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**WETLAND CONSERVATION EASEMENTS AND PLANNING:**

**OLD PROBLEMS, NEW SOLUTIONS?**

**A CASE STUDY**

**IN VENETA, OREGON**

by

**CAROL SUSAN ROSSKAM**

**A MASTER'S PROJECT**

**Presented to  
the Department of Planning, Public Policy and Management  
and the Graduate School of the University of Oregon  
in partial fulfillment of the requirements  
for the degree of  
Master's in Community and Regional Planning**

**December 1998**

***“One person’s pristine prairie pothole worthy of eternal protection is another’s mosquito-choked mudflat fit only for a shopping mall.***

***The dreams of wheat farmers and golf course tycoons - not to mention ecologists -- often ride on wildly different readings of the land”.***

by

*Bruce Selcraig, in ‘What Is a Wetland? The best way to find out is to wade right in’. <http://www.sierraclub.org/sierra/199605/mjweteco.html>*

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## **ABSTRACT**

An Abstract of the Master's Project of  
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Title:           **WETLAND CONSERVATION EASEMENTS AND PLANNING:  
                    OLD PROBLEMS, NEW SOLUTIONS?  
                    A CASE STUDY IN VENETA, OREGON**

This case study evaluates whether a Wetland Conservation Easement is the best tool to assure wetland protection in Veneta, Oregon. To research the issues, an extensive literature review was conducted, and ten personal interviews were completed with a variety of people who work with, or are interested in wetlands. In addition, one interview was completed with an electronic mail response. Based on the findings of this study, Wetland Conservation Easements should be implemented in the Veneta area as they would facilitate wetland protection there and provide numerous benefits to the stakeholders that are involved.



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## GLOSSARY OF TERMS AND ABBREVIATIONS

ACOE	U.S. Army Corps of Engineers
CE	Conservation Easement(s)
COV	City of Veneta
DEQ	Oregon State Department of Environmental Quality
DSL	Oregon Division of State Lands
EPA	U.S. Environmental Protection Agency
NFWF	National Fish and Wildlife Federation
NPDES	National Pollutant Discharge Elimination System
NRCS	National Resource Conservation Service
OCF	Oregon Country Fair
ODFW	Oregon Department of Fish and Wildlife
TNC	The Nature Conservancy
UGB	Urban Growth Boundary
U.S.	United States
USDA	United States Department of Agriculture
USFWS	U.S. Fish and Wildlife Service
WCE	Wetland Conservation Easement(s)
WRP	Wetland Reserves Program

CHAPTER I  
INTRODUCTION  
1.1 The Beginning

This project begins in the 1960's, when I was growing up in the "suburbs" just outside of Philadelphia, Pennsylvania. These suburbs were characterized by older houses that were built early in the 20th century, and in some cases during the latter part of the 19th century. Living in this part of the United States (U.S.) meant that the temperatures in July and August exceeded 90-95 degree F, humidity often stagnated at 95 percent, and the weather was generally unbearable during that part of the year.

Like any family that could somehow escape these uncomfortable conditions, my family (my parents, two sisters, the dog and I) went to "the shore" every August. "The shore" is Philadelphia area lingo for those parts of New Jersey along the Atlantic Ocean that were known for its boardwalk, miles of fine sand beaches, salt water taffy, big waves, and clean air. Every year in late August, we loaded up the family car (usually packed to the hilt) for the two hour drive to New Jersey. We stayed in Ventnor, Margate or Long Beach Island which are areas adjacent to Atlantic City, a famous resort area since the 1890's.

Towards the end of the drive that my sisters and I always thought was so long, there was great excitement as we approached the salt marshes and estuaries that preceded the ocean communities to which we were headed. As soon as the distinct smell of those wetland areas hit us, we all rolled down the windows to breathe in that famous salty, cool, invigorating, marshy smell. The smell signified that the journey from Philadelphia was nearly over and we were "almost there". At that point, my sisters and I always created quite a ruckus in the back seat as we wanted all passing motorists to know that soon we would



arrive at the shore! Some of my most vivid memories of those days relate to the distinct smell of those marshy wetlands, and the excitement that my two sisters and I felt as we passed by them.

Wetlands were part of my life back then, although I had no idea what they were. I was only 12 years old when the first Earth Day took place in the spring of 1970. In those days, we, the children growing up in the United States during the 1960's, did not learn about the complexities of ecosystems or environmental issues like most children are taught in school today. Despite this, I was already aware of and writing letters about "the environment" by fifth grade.

Even though I lacked knowledge and understanding of wetland issues and terminology at that time, by the early 1970's I already realized that things had dramatically changed at the shore. From my earliest recollections of being there, such as my catching the four foot eel in the lagoon (in 1962 at age five), to the time the first Earth Day had come and gone, it became obvious to me that the air and water "down at the shore" were not as clean as they once were, and there was a noticeable increase in the amount of garbage and tar floating up onto the beaches.

By the 1970's, it was much more difficult to find the clean air at the shore that was so important for my (non-smoking) maternal great-grandfather's emphysema condition. This good air kept him, and my great-grandmother, living and working in the Ventnor/Margate area between the 1940's and late 1960's. Only now, decades later, am I beginning to contextualize what I observed back then and the meaning of the changes in smells to the wetlands, or the degree to which the daily DDT sprayings adversely impacted the health of myself and my family (my sisters and I used to sneak outside whenever possible to greet the "spray man" - our name for the jeep and its drive that rolled by each day at 5pm

spraying a fog of DDT that was supposed to eliminate the mosquitoes). It is these experiences that create the foundation for my academic, professional and personal interests in Environmental Planning.

Nearly thirty years later and beginning graduate studies in Environmental Planning, I found myself vaguely familiar with wetland issues but still lacking any significant understanding and knowledge of their ecological intricacies. Considering how much time I spent around wetlands while growing up on the east coast, I felt a responsibility to learn more about them. I had the chance during my first semester of graduate school in a Planning and Law class that I took with Dr. Richard Lai in Tempe, Arizona. Having just relocated there after living in Canada for 20 years, I used this as an opportunity to study the “no-net loss” policy the Bush administration had recently implemented to protect America’s wetlands. The information I learned about during the course of that research served to inspire my fascination with wetland issues and the prevailing “dredge and fill” attitudes towards them that are so slow to change.

Later that same year, I moved to Eugene, Oregon to continue graduate studies. Shortly after the fall term began, I attended a brown bag lunch seminar where Steve Gordon from the Lane Council of Governments spoke about the West Eugene Wetlands Plan. I was so intrigued with his description of local efforts to protect wetlands that I decided to write my Master’s Project on a closely related topic. The following year, after meeting Dr. Dennis Todd, a University of Oregon professor who was also involved with local wetland issues, I learned about wetland conservation easements being considered in the Veneta area west of Eugene, Oregon. This information helped me to crystallize the topic on which this Master’s Project is based, and provides a context in which I can link my interests in wetlands with the planning process as well as dispute resolution.

## 1.2 Purpose

Wetland Conservation Easements, the focus of this Master's project, is an important concept to study for a number of reasons. They embody a paradox; whereas wetlands' value as an ecosystem is recognized more than it has in the past, and there are now numerous laws and programs to protect them (Salvesen, 1990; Mitsch and Gosselink, 1993), their rapid disappearance continues from the landscapes within and outside the U.S. (Dugan, 1994; Salvesen, 1990). At the same time, more vociferous demands are being made for wetland protection by a diverse array of individuals and groups within the public, private and non-profit sectors as well as grass-root, community based organizations (Dugan, 1994; Mitsch and Gosselink, 1993; National Research Council, 1995). Underlying the loss of wetland habitat are the issues of population, growth, and development, all of which propel expansion into diverse ecosystems such as America's wetlands. Until the question of exponential human population growth is addressed at local, regional, national and global levels, population pressures will continue to encroach on increasingly limited natural resources like wetlands.

This project is relevant to a number of interrelated planning issues, including public participation, natural resources, development, growth, and environmental impacts associated with development. The subject matter is also influenced by the endless number of regulations and planning tools that are being used to cope with the effect of population growth on shared, natural resources. Throughout the development of this case study, I attempt to consider and integrate these ideas with concepts like scale, connectivity, the notion of "success", and the meaning of "effective" in terms of wetlands and Wetland Conservation Easements.

Wetlands are one of the most productive natural ecosystems on earth, providing critical habitat for flora and fauna, flood protection, and maintaining water quality (Mitsch and Gosselink, 1993; Salvesen, 1990). They are ubiquitous, located on every continent except Antarctica, and in a range of climates including tundra and the tropics (Mitsch and Gosselink, 1993). "Wetlands" is a collective term for swamps, bogs, fresh and salt water marshes, wet meadows, ponds, estuaries, prairie potholes (from receding glaciers) and similar areas that form an interface between terrestrial and aquatic ecosystems (Runyon and Helland, 1995:2). They combine attributes of terrestrial and aquatic ecosystems, and yet they are neither one or the other (Mitsch and Gosselink, 1993). Wetlands are often categorized as tidal or non-tidal, which is based on their water regimes and coincides with legislative rulings (Salvesen, 1990).

It is difficult to develop a precise definition for wetlands because of their vast geographical extent and the diverse hydrologic conditions in which they are found (Mitsch and Gosselink, 1993). As a result, there are more than fifty definitions of wetlands. Formal definitions have been developed throughout the world, but some of the most widely accepted ones were articulated by an international treaty known as the Ramsar Convention, by Canadian scientists, and U.S. federal agencies. Most scientists agree that an area is a wetland if one or more of the following attributes exist (Runyon and Helland, 1995:2; Tabatabai, 1994):

1. *At least periodically the land is saturated or covered by shallow water sometime during the growing season of the year;*
2. *The land supports hydrophytic (water-loving) plants;*
3. *The subsurface is predominantly undrained hydric soil. (Runyon and Helland, 1995:2; Tabatabai, 1994).*



In the United States, two of the most widely accepted wetland definitions were developed by three federal agencies - the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (ACOE), and the U.S. Fish and Wildlife Service (USFWS). The EPA and ACOE use a regulatory definition of wetlands which the U.S. Supreme Court upheld in 1985:

*"Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas" (33 CFR Part 328.3 and 40 CFR Part 230.3, in Tabatabai, 1994:2).*

One of the most comprehensive wetland definitions, adopted by USFWS scientists in 1979, is now widely accepted by wetland scientists in the U.S. :

*"...lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes, (2) the substrate is predominantly undrained hydric soils, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year" (Mitsch and Gosselink, 1993:25).*

It is difficult to estimate the extent of wetlands worldwide, but the most commonly used approximation is that they cover 6% of the earth's land surface (Mitsch and Gosselink, 1993:4). On a global scale, the extent of human impact on wetland loss cannot be assessed, although scientists believe that its magnitude ranges from "significant to total" in developed and heavily populated regions (Mitsch and Gosselink, 1993:5).

According to the USFWS's National Wetlands Inventory, wetlands once occupied about 200 million acres, or 11% of the contiguous United States (Runyon and Helland, 1995:1). Today it is only 5% wetlands, representing a loss of at least 50% (Runyon and Helland, 1995:1; National Academy of Sciences, 1995; Salvesen, 1990:18; The Wildlife

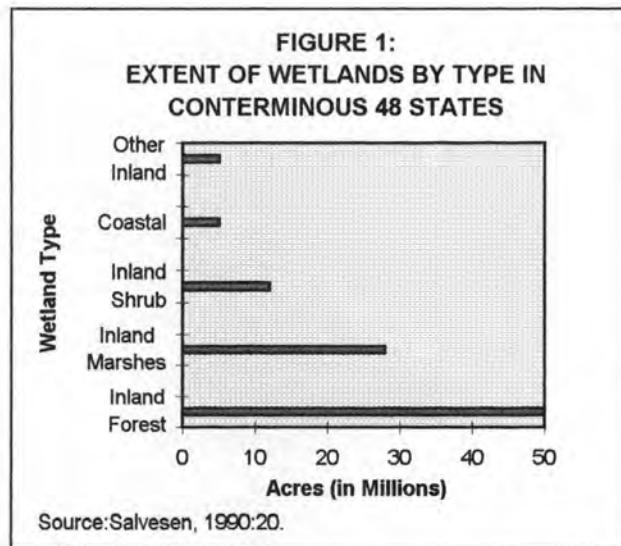
Society). Approximately 75% of the wetlands remaining in the conterminous 48 states are privately owned (EPA, 1995:30).

Until very recently, much of America's wetlands disappeared as a result of federal government policies that promoted wetland conversion for private development, agricultural practices, public projects or other purposes that were incompatible with wetlands' existence (National Research Council, 1995:1; National Academy of Sciences, 1995:1). For example, the federal government used the Federal Swamp Land Acts of 1849, 1850 and 1860 to deed more than 60 million acres of wetlands to 15 states for conversion to agriculture (Salvesen, 1990:20; National Research Council, 1995).

While significant wetland losses occurred because of federal swampland acts, federal and state policies and ACOE drainage projects, much of the conversion was initiated by private interests. The private sector had a significant influence on the development of wetlands into the croplands that now form an integral part of the U.S.'s agricultural resource base (National Resource Council, 1995).

The distribution of converted wetlands across the United States is uneven and varies according to many factors including wetland type (see Figure 1). The highest rate of conversion occurred in those states where it was both "feasible and profitable", or where the extent of wetlands was limited but corresponded with areas suited to agriculture and population growth (National Research Council, 1995:17). Wetlands still exist in every U.S. state, yet twenty-two states have already lost over 50% of their original wetlands (EPA, 1995:5). Of these, the losses in seven states exceeded 80% by the 1980's and reached more than 90% in California, Iowa and Nebraska (EPA, 1995:5; Runyon and Helland, 1995:1; Salvesen, 1990:19.)





As a natural resource, wetlands provide a multitude of essential ecological, economic, social and other values, and are considered to be “one of the most significant ecosystems in terms of their ecological functions, and their human-use values” (Tabatabai, 1994:2). Nearly 43% of North America’s threatened and endangered species rely directly or indirectly on wetlands (EPA, 1995:2; Runyon and Helland, 1995:2). Wetlands function like kidneys, filtering out pollutants to purify water before it enters water bodies (Mitsch and Gosselink, 1993; Salvesen, 1990). Similar to the human body kidneys and the difficulty it has functioning without them, planet Earth also suffers without the use of its kidneys - the wetlands. Despite this, wetland degradation and destruction continues globally.

In the United States, our perceptions of wetlands have improved dramatically (National Research Council, 1995; Tabatabai, 1994). We no longer consider them to be “swamps...what muskrats dream about...what charlatans in Florida used to sell to unsuspecting retirees in New York” (Salvesen, 1990:14). However, controversy still exists in many places between the disparate and often conflicting forces of development and

wetland protection (EPA, 1995:15-17; National Research Council, May 9, 1995; Sibbing, 1997). According to the chair of a National Research Council wetlands committee,

*"...wetlands regulation is a source of considerable friction between private landowners and the federal government for many reasons, but multiple definitions, field manuals, and agency responsibilities have contributed to confusion among citizens and corporations whose land may be affected"* (National Research Council, Press Release, May 9, 1995:1).

Increasingly, people are acknowledging the importance of wetlands and voice concerns over the rapid rate at which their acreage, values and functions are being lost, and how ubiquitous it is (EPA, 1995; Mitsch and Gosselink, 1993; National Research Council, 1995).

As a result of more widespread concern over wetland loss, a myriad of policies, programs, plans and planning tools have been initiated. At the federal level, the Clinton Administration responded to this situation by convening an interagency working group that addressed concerns with federal wetland policy. The working group proposed a comprehensive, 40-point plan to improve wetland protection and ensure wetland regulations were more fair, flexible and effective (EPA, 1995:7). The Administration introduced its Wetland Plan in August 1993, emphasizing improvements to federal policies by:

- *streamlining wetlands permitting programs;*
- *increasing cooperation with private landowners to protect and restore wetlands;*
- *basing wetland protection on good science and sound judgment;*
- *increasing participation by States, Tribes, local governments, and the public in wetlands protection (EPA, 1995:7).*

Since that time, the Clinton Administration has taken a number of actions to implement the Wetlands Plan. This indicates that more attention is being focused on wetland ecosystems and the need to develop and implement measures to protect them.

Wetland Conservation Easements provide an example of a planning tool being more widely used to mitigate wetland losses and help to overcome conflicts between different interest groups including environmentalists and developers. A Conservation Easement is "a

legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property” (Diehl and Barrett, 1988:5). Each easement has restrictions specific to the property and the property owner’s interests (Diehl and Barrett, 1988). In general, the name of an easement is based on the resource it protects; agricultural easements preserve agricultural operations, scenic resources are referred to as scenic easements, and wetland conservation easements protect wetlands (Diehl and Barrett, 1988).

Some advocates of conservation easements suggest that in many situations they are “the *most* useful tool to accomplish the reasonable goals of owners and their families and preservation and conservation groups, public and private” (Diehl and Barrett, 1988:144). Similarly, proponents of Wetland Conservation Easements believe they succeed in preserving and protecting wetlands (Scott, Personal Communication: February 27, 1998; Nowlan and Jeffries, 1996). Others support its use as an effective planning tool because it helps eliminate fears that may otherwise develop because of burdensome regulations and regulatory takings<sup>1</sup> claims (Devroy, Personal Communication: March 5, 1998; Wiebe et.al., 1996). In contrast, there are critics who claim that even with “innovative” efforts to protect wetlands , net wetland losses still occur, biodiversity is not preserved, and it is the developers who are served rather than the ecosystem and the public (Zedler, 1988). Ultimately, it is difficult to reveal the true nature of the forces that motivate public and private sector decisions about wetlands and development. Certainly, one of the goals of this inquiry is to facilitate more critical thinking about mitigating wetland loss in general, and how effective conservation easements are as a tool that supposedly inhibits those losses.

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<sup>1</sup> The denial of an individual’s right to use his or her property is referred to as a “taking”. Courts have held that overly strict regulations may be interpreted as a “taking of property” requiring compensation under the U.S. Constitution’s Fifth Amendment. However, the point at which restrictions become too restrictive has proven difficult to define and the issue continues to be widely litigated. Since

In Veneta, Oregon, located approximately twelve miles west of Eugene, the interface of population growth, development, infrastructure needs and wetland protection led several individuals and agencies to consider using Wetland Conservation Easements as a proactive step that would address these complex issues. This case study is based on the situation that has evolved in Veneta, and how it brought the Oregon Country Fair and the City of Veneta to consider implementing Wetland Conservation to address these challenges. The key question to be answered by this case study is as follows:

***Is a Wetland Conservation Easement the best tool to assure wetland protection in Veneta, Oregon?***

### 1.3 Methodology

To answer this question I used two qualitative research methods. The first was to review various information sources including: a doctoral dissertation; books; case studies; journal articles; newsletters from state and federal agencies; newsletters from non-profit organizations; reports by federal agencies; and reports by non-profit organizations. The second research method was open-ended interviews. Ten were conducted in person, and an eleventh response was received by electronic mail (e-mail). The interviews are the most crucial component of the research.

Personal interviews were conducted because they are an information gathering tool that is appropriate, effective and efficient given the parameters of this project. The purpose of the interviews was to gather information about Wetland Conservation Easements and their effectiveness as a planning tool that fosters wetland protection. Ten interviews were completed in Eugene and Salem, Oregon between January and April 1998. Each interview

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1987, the U.S. Supreme Court made several rulings over the takings issue, but they continue to have significant implications on Federal and state regulations of wetlands on private property (Mitsch and Gosselink, 1993:573; Porter and Salvesen, 1995:27).



was tape recorded and transcribed verbatim, and they are included in the Appendix section of this paper (see Appendix A-1 to A-12).

To address any bias that could develop, I tried to maintain an objective approach throughout the entire research process. It was particularly important that the information that was reviewed included sources from a wide range of public, private, non-profit, and grass-root community based organizations. There is already a range of opinions within the “community” concerned with wetlands issues. Some believe that public sector agencies perpetrate wetland destruction, while others believe that environmental critics are belittling a process that is at least attempting to create solutions to a difficult situation. This highlights the need to be as impartial an observer as possible. By doing so, the recommendations that are made may be taken more seriously by those interested in, and involved with these issues. Therefore, the interviewees were selected either because of their general involvement with wetlands or specifically due to their work on the conservation easements under consideration in the Veneta area.

I attempted to conduct the same number of interviews from each of the following categories:

- *Federal, State, regional and local government agencies;*
- *Non-profit organizations;*
- *Private businesses, groups or land-owners;*
- *Citizen groups and/or members of the community.*

According to statistics, this process is considered a quota system. The logic that I used to choose these particular groups was based on the idea that certain group types prevail over the concerns raised, and decisions that are made over wetlands. I intended to conduct three interviews from each category to avoid any bias towards one type of organization over another. It was difficult to arrange three meetings from each group, however I used those

parameters to reach my objective as much as possible. In addition, I was unable to contact one of the landowners and could only complete eleven interviews as a result. Out of the eleven interviews, ten took place in person and one was a response by electronic mail (e-mail). Table 1 provides a list of the final categories that I used:

Table 1:

Final Interview Categories

<b>GOVERNMENT AGENCIES</b>	<b>NON-PROFIT ORGANIZATIONS</b>	<b>PRIVATE BUSINESSES AND/OR LANDOWNERS</b>	<b>CITIZEN GROUPS OR COMMUNITY MEMBERS</b>
<p><b><u>Federal</u></b></p> <p>1. <b>Natural Resource Conservation Service</b> (*1) interview conducted</p> <p>2. <b>Environmental Protection Agency</b> (*1) electronic mail response (e-mail)</p>	<p>1. <b>Oregon Country Fair</b> (*1) interview conducted **is also a landowner</p> <p>2. <b>The Nature Conservancy of Oregon</b> * 1 interview conducted</p>	<p><b><u>Landowners</u></b></p> <p>1. <b>Oregon Country Fair</b></p> <p>2. <b>City of Veneta</b></p>	<p><b>Eugene Planning Commission</b> * 1 interview conducted ** interviewee also Coordinator of Friends of Eugene/Springfield Habitat (<i>FRESH</i>), a local non-profit organization</p>
<p><b><u>State</u></b></p> <p>1. <b>Oregon State Department of Environmental Quality</b> (*1) interview conducted</p> <p>2. <b>Oregon Division of State Lands</b> (*2) interviews conducted</p>			
<p><b><u>Regional</u></b></p> <p><b>Lane Council of Governments</b> (*1) interview conducted</p>			
<p><b><u>Local</u></b></p> <p><b>City of Veneta</b> (*2) interviews conducted the City Administrator. and the City Engineer) ** is also a landowner</p>			



Another important consideration is to interview people who hold positions with different levels of responsibility within each grouping. The reason for this is to bring even more breadth of ideas and experiences into the research process. In reality, this was difficult to accomplish although the author did succeed in capturing this to some degree (see Appendix A-1).

Three questions were posed to the first interviewee, Joseph Edney of the Oregon State Department of Environmental Quality (DEQ). These questions were:

1. *What are the conflicts that the Department of Environmental Quality would have to address if this Conservation Easement was instituted?*
2. *What are some of the compromises that the Department of Environmental Quality has to address if this Conservation Easement was instituted?*
3. *How would the Conservation Easement foster a win-win situation between development and wetland conflicts?*

It became clear that two additional questions were necessary to ensure that the interviews were comprehensive enough, therefore two more questions were added to the survey. The five revised questions that were posed to the remaining nine interviewees as well as the e-mail respondent are as follows:

1. *What are some of the conflicts that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair, City of Veneta or other adjacent properties?*
2. *What are the areas of compromise that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair, City of Veneta, or other adjacent properties?*
3. *How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a win-win situation addressing the conflict between development and wetland protection?*
4. *Will wetland functions be served by this easement?*
5. *Is there another administrative way to solve this problem that might be better?*

The interview questions were *schedule-structured*, meaning the wording and sequence was fixed and identical for every respondent. This format was appropriate to the type of information that was solicited from the interviewees. A *funnel* sequence was used

as a framework for the questions posed during the interviews, so that they began with a narrow scope and two closed-ended questions and concluded with more open-ended, general queries.

One of the disadvantages of using this particular structure is that it can be difficult to summarize the variety of responses that may result. In addition, the process is limited to a select group of individuals that were involved with some aspect of wetland protection. Perhaps the exclusion of other property owners, certain groups of concerned citizens, Native peoples or scientists will constrain and even bias the evaluation and recommendations to be made. Ideally, it would be best to interview a large number of diverse individuals and groups who are concerned or involved with wetlands, but that is not possible given the limitations surrounding this project. During the research process, it became clear that additional interviews would have provided invaluable information which could have fostered a more in-depth inquiry into this subject matter.

#### 1.4 Organization of the Paper

Following Chapter I and its overview of the issues being addressed, Chapter II contextualizes the situation by discussing the stakeholders, and the background and events out of which they evolved. This extends from more site specific information about the proposed Wetland Conservation Easement locations being considered in Veneta to the larger scale issues of wetland functions and values, and their conflicts with development. Conservation Easements are defined and discussed in greater detail.

Chapter III identifies the critical issues that were discussed by the interviewees. Given the limitations of this study, it is unfeasible to adequately discuss and analyze all of the ideas mentioned during the interviews, despite their relevance to wetland protection and planning. Therefore, the five most prominent themes that evolved out of the interview

process are recognized in the third chapter. The themes are identified and then discussed based on the points over which there was general agreement as well as those over which there was dissent.

Conclusions in Chapter IV include a recap of key issues. Recommendations are made about Wetland Conservation Easements in Veneta, and their role in wetland protection. Final remarks are made about other situations where diverse interests like landowners, planning and wetlands need to coalesce.

## 1.5 Summary

This evaluation is timely given the attention being given to wetlands in the United States at the local, state and national levels. Locally, efforts are being made to address wetland protection within the planning process including examples such as the West Eugene Wetlands Plan, and the Wetland Conservation Easements under consideration in Veneta. Statewide, the Oregon legislature passed a wetlands planning law in 1989, and in 1997 the State Land Board approved rules proposed by the Division of State Lands for Wetland Mitigation Banking (Gordon, February 19, 1997). Nationally, there is growing concern over wetland protection as policymakers realize that wetland function knows no political boundaries (Mitsch and Gosselink, 1993:541)

One of the most important considerations is the need to continuously build on the dialogues that are taking place between those individuals, groups and agencies that are concerned with wetland losses, and to facilitate new discussions between disparate groups that have yet to begin such a process. The purpose of this research inquiry is to provide information that will make the "effectiveness" of Wetland Conservation Easements less ambiguous. By doing so, it will become easier for scientists, policy makers, and community based organizations concerned with the status of wetlands to determine whether tools like Wetland Conservation Easements are effective, and what needs to change if they are not.

Overall, this inquiry attempts to provide some answers for one of the most frequently avoided, yet essential phases in any planning process - evaluation and modification of policy decisions. My intention is to conduct a thoughtful, objective and critical study. I will provide new insights to integrate into the evaluation of wetland mitigation tools such as conservation easements, and their fundamental role in wetland protection. It is my belief

that all necessary steps must be taken to ensure that the best efforts are made to protect wetlands for the present and in the future.



## CHAPTER II

### BACKGROUND

#### 2.1 Description of Study Area

The study area is located in Veneta, Oregon, approximately 12 miles west of the City of Eugene. It is part of the Upper Long Tom River Watershed which is in the southwestern section of the Willamette River Basin (see Figures 2,3). For the purposes of this project, the "study area" refers to properties in the Veneta area currently owned by the City of Veneta (COV), the Oregon Country Fair (OCF), and the Larson Family. Portions of all parcels have wetlands on them (see Figures 4,5). The entire study area is in the one hundred year flood plain zone<sup>1</sup> (Bettman 1996).

The Upper Long Tom River Watershed covers approximately 100 square miles of forested and agricultural land along the eastern slope of the Oregon Coast Range (Bettman 1996:8). The headwaters of The Long Tom River begin near Horton, Oregon where it flows mostly south for about 12 miles (see Figure 3) (Bettman, 1996:9). Near the town of Noti, the river changes direction and runs east for six miles before it drains into Fern Ridge Lake (see Figure 3). This "lake" is actually a reservoir that is 9,360 surface acres<sup>2</sup> in size. It was created in 1941 when a dam constructed downstream began operation for flood control and agricultural irrigation purposes<sup>3</sup>. The river continues flowing from the north end of Fern Ridge Lake and eventually merges with the Willamette River near Monroe, Oregon. The "Upper Long Tom River Watershed" refers to the area drained by the river before it enters Fern Ridge Lake (Bettman, 1996).

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<sup>1</sup> Based on the Federal Emergency Management Act 100 year flooding projections (Bettman, 1996).

<sup>2</sup> According to James Beal, Park Ranger at Fern Ridge Reservoir, the Army Corps of Engineers says Fern Ridge is a "maximum conservation pool" that is 373.5 feet elevation and 9,360 surface acres in size. "Surface acres" is the area to which Fern Ridge is filled each April.

<sup>3</sup> The downstream dam that created Fern Ridge Lake was constructed approximately 1939-1940, and began operations in 1941.



FIGURE 2:

LOCATION OF THE UPPER LONG TOM RIVER WATERSHED

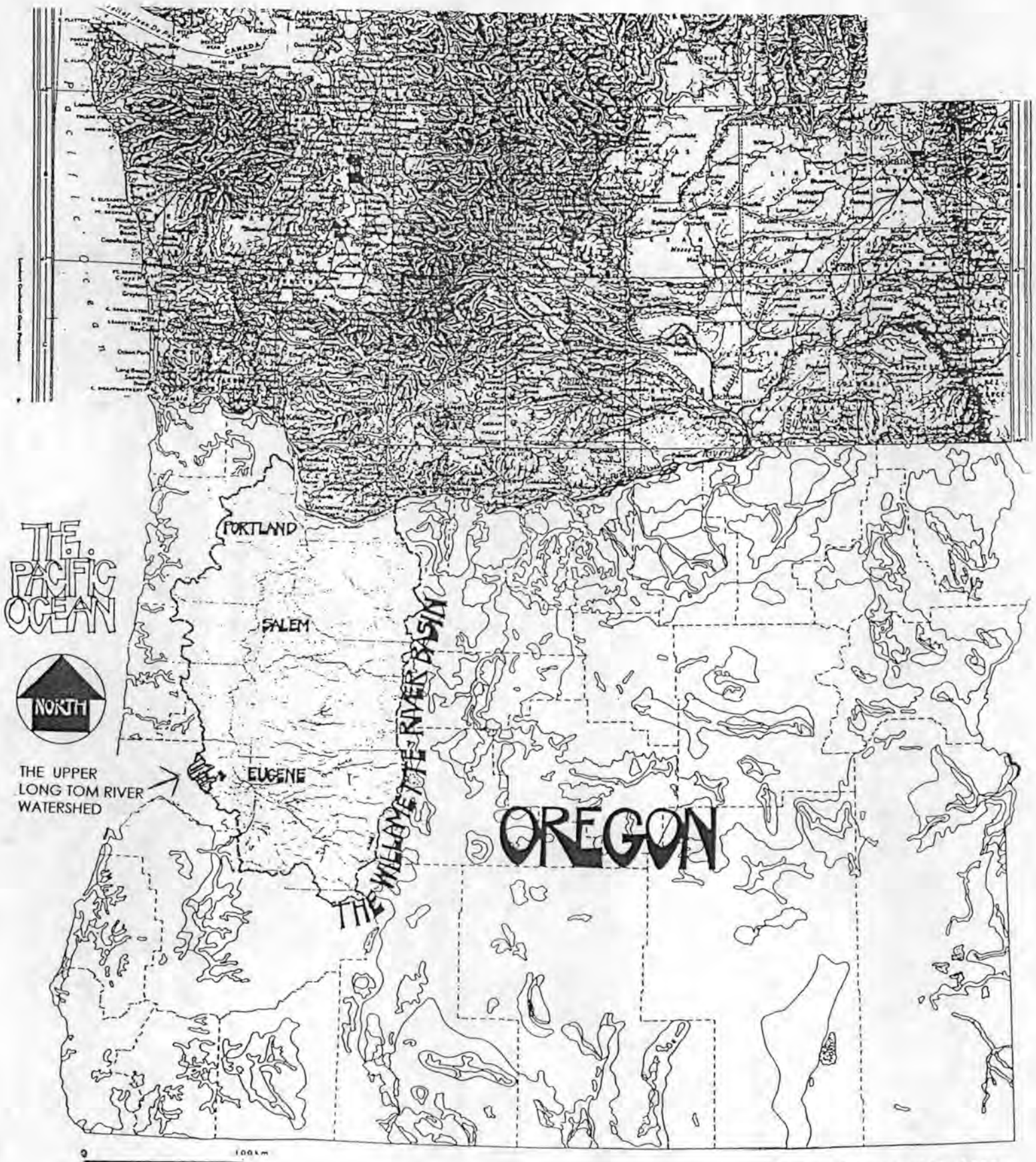


FIGURE 3

# Upper Long Tom Watershed Lane County, OR

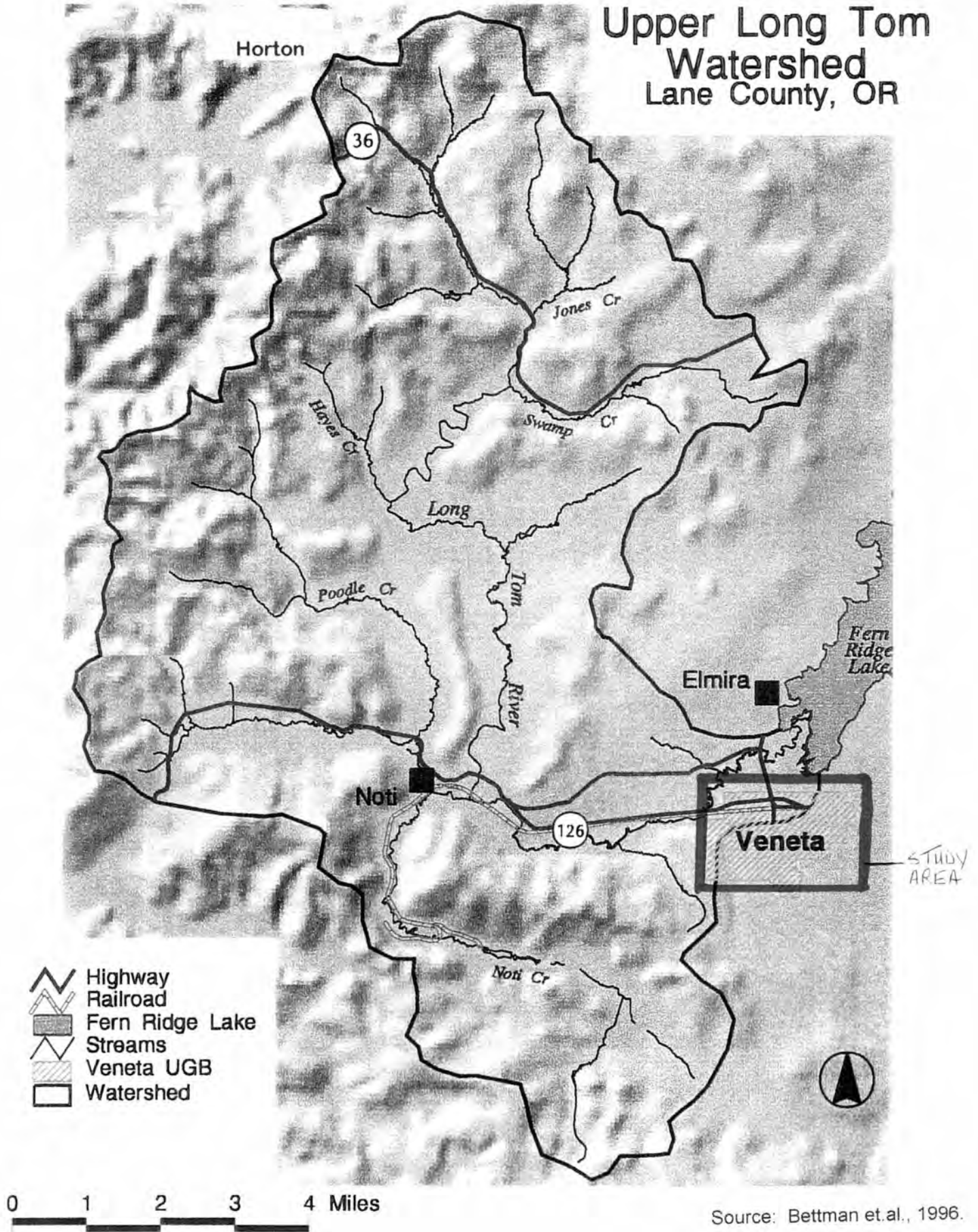






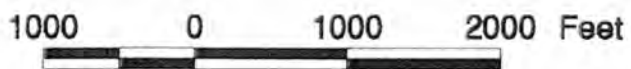


FIGURE 4:

# Study Area Major Land Owners



-  Major Road
-  Secondary Road
-  Railroad
-  Streams
-  Creeks
-  Tax Lots
-  Veneta UGB
-  Lake/Pond



Source: Bettman, 1996.

FIGURE 5:

# Study Area Wetland Features



- ✓ Streams
- ✓ Creeks
- ▨ National Wetland Inventory
- ▨ Local Wetland Delineation
- ▨ Veneta UGB
- ▨ Lake/Pond
- ▨ Wetland "fingers"

1000 0 1000 2000 Feet



Source: Bettman, 1996.

A number of native vegetation communities exist throughout the watershed. The upland areas are comprised of mixed evergreen and deciduous forest that are dominated by Douglas Fir, Western Hemlock and Big Leaf Maple. The riparian forests along streams and narrow valleys are mostly Red Alder, Cottonwood, Big Leaf Maple, Oregon White Oak and Willows (Bettman, 1996). Oregon Ash is dominant along the riparian areas owned by the OCF. The lowland areas west of Fern Ridge Lake consist of young wetland forests that are mainly Oregon Ash as well as naturalized hawthorn, pears and apples. Historically<sup>4</sup>, most of the flat lowlands were wet or dry prairie but were converted to predominantly pasture grasses (Bettman, 1996; Liberty, 1998). The most prominent community in the study area is the mature<sup>5</sup> gallery<sup>6</sup> forest along the river, and the extensive ash woodlands that surround patches of wet prairie and grazed pasture land (Bettman, 1996:20).

The Upper Long Tom River Watershed is relatively undeveloped compared to the more urbanized Eugene/Springfield area (Bettman, 1996). The dominant land uses in the watershed are extensive forestry and more limited agriculture, which is primarily pasture for cattle and some sheep as well as Christmas tree farms. Based on population projections for this area, residential and commercial development will increase in the towns of Veneta, Elmira and Noti. As a result, additional land will be required to meet development, recreation and other needs (Bettman, 1996).

There are four major landowners in the study area (see Figure 4). Those pertinent to this case study include the COV, The Larson Family, and the OCF. All of the major landowners have designated wetlands on their properties (see Figure 5).

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<sup>4</sup> In this context, 'historically' refers to pre-European settlement, prior to the early part of the 19<sup>th</sup> century.

<sup>5</sup> A "mature" gallery forest is approximately 150 years old.

<sup>6</sup> "gallery" refers to the multiple layers of strata from the ground up. A gallery forest has positive effects on habitat, temperature control, flood control and water chemistry.



## 2.2 The Issues

The Upper Long Tom River is one of three drainages (Long Tom, Coyote Creek, and Amazon Creek) emptying into Fern Ridge Lake, but is the only one with a significant flow during the summer. The preservation of water quality in Fern Ridge is closely connected with land use practices throughout the Upper Long Tom Watershed. Point source contamination, such as sewage effluent, is one of the factors effecting water in the lake. (Bettman, 1996:1,2). Some of the other influences include urban runoff, sedimentation from upland clear-cuts, and herbicides in addition to other nutrients used for agricultural purposes (Bettman, 1996).

### City of Veneta

Since 1976, the COV discharges effluent from its wastewater treatment facility into the Long Tom River during the winter period. During winter months, the river's seasonal flow is substantial enough to meet Oregon State Department of Environmental Quality (DEQ) standards for effluent dilution and disposal. The effluent is discharged into the river according to a permit issued under the National Pollutant Discharge Elimination System (NPDES). NPDES permits are part of the legislative program established to implement The Clean Water Act. A NPDES permit must be obtained when any activity, including construction or facility operation, may result in any discharge into navigable waters (Jain et.al., 1993). It specifies effluent limitations such as maximum chloroform levels and the average monthly discharge that can be released into a waterway.

During the summer, effluent was retained in a storage lagoon until 1982 when the COV started using a spray irrigation system. This operational change increased the facility's discharge capacity by extending the storage lagoon from summer only to year round use (Bettman, 1996).

Between May 31 and October 31<sup>7</sup>, Veneta's effluent is pumped through a subsurface pipe from its wastewater treatment facility to a 34-acre lot of pasture land north of Highway 126 that is owned by the OCF (see Figure 5) (Bettman, 1996:33; Wellman, 1998). Of the 34 acres characterizing the parcel on which effluent is sprayed, approximately 27 acres are used for irrigation. The irrigated section is vegetated with mixed non-native grasses and has been regularly grazed for more than 40 years (Bettman, 1996:33).

Veneta's existing wastewater treatment system was built in 1966. However, it is outdated and does not operate within Oregon State DEQ discharge standards. Consequently, the DEQ issued a Notice of Noncompliance to the COV in January 1996 stating it was unlikely the COV would be able to meet these standards in the future without substantial improvements to its wastewater treatment facilities (Wellman, 1998; see Appendix B). In October 1996, the COV signed a Mutual Agreement and Order (MAO) with the DEQ. This agreement established a schedule to improve Veneta's wastewater system, thereby forestalling DEQ enforcement actions. If the repairs are not completed according to the timelines identified in the MAO, the DEQ can either fine the COV \$10,000 per day, or they can issue bonds for the city and force it to do the work (Wellman, 1998). To facilitate project support, the COV is using written information and public meetings to educate residents about the issues (see Appendix B).

