



**RESOLUTION # 2013-06-02**

**APPROVAL OF THE RECOMMENDATIONS OF THE LAND CONSERVATION COMMITTEE TO ESTABLISH AND IMPLEMENT A LAND CONSERVATION LEGACY PROGRAM**

**PURSUANT** to ORS 568.550, General Powers of Board of Directors, Erosion Control Covenants, Interagency Cooperation, Land Use Regulations, Department Rules; and ORS 271.005 to 271.540, Use Of Public Lands; Easements Public Lands General Provisions; and

**WHEREAS**, the mission of the East Multnomah Soil and Water Conservation District (District) is to conserve and restore the natural resources of the District for current and future generations by making conservation, technical, financial, and educational assistance available and meaningful to all residents and ensuring equitable distribution of benefits and responsibilities; and

**WHEREAS**, the District's 2012 Strategic Plan states: "the primary focus of the land conservation fund will be to strategically and permanently protect the following in East Multnomah County: 1) high value agricultural lands in order to maintain a viable agricultural economy and improve watershed health and function; and 2) high value natural resource lands in order to improve watershed health and function and increase access to nature;" and

**WHEREAS**, the Land Conservation Committee (Committee) comprised of members of the Board of Directors and District staff has met regularly since September 2008 to develop its recommendations on program design and implementation; and

**WHEREAS**, the Committee's recommendations on program design and implementation were submitted to the Board of Directors in a report entitled "Land Conservation Legacy Program: Recommendations of the Land Conservation Committee on Creating a Land Conservation Legacy Program for Farmland and Natural Habitat Lands" on June 3, 2013; and

**NOW THEREFORE BE IT RESOLVED AND HEREBY ORDERED** by the Board of Directors as follows:

- 1. Program Approved.** The Land Conservation Legacy Program recommended to the Board on June 3, 2013 by the Land Conservation Committee is hereby approved (Attachment A).
- 2. Program Implementation Responsibilities.** The District staff will implement the approved program while the Land Conservation Committee will provide policy oversight PROVIDED THAT final selection of properties for donation, trade, fee simple and development rights acquisition or transfer must be approved by the Board of Directors.
- 3. The Board hereby approves the following Land Conservation Committee recommendations:**



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Recommendation 1: The District may hold or co-hold Conservation Easements with another qualified government entity or non-profit organization.

Recommendation 2: The Program shall use the Conservation Easement template that was reviewed by the Committee when drafting Conservation Easement agreements on approved parcels, making modifications as needed to suit the site characteristics and/or agreement with landowner.

Recommendation 3: The Program will use appraisals for all land valuations; the pursuit of any other land valuation method requires Board approval.

Recommendation 4: The ongoing functions of monitoring and enforcement of conservation easements are critical to the success of the program. The District must make the long-term commitment to funding the stewardship of lands in the Program.

Recommendation 5: Unless there are special circumstances, the District will re-sell any lands purchased to help to replenish monies used from the Conservation Fund. These lands will be permanently protected with a conservation easement before they are transferred. These special circumstances may include lands containing exceptional natural resources, lands to be used for Program purposes, lands donated to the District in a manner restricting transfer and other situations. The District may trade with or donate permanently protected lands to another public or private conservation organization provided there is enhanced public benefit by the transaction.

**APPROVED THIS 3rd day of JUNE 2013**

**BOARD OF DIRECTORS,  
EAST MULTNOMAH SOIL AND WATER  
CONSERVATION DISTRICT**

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**Laura Masterson  
CHAIR**



**Attachment A**

**East Multnomah Soil and Water Conservation District**

**Land Conservation Legacy Program**

Recommendations of the Land Conservation Committee  
on Creating a Land Conservation Legacy Program for  
Farmland and Natural Habitat Lands

JUNE 3, 2013



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### **East Multnomah Soil and Water Conservation District**

#### **Board of Directors**

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Laura Masterson  
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Bob Sallinger  
Rick Till

#### **Associate Director**

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## **BACKGROUND**

This report presents the recommendations of the Land Conservation Committee and District staff for the design of a Land Conservation Legacy Program and to implement its land conservation program goals to strategically and permanently protect the following in the District: 1) high value agricultural lands in order to maintain a viable agricultural economy and improve watershed health and function; and 2) high value natural resource lands in order to improve watershed health and function and increase access to nature. Agricultural land protection will operate primarily through the purchase of development rights by conservation easements while natural resource conservation and access to nature projects will focus on fee acquisition with partner organizations and agencies. Donations of fee ownership and conservation easements and bargain sales will be considered for all types of projects in the Program.

The Program is funded by the District's Land Conservation Fund. These recommendations address site selection criteria and process, terms of conservation easements, program finance and a plan for implementation. In addition, the report provides recommendations on leveraging funds from other fund sources and maximizing the effectiveness of the program.

Soil and Water Conservation Districts (SWCD's) were established after the Dust Bowl in response to the economic and natural devastation caused by unsustainable land use practices. Since then, Districts have been working with farmers and other landowners to protect soil and water resources. Today, SWCD's like the East Multnomah Soil and Water Conservation District, engage, assist and educate urban and rural landowners in the utilization of sustainable conservation practices.

