmers and ranchers or to ones that are expanding their operations. The “Aggie Bond” Program allows qualifying farmers to secure significantly lower interest rates for land and equipment purchases. The goal of Oregon’s Aggie Bond program is to support beginning farmers, help small businesses, and facilitate growth in the local market agricultural sector across the state. Conservation easements are not a component of this program but it would be interesting to explore this option if such a nexus could occur.
Summary of major findings and options for success

Work within the Current Land Use Program

1. Oregon’s Land Use Program is reasonably effective in containing urban growth and protecting rural landscapes.
2. Use conservation easements as a strategic tool to support Oregon’s land use program and not as an obstacle.
3. Continue to use easements as a tool to protect wildlife habitat, water quality, and other sensitive lands where fee acquisition is not possible or practical.
4. However, in light of Oregon’s Land Use Program, there has not yet been adequate experience to develop clear-cut ways to yield sufficiently valued easements on resource lands in Oregon using the IRS’s before and after appraisal process.
5. Work with counties to update comprehensive land use plans regarding agricultural, forest, and natural resource goals to better align the objectives of conservation entities with the comprehensive plan.

Focus on Properties with Development Rights

1. Rural home sites are often the most prevalent and substantial development right that can be appraised other than the land itself.
2. Identify properties in conservation priority areas that have discernible development rights, particularly Measure 49 properties and others with existing home site rights or ones with a reasonably probable of being exercised.
3. Target high-value farmlands that might be threatened by aggregate mining, for example in the Willamette Valley, for ACEP-ALE program.
4. Utilize The Trust for Public Land’s Working Lands Databank project to help prioritize outreach and funding of farm and forestland conservation.
5. Use emerging DLCD Transfer of Development Rights program to target properties with Measure 49 rights.
6. “Piggy-back” on riparian shading lease programs, such as those in the Tualatin and Rogue River Basins, to provide a bonus payment to convert those leases permanent conservation easement.

Increase Use of Working Lands Easements

1. Develop a standard working lands easement(s) suited to Oregon’s land use system that is accepted by government funders to establish uniformity and familiarity with appraisers.
2. In conjunction with the above, develop a pilot program for working lands easements where the purchase price is determined by an USPAP standard appraisal.
3. Develop a target area for this pilot program, such as rural reserve lands or other areas identified as vulnerable to development.
4. Expand the use of working forest easements that either reduce harvest levels or impose stricter environmental management requirements than allowed under current state law.
Funding of Conservation Easements

1. In general, landowners prefer the purchase of development rights to tax incentive programs.
2. Support, find or create a new state source of matching funds for the federal farm bill ACEP-ALE programs and other federal funding sources; the 2015 SB 204 is a good place to start.
3. Promote the ACEP-ALE program to land trusts and Soil and Water Conservation Districts.
4. Advocate with NRCS for additional funding and improved administration of the ACEP-ALE program.
5. Explore creating a specialty license plate program through the DMV and ODA to fund the above-mentioned program.
6. Explore allocating penalty fees for farm and forest special assessment tax status withdrawals to farm and forestland protection efforts.
7. Explore implementing a farmland mitigation program to raise funds for farmland protection similar to that considered in Jackson County.
8. Explore using the DEQ water protection revolving funds to purchase conservation easements where watershed protection can be achieved.
9. Explore obtaining private foundation funding to create a revolving fund to purchase and resell Measure 49 rights through DLCD’s emerging TDR program.

Other Incentives

1. Promote the use and understanding of federal charitable income tax deductions and the estate tax benefits for conservation easements.
2. Promote passage of the Federal Enhanced Easement Incentive on permanent basis. Also, devote resources to market the incentive to landowners in priority areas.
3. Utilize the above incentive before considering passage of a state tax credit program.
4. Federal estate tax has the potential of being an effective tool for the promotion of conservation easements given the type and magnitude of tax benefits offered to the heirs. Promote the federal estate incentives to the estate planning and agricultural communities.

Increase Knowledge of Conservation Easements Appraisals

1. Support the continued education of appraisers, land trust staff, and other conservation professionals about conservation easement appraisal standards and IRS rules.
2. Support the continued education of land trust staff on rural land use issues to assist with appraisal process.