Improvements to Veneta's sewage system are expected to cost \$7.23 million (Wellman, 1998). Of the total estimated costs, \$2.65 million (Wellman, 1998) will be grants from the Federal Rural Development Agency<sup>8</sup>, Oregon Economic Development Department, Community Development Block Grants, and the State Revolving Fund which is administered by the DEQ (Makinson, 1998; Wellman, 1998). The remainder of the project will be funded by long term, 40 year loans with low interest rates that are

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<sup>7</sup> Currently, the (May to October) period for discharge into the river is under review and may change.

below market levels. There are only 865 ratepayers in Veneta, therefore sewage connection costs will be increased from \$20 to nearly \$50 per connection to generate enough funds to pay off the loans (Wellman, 1998) (see Appendix B).

In addition to Veneta's existing sewage system problems, its population is expected to nearly double by the year 2020 to approximately 5,000 residents (Wellman, 1998). While Veneta's Urban Growth Boundary is large enough to provide for its anticipated growth (Elliott, 1998; Wellman, 1998), to accommodate its sewage needs the COV will require about 35 acres<sup>9</sup> of land for treated effluent spraying<sup>10</sup> (Wellman, 1998). Currently, it has access to 32 acres and requires an additional 12 acres to meet its needs. Another 12 acres that are available to the COV are designated as wetlands. However, Oregon Department of State Lands regulations state that effluent cannot be applied to those lands that are designated as wetlands (Wellman, 1998), and the COV is looking for solutions to resolve this situation.

One of the proposals being considered by Veneta is to plant an urban forest of approximately 1,700 hybrid poplar trees that could be used for effluent applications (Wellman, 1998)<sup>11</sup>. The growing season for poplar trees coincides with the summer period during which effluent irrigation is conducted. In addition, Poplars are well adapted to the high levels of ground water that characterize the Veneta area during winter months. They have a rapid growth rate<sup>12</sup> which is conducive to periodic cutting, chipping and replanting.

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<sup>8</sup> The Federal Rural Development Agency was previously known as The Farm and Home Administration.

<sup>9</sup> As of this writing, the amount of land area required for effluent spray is still under negotiation and has yet to be defined. Currently, 35 acres is considered to be sufficient but this could range from 20 to 45 acres; it is more likely that 20 acres will be needed in the final analysis.

<sup>10</sup> According to conservative estimates of documented growth rates for poplar trees on McBee soils in the Willamette Valley, 44 acres of poplars, planted at 1200 trees/acres, are necessary to dispose of the volume of effluent projected for Veneta's population growth by the year 2017. If pasture lands were used instead, 52 acres of land would be required to meet summer effluent spray requirements (Bettman, 1996:38).

<sup>11</sup> The hybrid poplar forest is an approved system by the Oregon State DEQ (Scott, 1996).

<sup>12</sup> Results from a recent pilot study conducted by the City of Woodburn, Oregon testing effluent disposal by spraying to hybrid poplars indicates the poplars grew 18 feet after only 14 months in the ground; these trees were grown from either bare 1 foot trees or 5 foot clippings (Bettman, 1996:38).



Currently, research is being conducted by a number of major paper companies and the Oregon Department of Agriculture into poplars' potential commercial value as a wood fiber crop. Preliminary results indicate that the poplar trees could become a revenue source for Veneta<sup>13</sup> when the chipped wood is sold for use as particle board or presswood, landscaping mulch, or on hiking and walking trails. Depending on market demand, this may help offset some of the operating costs associated with the disposal site.

Another issue relates to land ownership relative to use of the land. The COV owns land that is used for camping each year by the Oregon Country Fair during the event. In exchange, the OCF allows the COV to spray effluent on some of its property during the summer months. This is necessary because the COV does not have access to enough land to meet its effluent spray needs. At the same time, the OCF cannot provide camping on land that is used for spray irrigation. To resolve this situation, the COV and the OCF are considering a land exchange between these two properties. The presence of wetlands on the properties raises mitigation issues that must be addressed. The land exchange proposal has been presented in a number of ways including an acre for acre exchange, and an exchange plus cash to address the different property sizes (Wellman, 1998).

#### Oregon Country Fair

The Oregon Country Fair is a non profit Oregon corporation that hosts an annual three day arts, crafts, education, and entertainment fair west of Veneta, Oregon. Like any seasonal fair, the OCF changes every year. The fair has been held on its current site since 1970 (see Figures 6,7). Although the fair is a three day event held in mid-July, preparations begin twelve months in advance and site maintenance continues throughout the entire year.

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<sup>13</sup> Poplars can be harvested after 7-9 year rotations and may yield between \$450-\$2,700/acre after 8 years (Bettman, 1996:39).

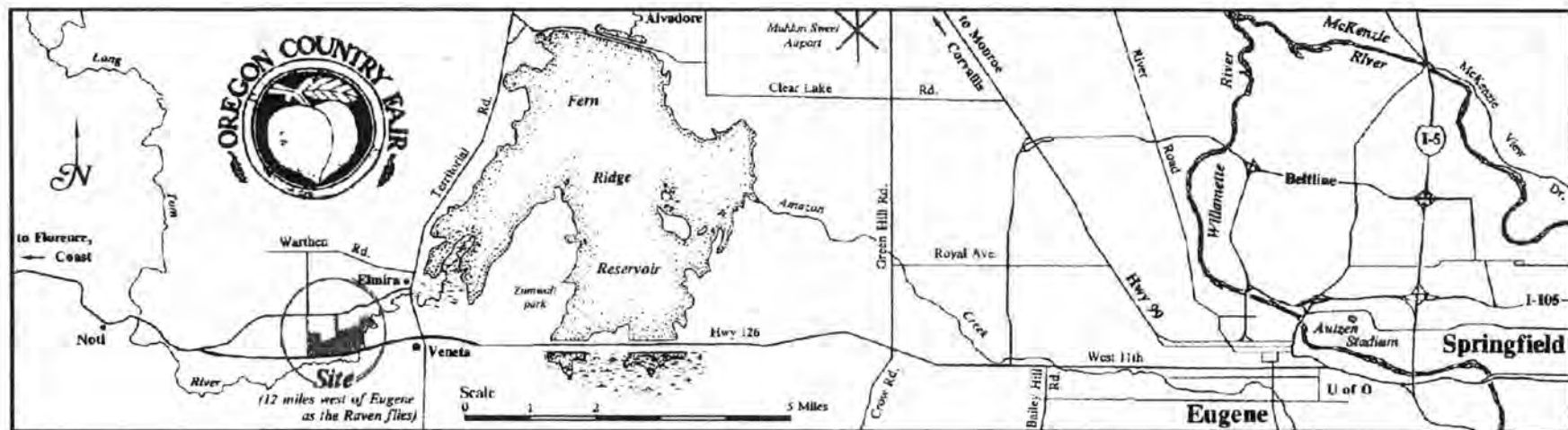


Figure 6:

Oregon Country Fair Vicinity Map

Source: Liberty 1998.



No Camping & Property Lines



Zoning



Camping & Circulation

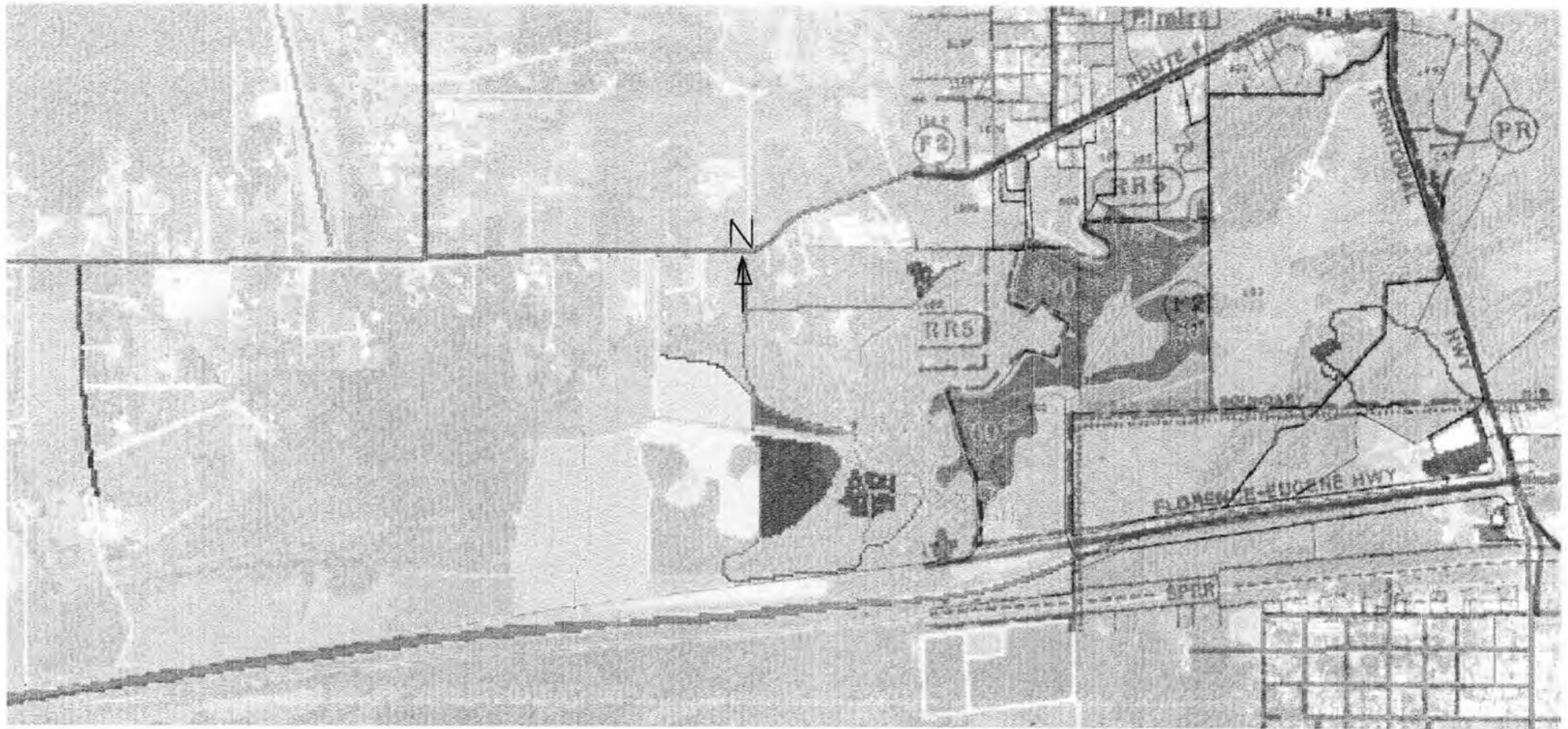


Figure 7:

Oregon Country Fair Map

Source: Liberty, 1998.

During the past one hundred years, the properties now owned by the OCF underwent a series of ownership changes. In the late 1880's, the land was sold to the Wright Brothers under the Donation Land Claim Act of 1850<sup>14</sup>. The brothers owned a total of 220 acres which was later subdivided numerous times (Liberty, 1998). Between 1900 and 1930, the land was owned by the Southern Pacific Railroad, after which 25 different owners held title through 1955. Usually, the sales took place mid-July when there was little rain and the land was dry. Around 1960, the owners of the WAC Corporation, a Eugene based firm providing aerial photography and photolab services, purchased the land and maintained ownership of it for 15 to 16 years.

In 1970, the OCF leased the land and began buying it shortly thereafter. Within ten years, the OCF had paid off the parcels it had purchased. At that point, those involved with the OCF started to think more seriously about how the land should be used. As OCF participants gave more thought to the relationship between the property and the notion of "stewardship", they became more aware of the impact the Fair's activities on the land. This inspired a number of Fair participants to begin studying the OCF land's geomorphic history. It also generated more interest in summer use of the land for the annual event, and maintaining it as a refuge during the rest of the year. Based on this consideration, the OCF properties have not been tilled since 1977 due to annual flooding on the property.

To some, the significance of the OCF property area in a regional context can be compared to that of Central Park in relation to the City of New York (Liberty, 1998). Central Park is an 843 acre park centrally located in New York City (Central Park Organization Home Page). It was designed by Frederick Law Olmsted, the park

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<sup>14</sup> The Donation Land Act was passed by the U.S. Congress in 1850. Under its auspices, most land claims were recognized that were filed under The Oregon Territory's provisional government.



superintendent at the time<sup>15</sup>, and Calvet Vaux, an English born architect, as the first landscaped public park in the United States. Although the park opened during the winter of 1859<sup>16</sup>, by 1865 it already had more than 7 million visitors annually (Central Park Organization Home Page). Central Park was designed to mimic the organized, controlled English garden and was a testament to American society's interpretation of nature at that time. In the same way, proposals being considered for the OCF properties reflect current perceptions of nature and the recent trend to keep (or return) them in a 'natural', less controlled state.

The OCF properties could serve a significant role in the Eugene/Springfield metropolitan area's future in the same way that Central Park is now a precious refuge area in New York City (Liberty, 1998). Both Central Park and the OCF properties serve similar functions including providing wildlife habitat, recreation opportunities and open space, moderating temperature and water quality, and facilitating the cohesiveness of a larger, regional vision. In the Veneta area, the OCF properties can provide large corridors where land could continue to flood, a critical factor for the continued health of the entire Upper Long Tom River Watershed.

Approximately 1992, the COV was considering expansion of its sewer system along the north side of Highway 126, on the opposite side of the Long Tom River from the OCF property. Veneta's sewage lagoon system was failing and the city was notified by the DEQ to revamp its entire sewage system; the existing system had to be repaired before it could be expanded. Pressures to expand the COV's system resulted from development pressures caused by the significant population increase taking place in Veneta. During that period, the COV sprayed effluent onto the Larson property, and

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<sup>15</sup> Central Park was first advocated by mostly wealthy merchants and landowners who thought a public park in New York City would help establish the city's international reputation. Subsequently, the Central Park Commission was formed to bring the park's concept to fruition. Frederick Law Olmsted was the Park Commission's first park superintendent.

<sup>16</sup> According to the 1860 Census, New York City had a "total" population of 805,658. Despite the fact that New York was considered a "northern" state in the context of slavery, the New York City census figures distinguish figures for its white population from the "free colored" community. "Total" population therefore aggregates both groups.



OCF members learned that this practice made the land unsafe even for parking purposes during the annual Oregon Country Fair. Around the same time, Veneta's local shopping center was expanded and wetland delineations were simultaneously completed to identify the location of area wetlands that were part of the National Wetlands Inventory.

Discussions between Leslie Scott, OCF General Manager, and Les Clark, Veneta's former City Manager, began over their shared concerns about the area's development pressures, sewage needs and water supply. Clark, who had previously worked in Arcata, California, knew about that city's use of wetlands for tertiary sewage treatment and suggested it be explored as a viable solution to problems facing the Veneta area (Scott, 1998). Subsequently, the dialogue included members of the Veneta City Council as well as the OCF Board, and both parties eventually signed a Memorandum of Understanding over these issues. In addition, a grant application was submitted to the Environmental Protection Agency to fund a study of the situation as well as a community development project providing educational and light recreational opportunities, green open space, and tertiary sewage treatment. This grant application was unsuccessful because it lacked clarity about the land in question and how the COV and OCF would collaborate to achieve the project's goals (Scott, 1998).

The OCF purchased the Larson land that had been used for spraying, and acquired it as a 35 acre parcel that was zoned for commercial use. Previously, a reciprocal license agreement had been in place over this land between the COV and the Larson family which enabled the COV to spray effluent during summer months and the Larson's use of it for grazing during the remainder of the year. Over the many years that this land was used for grazing and effluent spray, heavy soil compaction occurred and wetlands started forming. As the grazing and spray effluent continued, so did the

expansion of these wetlands into what is now referred to as interdigitated wetlands, or wetland "fingers" (see Figure 5).

Currently, one of the major issues challenging the OCF is the need for additional camping space. To address this, the OCF hoped to let the COV use the land now owned by the OCF for effluent applications. In exchange, the COV would allow the OCF to use some of its property to meet camping needs each July during the fair. Eventually, a land exchange may take place once the City's sewage project is outlined and underway according to engineering and DEQ guidelines. Some OCF members would like to exchange at least 40 acres of land with the COV and delineate the boundary, using as straight a line as possible. The intention is to keep COV effluent spraying south of OCF property, and the OCF camping area would be located to the north. Currently, there is a reciprocal license agreement in place between the COV and the OCF; this allows Country Fair camping to occur on City owned property during the Fair in exchange for COV effluent spraying on OCF property until the year 2000 (Scott, 1998).

#### Forrest Larson

For more than fifty years, the Larson family has used their land for agricultural purposes (Bettman, 1996; Liberty, 1998). Because the property is flood prone and is too wet for other agricultural uses, the family has mainly used it as pasture and grazing for cattle and horses. A wetland delineation conducted on the current effluent disposal site identified wetlands on almost half the Larson property (Bettman, 1996). The wetlands are mostly contiguous and cover approximately 18 acres bordering the south and east sections of the Larson property. Adjacent areas where grazing was prohibited are covered by dense ash forest (see Figure 5) (Bettman, 1996:5, 7).

Conservation Easements (as discussed in Chapter I) could provide Larson with a number of benefits. The agricultural use of these parcels has provided minimal economic

return (Liberty, 1998). Therefore, Conservation Easements (CE) may offer Larson a financial incentive which gives him the protection necessary to modify the use of his property and improve the return on his investment in it. One example of this is a proposal being considered for the Applegate District Wildlife Management Unit which extends onto his property.

The Applegate District Wildlife Management Unit is a low-lying, terraced flood plain where the Long Tom River enters Fern Ridge Lake. It is characterized by mixed deciduous-coniferous forest that is interspersed with old fields. This area is important if the connectivity between the Long Tom River and Fern Ridge Lake are to be maintained. The Applegate Unit is also the most natural shoreline area around Fern Ridge Lake (Bettman, 1996). This area provides diverse habitat which supports numerous species of birds and fur bearing animals as well as the endangered Western Pond Turtle (see Table 2) (Bettman, 1996:51).

Table 2:

Partial List of Birds and Wildlife found in the  
Applegate District Wildlife Management Unit

BIRDS	WILDLIFE
bald eagles	beaver
Canada geese	deer
osprey	mink
purple martins	red fox
upland game birds	Western Pond Turtle
wood ducks	
yellow-headed blackbirds	

Source: Bettman, 1996:20, 51.

Most of the 807 acre Applegate District Unit is licensed to the Oregon Department of Fish and Wildlife (ODFW) for wildlife management purposes. It is managed by the ODFW and the Army Corps of Engineers as part of Fern Ridge Lake (Bettman, 1996:50).

“Management” of the Applegate Unit refers to maintenance and protection of existing wetlands and other habitat, along with some recreation use including hunting, horseback riding, birdwatching, canoeing and fishing (Bettman, 1996).

Some of the goals of the Applegate District proposal include maintaining and managing wildlife habitat, promoting wildlife viewing opportunities, providing low-density, dispersed recreation, interpreting the unit’s natural resource values, and protecting its cultural resource sites. The steps necessary to accomplish these goals would include trail construction, interpretive signs, and control of non-native plant species.

### 2.3 The Proposals

Five Wetland Conservation Easements are being considered on lands contained in the study area (see Figure 8). To date, interest in the easements has been expressed by some members of the OCF, representatives of the COV, and to a lesser extent Forrest Larson.

#### Wetlands on Oregon Country Fair property (see Figure 8, Number 1)

This area of land owned by the OCF is located inside the COV’s Urban Growth Boundary. The OCF is considering the restoration of some of the wetlands on the 36 acres it owns that is currently used for effluent spraying by the COV.

The Indian Creek area of the Oregon Country Fair property is also being considered for Wetland Conservation Easement status. Extending from the western section of the OCF property boundary eastward, it includes parts of the parking lots on both sides of the creek. Indian Creek is a channel built in the 1930’s (Liberty, 1998) to create a drainage ditch for upland agricultural lands (Bettman, 1996) . It is similar to a number of other manmade channels along the Long Tom River.



FIGURE 8:

Approximate Location of Proposed Wetland Conservation Easements



Current Ownership of Proposed Wetland Conservation Easement areas.  
 1 Oregon Country Fair  
 2 City of Veneta - may be exchanged with the OCF  
 3 City of Veneta  
 4 City of Veneta (*Lomatium bradshawii* site)  
 5 Forrest Larson

- Streams
- Creeks
- National Wetland Inventory
- Local Wetland Delineation
- Veneta UGB
- Lake/Pond
- Proposed Wetland Conservation Easements

1000 0 1000 2000 Feet  
 \* Not to scale





Indian Creek is targeted as a potential restoration area because it connects upland and lowland areas. Additionally, it could become a model project since it is a typical example of creeks that have been channelized for agricultural purposes (Bettman, 1996). Instituting WCE status for this area could provide a number of benefits, including the creek's return to a more natural, meandering stream and habitat enhancement which would support more vigorous cutthroat trout populations in the creek and increase its biodiversity (Bettman, 1996).

City of Veneta property that may be exchanged with OCF (see Figure 8, Number 2)

This area will remain mostly under COV ownership. This parcel includes the "Borrow Pit" which was constructed by the COV to provide soil during the 1993 expansion of Highway 126. The Borrow Pit was designed to be shallow and rectangular to facilitate its future use as an additional sewage lagoon for the COV. Although habitat values were not considered when the pit was developed, it now functions in some low value wildlife capacity which could be greatly enhanced by modifying the pit's design<sup>17</sup> (Bettman, 1996).

City of Veneta property used for OCF camping (see Figure 8, Number 3)

This area, referred to by the OCF as "The Far Side", is currently owned by the COV. The COV allows the OCF to use this property each year for camping during the fair.

City of Veneta property with *Lomatium bradshawii* (see Figure 8, Number 4)

This 26 acre property is owned by the COV and provides habitat for the *Lomatium bradshawii* (Bradshaw's desert parsley) which is listed by the federal government as an endangered species of wetland prairie plant. Out of the total acreage, 5.75 acres are within Veneta's Urban Growth Boundary (UGB) and zoned "Industrial

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<sup>17</sup> Some of the design changes could include extending the pit's length to expand the edge habitat, and altering the water depth to enhance pond habitat diversity. In addition, planting more native species in and along the pond should be encouraged as it would discourage the establishment of exotic or "invasive" vegetation.

Commercial", while the remaining 20.25 acres are outside the UGB and are zoned "Agriculture" (Bettman, 1996:47).

A wetland delineation study completed by Salix and Associates in 1992<sup>18</sup> indicates that nearly the entire property is a high quality wetland which is dominated by native plants and provides ideal habitat for *Lomatium bradshawii*, although some of the site is *Lomatium* habitat. Another study completed by the Nature Conservancy in 1991 found approximately 2,300 *Lomatium* plants on this site (Bettman, 1996:47). Because the *Lomatium* is endemic to the Willamette Valley, the number of plants located on this particular parcel represents a significant population of this wetland species.

This parcel is becoming overgrown with trees which in time will shade out the *Lomatium* (Bettman, 1996). In addition, areas previously impacted by rodeo and softball use have been invaded by weedy vegetation (Bettman, 1996). According to the report completed by Salix and Associates,

*"development on the northern four fifths of the site which is outside the Veneta UGB would probably not be allowed on the site or if it were it would be very limited in area and would require expensive mitigation nearby. Commercial or industrial development or urban level residential development would necessitate an amendment to the UGB, which would be accomplished through amending the comprehensive plans of Veneta and Lane County. It would be necessary to demonstrate that the parcel proposed for addition to the UGB was the most suitable parcel for urban development compared to all other similar parcels on the UGB perimeter (as directed under Goal 14). This would be very difficult or impossible to do as the wetland and ecological values of the site would be rated very high under a Goal 5 (natural resources) analysis when compared to other sites on the UGB perimeter"* (Bettman, 1996:47).

Implementing a Wetland Conservation Easement on this land could serve a number of functions including: enhance, preserve and protect endangered species habitat; remove invasive exotic species; limit access to prevent plant damage; and educate the public. Periodic mowing could be conducted to eliminate tree seedlings.

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<sup>18</sup> Salix and Associates of Eugene, Oregon completed a wetland delineation of this (and other nearby) sites in May 1992.

Larson Property (see Figure 8, Number 5)

The Conservation Easement being considered for the Larson property would terminate agricultural uses of the wetland portion of the property. It may include the riparian areas on the western edge of the property.

2.4 Conflicts: Wetlands and Development

As noted previously, the United States has lost over half of its wetlands since colonial times due to land that was developed for a variety of reasons (Runyon and Helland, 1995:vii). Until very recently, U.S. government policies were intended to encourage or subsidize wetland conversion for agriculture or other purposes that were inconsistent with wetland functions (National Research Council, 1995). To date, a significant proportion of America's wetland losses resulted from conversion to agricultural use, but it is the major cause of loss at the present time (Mitsch, 1995:159-160; 545).

Urban development caused most wetland losses along America's coastal areas and this trend continues at the present time (Mitsch, 1995:548; Urban Land Institute, 1990:18). The rate of wetland loss due to urbanization varies but already exceeds 90% in states such as New Jersey, Texas, New York, California and Florida (Urban Land Institute, 1990:18). Some of America's largest cities<sup>19</sup> were built on drained, filled and developed wetlands. Two important social functions were served by wetland filling: additional lands were created for development, and cities were rid of lands considered to be "socio-economic nuisances" and sources of "disease and pestilence" (Urban Land Institute, 1990:1; National Research Council, 1995).

By the 1970's, Americans became much more aware of the importance of wetlands and concern over their losses increased (National Research Council, 1995). This created a climate of political support for the comprehensive protection of wetlands. The 1970's marked the beginning of federal wetland regulation on a broad scale which

has since been extended to include nearly all wetlands in the United States. At the same time, international cooperation over wetland conservation was formalized with the signing of the "Ramsar Convention", a global treaty adopted at an international convention held in Ramsar, Iran<sup>20</sup>. To date, wetlands are the only ecosystem type in the United States to be comprehensively regulated across all public and private lands (National Research Council, 1995:1).

Despite the international, federal, state and local laws now in place to protect wetlands, they are still under threat from real estate and agricultural development, and will likely face increasing development pressures (Urban Land Institute, 1990:2). Some experts believe that wetland conflicts may intensify, claiming:

*"conflicts between development and environmental protection are likely to become increasingly common as urban communities continue to expand into exurban and rural areas. These conflicts become particularly acute in areas that are rich in wetlands or endangered species and that also have strong real estate markets-areas like Austin, Texas; San Diego, California; Orlando, Florida; and Lindhurst, New Jersey" (Porter and Salvesen, 1995:1).*

Others support this view and claim *"like a cold Canadian air mass colliding with warm tropical winds, the disparate forces of development and protection have generated a storm of controversy. Why? Because of the incompatible demands placed on wetlands"* (Urban Land Institute, 1990:2). Dr. Joy Zedler<sup>21</sup> extends these concerns to include their impacts on biodiversity loss:

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<sup>19</sup> Includes cities such as Boston, New Orleans, New York, Philadelphia, San Francisco, Seattle (Urban Land Institute, 1990: 1).

<sup>20</sup> In 1971, an international conference on wetland conservation was held in Ramsar, Iran. The outcome of The Convention on Wetlands of International Importance is commonly referred to as the *Ramsar Convention* because of the conference's location. This global treaty provides the framework for international wetland protection as habitats for migratory fauna that transcend international borders and for the benefit of human populations that depend on wetlands. As of 1995, 74 countries joined the *Ramsar Convention*. In 1987, a permanent secretariat was established at the International Union of Conservation of Nature and Natural Resources (IUCN) in Switzerland (National Research Council, 1995:576).

<sup>21</sup> Dr. Joy B. Zedler is a Biology Professor and has been Director of the Pacific Estuarine Research Laboratory at San Diego State University. She was a member of the National Research Council's Committee on Restoration of Aquatic Ecosystems.



*"despite the threats to biodiversity, development of wetland habitat is still permitted by regulatory agencies if project damages can be mitigated by improving wetlands or creating new wetlands from uplands...The concept sounds reasonable, but biodiversity is continuing to decline. Why? First, the process allows a loss of habitat acreage. Second, there is no assurance that wetland ecosystems can be manipulated to fulfill restoration promises. The magnitude of the problem is well illustrated by examples from southern California, where more than 75% of the coastal wetland acreage has already been destroyed, where wetland-dependent species have become endangered with extinction, and where coastal development pressures rank highest in the nation" (Zedler, 1988:317).*

Both environmentalists and developers claim that existing federal and state regulatory programs fail to provide adequate protection for wetlands and associated endangered species, as well as guide urban growth in a consistent, rational manner (Porter and Salvesen, 1995; Urban Land Institute, 1990). For some time now, the environmental community has complained that the case by case permitting process causes "death by one thousand cuts" to environmentally sensitive areas (Porter and Salvesen, 1995:2). This refers to the minimal impact each individual development project may have on a specific wetland, compared with the cumulative impacts that become significant over time because a project slowly diminishes the ecological integrity and health of an entire wetland or habitat ecosystem (Porter and Salvesen, 1995).

Developers also criticize the regulatory process governing wetlands, claiming that they must work under a system characterized by delays, inconsistent decisions, objectives and guidance, as well as lack of coordination between different levels of government. These problems were highlighted over ten years ago in a report completed by the Office of Coastal Zone Management:

*"Developers may obtain all necessary state and local permits only to have a project denied by federal agencies. Often this occurs after specific sites have been selected, land acquired, local permits obtained, and large sums of money invested in engineering drawings, site investigations, and environmental analysis" (Porter and Salvesen, 1995:2).*

The situation becomes more difficult with government policies that may encourage developers to build on wetlands designated for residential development



according to local zoning maps, yet are subsequently contradicted by federal agencies claiming that the area cannot be developed (Porter and Salvesen, 1995). Additionally, the relationship that often exists between the ACOE and other federal agencies regulating wetland activities is often antagonistic rather than cooperative (Urban Land Institute, 1990:2).

As policymakers realized the failure of regulatory programs to reconcile conflicts between development and environmental protection, they initiated steps to develop collaborative planning processes. Some jurisdictions try to address these conflicts within a more coordinated framework that provides a more predictable permitting process and works with all affected interests - developers, environmentalists, regulators and communities. However, there are still relatively few examples of this kind of effort being implemented, and the conflicts over wetlands continue (Porter and Salvesen, 1995). Wetland Conservation Easements provide one example of the efforts that are being made to address these issues using a more flexible, and hopefully successful problem-solving approach to land and natural resource protection.

### 2.5 Wetland Conservation Easements

Easements maintain a unique niche in land protection tools, as they are between outright public or non-profit ownership and government land-use regulation. Although a relatively recent phenomena (Diehl and Barrett, 1988), easements are more permanent and (often) more restrictive than land use regulations which can change with shifts in political power and control (Edney, 1998; Diehl and Barrett, 1988). Simultaneously, easements are designed to match the protection needs of a specific property and the wants of an individual landowner. Easements keep property in private ownership and subject to taxes, and result in a lower price for land than if it were purchased outright (Diehl and Barrett, 1988).

A model Conservation Easement<sup>22</sup> (CE) is a guide rather than a rule. Its intention is to provide a reliable standard reference on drafting issues by offering an analytical framework for problem solving (Barrett and Nagel, 1996). In its most basic form, a conservation easement is a conveyance<sup>23</sup> that includes a number of essential terms, and recently has evolved into a contract in addition to a conveyance (Barrett and Nagel, 1996; see Appendix C,D). CE are used in most American states, however, there is little uniformity regarding requirements, validity, enforceability and tax implications of easements. Therefore, it is crucial that legal assistance be sought by those contemplating use of an easement in any way (Diehl and Barrett, 1988). An example of a CE is provided in Appendix E.

### Definition

The easement process is a legal definition of ownership and property rights rather than a definition of protection:

*"The nice thing about an easement is it becomes a part of the deed...and basically by the (going) part of the deed is privately enforced rather than publicly enforced...which basically takes the state out of the role of enforcement on the protection end of this stuff...the easement basically puts a private player into a currently public process, whose focus would be on protection as opposed to development"* (Edney, 1998).

Conservation Easements (as noted in Chapter I) can be defined as "a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property" (Diehl and Barrett, 1988:5)<sup>24</sup>. Each CE has restrictions pertaining to a specific property and the property owner's interests (Diehl and Barrett, 1988). That is, CE can transfer certain rights and privileges concerning use of

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<sup>22</sup> "Conservation Easement" refers to all easements granted for a conservation purpose- all essentially similar restrictions on land use - historic preservation easements, agricultural preservation easements, scenic easements, open space easements, forever-wild easements, conservation restrictions, restriction covenants, etc. (Diehl and Barrett, 1988:2).

<sup>23</sup> The 1980 Oxford American Dictionary defines a conveyance as a legal document that conveys land, that it relates to the transferring of land ownership.

<sup>24</sup> A Conservation Easement can also be defined as "a legal agreement that a property owner enters into to restrict certain uses of the land. The easement is recorded on the property deed and therefore 'runs with the land'. It legally binds all present and future owners of the land to the specified instructions, thus providing permanent or long-term protection. To establish it, a 'holder' or 'grantee' must be named as the willing recipient responsible for oversight of the terms. This would be a government agency or a private non-profit. If this mechanism is a gift, it may also qualify as a charitable contribution" (Leibowitz, 1995:71).

land to specified individuals or organizations without transferring the land title. Some of these "rights" may include subdividing the land, restricting access, or timber harvesting. If a property owner wants to retain certain rights while giving away others, they grant an easement to a third party and articulate the specific rights in the easement document.

Easements can be distinguished in a number of ways. "Affirmative Easements" allow the party acquiring the easement to perform affirmative acts on a property such as gaining access to wetlands. A "Negative Easement" requires landowners to refrain from certain activities. Easements are also named according to the resource it protects, so that a wetland conservation easement is intended to protect wetlands (Diehl and Barrett, 1988).

Conservation Easements can be an effective tool to protect the ecological integrity of conserved habitat, although some experts caution that they are "*only as effective as the efforts made to monitor and ensure compliance*" (Marsh et.al., 1996:208). The foundation of the monitoring process is the baseline data collected when the easement was first developed or acquired; one of the benefits of an easement is that it can yield federal income tax savings<sup>25</sup>, therefore baseline data is required by the Internal Revenue Service for those landowners claiming income tax deductions for easement donations (Diehl and Barrett, 1988).

### Goals

Conservation Easements are granted to protect land or historic buildings from inappropriate development *while retaining private ownership* (Diehl and Barrett, 1988:6). Granting an easement in perpetuity means the owner is assured that the resource values associated with their property will be protected indefinitely, regardless of future ownership over that property.

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<sup>25</sup> The Internal Revenue Service (IRS) has criteria by which easements qualify for US federal income tax deductions, including estate taxes. They can also reduce property taxes. The criteria are articulated in the IRS Tax Code, and IRS regulations for five specific resource categories (Diehl and Barrett, 1988:12-24, 51-60).

Wetland Conservation Easements like the ones proposed for the study area can provide a number of benefits. In general, the land's economic value would be reduced at the same time they maximize others that are more ecologically based. In addition, WCE can minimize the threat of development to these properties as the land becomes less valuable for development purposes.

One significant incentive for landowners to consider and implement Wetland Conservation Easements is the funding available to them through the Wetlands Reserve Program (WRP). The WRP is a voluntary, nationwide program intended to restore and protect wetlands on private property. It gives landowners the chance to receive financial incentives to enhance wetlands in exchange for "retiring" of marginal agricultural land. It is administered by the United States Department of Agriculture - Natural Resource Conservation Service (NRCS)<sup>26</sup>.

The WRP was authorized by the U.S. Congress under the Food Security Act of 1985, and amended by the 1990 and 1996 Farm Bills (USDA Wetlands Reserve Program Fact Sheet). In 1996, a cooperative agreement was signed by the National Resource Conservation Service (NRCS) and the National Fish and Wildlife Foundation (NFWF) that established a new \$10 million partnership under the Wetlands Reserve Program (WRP) to conserve and restore agricultural wetlands using voluntary easements. The purposes of the WRP Partnership fund include:

1. *extend NRCS contributions under the WRP program by attracting matching funds;*
2. *expand participation in the WRP program by joining forces with diverse conservation partners and the expertise and innovations they can contribute (Environmental Law Institute, 1997:14).*

The WRP benefits entire communities by improving water supply and quality, enhancing wildlife habitat, and reducing both soil erosion and flooding (NRCS, 1997). It offers landowners the opportunity to protect, restore, and enhance wetlands on their



property, and provides them with technical and financial support in return (NRCS, 1997). Payment for lands enrolled in the program is based on the agricultural value for wetlands that were previously drained and converted to agricultural uses.

The WRP guidelines enable landowners to retain control over access to their property. Additionally, landowners maintain ownership including the right to hunt, fish, trap, and pursue other appropriate recreational uses. They may request uses that are compatible with the program's goals of protecting and restoring wetlands and upland habitats and may do so throughout the life of the easement or agreement (NRCS, 1997). Landowners can choose to sell or lease land enrolled in the program.

The WRP offers landowners three options to protect, restore and enhance wetlands and related uplands. These include permanent easements, 30-years easements, or 10-year restoration cost-share agreements. The details of each option are listed in Table 3 (NRCS, 1997).

Table 3:  
Wetland Reserve Program Landowner Options

<i>Permanent Easements</i>	<i>30-year Easements</i>	<i>Restoration cost-share agreements</i>
<ul style="list-style-type: none"> <li>conservation easements held in perpetuity</li> </ul>	<ul style="list-style-type: none"> <li>expire after 30 years</li> </ul>	<ul style="list-style-type: none"> <li>10-year agreement (special circumstances may warrant longer time periods) to restore degraded or destroyed wetlands and associated upland habitat</li> </ul>
<ul style="list-style-type: none"> <li>the easement is attached to the property deed to ensure future property owners will preserve the wetland for generations</li> </ul>	<ul style="list-style-type: none"> <li>payments are 75% of what would be paid for a permanent easement, and 75% of restoration costs</li> </ul>	<ul style="list-style-type: none"> <li>USDA-NRCS pays 75% of restoration costs</li> </ul>
<ul style="list-style-type: none"> <li>USDA-NRCS pays 100% of restoration and legal costs to establish the easement</li> </ul>	<ul style="list-style-type: none"> <li>USDA-NRCS pays 100% of legal costs incurred to establish the easement</li> </ul>	<ul style="list-style-type: none"> <li>No easement is placed on the property, and there is no easement or other land incentive payment</li> </ul>
<ul style="list-style-type: none"> <li>the landowner receives a payment for a permanent easement which will be the lesser of:               <ol style="list-style-type: none"> <li>the geographical area rate cap which is obtained from the local NRCS office;</li> <li>the land's appraised agricultural value;</li> <li>an amount offered by the landowner</li> </ol> </li> </ul>		

Source: NRCS: 1997.

<sup>26</sup> The Natural Resource Conservation Service (NRCS) is part of the United States Department of Agriculture, or USDA. The predecessor to the NRCS was the Soil and Conservation Service, or SCS.



The WRP eligibility criteria pertains to the landowner and the land itself. Landowners must own the land for at least a year prior to enrollment, although there are limited exceptions that may apply. Those interested in the 10-year restoration cost-share agreement are only required to provide evidence of ownership. Requirements regarding the eligibility of the land itself is summarized in Table 4.

Table 4:

WRP Eligibility Criteria for the Land

<i>Eligible Land</i>	<i>Ineligible Land</i>
<p>Land must be restorable and suitable for wildlife benefits, including:</p> <ol style="list-style-type: none"> <li>1. wetlands cleared and/or drained for farming, pasture, or timber production;</li> <li>2. lands adjacent to restorable wetlands that contribute significantly to wetland functions and values;</li> <li>3. previously restored wetlands requiring long-term protection;</li> <li>4. upland areas needed to provide an adequate ecological buffer or otherwise contribute to defining a manageable boundary;</li> <li>5. drained wooded wetlands where hydrology will be fully restored;</li> <li>6. existing or restorable riparian habitat corridors that connect protected wetlands;</li> <li>7. lands substantially altered by flooding where it is likely that successful wetland restoration can be completed at a reasonable cost.</li> </ol>	<ol style="list-style-type: none"> <li>1. wetlands converted after December 23, 1985;</li> <li>2. certain Conservation Reserve Program contract lands where trees have been successfully established;</li> <li>3. federal lands;</li> <li>4. lands where conditions make restoration impossible.</li> </ol>

Source: NRCS: 1997.

The WCE helps protect a number of important ecological functions. For example, they facilitate continuity in the area's hydrology cycles by maintaining connectivity between wetlands and areas prone to flooding. They enhance wetland ecology in other ways, including:

- *maintaining refugia for flora and fauna;*
- *providing a resting place, especially for migratory birds;*
- *continuing connections that are critical to flood dependent species;*
- *creating a variety of ecological habitat in different stages of succession.*

Additionally, WCE could help maintain parkland and provide for a large open space area, which may benefit an area like Veneta as a result of increased tourism.

The Conservation Easement is still a relatively new tool in the protection of land, natural and cultural resources. The enforcement of CE is still too infrequent, which some believe reinforces the need to draft well-crafted easements that include clear statements

of its purpose, the conservation values intended for protection, and the public benefit to be derived from it (Barrett and Nagel, 1996:xiii). Despite this, CE role in protection of natural and other resources is becoming more prominent, and its use has become more ubiquitous (Barrett and Nagel, 1996; Diehl and Barrett, 1988).