One of the many challenges of working in a growing metropolitan area is the continued threat of development and loss of important agricultural and natural habitat lands. These lands contain valuable natural and economic resources that once paved over or otherwise significantly altered, are functionally lost forever. Working on an entirely voluntary basis with willing landowners, the District's Land Conservation Legacy Program seeks to permanently protect critical lands through accepting select land and conservation easement donations, completing fee simple land and conservation easement acquisitions and partnering with individuals, organizations, business and government.

## **OREGON'S LAND USE SYSTEM**

Oregon's statewide land use system has afforded substantial protection from development for farmland since its inception in the 1960's. The system uses a combination of land use planning, zoning regulations and property tax assessments to protect agricultural lands from development, contain urban sprawl and prevent incompatible uses on rural lands.

At the highest level, Oregon Statewide Planning Goal 3, Agricultural Lands, requires protection of important agricultural lands and Statewide Planning Goal 14, Urbanization, requires the designation of Urban Growth Boundaries (UGB). UGB's serve to delineate and contain urban development and have been effective in preventing the wholesale development of prime agricultural lands outside cities. UGB's provide a 20 year supply of land for urbanization and are reviewed periodically to maintain an adequate supply of land for cities.



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The state has also created a process for designating Rural Reserves, which are areas that should remain working farms and forests or natural areas for the next 50 years. Multnomah County Ordinance No. 1161, adopted on May 13, 2010, designated a substantial portion of the District a Rural Reserve, which provides substantial protection for agricultural and forest lands through the year 2060.

In 1963 the Oregon legislature established the Exclusive Farm Use (EFU) land use zone (ORS Chapter 215) and the types of land uses and commercial activities that are allowed in these zones. This zoning designation is the foundation for farmland protection in the state. Within the District, EFU zoning is implemented through the Multnomah County land use code for the West of Sandy Rural Area, Multnomah County Code Chapter 36. For the priority areas of the District's agricultural conservation program, these zoning regulations provide important information regarding some of the development rights held by landowners.

Oregon Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces, requires the conservation of natural areas and open spaces. Some of the implementation strategies include: 1. Development should be planned and directed so as to conserve the needed amount of open space. 2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.

This planning goal delineates Conservation Strategy Habitats that are considered to be the most important to conserve. The habitats that are found in the District include: wetlands, riparian habitats, oak woodlands, grasslands, floodplains and freshwater aquatic habitats.

In 2005, the Metro Council adopted Title 13 (Nature in Neighborhoods) into its Urban Growth Management Functional Plan to meet Goal 5. Title 13 includes provisions that encourage habitat-friendly development practices (e.g., pervious paving options, alternative stormwater treatment facilities, transferable development rights, etc.) while also regulating development activity within designated Habitat Conservation Areas. With the protection of these natural sites in urban areas, local residents including those living in "undernated neighborhoods" as identified in the Coalition for a Livable Future's Equity Atlas, can have more opportunities to experience nature.

### **Threats to Agricultural and Natural Lands**

Even with the strong state land use laws and local and county protections, there remain significant threats to agricultural and natural resource lands in the District. The Land Conservation Legacy Program is a strategy for the permanent protection of these valuable lands for future generations. The Program has initially identified the following short and long term threats to these lands.

#### **Threats to Agricultural Land**

While the state land use regulations, tax code and local initiatives have helped to protect farmland and open space, there have been constant changes and challenges to the statewide system. Sullivan and Eber in their research of Oregon's system from 1961 to 2009, state that "the definition of "farm use," which triggers the eligibility for the preferential property tax exemption, has been amended frequently" and "the non-farm uses permitted in EFU zones have changed with every session of the legislature since 1973." These uses include commercial uses,



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home occupation, utilities facilities, mining of mineral and aggregate resources, solid waste disposal sites, rural transportation facilities, and private and public parks.

There have been other significant threats to the rural land use system, most notably and recently, Oregon Ballot Measure 37. The voter approved Measure 37 was a radical challenge to the state's land use laws and one provision required that landowners be financially compensated for zoning laws that prevented them from developing their lands. A few years later, Measure 49 rescinded the more extreme provisions of Measure 37 and restored most of the rural land use system to its previous position.

The boundaries of the UGB have been and can be expanded approximately every twenty years (technically that can change every 10 years as part of periodic review of the UGB), so the loss of farm and natural areas close to their borders appears inevitable barring additional protections. The Portland metropolitan area has been very successful in maintaining the integrity of its UGB, but nonetheless, it has expanded into former agricultural and natural habitat lands and extended the built urban area.

While the agricultural land use program provides substantial protection for agricultural land, there are still threats to the protection and continued viability of agricultural land within the District. As explained by the Department of Land Conservation and Development:

“A vibrant local farm economy requires a critical mass of farmland. When too much residential development encroaches on farmland, a downward ‘cycle of conversion’ can begin, in which farms experience conflicts with neighbors, such as trespass, littering, pets chasing livestock and complaints about spraying, manure application, hours of operation and other normal farming practices.

When conflicts become disruptive, farmers stop making investments in their operations and may seek to divide and sell their land for development or use it for other purposes. The division and sale of farmland for non-farm purposes drives up land prices, often putting it out of the reach of existing farms and new farmers wanting to enter the market. As farm operations scale down or leave, farm infrastructure, such as feed stores, processing facilities and irrigation districts may start to disappear, affecting the ability of the remaining farm community to be successful, and driving the cycle of conversion.