Develop Professional Networks

1. Formalize a network of Oregon Conservation Professionals, such as accountants, attorneys, appraisers, and others who work with conservation easements to connect these professionals to potential easement holders, landholders, and each other.
2. Use this network to promote the federal income and estate tax benefits of conservation.
3. Land trust staff should stay abreast of the emerging ecosystems services markets by partnering with leaders in that field such as Willamette Partnership, The Climate Trust, The Fresh Water Trust, and the Oregon Sustainability Commission.
Next Steps

The presented findings and recommendations need to be addressed from a practical standpoint, with the expectation of shaping them into concrete programs, policy proposals and/or regulatory. For these purposes, it is recommended that OCEAP partners engage in some, if not all, of the following future steps:

- Assess the representativeness of the findings, and the interest, applicability and viability of the recommendations with various Oregon working land stakeholders.
- Establish a permanent working group with experts and representative stakeholders to further develop and perfect these recommendations.
- Work directly with local and state agencies related with natural resources, land use, environmental, and conservation government agencies in order to assess both the financial and political viability of these recommendations.
- Engage in community outreach and public communications campaign to increase awareness of the findings of this report and to create public support for the need of concrete answers to the needs identified.
- Support future legislation to create a program to purchase conservation easements on working lands, which could be a pilot program for a more robust conservation easement program in for the state.
- Begin to develop a working lands easement strategy with multi partners, agencies, and professional consultants to generate awareness of and support for more supportive policies and programs to conserve Oregon's private land base.
Appendix

List of Interviewees

The following people were interviewed for this project. Their names are listed in alphabetical order by last name and their positions and places of employment are listed for context. The recommendations and conclusions in the OCEAP report is the work of the authors and do not reflect the opinion of the interviewees. The authors and the OCEAP project partner are grateful for the time and interest the interviewees have given to this project.

Sam Baraso, Ecosystem Service Project Manager, Willamette Partnership
Richard Benner, Attorney (retired), former Metro land use attorney
Brad Chalfant, Executive Director, Deschutes Land Trust
Nancy Chase, Realtor, independent conservation consultant
Katherine Daniels, Farm and Forest Lands Specialist, Oregon Department of Land Conservation
Beth Fenstermacher, Act 250 Coordinator, Vermont Agency of Agriculture, Food and Markets
Craig Harper, Project Manager, Southern Oregon Land Conservancy
Jim Johnson, Land Use and Water Planning Coordinator, Oregon Department of Agriculture
Julia Lakes, Conservation Director, Wallowa Land Trust
Matthew Larrabee, Principal Appraiser, Rea Estate Services Group, Inc.
Scott McEwen, Conservation Director, Columbia Land Trust
Jason Miner, Executive Director, 1000 Friends of Oregon
Dan O’Connor, Attorney, Huycke O’Connor Jarvis, LLP
Leslie Ratley-Beach, Conservation Defense Director, Land Trust Alliance
David Pilz, Senior Associate, Ecosystem Economics
Evan Smith, Vice President of Conservation Ventures, The Conservation Fund
Charles Swindells, Attorney, land use attorney in private practice
Kara Symonds, Program Coordinator, Skagit County Farmland Legacy Program
Rick Till, Conservation Legal Advocate, Friends of the Columbia Gorge
Tom Tuchmann, President, US Forest Capital, LLC
Megan Wargo, Conservation Director, Pacific Forest Trust

OCEAP Partners

The OCEAP partners also provided significant input into the writing of this paper. The staff members for the partner organizations that helped guide and oversee this process include:

Kelly Beamer, Executive Director, Coalition of Oregon Land Trusts
Nellie McAdams, Staff Attorney/Next Generation Program Director, Friends of Family Farmers
Rick McMonagle, Land Legacy Program Manager, East Multnomah Soil & Water Conservation District
Brad Paymar, Northwest Conservation Manager, Land Trust Alliance
Mike Running, Communications and Outreach Manager, Coalition of Oregon Land Trusts
Tom Salzer, General Manager, Clackamas Soil and Water Conservation District
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William F. (Fritz) Paulus is an attorney with a law practice in Portland that focuses on land conservation, real estate, and land use matters in Oregon. Conservation easements are one of his practice areas, where he represents individuals, government entities and non-profits in drafting and giving legal advice about these instruments. He has authored a chapter about conservation easements for the upcoming Oregon Real Estate Deskbook, which will be released by the Oregon State Bar later in 2015.

Mr. Paulus was born and raised in Salem and is a fifth-generation Oregonian. He graduated from Whitman College in 1985 with a degree in mathematics, earned his law degree from the University of Oregon in 1991, and has been a member of the Oregon State Bar since then. He is a former Real Estate Negotiator with the Natural Areas Program at Metro and Executive Director of the Oregon Water Trust. Prior to his work in land and water conservation, he held positions as an Assistant Attorney General at the Oregon Department of Justice and as a Staff Attorney for Multnomah Defenders, Inc.

Alejandro Orizola has a law degree from Universidad de Chile, and has recently completed an LL.M. in Environmental Law and Natural Resources at the University of Oregon. Previously, he was the Lands and Development Manager and Legal Counsel at Patagonia Sur, LLC in Santiago, Chile, where he lead the company’s land acquisition program, and provided legal services, including the creation of conservation easements. He is currently a member of the board of Fundación de Conservación Tierra Austral, Chile’s first land trust. Prior to Patagonia Sur, Alejandro worked for the Chilean law firm of Carey y Cia, specializing in project finance.
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