## CHAPTER III

### CRITICAL ISSUES IDENTIFIED BY THE INTERVIEWEES

The conflicts between wetlands and development are numerous and ubiquitous. As noted in the literature, the complexity of the problems is compounded by their interaction with ecological, economic, environmental, political, and social concerns. To further my understanding of these issues and their relationship with wetland protection and planning tools like Wetland Conservation Easements (WCE), I conducted a number of interviews that were outlined in Chapter I. During the interview process, the interviewees discussed a range of topics which are summarized in Table 5. In addition, there were a number of subjects that were mentioned in less detail such as historic restoration, cultural values and commitment.

Table 5:

Major Topics Discussed By Interviewees

TOPIC	NUMBER OF INTERVIEWEES WHO DISCUSSED TOPIC
Access	2
City of Veneta wastewater & sewage needs	2
Communication, building relationships, cooperation	7
Compatible Use	2
Concern over easement language & specifics regarding creation of new wetlands	2
Conservation Easements are devoid of political influence	2
Education and consciousness raising	3
Financial incentive/money	5
Fosters win-win situation	6
Management, security, certainty and monitoring	4
Ownership, property rights	1
Personal legacy	1
Protection and corridors	5

After carefully considering all of the ideas that were raised during the interview process, I chose five themes to identify and discuss in this part of the case study. I selected these specific themes because they were the issues most frequently mentioned by the interviewees and seemed to be subject to the most prominent concerns. They are also critical to the overriding question of how we can resolve the intensifying conflicts between wetland protection and development pressures.

The five topics that I will discuss in this chapter include: *communication and education; management and certainty; financial incentive; fostering win-win situations; and protection and corridors*. Given how difficult it is to separate education, consciousness raising and communication, I will consider these as one theme and discuss them accordingly. The critical issues that I present in this section include the points over which interviewees agree as well as those where they express dissent. Although the topics listed in Table 5 are equally important, only a few of them can be adequately addressed within the limited scope of this paper.

### 3.1 Communication and Education

Conservation Easements (CE) can provide a number of opportunities to improve communication and help develop relationships between otherwise disparate parties. They may also educate the public and increase their awareness about land and environmental issues. This will happen depending on the circumstances surrounding each situation, and the degree to which the parties with vested interests in the easement share common goals.

Within the context of easements, there exists a relationship between the property owner and the party that purchases the easement (Brown, 1998). One of the roles that CE may have is to help forge new relationships between property owners,

easement purchasers and other potential partners including adjoining landowners, by providing them with an opportunity to discuss their interests and other issues (Makinson, 1998).

In the study area, CE could help redefine a relationship between the OCF and the COV as noted by one respondent who said:

*"...if I had to speculate about this particular situation, it seems like the OCF can create terms...so one thing it can do is provide a mechanism for them to interact with each other, and build a relationship that is based on ...mutual goals, and in this way build trust, and open up lines of communication...because they also have to deal with each other on other issues, so it's a kind of win-win situation for both sides..." (Alverson, 1998:2).*

Similar ideas were elaborated by Veneta's City Manager, Jan Wellman:

*"...this is a good joint project between us and the Country Fair - I mean it's really something that we're cooperating on...there's no animosity here...it's a real cooperative effort right now...see, you never know. City Councils can change, Managers change...we've got a working relationship with the Country Fair...we'd like to work with them...as changes in the future...that's...why...we're trying to get this done, get this arrangement in place" (1998:8).*

The idea of relationships with the land, and other people which encourages community building, are central to the philosophy behind the Oregon Country Fair. Leslie Scott, the OCF General Manager, says *"...lots of people at the Fair have very powerful relationships with the land. Many people have a real sense of ownership - it's kind of...it's their land in the sense that it's their community and family really..."*. She also notes that some OCF members hesitate to become involved with "outside" interests like the federal government. Since these Fair members fear the easement process will diminish the OCF's ownership of its land by placing it in someone else's hands, this may be the first major source of conflict for the OCF to address in the



easement process. However, Scott believes that once concerned OCF members are educated about the easement process and learn how it works, their fears will subside.

Scott says that one of her primary interests in CE is protecting the land, regardless of what happens to the Fair, and that the overriding issue is really "*what do you think most protects the land?*" (1998:5). Scott believes that people's relationship to the land is a primary part of their intent to protect it. Therefore, she expressed concern over OCF members who may lose their sense of ownership because they misunderstand the issues related to wetlands and easements. This may mean that they will lose interest in the land and their stewardship of it. For this reason, she says it is critical that this first "*hurdle*" be overcome so that their sense of ownership is not diminished in any way (1998: 5).

Scott (1998:8) believes that the OCF would be more integrated into the "*landscape of the community*" if a relationship with the land was based on a sense of place. This connection would be derived from a different type of substance, character, and quality that would occur when a natural system is restored to the best possible extent. When this takes place, many different types of people will more readily make commitments as stewards to the land. As it thereby becomes cultural in focus, it also evolves into an environmental project about a relationship with a place as well as people who are working together.

According to Scott, those favoring the WCE believe the benefits far outweigh the risks, and will encourage an understanding and relationship with Veneta:

*"a lot of the future of the Fair depends on these relationship and on not having this thing, you know...this creepy thing over there...but as an integral part of this community and the landscape, completely woven in..it's a real opportunity to do something as a partner...if we can, you know, in the love of this place the sort of artificial cultural trappings that we believe keep us apart really fall away. That's why I say it's more a cultural project in a way...a community development project, rather than an environmental or an economic development project" (1998:9,10).*

Scott believes that the CE process will raise OCF members' consciousness about wetlands issues. She says the process would be very educational and would *"really speak to our mission...it would certainly speak to our highest value, to me, which is reverence for the land - to restore wetlands, to restore Indian Creek, and to make sure that this land is protected from development"*. Working on these issues would enable people to *"get their hands in the dirt...plant the plants...collect the seeds"* and make it more of a reality to people. Scott sees this kind of experience as an opportunity to visibly assert the OCF's values and *"an ongoing way to bring us all together really around the stewardship of the land - I just can't think of a more wonderful way to do it frankly"* (1998:6).

According to Mary Kentula (1998), it is the educational aspect of WCE that is primarily responsible for its success in resolving development and wetland conflicts, and fostering protection of wetland functions and values. Dr. Kentula notes how critical it is for developers and landowners to understand the ecological and economic benefits of WCE, and how few people understand the "amenity value of natural areas". Kentula says *"the wetland may function marginally, but because of the potential for people to*

*learn about and appreciate wetlands the value of the site may be quite large. An informed citizenry is important"* (1998:1).

Larry Devroy of the Oregon State DEQ also applauds the link between education and WCE. He maintains that protecting the land and inhibiting adverse activities from occurring on it will usually enable a wetland to improve its function over time:

*"I think what helps more than anything else is the wetland starts to look good...I hate to say that, but a lot of people get very worried about a wetland in their subdivision or on their property when it looks good and attracts wildlife...so it starts to function like a natural wetland and then people become concerned...if you look at it and it looks like it's functioning well, and that means various things to various people...if it looks good, then people are going to kind of adopt it, and if it looks bad, they'd like to get rid of it. So from a lay person's point of view, CE may keep somebody out of it longer, or keep people away from it enough so that it can start to look good and be something that people want to be associated with in their neighborhood"* (1998:13-14).

Art Farley's analysis of WCE and education centered on the role that participation plays in raising people's awareness of issues. Dr. Farley, a member of the City of Eugene Planning Commission,<sup>1</sup> said:

*"just participating kind of raises the level of awareness and complexities of issues that a lot of times people don't understand on the other side...learn about what will make it successful. And also, throwing in the equation, OK, just as the City of Veneta and the Country Fair...is the wetland...or general stakeholders in the future that will depend on the ecosystem - so that kind of is elevated...the silent partners get heard for something...the silent partners...the federal government's wetland policies...environmental activists and others...have a direct voice...So I think the big thing is...accepting of the other side - educating the uneducated. Only after you do that can you then hope to find a solution* (1998:4).

### 3.2 Management and Certainty

As noted in Chapter II, both environmentalists and developers criticize existing wetland regulatory programs for a number of reasons including their failures to guide urban growth in a consistent, rational manner (Porter and Salvesen, 1995; Urban Land

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<sup>1</sup> Dr. Farley is also Coordinator of Friends of Eugene/Springfield Habitat.

Institute, 1990). It is therefore crucial that developers, regulators, environmentalists, and the public have clear guidance and certainty from wetland regulations that facilitate collaboration and conflict resolution, rather than discord and intensified hostilities. Certainty over wetland decisions, in conjunction with management issues, must be adequately addressed so that they are factors leading to the success of WCE instead of their failures.

Allen Makinson (1998) addressed these issues within the context of the Wetland Reserve Program and its management role over WCE. Because the WRP guidelines are based on historical restoration, the NRCS would refer to this and help facilitate solutions should conflicts develop in Veneta as the WCE are considered. For example, if either the 30 year or perpetual easements were agreed upon in the study area, the NRCS pays the operations and management costs. Aside from restoring the local hydrology, once a wetland prairie area is established, haying, mowing or brush control would probably be the only operations and management issue remaining so that the area remains open wetland prairie and does not evolve into an ash grove.

The NRCS does have management responsibilities pertaining to the deed until a plan is in place with the property owner who would take over management responsibilities. The NRCS could also delegate the WCE management role to another entity such as The Nature Conservancy (TNC). Assuring proper management over the easement is a crucial factor in providing the certainty that the wetlands will be properly maintained under the easement status, regardless of the property ownership.

The WRP agreement articulates the monitoring and evaluation to be conducted for WCE. It states specific requirements about that status reviews that must be completed for each WCE contract. In general, these stipulations ensure the plans are



being followed according to the management specifications. Makinson thinks that combined with the WRP guidelines, the legal agreements and management plans assure considerable certainty and security for WCE and "*as far as the wetlands go it's a good deal*" (Makinson, 1998:5).

Concerns over management of proposed WCE were expressed by Leslie Scott of the OCF. She asked "who is going to be...looking at what, and what's the best way to go with that, how much can the Fair really do...and...there's monitoring projects...and *lots* of stuff to do" (1998:7). Scott postulated that perhaps a group like TNC would eventually micro-manage some of the WCE which could simultaneously raise issues surrounding compatible use of the land.

To some OCF members, easements may seem like a question of risk assessment, "*a big 'if'*". She notes that the "*unknown*" is a factor that is real and must be considered (1998:7). The idea of a WCE may be a vision held by only a few people at the Fair, and Scott says "if it won't spread beyond us, then I don't think it will fly". She thinks the OCF Board sees this as an exciting possibility but views it with caution and wants to explore it further and answer uncertainties about management, monitoring and related issues such as compatibility and use.

To Larry Devroy from the Oregon Division of State Lands (DSL), the notion of certainty is very important, and is a positive attribute of the easement concept. He believes that "*the most important thing is to be able to give somebody a clear picture quickly of what they're getting into*" (1998:4), and that this is facilitated when a CE exists on a property that is being considered for purchase. According to Devroy (1998:5), "*with the Conservation Easement, the idea is of having certainty...it will spell out about activities that are allowed, those that are prohibited, all the terms that come*

*to bear in terms of protecting the resources. Somebody can see what it means in clear language”.*

Having a CE in place helps to avoid problems that may develop under certain circumstances. For example, conflicts may arise in a situation where less than ½ acre of mitigation is required; without an easement in place, the limitations of activities that may occur on that land are unknown. This is a recurrent predicament people face when they purchase property with wetlands on it, but are unaware that it is also a mitigation area. Under different circumstances, potential property buyers can complete normal property purchase procedures, after which they can check with the government agency holding the land title records to determine whether there is a CE or deed restriction in place that encumbers the property or associated resource. Although this is not always the case, in general it means that choices will be made based on complete information about the land or resource in question which gives the interested party or stakeholder the certainty they need to proceed with their decision (Devroy, 1998).

Devroy notes another way that easements contribute to certainty over decisions regarding wetlands, land, development and related issues:

*“if you have a Conservation Easement on a wetland, it’s an obvious indication that the state realizes it’s there, you realize what the terms and conditions are, in terms of what you can and cannot do, and if you buy property without paying more than you should - planning to develop it for some kind of a construction project, you’re assuming there’s so much fillable area and/or that you could get permits for it and you can find out that you can’t there’s a Conservation Easement there - then that saves you a lot of hassle in the long run” (1998:6) .*

Additionally, Devroy (1998) advocates that easements enhance resource protection, at the same time they protect the buyer or seller from making assumptions that are inappropriate for that particular resource and its future.

Design, monitoring and management are important concepts to Devroy who notes that they must be implemented if the goal with a wetland restoration or WCE is to be achieved. The end result may not be exactly what was sought or anticipated, but given the many variables that effect wetland functions, "*getting something that's approximate is much more...I think realistic, and that happens fairly often*" (Devroy, 1998:12). Devroy cautions "*there's no one thing that does everything and is 'the' solution*" (1998:6), rather it is the combination of easements, regulations, and state guidelines that facilitate the protection of wetland ecosystems.

### 3.3 Financial Incentive

Some of the most significant incentives that encourage landowners to implement WCE are the financial benefits that are available to them. The two that are most widely used are federal income tax deductions (see Appendix C), and financial assistance offered by the WRP (see Table 3). As described in Chapter 2, the goals of the WRP are to restore and protect wetlands on private property. It is administered by the United States Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS).

Tax incentives are made available for property owners to use an easement as a donation to a non-profit organization, which provide the landowner with significant economic benefits (Brown, 1998). The benefits to a non-profit organization are typically the costs of purchasing a CE versus outright purchase of the property. Purchasing land is one alternative to easement status for those concerned with protecting land or natural resources. In that case, the property may be purchased by a local government or non-profit group which pays a fair market price to the property owner, or some other reasonable price that the stakeholders agree upon. Generally, it is cheaper to institute

easement status than it is to pay the fair market value<sup>2</sup> for a property and gain title over it (Brown, 1998:1).

Tracy Brown of the Lane Council of Governments (1998) believes that easement status and other types of protection such as natural resource protection status provide almost the same end result. The difference is the name that will continue to hold title to that land and appear on the deed. A CE is a tool that protects property and benefits the property owner with tax breaks. In contrast, there is no financial compensation for the owner of land designated with natural resource protection status, so their only incentive is the assurance of their property's protection based on that special designation.

For landowners that are reluctant to deal with easements, a major selling point can be the financial benefits they will accrue while simultaneously engaging in various activities on their land. During the interview, Brown expanded on this further as he discussed the relationship between reluctant property owners, altruism, and the financial incentives with easement status:

*"they could get a tax break and if they have more altruistic interests then they could be assured this property will be protected after they're gone...to the reluctant property owner who's not thinking of anything but themselves, that may not be much of an incentive. But, who knows...that's why a lot of people do it, I think, towards the end of their time, and they do it so they don't burden their heirs...they love that piece of property and they don't want to see it ruined some time in the future, so they pass it off to a non-profit that will keep that nice in perpetuity...the non-profit can sell it too, but there's a certain amount of trust there...groups like The Nature Conservancy...they have a track record, a long term trust" (1998:5).*

Given the relationship between an organization's financial status and its ability to manage property and pay taxes, losing the primary income source that covers their costs could create significant financial concerns. With regards to the Oregon Country

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<sup>2</sup> A sale "at fair market value" means the owner gets the full market price for his/her property (Leibowitz, 1995:70).



Fair, Brown notes that it has been around for many years but it is under constant attack. Brown thinks that those who oppose the OCF question its operations rather than its ownership of the land. If the OCF lost its property or had its operations were terminated, its ability to continue managing the property and paying the taxes on it would be jeopardized unless there was another income source available. The situation would be similar for an organization like TNC as it heavily relies on grants and donations as well as its membership base (Brown, 1998).

While Brown noted that outright purchase is more costly than the CE, he favored outright purchase as the preferred option for protection of land and resources. He added that this is based on the prospective buyer's ability to afford the purchase, and the property owner's willingness to sell it (1998:6). To him, clear title to land *is "just cleaner, it's easier.. as to what, who, what's going on...is just cleaner"* (1998:4). Because outright purchase is more costly than easement status, landowners may opt for a CE until they can afford to purchase the area outright which is a common scenario for many land trusts that want some degree of protection implemented.

The WRP funding provides a major incentive to any person or organization considering an easement. (Farley, 1998; Makinson, 1998; Scott, 1998). One of the most significant expenses incurred by those establishing easements are the legal costs (Makinson, 1998). These include the survey itself and having the survey results legally recorded<sup>3</sup>. Under WRP guidelines, the USDA-NRCS pays 100% of the legal costs for establishing a permanent or 30 year easement (see Table 3).

In addition to survey and legal fees, the WRP pays for restoration costs and some portion of the land's assessed value, depending on the length of the easement

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<sup>3</sup> Allen Makinson noted that the USDA-NRCS paid about \$6,000.00 to survey and record the legal results for an area approximately 355 acres in size that was being designated as an easement under the WRP (1998:2).

as well as other factors (see Table 3). This financial assistance is of major importance to an organization like the OCF which would make a considerable financial commitment to implement the easements.

As grant funding is often temporary and precarious, Leslie Scott sees the WRP contribution as a vital element in the OCF's ability to proceed with a vision of having a WCE on its land. Scott said:

*"I don't see another source of funding that's stable...the risk would be enormous but you could get the project, and run out of money and there you'd be...I just don't see where else the money's coming from - to do it...I know the City (Veneta) doesn't have it, and I don't see...a community benefactor or anything like that! ...We may be able to fundraise for it, but...just having people to spend time on it, that are able to spend time on it, and having people that we're sort of partnered with available to spend time on it really has been kind of hard right now (1998:9).*

#### 3.4 Fostering Win-Win Situations

Advocates of CE believe they are effective tools that foster win-win solutions and resolve conflicts between wetland protection and development. Their role was succinctly stated by Dr. Mary Kentula in her response to one of the interview questions: "I am impressed with the utility of easements. They seem to be one of the most 'win-win' of the options for balancing the need for environmental protection/regulation and property rights" (1998:1).

Joe Edney of the Oregon State DEQ has always viewed the Veneta situation as being win-win, although it was not the easement that he thought was the key element to facilitate solutions for the stakeholders' benefit (1998). According to Edney, a WCE would function as a barrier, and would require the City of Veneta to proceed with the Clean Water Act fill process if the easement transverses the irrigation pipeline. The

irrigation system must be at least 10 feet from any irrigation system<sup>4</sup>. This poses some challenges, although Edney notes that it is much better to have surface runoff<sup>5</sup> enter a wetland before it merges into a river.

*"DEQ, as a result of the actions of the City of Veneta...the DEQ is getting another public wastewater treatment system, running at a level that is consistent with permit requirements, or better than permit requirements in this case, probably...we always consider that to be a good thing...everything we've seen so far suggests that this situation will work out to the positive both for the City of Veneta, and...it will certainly resolve one of the water quality problems we have in that area...For the City, it puts them in a position where they are probably spending less on wastewater treatment than they would otherwise...And it provides them with some public open space...that public open space would be adjacent to the Oregon Fair, which has been in the past something of a pain...for the City of Veneta...and with them working together to try to resolve all of these problem, it appears that there's a win-win situation all the way around...the Oregon Fair has the chance of additional ground on which they can deal with their problems...and the solution...seems to be pretty decent...the river itself, the Long Tom, the water quality should improve somewhat, especially in the summertime for removal of cattle from grazing on that property adjacent to the river...I'd see it all the way around as being a win-win situation. I think we've worked real hard and diligently toward that point. The history of it - there has been some **real** battles, but we've been...moving into that direction quite well" (Edney, 1998:1-2).*

Tracy Brown thinks that easements do facilitate win-win solutions and minimize conflicts between wetlands and development. However, Brown says that depends on each situation and should be reviewed accordingly. Because a CE is an exchange of the development rights of a property from one entity to another, it is important to ascertain each stakeholder's intention for the land over which they hold title (Brown, 1998).

Ed Alverson, a Nature Conservancy ecologist, saw the potential for an easement in the study area to foster a win-win scenario that would benefit both the OCF and the COV. However, he thought that this would be more related to "*rights and*

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<sup>4</sup>The 10 foot set back from property lines and wetlands is a standard set in DEQ rule. The reference is OAR 340-55-015-Table 1, Buffers for irrigation. OAR 340-55-015(1)through (12) articulates the modifications that can be made (Edney, December 4, 1998).

*exchange for wastewater treatment rights*" than to wetland or endangered species issues (1998:2). He noted that other strategies could be used if the only goal was to protect wetland habitat and rare species, including:

- *the COV retains ownership of the property and develops a CE with the USFWS;*
- *a private land trust with conservation goals purchases the property (Alverson, 1998:3).*

Given the circumstances in Veneta, Alverson thought the easement was a good idea, noting that easements are "*less final than if it was the sale or exchange of ownership of property*" (1998:2). He also commented that stakeholders' motivations, intentions, needs and wants are complex. Moreover, their goals may differ, and in the Veneta area, this may mean the OCF wants to protect wetland habitat and endangered species, while the COV's primary goal may be guarding its water quality (Alverson, 1998). He remarked that stakeholders' perceptions of "*win*" and "*needs*" could be so different that perhaps "*win-win equals the convergence of multiple truths*" (1998:4).

As the COV Engineer, Jerry Elliott (1998:4) said that additional land requirements for easements, access issues, needs or by other interests would mean that the only way Veneta could have a win-win situation would be to "*get that land back*". This would not necessarily be acre by acre, but could also be on a functional basis (Elliott, 1998).

Compromises are a critical element of the "win-win" concept to Art Farley. Dr. Farley believes that the notion compromise must enable people to leave a negotiation process with some sense that "*everybody won*" (Farley, 1998:2). He also says "*you can do compromise so that everybody loses, or you can compromise so that everybody wins. So that's the managed perception that you have to work hard to find out what*

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<sup>5</sup> Spray irrigation systems produce surface runoff, especially during Oregon's frequent, intense winter rain (Edney, 1998:1).



*people are most interested in, and either accept that or seek to change that...in the end, you can get a compromise, so they often say 'gee...you know'..." and walk away feeling that they got more than they would have without this process (1998:2).*

According to Farley, Fern Ridge and wetlands in the study area should be connected so that its ecological functions serve the area as a buffer, and can also be accessed for educational purposes. Farley said, "and that's a 'win'. Some wetlands...are given up for effluent use but at the same time there's a commitment that it will connect and be a better system than it would otherwise. So it's kind of a win-win perspective trying to be developed there as well" (1998:2).

Farley cautions that easements alone cannot protect wetlands. He says they are only one step towards protecting wetland function, and they require the crucial element of commitment to serve as a compromise and facilitate win-win solutions (1998). Not only must stakeholders realize the need to make decisions within a specific time period, but they must also consider "*in the future how to manage, not just what is some decision right now*" (Farley, 1998:4). If interested parties commit themselves to funding or managing the easement, it means the easement will work. However, he cautions that "*any effort, any compromise that isn't supported by a commitment - then it could be a lose-lose situation*" (1998:4). Farley (1998) says that commitment is also necessary if enforcement is to take place. For example, a lack of commitment in the study area could mean that there is no way to ensure the City of Veneta *will* put in access trails and *will* revegetate (1998:5). This highlights the need for commitments to include ongoing work so that an easement is maintained (Farley, 1998).

The Country Fair's General Manager, Leslie Scott is enthusiastic about the easements being considered in the study area, and believes they would result in a "true win-win" solution (1998:8). Scott supports the idea and says:

*"I think we can honestly all have what we want and there are all kinds of wonderful benefits that could come from it that I think we can only just imagine. I mean, if just the project itself were done it would be a wonderful thing, but in terms of our own education, and our own relationships and the quality of our lives and the kinds of ways it could pull us together, and the opportunities for the high school and the community to learn about natural systems and...you know...those are just endless practically...those opportunities to have"* (Scott, 1998:8).

### 3.5 Protection and Corridors

The study area should be viewed as a "whole landscape not just a collection of unrelated problems and solutions" (Bettman, 1996:23). Therefore, any strategies that are developed to address wetland issues in the study area should integrate all related concerns, problems and opportunities. Wetland protection will be an important component of the framework that is developed because it is a fundamental goal of implementing a WCE in any given area.

Wetland protection is complex as it is closely related to a number of other issues, one of the most important being the idea of connectivity. Connectivity allows a wetland to maintain its ecological integrity and productivity. Protection is inextricably linked with threats from development and pollution, both of which exacerbate wetland fragmentation and loss. Inadequate wetland protection jeopardizes the chance for the ecosystem to remain intact, and therefore function at its highest level of ecological productivity.

As noted previously, Art Farley believes that easements cannot provide adequate wetland protection without commitment and long term management. He also

added the role of connectivity in “adequate” wetland protection, and said “*all wetlands should be protected but all wetlands should be **protected and interconnected**. OK, we’ll try to keep the same amount of wetlands we have right now, we’ll give up some of these...it’s perspective*” (Farley, 1998:6). Dr. Farley also highlighted the degree to which wetland protection is a complex and comprehensive process:

*“they’re just one of the steps in protecting wetland functions...other development and activities we know will vary - that’s step 1 - because you already have a chance. Now where is the area and how is that area being connected?...these are key steps. Now overlay that over your key wetland areas and connect it to the other wetlands on the site, you’ve got a good start”* (Farley, 1998:5).

Leslie Scott also emphasized the importance of corridors and connectivity in wetland protection as well as with the study area WCE. Scott (1998:5) said, “*to make a viable ecosystem, there needs to be some sort of minimum size...the idea is to not have a patchwork obviously, but to create corridors or integrated areas*”. She noted that the WCE could be connected and even extend from the study area to the Fern Ridge reservoir (1998). This would protect remnant oak trees<sup>6</sup>, as well the (proposed) Long Tom River Greenway Corridor<sup>7</sup> (Scott, 1998:7).

Annette Lalka of the DSL emphasized the importance of clearly identifying stakeholders’ goals in the easement process, and those for the easement itself. Wetland protection should be based on the degree to which these goals are compatible and if they can accommodate diverse agendas and needs. In the study area, wetlands are getting more protection than they would in other communities because the COV is addressing wetland issues at the local level under the guidance of the Oregon State

<sup>6</sup> Previous to European settlement, oak trees were widespread in the Willamette Valley (Todd, 1998).

<sup>7</sup> Bettman et.al. (1996:23) describe the overall unifying framework that a Greenway would have with preservation and protection of the study area’s natural resources. A “greenway” is an open space easement that protects a long, linear natural area. During the past few years, a proposal has been considered to establish an Upper Long Tom River Greenway. Its purpose would be to protect the natural area along the length of the Long Tom River as it flows north around Veneta, and as it empties into Fern Ridge Lake. The greenway could help buffer the City of Veneta, and contain urban growth with open space.

Planning Goal 5<sup>6</sup> (Lalka, 1998). Lalka said that instituting WCE in the study area would provide “a little stronger protection”, but added that the easements should have clear goals (1998:2).

Lalka suggests that the overriding goals should be “*protection of the wetlands and their values in perpetuity*” (1998:3). Regarding the wetlands in the study area, implementing easements may help maintain connectivity between the wetlands better than if there were no easements in place at all. She said “*if that can be one of the goals of the easement to maintain the unity and the connectivity, and just the sheer...keeping the large pieces in tact as much as possible, that would...if the easements can accomplish that, that’s one of the goals, that would be valuable, sure*” (1998:4).

To Lalka, the decision to use an easement instead of other options should address the following questions and issues:

*“what the biggest threats are, what’s the priority for putting an easement over, and what’s realistic for...based on the agenda as you can see it right now...what’s it likely to look like in 20 years, and how much can we secure up front...and how much of it are we going to see developed, who’s not going to be a willing participant, or what’s going to be the matter of what is an easement...that could be valuable...”* (1998:4).

Lalka (1998) stressed the importance of evaluating wetland protection decisions within a larger context that is based on regional ecological management. Ultimately, this is more beneficial to the wetlands and is conducive to better decision-making overall. Therefore, the study area must be considered along with regional needs and what facilitates the highest functioning wetlands. Lalka added, “...it’s not so much site

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<sup>6</sup> Oregon’s Planning Goal 5 aims to “Conserve open spaces, scenic and historic area, and natural resources. Protect scenic and historic areas and natural areas for future generations. Promote healthy and visually attractive environments in harmony with the natural landscape character. The location, quality, and quantity of the following resources shall be inventoried...fish and wildlife areas and habitats, ecologically and scientifically significant natural areas, wetlands. ...Where no conflicting uses for such resources have been identified, such resources shall be managed so as to preserve their original character” (Leibowitz, 1995:61).



*by site, it looks at...the whole context of the watershed and how this particular wetland is functioning in this context"* (1998:4).

According to Tracy Brown, CE are just one of many legal mechanisms that are available to achieve wetland protection. Brown said, *"there's other approaches that can be as effective, if not more effective, depending on the conditions, circumstances of who owns the property, the willingness of the property owner"* (1998:3). These include natural resource protection zones, or the purchase of a property by a non-profit organization that seeks to protect land and resources (Brown, 1998). For example, Brown thinks the COV would have little problem protecting its property where *Lomatium bradshawii* was identified (see Figure 8). It could protect it using a mechanism like the natural resource protection designation, which would make a CE unnecessary.

Brown suggests that there is little difference overall in the degree of protection offered by easements as compared to other designations:

*"...my impression is the end result in CE versus a designation as a natural resource protection are essentially the same...the difference is who...whose ownership is it going to be the deed continues to be in. A CE is a technique that's used to protect property but its benefit to the property owner is that they are going to get a tax break...so , if a property is just designated natural resource, and there's no exchange of CE and a non-profit, there's no compensation in any other way, the benefit to the property owner is limited to just the project of the property, rather than a financial, or another type of financial incentive. But, you know, the functions and values I think will be maintained and and/or enhanced through either mechanism, and you can have an area protected by CE next to an area that's outright protected...there's not going to be any difference really..."* (1998:4).

Overall, Brown recommends CE as being a good mechanism that can protect property. However, each situation should be evaluated individually so that other approaches that may be more effective and appropriate can be considered (1998). He cautioned that the takings issue must be addressed if private property is involved, since

it could become a significant issue if a private property owner loses their ability to develop their property (Brown, 1998:3).

Joe Edney of the Oregon State DEQ expressed views that are similar to Brown's with regards to easements and the degree of protection they offer:

*"Well, I don't know that the easement would be any **more** protective. The easement works in this particular situation because of the ownership pattern, and the desires of the current owners on what they want a particular hold on and what they want to do. If you're looking at it from a particular protection point of view, there are several different ways that protection can occur...easement process is jut, basically nothing more than a legal definition of ownership and property rights. It's not really a definition of protection. The nice thing about an easement is it becomes a part of the deed...the deed is privately enforced rather than public enforced...which basically takes the state out of the role of enforcement on the protection end of this stuff...but because it does become a wetland, it becomes waters of the state, so it's still under the jurisdiction of the state when it comes to water quality and development as a wetland (1998:2).*

As far as COV Engineer Jerry Elliott (1998) is concerned, development pressures do not threaten the study area wetlands, in part because neither the COV or the OCF have any interest in developing their properties in the study area. Moreover, he thinks the protective strategies are already in place to safeguard Veneta's wetlands, and he is *"far more concerned about the quality of the wetlands than protection per se"* (Elliott, 1998:7). To Elliott, the "wetland fingers" (see Figure 5) are low quality wetlands that are not very productive and lack plant or animal diversity, in contrast with a higher quality wetland like a pond which is more biologically diverse and has more elements of distribution (1998:7).

Towards the south end of Veneta, there are *"better quality"* wetlands that are not in *"strips"* and therefore have a higher diversity of biota and a wider range of species (Elliott, 1998:8). According to Elliott, the probability of development is higher in this area as well as the eastern parts of Veneta where there are better roads that are

also designated for development. The total acreage of wetlands in the southern and eastern areas of Veneta is relatively small compared to those in the study area. However, Elliott thinks that it is the wetlands in the southern and eastern areas of Veneta that will be damaged or impacted by development, not the larger areas in the study area. (Elliott, 1998).

Elliott raised the issue of drainage, which would have been otherwise overlooked although it is closely related to the subject of wetland protection. His comments serve as a reminder of the degree to which wetland issues are complex and integrated with ecological, social, political and economic concerns:

*“if we as a society are deciding that wetlands are important and should be preserved, yet wetlands, especially here in Veneta are the transportation corridors for drainage - and I've got to drain somewhere, else I'm damaging homes and property because I'm flooding things. So how do we integrate a wetland management strategy that are also appropriately designed or allows for drainage?...we ought to do a drainage plan for the COV and I need some way of managing it. If the drainage plan says we're going to drain to these open, wetlanded waterways, then how do you manage them and keep them think enough so they have a capacity so that when you do get that big storm there's not flooding all over?...it's also a policy question. You know, it's not just a wetland itself ...I mean for capacity...the policy says we're not going to dump into natural waterways and we're going to keep those natural. Then I've got to have not only natural waterways but an additional buffer for capacity. So we get into land use and property rights issues, because how can you tell someone, well, basically we as a city need a drainage way and an extra 25 feet or whatever to manage their drainage...so there's no room left on your parcel to put a house...and they are policy questions” (1998:9).*

## CHAPTER IV

### CONCLUSIONS AND RECOMMENDATIONS

#### 4.1 Synopsis of Wetland Issues

Wetlands are one of the most productive natural ecosystems on earth (Mitsch and Gosselink, 1993; Salvesen, 1990). Their importance should not be underestimated, however the magnitude of their loss is already "significant to total", especially in more developed and heavily populated regions (Mitsch and Gosselink, 1993:5). In the contiguous United States, at least half of the original wetlands have been destroyed (Runyon and Helland, 1995:1; National Academy of Sciences, 1995; Salvesen, 1990:18; The Wildlife Society), with losses ranging from more than 50% in twenty-two states (EPA, 1995:5) to 80% in ten others (EPA, 1995:5; Runyon and Helland, 1995:1; Salvesen, 1990:19). Approximately 38% of Oregon's historic wetlands have been converted for agricultural, commercial, and other uses (Leibowitz, 1995:10). Of those remaining across the U.S., about 30% are "severely damaged" and do not perform wetland functions as a result of human alteration (Tabatabai, 1994:150). The results of these losses include a decline in water quality, loss of floral and faunal habitat, and increased risk of damage from flooding and erosion (Leibowitz, 1995).

Until very recently, federal and state government policies and regulations caused much of America's wetland losses, although private interests initiated a substantial amount of the conversion (National Research Council, 1995; National Academy of Sciences, 1995). In the past twenty years, changes in public policy have been made to reverse these trends, and they are reflected in federal and state regulations, planning strategies, and incentives for landowners that intend to protect wetlands and other natural resources (Liebowitz, 1995).



Despite the changes that have been implemented, controversy still exists in many places between the disparate and often conflicting forces of development and wetland protection (EPA, 1995:15-17; National Research Council, May 9, 1995; Sibbing, 1997). At the same time, people are becoming more aware of wetland functions and values and are searching for different ways to resolve these complex disputes (EPA, 1995; Mitsch and Gosselink, 1993; National Research Council, 1995). Wetland Conservation Easements (WCE) are one of the tools that have been used to address these situations during the past twenty years. The goal of this project has been to study wetland and development issues to evaluate whether a WCE is the best tool to assure wetland protection in Veneta, Oregon.

#### 4.2 Revisiting Critical Issues From the Interviews

##### Communication and Education

Almost all the interviewees who discussed this theme indicated that WCE have a positive effect on communication, education, and relationship building, and that wetlands as well as stakeholders benefit from them. Some interviewees, including Dr. Mary Kentula (1998), believe that education is the most important aspect of the WCE process. The educational component of WCE provides people with the potential to learn about and appreciate wetlands, and the amenity values of natural areas. As people become educated, they develop a deeper level of awareness that ultimately creates an "informed citizenry" (Kentula, 1998). This is critical if they are to make better, more informed decisions overall.

A number of interviewees mentioned the value of bringing people together to discuss wetland, development, and planning issues, and the positive effect it can have on wetland protection. Annette Lalka noted the importance of identifying various

stakeholders' needs and intentions as they become involved with wetlands and easement issues. It is my opinion that the easement process itself can facilitate more dialogue between disparate forces than may otherwise occur. Certainly, this is relevant to the situation that exists in the study area, and the diverse interests that are involved.

### Management and Certainty

Both environmentalists and developers claim that existing wetland regulatory programs fail to guide urban growth in a consistent, rational manner (Porter and Salvesen, 1995; Urban Land Institute, 1990). While a WCE is not a panacea that will solve all, if not most conflicts between wetlands and development, it can offer certainty which is important to landowners, potential buyers, and developers as well as other interested parties. Some interviewees believe that WCE can provide more certainty because it can shift wetlands out of a public process that is based on law and enforcement but subject to political manipulation, into a more private one that is focused on protection instead of development.

Depending on the circumstances, WCE may be an alternative decision-making process that offers more certainty to the people who ultimately choose whether wetlands are protected or not. I believe that each situation should be carefully considered on its own merits, and that easements can contribute to better guidance by virtue of their remoteness from the politics of wetlands and development.

Several interviewees raised concerns about the management of WCE and that it must be implicit in the easement agreement if WCE goals are to be achieved. The management question - who will be responsible, the degree of involvement required, and the most effective way to accomplish it, seems to be a critical component of the easement and should be integrated into the entire easement process.

### Financial Incentive

There are a number of financial incentives that add to people's interest in considering easements. Some of these include deductions on U.S. federal income tax, and lower estate taxes. In addition, there is funding that is currently available through the Wetland Reserve Program to cover legal and survey costs which can be quite significant. A number of the interviewees discussed financial incentives as being important and of great benefit to those who consider using WCE as a tool that facilitates wetland protection.

### Fostering Win-Win Situations

In general, those interviewees who discussed how WCE can facilitate win-win situations related it to WCE overall and the study area around Veneta. Some cautioned that it is not the easement itself, but the potential for dialogue and relationship building that is the essence of a "win-win" scenario. Others noted that WCE create the potential for win-win outcomes, but that it would depend on the specifics of each situation.

Several interviewees mentioned that compromise is a key element of a "win-win" situation, but that people's perception of compromise must result in stakeholders leaving a negotiation process with some sense that everyone "won". Therefore, it is critical that participants clarify and address their understanding of "win" and the nature of their "needs". As indicated by Ed Alverson (1998), perceptions may be so different that *"win-win equals the convergence of multiple truths"* (Alverson, 1998; Farley, 1998). Certainly, as a number of interviewees noted, easements alone cannot protect wetlands, but they are one step in the right direction and they can be extremely effective when used in combination with other protection mechanisms.

## Protection and Corridors

The interviewees expressed a range of opinions about the degree to which WCE facilitate protection for wetlands in general as well as in the study area. Some noted that WCE are most effective when they are backed by commitment and long term management plans. Others said that decisions to use easements over other protection strategies should only be made after addressing issues like threats to the wetlands, and a long term vision for them. I agree with those interviewees who advocate for careful consideration of the circumstances surrounding each situation, to determine whether a WCE is the best protective tool that should be used there.

A number of interviewees talked about the importance of making wetland and WCE decisions within a regional or landscape level context. To foster a wetland ecosystem that functions well ecologically, wetlands must be connected as corridors. As noted by Art Farley (1998:6), "*all wetlands should be protected but all wetlands should be protected and interconnected ..*", although he also pointed out that some wetlands will be altered and developed so that others can be preserved and protected. It seems that protection and corridors should not be considered as separate ideas, but in a context that views them as being intricately connected.

### 4.3 Recommendations

It is my opinion that the easement process facilitates significantly more dialogue and relationship building between disparate forces than could otherwise occur. Certainly, this is relevant to the situation that exists in the study area and the diverse interests that are involved there. As indicated by a number of interviewees, it is ultimately people who protect wetlands, and if the people are involved in a process that educates them and creates communication rather than conflict, then wetlands will be



more readily protected. Based on the findings of this study, it is my belief that Wetland Conservation Easements are viable strategies to use in the Veneta area to foster wetland protection, and that they are the most effective tool given the circumstances that exist there at this time. In my opinion, the coalescing of legal agreements, certainty, security, and management issues, in conjunction with the WCE, will serve both wetlands and stakeholders in the Veneta area.

The continuation of funding for the Wetland Reserve Program, like any government program, depends on political forces that are often uninformed about the program's benefits and are disconnected from the people and natural resources they are supposed to serve. Therefore, it is my opinion that the WRP should be used while it is available to implement WCE in the study area. It will reduce the financial burdens on property owners, and its continuation in the future is questionable due to political decisions made at the federal level.

Relatively little is known about the intricacies of wetland systems and how they function, although there has been more research conducted on them in recent years. It seems like we are in the dark when we make decisions about wetlands and other natural resources. Perhaps WCE represent a protection strategy that can shed new light and perspectives on the solutions that we choose - in essence, we search for solutions to deal with the impact of human population growth on natural resources. Art Farley summarized my opinions on this matter when he said:

***"we're shooting in the dark...at least we have some commitment to protect what we have. Over time, and some education and experience we can get the community doing things like this...involving the community (in)...the jewels of our cities...it's going to be hard...our cities will be coming out and saying 'Where's our wetland area? Let's put it back together! ...once you have that perspective, that really one hopes this evolves over time"*** (1998:6).

#### 4.4 Conclusions

In closing, the process of conducting research and analysis for this case study has enabled me to see more clearly that Wetland Conservation Easements do embody a paradox; more people now recognize wetlands' value as an ecosystem and stringent laws and programs try to protect them, yet they continue to disappear at astonishing rates from landscapes around the world (Dugan, 1994; Salvesen, 1990). Ultimately, it is only by educating ourselves about the planet's intricate systems and our place in them, that we will become more aware of what we can and should do to preserve the remaining wetlands so that they can continue to filter and function as earth's "kidneys".

This project has enabled me to forge a link between my first recollections of wetlands and "the environment" from the 1960's, and my current search for answers to the environmental dilemmas that we have created. Certainly, this undertaking provides information, insights, and even solutions, but it is only another step forward. The task is far from being complete.