Oregon's agricultural lands protection program has reduced many of these problems relative to other parts of the country, but the threats still exist. Existing zoning, tax, and right-to-farm policies encourage continued farm use, but new challenges continue to appear and growth pressures will likely continue in many parts of the state.”

Finally, land uses established prior to current zoning restrictions are allowed to continue as “non-conforming” uses. In many cases these uses are not compatible with agricultural conservation. Examples of non-conforming uses include residences permitted prior to the creation of farm dwelling standards, i.e. non-conforming non-farm dwellings.

### Short Term Threats





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- Continued increase in the number and type of allowed land and commercial uses in the EFU unrelated to agriculture.
- New residential development, including development rights based on Measure 49, a legal lot of record, or as a non-farm dwelling.
- Continuation, replacement, or expansion of non-conforming uses and non-farm uses as authorized and as defined by the Multnomah County Code Chapter 36.
- Utilizing legal home sites and building on farm or natural lands with the resulting impacts: increased impervious surfaces, loss of natural habitats and removal of lands from agricultural production.

### Long Term Threats

- Challenges to the Urban and Rural Reserve system.
- New and permitted uses in the EFU that result in the net loss of farmland.
- New State legislation and/or ballot initiatives (e.g. Measure 49) that increase development in the EFU.
- Cumulative diminishment of the number of active farmers and the resulting impacts on the local agricultural economy.
- Expansion of the UGB.

### **Threats to Natural Resource Lands and Access to Nature**

Natural resource lands and the remaining urban open space and natural lands face many challenges for permanent protection due to their location in a growing metropolitan area. Since open land is a highly valued and expensive commodity in an urban area, the cost for the land could be prohibitive for protection efforts. The natural structure and function of some undeveloped open lands may be so degraded that protection and restoration efforts may seem daunting. None-the-less, protecting and restoring natural lands in the District will enable more residents to experience the many inherent benefits of natural landscapes.

Some natural resource lands, such as Oregon oak woodlands, are not protected whether they occur inside or outside the UGB or Rural Reserve. These and other Conservation Strategy Habitats in the District are under imminent threat from all development, including agricultural uses.

### Short Term Threats

- Lands get developed for other uses: housing, business, industrial, transportation.
- High purchase price.
- Lack of community interest in protection.
- Insufficient public or private funds.
- Degraded conditions requiring substantial investments to restore.
- Development of certain types of natural habitat lands that are not protected within or outside the UGB.
- New residential development, including development rights based on Measure 49, a legal lot of record, or as a non-farm dwelling.

### Long Term Threats

- Future population growth places more pressure to develop open lands.
- Zoning law changes that increase incentives for denser development.



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- Diminished public sector budgets for land conservation.
- Inadequate regulatory and non-regulatory mechanisms for protection.

### **PROGRAM CONCEPT**

Private and government sponsored land conservation programs have been established in many localities across the country to permanently protect important agricultural and natural lands. County, state and the federal government, land trusts and other conservation organizations and natural resource agencies, have successful programs to permanently protect the many conservation values and benefits inherent in our lands and waters.

The Land Conservation Legacy Program is a voluntary program between the District and private landowners. The Program enables property owners in priority areas to donate or sell their lands or development rights through conservation easements to the District. Conservation easement agreements are perpetual agreements between landowners and the District that retire all or most development rights and permanently protect critical conservation values for future generations. The conservation easement places permanent restrictions on future use and development of the land. Easements are held by the District, a government agency, or qualified conservation organization in perpetuity. The property owner continues to own the land and may sell it but the conservation easement restrictions run with the land. Conservation easements are designed to protect the conservation values that make the land important to protect. This might be wildlife habitat or ecosystem function in some cases, agricultural use in others, or it may be tailored to protect multiple values on one site. In the case of agricultural conservation easements, the purpose is to ensure that the land stays in agricultural production and that activities endangering this use are prohibited.

Natural and access to nature land projects will primarily be fee acquisitions in partnership with the private or public sector. Donations of land or conservation easements on priority lands will be considered by the Program. Usually, the partner agency or organization has a greater understanding of the specific land protection project requirements and will be primarily requesting funding assistance from the District. Natural and access to nature projects may become public park and open space lands while protecting threatened plant and animal habitats. A large percentage of the District's population lives within the UGB and the urban area projects will provide lasting benefits to area residents, improve their quality of life and protect important natural habitats.

### **PROGRAM PRINCIPLES**

The Committee established a set of program principles to guide its work in the Land Conservation Legacy Program. These principles are intended to clarify the goals and basic parameters of the Program:

1. The program is voluntary and includes only those landowners who wish to participate.
2. Primary goals of the program include:
  - Preserve and enhance a critical mass of important agricultural lands to sustain the farm-related businesses and activities that are necessary to support the agricultural economy in East Multnomah County.



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- Permanently protect critical natural lands for habitat, water quality, climate, and biodiversity values.
  - Permanently protect lands to increase public access to nature and open space in areas lacking such access, particularly underserved communities.
  - Provide fair compensation based on current market values for acquired lands and conservation easements.
  - Support partner agencies and organizations in acquiring lands identified as priorities in their respective land acquisition programs.
  - Prioritize easements that protect critical natural lands for habitat, water quality, floodplain, climate, and biodiversity values.
3. To be effective the program must offer a financially attractive option for landowners, while ensuring purchase prices are not excessive.
  4. The program is only one initiative to preserve farmland and natural lands in Multnomah County. It should be coordinated with and compliment other local programs and initiatives.
  5. Whenever appropriate, the program should leverage other public and private funding sources and property owner incentives.
  6. The design and implementation of the program should be based upon successful models of other programs around the country.
  7. A long term local commitment will be required from the District to successfully implement the program and provide for on-going monitoring and enforcement.

## **PROGRAM STRATEGIES**

The Land Conservation Legacy Program is designed to protect the conservation values of important agricultural and natural lands within the District. It is modeled after other successful private and public sector land conservation programs in Oregon and other parts of the United States. The land protection strategies and techniques that the District will use have been tried and tested by many non-profit organizations and government agencies. They continue to be highly effective land conservation practices and have stood the test of time and legal and political challenges.

The District will utilize different tools to permanently protect lands. Donated fee simple lands and conservation easements represent the least costly way for the District to achieve the goals of the Program. The District is a qualified recipient of deductible charitable contributions like land and conservation easements under Internal Revenue Code § 170(b)(1)(A)(v) and § 170(c)(1). While accepting a donation of an easement or land in fee simple may be the most cost-effective method of protecting land, it is not without cost. The District will incur transaction costs and will be responsible for stewardship of any conservation easement provision or development restrictions in perpetuity. For this reason, even donations of land or easements must be carefully considered before being accepted.

The purchase of conservation easements on priority lands represents a mid-range cost option for the District to achieve the goals of the Program. Purchase of conservation easements is more costly than donation, but it will require less monies up front compared to fee simple acquisitions. For agricultural lands, the District will purchase existing development rights.



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The Program may utilize fee simple acquisitions to permanently protect land. This method involves the greatest up-front costs since all of the property rights are purchased. While the preference will be to protect land through other means, outright purchase may be a viable option in some situations. Where such lands are then sold, proceeds will be retained in the Land Conservation Fund for future projects.

### **Program Strategies**

1. Develop a ranking system to help prioritize lands of high interest.
2. Solicit and accept select donations of lands and conservation easements.
3. Purchase conservation easements to protect priority lands.
4. Utilize fee simple acquisitions to purchase priority lands.
5. Use conservation easements to protect the conservation values of select properties.
6. Partner with units of government, organizations, business and individuals to leverage funds for land conservation projects when possible.
7. The Land Conservation Committee may identify and propose for Board approval particular areas of focus. These may be geographic areas or others (such as Measure 49 claims) and may change from time to time. This focus shall not preclude pursuit of unusual opportunities should they arise, such as the donation of important lands or easements.

### **PRIORITY LANDS & PUBLIC BENEFITS**

The Program recognizes three general categories of lands for funding: Agricultural, Natural and Access to Nature, with the acknowledgement that there may be overlap between these designations. Most agricultural lands projects will occur outside of the Urban Growth Boundary (UGB), natural lands projects may occur throughout the District and most access to nature projects within the UGB in densely populated areas.

#### **Agricultural Lands**

SWCD's have a long history of protecting our nation's valuable soil and water resources with a primary focus on agricultural lands. Our productive farm soils are a finite resource and are the foundation of our food production system. A viable agricultural economy can provide jobs, food, a range of economic benefits and social stability. Currently there are no active conservation easement programs to permanently protect agricultural lands in the District.

#### Public Benefits

Permanently protecting important agricultural lands for future generations will provide many important public benefits including the following:

- Permanent protection of important agricultural soils.
- Increased protection of water quality.
- Help to stabilize the local agricultural economy, farm services and other critical infrastructure.
- Contribute to the long-term sustainability of working farms.
- Preserve and enhance a critical mass of important agricultural lands.



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The District's approach to the conservation of agricultural land will:

- Protect high quality agricultural soils and working farms for future generations.
- Receive project funding assistance from partners and individuals.
- Attempt to permanently protect working farms and forests in close proximity to each other to strengthen the rural economy.

### **Natural Lands**

Natural lands and waters have important ecological, economic and social functions and are the foundation of life on our planet. There are significant public natural and open space lands within the Portland metropolitan area and in the nearby region. Forest Park, the 5,000 acre Portland city park, is an excellent example of a large public natural area with easy access to area residents. The Columbia River Gorge National Scenic Area, the Sandy River, part of the Oregon Scenic Riverway Program, and Oxbow Regional Park are prime examples located in the District.

For decades there have been many successful efforts to protect important natural areas in the metropolitan region. Metro has had a multi-million dollar bond funded program to buy and permanently protect key natural lands including some in the District. Non-profit conservation organizations, government agencies, local communities, business and individuals have also participated in local natural area protection. However, there remain critical gaps in the regulatory protection of important areas.

### Public Benefits

Permanently protecting natural lands and waters for future generations will provide many public benefits including the following:

- Cleaner water.
- Protection of threatened native plant and animal species and communities.
- Places for the public to experience nature.
- Protection of natural systems to help mitigate the effects of climate change.
- Sites for natural habitat restoration.