***"You are not required to finish the task,  
but neither are you allowed to desist from it completely"***  
*Hebrew translation taken from:  
Healing of Soul, Healing of Body. 1994. Rabbi Simkha Y. Weintraub, ed.  
Woodstock, Vermont: Jewish Lights Publishing. 15.*

## REFERENCES

- Alverson, E. Personal interview. January 30, 1998. City of Eugene. Department of Public Works and Engineering. Eugene, Oregon.
- Beal, J. Telephone interview. July 30, 1998. Army Corps of Engineers. Fern Ridge Reservoir. Eugene, Oregon.
- Barrett, T.S., and S. Nagel. 1996. Model Conservation Easement and Historic Preservation Easement, 1996. Washington, D.C.: Land Trust Alliance.
- Bettman, A., R. Britz, and K. Kirsch. September 1996. Ecological Planning for the City of Veneta, The Oregon Country Fair and the Upper Long Tom River Watershed. Eugene, OR: Pacific Basin Shelter Company, Inc.
- Brown, T. Personal interview. February 5, 1998. Lane Council of Governments. Planning Department. Eugene, Oregon.
- Central Park Organization Home Page. <http://www.centralpark.org/home.html>
- Clean Water Act Section 404 Corps Regulation. 1977. 33 CFR Parts 320-330.
- Devroy, L. Personal interview. March 5, 1998. Oregon Division of State Lands. Salem, Oregon.
- Diehl, J., and T.S. Barrett. 1988. The Conservation Easement Handbook. San Francisco, CA: The Trust for Public Land and The Land Trust Alliance.
- Dugan, M. 1994. Citizen Participation in Wetlands Planning in the Pacific Northwest. *Journal of Environmental Law and Litigation*. 9:29-87.
- Edney, J. Personal interview. January 23, 1998. Oregon State Department of Environmental Quality. Eugene, Oregon.
- Edney, J. Electronic mail response. December 4, 1998.
- Elliott, J. Personal interview. February 19, 1998. Systems West Engineering. Eugene, Oregon.
- Environmental Law Institute. National Wetlands Newsletter. Washington D.C.: Environmental Law Institute. 19(1): 14.
- Farley, A. Personal interview. April 3, 1998. University of Oregon. Department of Computer Science. Eugene, Oregon.
- Gordon, S. Personal interview. February 27, 1997. Lane Council of Governments. Planning Department. Eugene, Oregon.

- Jain, R.K., I.V. Urban, I.V., G.S. Stacey, and H.E. Balbach, 1993. Environmental Assessment. San Francisco, CA: McGraw-Hill, Inc. 24.
- Kentula, M. Electronic mail response. April 2, 1998.
- Lalka, A. Personal interview. March 12, 1998. Oregon Division of State Lands. Salem, Oregon.
- Leibowitz, N., comp. March 1995. Oregon's Wetland Conservation Strategy. Oregon Division of State Lands Wetland Conservation Strategy Workgroups. 61, 70.
- Liberty, D. Telephone interview. July 26, 1998. Eugene, Oregon.
- Makinson, A. Personal interview. February 6, 1998. Natural Resources Conservation Service. Eugene, Oregon.
- Marsh, L.L., D.R. Porter, and D. A. Salvesen, eds. 1996. Mitigation Banking: Theory and Practice. Covelo, CA.: Island Press.
- Mitsch, W.J., and J.G. Gosselink. 1993. Wetlands. New York: Van Nostrand Reinhold.
- National Academy of Sciences. May 1995. "Report in Brief". Washington, D.C.: National Research Council. 1-2.
- National Research Council. May 9, 1995. Press Release: Federal Officials Should be Reading from Same Book on Wetlands. Washington, D.C.: Office of News and Public Information.
- National Research Council. 1995. Wetlands: Characteristics and Boundaries. Washington, D.C: National Academy Press.
- Nowlan, L., and B. Jeffries. 1996. Protecting British Columbia's Wetlands - A Citizen's Guide. Vancouver, B.C.: West Coast Environmental Law Research Foundation and The British Columbia Wetlands Network.
- Porter, D.R., and D.A. Salvesen, eds. 1995. Collaborative Planning for Wetlands and Wildlife. Washington, D.C.: Island Press. 1-2, 27.
- Runyon, L.C., and J. Helland. March 1995. Wetlands Mitigation and Mitigation Banking Reducing the Impact of Development on Wetlands. Washington, D.C.: National Conference of State Legislatures.
- Salvesen, D. 1990. Wetlands. Mitigation and Regulating Development Impacts. Washington, D.C.: The Urban Land Institute.
- Scott, L. Personal interview. February 27, 1998. Oregon Country Fair Office. Eugene, Oregon.



- Selcraig, B. 1996. What Is A Wetland? The best way to find out is to wade right in. <http://www.sierraclub.org/sierra/199605/mjweteco.html/>. 3.
- Sibbing, J.M. 1997. Mitigation's role in wetland loss. National Wetlands Newsletter. Washington D.C.: Environmental Law Institute. 19(1):1.
- Tabatabai, F. 1994. Wetland Mitigation Banking: Investigation of an Innovative Approach to Off-Site Wetland Compensatory Mitigation. Ph.D. dissertation. University of California, Los Angeles.
- The Wildlife Society. <http://ns.us.net/wildlife/wp3html/>.
- Todd, D. Electronic mail response. December 7, 1998.
- United States. 1864. Eighth Census of the United States 1860: Population. Washington, D.C.: Government Printing Office. 337.
- United States Department of Agriculture Natural Resources Conservation Service. USDA 1996 Farm Bill Conservation Provisions: Wetlands Reserve Program Fact Sheet. <http://www.nhq.nrcs.usda.gov/OPA/FB96OPA/WRPfact.html>
- United States Department of Agriculture Natural Resources Conservation Service, Nebraska Game and Parks Commission, and National Audubon Society. October 1997. The Wetlands Reserve Program. Washington, D.C.: USDA-NRCS.
- U.S. Environmental Protection Agency. 1995. EPA Wetlands Fact Sheets. EPA 843-F-95-001. Washington, D.C.: Office of Water, Office of Wetlands, Oceans and Watersheds. 2,15-17.
- Wellman, J. 1998. Personal interview. February 6, 1998. City of Veneta City Hall. Veneta, Oregon.
- Wiebe, K., Tegene, A., and Kuhn, B. November 1994. Partial Interests in Land: Policy Tools for Resource Use and Conservation. United States Department of Agriculture Economic Report Number 744.
- Zedler, J. B. 1988. Restoring Diversity in Salt Marshes: Can We Do It?. In E.O. Wilson, ed., Biodiversity. Washington, D.C.: National Academy Press. 317-325.

APPENDIX A-1

LIST OF INTERVIEWEES

<b>Name, Title</b>	<b>Interview Number</b>	<b>Agency or Organization</b>	<b>Interview Date</b>	<b>Location of Interview</b>	<b>Contact Information</b>
Edward Alverson, <i>Willamette Valley Stewardship Ecologist</i>	2	The Nature Conservancy of Oregon	Friday, January 30, 1998	City of Eugene Public Works Engineering 858 Pearl Street Eugene, Oregon 97401	City of Eugene Public Works Engineering 858 Pearl Street Eugene, Oregon 97401 phone: 541-682-5262 email: ed.r.alverson@ci.eugene.or.us
Tracy Brown, <i>Associate Planner</i>	3	Lane Council Of Governments	Thursday, February 5, 1998	Planning Department Lane Council Of Governments 125 E. 8th Avenue Eugene, Oregon 97401	Planning Department Lane Council Of Governments 125 E. 8th Avenue Eugene, Oregon 97401 phone: 541-682-4363 email: tbrown@lane.cog.or.us
Larry Devroy, <i>Wetland Mitigation Specialist</i>	8	Oregon Division of State Lands	Thursday, March 12, 1998	Oregon Division of State Lands 775 Summer Street NE Salem, Oregon 97310	Oregon Division of State Lands 775 Summer Street NE Salem, Oregon 97310 phone: 503-378-3805 email: Larry.Devroy@state.or.us/
Joseph Edney, <i>Clean Water State Revolving Loan Fund Project Officer - NRS3</i>	1	Oregon State Department of Environmental Quality, Western Region	Friday, January 23, 1998	Oregon State Department of Environmental Quality 1102 Lincoln Street, Suite 210 Eugene, Oregon 97401	Oregon State Department of Environmental Quality 1102 Lincoln Street, Suite 210 Eugene, Oregon 97401 phone: 541-686-7888 email: EDNEY.Joe@deq.state.or.us
Jerry Elliott, P.E. <i>Lead Civil Engineer, City of Veneta</i>	6	City of Veneta	Thursday, February 19, 1998	Systems West Engineers, Inc. 1600 Valley River Drive, Suite 310 Eugene, OR 97401	Systems West Engineers, Inc. 1600 Valley River Drive, Suite 310 Eugene, OR 97401 phone: 541-342-7210
Art Farley, Ph.D. <i>Member, Eugene Planning Commission (and Coordinator, Friends of Eugene/Springfield Habitat, or FRESH)</i>	10	Eugene Planning Commission (and Friends of Eugene/Springfield Habitat or FRESH)	Friday, April 3, 1998	Department of Computer Science Deschutes Hall Room 362 University of Oregon, Eugene, Oregon 97403	Department of Computer Science Deschutes Hall Room 362 University of Oregon Eugene, Oregon 97403 phone: 541-346-3414 email: art@cs.uoregon.edu
Mary Kentula, Ph.D., <i>Wetland Ecologist</i>	11	Environmental Protection Agency	<b>Email response:</b> Monday, April 2, 1998	Response by electronic mail (e-mail)	United States Environmental Protection Agency Research Lab, NHEERL-WED 200 S.W. 35th Street Corvallis, Oregon 97333 phone: 541-754-4478 email: kentula@mail.cor.epa.gov
Annette Lalka, <i>Wetland Inventory Specialist, Policy and Planning</i>	9	Oregon Division of State Lands	Thursday, March 12, 1998	Oregon Division of State Lands 775 Summer Street N.E. Salem, Oregon 97310	Oregon Division of State Lands 775 Summer Street N.E. Salem, Oregon 97310 phone: 503-378-3805 email: annette.lalka@dsl.state.or.us
Allen Mackinson, <i>Area Soil Scientist</i>	4	Natural Resources Conservation Service	Friday, February 6, 1998	Natural Resources Conservation Service 1600 Valley River Road, Suite 230 Eugene, Oregon	Natural Resources Conservation Service United States Dept. of Agriculture Tangent Field Office 33630 McFarland Road Tangent, OR 97389 phone: 541-967-5931
Leslie Scott, <i>General Manager</i>	7	Oregon Country Fair	Friday, February 27, 1998	Oregon Country Fair Office 1451 Ferry Street Eugene, Oregon	Oregon Country Fair P.O. Box 2972 Eugene, Oregon phone: 541-343-4298 email: ocf@efn.org
Jan Wellman, <i>City Administrator</i>	5	City of Veneta	Friday, February 6, 1998	City Hall Veneta, Oregon	City of Veneta P.O. Box 458 Veneta, Oregon 97487 phone: 541-935-2191

APPENDIX A-2

INTERVIEW 1

Name of Person Interviewed: Mr. Joseph (Joe) M. Edney  
Title: Project Officer, Clean Water State Revolving Fund  
Agency, organization or affiliation: Oregon State Department of Environmental Quality (DEQ),  
Western Region  
Date of Interview: Friday, January 23, 1998  
Location of Interview: DEQ, 1102 Lincoln Street, Eugene, Oregon

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1. What are the conflicts DEQ would have to address if this CE was instituted?
2. What are some of the compromises that the DEQ would have to address if this CE was instituted?
3. How the CE would foster a win-win situation between development and wetland conflicts?

Notes (before taping started)

JE: ~ 1/3 of the City of Veneta's property is wetlands, the rest is poplar.  
Joe's title: Project Manager, Water projects...??????????????

Transcription of Taped Conversation:

Conflicts:

JE: A WCE would primarily function as a barrier. If it went across, if the easement went across the pathway of the pipeline, we would have to go through probably a 404/401 fill process-we would have to require that of the City (Veneta). Also, in the irrigation process we would have to have a setback for those wetlands of at least 50 feet of any irrigation system - in other words the spray, it's a spray irrigation system, the extent of the spray cannot be closer than 50 feet from the designated boundary of the wetland.

Other than that, that's, I think those are the only conflicts that I can think of right off the bat. Having a wetland and adjacent to an irrigation site, I think would be a good idea.

CR: Why?

JE: Mainly because in the winter time, when it's raining hard, and you're certainly going to have some surface runoff, having it run into a wetland before it runs into the river is a excellent treatment process for reducing non-point source pollution problems. And if the ultimate development of this irrigation site action **becomes** a public park forest type of structure, then there probably is going to be some public use of the property which will probably result in some need for pollution reduction from runoff. I guess that's the good side of it, when you think about it.

CR: Yeah.

Compromises:

JE: Compromises.....I guess I've never really, seen....(a bit confusing here-) this as a win-win situation. I've always seen this as a win-win situation. DEQ, as a result of the actions of the City of Veneta....the DEQ is getting another public wastewater treatment system, running at a level that is consistent with permit requirements, or better than permit requirements in this case, probably. And that's - we always consider that to be a good thing - we smile when we have plants that work well. And everything we've seen so far suggests that this situation will work out to the positive both for the City of Veneta, and DEQ, and the water quality, in that particular area...it will certainly resolve one of the water quality problems we have in that area...

For the City, it puts them in a position where they are probably spending less on wastewater treatment than they would otherwise, which is a very positive thing for them...And it provides them with some public open space, so ultimately if it works out the way everything is planned...some public open space that they desperately need...and that public open space would be adjacent to the Oregon Fair, which has been in the past something of a pain in the butt for the City of Veneta..and with them working together to try to resolve

all of these problems, it appears that there's a win-win situation all the way around...You know, the Oregon Fair has the chance of additional ground on which they can deal with their problems...and the solution sounds to be, seems to be pretty decent ...The river itself, the Long Tom, the water quality should improve somewhat, especially in summertime for removal of cattle from grazing on that property adjacent to the river will be an asset to that water quality problem...I'd see it all the way around as being a win-win situation. I think we've worked real hard and diligently toward that point.

The history of it - there has been some **real** battles, but we've been... moving into that direction quite well.  
CR: Why do you think that the, particularly the **easement** would be helpful over , compared to other types of wetland protection...whether it's the..

JE: Well, I don't know that the easement would be any **more** protective. The easement works in this particular situation because of the ownership pattern, and the desires of the current owners on what they want a particular hold and want they want to do. If you're looking at it from a particular protection point of view, there are several different ways that that protection can occur..

CR: Right...

JE: Easement process is just, basically nothing more than a legal definition of ownership and property rights. It's not really a definition of protection. The nice thing about an easement is it becomes a part of the deed...

CR: Right...

JE: ...and basically by the (going) part of the deed is privately enforced rather than publicly enforced...which basically takes the state out of the role of enforcement on the protection end of this stuff..but because it does become a wetland, it becomes waters of the state, so it's still under the jurisdiction of the state when it comes to water quality and development as a wetland.

CR: Right...

JE: Even with the easements you still have to have...if anyone came in and asked for development from me, it would have to be a 404/401 process, a state lands process, ...the easement basically...The easement basically, puts a private player into a currently public process, whose focus would be on protection as opposed to development.

CR: So, can you talk a bit more about the private versus public protection, because...

JE: Well currently, the primary mode of wetland protection is public law, and enforcement of that law...which is subject to, and often is, politically manipulated to the extreme!!

CR: Right...

JE: Which often results in non-protection...Hyundai is a perfect example...it's 2 or 3 billion dollars of investment...in federally ....and you don't give a damn about the wetlands..?????. With the additional player of the private sector, ownership of an easement, ...that establishes a private ownership which is enforceable through civil court, and that private ownership is very basic in that it is an easement specific to wetlands protection. And the individual or the company or whatever that owns that easement, if they so choose, can stop any proposal to build and activities because of this easement that they own, which is just a whole lot easier than dealing with the government agency process of 404/401 which is so easily manipulated. This basically puts in the hands of the conservation group that owns the easement the right to say no, and have it stick, devoid of political influence.

CR: But then there's also the question of change of ownership, and as the property rights are shifted...

JE: ...in the case of an easement, if there's an easement across your property that you own, when you bought the property you agreed to that easement, or during your ownership of that property you sold that easement to whoever owns it, on the sell of that property, the new property owner then has to accept that easement or buy it back, but it doesn't disappear upon the change of ownership. And that's a, that's a private.....if for instance...an example would be...if out at the Hyundai site..the person who sold that property to Hyundai had previous to that sold a wetland easement to the conservation, what do they call those guys...

CR: The Nature Conservancy?

JE: The Nature Conservancy (TNC)...for those wetlands on the property, then at the sell of that property to Hyundai TNC, would have, if they had chosen to sell that easement would have had to negotiate with Hyundai for a sum of money to sell their right to that easement, or Hyundai would have had to accept that easement across the property in the purchase agreement, ...and if accepted then that puts TNC in a position of saying no you're not going to put any development in our wetlands...which would have been a really cool thing if it had happened...but...

CR: Right...



JE: and quite frankly, the previous landowner was so damned greedy that if TNC had come forward and offered such a thing even 10 years ago when they first bought that property out there they would have sold that easement on the spot...no, he was a greedy old fart ....who had no respect for natural resources...

CR: but Jim Torrey owned the adjacent property just next to it but he didn't own that property, right?

You know, it's interesting to me that a lot of what underlies all these issues is property rights...and..one of the...

JE: agreed..

CR: agreed...and one of the things I've learned the last couple years in school is that to me, so much of our whole system, our judicial system, our political system, the economic system, is all predicated on protection of private property rights...

JE: Yep...

CR: going back to the beginning of this country...

JE: Yep...

CR: that's how it was formed... that's the basis of the Constitution...and so now, for me, the landlord, the word the "landlord", has taken on new meaning, and what partly inspired that was going through court with the "landlord" last year and understanding that in this system, the person who owns the property is the lord of the land...

JE: Yep....

**(End of Taped Conversation)**

## APPENDIX A-3

### INTERVIEW 2

Name of Person Interviewed: Mr. Edward (Ed) Alverson  
Title: Willamette Valley Stewardship Ecologist  
Agency, organization or affiliation: The Nature Conservancy of Oregon  
Date of Interview: Friday, January 30, 1998  
Location of Interview: 858 Pearl Street, City of Eugene Public Works Engineering Eugene, Oregon

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**Question 1:**

*What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 2:**

*What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 3:**

*How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?*

**Question 4:**

*Will wetland functions be served by this easement?*

**Question 5:**

*Is there another administrative way to solve this problem that might be better?*

**Transcription of Taped Conversation:**

**Conflicts:**

EA: TNC has been involved in the management of lands out by the Hyundai site since the late 1970's; Easements are a mechanism to acquire property rights, the underlying ownership; I would guess that there are not so many cases where TNC finds an easement preferable to ownership of the land - ...that the owners of the land want to be able to control it. - those are the conditions that we would enter into...here, it sounds like the Country Fair, Veneta owns the land, Veneta wants to use part of the OCF site for their wastewater treatment system, and the OCF knows that Veneta owns land that has camping values...so there's various ways for the 2 parties interests' to be met. One way would be to do some kind of sale or exchange of ownership of the land, but an easement might another vehicle to do that without having to do all the steps it takes to actually do property transactions. And so that's kind of the way I'm understanding the situation...

...so, I guess in terms of conflict, probably the biggest potential for conflict as I understand the situation is there are wetland values on the property, on the land that Veneta wants to use for their wastewater treatment that would be negatively impacted by that use ..and, having not seen the site, I don't really know whether that would be the case...for example, would an intact Native prairie remnant, which has, which experiences a certain hydrological pattern over the seasons, wet in winter, generally in spring it can dry out, native species that are adapted to these conditions might be adversely impacted by having more water than normal and could shift the competitive balance...could give a competitive advantage to some non-native species, and directly kill native species....

On the other end of it, if the OCF intends to use the land for camping, the important thing is to find out if there will be some resource values impacted by camping at that time of year? Usually by early July, a lot of the native prairie species are going somewhat dormant ...my impression is that where they have all the parking, they cut the hay and the ground's dry and people drive on it and cause some damage and that kind of thing...and it's hard to really envision what the impacts from camping would be, whether that would be compatible with the Lomatium, the plant...an endangered species...because Lomatium starts blooming March/early April, and usually becomes dormant by July...so there's a possibility that it might not be adversely impacted, from trampling, vehicles, ....but, because the Lomatium is Federally listed

(endangered) species, there are certain steps...regulatory steps that (TNC is not party to)...but that would be part of a process...it would depend upon...that it would certainly be valuable to do an informal consultation with USFWS..

CR: Yes, they did a walk through with people from ODFW..

EA: But I'm talking about the US Fish and Wildlife, is responsible for the Federal Endangered Species Act...I'm not talking about wetlands but about the Federally listed Endangered Species..and, yeah there might be other issues regarding fish and wildlife..or whether...in terms of camping....

CR: I know that part of the intention is to link some of the wetlands that are there on the 2 pieces of property.

EA: Well, probably the way to do it would be..... I understand that there is an intention to protect wetlands and species that are there....they must look at that site and identify which areas are not wetlands.. they're uplands, which areas don't have a particular stock? in terms of wildlife use...whatever...or, you know, they could change the schedule for the Country Fair so that it's a little bit later in the summer...so there's ways to analyze issues to try to minimize the impacts. I'm really saying that more as a knowledgeable?

person...TNC never really had a goal for that kind of property- it's really an issue between the landowner and the state and federal agencies...about their regulatory roles over the wetlands.

CR: (asked about TNC articles on WCE)

EA: In general, I think ..as I mentioned earlier....TNC finds acquisition of title, actually owning land to be preferable...the problem with whether it's a CE for purchasing...or a voluntary agreement...the problem with that is that it requires a lot more **communication** between the landowner and...a lot more communication and interaction, a lot more work...and you don't get as strong a protection...so it's not something that we're going to ..but might use amidst certain circumstances..but definitely that issue of communication, communicating intentions - what does each party want from this piece of land? ensure they are the same intentions - are they compatible? and it's sort of an ongoing thing...ensure you know what the other party is doing.. it's kind of like a marriage - it needs a lot of caring, rather than a solitary endeavor..

CR: asked about the easement between private landowners or private parties being less influenced by the political maneuvering that effects regulatory agencies..therefore a better protection tool..

EA: Yeah, it really depends upon the circumstances of the situation, but I guess if I had to speculate about this particular situation, it seems like the OCF can create terms...so one thing it can do is provide a mechanism for them to interact with each other, and build a relationship that is based on mutually...mutual goals, and in this way build trust, and open up lines of communication...like that, because they also have to deal with each other on other issues..so it's a kind of ...a potentially win-win situation for both sides..and so that's kind of irrespective of wetland issues, endangered species issues...basically you can boil it down to a.. it can be rights and exchange for wastewater treatment rights..

CR: Sometimes, those issues override the actual issues of habitat or species...the communication issues...

EA: Well I wouldn't say the issues override but in terms of choosing the mechanism to deal with the issues, an easement might be a good mechanism. You know, it's certainly less final than if it was the sale or exchange of ownership of property...

CR: Do you think that as far as the protection of important wetlands, that on some occasions it might be better to have the outright purchase of....

EA: Yeah, I mean if the only goal were to protect the wetland habitat and rare species, then you would probably undertake a different course of action...and there's a variety of...a bunch of ways that could happen. One way is for the COV to retain ownership of the property but enter into a CE with the USFWS, for example...or there could be a land trust, a private land trust that had conservation goals that would purchase the property.

CR: Do you think in the last 10-15 years there have been more options that have become available, or do you think they were there even 20-25 years ago but they are considered more now?

EA: The main difference is that people are thinking about things that they never thought about, thinking about issues and.....people are focusing on these issues...10 or 15 years ago, the land that you are talking about in Veneta was owned by the Corps of Engineers, and they sold it, swapped it with Veneta for ....??and that was the probably original mistake - it should have been kept in federal ownership, and it was an oversight of the management of the COE at that time that entered into that swap, or sale...and ....ill served both the public because we own land owned by the COE because it is a federal agency, and the COV because they didn't get what they thought they were getting. So that was the original problem...and that may be...there may be issues related to that, that are part of this whole thing.

CR: And the ACOE owned that property because...

EA: My understanding is that the ACOE purchased a lot of land around Fern Ridge reservoir as part of the dam construction project around 1940's. What they wanted to do was own all the land up to a certain elevation so that if the reservoir rose to its highest level, that would make it like private property...by the

water. The water never gets up that high, but they owned a buffer between the normal high water level and the ultimate potential highest.

CR: So I guess that would be related to why they wanted to own the property .....avoid takings issues...

EA: I would guess that it's just their standard operation procedure...that was how they decided on what land to purchase.

CR: So maybe I need to go back to look at the evolution of the property ownership...I didn't know the ACOE owned that property before COV did...that's important information..

EA: The next question about compromise...I guess that's a hard one...from TNC perspective, it looks at the situation like can we do whatever we need to meet our goals, or do nothing - we don't enter into a project where there are ....and compromises...we try to anticipate that up front, ***because if our ability to do what we think needs to be done is compromised then our likelihood of success is also compromised***....vested resources in the project....so that's kind of TNC perspective on it...I can see how the dynamics between the OCF and COV ...and their differences...since they are both already engaged in a relationship..

CR: It comes down to the degree of compromise they are willing to accept...

EA: I think that the most challenging thing in a compromise situation is really the understanding of the tendency for 2 opposing parties to think they have agreed and compromised but when it comes down to it, the 2 parties have different impressions or recollections of what exactly they agreed to. You can challenge them on that, comes back to communication.

CR: So the connection between communication and a CE is interesting and one that I should do some reading on.

**(End of Taped Conversation)**

**Summary of written notes after taping ended**

EA: Obviously, there is mutual interest between OCF and COV between the uses of the parcels of land. CE could provide a forum to build positive working relationships - but the potential for the community as a whole (Veneta) is less likely (since they are less open to outsiders especially from Eugene).

What are the COV's intentions for the land? Maybe they have unmet expectations - are there unstated ones and unstated needs? Motivations of different parties are complex. "Win-win" is too simplistic a phrase. Perceptions of "win" and needs can be so different - so win win- equals the convergence of multiple truths???

OCF's goals include protection of wetland habitat and protection of endangered species;

COV's goals: water quality.

***Could there be another way, another administrative tool to use?***

- COV could improve their wastewater treatment process but would be capital intensive and costly to operate;
- COV right now could protect the wetlands and manage it or return it to the ACOE or trade with other ACOE property;
- Why COV didn't yet protect their wetlands? might say wetlands protection isn't within their mandate, that's why they didn't yet take steps to protect it...THIS IS DIFFERENT from AVOIDING.
- Eugene can't come in to Veneta and tell them what to do - thus there's a cooperative agreement which provides a better protection vehicle.
- ACOE contact - Jim Beal, Fern Ridge G.M.



APPENDIX A-4

INTERVIEW 3

Name of Person Interviewed: Mr. Tracy Brown  
Title: Associate Planner  
Agency, organization or affiliation: Lane Council Of Governments (LCOG)  
Date of Interview: Thursday, February 5, 1998  
Location of Interview: LCOG - 125 E. 8th Ave., Eugene, Oregon

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**Question 1:**

What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 2:**

What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 3:**

How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?

**Question 4:**

Will wetland functions be served by this easement?

**Question 5:**

Is there another administrative way to solve this problem that might be better?

**Other questions:**

- Is the easement more a result of political expediency versus the best possible land-use allocation?
- Would any of this even happen without certain federal policies hanging over everyone?
- What have been the most difficult problems in making the whole thing work?

**Transcription of Taped Conversation:**

TB: Conservation Easements are often used in cases where some private property owner willing sells or donates development rights to non-profit, could be a city, to some entity that will have management responsibilities on that property and what it allows them to do is to ensure that it's not going to be developed. There are tax incentives for the property owner to donate to a non-profit if that is a tax-deductible donation, and that could be economically a good tax deal.

CR: Last night I was reading one book and it said sometimes the property taxes are so high that the heirs or the family might have to sell the property just to pay the taxes...and then they will institute an easement because they get a tax break on it and then they can ensure it won't be developed.

TB: The benefits to a non-profit is that typically the costs of purchasing a CE versus purchasing the property outright and that's another option. The property is purchased by a city or a non-profit and they pay a fair market value to the property owner or some other reasonable price, and then....it's usually cheaper to do a CE than it is to get title.

CR: Would LCOG be involved in this at all?

TB: Typically we're not involved in that kind of stuff except in cases where people request that we get involved. What we are in a sense is a public consulting firm. LCOG does now, just fairly recently, have a...established a non-profit status-not for all of LCOG, but just this other separate little organizational entity which is non-profit ..hasn't really been used at LCOG. But LCOG, by itself, is a public agency, we work on a contract basis, the city requested, or if the Fair requested we get involved, something like that...we're definitely willing to do that...The question always comes to, well how are we going to get paid? You know, we do stuff free too but usually on our own time.

CR: When you were out here doing some of the wetlands work was that on your own time?

TB: No, that's all part of the contract. I wrote a grant to DSL on behalf of the City of Veneta, and got that grant..so a portion of the grant money is going to LCOG, and a portion is going to the consulting firm...

CR: That was Jennifer (Guard)?

TB: That's a combination of Satre and Associates and Wetland Specialties - Jennifer is Wetland Specialties...but it's a joint project. Satre and Associates is doing the mapping, all the digitizing of the

wetland boundaries, and Wetland Specialties is doing the field work and the wetland assessment. This inventory ...so the properties that were previously inventoried - she's not going back to those and reassessing them...

CR: So that would be like where Salix did their...

TB: Right..she's not going back and redelineating previous studies, what they're doing is just including, or digitizing those studies, so now we have them in a common mapping system, and this information can be overlaid on the city's parcel base. The primary purpose of this study, the wetlands inventory, is to assist the City in evaluating their buildable lands inventory..

CR: Right. That's the City of Veneta?

TB: Yes, that's the City of Veneta..

CR: And the precursor to that, as I understand it, thanks to talking with Ed last week, Alverson...is that when the COV bought the property from the ACOE nobody knew that there were important wetlands on there. Is that part of this?

TB: I'm not sure. Well...

CR: That's kind of...part of what I took from him last week.

TB: See there are different levels I guess, different elements in studies. One purpose is to in terms of overall planning for the city's development and growth for the next 20 years. They need to figure out how much land they have available to meet projected demand....you know, population growth. So they are going through a process of figuring out what is their potential population growth. Wetlands they have available...wetlands that are available are constrained by certain natural elements like wetlands or riparian areas. So essentially, those constraints for the most part are deducted from the overall amount of land that's available. And then they come up with a kind of a net number that says OK, here's how many lands of residential and commercial, industrial, industrially planned land we have in the city...Will that amount meet the future demand in 20 years? And it's a little hard to predict what's going to happen in 20 years, but you just have to make some assumptions as to what that's going to be. And the other aspect of this is from the biological standpoint, and that's where Ed is definitely coming from, is identify rare plants on the sites, or on that site in particular.

CR: Where the Lomatium reserve is.

TB: Right. As far as I know, the consultant hasn't identified any other rare plants. There are some kind of unique areas, but they are not classified as rare or endangered.

CR: So if there was an easement, one or several easements that were implemented for any of these pieces of land, what kind of conflicts do you see arising, or what kind of let's say if LCOG was involved, what kind of conflicts would it have to deal with?

TB: Well, I mean I think the conflicts ...the issue of conflicts is based on who owns the property? Is the person, does that individual or organization have a development plan? If they don't, then I don't really see any conflicts. The Country Fair is willingly, you know wanting to protect this property, there's really no conflict...they establish a conservation easement and it's done. If it's a private property owner such as the Larson property to the north, and that person has development plans then there could be conflict, and it really a lot of times boils down to do they - are there - do they need tax breaks, incentives? Since that property, the Larson property is outside the Urban Growth Boundary, the likelihood of it developing intensively is not really that good. It could possibly be divided up a little bit and maybe a couple more houses put on, but..you know, but it's probably pretty unlikely that there's going to be a shopping center put on that property since it's outside the Urban Growth Boundary. I mean you never say never, but it's ..there's certain constraints, and particularly with the extent of the wetlands...it would be a major endeavor to fill that site and mitigate for it. The City owned property of Lomatium - I don't really know what the City's plan is, but it wouldn't surprise me if they have no problems protecting that site...whether it's your conservation easement..you know, in some cases a conservation easement may not be necessary, if the City's plan establishes that site as a natural resource protection area, then really a conservation easement isn't that necessary. You know, there...I'm not sure that's... you know there are definitely other mechanisms to protect property, particularly the properties that are owned by, you know, the City and/or the Country Fair. When you get into private property, then the issues of takings...and maybe you should address that a little bit, because, the issue of takings could come in...if you...the City...well, in this case, if there was a private property within the UGB, and the City decided that this entire property is going to be protected because it's totally covered with wetlands, then the issue of takings - it's going to be a real problem. Essentially, you've taken away all of that person's ability to development. If, for example, you had a private property in the Urban Growth Boundary, but only a portion of that property was affected by wetlands, and the City said we want to protect all those wetlands on that property, then you're,... you know you're on less shaky ground I guess. I can't tell you exactly what percentage of that property would have to be affected before the takings issue is a major problem. And I suspect that recent court cases talk about substantially taking away things like that...it's up to the courts to make interpretation of what is substantially a taking.

CR: So, do you think that maybe by putting some of these into CE that it just generally avoids future conflict?

TB: Well, it would avoid future conflicts, definitely. But I guess what I was saying before is that CE is just one approach, and I think there's other approaches that can be as effective, if not more effective, depending on the conditions, circumstances of who owns the property, the willingness of the property owner..

CR: Can you talk about them a bit? What some of the other...

TB: Well, oh...just like a natural resource protection zone, and purchase of the property by a non-profit organization whose mission is to protect property. Say, for example, the COV sold that property to TNC. You know, the protection of that property is pretty good, the likelihood that it's going to be protected in perpetuity. So a CE is just one method of protecting the property. There's many other ones.

CR: And it could be that with each of these pieces of property, that some might be better served by an easement and others might be better served by outright purchase or other ways, like you said.

TB: Right. And it, as I was saying..I think it does boil down to the cost, and the willingness of the property owner, and who currently owns the property.

CR: And one of the other things that Ed pointed out last week, along this line...was that whether the different property owners can find common ground, what will meet their needs.

TB: So when you were talking to Ed, were you talking about specifics? or were you talking about CE in general?

CR: Uhm, more about CE in general. He hasn't really been involved in this either.

TB: Yeah, so I think, you know, maybe that's what I'm trying to stress here...CE in general are a good mechanism for protecting property to ensure that property is being protected. But it is used...in what situations you use that...I think you just need to evaluate in this situation, if you're talking on a specific case study, there may be other types of approaches, rather than just saying CE ...recommend that the City designate that property as a Natural Resource zone. If it's under City ownership...although it is outside the UGB. You know, you could recommend that the City include that area in their UGB and then designate it as a Natural Resource zone. Right now, it's in Lane County, or they could work with Lane County, or they could work with, you know, have some policies in their current Comprehensive Plan that specifically identify that as an important natural resource to be protected.

CR: And if they did that..

TB: So a CE is just one legal mechanism to accomplish kind of a similar goal. If the city was interested in getting that property out of their hair, because they...you know....it's just a weed patch, and they don't want to have to go out there because people are complaining about it, they may want somebody else to manage that property...you know, that will go out there and take out the invasive species...and they may want to sell the CE to TNC or the Country Fair or somebody that will take care of the property and ensure that the development of it is ...can be limited...can protect it...and it's going to be managed. But just having a site out there doesn't ensure that it's going to be...you know...always remain a pristine area. It could turn into some hangout, for people partying or whatever, and become strewn with litter, and the plants are trampled down, and you may need to have it fenced off.

CR: Can you talk a bit about the wetland themselves, and protecting their function, and how that relates to a CE? Do you think that you know, like you just said, it really depends on the situation, whether it's the most effective tool to protect the actual ...the wetlands, as separate from the needs of the property owners? Or do you think in this situation, some of the wetlands would be best served by an easement and some of their functions and value would be best protected by other ...

TB: Well, I think...my impression is the end result in CE versus a designation as natural resource protection are essentially the same. And just the difference is who...whose ownership is it going to be the deed, continue to be in. A CE is a technique that's used to protect property but its benefit to the property owner is that they are going to get a tax break, ok..so, if a property is just designated natural resource, and there's no exchange of CE and a non-profit, there's no compensation in any other way, the benefit to the property owner is limited to just the protection of the property, rather than a financial, or another type of financial incentive. But, you know, the functions and values I think will be maintained and/or enhanced through either mechanism, and you can have an area protected by CE next to an area that's outright protected, and I don't think you're looking at those properties and there's not going to be any difference...really. As long as...you know, a CE allows ..it's a contract in a sense, and you know there may be, depending on how that contract is established, there may be things that are still allowed, for example, you know, the organization may say well, ...or the property owner says yeah, I want to keep grazing my cattle on this for another five years then I'll stop doing that. And so that they may have purchased the CE with that understanding, that future it's going to be protected, but there's going to be limited disturbance, rather than, you know...he's giving up his right to put up a new barn on that property, or something. But he may have certain other rights. Probably...you know an organization like TNC, if it is pristine wetland, would probably be not as interested in



doing that because they want to protect the property rather than allowing it to be grazed..but if that's what they can get, it might be worth it. So, you know, in the Willow Creek area where TNC is working, they have a combination of the purchase of the property outright and I think some Conservation Easements.

CR: Although he said last week that they're generally inclined to just outright purchase rather than deal with an easement.

TB: Right, it's just cleaner, it's easier..the question of as to what, who, what's going on is just cleaner. The value, and I think the cost of one versus the other, probably the purchase is more costly than the CE and so that's, you know...that's financially...there's financial issues..and they might be inclined to get a CE till they can afford to purchase it outright. And that's what a lot of these land trusts do, you know they can come in and get some protection on it like a quick hit until they can figure out who is going to be the best management entity for that property. But at least it's under some protection in that interim period. So in this case, it's not clear to me that.. except for that Larson property whether a CE is necessarily the best approach. You know, if it's in COV ownership, and they have some explicit policies which talk about not developing that property, or even talk about enhancement of it, or... it may be even a point in having the UGB extended out there so it is....the likelihood of it being developed I think is pretty slim. You know, whether..and then it gets back to the management, whether, how it's being managed. You know, if weedy species come in it could be overtaken, some of those unique functions and values.

CR: So where do you think the question of compromises would come in? Or what would the compromises be if easements, an easement or some easements were instituted, what kind of compromises would people ..the agencies, or organizations or people have to deal with or think about?

TB: I think I've already said a couple...like I was saying, I think CE are agreed upon contracts so compromises might be like what I was saying about, you know..the property owner could have some limited use or activities allowed on the property for a period of time, or even indefinitely..as long as they were agreed upon not to be so intrusive as it's going to ruin the functions and values. In some cases, the wetland boundaries are pretty irregular, and so typically it's easier to do a CE if the easement is done for the entire property. It's just easier to know what the boundaries of that are, rather than having a CE just following the wetland boundaries. I mean that's pretty tough. So, you know maybe the agreement is that yeah, up in the north part where there aren't any wetlands you can still do something up there as long as you fence it off, but on that south part where there are pristine wetlands you have limited use..and you know, they may agree that the property owner can still mow that northern part for hay, but the southern part is off limit because you want to restore the wet prairie grassland, and that kind of thing. So I think the compromises are based on a site by site case, and it's a negotiation..I think the selling point to the reluctant property owner is that well, they can get some money for this, and they could still do some things on their property, they could get a tax break and if they have more altruistic interests then they could be assured this property will be protected after they're gone.

CR: Which for some people is really important.

TB: Well, yeah, it is...to the reluctant property owner who's not thinking of anything but themselves, that may not be much of an incentive. But, who knows.. I mean, that's why a lot of people do it, I think, towards the end of their time, and they do it so they don't burden their heirs, and they do have a...they love that piece of property and they don't want to see it ruined some time in the future, so they pass it off to a non-profit that will keep that nice in perpetuity. You know, the non-profit can sell it too, but there's a certain amount of trust there, and groups like TNC have a ...they've been around. There is a long term ...they have a track record, a long term trust. And there's other groups, I mean the Country Fair has been around for a long time, although you know, it's...who knows what will happen, it's always under attack. In terms of the Fair itself, the ownership of the property I don't think is in question, it's the operation of the property.

CR: But then that could be tied into the ownership.

TB: Right, yeah...and there's always, you know... talk about losing the property, it being shut down...if the Fair wasn't in operation, can the Fair continue to manage a piece of property or pay the cost of it, the taxes...there has to be some income coming from somewhere. And that's the case with TNC. They go out - a lot of their funds come from grants and donations and they got a membership base.

CR: The membership doesn't cover the cost, the considerable cost of the purchase of property. So that's where the grants and donations have to be...you know, and annual membership fees..I know there's millions of members, and one piece of property could wipe out the equivalent of that entire memberships' entire fees.

TB: Right. Probably the membership fees just cover the administration of trying to get grant money or something.

CR: Right.

TB: So yeah, I think my feeling is that it's a case by case basis, looking at individual properties. The ownership of that property, the quality of the wetlands...you know, I know in a lot of these organizations aren't interested in the purchase of ..in getting a CE on any old property, it's just a management hassle for



them. So they want unique science, rare plants on them, or in areas where they think they can get maybe chunks...maybe there are some rare plants and then they'll build this kind of buffer base around that, like in Willow Creek area. The first purchase was small, then they've been expanding it outward to keep the protection.

CR: Which is I think a really important point - the ability to create a buffer.