The District's approach to permanently protecting natural lands will:

- Engage partners to fund and manage special natural lands.
- Protect lands adjoining other protected lands or natural areas.
- Focus on lands that have multiple conservation values.
- Protect high quality lands that are not the priorities of other conservation programs.

### **Access to Nature**

There is growing body of interdisciplinary research finding that access to natural open space areas is important for the health and well-being of all members of society and in particular to urban residents who lack easy access to these types of environments. Some of the societal and health benefits identified with those populations that have access to natural areas include: higher levels of physical activity, lower obesity rates, less crime, increased learning potential, greater community involvement and social cohesion.

Given that the District contains a large portion of the land base and urban population, we are



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committed to supporting readily available access opportunities to natural areas for all of our residents. As local support for such projects is key to their success and there is significant interest from local government, local organizations, neighborhoods and individuals, we envision most of our urban lands projects to be partnerships.

### Public Benefits

Assisting communities to permanently protect access to nature lands will provide many public benefits including the following:

- Increased access to natural and open space lands for residents of historically underserved communities.
- Enhanced livability of urban areas.
- Enhanced existing community institutions and public gathering places, e.g., schools, community centers and parks.
- Improved storm water function in largely impervious areas with resulting water quality benefits.

The District's approach to the protection of access to nature lands will:

- Partner with local government, organizations, business and individuals to permanently protect key natural lands in urban areas.
- Focus on areas that don't have easy access to natural areas as identified by the Coalition for a Livable Future and other metrics.
- Encourage local organizations to partner with the District and others to protect scarce urban natural lands.
- Focus on land projects that have a high level of local support.

## **SITE SELECTION CRITERIA**

A clear set of site selection criteria is needed to determine which lands are eligible to participate in the Program and which lands should receive priority for funding. The criteria must reflect the core principles of the Program, must be understandable and must be specific enough to provide a basis for distinguishing among competing properties submitted for consideration. Site selection criteria from a number of other programs were reviewed as a starting point and then tailored to reflect the particular characteristics of the District.

The Board of Directors has identified three types of projects appropriate for land conservation work by EMSWCD. These are defined above. Each of these categories differs significantly from the others that separate ranking criteria have been developed. The Committee envisions that there will be projects containing both natural resource and agricultural values on the same property. For this reason, key environmental ranking criteria are included in the agricultural ranking system.

The proposed criteria rely upon a numerical evaluation system in order to simplify the site evaluation process and to make it fair and understandable. It should be noted however, that the criteria cannot possibly anticipate or address all of the unique characteristics of actual properties under consideration. Therefore, the numerical guidelines under each criterion should be viewed as analytical tools only; decisions may also be informed by a range of factors not anticipated in the ranking system. The proposed point system reserves twenty (20) of the evaluation points for



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site selection committee discretion so that the strategic value of each property can be carefully weighed in the final rankings.

### Recommended Site Selection Criteria

#### Eligibility Requirement

To be eligible to participate in the Land Conservation Legacy Program a property must be located within the boundaries of the East Multnomah Soil and Water Conservation District.

#### Agricultural Lands

The Agricultural Lands scoring criteria were developed by using ranking systems of other well established farmland protection programs including Skagit County, WA, the U.S. Department of Agriculture's Land Evaluation and Site Assessment System (LESA), land trusts and other government programs.

#### Natural and Access to Nature Lands

Natural Lands and Access to Nature Lands' projects will primarily rely on the extensive work done by partners and others in the Portland metropolitan region to rank and select high priority projects. Examples of these initiatives, programs and organizations include Intertwine, Metro's Nature in Neighborhoods and Parks and Natural Areas Acquisition programs, Audubon Society's Urban Conservation program, Trust for Public Land, The Nature Conservancy, Coalition for a Livable Future, the State of Oregon, the cities of Portland and Gresham, neighborhood initiatives and others. These groups and programs often have much more detailed knowledge and experience with select areas and environments and a long history in a particular locale. The District will build on its existing collaborations with these entities and establish new ones to promote the permanent protection of these valuable lands.

In certain cases, the District may be the lead organization in a land protection project within the urban area or elsewhere in the District. With these projects, the District would rely on its own internal scoring criteria to evaluate the suitability of these lands with the objectives and goals of the Land Conservation Legacy Program. The following two scoring systems were developed to be utilized in such instances.

## **EAST MULTNOMAH SOIL AND WATER CONSERVATION DISTRICT FARMLAND SCORING CRITERIA**

### **CRITERIA**

<b>CHARACTERISTICS OF FARMLAND</b>	<b>POINTS</b>	<b>SCORE</b>
<b>Soil Quality</b>		
75%+ is prime or special soils.	50	
50-75% is prime or special soils.	10	
<50% is prime or special soils.	0	
<b>ODA Designated Foundation Farmland</b>		
Yes	10	
No	0	



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**Size of Property**

50+ acres.	20
30-49 acres.	15
20-29 acres.	10
10-19 acres.	5

**Economic Productivity**

>\$40k/year gross.	10
<\$40k/year gross.	0

**Proximity to Other Farm Lands**

Adjacent to other farm land, other property restricted as open space or District owned lands.	20
Within 1,500 feet.	10
Within 2,000 feet.	5