TB: You may use, say in a complex area with multiple ownerships, you may use a variety of techniques. Some fee based purchase of the property, and then as you move out you might have...you know CE I think have...can, in how they are negotiated, have slightly less..I'm thinking of this site, this area where you get into multiple ownership, there's certain inefficiencies in that, because you're talking about management of it. Decision making is ?????...although partnerships are definitely beneficial as long as we're on agreed upon terms. In West Eugene, the partnership - they've developed by-laws, and a responsibility matrix as far to who will do what. You know, the BLM is purchasing land. TNC is ..they are purchasing as well as managing their properties, and then they do some work on BLM properties in terms of the plant surveys. The City of Eugene has other maintenance responsibilities. That..those types of partnerships can be good. The COV has some maintenance crews, so they're...they can be pretty handy, at picking up garbage, things like that and fencing. The Country Fair has a big volunteer base so they can pull in volunteers to do planting.

CR: What do you...when you think about political influence, how does it relate to something like a CE, rather than leaving important property or habitat in the hands of a regulatory agency? Like do you think that an easement might be a safer, less politically influenced and driven process than if a regulatory agency, or several agencies were involved in protection?

TB: I think in one of the..understanding of CE because it protects in a non-profit status is key to the property owner who's granting it, the CE...the ..you know, I'm not sure that there's any black and white answer to that, because it's a private property owner decision, everyone is motivated by something different...and who they trust is, ...could be different. A lot of times, groups like TNC who are viewed as apolitical are trusted because their goals, their mission is.. you know preservation and protection of the site...management, preservation and protection of the site, rather than the lobbying or changes in laws, political maneuvering. I think...I guess, I think it's individual and there's....I don't know if there's a lot of cases where CE are granted to...well, there are like BLM I believe is purchasing some CE although they're mainly focusing on outright purchase of the property, but they're doing a combination too. I think outright purchase, if you can afford it, is the preferred option, if the property owner is willing. If the property owner is only willing to do a CE and if the individual property is important, then that's looked at as another option. I don't think it's a preferred option, really, or the ultimate protection. It may be an interim step, too, until say a CE cost \$50,000 but the purchase costs \$200,000 it might be an interim step until the organization can raise the \$200,000 to purchase it. But that 3 year period or whatever it takes to get that money at least there's some protection that happens. So in terms of political elements, I don't know..I just think it's dependent on who, who's involved. I don't think there's any right or wrong way of doing it. Who the property trusts, and who they feel will uphold the terms of the agreement and if their desire is to see that property protected into the future, who they think will do that effectively.

CR: Can you suggest to me any particular readings I should do about CE like a book or an article or ...

TB: I can't think of them but there's a bunch of them out there..

CR: I got a bunch of them at the law library..

TB: I'm sure we have a bunch of them here too. I can't really think of any offhand but ...we can look in the library..

CR: Is there an LCOG library that's organized like any library? Like can I go punch in conservation and..

TB: No, it's not online, I don't think. It was supposed to be, but I don't know if it's ever happened. We have a section of our library, and it's not an extremely well organized library, that deals with wetlands.

CR: I got some great wetlands books, so that's out of the law library, and I just got one called Collaborative Wetlands and Planning: Issues and Examples, and it cites a number of cases, so that's great. But it would be helpful if I find some more on easements, and I'm now really interested in how... the connection between easements and communication between the property owners, the landlord, because that's key.

TB: Yes. I mean the relationship that happens is critical.

CR: And sometimes, maybe an easement might foster a better relationship compared to outright purchase, and so..

TB: It could, yeah..

CR: And so sometimes, like you said, on a case by case..you have to look at it case by case to see what's really...

TB: I mean, I guess that it depends on...I mean there's still a...in an easement there's still a relationship between the property owner and the purchaser of the easement. In an outright purchase, the property ownership changes. You know, and that relationship, I think, can work for or against the ultimate...if the

goal, I think you need to look at the goal. Is the goal is to protect the land, or is it to build a relationship? If it's to protect the land, the purchase of that land is a better option, because then you don't have to worry about, OK, what if Farmer Jones

decides...they're just getting crazy and just start plowing everything in sight...and, because they still...feel like they have the right to do that, or they decided well, I don't like that conservation easement, or something comes up.

CR: But really, if you think about it, I think everything, every one of the tools is subject to change. I mean, there could be a new city government that would come in down the road, and having designated one property as a natural resource area, then changes it. Or, you know, there's a change of property ownership and something changes it, or down the road an easement is changed, contested in court, or whatever. So really, nothing is ever, nothing is ever in perpetuity when there's people involved.

TB: That's true, yeah...it could be how ...so I think.. using as many techniques as possible to make it as difficult as possible to change agreement or the decision that was created at, you know, 1998, is better I think. You know, if that area, if some area is designated for natural resource protection and it's in their policy documents, there's going to have to be, to change that, there's going to have to be a certain amount of public process, there will have to be a certain amount of review by state agencies...and hopefully there's enough safeguards or watchdogs..but conditions change too...so it's ...everything has to be somewhat flexible, but there needs to be a process that...and it should be a rational decision based on the right reasons...maybe those reasons are environmentally sound reasons rather than economically driven reasons. I could show you a portion of....do you have any other questions?

CR: No, other than, if I find some holes in any of this that I need to fill in or clarify, can I email you or try to ensure I understood it properly? Or if I need to come back and ask you a couple more questions? I'm hoping to get this done by June so I can graduate!

TB: Yeah! I don't think you'll have any problems there. Tell me again what the outline was, basically?

CR: The outline was, let's see: Introduction, Background to the site and overall statement of the issues - being conflict between development and wetlands...

TB: In light of what we've talked about, I guess I'm wondering if the...I mean, it seems like you're really focusing on CE. I guess in light of what we've talked about, I was wondering if the approach of *natural resource protection of this site - what is the best techniques for natural resource protection of this site*, would be another alternative approach, rather than saying CE...for this..you know what I mean? Because I view it as CE being just one of the possible tools rather than the only way. I guess the other, alternative approach is to say, *CE: Good or Bad for this site?* you know what I mean? rather than saying: *Protection of the site - what method to be used?* Do you know what I mean, the difference?

CR: Right.

TB: Because it may be...and you can still get into the ...the nuts and bolts and intricacies of CE, but the parcel by parcel evaluation may conclude that: it's in city ownership, the city should do this. Or it's a valuable, site for these reasons..the OCF site is different...and so, and the Larson property is different...so, this is maybe a preferred method. The cost/benefit, looking at outright purchase, CE...concludes that a CE may be a good interim step protecting that site..until it can, you know, be purchased.

CR: I guess I'm ...the question I'm trying to answer is whether a CE would foster a win-win situation between ...to minimize conflicts between development and wetlands. And that's really interesting the different ways that this could be approached.

TB: I think..I mean, I think the answer to that question is clearly yes. Then the only question is, I mean in concept the question that's answered is yes. In a specific case study, I think the answer is, well I think it just depends...on the ownership of the property. And so you're going to have to go through, I think, each of the ownerships and answer that question differently. Maybe you'll have a different answer. If the city owns the property, who are they going to sell a CE to? You know? Because a CE is an exchange of the development rights of that property from one entity to the other.

CR: So if I'm going to try to evaluate this effectively, then I need to ask the same questions as I evaluate each property....is this best serving the wetlands? is this fostering a good working relationship? if so between whom? for what groups? is this the best protection for the long term?

TB: I think there's party A and party B. Party A is who owns the property now, Party B is who would be the purchaser, or holder of the CE? If A and B are the same, I'm not sure a CE is an option...have something that's more...maybe you should ask people like Ed more about that - can ...if the property...say TNC has a chunk of land..that they fully intend to protect that piece of property... is there any need or goal for a CE?

CR: He said they would buy it.

TB: Well, I'm saying they *own* the land.

CR: Oh they already own it.

TB: They own a chunk of land. And they plan to purchase that. A CE is not needed.

CR: But then we never know what will happen down the road.

TB: Right. But I think in the case of this Veneta site, the question is, who ...if the city has some system to protect that, policies or whatever...need to..and then probably the desire to sell a CE..maybe...unless it fits into the scheme of some other entity who has a... more of a long term vision of wanting to connect that property with the Larson property...and the other COV property to restore that ...enhance the values and protect it in perpetuity, maybe that's the case.

CR: So maybe that's something I need to ask, like when I go talk with Jan Wellman..

TB: Yeah, I think ask him..what is the vision for that property...I know that the thing about these two properties over here is to exchange - a win-win. But how about that other one over on the corner?

**(End of Taped Conversation)**



## APPENDIX A-5

### INTERVIEW 4

Name of Person Interviewed: Mr. Allen Makinson  
Title: Area Soil Scientist  
Agency, organization or affiliation: Natural Resources Conservation Service (NRCS)  
Date of Interview: Friday, February 6, 1998  
Location of Interview: NRCS, 1600 Valley River Center, #230, Eugene, Oregon

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#### Question 1:

*What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

#### Question 2:

*What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

#### Question 3:

*How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?*

#### Question 4:

*Will wetland functions be served by this easement?*

#### Question 5:

*Is there another administrative way to solve this problem that might be better?*

#### Transcription of Taped Conversation:

##### Conflicts:

AM: ...our agency would have with the objectives of the Fair?

CR: Not necessarily just the objectives of the fair, but just in general any conflicts that this agency might have to deal with any stakeholders that would be involved.

AM: That could get real lengthy, actually. I'll start in with the obvious.

CR: OK.

AM: One of the conflicts that I'm going to have to deal with in the plan is the use of the Fair for the actual celebration. And we've been looking at that. One thing that I have to figure out within the plan is what's called compatible uses. We can allow uses that wouldn't necessarily be strictly restoration and protection as long as they can prove they're compatible with the intent or they assist with restoration. And, in this case, the mowing of the area for the parking lot is very compatible...in fact we would like to encourage mowing, and/or, in some cases even grazing, to replicate the Indian burning that traditionally went on in those areas. Now normally, if we had a case where we had a restoration where, in fact we are looking at these where there's going to be almost no use, and that person really isn't interested in doing any sort of haying or mowing or grazing or anything of that sort, and they're not interested in burning, we might have to look at actually paying someone to go in there and mechanically do that, which could cost \$20.00/acre/year. So, that's a ..problem..

CR: Is that on some of the wetlands that we're talking about, or is that elsewhere?

AM: Elsewhere...So in other words, there's a potential conflict, and also a potential compatible use we're looking at. You know, certainly some of the areas within the fair where there's a little more heavier use, which I think in talking with Dennis Todd they're actually looking at excluding, and that would be good...if there are any areas that there's going to be buildings on, or potential buildings, or signs, those should be excluded from the easement.

CR: Right...

AM: And then we don't have to deal with the conflict.

CR: Can we maybe back up even a minute and talk about easements in general and why, I mean especially for me to pose this to you it will be really helpful for me to hear your answer, I mean...Why, why easements.. in this case? ...rather than other tools to protect the wetlands? I mean, there's the financial incentive, but beyond that, why are we talking about easements at all?



AM: Ah...that's interesting..And as far as I know, well, there are several easement programs available for wetlands. There are none that I know of, even through USFWS, that are tied to the deed, and have completely, ...and these easements have been tested in court...

CR: Would you later maybe suggest the names of the court cases I could read through?

AM: I'm not sure of them and I'm not sure of how public those are either..so...in other words some of them may still be tied up in litigation.

CR: Oh, OK.

AM: But I guess that's the bottom line...USFWS Partners for Wildlife Program has an easement but it's not filed and it's not surveyed, which in other words is a written and also in terms of verbal agreement which I guess you could call a, well it might not be politically correct but a gentleman's agreement....in other words it really depends on the present landowner to honor them. Now, once that land transfers hands, there's really no vehicle in place to retain that plan or the intent of the easements and staying as a natural area...

CR: So these easements are different.

AM: Right..yeah, and one of the reasons, number one, we go through an incredible expense to, if you have an easement area, that area needs to be described, it needs to be surveyed. Number one. And legally... recorded. We're working with one presently that's about 355 acres that's costing us \$6,000.00 to survey.

CR: Wow...and the USDA pays for that?

AM: Right.

CR: So that's a big incentive then for any person or organization considering an easement.

AM: Yes. The other thing is, is...which I'll give you..I brought all the legal papers here..this is the warranty for 30 years...this is the one filed with the actual deed, and with the survey recording it so we know exactly the area...And basically, almost in essence this is where almost all of the rights of the property we purchase. And then we figure out those compatible uses which may be haying, grazing, mowing, you know and in some cases it could mean limited ??? harvest.

CR: So rights to the property meaning the use?

AM: These are the prohibitions, these are the prohibitions of actual use..

CR: The rights to the ...so it's the rights to the activities and uses have been acquired. So, the ownership is retained by an entity other than the USDA..

AM: Right..

CR: ...but the USDA through the easement contract..

AM: Well that's actually a warranty easement deed, so..

CR: So that's...OK...and this is one of the easement types that is available.

AM: Right. Actually the deed is very similar it's just the length of the easement...we have a perpetual and thirty year easement, the two options. We also have a restoration agreement. Restoration agreements are valid for only 10 years. And actually after the 10 year period, the person could go ahead and convert the whole area to whatever they want.

CR: And the Fair is considering the easement in perpetuity....right...to protect the wetlands..and am I right in thinking that all the different wetland areas that are being considered for easements are high value wetlands? or are some lower value but are still being considered for easements?

AM: The program itself requires that 50% of the area be termed "degraded" wetlands. So if you're looking at the actual restoration quality of the wetlands, yes, 50% or more has to be degraded...whether that mean pasture, or it could be...also be some of the areas vegetation is, ...it may be very high quality but the hydrology may be channelized. So you have various needs there. As far as the actual functions and values of each of the wetland types, that is something really completely different. You know, we're not targeting any specific wetland area...with the exception that we're looking at converted or degraded agricultural wetlands, and most of them will be termed seasonal or temporary wetlands, that have a seasonal or temporary hydrology. So, a lot of those would fit into what would be termed a wetland prairie area. In the Willamette Valley that works fairly well, because the greatest percentage of lost, as far as percentage that was in agriculture..is the wetland prairie areas, and not the ??? marshes...there's very few of those that have been lost there in agricultural conversion.

CR: Because..and this is part of the confusion I was hoping to clarify today in talking with you; several people have asked me well, why...so they have all these wetlands out there...what is it about these wetlands that is important...Why are they even thinking of protecting them - just because they're wetlands? And, so..I'm not ..I'm not yet clear as I'd like to be about the entire project and the proposal to understand and be able to answer those questions.

AM: It's interesting...in fact, I was in a discussion here the other week with Ducks Unlimited and Oregon Department of Fish and Wildlife. Fortunately, the person with ODFW had worked with riparian systems

and has seen the value...and we got into a discussion on the value of wetland prairies versus basically semi-permanent.. their term that they use is "???"...because they see a much higher value for raising ducks, so, specifically in those areas. It was interesting to see the person from ODFW go through a species list that's a mile long, compared to ducks as the species...Those values are debatable.

CR: But those are all human values too. They're centered on our own thinking rather than ecological value.

AM: Yes, but a much easier way of thinking is, in the Veneta area, you have a high potential for encroachment, urban conversion; which are going to be the easiest areas to fill or develop or to put development on? And I think you can kind of quickly say it's going to be on the ????. Those are the areas of the entire west side wetland area.

CR: So what you just said then to me expands this whole issue into a more regional context, and a broader question which is what I'm really trying to address throughout this whole project, the conflict between wetlands and development. And so I'm trying to write this case study to show, well, OK, so this is one tool that could be used to try and resolve some of those conflicts that might arise, and hmmm, is this the best way to try and do that in this case?

AM: We went down to Creswell to look at an area, and I was absolutely amazed. It's over 100 acres, and there are areas making 30% of it it's almost pristine wetland prairie. Fortunately, the owner had gone and is looking at putting on 4 houses on the property, putting it onto 2-25 acres, and he got into a situation where he had to prove that it was a gross income over a certain amount to put this development in. And he went down to the local Senex dealer, and got a whole list of costs of converting ????. Fortunately, he also found out that if the area were declared a wetland that he could get a wetland plan and not be able to turn it into farmland but ????.so that's what he pursued, and that entire area, if he had gone the other direction, would have been all converted to this home. And it was also interesting, I found out the area known as Kemm's Creek was ....???.ODFW..???. was sold to...and the reason they sold it was ?????...and it was wetland prairie too...

CR: Someone told me last week the area owned by the City of Veneta that is in question used to be owned by the Army Corps of Engineers...and was sold to the City of Veneta, because, well in part, they didn't know that there were wetlands on there that were even valuable, or important. So now, this has become a bit of an issue because they've realized that there are these wetlands out there. So what that tells me is that I need to look at the history of the ownership of this whole area, and talk about that as well. Because, maybe if at that time the people in the ACOE realized what was out there they wouldn't have sold it.

AM: Maybe, maybe not. There has not been, I would say up until The Nature Conservancy established the Willow Creek and did some studies on it...probably not until 10 years ago, that there was a lot of quote 'value' put on wetland prairies.

CR: Or wetlands at all?

AM: No, wetlands there was, and I think always has been....the concept of having a S...Marsh wetland, in a lot of people's minds, at least...that has been an easy sell...when we go out to a restoration area, an easy sell is a marsh, or converting one to a marsh...

CR: Is that in part because of the American mindset and because of what we deem as being beautiful?

AM: Yes.

CR: It probably goes back to Washington and Jefferson...Because recently I read that they paid people to fill in their marsh...and the whole history of that east coast area and D.C. even.

AM: ...(referring to map)...before restoration, that was probably a wetland prairie, or certainly a wetland... Now whether this area historically was or not is another issue. Their restoration could be correct here..and this has been channelized and drained. If it is not, and yet they're putting a dike around the area, which I would...no comment on that! But this is rather typical, this is an easy sell.

CR: So it goes back to the taming of the west kind of mentality, in a way, whether it's the west or the east, it's the landscape that needs to be organized, and controlled.

AM: And managed.

CR: So, in light of the question of conflicts that may arise, if there was conflict between some of the stakeholders would the NRCS just kind of step back at that point and let them sort it out, then come back in when it's resolved?

AM: Well the guidelines of the program, I think help to do that, because the program is based on historical restoration. We can look at up to 30% of the wetland area being enhancement. So, we could look at some of these areas as far as establishing hydrology that lasts till June or July, that may not have been there historically. We ran into the same sort of discussions in the Corps ??? Project...Are you familiar with that?

CR: No

AM: It's in the West Eugene area in the Willow Creek area..and it's a beautiful wetland prairie and probably always was. But in planning stages, that was an awful lot of ..a lot of pressure to try and restore riparian area that was probably never historically there.

CR: But it's there now because of the channeling?

AM: There may...I guess that's one of the things as far as most of these areas probably didn't have distinct channels...they were probably braided shallow systems and probably more ephemeral than what they are now...there's probably a lot of sub-surface water but probably not a lot of surface water ??? channel, into the surface aquifer...which also tends to drain into..

Another conflict I saw immediately in this area was the area historically was high level ???, and with that they burned on a yearly basis to create camas prairie areas. And as far as the historic photos, you'll probably find much less of a percentage of the area was forested at the turn of the century and the earliest '36 (i.e. 1936) photos that what you have now.. and I noticed that one of the goals and the objectives in the Country Fair plans was to establish a lot of trees for shade, and that is not historically correct. In fact, what you should probably do is establish a high percentage of the forest that is there, which I'm sure will be a problem, a really tough sell.

CR: So how would that issue, that could become a conflict because of the different goals.

AM: Right. And then again, we could look at, you know, a portion of saying it's enhancement, or a we could look at retaining one portion ???or opening up some other spaces or something like that.

CR: Right..so that kind of leads into the next question about compromises. Can you talk a bit about some of the compromises that the NRCS would have to consider as an agency for all of these easements if they were to be instituted?

AM: Yeah, I think...well certainly the first one is...very few of the science will ever restore maybe even 80-90% of what was agreed to as far as historic restoration and hydrology. And again that could be objectives and which in this case could be drainage...which could be potential flooding - adjoining neighbors properties. It could be damming the drainage upstream which in this case I don't think it's a problem...

CR: So given the issues out here, do you think that this is a good tool to try to resolve what might become conflicts?

AM: I think so, I think it kind of presents a forum for all the potential partners, which includes adjoining landowners...they could come and discuss.. ???

CR: But still, in the future, even if these easements are agreed upon and the legal wording sets them in perpetuity, it could all still change..right?

AM: Well, the warranty easement couldn't. It would have to be purchased. The objectives and plans for the compatible uses could. So basically the intent of the warranty easement and the wording of this is ...- wouldn't.

CR: So who would have to buy it back down the road if they wanted to...or people that were interested in buying it...now what happens if the Country Fair was no longer able to operate and therefore they didn't have money to maintain the property, so then what would happen to the easement?

AM: The operations and the management, if it's a perpetual easement or 30 years is paid for by us (NRCS), which in this case, once we get a wetland prairie area established, we're probably dealing with ...creating ...other than restoring the hydrology, the only thing that I could foresee would be haying or mowing or brush control to keep the wetland prairies open and not have them turn to ash groves. But as (to) the deed itself, we actually have management responsibilities until we have an agreed to plan with the owner on that management that they take over management responsibilities essentially or we can also delegate that responsibility to another entity for, in perpetuity.. for instance if TNC, that would be a very high likelihood of the entity in this case.

CR: So this makes, ...this provides the certainty so that the wetlands are maintained.

AM: Right.

CR:...regardless of what happens to the ownership of the property.

AM: Exactly. Right.

CR: So that's the security.

AM: Let's say for instance the OCF dissolves for some reason, it goes back in taxes and the City of Veneta ??? the property and decides to build condominiums on it or something. That's not going to happen.

CR: Right. Is there some kind of a monitoring and evaluation component to look at all these easements that are being instituted, to see if they are working?

AM: These are all under contracts and we have requirements to do status reviews of the contracts.. to make sure the plans are being followed according to the management specifications.



CR: And, so...between the legal agreement and the certainty and security and the management part of it, it seems like as far as the wetlands go it's a good deal.

AM: I would say so. Yes.

CR: And maybe because of the security over the management and maintenance, compared to other administrative tools, this is a good thing right now for these particular wetlands.

AM: And I know that there was some uncertainty by members of the Fair Board about the management and our responsibility, and I can *completely* understand that, especially considering our history in the last 20 years specifically. And that's where if that management and basically overseeing authority is delegated to another entity, you know...specifically say TNC...I don't see it as a problem, I would see it as assurance that their objectives would be closer to historical of TNC...??

CR: OK, now that confuses me a bit, because, does TNC get involved in things like that? I thought that they would, they prefer to outright purchase the property rather than deal with easements or...so how, what would their role be in this as far as maintenance?

AM: T\_\_\_Marsh is a WRP easement..riparian, and it's TNC. The WRP is worked out with the previous owner..so yeah, we currently have an actual easement with the actual TNC as...???

CR: So the management is part of their mandate..

AM: Yes.

CR: This is notes that I took from Dennis about the different wetland areas on OCF property that are being considered, or on adjacent properties, and...I got a little confused last week, I wanted to talk with someone and I wasn't clear on how many acres are involved and exactly where...so having this laid out is helping me a lot.

AM: And actually none of those as yet have been solidified..

CR: Right ..nothing is.

AM: And I haven't received any word back from the City of Veneta - initially they were receptive to the idea, but...I'm not sure on that...

CR: I'm going out to Veneta this afternoon to talk, to meet with Jan Wellman, and I'm going to go through these questions with him..so that will help me get a little different perspective too, on what's going on, and what different groups stand to benefit, or how they stand to benefit..from participating in this.

AM: I know the one question that came up initially I think was with Forrest Larson..the possibility of using certain areas that are there now for mitigation banking.

CR: Right.

AM: You know, as far as our purchase, we couldn't compete with a mitigation bank..and even with..I'm not...they have an easement on them..but I think it's an easement agreed to with DSL, and I'm not sure as to the requirements on it.

AM: Well, are there any other questions you want answered?

CR: Only one, and that is if there's anything you can suggest to me that I haven't maybe considered and should consider and integrate into this whole endeavor? Or, something in particular I should be researching to try to present a good case study - you know, what this is all about? One thing that came up the other day that I found really interesting is just the whole question of communication and conservation easements, and how sometimes it might be the best thing for all the property owners because it forces them to communicate and create a dialogue...and sometimes that in itself is the best tool rather than use something else that is maybe more certain in a way, I mean outright ownership to an extent is more certain..but it doesn't have the same type of emphasis on communication.

AM: Right. Yeah. I would say as far as the investigation, there currently are a number of vehicles for conservation easements with a presence on the property which be just a signed agreement. The only other vehicle that I know of that is a deed, a warranty deed, is filed with the deed itself, is actually the Rural Development here...??? they have complete control of the loan, and would get into the area with Fish and Wildlife, and survey out an easement area, have that filed, including the deed itself. I'm not aware of other easements filed with the deed with Fish and Wildlife....due to the expense. Originally, this bill was to foot the bill for deed filing and surveying and ...????

CR: I think that I still have to at least address other mechanisms like zoning or designation as natural resource areas, you know...why do this rather than that? or why do this rather than just outright purchase?

AM: The only zoning is an open space designation. I don't know of any other zoning other than that, and open space could have a multitude of meanings. Open space could include bike paths, including concrete bike paths which would never go into an easement. Unimproved paths would. Heavy recreational activity would not - I don't think we'd ever encourage AT use or anything like that - but open space designation would allow for it. There's probably a lot of other reasons too. Zoning doesn't I think address the issue of historic wetland restoration at all.



CR: So if that is the goal, then maybe the easement is the most effective way to address this?  
AM: Maybe in the long run, I think so. I know that the programs ???? that Fish and Wildlife ...are not nearly as restrictive. In fact we've dealt with that, we've had conflicts with their easements where they may be encouraging a majority of the area to be enhanced for a particular species, which may be ducks or it may be the case where it's a ???  
CR: So maybe it comes back to the whole issue of communication to ensure that all the stakeholders are on the same station and having the same goal. Yes, this might be the best tool to implement, but if this isn't the goal that everybody shares, then maybe other people would think, or other stakeholders or property owners would think hmmm...well, there's other ways to deal with these issues.  
AM: That's right.  
CR: So it comes back to articulating, communicating common ground.  
AM: And maybe an open space designation, or another type of easement would be more suitable.  
CR: Right.  
AM: I thought it was real interesting, after...and this issue is also a case and point with the Country Fair..we were looking at cultural side with the tribe, and their goals, and what they would want to see as far as the property's value, minus the casino, and economic ..that as far as their values... fit beautifully with historic restoration. Probably more so than ???...and I thought that was rather interesting... In other words, no, or very little.???? .lots of burning...  
CR: These are the Confederated Tribes?  
AM: Yes, the Grand Ronde actually. Actually the primary thing they have advocated for now is burning...and I know there could be a possible conflict with the objectives of the Oregon Country Fair that the tribes, a situation they could get into..because they are using the site for camas harvesting. And, we're certainly well aware of the side of cultural values of the area..the whole area of Fern Ridge is high... in cultural values...almost anywhere..  
CR: I guess my last question would be are there any books or documents or reports in particular that you could suggest to me? I mean I have quite the stack but I'm always open to finding something that I haven't..  
AM: You mean as far as ??? specifically or..  
CR: Easements..  
AM: Oh easements...  
CR: I got some great books out of the law library, and I got some great books on wetlands..  
AM: Actually that's interesting because the book that was on Rick's desk is...  
CR: Yes, I've seen that..What else - I just got a great book called Collaborative Wetlands Planning, and it cites different case studies.  
AM: Is that EPA?  
CR: No, that was published by Islands Press in '96, and it was David Salvesen..I've seen his name on almost every book that I've found.  
AM: It wasn't Mary Kentula..  
CR: No, no. I'm hoping to actually connect with her, I want to give her a call.

**(End of Taped Conversation)**

**Summary of written notes after taping ended**

Private landowner is not required to maintain preservation of cultural sites. But, with an easement, it is tied to the Federal government and must be protected, so there is a greater obligation. The entire Fern Ridge area is (rich in cultural resources) and the City of Veneta should have cultural resources renewed for any housing development.

APPENDIX A-6

INTERVIEW 5

Name of Person Interviewed: Mr. Jan Wellman  
Title: City Manager  
Agency, organization or affiliation: City of Veneta  
Date of Interview: Friday, February 6, 1998  
Location of Interview: City Hall, Veneta, Oregon

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**Question 1:**

*What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 2:**

*What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 3:**

*How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?*

**Question 4:**

*Will wetland functions be served by this easement?*

**Question 5:**

*Is there another administrative way to solve this problem that might be better?*

**Notes (before taping started):**

The City of Veneta needs 44 acres for spraying but it's in wetlands. So it's short 12 acres. Department of State Lands says you can't spray onto the wetlands. There will still be an area in between the 2 parcels of land, so they need a long term contract to be able to spray. If the Oregon Country Fair or the City of Veneta expands, then each needs more land.

**Transcription of Taped Conversation:**

CR: So, is this really the crux of the issue for Veneta?

JW: It's the crux of the issue for the City. We need a sufficient amount of land to do spraying, application of effluent. You see, what we're going to do, we're not just spraying effluent. We're also going to build... we're going to plant an urban forest of hybrid poplar trees, about 1700 of them. So we're going to create a huge woods back here, and then we'll spray the treated effluent, and then we'll have those poplars to sort of condense up the water, there's a heavy water use and spraying. So what they'll do is we'll plant those and help soak up the effluent, and help us dispose of the ????. And then every so often the trees will be cut and chipped and replanted. So it'll be an ongoing cut and resource for the city for chip wood. Poplar trees get brittle after so many years, and it's for safety reasons, we're going to cut them.

CR: What would the city use the chips for?

JW: Just to cut them.

CR: Just sell them?

JW: Yeah, sell them.

CR: Or use them for landscaping?

JW: Well, no...there's other trees per acre...??? ...there's 44 acres you're talking about trees that could actually become a real revenue resource for the city. Chipwood's very valuable...it's used for mulch, presswood, particle board. So it has a market. We may use some of it ourselves for mulch, chips for hiking trails, parks or something like that...or we might sell it as a cash crop. Contractors would come cut the trees, take them and chip them...that is they're taken out ??? But our big issue right now is we have sufficient land to produce an urban forest and use with the spray application. And right now, it's estimated that the city needs 44 acres but we've only got access right now to 32, so there's 12 acres out there in contention, because it's considered wetlands and you can't spray on the wetlands... so, they're going to try to do what

the Country Fair wants to do which is mitigation banking - they'll say OK, we'll remove these wetlands and we'll use these A wetlands over here to try and take its place..

CR: ..like the edge of the fingers.

JW: Yeah, we'd take the...see, the edge of the fingers now is to about 10 acres, so if we can take those out and create 10 acres of wetlands in some other place, we're going to try and do it. We're going to try to get credit for that borrow pit that's over there...and they've relocated the highway to build it up so they've dug some pits over there - and that's what looks like a pond, lakes...the bottom pits.

CR: Right...that's the ODOT ponds.

JW: They fill up a lot. Well they're classed as wetland now because a lot of migratory birds use them. What they (*i.e.* OCF) want to do is try get some credit for that as well as mitigation banking or create a wetland in some other place to make up for the ones they might fill. Although those wetlands down there are seasonal wetlands, they're not wet all year long. This time of year you go out there most of that field will be under water. But you go out there in summer and it's drier than a bone - that's what they park the cars for the Country Fair - it's dry out there...so they're really seasonal wetland.

CR: And what about the Lomatium reserve?

JW: I don't know what they're doing with the Lomatium reserve. I know that's something that's..

CR: That's on the Country Fair property...

JW: ..that's with Dennis Todd.

CR: Right...right. So as far as Veneta goes, it's just this area for the effluent spray, and the extra 12 acres, if...so that will be a total of 44, but then, that...how, ...what's the future projection of needs that would ask for 44 acres, is it 20 years? or 50?

JW: This site will basically be probably a 20-25 year solution. The plant that we're building right now at our (spill?) project has a projected life of 20 years. What'll happen is if we go beyond that, we can probably replace the sewer system with an active treatment plant, which would be one that actively treats effluent. I mean, it sounds horrible, but it's one of these kinds of plants that literally treats the water to the point where you can put a glass of water and drink it, and I've seen people do it....a guy up at Truckee up there at the treatment and sanitation thing, it's a state of the art plant and on TV where they opened it up and drank it right there on TV.

CR: They're doing that in San Diego now, I just read a big article about that.

JW: Very expensive - you can justify only when you reach a certain size. See right now, the City right now is growing on septic tank...what we do right now is active treatment with ultraviolet treatment, pumping, aeration, chemical treatment..and then, see what we do is in the winter months we discharge into the river so we have to discharge into the Long Tom River and meet discharge standards under a NPDES permit. And then in the summer months we can't discharge into the river so what we have to do is spray effluent.

CR: So that's only in summer and fall?

JW: May 31 through October 31 is the spray season. It's about 5 months of spraying. The rest of the time we discharge into the river.

CR: But it's been exceeding the permit limits for a long time?

JW: Well, it doesn't exceed it every day but it does, it exceeds it enough times in the wet season that it needs addressing. See, you can exceed a permit by flow, too much flow, but you're allowed to, say, discharge 350,000 gallons/day I mean if it's wet, you won't have infiltration problems in the system...you can actually discharge 500,000 gallons/day...you may exceed your discharge permit only for 2-3 days but you may not exceed it on a monthly average. So there are different ways of calculating it. There's also chloroform counts - you can't exceed 30 chloroform counts - you have to... chlorination...Chlorination kills chloroform...you'll be able to discharge to the river, but then if you have too much residual chlorine then it harms ???...and ???

CR: So really the issues here are population growth and land use for Veneta.

JW: That's our big thing is population. We have a huge Urban Growth Boundary here. This town can grow substantially. Our projections show the town's population in the next 25 years will be close to 5,000, not quite double the size. The other thing is this town is primed to grow once the sewer plant is fixed. I can just start to see some businesses and industries that serve the west Eugene area and the tech park you've heard about, I guess..they're starting to move out this way. Plus you have (housing???) ..The only disadvantage here is 126 contains a substandard road, the traffic, cars wouldn't be accommodated. The reservoir and wetland issues basically keep that road from (being the way it should be???)

CR: Can you talk a little bit about the conflicts that the City of Veneta might have to address if these easements are implemented and acted on?

JW: Which easements were you looking at?

CR: Well, OK (referred to notes)...I guess one in particular would be the wetlands that the Country Fair plans to restore in the 36 acres in Veneta's current UGB, current effluent spray area...



JW: That isn't resolved. If this issue isn't resolved, then what happens is the city will reach a point where it will have insufficient land to dispose of some issue on the treated effluent. That's the biggest thing... Instead of having a 20 year window, there's a 12 year window and then what we'll do we'll reach a point where won't have sufficient land...so even with the land exchange we'll still be in a situation where we'll have to contract with someone on a lease basis to get enough land for the spray effluent. See that puts us in a real predicament, that puts anybody in a predicament because you've got..you don't know what the political influence is going to be. Right now the Council and the Country Fair get along real good - that hasn't always been the case. In the past you've got Councils that don't particularly like the Country Fair and vice versa...????,so for us it's strictly, it's really a growth issue. The town would be restricted, will have unfettered growth if it isn't resolved.

CR: So, let's see..the City owned Lomatium preserve around the Larson arena..

JW: I'm not really sure what you mean about Lomatium preserve. I know the Larson property..see this project is not just the City and the Country Fair, it also has Forrest Larson. I think that his land is also in question. What they're trying to do with him is to try get him to use some of his land ...the Country Fair will use some of that land to make additional lands available for the spray effluent and Lomatium.

CR: Right. And the property that the Country Fair would acquire from Veneta, what is referred to as the "Far Side", where we had the camping...

JW: Well if they require land from the City to use as a campground...and for spray effluent.

We spray on some of our property now, but it's not enough. We have to go and spray on theirs also. And then they have the campground on land that's owned by the City. Because they don't want the campground on land where the spray irrigation takes place. You can have spray irrigation effluent - it's caused secondary treatment with contact standards - but it's mostly golf courses. A lot of golf courses spray with treated effluent but it has to meet certain standards.

CR: So would this involve just a land exchange and not an outright purchase?

JW: Yes, it would be a land exchange. But the problem is because of the wetland issues, there may have to be some mitigation banking efforts taking place. It's been presented a couple ways, like just a straight exchange, and an exchange plus some cash because the Country Fair requiring a larger piece of land. I think the Country Fair would get a larger piece of land than what they'd be trading, or vice versa. I can't tell you off the top of my head. One of us ends up with the short end, and I can't tell you if it's us or the Country Fair.

CR: Right.

JW: You should talk with Jerry Elliott at some point.

CR: Yes, I'm going to give him a call next week and see when I can arrange to meet with him...So from a management and planning perspective, do you think that the COV would have to compromise at any point to be able to get these extra acreages...acres for the effluent?

JW: Oh yes, the City will have to compromise. In fact it's willing to compromise. We've been to the table several times talking about these things...the question is how..the problem is that the third player here is DSL and how are they going to let this thing happen?

CR: And that's because of the wetlands guidelines that they...

JW: You can't spray treated effluent on wetlands. So what we need to do is destroy these wetlands and use them - the purpose is to create a wetland reserve. I don't think it's an equal acre for acre, I think that you create more than you destroy. Like the ratio at this place is 1-1/2 :1 or something like that.

CR: I think sometimes it depends on what type of wetland is being lost too.

JW: Let me show you...(gets map to refer to)...Here's really what the issue is....Jerry has a much better map than this.

CR: Right...I saw Tracy Brown yesterday so we looked at this map...and he said there has been a little bit more...there's currently a little bit more inventory being done, that Jennifer is doing...

JW: Yes, ....here are the fingers that I'm talking about...what they want to do with these fingers is chop these off, and then what that would do is ...they would have to take a credit for these poplars, and move that cedar to these ponds here...and then ....credit for the uplands that you're creating and then that would be mitigated or banked, maybe created over here somewhere. We're still going to be short several acres, like 10-12...

CR: Still short?

JW: See the thing is we were working under the assumption that you had to have a buffer of so many feet from the river, but it turns out it's not as far as we thought. We were working on the assumption of 100 yards, but in fact we can get much closer, that gains a lot. So I think this could be done, it's just a matter of say chopping these fingers off, you create wetlands over here...and then we'll have sufficient land...???

CR: And that's a DSL decision?

JW: Yes.



CR: Because they're now..because of the new guidelines?  
 JW: See part of - LCOG likes this project....and that's something we need to work on too..I was talking with someone at LCOG and they came out to the City the other day and made a presentation...but you need to get to certain people at DSL to see if this will go...but that's the situation and that's how it's working.  
 CR: And there's a 50 foot distance from the riparian area?  
 JW: I think we were figuring on...  
 CR: 50 feet from the actual stream?  
 JW: ...it's the riparian area next to the stream.....???  
 CR: ...but a point that somebody raised was that the effluent could be sprayed but because of the seepage, it...there's also those issues to think about, if the seepage would come up to the 50 foot point? So it actually can't be the spraying right up to the 50 foot mark?  
 JW: Yeah, that's possible. You might not want to spray right up to it, you want to leave enough of a buffer. It may not really be a problem, because summer months - it's so dry up here, the spray is just so...right now it's been (growing???)....so bad we even have an agreement with Forrest Larson - we let him go in there and if he'll mow it he can even have the hay. So he goes in and cuts it and gives it to his livestock.  
 CR: And...I have no idea who Forrest Larson is or you know...  
 JW: He owns this land up here...(points to map)..  
 CR: And he would keep that in his family?  
 JW: Yes, but he's talking about doing some sort of exchange with the Country Fair. There's two Larson brothers - Forrest owns this up here and there's another brother owns this down there...And it's all in wetlands. This entire area is wetlands.  
 CR: And is there talk about preserving this?  
 JW: This will be preserved...well, not that there's anything you can do much with it because it's wetland...this area has been filled so many times it's actually been classified as a wetland, over the years...This was a created wetland....and what happened is the water ??? just filled it over the years...??and so it's been classified.  
 CR: Has this been presented to the community and Council meetings?  
 JW: There's been 2 public hearings on this wetland project and the Council meetings...final draft...???  
 CR: And there's been general support for it?  
 JW: Well, I wouldn't say there's general support for it. Most people don't like wetlands, - they like wetlands, but they don't like them on their property. If there's wetlands on your property it restricts what you can do.  
 CR: And maybe some people don't, ..wouldn't want to see Veneta enter into any agreement with the Country Fair.  
 JW: No, that isn't what it is, people just don't want to see any wetland identified with their property. No, this deal with the Country Fair doesn't really effect people in town at all. Well, it does effect them in that it allows us to have a place to spray effluent....no concern to them...there's nobody in town that would not want to see this happen - on the basis that it's the advantage of the town to do it...there's just some people don't like the Country Fair and just on principle don't want to do it...  
 CR: So do you think that the..the benefits of proceeding with this whole idea would create a lot of community support, even enough to override any opposition it would have to the Fair, or that they have to the principle?  
 JW: No. They just don't like the Fair. There's just people in town that can't care whichever it is they...don't like the Fair...There's opposition to this project because it's a part of the overall super improvement project which there will be a lot of opposition to because of cost. They're raising everybody's sewer rate in town by 30 bucks.  
 CR: 30 bucks?  
 JW: ...on top of 20.  
 CR: ..a month?  
 JW: Yep. So you're talking of going from a now a \$20 sewer rate to nearly 50. There'll be great opposition to that.  
 CR: That's per household.  
 JW: Per connection..  
 CR: Yeah, Per connection...  
 JW: So in some places you're considering like 2-3 connections. And that will generate the money necessary to pay off the sewer project. The sewer project is about \$7.23 million. We've received about \$2.65 million in grants, the rest is in loans.  
 CR: Who, ...from like banks?  
 JW: No, it would be from Rural Development, which is the old the Farm and Home Administration, the OEDD, the CDBG Grant, and the State Revolving Fund which is a DEQ Program.  
 CR: And then the Federal Rural Development Farm...

JW: Right, and that's what will carry us on the long term, it's a 40 year loan. They're at less than market interest...they're like between 2-1/2 or 4-1/2%... We've only got 865 ratepayers to spread that kind of debt you need another 165 people...even 2 or 3 % interest is a lot....?????????..we estimate the rate of retiring would be \$26 a house...so you take it to..we're still in the process of trying to negotiate out the final amount on the grants...our deal right now is a \$2 million grant, \$2 loan...now they're backing down right now and saying.....if that happens it effects your rate \$7 or \$8 which is significant...

CR: But the sewage improvement project has to proceed regardless of ...even if the land swap takes place, this still has to happen.

JW: Oh yes, this has to happen.

CR: This has to happen...

JW: We're under what they call a Mutual Agreement and Order...between the City and DEQ...basically DEQ can then lay an edict on the City and says you will fix this plant. You sign the agreement, and say OK I'll do it. If you don't do it, DEQ can do one of 2 things - they can fine the City \$10,000/day or they can just come in and just issue bonds for us and force us to do the project.

CR: So, people's opposition is based on cost?

JW: Yes...

CR: But they realize that it has to be done.

JW: They flush and it goes away...as long as it stays down they don't care and think about it. Sewage is a hard thing to sell to anybody because they don't see it. Sewers are a pretty elaborate system...the toilets in their house, that's all they think it is...they don't really understand..They can't process that everything has to go through standards and discharge standards. Ideally, I think if we told people we're a source of pollution to the Long Tom River and it needs to be cleaned up they'd say great, clean it up...but they don't want to pay for it.

CR: So is the COV embarking on an education campaign right now, trying to...?

JW: As much as you can. We've sent out an announcement to everybody in town notifying them of the rate increases and what the problems are. I can get a copy of those if you want it...

CR: OK..So right now it's actually a really important..like the whole land issue is really important with the Country Fair in trying to resolve all this...

JW: That's right. So we're doing several projects. I mean, the City has got major infrastructure projects on-line. We've got sewer project, we've got a water improvement project, a drainage project, we're in periodic review...

CR: So this would be a really...resolving the land exchange with the Country Fair be, would be a benefit to everybody.

JW: Oh yeah, it will help us on this project. Because just think if we don't do this with the Country Fair, the City is going to have to go have to go out and acquire additional property. That's tough.

CR: And this way there would be, you know, protection of an important ecosystem at the same time.

JW: Yeah, that protects the Long Tom River, it protects the groundwater, the wetlands..

CR: So this went out, to every household?

JW: To every sewer ratepayer.

CR: Just sewer ratepayers...how about people who rent but maybe don't pay sewage separately from their rent.

JW: As soon as the landlord pays they pass it along in their rent. A good example is we have the trailer park down here that get 1 mil and they pass the cost along in their rent.

CR: Has there been a large turnout at the meetings, the 2 public hearings?

JW: On the wetlands?

CR: Yeah.

JW: The second one was pretty good. This room was full. I was surprised. I didn't expect it to get around that much. It was pretty good. You'll start seeing larger turnouts at the public hearings regarding the ratepayers information...that's when people start coming out.

CR: And can you highlight some of the issues that people talked about at like the second hearing?

JW: On wetlands? They're just mostly concerned about a wetland that's identified wetlands with their property - how it's going to restrict their ability to develop their land.

CR: Right.

JW: If you have a wetland that's identified on your property generally restricts your ability to develop that land to its potential.

CR: And when they talk about developing that land does it usually imply subdividing and building more housing?

JW: It could. You know, if it's a large enough parcel it'll probably involve a subdivision. If it's just a single house with a wetland on it, then that's not too big of an issue. It's mostly the inability to develop lands. See a lot of these are just raw lands...but if you own 30 acres and it has wetlands identified on it then ....???

CR: And so that's why the wetland delineation and identification has been contracted and is being completed? To know where it is in the UGB.

JW: It's also part of Periodic Review and Goal 5 - to do the wetlands inventory and analysis.

CR: So, I guess the only other question I'd have right now is about the Urban Growth Boundary. Is there talk about trying to expand it to try and deal with some of these issues?

JW: We don't need to expand the UGB - it's huge - we have acres and acres of land to expand...that's one of the advantages the City has...??? with the UGB we have a lot of area to expand...

CR: Right. And when was the UGB put in place?

JW: I couldn't tell you the year...???...I don't know what year...it was done at the same time as everybody else's...I'd guess maybe the 70's.

CR: Can you suggest any other people besides the ones you've already mentioned to me - like talk with the engineer - I'll call him next week...Gaylen...There's a woman up at DSL in Salem that I'm told I should talk with..

JW: Annette Lawka?

CR: Right.

JW: She was involved with this project from the outcome. You already talked with Dennis Todd?

CR: Yes, Dennis...

JW: and Kate Kirsch?

CR: Yeah, I called Kate the other day and she said that she wanted me to get clearer on what lands were being considered for easement and how many acres and then come back to her.

JW: Those would be about the only people. If you're interested in planning and growth management issues at LCOG talk with Sandra Belsen - she's the contractor for the City. She works with Tracy a lot.

CR: Yeah, I've met Sandra. OK...

JW: ...and Jerry ...he's a real source of information on this whole project here. You ought to talk with Jerry for sure.

CR: Yeah, yes, next week for sure...and I talked with Tracy Brown yesterday, and then Allen Makinson. Now I'm really keen to contact somebody with the Confederated Tribes.

JW: There's a guy, Albert ...I can't think of his last name...Gaylen knows him...They came out here...and looked at the property by the shopping center...Albert Jeffers?

CR: Allen told me this morning to contact June Olsen, I think her name is? She works for the Confederated Tribes, La Ronde? She does cultural resource work...So I...he suggested I talk with her.

JW: The Confederated Tribes - their office is in...it's not even close...

CR: Yes they have a 1-800 number...Is there anything else you want to add right now?

JW: No, other than this is a good joint project between us and the Country Fair - I mean it's really something that we're cooperating on...we're working on???...there's no animosity here...it's a real cooperative effort right now...

CR: That's really important.

JW: And as long as the existing City Council is here, I think you'll see that...you'll see that continue, as long as this Council's in place.

CR: But down the road who knows...

JW: Yeah, see you never know. City Councils can change, Managers change and stuff...we've got a working relationship with the Country Fair...we'd like to work with them...as changes in the future... that's like why we'd trying to get this done, get this arrangement in place.

CR: So I mean ideally, as far as the COV's needs, when would be the best situation as far as a decision about the land exchange?

JW: Well the best thing for us would be to have DSL allow us to have mitigation take place. ..the Country Fair has???...acres and acres...that would be ideally the best solution...we need to have about ??????...

CR: Why would there be a land swap rather than an outright purchase?

JW: Well no money doesn't have to change hands. Kind of like here's the 10 bucks IOU, here's the 10 bucks IOU! OK, we're all done.

CR: But it would be a change of ownership but no exchange of...?

JW: No exchange of money...just be an exchange of ownership. It's for value other than cash. We bought it from them...and so you pay you and say here's your money, and then the banker says now here's your money - it's an exchange.. it's easier...

CR: It's pretty interesting!

JW: It's a good project. It's - this is a real ...kind of like these appropriate technology projects too people like to see - it's a real innovative way to deal with problems using spray effluent - this is something that I don't think is being done in any other part of the state as far as we know. There's probably attempts at it, way...but it's a real appropriate technology kind of approach. That's what they like to see, you know...innovative or creative ways to solve what are standard problems.



CR: Has it worked in other places in the country where they've used the spray effluent?

JW: Yeah, this spray effluent has worked pretty well. In fact, that's where Jerry Elliott the City Engineer has some knowledge of it, in some other states. See, in other states, you don't seem to have the restrictions of applying effluent to wetlands. In most places, they want you to apply effluent to wetlands. We built a huge pond down in California, in the southern???.the Corps of Engineers said that's great - put all that effluent right here in the wetland, and ....it expanded the size of that wetland three times...

CR: Has the Corps of Engineer been involved with this at all?

JW: No, it's really kind of out of their jurisdiction here. Well, I wouldn't say it's out of their jurisdiction - the Long Tom River is under their jurisdiction - this is up away from it...they're a participant in it, I mean they're interested in seeing it move forward..but it's nothing that they're directly involved in. The Corps' presence here is pretty more like a participant...

CR: Do you know who owned the property before the ACOE did? and then,... because Veneta bought it from the Army Corps, yes?

JW: I have no idea about that land. It was probably just in private ownership. Could have been state forest, it could have been BLM land, may have been...

CR: So maybe a question that I should ask to the state lands people is about the fact that Oregon is the only, or one of the only states in the country where spray effluent is not allowed on wetlands?

JW: Well it's not "spray effluent", it's just "discharging any treated effluent" to wetlands. Most states would allow that. I mean I think to make a blanket statement that they all do, I don't know...I mean, the ones I worked in, I know you could. I worked in about 8 states and I know that spraying effluent on wetlands is generally not a problem. See, they look at it as "wetland recharge"...I mean anything you do to keep water in a wetland to keep it viable is a real advantage. I mean I don't want you to put raw sewage in a...in a wetland, but treated effluent, that's been treated,... that's got low chloroform count the chlorine's been taken out of it,...if it meets those standards then it can be applied. You wouldn't..nobody will let you put raw sewage in a wetland because that will kill it. What you want to do is water in it and that will enhance it. To make it function it would have to be low chlorine, low chloroform count, heavy metals would have to be taken out.

**(End of Taped Conversation)**



APPENDIX A-7

INTERVIEW 6

Name of Person Interviewed: Mr. Jerry Elliott, P.E.  
Title: Lead Civil Engineer  
Agency, organization or affiliation: City of Veneta  
Date of Interview: Thursday February 19, 1998  
Location of Interview: Systems West Engineers Inc., Eugene, Oregon

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**Question 1:**

What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 2:**

What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 3:**

How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?

**Question 4:**

Will wetland functions be served by this easement?

**Question 5:**

Is there another administrative way to solve this problem that might be better?

**Other questions:**

- Is the easement more a result of political expediency versus the best possible land-use allocation?
  - Would any of this even happen without certain federal policies hanging over everyone?
  - What have been the most difficult problems in making the whole thing work?
- 

JE asked what a CE is?

**Transcription of Taped Conversation:**

CR.: My understanding is that it's a legal agreement between 2 or more entities where the...certain area of wetlands would be protected regardless of the future sale of the property, regardless of who owns the property in the future...and depending on what kind of Conservation Easement (CE) is agreed upon, it might be protected for 30 years or in perpetuity. So that's my understanding of it. And I also know that some easements are more closely tied to the deed of the land than others, and the terms of the easement might in some cases be defined by the property boundaries and in some cases defined by the wetland boundaries - so each easement is different but it's a binding legal agreement. That's my understanding. So does that coincide with how you understand it?

JE: Well, when I see the term easement, I'm usually thinking of the right for a ingress - an egress relative to maintenance-within the context of public works we usually ask for an easement to let us have access to the property. So I guess what I'm thinking of here, is, and this goes to question 1. (*asks if the tape recorder is going - CR. replies yes, green light is happening!*)..Well, question 1 talks about some of the conflicts that we might have relative to an easement. One of the things that the City plans on doing to the Area north of Highway 126 - not doing to, but doing with...is applying their wastewater effluents out there.

CR.: Right. The "City" being the City of Veneta.

JE: ..the City of Veneta. And there are certain regulatory standards that must be met if it's going to have incidental human contact. And then there's the lesser standard if the people who are going to have contact with them are city staff or trained personnel who have some idea of the hazardous and inherent risk with that. So when I say the word "easement", I get awfully skittish about an open pathway through that, because that would change some of the design criteria relative to what we can and can't do.

CR.: Oh, OK. So, I mean I guess in some cases that could be part of the easement, but... as far as what I'm trying to write this case study about, the easement idea might be...the easement idea is being considered to protect the wetlands.

JE: OK, so it's not necessarily a question of human rights or ingress or egress - maybe a habitat easement or habitat protection issues.

CR.: Right. And maybe one...one of my conclusions at the end of all this will be that each wetland area being considered should have a different kind of protection. Maybe one should be under an easement in perpetuity, and maybe one under a natural resource protection by the City of Veneta, and maybe instead they should all be considered under the same kind of protection tool. But for me, essentially what I'm trying to do is write a case study about the site, the wetlands, and whether a conservation easement for these wetlands would be the best way to protect them and would it be a win-win situation for all parties. So that's really the question I'm trying to ask and answer.

JE: OK. Well, so the first question relates to conflicts, and I...it's not necessarily a conflict but it's a **concern**. One of the things that's happened to the City of Veneta is ... years ago, I think those years were like 1982, the City Engineer did some preliminary planning relative to sewage and wastewater management north of Highway 126. Essentially, he let the State Highway department - the term is 'borrow' - but take some dirt from him to build the highway there. And the long term planning of that was that that would probably serve as a future lagoon. Well, in the meantime, it got flooded, and succession happens and now it's designated a wetland and the city has lost its use of the land as a wastewater treatment option. So, one of the things that concerns me is that if we ...if the city were to go into and... enter into wetland protection easements, we'd want to watch the language very carefully because we're going to be applying sewage effluent out there for 20 years, and we may...we may create additional wetlands. We may have some incidental runoff and some elevated or perched water tables that allow wetland habitats to...or wetland plants to expand their niche, or expand their area, and 20 years down the road we may have a certain number of acreage less, or certain acreage more of wetlands. Which then distracts from the operations of that (work trim??). So I guess that's a conflict, some kind of addressing in any kind of easement language. That's all I can think of for conflicts. Question 2 I guess brings me back to the issue of **access**.

CR.: Right.

JE: You know, except for all these say the Oregon Country Fair property and in a sense...well...there's 2 properties there...are you talking about the ones north of Highway 126?

CR.: There's actually 5 different properties being...that are possible easement areas.

JE: Right.

CR.: There's...I'll try to get this straight. There's the one owned by the COV currently, with the Lomatium preserve on it...there's 36 acres that the COV and the OCF might swap...there's the Larson property, or some of it - that's 3...there's some wetlands that are like fingers there and they're thinking of cutting off the fingers and using them...

JE: Yeah, that's part of the 36 acres.

CR.: Is that part of the 36?

JE: Yeah.

CR.: OK. That's 3.

JE: And there's the Veneta owned parcel. And then to me a 5th parcel would be the OCF land on the other side of the river - on the west side of the river - Indian creek.

CR.: Indian Creek. Right, OK.

JE: So, when the questions state "on OCF property", you're only referring to the Indian Creek and the 36 acres?

CR.: No, that actually should...you're right, that's a good point. I'll have to change that so it says "**on the**"... I should say "**on the property under consideration**". Because currently, some of these are not owned by the OCF.

JE: Right.

CR.: Some are owned by COV and some are owned by Forrest Law...Larson.

JE: Forrest Larson..Right. Not Larson's Forest, but Forrest Larson!

CR.: Right! With 2 'r's right?!

JE: Yeah! 2 something...I forget what! Well, then in the context of Question 2 in terms of compromise, again we're operating a wastewater treatment facility and we want to be very cautious about casual access to it.

CR.: Right.

JE: There may be some operational things we could do, some design things or some land swap things that would allow some corridors for example..

CR.: Corridors?

JE: Corridors.

CR.: C-o-r-r...not quarters?

JE: Pathways.

CR.: Yeah, OK. Do you...I mean, underlying all this is the question of growth - Veneta's projected population increase and the need to provide certain infrastructures for those people. So, how that all relates to the

wetlands and the easements being considered, how do you...and the need for provision of sewage treatment, how do you... how do you see some of the ...what do you think some of the compromises might be that the COV would have to make?

JE: Well, I ...let's see if I can explain it this way, hold on...

CR.: I copied this (*showing Jerry maps*)..I got that from Leslie Scott, and I also copied the Salix Associates delineation, what was done. So that's for me really helpful.

JE: I guess the point I'm making is ...this is the OCF parcel, this is Larson's, this is the Lomatium, this piece here is the City property. We had a very difficult time finding enough area over here to do one in term of...we arrived at a guess...so when we talk about..and I'm thinking about pathways for other things that take up chunks of land, then our marginal amount of land becomes less than marginal. And so then what the City has to do is it has to go out and find other acceptable lands. So, the City is right now sitting in a position where it looks like they can do everything they need to do for the 20 year planning period in this thing...based...and stay on their land...what land that they had envisioned over...what land they had purchased for this purpose years ago. So, any outside influence in the sense of easements or pathways or corridors or trading of wetlands then **imposes an additional burden on the city** when it has to go out and get some replacement land to take care of that.

CR.: And part of this limitation is because this is all riparian and so it has to be 50 feet from the edge of the waterway where the effluent is sprayed?

JE: That's part of it, and...

CR.: That's part of it..

JE: ...and.. the Salix report doesn't cover this area, but we had to make some assumptions relative to well...if these areas tended to be about 40% wetlands, we had to assume that this probably be the same.

CR.: Where is Jennifer's delineation going on right now? I know that she's not doing...she's not redoing what Salix Associates did, she's doing something else.

JE: My understanding is she wouldn't have to do this. I'm not sure.

CR.: So one area of compromise might have to be addressing the whole issue of access?

JE: Well certainly access. And then, my context of compromise is that we have to give up some land when you're speaking of the city. And because things are so tight, we don't have any spare property so to speak, we have to give up some, then we're going to have to pick up some additional through purchase or other resources.

CR.: What happens 22 years from now after the 20 years needs are met?

JE: Then they build a new plant and figure out what goes from there. And the **hope** is that we've designed this conservatively enough with the poplar trees and we'll learn enough about poplar trees over the 20 year operation period is that we can probably tweak another 10 years off the operation. But we're not going to promise.

CR.: So is there hopes that eventually a much more high-tech treatment facility will be built out there?

JE: Ah, much more high-tech than what - than now or what's proposed at this point?

CR.: Like a tertiary treatment?

JE: There is no talk right now of going to a tertiary treatment.

CR.: Well, what happens if in 20 years there's even more of a population explosion out there and ...or a possible one...so there's all of a sudden much greater need to deal with sewage issues?

JE: Well, given the current rule, if that happens, yeah they would have to go to tertiary. Because the current rules say that I don't care how much population growth you can (see???), the load to the river isn't allowed to change, which (or your efficiencies of that???). But that's the load to the river. I still don't suspect it would change the...that we would run through the tertiary process for the land application. Unless we had to in order to protect public health interests when there was access issues which are going on...or didn't or could not respect the fact that it was (?????) or the state rules change...which is (CR. and JE) all possible!

JE: (again) all possible!

CR.: When it's just one big possibility!

JE: So in context of **win-win**, I guess the quickest answer to that is if easements or access issues or needs or other interests require land, that the only way the city would be in a win-win would be to get that land back. Not necessarily an acre per acre basis but on a functional basis.

CR.: Could that mean expanding the UGB out there?

JE: I don't see why.

CR.: Because when I ...when I went out to meet with Jan Wellman, he said the COV has ample land within the UGB. And so there's no need to expand it, it would just be a matter of finding other lands within that delineation to expand onto.

JE: Well, from the context of which (creek???) So. This plan actually follows for most of that. The UGB is this line (*pointing to map*) or roughly this line right here.

CR.: Right.



JE: So we're already planning on applying effluent on certain sections. And I think that's perfectly acceptable to the State Plan then because when you're planning...when you're discharging effluent, it's not exactly like you're opening up (dramatic development???)

CR.: Right. So, the ideal situation is that the ..the planting of the poplars is successful, and the spraying in that area...that that all works yeah?

JE: Yeah!

CR.: And that the wetlands that would be protected...would be ...it would be possible to retain them in protection and still meet the COV's effluent needs.

JE: Yeah...actually, I see another more ideal situation... is that the **regulations change** and we're allowed to discharge (right on it???) . Because there's a tremendous amount of assimilative capacity there. And I think with some proper and careful management that we could actually enhance the quality of those wetlands. The Salix report suggests and enough people at OCF suggest that it's pretty marginal wetland quality anyway.

CR.: Right. Except for the Lomatium.

JE: Well, and even that's prairie, not wetland. I don't think Lomatium is a wetland plant is it?

CR.: I thought it was.

JE: Well, and that's quality for one species. I guess when I think of a quality wetland, it's usually deep enough to wade in. Of course that's a personal bias. But anyway, if the regulations were to change and then the DEQ were to allow discharge to wetlands, then I believe we could probably enhance the wetland quality.

CR.: OK. So that raises an interesting question for me to pose to you as an engineer. So, Oregon is the only, or one of the only states that doesn't allow discharge into wetlands?

JE: I'm only licensed in 3 states! so I can only speak for those 3! But it's the only 1 of those 3, right!

CR.: Right. So, as far as the wetland protection, do you think that that in itself poses a conflict? If there's the use of wetlands for sewage treatment? Do you see that in itself as being a conflict between wetland protection and development? Or do you think it's safely and...

JE: I don't think I truly...

CR.: doable enough that it isn't really a conflict?

JE: I'm not sure that I understand your question. But let me answer it this way and then you can see if you need to guide me through it.

CR.: OK.

JE: I can put more water into those wetlands through discharge of treated effluent, and I'm not talking about raw stinking sewage here...well managed sewage, which is rich in nutrients, and which would have some, you would...have (eugenic organisms???) . But those organisms at that type of water is the kind of water that is typical of wetlands - stagnant, ...fairly nutrient rich....and so I say enhance them...so that I can give them more water, more of that kind of water so that there can be more production ...of whatever you're producing, sedges, or ducks or snails ...

CR.: So you think that careful and treated ...carefully and properly treated sewage then can be used in conjunction with wetlands and still not jeopardize the ...

JE: the quality of...

CR.: ...the quality and functioning of those wetlands, right.

JE: ..but the thing you don't know about me is I also have a degree in biology. So, I have...when I take off my engineering hat and put on my biology hat, I'm still not upset about it!

CR.: Right. OK, so, how about the question of heavy metals? How does that relate to the composition of the sewage and what happens to the quality of the wetlands?

JE: Well, the first thing to keep in mind is this is a small, bedroom, domestic city, so the only heavy metals you're getting in there are incidental sewage waste heavy metals. There's no manufacturing in the city, so you're not getting any chromium plants, or copper waste from tire manufacturing or selenium waste from leached soils, or...so it's a pretty clean waste in that context.

CR.: As it is!

JE: As it is. Secondly...the treatment plant process tend to precipitate out a lot of those metals. It's only in the sludge which we're planning on re-applying back out here anyway, so it's kind of a mute argument! So there is an opportunity for capture, and so if there was an industry that came to town, Hewlett Packard...and they ...I know that Hewlett Packard in Boise's plant has trouble getting all the gold out of their effluents. So if you've got gold and (arrow???) or mercury or something else, if you add a process change, you would have an opportunity to capture it there on the sludge and then change your sludge management, and still be pretty comfortable about what's pumped out. So...

CR: Because maybe that will happen, yeah? Maybe there will be new industry that moves out there.

JE: Right. But right now, what we know about this community is not telling that..it's not (???)..it's not a concern. And probably in 6 months we'll have sludge samples that verify that.



CR: So if there was quite an interest by different industries to move out there, and then that became an issue as far as what's in the effluent and what's - how it's being treated, then what happens? Does it have to go to a higher treatment level?

JE: Well, the current trend in the industry is to stop it where it starts. So if you have a plating company that wanted to go out there, and they were going to discharge chromium, then as part of the Planning Commission review process we'd make them put in a pre-treatment plant for chromium. And then on the other side of the pipe, we'd monitor for chromium occasionally, to make sure they were meeting those pre-treatment criteria. So in other words we'd nip it in the bud. Now granted, there's always illicit dumping and those kinds of things that can and will happen. But they're very very minor part of the (????).

CR: Not that Veneta's going to become the industry hub of this whole area!

JE: No, they would like to but they're not going to!

CR: So you...from what you've just said, it sounds like you...you believe that the wetlands themselves will...still...their ecological function and the maintenance of the habitat will be...will continue, even if the effluent is sprayed, and even if the land exchanges take places and the easements are instituted?

JE: Well, our...we're going to try...we're going to design around the wetlands as much as possible. Since it's preservation in the context of what we want to design, we're going to leave them alone as much as possible. And in the context of what I'd like to do is I'd like to enhance them but I don't think I'm going to (be able to???..enhance means more water..???)

CR: But that would be a state level change.

JE: Right..

CR: And it seems unlikely to (fill???) right now, or in the near future.

JE: In fact, DEQ had a committee to review it for a couple years. There's no rumblings at all. There's some people in DEQ that would like it to change, but just given the current direction that's not happening.

CR: Do you know why that's been decided for Oregon in contrast to how other states deal with it?

JE: Yep! You want me to share my knowledge, huh?!

CR: If you care to! I find it interesting...

JE: When Oregon was fabricating its pollution control laws, ...let me back up a little bit. Most states, when they put their pollution control laws together, they try to define what comes out of the pipe in terms of quality or quantity. When Oregon was putting its laws together, they tried to go a step beyond that. They wanted some assurance that in-stream water quality could be maintained or at least would not be detrimental to sensitive aquatic species. So they wrote the law such that it really didn't matter what was coming out of the pipe, it mattered what your impact on the stream was. And they defined that with what they called a "mixing zone". And you had this mixing zone where you could have a certain pollutant level in the stream, and once you got past that mixing zone you had to be back to a condition where it was not hazardous to aquatic species. And then what they would try to do is they would take the stream (*started drawing example on paper*)...

CR: So it's a transition zone, the mixing zone...

JE: Yeah, but they went a step further...they went a step further and basically defined that there ought to be a way for a sensitive aquatic species, i.e. salmon, to get past this pollution zone without getting ill...If you look at a stream in process, for Veneta the mixing zone takes over about 2/3 of the stream when you go down the stream about 125 feet...the pollutant level requirements....and we meet the requirement because a salmon can be swimming upstream...and since there's chemicals that it doesn't like, then it can swim sideways...the mixing zone is - takes up only 1/2 the stream..it can swim up here and avoid the toxic area. And actually the time we did our study, there was also layering effect, there was a place underneath that wasn't (???). So anyway, with that complexity defined for how the discharge is managed, then this committee that was reviewing wetlands got into this whole thing of "*how do you define a mixing zone in a stagnant water*"? They found they couldn't. So that's why when (???) ...they haven't really got around the definition... they're so happy and tickled pink with the mixing zone and criteria...water quality criteria that they don't want to go back and mess with that just to open up this window for wetlands.

CR: So in other states how did they address that or resolve it?

JE: Well in other states, they tell you what you need at the end of the pipe. So ...I haven't worked on a California wastewater treatment plant before. If you have a sensitive stream in California, they'll basically tell you that the end of the pipe must meet the criteria. So in that sense, they're stricter. They don't allow for the mixing zone.

CR: It's intriguing..I'm just intrigued how the same idea can have so many takes on it, depending on where you are, and who's talking about it and what questions people are asking and what their assumptions are!

JE: Oh yeah!

CR: A wetland isn't just a wetland. So in the ideal situation, what tools do you think should be used to protect the wetlands out here?

JE: Protect it from what?

CR: From development.

JE: Well I think, I think the tools to protect it from development are there...and there's other more aggressive things..I am far more concerned about the quality of the wetlands than protection per se.

CR: Can you elaborate on that a bit - the quality point?

JE: Well, when I look at the fingers of wetlands out here, they strike me as low quality. They're not very productive, there's not a very big plant or animal diversity...versus a pond, or a shallow pond may be very diverse biologically...have more elements of distribution. To me, that's a higher quality wetland....a bigger spread of biota.

CR: Right. So in this whole area, what do you think is the best - or some of the best administrative tools to use to protect the higher quality wetlands, the more diverse wetlands, from potential development?

JE: Well, I don't see development as a problem. The City and the OCF have it all locked up and neither one of them want to develop it.

CR: As it stands. But change of ownership of some of the properties, the OCF property, maybe that would mean the land would become open up for development. Who knows what would happen...

JE: Well, that's true. The OCF has said that they're not interested in selling out for development.

Yeah, Larson (????)...and the City has got (planned interest in that so they're not interested in development???) So...

CR: But things could always change...maybe the Fair won't be able to operate, maybe that..and that means they can't pay their taxes and they can't keep the land, and then it goes...and then, it's open. Who knows what would happen. Like one person suggested that the COV could impose a natural resource designation on the wetlands owned by the city...an easement is a possibility..another person I talked to said...

JE: Well, the City has no interest at all (in ????)...it's got plans for it right here. So I guess just I can't even fathom that 20-25 years down the road, I just can't see the City giving that back...and then we talked administratively of the City...the COV is a small town and I would be quite concerned about giving them an administrative burden of trying to determine wetlands, or what wetlands should be protected or shouldn't...there may be a way that they could.....right now they're pretty much administratively burdened trying to manage water systems, sewage systems...so I don't think the COV...and I guess my context is I think there is a system within the state that allows for protection. They're already delineated...so now if anybody were to acquire them, they'd need a fill permit if they want to do anything on them. So right now I guess I just don't see the (problem???) ...and I don't think they're very high quality.

CR: So let's say in 25 years the federal government offers enough money to Veneta to build some really high tech tertiary sewage plant and then there's no more need for the effluent spray area..and then maybe the city decides to...they decide they want to develop that.

JE: Yeah...

CR: You don't think that would be..

JE: I'm not much into 'what if' games. No, I don't think it's very plausible...I think it's really ...after 20 years they'll ...you know I guess I'd back up if that truly did happen, one of the conditions of that high tech operation would be that the effluent disposal area would have certain rules and regulations over disposal options relating to it. I mean, that's a really lousy place to think about development-away from the collection system of the sewers, it's at the very edge of the water systems..it mostly floods...so all the high tech stuff in the world won't protect it from flooding.

CR: So you think right now the best way for all involved parties to proceed is to go ahead with the land swap and do the poplar planting, and ...

JE: Well, I am advising the city not to land swap until they know exactly what they've got in terms of land and requirements. We're...if I get a go-ahead Monday on a contract, 6 months later (???)...there's been talk of a 1:1 swap, the trouble is the OCF wants to give us 34 acres of which 19 acres is unusable for us: So, you know, I'm just advising the city to build poplars until (???)..

CR: So 19 of those acres are unusable even with the poplar planting?

JE: Those have been identified as wetlands...Actually, based upon this line we're saying we've only got 12 acres...but the point is an acre per acre land swap may not be in the city's best interest.

CR: Right. So I guess my last question to you is (tape side 1 ended)...

JE: Development of housing, commercial or industrial areas over wetlands? Maybe I'm in a box here, but I just don't see that happening. The lowland area is expensive..drainage...and parts of it are outside the UGB so that's not very conducive to development..and the owners have already decided what land use they want. Sure, the odd man out is Larson, but he still has all the other constraints...So, I just have a hard time envisioning developers (???).. If you go south in town, there are some, ...well in a sense better quality wetlands with a higher diversity of biota, because there aren't strips... there's a range of species... and I would think there'd be a higher probability of that being developed. There's some probably good quality wetlands on the far eastern end of town...the roads are certainly better and designated for development..they have a higher probability of being developed on there...

CR: Is that inside or outside the UGB?

JE: Inside..

CR: Inside...

JE: Now I don't know how wide they are, but these 3 drainages come in here, and this is heavily wooded and gotta be wetland down through here ..that's drainage.to me much more likely to be developed or encroached upon.

CR: So are you saying that they are a little more fragmented here or are they still being connected?

JE: I don't know. I'm just saying that I think that it's a drainage way...and it's probably a better quality wetland. Maybe that's just....clearly all that's within the UGB. The city doesn't have any ownership in it, no other conservation group has ownership in there. It seems to me, that's the - that's the wetland , yeah, that's the wetland that's going to be damaged or impacted.

CR: And this needs to be looked at.

JE: Well, if the objective is to protect wetlands. There may, there may be - I don't know...150 acres of wetlands down here, but I don't see anybody knocking on the door to get at these wetlands. This is basically done..I don't...all that I think's going to be done with it. There may be a bigger number of acres here, but I don't see an insistent that it be developed. Where there's a smaller acreage here, then I think over the long term that will be developed. And here's another big issue, as an engineer: ..if we as a society are deciding that wetlands are important and should be preserved, yet wetlands, especially here in Veneta, are the transportation corridors for drainage - and I've got to drain somewhere, else I'm damaging homes and property because I'm flooding things. So how do we integrate a wetland management strategy that are also appropriately designed or allows for drainage? In other words, in the old strict engineering way of doing this would be to put that thing in the channel or put it in the pipe so we get a nice big capacity, it didn't get roots in it or leaves or rocks that mess it up so it couldn't flow through, and I don't think that's what they wanted. As an engineer who's doing water studies I never want that. It's always going to be the traditional, easiest method of drainage in town. And then you get the opposite situation. My best experience with this was in Boise, Idaho about (8??) years ago. Do you know Boise at all?

CR: Never been there.

JE: Well, in a sense it's like this: a river runs through it. Just immediately outside of Boise are two major dams on the Boise River. Well, they had a very wet spring...and those dams were having to open the gates fairly wide so that they didn't overspill the dams. And so that I just happen to remember the number, but they were discharging about 8,000 cubic feet/second of water, and they were getting floods like they were, like it was 10,000 cubic feet of water, and they couldn't figure it out. And the reason is, because over the years, the river had been so grown up with vegetation, because they'd been able to control the water through the dams, that now all this vegetation is wetland, quality wetland in the river, was acting like a series of mini-dams and was raising...was competing with the flow of the drainage of the river. So, they were discharging 8,000 cubic feet/second and they thought they had a channel capacity of 10,000 and they really only had a channel capacity of 8,000 because it had basically been eaten up by wooded growth and not only development - just the wetland itself doing what wetlands do, growing (???).... So we ought to do a drainage plan for the COV and I need some way of managing it. If the drainage plan says we're going to drain to these open, wetlanded waterways, then how do you manage them and keep them thin enough so they have a capacity so that when you do get that big storm there's not flooding all over (???)

CR: Seems to me that should be an integral question within the whole issue of development and wetlands?

JE: Well yeah it is, but it's also a policy question. You know, it's not just a wetland itself in, I mean for capacity... the policy says we're not going to dump into natural waterways, and we're going to keep those natural. Then I've got to have not only natural waterways but an additional buffer for capacity. So we get into land use and property rights issues, because how can you tell someone, well, basically we as a city need a drainage way and an extra 25 feet or whatever to manage their drainage..so there's no room left on your parcel to put a house. Tough luck!

CR: And they're not easy questions to always answer...

JE: No. And they are policy questions.

CR: They are policy questions, and they'll continue to be so as long as we have more people that drives attitudes, live..and move around..

JE: Yep...

CR: So they'll come here after the next big earthquake in L.A.!

JE: We'll get one. It could be worse here. Anything else?

CR: Just to thank you for your time.

JE: Do I get to see the paper when it's done?

CR: If you like to, and if I think that it's good enough grammar and done well enough by June!  
and I wouldn't be embarrassed to share it to people!

JE: Am I your first, fifth or...?



CR: Halfway through now!

JE: Out of how many?

CR: This is number 6!

JE: Twelve?

CR: I want to try to do a good job, and get a good cross-section of ideas and perceptions..You know, I'm doing some from state, local, federal, I want to talk with the Cultural Resource person for La Grande Ronde Confederated Tribes...and people from the Country Fair...

JE: What about Forrest?

CR: I want to talk with Forrest..So, I think it's really important to try to get a good cross section of ideas...and that will be the most important part of the whole paper..is analyzing and evaluating what people share with me through these interviews. You know it's easy to do the reading and research and summaries from the existing materials on wetlands and developments and conflicts and easements. But then to lead into the specifics of this, and provide some recommendations, that's my part of it. So, if I only had this to do between now and June it would be really easy! But it's kind of a multi-layered life right now!

**(End of Taped Conversation)**



## APPENDIX A-8

### INTERVIEW 7

**Name of Person Interviewed:** Ms. Leslie Scott  
**Title:** General Manager  
**Agency, organization or affiliation:** Oregon Country Fair  
**Date of Interview:** Friday, February 27, 1998  
**Location of Interview:** Oregon Country Fair Office, 1451 Ferry Street,  
Eugene, Oregon

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**Question 1:**

*What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 2:**

*What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?*

**Question 3:**

*How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?*

**Question 4:**

*Will wetland functions be served by this easement?*

**Question 5:**

*Is there another administrative way to solve this problem that might be better?*

**Transcription of Taped Conversation:**

LS: The project began with the realization that the Veneta...Veneta...the COV was going to expand its sewer system on the north side of the highway, right on the ..on the other side of the river from the OCF property. They had built a borrow pit which was supposed to be an expansion lagoon. They were also spraying effluent onto that...onto the Larson property, and we could learn from the '92 field trip that it was unsafe to even park on that land because of that effluent spraying process. And, so, I just started poking around and reading and going to meetings and hearing about all the water problems and sewage problems and started talking to people, and we also were concerned because the shopping center expanded and we knew that there were wetlands out there in the National...part of the National Inventory. So, I actually was talking to the City Manager, the former City Manager of Veneta, Les Clark, about alternative treatment systems, tertiary treatment systems. He had worked at Arcata, in Arcata, California, where they use wetlands to...for tertiary treatment, and thought it might be worth exploring. So we had this idea to do a feasibility study, and he..and they...he was aware ...I mean the DEQ had put them on notice that they had to really revamp their sewer system because the whole thing was failing...their lagoon system was failing. So before they could do any kind of expansion, they had to repair the existing system. And, they were under pressure to expand because there was a lot of development pressure in Veneta - and this was pre-Hyundai, and now it's much worse, needless to say, and the pressure's greater.

So, we had learned that there was some - I don't even remember how - under the National Clean Water Act, there was some EPA funding for watershed enhancement, there was some grants. They were looking...I think it was from Steve Gordon who I had talked to at LCOG, and he told me about this. And also, Peter Thurston, from Lane County Community and Economic Development had told me. So I had two...yeah, I just was started talking to people about the whole situation out there, and..and those..both of those people happened to mention that there was this EPA funding that a project like this might be eligible for. So Les Clark and I, the Veneta City Manager, put our heads together, and actually just looked in the Yellow Pages and found Pacific Basin Shelter Company and called them up, told them what our idea was, what we wanted to explore... I talked to the LUMP Committee at the Fair and of course the Board of Directors, and we talked to ...The City...talked to the City Council.

CR: The City of Veneta?

LS: Yes, the City of Veneta City Council...and we signed a Memorandum Of Understanding in order to be able to apply for the grant we had to do that - that sort of outlined the..the study that we wanted to undertake - and the collaboration. And it was meant also to be sort of a community development project and that it was to be ..do something that...that would enhance the landscape, and that provides educational and light recreational opportunities and keep a green open space for the community ...that the community could have access to...and, as well as solve the tertiary treatment - piece of the whole sewer dilemma. So, our original sense was that it would be...we would use constructed wetlands much like the Cannon Beach application. We started...we organized some field trips and visited the Hillsboro system and the Cannon Beach system, and I got a video tape on the Arcata project, and just started finding out that ...you know...it's a dilemma more and more rural communities are facing as you know the Clean Water Act and the mandate to reduce point source pollution has required...that...you know, the City during the winter discharges directly into the River and then does the effluent in the summer and the...the - what was being discharged in the river is definitely well below standard, and what was being sprayed in the summer was so heavily chlorinated that when we actually did an environmental assessment on the land we bought there was...they said..what we needed to watch out for was chlorine toxicity. So, our first stab at the grant was unsuccessful. And the main reason was there was no clear sense of how The City and the OCF would actually partner to do the work. And, the land base in question was owned by neither party - where the application was going to be. So the OCF bought the land from the Larsons. It was zoned commercial, and it was a separate 35 acre parcel, and it was...that...they had a reciprocal license agreement - The City (COV) and the Larson family, whereby the City could spray effluent and cows could graze on the property, and you know...sort of called fertilizer I guess! And the soil compaction...the combination of spray irrigating and soil compaction from the grazing, it was very heavily grazed...started creating wetlands - this practice had been going on for years and years, and it started creating these wetland fingers. And it grew as the spraying and the grazing continued. You can see them in aerial photographs just growing out - as Dennis Todd calls it, "interdigitated".

CR: Oh, that's how these fingers started.

LS: Yeah...There was an intact ash swail, you know that kind of wetland system, but the highway destroyed it when it went through, and that's where those mitigation ponds came from. You know, but that...before the highway came through, that was a very different system. You know, a very different kind of vegetation and everything. Anyway, so we bought the land and we applied for the grant again and this time we got it. And Pacific Basin did the study...and it turned out that the...the wetlands were going to be economically...the constructed wetlands just weren't economically viable because the...the...you have to line the ponds, because they..it becomes waters of the state and you can't...you know... mix those, and... So, we...Kate Kirsch, who was a graduate student in Ann Bettman's class, whose...who was one of the partners in Pacific Basin Shelter company got very interested in the whole idea and wound up doing her graduate work on...on the idea of a planted native forest as a way to...using drip irrigation...as a way to dispose of this...you know, the water...and provide the tertiary treatment basically.

CR: So that's where the idea of the hybrid poplars came from?

LS: Well, the hybrid poplars were...had to be put in there because that's an improved system at this point by DEQ. The planted native forest is not...it's an entirely experimental - it's not been done, but it was included in the facilities plan. She started working very closely with Jerry Elliott -(i.e. COV's Engineer) we've been working with Jerry of course all along. We did a number of community presentations on this, to let the community know...when the proposal, when the feasibility study was completed...the first grant was \$36,000. And when the feasibility study was completed, there...there were six proposals that came out of it - Conservation Easements weren't even among them. But one was...that it went all the way from the watershed council on one end of the spectrum to the application for treating the effluent on the other...(interrupted by phone call)...So let's see - where were we...so the proposal had six...the study came out with six recommendations. There was...it was called the Long Tom Greenway, which was sort of the name for the overall...and other projects includes: the sewage lagoon; the ODOT ponds; Indian Creek; the Bradshaw Lomatium Preserve; and then the creation eventually of a kind of open space, interpretative community place - not really a park, you know, because most of it is outside the UGB.