**Water Rights**

Property has water rights.	10
Property does not have water rights.	0

**Proximity to Urban Development**

Within 500 feet of UGB or commercial zone.	10
Within .25 mile of UGB or commercial zone.	7
Within .50 mile of UGB or commercial zone.	5
Within .75 mile of UGB or commercial zone.	3
Within 1 mile of UGB or commercial zone.	0

**Proximity to Major Roads or Highways**

Located on I-84, U.S. 26, or Historic Columbia River Highway.	10
Within 1,500 feet of I-84, U.S. 26, or Historic Columbia River Highway.	7
Within 1,500 feet of other major roads.	5
Within 2,500 feet of major roads.	0

**Scenic Value**

Exceptional scenic value from property.	10
Moderate scenic value from property.	5
No scenic value from property.	0

**ADDITIONAL FACTORS INFLUENCING LONG TERM VIABILITY OF AGRICULTURAL USE ON SITE**

**Within Exclusive Farm (EFU) Use Zone**

Within EFU.	20
Outside of EFU.	0





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**Within Rural Reserve**

Within Rural Reserve.	20
Outside Rural Reserve.	0

**Compatible Surrounding Land Uses**

Property is surrounded by agricultural land.	20
Property is surrounded by a combination of natural areas and agriculture.	10
Property is bordered by residential development.	0

**Urgency of Sale &/or Threat of Non-Farm Development**

Imminent sale, personal circumstances of owner, undeveloped residential rights, lots of record, etc. create immediate threat of non-farm development.	10
Likely non-farm development in the near future.	5
Unlikely non-farm development in the near future.	0

**ENVIRONMENTAL**

**Conservation Strategy Habitats**

Large wetland or habitat with exceptional value.	10
Moderate habitat area with some value.	5
No habitat areas.	0

**Water Resources**

River, stream, lake or other natural water resource located on property.	10
River, stream, lake or other natural water resource borders property.	5
No natural water resources on property.	0

**Proximity to Protected Natural Areas**

Adjacent to public park, recreation, historic, scenic or natural area.	10
Within 1/4 mile of a public park, recreation, historic, scenic or natural area.	7
Within 1/2 mile of a public park, recreation, historic, scenic or natural area.	5
Within 1 mile of a public park, recreation, historic, scenic or natural area.	3

**FINANCIAL CONSIDERATIONS**

**Bargain Sales**

Price <50% of full value.	20
Price 50% to 70% of full value.	15
Price 71% to 90% of full value.	10



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Price 91% to 99% of full value.	5
Price at full value.	0

**Availability of Matching Funds**

Matching funds of at least 50% are committed.	20
Matching funds of at least 30% are committed.	15
Matching funds of at least 20% are committed.	10
No matching funds committed or likely.	0

**COMMITTEE DISCRETION** 20

**TOTAL POSSIBLE POINTS: 310**

**EAST MULTNOMAH SOIL AND WATER CONSERVATION DISTRICT**

**NATURAL LANDS SCORING CRITERIA**

**CRITERIA**

<b>ENVIRONMENTAL &amp; SCENIC</b>	<b>POINTS</b>	<b>SCORE</b>
<b>Conservation Strategy Habitats</b>		
Large wetland or other strategy habitat of exceptional value.	20	
Strategy habitat of moderate value.	10	
No strategy habitats.	0	
<b>Water Resources</b>		
River, stream, lake or other natural water resource located on property.	20	
River, stream, lake or other natural water resource borders property.	10	
No natural water resources at property.	0	
<b>Native Species</b>		
Endangered or threatened fish, wildlife and/or plant species found on or use the property.	20	
Important native fish, wildlife and/or plant habitat occurs on the property.	15	
Important native fish, wildlife and/or plant habitat can likely be restored on the property.	10	
<b>Proximity to Protected Natural Areas or Other Public Lands</b>		
Adjacent to public park, recreation, historic, scenic or natural area.	20	
Within 1/4 mile of a public park, recreation, historic, scenic or natural area.	15	
Within 1/2 mile of a public park, recreation,	10	



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historic, scenic or natural area.  
Within 1 mile of a public park, recreation,  
historic, scenic or natural area. 5

**Size of Property**

Over 50 acres. 20  
20-49 acres. 15  
10-19 acres. 10  
Less than 5 acres. 5

**THREAT OF DEVELOPMENT**

**Proximity to Urban Development**

Within 500 feet of UGB or commercial zone. 20  
Within .25 mile of UGB or commercial zone. 15  
Within .50 mile of UGB or commercial zone. 10  
Within .75 mile of UGB or commercial zone. 5

**Proximity to Major Roads or Highways**

Located on I-84, U.S. 26, or Historic  
Columbia River Highway. 10  
Within 1,500 feet of I-84, U.S. 26, or Historic  
Columbia River Highway. 7  
Within 1,500 feet of other major roads. 5  
Within 2,500 feet of major roads. 0

**Scenic Value**

Exceptional scenic value from property. 20  
Moderate scenic value from property. 10  
No scenic value from property. 0

**FINANCIAL CONSIDERATIONS**

**Bargain Sales and Leveraging**

Price <50% of full value. 20  
Price 50% to 70% of full value. 15  
Price 71% to 90% of full value. 10  
Price 91% to 99% of full value. 5  
Price at full value. 0