And then, we set about trying to implement...The Community Response Team was very active - Jim Bravold ...our priority, and our strategic plan for infrastructure was water issues, and so the group was very interested in this project, and interested in the establishment of a watershed council. Jim Bravold did a lot of work to help that happen, along with David Liberty from the Fair, and Lonnie McCullough...

CR: Oh - I know Lonnie! Oh, this is what he was working on for all that time! Oh, that's exciting - Oh, OK!

LS: Uh huh! So we got Steve Gordon, and Cindy Thieman - something like that...actually helped eventually write a grant, a GWEB grant, that got the watershed council funded. We have also a big piece of this for the Fair - the piece of it for the Fair that made it important beyond the fact that this is environmental and

community benefits...was that we needed more camping space. And so, our hope was to do the effluent application on the land that we owned, and camp on the City land, and then be able to swap lands once...once the City's project got underway and got fully lined out, you know, got fully developed from the engineering and, you know, facilities plan and DEQ point of view. And, as a part of making it possible, now..now...because the wetlands have...part of the grant...a huge bulk of the money from the study...grant, feasibility study grant, was spent to do a wetlands delineation on the Country Fair and the..the City of Veneta property, and that was done by Salix and Associates, by Bruce Newhouse.

CR: Right...

LS: And then the Division of State Lands got...you know really concerned... and had some charge from somewhere, and I don't know if it was the state level - but it probably came from the federal level - to do a delineation on...for the whole COV.

CR: And so that's what led into what Jennifer's doing.

LS: And that's what led into...that was Jennifer's piece. But the Salix report was done back in '95, and that's what created the...the..you know..then the wetlands fingers that had been created by the spraying, there were vestiges of wetlands left on the south part of that land, and then those fingers grew and grew and had been delineated. So in terms of using that land, at this point for their application, we really ran into a ...we ran into a problem finding enough acres period!..for the city to do its tertiary treatment in any form. The estimated acreage...Kate Kirsch estimates 34 acres, Jerry Elliott estimates 44, and so we've agreed that 10 acres is a contingency. That,... you know, we've agreed to go with Kate's as the basic, but with Jerry's to extra 10 as a contingency acreage.

CR: She estimated 34?

LS: Uh hum...

CR: Of wetlands that are available for...

LS: No, of land needed to be planted to do enough uptake to..to, you know...to dispose of the water, and...

CR: Of the spraying?

LS: Uh hum...Right.

CR: For Veneta...

LS: For their tertiary treatment...

CR: For 20 years?

LS: Right, for 2020. It's projected till the year 2020. So, the combined acreage of the two properties is a little over 100 acres - about 105 acres, and a lot of it is, you know... all along the river bank, so you have to be back 100 feet back from the river bank...

CR: It's 50 or 100...

LS: We hear different things depending on who you talk to, and the DSL hasn't really told us. And the...we had hoped to...in our hopes still is that we will swap for a minimum of 40 acres for the Fair, and draw as straight a line as possible so that their application will be below ours to the south of ours... and ours will be to the north for our campground, but there's still this...this collaboration on this green, open space and, you know, using it for these other community purposes...So, we...now I have a reciprocal license agreement with COV that says we can camp on their land and they can spray on our land until the year 2000.

CR: That's only two more years.

LS: Yeah. And at that point, we expect to have another system in place. So, we went to the DSL and told them what we wanted to do on our land. The City, as a governmental entity, cannot take any..cannot fill any wetlands and get any funding - and they need funding desperately. I mean, for the whole project, it's a multi-million dollar project and it was delayed so long that they've lost some funding opportunities. So they're really scrambling, and they don't want to risk jeopardizing anything at all. So before the land swap could take place, we had to do...we had to propose to the DSL that we'd sort of chop off those fingers, fill them, but...and then... the idea is that we would take the dirt right from the place where we need to flatten it and fill the fingers, so it's the same soil..it's pretty non...it's not going to be this big earth moving project...it's very gentle...and we're doing less than 5 acres of wetlands. And that's going to give the City the first big chunk of land that it needs. And it will definitely need some the land immediately to the north of that, but they...

So, once we realized we had to do all this work, we realized we need to write more grants, and we've gotten a grant from Cascade Pacific RC&D, and we've gotten..it looks like we have a really good shot - we were recommended for funding for the...for a GWEB grant to do this work. Now where Conservation Easements come in to all this, was again another conversation...but you know, now I don't even remember who I was talking to...with - I think it might have been Steve Gordon again, talking about the ...telling me about CE's in this new Wetlands Reserve Program that they had. And Steve...Dennis Todd found something on a web site...it's one of those wonderful synchronicities, you know because we hear these things all at once. Steve



Wisznovsky, had gone to - the Site Manager...had gone to some meeting or other and heard about it; Dennis had looked them up on the web site, you know, and...

CR: That was last spring, I remember that...right...and we went out, and we had the...it used to be Soil and Water out of USDA, and now it's called the Natural Resources Conservation Service, and we went out with two folks from there, and they were just...they're just looking for projects, and they were really excited about the OCF land! Particularly about the Indian Creek project, because that was another thing - to do Indian Creek is a lot of money and we knew we were going to have to get the money from somewhere because this isn't typically what...the kind of thing the OCF spends money on, and no-one has been at all convinced that we could get the Fair to...I mean we did buy that land - but, you know, it also bought it with the idea of eventually swapping to get the extra camping...so, and I'm sure I'm answering a lot of your questions here!

CR: Yeah! Yeah!

LS: And that's where we...so they came out and we've been talking about different scenarios about conservation easements...

CR: Can you talk about the conflicts and compromises specifically? Because I think they're really fundamental issues that everybody seems to be thinking about.

LS: I think... you know... lots of people at the Fair have very powerful relationships with the land. Many people have a real sense of ownership - it's kind of ...it's their land in the sense that it's their community and family really, and there's a lot of nervousness about getting that close to the 'feds'. The Easements are, of course...there's the one in perpetuity, and then there's the 30 year easement, and they are looking for both - the NRCS is looking for both kind of easement. So, the first issue, or the first big source of conflict is the sense that this would take away...somehow the Fair would no longer own the land. You know...it somehow would be in the hands of someone else. In my way of thinking, you know...once people understand how this stuff works, they won't feel that way. One of my primary interests in it has been to protect...no matter what happens to the Fair, not that I think anything's going to? But...no matter..

CR: Right, who knows...

LS: Or who can say that in 10 years we won't say enough's enough? Or I don't know...But, the land would be protected from development, and the development out there is enormous. And you know, the Fair has this incredibly valuable resource. And it also keeps us from developing it - you know, there's the whole compatible use issue. And I'm quite reassured...so that's the big overarching issue, I think - is: what do you think most protects the land, to me...and what do you think...and people's relationship to it is primary to that. So if they've lost the sense of ownership somehow, but I think because of what is potentially a misunderstanding of what the issues are, do they lose interest in the land and no longer steward it? The, the, there are a number of particular issues - the whole idea of compatible use is a big one. We do our parking on a lot of the land that would be in these easements. It would never be the "Figure 8" (refers to an area on the Fair property), you know we're talking about the lots and the land on the banks of Indian Creek, and the "Unorganized Territory" (refers to an area on the Fair property) and the "Islands of Maui and Wowie" (refers to an area on the Fair property) - that's what we're talking about, and all the parking lot. But, to make a viable ecosystem, there needs to be some sort of minimum size...the idea is to not have a patchwork obviously, but to create corridors or integrated areas. And, so the traffic folks are, as they should be, really... worried about someone coming along at some point and saying "this is no longer a compatible use" - you know, this parking - and we can't risk that. So, we've got to sort through that - how airtight is that? If we get past the first hurdle which is the sense that we've lost ownership of the land and some how invited the 'feds' into our, you know...home territory...The...you know...one of the (definite???) values to me is that they pay money. They pay 100% of the value...not the market value, but the assessed value of the land and 100% of the restoration costs if it's perpetual easement and 75% for a 30 year.

CR: And the survey costs?

LS: Yes.

CR: Which is separate from the assessment, and separate from the...what was the other one you just said - not the assessment?

LS: The assessed value and restoration.

CR: Yes, the restoration...So there's 3 things - restoration, assessment, and survey costs..and the survey costs are apparently quite astronomical.

LS: Right. So there...at least...to do these things which to me, would raise, too, the consciousness of people at the Fair enormously - not only would it be an incredible aesthetic benefit in the parking lot, it would be very educational, it would really speak to our mission, and it would certainly speak to our highest value, to me, which is reverence for the land - to restore wetlands, to restore Indian Creek, and to make sure that this land is protected from development. So, and I think just having it...you know, working on that kind of stuff - what we're finding is this is one way..this is the way that really many, many people relate to the environment - just working with it, you know...they get their hands in the dirt, they plant the plants, they collect the seeds and all that, and it just makes it much more real to people. So the opportunity to have that experience - and



that very visible assertion of our values as an ongoing way to bring us all together really around the stewardship of the land - I just can't think of a more wonderful way to do it frankly. And I can't see the Fair doing a perpetual easement, I can see maybe...I love the idea of next year being our 30th anniversary and having this 30 year easement so we project ourselves 30 more years out! ..you know, like we've come 30 years and we do the 30 year easement which sort of projects the Fair out for that other 30 years...

CR: What about the perpetuity though?

LS: Well, I don't think we can ...we'll ever get anybody to agree to perpetuity...

CR: Why? Is it just like it's so full of conflicts?

LS: Yeah, it's just so prominent, it makes it...anything that's forever, you know, I think it's going to not fly.

CR: An interesting thing though to me is that even if it's in perpetuity in words, and on paper, none of it's ever in perpetuity. Because things can always change - the laws can change, lawmakers can change and all this...and it's just an interesting thought that even though we're trying to establish something for the very long term, over the 7 generations, can we even achieve that? We can maybe always work towards it...

LS: Right. Exactly. But you know, the one thing that's another sort of thing about the Fair culture is the sort of anarchy - towards authority - the sort of not wanting to speak or take options away from future boards, future Fair families who are the next generation of folks who are going to run this thing here pretty soon, and you know...not to tie hands. Anyway, that's...it's just my feeling that it would never go to the perpetuity place. And my feeling that...there may be some resonance for people with the 30 years for the 30 year easement that may give us a window - a step up of interest, an opportunity to give us a stake about the future.

CR: But it doesn't mean that every easement would have to be...or every piece of...every area of wetland doesn't have to be maybe protected in the same way. That's another thing - that's an option yeah?

LS: Yeah!

CR: That some might be...

LS: I mean you could have a mix...

CR: Some could be in perpetuity for a good reason...

LS: You could do the Indian Creek thing in perpetuity, and the parking lots...you know, which is - there isn't that much restoration...you could do, you know, make sure the parking lots...then do the Unorganized Territory and the Islands for 30 years - that kind of thing, and just do the parking lot work ourselves. Then they do some little bit...they'll do the survey for all of it - but yet we asked if we could split that and they said yes...it's trickier - you don't want to make it so complicated because there's competition for the funding, needless to say. But I also talked to the Winery, on, you know, to the west of us...and to Forrest Larson on the east of the COV property, and to the COV, and we're talking about getting them all the way along, you know, there really is a huge area in CE that would go all the way to Fern Ridge.

CR: So the corridor, the idea of the corridor.

LS: Yeah, the oak, and in fact the Greenway Corridor would be protected. And the City couldn't extend it's UGB if ...if there's going to be any pressure to do that. I mean, maybe not this year or next year, but you know, I would say there would be very real pressure in the next five years especially if Hyundai gets to build Phase Three. Anyway...

CR: Well now, that's interesting because I asked Jerry Elliott about that and he said Veneta has a huge UGB, and there's no way that they are going to have even near the development to fill a huge part of it in the near future, and there's no reason to expand it because there's already way more than sufficient land.

LS: But see now that there's this Wetlands Delineation has been done, I think they don't have nearly the Buildable Lands that they thought. And, I don't know...I mean it's just hard to know...

CR: Is it all done, the delineation?

LS: I just know that we're seeing here, and I know that if Eugene holds its UGB which there's enormous pressure to do, then it's going to freeze things. Junction City is very aggressive about its UGB and wanting to expand it and stuff but it may be much more likely that that bedroom...a lot of that bedroom community stuff will go there.

*(taping interrupted momentarily)...*

LS: I think another issue is the management of...regime - what is...who is going to be messing around and looking at what and what's the best way to go with that, how much can the Fair really do...and, you know, there's monitoring projects, and there's...you know, lots of stuff to do.

CR: Right.

LS: And, again, it's kind of that question of...we always try to do everything ourselves, because it's kind of like we don't trust anyone else to do it right...and we don't want anybody else sniffing around or whatever. And...but I think...my sense is that once the feds do this, this will be the hands off...that we're a lot more likely to get more micro-management by somebody like The Nature Conservancy, and I would worry more about compatible use issues with TNC than I would about the feds, because I think it's their job to spend this money and, you know...find good projects and spend the money and get it - the program going... but I

don't think they have any kind of follow-up budgets, or very few inclinations. I totally trust Allen Mackinson. I think he would be absolutely wonderful to work with. He's got all kinds of just fantastic ideas. He's a total Oregonian. He's here, he's committed to this place....and, I mean..I...so I don't have the worries about him and I don't have the worries about the feds that I think other people do.

CR: But then it's tied to him! What happens if he's not here?

LS: ...if he leaves...Right. Sure. And, I mean...

CR: Or if he wins the lottery, or if he retires...

LS...Oh yeah, or if he keels over...there's a million possibilities. It's all sort of a risk assessment issue, and ...I mean what happens when I'm gone? And, what happens when the guys in the lots are gone, you know, that are running traffic are gone? What happens when the Dennis Todds and David Liberty's and the Marlene and Phillips and the VegManics crew are gone? It's all a big 'if'...and so, I think that sort of factor too, the unknown, and that this is a vision of a few people at the Fair, and if it won't spread beyond us, then I don't think it will fly. The Board, I think, sees some real exciting possibilities and some...and...but... is very very cautious about the idea - and wants to continue to explore it. But is very cautious.

CR: So do you think this kind of leads into the compromises...it might take some people's own personal concerns as being major compromises to go forward with this?

LS: I think that's going to be the big leap of faith of what's required here. And a lot of things happen at the Fair that way - I mean it's really...it sounds really strange, and sort of New Agey or Eugeneish or something - but, we... - you...just something literally just feels right or sounds right or you just see it and know it. And that was how it was to a few of us when we first heard about it. I suppose you could say that we had an agenda, but I don't think that it's a personal agenda. I think it's...it's a ...seeing a way...as I said earlier...to really live what we say we value, and creating a relationship to that land that has a whole different substance to it, that has a whole different character or quality to it, that I think would be much more hands on, and that...that integrates us into the...into the landscape of the community. You know, this kind of work links the Fair in the community in ways that ...it's hard to undo nature really...! I mean, the idea being that you restore, to the best possible extent, a natural system... and you get commitment, you know...from all kinds of different people. I mean it turns it into more of a cultural project, or as much of a cultural project as it is an environmental project, because it's about a relationship to a place, and about working together, you know...especially with the Long Tom and the watershed council work kind of at the center of it all, you know, because that's there, and that's happening. And, because it ties us much more directly into Fern Ridge. I think...people...you know...Veneta...I mean, this is this incredible recreational amenity, and it's something that Veneta places a lot of its economic...bases a lot of its economic projections on, and...you know, understands at that...you know...to the community in this way. And if the water quality at that place is not protected and people can't swim in it, there are warnings all over the place about falling out of boats or windsurfing at your own risk and stuff, it's hardly going to be a viable tourist attraction, and/or recreational attraction. A lot of their strategies are based on Fern Ridge, and this is all about...a lot of what it's about is protecting that water quality, and creating this green, open space that goes into the wildlife refuge, greens the whole area.

CR: Do you think that this is the best administrative tool to achieve this? I mean, could these other things take place and be accomplished without involving WCE?

LS: I don't think so. I can't think of any other way to do it. You know, grant funding is just so fickle and unpredictable, and because the idea is to do something that establishes itself for the longer term, it removes it somewhat from the immediacies of local politics - you know, either Fair politics or Veneta politics. And to me, it's a true win-win because I think we can honestly all have what we want and there are all kinds of wonderful benefits that could come from it that I think we can only just imagine. I mean, if just the project itself were done it would be a wonderful thing, but in terms of our own education, and our own relationships and the quality of our lives and the kinds of ways it could pull us together, and the opportunities for the high school and the community to learn about natural systems and...you know...those are just endless practically...those opportunities to have.

CR: Yeah. That's been a really common theme I've heard so far, talking with everybody...

LS: Great!

CR: ...is that it opens up this possibility for relationship...and...and maybe one of the recommendations that I'll make, or the finding... is that a CE in some cases might not be the best administrative tool, but it opens up the possibility for a new relationship which is maybe more overriding and in the long term would foster the ecological protection that's really sought.

LS: Yeah.

CR: And..and maybe that relationship, and communication, dialogue... opening up is so important that the easement - the benefits of the easement would override any disbenefits.

LS: Yeah. See, that's what my feeling is. Exactly. That that's the picture that those of us who favor the idea and think that the risks are worth it, you know...the benefits far outweigh the risks and whatever



drawbacks there might be. I also just don't see...I know that the City doesn't have any money to fund this, they don't have any staff for whom it's a priority...the Council right now is receptive...the City Administrator is receptive...the Mayor is receptive...but those things change, and they may change very soon in some cases. And with the Fair Board, I won't frankly...I won't be here forever...the Fair Board that I'm working with has a lot of continuity. And so there's an understanding, a relationship to this community and, you know... the ways that we can work together that built, in part, on the relationships that...you know... on the people right now. You know, Dennis Todd has worked so hard for so long, and I don't know how long he will do that...And so, you know...we could all go away, and the idea could go away. But, you know...what...and the financial commitment to this thing is enormous. And I don't see another source of funding that's stable...you know, that you wouldn't...the risk would be enormous but you could get the project, and run out of money and there you'd be. And I just don't see where else the money's coming from - to do it. Because I know the City doesn't have it, and I don't see, you know...a community benefactor or anything like that! So, I don't know...We may be able to fundraise for it, but...it sure isn't in my job description, this stuff! So, you know...just having people to spend time on it, that are able to spend time on it, and having the people that we're sort of partnered with available to spend time on it really has been kind of hard right now. That's a whole other thing, and that won't last, I don't think. I mean, the vision will last...  
(tape side 1 ended).

CR: So here's something I didn't write down on this sheet, but it's kind of a thought provoking question. What have been the most difficult problems with making this whole thing work so far? Is it education and helping people override their fears and trepidation?

LS: Well, I think frankly it's like "why in the world are you doing this - what does this have to do with the Country Fair?" And, you know, that comes from seeing that there is only an event, a three day event, rather than a community organization that's part of a larger community that has a...you know, owns its land and has to take care of it in a way that...we have a huge footprint out there, and that footprint is getting bigger and harder all the time, and we need to mitigate. And I don't know that people feel that way, for the most part. I mean, by far and away the majority of the folks come, they do their thing, they do a great job, and they love the event and then they go home and they don't think about it much. Being in this job, for me, that the big lesson has been that a lot of the future of the Fair depends on these relationships and on not having this thing, you know...this creepy thing over there, you know, but as an integral part of this community and the landscape, completely woven in...and so I'm ...I mean, that just comes from a place of real conviction for me. But it's very hard to know how to convey that to the broad Fair family. I think that the Far Side campground is really doing a wonderful thing for us, because we're so crowded and it's such a beautiful space, and it's also...it was real different...there was a lot of hesitation about going "off our land", not being "on our land" and going on the "other side of the river", and all that, but the people who were over there just loved it.

CR: I was over there, it was really nice...

LS: ...and more people are now...lots of people now want to go. And that's a big change for us, you know, just to do that. It's such an extraordinarily creative bunch of people, and extraordinarily adventuresome! And I think that ...that...once...just having the Far Side is going to help kind of...it just puts people in the bigger picture. Because now, a lot of people just didn't...had never even been over to that side of the river...have a whole, you know...different view of things!...And so I think once we can accomplish the land swap, and just sort of get that one scratched off the list, and we're secure with that campground, and that it ...that it sort of ...it will make it easier to launch off into something else. You know, that's the other thing - people just...we need to complete things and get them so that people don't...the volunteers don't feel spread too thin. Because a lot of what we will be asking is the volunteer commitment to help make this happen. It's one of the...I don't think we realize what an incredible asset it is sometimes, but ...when I tell people that we have this 3,000 person volunteer base that's ...that is just incredibly loyal and returns and returns...the can't believe it. I think our volunteers really like interesting things to do, and I think they'll respond to the idea...you know...I think our primary job is to just get every single bit of information that we possibly can, and lay it all out in a totally open fashion, so everybody can see anything they want, and ask all the questions that they want and really explore it, and I think we'll get more comfortable with it. I mean, I'd like to do it a before and after kind of slide show, that shows people the kind of aesthetic change that just some of this stuff could make. I mean, we already have, because we've let Miss Piggy's (*refers to an area on the Fair property*) go longer without mowing it and then collecting seeds and stuff, the native plants are coming back, and we have way more birds in the winter this time of year than we've had. So just things like that are starting to happen already, just from the simple changes made. And imagine Indian Creek with a meander and all kinds of really beautiful grasses and native things and native birds, and little benches, I will be...I mean it's not going to be a ditch anymore! It will help the beaver, so you know if it helps the beaver they won't do some of the desperate things like they're sort of doing! And...

CR: And it will help the wetlands...

LS: Yeah, it will totally help the wetlands. And we...our activities, the activities of our neighbor's have hurt the wetlands immensely, and I mean...it's a real opportunity to do something as a partner with people that we don't ...if we can share, you know in the love of this place the sort of artificial cultural trappings that we believe keep us apart really fall away. That's why I say it's more a cultural project in a way...a community development project, rather than an environmental or an economic development project.

CR: It's kind of interesting that wetlands filter, like kidneys...and, so... in a metaphorical way, you could say well, this could bring people, this could filter people's energy more to the land and make...forge more of a connection...

LS: Absolutely...

CR: ...because ...because it's enhancing the different communities - human, human/natural...

LS: Absolutely...yeah!

CR: ...and what do kidneys do? They filter out the poisons. And what is toxic? It's that cultural lens that separates people.

LS: Yeah. Yeah, exactly. It's a wonderful metaphor...the fear and suspicion and hostility...

CR: Fear and loathing on ...

LS: It's all about...

CR: Fear and Loathing on Indian Creek...Maybe that's what I'll call it - (*after*) Hunter S. Thompson - "Fear and Loathing in Las Vegas"! "Fear and Loathing on Indian Creek: A True Study of Wetland Conservation Easements! So what if people don't own the land? Then it's just an interesting concept that when people feel connected through ownership to the land that there's a stronger ...the perception is stronger regarding stewardship and the land, and their role in that. But if people don't own the land, the connection isn't as strong. So, it raises an interesting point to me - how do we get people to be stewards regardless of whether they own the land? Because traditionally, a long time ago and not so long ago, people didn't "own" the land!

LS: Right, the whole notion of western property rights. I think ownership is, you know, a lot about control. And one of the things that we know is that a lot of folks...this is a place where they feel that they're in control - of a time in their lives - and the Fair gives that to them. And..but the feeling is the "taking away of our land", that "selling our land" is giving control to someone that culturally we're supposed to be opposite from, and fear of regulation, inspection...

(temporarily interrupted)...

LS: Realize that really the land owns you...we're of the earth, we return to the earth...we share the earth with a whole bunch of...the rivers and the trees and the other living things have just as much a right to be there as we do, and you know...we've lost that sense of relationship.

CR: So in a way, if people were really inclined to think that way and act that way, it would be easier to accept something like an easement and let go of the idea of the ownership.

LS: Yeah. Because what that does is, in some ways, no-one owns it, or that we all own it ...the community of living things, including the trees and the river own it, and we're just giving it back, or you know...we're just you know...giving up control.

CR: So do you think if you posed it in that way that people might be more inclined to sit back and think at a deeper level about this?

LS: As long as it doesn't sound "preachy". You know, like "I know better than you about how to think about this"... or you know, that kind of stuff, obviously, we'd have to watch for that. I mean that comes from me, and I don't know how much shared that is, you know...I own the land that my house is on, but I haven't landscaped it - we've done everything we can to make habitat enhancement - and let branches fall down and tangle up and wild things grow..there's a tangle of this and that, because they all love it - the raccoons and birds - I mean, we have way more than anyone else in the neighborhood...but I still own the land, you know...I own the place and I really like it...it's just...it all feels very transitory...

CR: We are! and so is this...if Native people were brought into the discussion I'm sure it could become very intense, because they would say "you all took our land".

LS: Oh, they have! One of the people trying to create a sweat lodge, they even wanted a longhouse...but what we ran up against was this idea of 100% access anytime including during the Fair, and we couldn't work out something, and the folks we were talking to weren't willing to let the Fair have any control at all over their comings and goings, and then they wanted to choose where to put it...and we were like, no...and that's what I hope is we create this open space - it won't be an organized park. You know, there are not going to be swing sets or anything like that, it will just be open and wild, and accessible where it is now, and there will be a few little benches in there...maybe a platform or two for birdwatchers...so, that's it.

CR: It all comes back to education - helping people learn about new potentials.

LS: And doing it together - we all have a learning curve, and we all have blind spots, and we all...we're...it's ...curiosity and imagination and creativity - we need to embark on that kind of stuff...it's exciting! you don't know what you're going to discover, but you know you're going to learn a bunch. I mean...and the kids



loved it! We did a...you know part of the ODOT pond work has been done...we've...one of the fair volunteers got some money from ODOT to replant one of the ponds - that big one right outside Maple Gate - and she worked with the high school biology teacher and they did a year long field biology curriculum on the wetlands, on the wetland restoration. And they did the inventory of existing plants, they did the monitoring of you know...what happened over this year, then they did the pure, you know...study and science part, they came out and saw the floodplain's condition, and then they did the planting thing.

CR: What an experience!

LS: They loved it! And now they totally...they're...they get.. big defenders of wetlands, those kids! They're like...this is just so cool! They love it! And when they find out, they're almost angry - you know...'why didn't someone tell me this!' I mean...yeah, so being able to do that is the opportunity like I say..are enormous..and to make a commitment to that - to recommit to that in a whole other way, for another 30 years is very appealing. I think there's a lot of people...I mean to commit to that forever would be great, but..I don't want to push..try to push for too much...

CR: Do you think that all of these wetlands should be protected just because they're wetlands?

LS: Absolutely.

CR: Because I've had some conversations where's it's well, you know...some of these wetlands they're not so valuable - and the whole question of 'value' - you know...some of the wetlands are really valuable because they have Lomatium on them, endangered species, so other ones aren't so it's just this whole human centered perception, value...

LS: Perception. I mean, I think the isolated chopped up patches that are cut off are maybe...until we do..you know...think and understanding these things differently, there may be some tradeoffs to be made. And that's why we've pushed the whole corridor idea. If we can get..that we can still do what we need to do... I don't feel bad, I have to say...about those fingers - because, you know...I can literally see how they were created - we made them, and what we will put back is much more in some sense valuable to the system because it takes away our impact and, you know it also enables our human activities that will replace the current activity on that land to be much more compatible and earth friendly wetlands friendly...and get that...all that replanted with indigenous ash and willow and poplar and stuff is going to be a fantastic thing. I think...you know..and...but that happens to benefit us, and that it happens to be something we can enjoy and learn from is a very nice bonus!

CR: I hope that I can make something meaningful out of this, so that people might find pieces of information, like you said, to have..get every single bit, lay it out...if not hopefully I'll just have good grammar if nothing else!

LS: Well, and it's not just OCF land, you know.. that we're really interested in doing these easements on, it's also COV and Larson's property...especially COV. I guess the one conflict there, the one thing that..the political climate there is changing, and they're having to charge so much money for their sewer, that they're worried about recall and everything else. And so if we lose that partnership because of the cost of the thing and the politics around it, that would be devastating. I mean we'll have the watershed council and I believe we'll affect the land swap before that happens, but you know how we will work to create CE's..but you know, they might go into them because they have land they can't sell and develop because it's covered with wetlands, so it may benefit them to do easements. I mean certainly, there's the notion of mitigation banks - that may be another strategy - but I have much more problems philosophically with that than I do with CE's...because the notion that we could put our credits into a bank and somebody like Hyundai could buy them ...I mean...so, that's a seemingly sort of administrative rule or issue that I don't...want to be in at all...although there's some people who are very interested in it, and it may..you know...like Forrest Larson, whose option is to sell it to a developer or put it in a mitigation bank, I prefer the latter..you know what I mean? If he can get \$10,000/acre as opposed to \$1,000/acre he won't do it, and that's OK.

CR: Is there any problem or conflict if I call him and introduce myself and ask if I could come out and talk with him?

LS: I don't think so, I mean he doesn't know much and I don't know how much you'll get...I mean ...he keeps in touch and he's a wonderful person but I don't know how much he knows about this stuff, this kind of detail. But you can certainly try...he's in the Veneta phone book.

*(brief discussion about upcoming interviews with Larry Devroy and Annette Lalka at DSL)*

LS: You could have Forrest Larson with a mitigation bank credit wetlands and the City with some combination of CE's and TNC you know purchase and the OCF with CE's...

CR: Right, and that's another common theme that's come up - that each different parcel, or area of wetland, has to be looked at individually, rather than everything being looked at as the same...

LS: Well, we need to look at it as a landscape, certainly as an integrated whole, but how we go about funding this, or what like you say administrative mechanism we use to accomplish it, it may be very different. And I think they're probably compatible.

CR: And maybe they should be - that's how people need to think about it - holistically, as far as the landscape and the connections and corridors, but on a more individual basis as far as the administration of it...

LS: What works...financially and sort of culturally is different, yeah...

**(End of Taped Conversation)**

## APPENDIX A-9

### INTERVIEW 8

Name of Person Interviewed: Mr. Larry Devroy  
Title: Wetland Mitigation Specialist  
Agency, organization or affiliation: Oregon Division of State Lands (DSL)  
Date of Interview: Thursday, March 5, 1998  
Location of Interview: Oregon DSL, 775 Summer Street N.E., Salem., Oregon

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**Question 1:**

What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 2:**

What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 3:**

How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?

**Question 4:**

Will wetland functions be served by this easement?

**Question 5:**

Is there another administrative way to solve this problem that might be better?

**Transcription of Taped Conversation:**

LD: ...to the city - the city was going to transfer it over. See the applicant was going to grade it and then give it back to the city. A CE - we had problems with the CE because the language made it sound like it was going to allow someone to come back in and do all kinds of alterations after. So we were constantly trying to refine that until we convinced the applicant to throw out the whole application until figured out how to do all these different things that he was having problems with...

CR: First...

LD: Yeah, and then...including the CE. He was trying to figure out how to write it because he didn't own the land...And how could he be implementing this...so very confused. That was one of the major problems with it. If the person doesn't own the land they're trying to mitigate on, then how can we structure it so that... they can...how can they guarantee to us that it's going to be (lightening???)?. They're putting this together - the third party's going to be the recipient - the third party is going to have to live with it. How can we make sure that the third party is agrees to all those terms? Generally what they want to do is change it after it's signed is something comes up that they didn't anticipate. Which is kind of a general occurrence that happens with CE's. That a matter of fact just arose this last week with a parcel over in Salem here...in an industrial park ...where a developer came in to buy a lot... the city is developing this industrial park, and it has a piece of a wetland mitigation area on it. Now the Wetland Mitigation area is failing, and so the issue becomes do we really want to enforce that CE? And wouldn't it be better to put that little wetland mitigation area - do the mitigation that that was representing somewhere where it would have a better chance of survival? And my issue is well, how do we take this CE, abolish it for that location and put it somewhere else? And - that - like I said, we need some legal assistance here because I don't know if just going at it saying '**oh we don't mean it here, we really mean it over here...**' is legally valid? Can we just amend that instrument or not? So we're supposed to be looking into that. Everyone said well, can't we just change it? I said well it's already recorded somewhere, so what's the legal implication of that? And that I don't know - ..

CR: And the whole question of a failing mitigation is interesting on its own - why is it failing?

LD: Yeah...

CR: Is it failing because insufficient time has passed? Some scientists would say the question of "success" might need a long time frame, longer than people have used so far.

LD: My feeling is that a lot of sites that start out looking weak in terms of vegetation typically... the hydrology is there... for a four or five year time span you start to see them get more "natural" looking



characteristics. But everybody *expects* that over time they're going to get worse. If they're not doing well right from the get-go, they expect them to go downhill. And... I've been doing this since '81 and I've seen a lot of sites where they start out real weak, a typical thing...people get upset it looks really weedy, and there's a lot of invasives in there that are really kind of on the marginal side of wetland stuff anyway - they may be like (facultative or back up ?????) plants that come in like annuals, stay there for a few months and then get inundated, and their seed bank gets partially destroyed by anaerobic conditions. But after a few years, they disappear, and the more adaptive natives come in a pretty natural looking density location and everything. So the main thing is to set the stage and plant, but don't be too rigorous about worrying that the community that's initially installed stay. It's more that you get good vegetation, good sense of being native and get the proper characteristic plant community that's coming in. Does it look like the type of plant community that you have in a natural wetland, and I'd give them relative location to the wettest part of the site, the driest parts of the site. That's really what you want. But the planting - some people propose to just see what happens, and sometimes, if I've worked with them before and feel comfortable, we'll let that go, we'll say OK, let's do that. Because a lot of time, you'll get real good recruiting of alders, cottonwoods and fast growing species, and then they'll start to go through normal succession. So then an issue becomes the (seedlings????), and you got to structure them so that if there's a failure, you can come back in and do work to correct it, and it's hard to anticipate what that work might be. It could be anything coming back in and regrading, which would be wholesale, you know, disturbance, or it could be just coming in and planting trees, and shrubs, coming out with volunteers or paid plant installation folks and doing that kind of work. It could be a minor amount of activity, or it could be a *major* restructuring of the whole thing. And if a CE hasn't allowed for that, it could actually be one of those things where you end up saying - "we had to go by this because this says we can't do the work we need to do to keep this site from failing". So, that's why it's a challenge too. So we've put things - language in, that says... that "*the Division or the Corps of Engineers can allow activities not explicitly enumerated here in order to make sure that the site succeeds*" or something to that extent that way - we can authorize it. It might be something not envisioned originally, and it wouldn't be out of compliance with the CE, but it wouldn't be up to the applicant to say 'oh, I need to do this' and they just go in and put a pipeline in there or something...thinking 'well, we can do what whatever we want' as long as we leave the site when we leave as a mitigation site.

CR: Right...

LD: And we want to make sure it's not just that, but that they don't screw up their own plan by doing something they need to do, but it does cause the site to fail in the long term. We want to have the ability of kind of have some oversight and prove it before anything that's very disruptive is done, especially if it's a CE. And I guess one of the things we haven't mentioned, and I don't know if you're aware of it or not...we require a CE only on major projects, what we call "non-final projects", if you look at our mitigation rules. So projects under half an acre of impact - there is no CE required.

CR: (*pointing to one of the documents on the table*) That's not articulated in this document here.

LD: No, no not in there.

CR: Because this is just a guide - this book doesn't have the actual regulations.

LD: Yeah, that just kind of puts you in touch with...or gives you an idea about who to talk with about doing various things to the land, resource protection or conservation oriented. So. You know, our mitigation rules - because what we're...what I'm talking about are... is all from (right in terms of perspective????). If somebody submits a plan A, for mitigation over half an acre, the list of things they have to do is much greater than under half an acre. One of those things is the CE for larger projects.

CR: So that's requiring a CE?

LD: Well that's not required, a CE...but that's often used - it's just that there has to be a method of long term protection that's specified. That could be CE's, covenants, it could be...you know...deed restrictions or transfer of the property at the end of the monitoring to a third party that's usually a conservation organization or governmental unit or whoever we could be reasonable certain won't have a contrary interest to protection of that mitigation area.

CR: Or a natural resource designation?

LD: Yeah...

CR: ...or zoning changes or whatever...

LD: We really just want to know what the protection mechanism is going to be, and we suggest some things in the rule language but it leaves it open for some creative solutions.

CR: So if easements were instituted in this area (*referring to the Veneta area wetlands map*) so it would be like - I think this piece of the Larson property for this area - and here where the City (COV) owns land - I think this is the Lomatium preserve, or to the OCF property - so if some or all of these were implemented, am I right in thinking that DSL has to approve any mitigation work that will take place and the easements?



LD: Well, now, if there's a wetland impact. And we have...or somebody crosses that 50 cubic yard threshold of work in a wetland, then we're talking about there has to be a mitigation plan. So, And if they're over half an acre - then a CE or some other protection method is required.

CR: Because I think I understand this right now - there are wetland "fingers" that are currently owned by the OCF, and so one idea is to cut off the edge of the fingers, and the COV...because they're very low value wetlands...and the COV can use that for additional treated effluent spray area. And then there would be a land swap between the COV and the OCF, and that area that would be lost at the edge of the fingers would be mitigated elsewhere. So DSL would have to approve that.

LD: Right. Well, that's one of those gray areas, where you're saying...the question always is:

*when something is done that doesn't involve filling or excavating, for instance if you're saying well, the way we're going to cut those fingers off and make them into...make that wetland area into filtration system is to put it in...oh...an earthen dam or something that takes 48 cubic yards to fill in the wetland areas, and outside the wetland areas you may have 400,000 cubic yards to fill, but in the wetland areas you're under that 50 cubic yards, we don't have any say about it. And, the question is, well, you're isolating that wetland from other waters of the state -shouldn't that require a permit? And that's kind of a - one of those issues - where I know some resource coordinators would say 'oh definitely, we have jurisdiction over that' but others would say 'it's not 50 yards'. And it would probably be the Corps of Engineers that would wind up regulating that - we may up saying 'we can't even touch that'. I think probably the former resource coordinator here would say 'no, we're going to regulate...we're going to choose to regulate that, and unless I'm really told otherwise by legal counsel I'm going to require a permit because the impacts are likely to be significant. And we'd consider that area taken out of our jurisdiction, and that means we'd end up requiring mitigation. And so I'd end up reviewing a mitigation plan, most likely and trying to decide if it was going to replace the functions that that low value wetland had performed, and if it's over half an acre, then we get into what kind of long term information are we going to have on the mitigation site, wherever it is?*

CR: I think the intention would be to fill that area? grade it and fill...

LD: I tend to look at it as...if you're taking it out of an agency's jurisdiction, the impact to the resource is often that it isn't going to perform those functions for downstream water anymore, so it's just as if you filled it. I mean, it's like diking off an area of estuary. When we dike off areas of estuary, a lot of times what you're really doing is the equivalent of a fill, because that river system in the estuary can't flood over onto those diked off areas...so you go from a brackish situation to a fresh-water situation effectively, even though you haven't eliminated the wetland, you've changed the character of it so drastically it made it non-communicating with the estuary, it's the same as if you've filled it, in large extent...and you've definitely caused a flooding situation...you know, exacerbated...

CR: That's an interesting way of contextualizing it.

LD: Well...

CR: ...just to even, you know, talk about communications...

LD: But that's what you do really, it's one of the things I've been kind of involved in here. Well, I do mitigation banking work - that's one of my main responsibilities. And so what that means is we're in estuarine situations, even freshwater situations along rivers. We talked about how easy it is to produce functioning wetlands again when you take down dikes. If there was a wetland there before, and it simply diked off, and that wetland behind the dike dries up, then taking the dike down is going to be a pretty much...a no-brainer to get it back to wetland conditions, unless the whole estuary is sunken. And so it's a common way of doing mitigation in a lot of areas. You run into conflicts with other land users sometimes you don't see that happen - because it's agricultural...agricultural and productive land (as it's on his????) - the ag producers don't like to see that as a common practice because their base is going to be eroded.

CR: Right.

LD: I can understand that, but there's a lot of places where farming hasn't been practiced even though it's been diked, and those are not doing anybody any good. Those are the ones we're trying to focus in on. But people always go 'the flooding's gotten worse over the years', and I've always said 'well, you know, diking is the same as if you filled the flood plain. You're eliminating flood plain storage. The river can't go into that area anymore'. And it's a very efficient way to wipe out the flood plain. Wipe out the river's ability to go beyond that dike, and it's the same as if you've filled right from the dike all the way back till above the 100 year floodplain, or whatever the floodplain can (be with it???)

CR: It's a very linear attempt to resolve conflict, but it removes the whole question of communication which to me is integral to the whole idea of ecology.

LD: Right - it eliminates...or in the floodplain sense it eliminates the problem for that landowner and passes it to the ones on both sides of him, or as the case may be...**looking at your question #3**, unless you have something else...

(re Question #3): One of the first things that I think of is in terms of a CE, when somebody goes to buy that land, they already know what the encumbrance is on it. And they don't go to buy it assuming that they can do commercial development or something, you know, wetland areas...one of the biggest things we wind up doing as regulators and facing is...people will want to know what the bottom line is, and if you can't tell them, naturally they get very upset! Wetland delineations tend to be like that... 'where's the line'?...and it takes 1 consultant who sets the line over here, 1 sets it over there...they say 'well where the hell is this wetland limit'...and if you can give somebody a quick, definitive answer, a lot of times, the regulatory side is not a big burden. But if you can't give them a quick answer, and they're trying to decide in a very short time frame what to do and how it's going to pencil out, they get naturally very upset. So, I think the most important thing is to be able to give somebody a clear picture quickly of what they're getting into.

CR: Do you think wetland delineation in general now helps to resolve that?