**Availability of Matching Funds**

Matching funds of at least 50% are committed. 20  
Matching funds of at least 30% are committed. 15  
Matching funds of at least 20% are committed. 10  
No matching funds committed or likely. 0

**COMMUNITY**

**Partnerships**

The property is in a priority area of a lead partner(s). 20  
The property is not in a priority area of a lead partner(s). 0



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**Community Engagement**

There is substantial evidence that the surrounding community supports the project.	20
There is some evidence of community support.	10
There is no evidence that the surrounding community supports the project.	0

**COMMITTEE DISCRETION** 20

**TOTAL POSSIBLE POINTS: 250**

**COMMENTS**

**EAST MULTNOMAH SOIL AND WATER CONSERVATION DISTRICT  
ACCESS TO NATURE SCORING CRITERIA**

**CRITERIA**

<b>COMMUNITY</b>	<b>POINTS</b>	<b>SCORE</b>
<b>Equity Goals</b>		
Property lies within or adjacent to an “undernated neighborhood” per Coalition for a Livable Future’s Equity Atlas or other regional equity access documents.	30	
Property believed to provide important access to nature for underserved populations.	20	
Property will provide little or no access to nature for underserved populations.	0	
<b>Community Engagement</b>		
There is substantial evidence that the surrounding community supports the project.	20	
There is some evidence of community support.	10	
There is little or no evidence of community support for the project.	0	
<b>Partnerships</b>		
The property is in a priority area of a lead partner(s).	20	
The property is not in a priority area of a lead partner(s).	0	
<b>Proximity to Schools or Community Centers</b>		
Property lies adjacent to a school or community center.	20	
Property is located within the same block as a school or community center.	15	
Property is located within a ¼ mile of a school or community center.	10	



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### **Increases Access to Recreation and Transportation Areas**

Provides new or improved access to public bike or pedestrian trails for underserved communities.	20
Contains or adjacent to public walking, biking and recreational trails.	10
Does not provide new or improved access to public trails.	0

### **SCENIC & ENVIRONMENTAL**

#### **Strategy Habitats**

Large wetland or other strategy habitat of exceptional value.	20
Strategy habitat of moderate value.	10
No strategy habitat.	0

#### **Water Resources**

River, stream, lake or other natural water resource located on property.	20
River, stream, lake or other natural water resource borders property.	15
No natural water resources at property.	0

#### **Size of Property**

10+ acres.	20
5-9 acres.	15
2-4 acres.	10
<2 acres.	5

### **FINANCIAL CONSIDERATIONS**

#### **Bargain Sales and Leveraging**

Price <50% of full value.	20
Price 50% to 70% of full value.	15
Price 71% to 90% of full value.	10
Price 91% to 99% of full value.	5
Price at full value.	0

#### **Availability of Matching Funds**

Matching funds of at least 50% are committed.	20
Matching funds of at least 30% are committed.	15
Matching funds of at least 20% are committed.	10
No matching funds committed or likely.	0

**COMMITTEE DISCRETION** 20

**TOTAL POSSIBLE POINTS: 230**

### **ADVISORY COMMITTEES**

The District may elect to form a review committee or committees or appoint individuals to the Land Conservation Committee that include experts, stakeholders and partners to review projects



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before they come to the Board for approval. They may be temporary voting members of the Land Conservation Committee but not of the Board of Directors. Specialized committees could be formed as needed to review agricultural, natural area or urban projects or to address other issues as needed. Because the Land Conservation Committee would be making recommendations to the Board, their meetings would be public meetings. However, due to the nature of their charge, they may at times need to meet in executive session to protect confidential information.

## **CONSERVATION EASEMENTS**

A conservation easement is an interest in real property established by agreement between a landowner and the District or other qualified entity which restricts certain activities and uses on the property. Easements “run with the land” and bind future landowners. The Committee recommends that the key elements listed below be included in a standard conservation easement for the program. The District’s Conservation Easement template is included in Appendix A. The standard easement should be the starting point for negotiation with property owners; it is recognized that individual circumstances and pre-existing uses may require minor variations from the standard provisions. These variations will likely affect the price offered to a land owner for the conservation easement. While flexibility is desirable, all easements must sufficiently protect the conservation values for which the easement is constructed to justify the public investment.

### **Conservation Easements: Key Provisions to be Included**

- Caption: Project Name
- Deed Form: Identification of parties; Consideration; Description of Property.
- Purpose Statement: The purpose of the conservation easement is to preserve the significant conservation and/or agricultural values of the Protected Property. An additional purpose shall be to protect any other values that are listed as part of the property scoring criteria.
- Recitals: The “Whereas” Clauses.
- Incorporation of Purpose and Recitals.
- Restrictions and Reserved Rights
  - Land Use
  - Subdivision
  - Structures
  - Surface Alterations
  - Vegetation Management
  - Waste Disposal and Water Protection
  - Public Recreation and Access
  - Definitions
  - Holder’s Affirmative Management Rights
- Administrative Provisions
  - Holder’s Affirmative Rights
  - Notices to Holder



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- Notices to Grantor
- Costs, Taxes, Liability
- Conservation Easement Requirements Under State and Federal Law
- General Provisions
- Third-Party Interests
- Habendum and Signatures
- Acknowledgement and Recording
- Holder Acceptance
- Exhibits and Attachments
  - Exhibit A: Legal Description of Protected Property
  - Exhibit B: Description or Map of Land Use Areas
  - Exhibit C: Summary Baseline Report Information

### **Monitoring and Enforcement**

Conservation easements are perpetual and binding and therefore require an ongoing partnership between the District and participating property owners to insure the long term stewardship of these lands. The District and easement co-holders, if any, have a responsibility to enforce the easements ensuring compliance with easement restrictions and prompt resolution of any violations which do occur in order to protect the public's significant financial investment in this program. Furthermore, the long term success of the program will be enhanced by maintaining a supportive relationship and open communications between the District and landowners.

Key functions in the ongoing stewardship of lands subject to conservation easements include the following:

Monitoring: Visiting each site at least once every year to determine compliance with the terms of the easement, documenting property conditions in a report to be kept on file in the District's office, taking photographs and including them in the file.

Enforcement: Following up on any potential violations of the easement conditions and attempting to resolve problems with the property owner; taking legal action if necessary to enforce the easement.

Interpretations: Working with property owners to resolve uncertainties about what is permitted under the easement.

Outreach: Educating realtors and new property owners about easement restrictions.

Complaints: Responding to any complaints from neighbors or the general public about potential violations of the easement.

Permit review: Reviewing applications for development permits, subdivisions, etc. to determine consistency with easement restrictions on lands that the District holds or co-holds a conservation



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easement. The District will need to review permit applications and possibly submit comments and appeal land use approvals if necessary to protect the property rights acquired in a conservation easement.

Amendments: Responding to any requests for amendments.

Activities Requiring District Notification or Approval: Most if not all of the conservation easements will specify certain types of activities that require notification or approval by the District. The terms of the conservation easements will specify how the notification and approval provisions must be conducted by both the District and the protected property owner.

Monitoring and enforcement of the terms of the conservation easements are an integral part of the District's Program. These oversight provisions are specified in the conservation easement agreement and the District, as the Grantee, must uphold its obligations. The District can use staff or contract out its monitoring and enforcement responsibilities.

## **STAFFING NEEDS**

Staffing needs of the program will be the most extensive during the first three years of the program when the initial acquisition program is underway. During this time it is estimated that the staffing requirements to carry out the program are about 1 FTE (full time equivalents) for the Land Conservation Program Specialist. Contractors will be used to produce baseline document reports and accomplish other specialized tasks.

Ongoing staffing will require a minimum of 1 FTE Land Conservation Program Specialist for the first 2-3 years of the program. If the District retains enforcement responsibility and continues to fund land conservation work at current levels, there could be a need for additional staff in the future. This depends on a number of factors including level of interest in agricultural easements, interest in donating land or easements and leverage/partnership opportunities.

## **Additional Costs**

There will be other costs associated with the Program. Some of these costs will include: attorney fees, appraisals, land surveys, contractors for baseline documentation and other tasks, title insurance, mileage, document research, and overhead. On-going stewardship, monitoring and possible legal defense fees are some other additional future costs.

## **FINANCING THE PROGRAM**

The Land Conservation Legacy Program will be funded by the District's Land Conservation Fund. In addition and whenever possible, the District will also leverage additional funds from local, state and federal governments and from the private sector. Examples of possible funders include the USDA's Farm and Ranchlands Protection Program and the Oregon Watershed Enhancement Board.

The District can recoup some of its costs by re-selling a property after it has been permanently protected with a conservation easement. The re-sale value will usually be less than the original unrestricted value of the property. The District can also lease agricultural lands, for example, to farmers and use the rental income to support other Program activities.

To further reduce land protection costs, land owners can sell land or conservation easements at





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below appraised value as a “bargain sale” and donate land or conservation easements to the District.

### IMPLEMENTATION PLAN

The following activities and timeline provide a basic outline for the implementation of the Land Conservation Legacy Program:

- Staff and Attorney presents model CE template for approval by Land Conservation Committee. Committee modifies if needed, approves. April 2013
- Adoption of Program by Board of Directors. June 2013
- Communication materials are developed to promote the Program. June 2013
- Funding partners or other project partners are identified and engaged. On-going
- External experts may be recruited and convened to advise staff, review projects, and make recommendations to the Land Conservation Committee and/or the EMSWCD Board of Directors. July 2013
- Land Conservation Committee decides on a geographic or other focus for initial period of Program, refers to Board of Directors for approval. July 2013
- Land Conservation Committee continues to meet on a regular basis or as needed to provide oversight for the Program. On-going
- Staff researches opportunities for land and conservation easement acquisitions and donations. On-going
- Staff meets with landowners interested in donating or selling land or conservation easements. On-going
- Staff and Committee evaluate potential land conservation projects. On-going
- Staff and Committee recommend land conservation On-going



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projects for acquisition to the Board.

- Board approves proceeding with recommended land transactions. On-going
- Offers to purchase, appraisals, land surveys and other necessary real estate transaction activities are completed. On-going



**APPENDIX A**  
**Sample Conservation Easement**  
(Published under separate cover)