LD: Well yeah...I mean...that's...when I was a consultant, and it's no different now, one of the things we used to say - and I still tell people this - they'd call me and say what do I do - I'd say you get yourself a consultant, and don't ask them to do a full scale *delineation*, necessarily, but have a determination done. So you just know if you have a wetland issue. If you have a wetland issue, the consultant will a lot of times will give you just approximate idea of the percentage of you property that might be wetland. Then you can make a decision about whether your project can go ahead, whether your sale can go ahead, whatever. With the CE, the idea is of having certainty about...it will spell out about activities that are allowed, those that are prohibited, all the terms that come to bear in terms of protecting the resources. Somebody can see what it means in clear language.

CR: And do you think that might not otherwise become so clear?

LD: Yeah...I mean...

CR: ...it kind of forces the issue?

LD: If you have no CE, like in situations where it's under half an acre of mitigation required, you're kind of perpetuating a situation where you don't know what that wetland...what the limits are on activities in that wetland. If you buy a piece of land, and it's got a mitigation wetland on it...it was done as part of an impact for another project maybe...maybe on a different site...you would not know that that wetland should even impact that wetland...so our rules require doubling of the ratios for mitigation areas.

CR: So 1:2?

LD: No, it's doubling of the ratio. So if the ratio's 3:1 as you did in enhancement there, well, not there...if you're going to do enhancement - this gets into kind of a technical knowledge of our rules - but - if you said, well, I'm going to fill this...I need to fill this wetland area for part of a house - and you said, 'oh, you know, what you just bought is actually a mitigation area, and so the ratios are double'...and they go 'well, OK, so I'll go do enhancement over on another parcel - what do I need to do?'...and we end up talking...well...that's 6:1...they go 'what? I got to fill...I got to filling a half acre and now I've got to do 3 acres of mitigation now? How'd that...how'd you get to that point?' Our ratios are - because they're doubled, and you're doing enhancement, enhancement requires 3:1 replacement ratio - and our ratios are doubled, so that would be 6:1...that's the case we just talked about, over in Fairview Industrial Park is that way. That wetland...little wetland area, that the third party wants to buy the property...the City (of Salem) has this area, this little less than a 1/10 of an acre finger designated as mitigation area. And their proposal is to do - they'll do the mitigation and replace this, as anybody would have to, over on this other area that already has mitigation on it but adjacent to that. We said OK, so you've got to come up with six times as much, and they went 'why'? We said well, you're talking about enhancement, that's existing wetland - you're going to plant trees, plant other native vegetation, do some...get some more dual regrading and recontouring, and ...but it's in an existing wetland, so that's enhancement, and enhancement is 3:1, but this ratio is doubled now because you're impacting this mitigation site, so it's 6:1. Now they're...oh...maybe we can find a spot where we can do restoration because that's 1:1 and that would mean doubling it would be 2:1, so...it kind of works in...it's kind of a strange thing - people go, 'well how do you get that'? It isn't just two times the area that you're impacting - it's two times the ratio that would normally be used.

CR: Do you think that's clearly spelled out in the guidelines?

LD: No. I think people are always confused about that. So you could buy a piece of property that's got a wetland on it. You don't know that it's a mitigation area. You just see it's a wetland and you call the Division of State Lands and say 'I've got a little wetland area, I have a little impact, I'm looking at the rules, I'm going to do restoration, and that means I'm going to do...because I have this little impact but I need a permit I'm going to do it 1:1...' - we go 'Oh, no, it's mitigation area, that's 2:1'...- they end up going 'Why'?...because there's nothing on that site that says it's a mitigation area, and it's ...it takes time to come to an understanding about what that implies. So, if you have a CE on a wetland, it's an obvious indication that the state realizes it's there, you realize what the terms and conditions are, in terms of what you can and cannot do, and if you buy property without paying more than you should - planning to develop it for some kind of a construction project, you're assuming there's so much fillable area and/or that you could get

permits for it and you find out that you can't - there's a CE there - then that saves you a lot of hassle in the long run.

CR: So it helps to...it helps to bring to light what is really...what the situation is and what resources are on the property?

LD: It protects the resource, which is what it's supposed to do, and it protects the buyer or the seller from making assumptions that aren't warranted about the feasibility of that resource.

CR: Right. Do you think, like for Oregon wetlands, that it does ensure what - 39% are lost?

LD: Yeah.

CR: ...of what was historically here? So, do you think that that...does a combination of easement and the state guidelines and regulations that it really protects the ecosystem?

LD: Well, everything...it does help. There's no one thing that does everything and is 'the' solution. Like I was saying, some people come in to me...and talk about ..talking about mitigation banking, making it sound like that's going to solve all the problems, and they go, 'let's be real, this works perfectly because you'll have counties that record CE's with ...but somehow the buyer never sees it...buys the land, and then we have a copy of that...and we know that the site is that way, but the buyer doesn't know it even though he went to check on the land and did all his kind of due diligence to make sure he's not buying something encumbered by liens or whatever and he's probably just free and clear but then finds out that...then it comes down to: is it a legal matter that this owner could go back and get compensated for this inaccuracy...inaccurate representation - does he have grounds for voiding the sale, or whatever? In most cases, I think after they've gone through the normal procedures of buying property they could go to the county or the city or whoever's holding that...the records, they'll see there's a CE there or a deed restriction or whatever that encumbers the property or some resource protection purpose.

CR: Do you think that by virtue of the clarity that it fosters that that in and of itself is helping resolve potential conflicts between potential development and wetlands?

LD: Well, that's hard to say. The first thing is that developers may think that that is something that can be changed - they don't really know whether it's ...a typical situation is somebody buys it knowing that it has a wetland on it, and they may buy it knowing it has a CE on it, and they negotiate it down to a price they feel is fair because they can't use that area, and then they immediately try to explore the potential of using that area. So...not an iron clad protection mechanism, just a better one than nothing. And of course we resist those kind of things...using things we can think of, like pointing out that there are ratios that can be doubled, and there's a CE there...and it was put on there with the intent of having it be in perpetuity, not that somebody could change it every few weeks or few months because you'd like to see your flexibility guaranteed.

CR: But most mechanisms are tied to the notion of property ownership, right? And it intrigues me that the idea of stewardship is tied to ownership of the land. And so, people are less likely to be good stewards if they don't own the land and therefore have a sense of being tied to it and connected, and feeling more a part of the land, and the land a part of them. And so, I wonder about fostering good stewardship for those that aren't direct owners of the land.

LD: Well, you mean in terms of....?

CR: More a philosophical question really.

LD: Yeah, but...

CR: I mean, in a way, the public is an indirect owner, and so...

LD: What it makes me think of when you talk about the stewardship element is that kind of "after the dust had settled", a lot of times people will come in to a subdivision that was just filled, and they go 'well, there's wetlands on the subdivision, we know there's mitigation area requirements on that, can we come in and plant more trees?'...and we say, 'well, of course'. And they'll say, 'well, there might be a CE on this, will it allow it?' And we'll do a little research and find out that there's a (requirement???) that's in-house here, or whether it was something that was done, maybe somebody did it just to do it. They may have come in and actually restored a wetland area not knowing they needed permits, or did it as a volunteer type thing and they'll say 'well, we need to get something from you'. And my response is: unless you're going to be moving a lot of dirt to do this, you don't need a permit from anybody to come in and replant an area. The stewardship comes afterwards, most of the time. The problem is a lot of times the developers are not...and this is one of the differences between the northwest and the southeast...I started to see a lot of developers that are real sensitive to that in the southeast, and here it's just coming around a little bit. Some big time developers are starting out with the idea that stewardship is ...you know...we've got to build this into the whole idea...and ..but still, the majority are saying 'whatever I need to do I'll do, and beyond that I'm going to do what I want', you know...

CR: Right.

LD: So...

CR: So in the southeast, what has fostered that sense of stewardship?



LD: Overall awareness that the public knows the wetland issues...

CR: ...is it more pressure?

LD: ...and knows that he's been hammered in the past, and they're not going to buy lots from somebody that's becoming more and more apparent - people are not going from somebody that doesn't have a reputation of being more environmentally aware. And that's starting to happen here in the areas that have a lot of development, of course...it's that natural human feeling that things are changing and they can't be for the good - it is sometimes, but...when they get involved and they can see what's going on, they get worried about it and step up and say hey, maybe we need to get some volunteers together here and go out and watch this and make sure that nothing degrades this further, you know, whether it's their own infrastructural stuff like sidewalks and roads and things or wetlands and park areas and things like that. So, I think it's happening here, but it's happening...it's a few years later because there wasn't a big growth spurt until recently and in Florida it's been going on for the last three decades and has had more time to mature. So.

CR: Mostly post-war in Florida?

LD: Yeah, well...same as...really, it started the same time here and there, it's just that Florida took off like this (*points to steep growth curve*) and Oregon has been just starting to really get into that geometric progression situation that Florida's been in for thirty years now - it's just starting to do a little bit of decreasing rate of increase. So.

CR: There's sun in Florida, and now people are willing to trade sun for quality of life.

LD: Well, that's...I lived there for 8 1/2 years and was just talking to somebody about this yesterday..about the fact that the rain in Florida is just a daily thing, just like it is for a lot of the year here. It's just that you get a concentrated blast of it there, here it will spread out over..you know..a mist or light rain...and there you get violent deluges of rain in a few hours there...and 1/4 of an inch here in a day is a lot, but it'll be constant, light rain fall.

CR: Right.

LD: So...hydrographs here look a lot more flat than there, you know...spiked...but the amount of rainfall is actually higher there than here, in most areas of the state. So...I lived in Tampa, and Tampa used to get about 56 inches or so a year - here we get..here...when I say 'here' I mean Portland/Salem area - Eugene's a little higher, but...still, you know...45-50 inch range..they're not that different, but they say they're the Sunshine state, but... go down there and hang out for a couple weeks and see how many times you see rain, then you come up here and count the number of times you see rain here, it's pretty close! It's just the perception, not the reality.

CR: It's the tropics - it rains in the tropics but it's just different.

LD: Yeah.

CR: It's that violent outburst. I grew up in Philadelphia, I mean when it rains there in summer, it's almost scary!

LD: Yeah. Yeah.

CR: Do you think that DSL would have to compromise in any way if any of these were instituted?

LD: Well, in terms of the CE's? That really is...I don't see a CE as a compromising tool. Maybe I'm not understanding what you're saying, but it's kind of a way of instilling the things that you'd like to see happen, like through stewardship...it's kind of a way of putting a written requirement that stewardship be acquired instead of expecting a whole community to adopt those wetland areas. So, it's kind of still one of those things where you kind of go...well, if we were in a perfect world you'd kind of say 'why do you need a CE? It's obvious that this should be protected'...but everyone doesn't have the same level of awareness, everybody doesn't have the same *need* to see the resource protected, I guess. So, I don't think it's a compromise, it's a necessity to make it clear to people of all walks of life that this is what is meant by this wetland and protecting it, in terms that should be clear enough for anybody to understand that can read.

CR: How about the question of wetland protection overall - in contrast to different levels of wetland function that should be protected? Should tools like CE's be used to try to protect all wetlands because all wetlands are important and valuable and have a function? Or should it be the most valuable wetlands?

LD: Yeah...

CR: And what does that mean? And is that tied to the notion of "success"?

LD: So...what we're talking about in terms of what DSL does, we don't as a rule put CE's on wetlands that are not involved in the regulatory process. Other agencies may do that but ..you know...our activities are all tied to somebody needing to do an activity in the wetland. So what we're talking about is: this is one of the things that you're going to do as a condition of your permit. You're going to do this mitigation and protect this in a conditional manner, and that might be a CE. So, it's not the same as saying well, there's a wetland over there, that sits on that piece of property and we want to put a CE on it. It's not going to happen without there being an activity that leads to a wetland impact, or a loss of wetland function - so it's always in a regulatory context, which is a thing that a lot of people misunderstand about the regulatory framework in the first place. You know, people tend to think 'well you regulate' - or they'll say "you regulate wetlands - aren't



you going to take care of mine?". And we go, that's right...those are two different ideas here...we're going to regulate wetland impacts, but if there's nothing happening, if there's no impact proposed, then we don't have anything to say. There's go to be this activity proposed, then we have a set of things that...a cascade system of action that will occur. If there isn't, there's nothing that needs to be done.

CR: Is "activity" clearly defined?

LD: As I said, it relates to the wetlands specifically - there's 50 cubic yards of fill or excavation. That may change under...we go through the state programmatic general permit process with the Corps of Engineers. So, but it's no something where we say well, we looked at your property and it has wetlands on it so we want a CE on it. We don't do that. But the idea that you did mention about having wetlands that have full function all be...are in high function all be protected the same way is something that I think the State of Washington has a state of dealing with - they say you know, there's Class 1, 2, 3, 4...a wetland in Class 1 is a valuable wetland because of usually rare, threatened or endangered species being found in those wetlands, or it's habitat for rare or threatened...rare, threatened or endangered animals...so, and if it's not that class and it's Class 2 then those may be very high valued for their ecological function outside of specific rare threatened or endangered species. So they rank them and require different levels of mitigation if you're going to impact them and will require...will require or discourage different activities as the result of those rankings. You see, we don't have anything like that here.

CR: How come?

LD: Well, we just have none in that manner. Our permitting goes by the idea of: is the habitat type that's proposed to be effected something that we need to protect? So it's an ad-hoc way to protect - there's no prescribed way in the rules...just that each resource coordinator has to make their own distinction between what they can allow and what they can't, and it's based on the value of the wetlands proposed to be impacted from their point of view, and the need for the project. And, can we...can we kind of live with allowing that kind of impact that you say you need as an applicant? We balance that with the needs of the applicant. We balance the high value resource against the needs of the applicant. If we can't, then we may end up not granting a permit. If we can, and we think that loss can be mitigated, then we may issue and require mitigation.

CR: Do you think that leads to more holes and conflict?

LD: Well...

CR: ...because it's less coordinated and more ad-hoc?

LD: Well, I would like to see...I mean, to me, I like a lot of aspects of that ranking system because there's a lot of wetlands that we deal with that are farmed wetlands, farmed for many years, disturbed regularly, and it just certainly be nice if we could say those deserve this level of protection - then it's not that much, but I still like the idea of acre for acre replacement...but that wouldn't end up having such stringent requirements on those kinds of site. Maybe it will allow somebody to put that wetland elsewhere on site and make something very equivalent. Right now, I have to require, you know...I'm going to end up requiring a more natural wetland than what was impacted, which is kind of good for the resource, but leads to people feeling they're being...they're not fairly treated for something that they know is of low value and they know that I know is of low value - it makes it sound like we're out to make a big gain off their hardship. So I'd like too...it would be nice if we could rank them but that's tough to do because there's a lot of things as you said in the gray area where you go...more value or valuable, or less valuable? There's not the hard scientific line between those different categories. That's one ...always one of the problems that Washington has...

CR: So that might in itself lead to more conflicts?

LD: People are always arguing they're Class 3 or Class 4...and you know...the state agencies are always saying you're in Class 3 or Class 2, you're not Class 4 where minimal requirements kick in. It puts the conflict into a different context. But still it would help if people had broad guidelines and emphasis on what are the general rankings of the values of the functions of wetlands? But I don't think that's going to happen soon.

CR: So when Oregon guidelines were formalized, was there a particular reason why rankings weren't included?

LD: Well, I don't know. Because...I saw the draft regulation and commented on them, but nobody really said let's rank the wetlands in order to...it was like those are the mitigation requirements, and I don't think that any of us talked about the ranking - we just didn't address that. I don't know if writers of the rules were thinking of that or not and may have considered it and thrown it out for some reason.

CR: I find that really intriguing because Oregon's one of the few states where wetlands can't be used for treated spray effluent, right?

LD: I wouldn't say that there's a lot of states that won't allow wetlands to be used for treatment. I know like Michigan wouldn't allow that - they'd want that to be a constructed wetland, or something outside of their jurisdiction, because trying to stop degradation of water quality, you know...if you're going to say that the

wetlands that are created as a result of mitigation and those that are naturally existing are waters of the state, then you can't allow activities in those wetlands that degrade of waters of the state.

CR: Right.

LD: So when you build a facility, you have to build a facility outside of those waters or wetlands and use it for treatment before you put it into waters of the state, because waters of the state either can't be degraded or need to meet state water quality standards. And I have that problem right now with mitigation banks because we end up putting new sources of hydrology in, then having to deal with our sister agency, DEQ, who says well, that source of hydrology needs to be tested because we need to know if it's going to meet state water quality standards. And I've been in this kind of strange situation where I say to DEQ well, why are you worried about meeting water quality standards when if we don't have the bank, the water quality in the downstream area has no chance of being approved?

CR: Right.

LD: So both DSL and DEQ end up going well, how do we deal with this situation? You know, we'd rather have banks than not have them, we'd rather have wetlands that are treating waste - not wastewater...*(end of Tape side 1)*

CR: spray into...treated spray to be applied to wetlands...so that's kind of interesting in light of the fact that there's a more ambiguous guideline here - it's not so specific and clear to say well, OK, there's this value put on this wetland here, and this other value over here. So on one hand, it's very specific, and on the other hand, it's quite ambiguous.

LD: Yeah.

CR: ...and that's an interesting dichotomy.

LD: Well, let me tell you a little more about this. The problem arises because we have no standards for water quality in wetlands, and the standards are not going to be the same as (fully???) or standing...you know, perennially standing waters like lakes or streams that are flowing. Obviously with things like dissolved oxygen it's going to higher in both those situations, at the surface of them, at least. And so the standard is based on the idea, well for dissolved oxygen, can fish survive? You know, when the temperature comes in as a determined high saturation level of oxygen...so if you look at wetlands, a lot of them have no mixing, they're isolated, they heat up a lot in the summer and they're ephemeral - some of them are, you know, only have water for part of the year. So what would the standard be without specifying so many different scenarios as having a standard for each one, it's hard to say...you go to any wetland in say June, before it really gets too hot, sample and you're probably going to find you can't meet pH, you can't meet dissolved oxygen, temperature...and this isn't the worse case, you know? You can't meet maybe nutrient levels either because the wetland itself is producing a lot of vegetation and the vegetation dies and decays and has phosphorous and nitrogen and who knows what toxics that the plants absorb back into that same wetland...so, you know, you end up with...you're building a mitigation wetland, how are you going to build it so that it meets state water quality standards from the beginning? If you're lakes, and the streams...and have different out of kind mitigation than what was probably there in the first place? So, I raised that issue recently - I had to kind of say well, I had the staff folks telling me that I had to meet water quality in the mitigation bank. Well, people proposing the mitigation bank may or may not have realized it but I said this ...we have to do this, or we're not going to have a bank there, because we're simply not going to be able to pass the test. So, I went to the director...our director...and said you need to talk to DEQ's director about these things being on their list of requirements. So he did, and they eventually said yeah, we agree that we can't do that kind of...can't force that kind of requirement unless we (ask for???) damage for a wetland that would be appropriate to ask this bank to meet. But, the staff people were kind of doing what they thought they should be doing. I understand that, but I look at it as: is the bank going to improve watershed water quality? And if they don't look at it that way, and are looking at it as specifically meeting standards in that location, then we might as well quit! But we're kind of far away from CE questions here today!

CR: Well, but they're all so related...

LD: Yeah...

CR: ...you know, because it's the larger issue that really has to be addressed.

LD: Well, it may help you when you're trying to figure out what to say in various areas to know all this background, or else you end up going why did anybody make that decision?

CR: I mean, without knowing the history, it's a bit of a black hole.

LD: Well, that's the thing about wetlands work...

CR: Right.

LD: That's the thing about somebody that kind of jumps into it - they go 'where the heck did this requirement come from?' and 'why are we asking for this?' or you know..no, it can't be that way'...and you end up saying 'well, it is'. So, you've got to know a little bit about it to understand it.

CR: I've read not much, but a little bit written by ...I think she's a biology professor at San Diego State, Joy Zedler...and she seems to be really concerned about mitigation in general. One thing that really struck me



was that she believes it does ***not at all*** work towards protecting biodiversity. And in fact, it might do the complete opposite. She says banks...mitigation...is nothing like a natural wetland, and we need to preserve and protect natural wetlands, foremost.

LD: Yeah. Well, that's...everybody in agency work says that...and the problem is, in reality, the pressures that come from the outside say we have to do what we need to do...and if I was able to do it, I'd wind up saying well, we're going to wind up ranking wetlands, and there's - like I was saying earlier - going to be those that we're going to forget having any impacts in...those that if you do mitigation for, you say - yeah, that right over there - we don't care if that goes away, you don't have to do anything to deal with it. No matter what system you use, you raise a whole host of questions. I mean, if you're saying your concern is acreage, then we know how much we've lost and how much should we allow to go away from here? Shouldn't we preserve that basic measure? Because it's easy to see, and the functionality side is a lot harder to assess. You know, so...but, yeah, it's true..and I hear everybody say all kinds of things - you know, the scientific community and the lay community about mitigation does work, doesn't work, and I say well, the thing that...***I don't think it's a question of whether mitigation works - it's a question of making it work right, the right way.*** The problem is, always that there's no incentive to make it work. I like the idea of banking wetlands, but that doesn't mean there's no problems with that either. It should be that you bank if you have somebody that wants to....there's a profit motive - they want to make some money off this deal, and they want to...they need to demonstrate the expertise or else they probably won't be...they won't be able to stand the scrutiny of where people are all looking to see that this resource is protected, and that's kind of the situation we want to see. They want to be able to sell credits, and they have bring their expertise to the table to show they are capable of administering the whole program so they can sell credits. That gives them a reasonable way of making money, and at the same time that gives us the assurance and expertise that we can do what's needed to make this a success. And doing mitigation and being involved in various aspects of it since '81, most sites that are managed well I think I could take any group of people to them and say 'look at this - is this manmade or natural' - people would have a rough time determining it. They'd have to do some...quite a bit of testing and checking to see if it was natural or manmade. On the other hand, I could take you to a bunch of them that were complete failures because, you know... somebody went out and dug a hole in the ground, planted a few trees and left it - never looked at it again. The amount of time needed to go and look at every site is just...is prohibitive, and because there are so many applicants and so few of us, so few resource people able to look each site, we don't get around to each one and people don't submit monitoring reports often, and when they do, they don't know what to do if we tell them they have to correct it. So we have to work closely with people...the people we do work closely with and watch and work with tend to have success. Those that...there are those that are in the right position, have the project designed well and everything, sometimes those sites succeed without a whole lot of manipulation. But, I can show you a lot of them that just thought they would just work, go out and look at them two years later...first time you go out, you know...somewhere distant enough away where you don't get to that locale very often, and you look at it and there's barely no (similarities???)...it's overgrown with blackberries and highly (intolerating???) stuff. Because they weren't managed - nobody went out and said uh-oh, you've got a problem here, let's correct this. But if somebody says it just doesn't work, and doesn't explain what they mean by that, I always kind of...say...Joy, (i.e. Dr. Joy Zedler at San Diego State University) I know, she's thinking of as a program, there's major problems, and I agree with that. But when somebody says it just never works - think about how wetlands formed - they form in all kinds of situations - they can form through geologic process - sudden geologic process - earthquakes form wetlands...faulting of all kinds results in trapping water in areas that eventually become anaerobic and wetland plants come in...and over three, four or five, ten or twenty years, you have full fledged wetland and who's able to say that's unnatural? So they do come in, and can be made, it's just the design is important...the monitoring, the management is important. All those things are geared to follow through carefully - you get a very good product. It may not be ***exactly*** what you anticipated, and that's also what a lot of environmentalists will say is that well, here's what was said in the application, and here's what the design is predicting, and look, instead of instead of this (fostering???)...emergent marsh you have a partially forested swamp and you failed! Well, so...it's...there's a lot more variables that we're looking at that have an effect. So trying to get an exact functional replication of what is permitted to be lost is very difficult. Getting something that's approximate is much more... I think realistic, and that happens fairly often.

CR: So what about the monitoring and evaluation? It's often forgotten.

LD: Well, yeah...or...

CR: I'm not saying it happens here necessarily...

LD: ...not enough information, or...you know, those kinds of things where you're saying...somebody says well, we're going to have 80% survival of all planted species, then they come back and say well, here are the pictures and it looks good, and you go... 'what does that tell me?'

CR: So people have to have the incentive to carry over into that next step.

LD: Yes.

CR: And ask the right questions.

LD: Right.

CR: Not just looking at the pictures and say 'oh great', but look at it and say 'hmmm...OK, is that working? is it functioning?'

LD: Yes, and look for evidence of that and look for ...you know, that's why I'm a very big fan and promoter of having performance standards so that somebody can say well, in five years, what we want is this, and here's how we're going to measure that...

CR: Right - and this is what we need to do to make it happen.

LD: Right. So we know that usually in those situations because they have different standards for different years, so we have kind of a successional trajectory in trying to get from this little system where it's all very obviously just been excavated to something where there's different age classes of trees, shrubs, and a good diversity in vegetation - how are we going to get there from an excavated piece of ground with bare soil? And where should we be likely at one...in each year really because (we want each year to monitor of course???) ...but from Year 0 to Year 2 there may not be a whole lot of change except maybe weedy species...and Year 5 we want to start to see some real elements of long term stability, like different age classes of vegetation, and good pruning of different species that weren't planted originally, and no high densities or coverages of non-natives...so...

CR: So do you think something like an easement is a good incentive to foster wetland protection?

LD: What it really lends to me...what it does more than anything else is it keeps activities that are adverse to the proper functioning of that wetland from inadvertently being done in that wetland area. It doesn't really promote management of that area - that's really an agency function and that's one of the things I was just alluding to, you know...getting somebody to have incentive. A CE - I don't think is a big incentive to that - it acts more like a protection mechanism that keeps adverse activities from hurting that wetland. It may raise awareness, but I don't think...that's not the primary reason, or primary purpose.

CR: But it does foster communication between different parties ...

LD: Yeah...

CR: ...and sometimes that in and of itself is...

LD: Yeah, it's just that that's not the primary thing. You know, most people find that they have a CE on a piece of land and they go 'dammit, I can't use it for what I thought'. You know...sort of...it's like a ...it's a protection mechanism, and not primarily a stewardship mechanism.

CR: So what else has to come along with the easement to foster that stewardship? Because there has to be that connection.

LD: Yeah. I think, like I was saying...if the land is protected, and that means none of these adverse activities will occur, then it can...usually the wetland is functioning correctly will improve over time. And then I think what helps more than anything else is the wetland starts to look good...I hate to say that, but a lot of people get very worried about a wetland in their subdivision or on their property when it looks good and attracts wildlife...so it starts to function like a natural wetland and then people become concerned. If it's an ugly pit in the ground, people don't tend to have a lot of sympathy for that area - they don't want to protect it. That's a common thing - I've heard the same thing from a person calling about, you know...someone doing something illegal in a wetland...and they'll say 'but the wetland...this wetland ...it's got all kinds of garbage in it, and I wish somebody would just fill it'.

CR: Right.

LD: I mean it's kind of a human thing. But ...and part of it is true - if you look at it and it looks like it's functioning well, and that means various things to people...if it looks good, then people are going to kind of adopt it, and if it looks bad, they'd like to get rid of it. So from a lay person's point of view, CE may keep somebody out of it longer, or keep people away from it enough so that it can start to look good and be something that people want to be associated with in their neighborhood.

CR: I mean there's the whole question of a system that people don't see, per se...that are so critical...so is it only the things that we can see and we can therefore rationalize and understand?

LD: No, it isn't, but those tend to be the primary...the things that people can see tend to be the primary things, I mean, even in the monitoring part...stage...people...biologists submit the stuff that's easily measurable, and in terms of saying the harder science stuff, they don't quite know what to do with that, no matter what their level of training is or the level of science, there's no agreed upon way to deal with that yet. I think part of the problem is we tend to think wetland science has been around for a long time, because we've been doing it for years, it seem like.

CR: But it's so new!

LD: But it hasn't been! It hasn't been! So it's the tendency to think that things that are short term in reality are long term because we've been doing it for a long time...because we've been doing it for "a long time" - which is 10 years or 15 years or...you know, really wetland regulatory stuff started up in the late '70's and



you know...that's not very long compared to civil engineering practice that's been around since, you know...the 19th'... the early 19th century and way before that there were elements of it, so...it's a new thing and that means that it's ...the emphasis on science, but there should be more still intuitive, but, well, we're getting there - it's just gradually. Anyway, what else do we have?

CR: That pretty well covers it. It's just interesting to think about, you know...all the difficulties that are associated with easement process itself, but more than that, wetland protection. I think it's perception...

LD: Yeah...

CR: ...and misinformation - a lack of information.

LD: Right..yeah...people have...I mean, the kind of things that we run into here daily are very incensed people because they find out they have a wetland on a piece of property that they've owned for a long time or they just bought, and they can't believe that we regulate that. And then, I mean...the biggest thing you can do to diffuse that, and I do this all the time because this is something they need to know, that just because you have a wetland on your property, that doesn't mean that something bad is going to happen! I mean people will call and say "I have a wetland on my property, now what do I need to do?"!

CR: Right.

LD: And I go, "nothing". "What do you mean, don't you come out and, like, take that land from me?"...and I go, "are you doing anything there?"..."no"..."well, just leave it alone. If you leave it alone, there's no issue"..."well, I don't know what it is"..."I say, "well, you know, one of our people can come and just give you a rough idea, we do some of that"..."but, and then when they have a project where they're building an addition on their house, and somebody will say well you've got wetlands there and you need to talk to DSL, and they get all riled up and they go "are you going to be putting 5 dump truck loads of fill in there?"...and they go "NO!" ..."well the thing to do if you want to be safe is, you know...find out where that wetland location is, and somebody from here will come out again, or you can get a consultant - it depends on how much money you want to spend on this, and from the Corps of Engineers, they have nationwide permits for that...you make application, and it's a fairly simple thing, and they'll tell you it's so small they're not going to require anything. They will tell you we don't have any authority to require anything from you in the first place". And they find out they don't really need much to do it, it's easier than getting a building permit. But on projects that are over 50 cubic yards, yeah, you're going to have to go through the whole 9 yards - there's no short cuts...

CR: Right.

LD: And the only short cut is: is it a major project or a minor project? Something that has a good effect - does it have a positive impact? a negative impact? But there are things that can be done, that's what I tell people...it isn't something like - you have a wetland and you can't do anything...and that's what most people think that aren't familiar with the program - is that we would regulate everything they would possibly do all the time, that they couldn't possibly walk across it, you know...so...

CR: I think part of it's just the perception because, you know, wetlands are dark, and they're not a big mountain, or a wide river, right? It's a very different...the aesthetics are totally different.

LD: And all that historical stuff about swamps are...

CR: ...the boogie man lives there...

LD: Yeah, the swamp thing is coming! But that's changed quite a bit the last few years...I bet if you went to any school kid in Oregon that's old enough to know a lot about the world about...around them, they know what wetlands are in some sense, and they don't have this image of it being a deep, dark swamp where something's going to come out of the water and grab them by the leg! I mean, they'd go wandering into one rather than running away from it. On a lot of projects that we have mitigation requirements, they ...people are saying...schools are saying, 'can we get the kids involved in doing some of the monitoring? Can we get out there and look at the site, is there a problem with that?'...and I go, 'well just make sure they take boots, you know!'...go out there as much as you want! Then they ask for all kinds of materials and we give them what we can, ...most of the kids are...have no problems with this. It's the adults that are the ones that have the old English mind, so...that's kind of the way things go.

**(End of Taped Conversation)**

APPENDIX A-10

INTERVIEW 9

Name of Person Interviewed: Ms. Annette Lalka  
Title: Wetland Inventory Specialist  
Agency, organization or affiliation: Oregon Division of State Lands (DSL)  
Date of Interview: Thursday, March 12, 1998  
Location of Interview: Oregon DSL, 775 Summer Street N.E., Salem, Oregon

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**Question 1:**

What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 2:**

What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 3:**

How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?

**Question 4:**

Will wetland functions be served by this easement?

**Question 5:**

Is there another administrative way to solve this problem that might be better?

**Transcription of Taped Conversation:**

AL: So...so what have you found out with the conflicts that may occur?

CR: Well, it sounds like cultural resource could be a conflict. Apparently, there's a significant number of archaeological sites in the whole Fern Ridge area...

AL: ah ha...the area they dig them out...

CR: right...and so the Kalapuya? - the Kalapuya tribes are in here? And so that could be a conflict if it's not, you know, considered and addressed in any movement of earth, or what is found when they do move earth...

AL: What are they proposing to do specifically with the restoration? Is there...is there...I mean, have they gotten to the point where they're saying you'd like to do this with the hydrology, you'd like to do this with the vegetation habitat - are there any sort of actions proposed for improving the wetland functions, in the proposed easement area? And where is the proposed easement area?

CR: Well there's 5 different areas, so one would be - my understanding is - cutting off some of these fingers here, and then filling it in and doing mitigation elsewhere - I think in the upland area -

AL: So that's going to be for...so that they could continue to spray their wastewater treatment.

CR: Right, right.

AL: Yeah.

CR: Right. So that's one. And then two would be...

AL: Not the easement - mostly for the purpose of them continuing that function, if not a Wetland Reserve Program type of easement...

CR: uhmmm - it might be -

AL: It might be?

CR: Yeah, I mean that would be part of the exchange, is that right? between the OCF and the City? - because right now this is ...this is owned by the OCF but the City needs it...

AL: Right...

CR: So they would swap ownership, I believe...there's two places where ownership is being considered for swapping.

AL: OK...Yeah, I think that they've talked about that for a long time too. So that the City can permanently...you know...rely on being able to use their site and have (an alder permit some place in a

row???) and then in exchange for what they need to do for alterations and for getting the site, they would give the OCF some...probably more ecologically attractive area that they're interested in.

CR: Right. OK. And also the area that the Fair needs for more...extended camping...

AL: OK.

CR:...that's called 'The Far Side'. And the City owns that right now. And then there's, let's see..where is Indian Creek...

AL: I don't know Indian Creek...

CR: ...because Dennis said one easement would be from the west side of the OCF boundary along Indian Creek...(referring to the map)...this is the Long Tom...(referring to the map)....almost all the wetlands are over here that they're talking about - it's one area in here (referring to the map)...because Forrest Larson's property is over here (referring to the map)...

AL: Forrest Larson's I know....

CR: He has two properties in this area...

AL: This is one of them right here, both in and out of the study (referring to the map)...I don't know of anything that's really called a 'creek'..I never heard of anything...so one unit is this...

CR: ...and I guess one property would be the second...

AL: ...which would probably be like pasture land...

CR: Yeah...and that would be him putting an easement on there...

AL: OK so the easement...so what would be in the easement agreement? Is it...what would they all be trying to accomplish with the easement?

CR: To preserve the wetlands regardless of future land ownership and development or sewage treatment needs...preserve the more valuable wetlands, there's some in the uplands here - is that right? that are kind of valuable, more valuable ecologically?

AL: Well the forested - the ash forested ones are more valuable, yeah...functionally and ecologically...you know, the ones that haven't been grazed and that kind of impact...impact on it...but I guess what I'm trying to understand is what are they really doing for the wetlands? Because right now, the removable fill program requires them to replace lost wetlands of course if they want to fill them. So they're already protected in that way, and if there's any sort of (adfacious???) management plan, say we're either ...we're going to restore and increase the function of this degraded wetland? Or is more or less well, we're going to keep it intact - we're not going to disturb any more wetlands, and on the disturbed ones we're going to allow them to camp on every summer...what's really going to be gained here for wetlands that already isn't in...isn't in place? - is what I'm wondering...

CR: I guess just overriding would be long term protection.

AL: Yeah. I don't know...I don't see a lot being gained because...I mean, if you're working it into - well we've got this...if you're going to go that far and say...we want to make sure this wetland unit here is long term protected, it's kind of to me only going half way, because, it's like well, if it's going to be protected, how do we want it to regenerate so that it becomes a healthy system? And you know, are we going to take the cows off? Are we going to try to introduce native species? You know...so having it as a unit and say well, it's going to be linked to this unit here...and we want...just, you know what you get with the management plan - because you can get a lot of benefits if you have some real goals associated with that easement. But just protection, it's already protected by the State of Oregon and The Corps of Engineers. I mean of course anybody can come in for a permit then it wouldn't be protected, but are those threats really real - for people coming in for permits to fill a bunch of wetlands in here? Is that a real...is that a real threat?

CR: Maybe a threat with ...in light of the City's need to deal with their sewage issue...

AL: Well here...yeah, here it is...here we know that they have this proposed impact and have kind of laid it on the table that yeah, we're going to do this here, we're going to..but ...what is this zoned I guess I'm wondering? What is it zoned?

CR: Some of it is commercial and industrial?

AL: It's in the UGB...what their - kind of what their plans are...

CR: Yeah...I have the zoning map for there - I wish I'd brought it...

AL: Another...I guess the other really interesting element that would be important is the City, you know...this is such a large wetland, but these are all going to be designated with the study that we're just completing as Locally Significant Wetlands. And what that means is that the City has to develop a program, an ordinance to further manage what can happen. And it has to do with grading, vegetational, native vegetational, setback buffers...that more detailed management stuff that federal programs don't...don't cover. So in the scenario of thinking that this is a...that we have a Significant Wetlands, what we have then is some pretty good protection in place because the mitigation...I mean if they want to impact it, the mitigation...it's going to be more scrutinized, the City has to decide whether or not it's in accordance with their local plan, and if they do allow a certain amount of local impact, the mitigation is going to have to be very well put together on it. So we're at a stage with the wetlands and COV they are being addressed



locally and getting more protection than a lot of other communities have that haven't dealt with the Goal 5. So if you add on top of that the easement situation, that adds a little..you know a little stronger protection, but I think the easement should have some real goals. You know, what are the common goals of the different parties? How can those goals be compatible and meet the needs and different agendas of the different parties?

CR: It sounds like some of them...they...like they camping area, they would have the summer camping, and then otherwise it would have time to restore and regenerate all year. The Lomatium Preserve is City owned, I think? And that was one consideration for easement?

AL: Yeah.

CR: So that's, 1, 2, 3 would be the Larson...

AL: Definitely you'd gain something with an easement on a Preserve because that doesn't...that is...that's - that is pretty voluntary as far as protecting those species go if it's not on public land... well this, if you're saying this is on City land...

CR: I think it's on City land...

AL: ...but still, you know, it's putting a fence around there so to speak!

CR: Right!

AL: ...definitely would be beneficial!

CR: ...and then this area here, I think it's here the camping area...that's 4, and then 5 would be the...the area that he said is from the Indian Creek side of the OCF boundary and then coming this way (*referring to the map*). It seems like there would be different goals because the different landowners would have different goals. But overriding should be protection of the wetlands and their values in perpetuity. Because the land ownerships can change - maybe the City will sell some of its land, and who knows, or the OCF, maybe in the future they won't be able to operate and their land is sold and...it seems like the Wetland Reserves Program allows the opportunity for the surveying and then the protection. We know where the...where the boundaries are, it's all legally laid out...and sure it's protected regardless of what happens in the future.

AL: So basically what we're gaining is chasing the cows off and putting some campers on.

CR: Although, well...

AL: ...in one respect.

CR: Maybe in one respect. Except literally, in that area, you know, if Forrest Larson has cows on there during the year, he does grazing on some area...maybe that would continue through the year?

AL: I think with the Reserve Program, the idea is to take it out of that use - and just to have however you're managing the land, to go towards wildlife habitat, wetland..increasing wetland...you know, stability in that...that environment by reducing the disturbances. So...

CR: But the whole question of compatible use, I mean some people would say that's a compatible use, right?

AL: What's that?

CR: With...if they continue grazing cows on it...

AL: Compatible with - ?

CR: With the easement guidelines?

AL: I don't know why it would be compatible, because that's what they're doing right now - why do you need...I think the easement could accomplish a lot more, depending on, you know, what people want...I mean, the Wetland Reserve Program - those moneys are really supposed to be there for compensating the landowner for taking it out of agricultural use and restoring it to its natural...in a more natural state - and reducing the disturbance. So I would think that it would be very...if there was grazing going on, it would be very carefully managed to, just, you know...not to hinder that wetland development. So it's kind of confusing to me, because when I think of a project, I just always think of like you said, people coming together and talking and having some of their goals met by the project.

CR: Well, it seems like some of the needs are the COV's to address their rural effluent disposal system, so that's one...

AL: But that's kind of a land swap - that's the land swap and removable fill permit mitigation. And mitigation sites are protected pretty stringently.

CR: So what would be the...how would the wetlands be served better - by an easement than just by mitigation?

AL: I mean an easement does lock it in, and some...some mitigation sites do say they want an easement on top of this as well. But the benefit isn't the easement - the benefit is what they've done to improve that wetland or to make that wetland with mitigation. The easement just kind of puts the seal on it. So that's how I see the rest of the project. And...off course it's not mitigation where you're required do this, this and this...it's voluntary! What can we all gain from this? And then easements being on top of that.



CR: Well, an interesting question that I've started thinking about is the whole notion of wetlands being protected, and values - what value is put on different wetlands? And if...we have this human construct of what is a valuable wetland and what is less valuable. And so, should we protect all wetlands? Or should we protect the most valuable wetlands? Well, what about the lesser valuable wetlands?

AL: The way it is right now, it's different levels of protection, and they are all protected if they meet the wetland hydrology/soils and vegetation criteria, as you're aware, they're protected in state and federal programs. As far as...and the ones that come out high under functions and values under the Freshwater Assessment Methodology, will receive more scrutiny when...if caps are proposed, both on a local level and state permit, and you'll have a better idea of what kinds of functions and values have to be replaced - to what degree. And the tool that helps you do is this Freshwater Assessment Methodology and basically looks at: wildlife habitat, fish habitat, water quality functions, hydrologic control - those are the top four...and then also as far as planning goes, an application to physically be able to cap, and the potential education potential, recreation and aesthetic quality. So that...that's one way that we're doing 'what is this wetland about' and helps us with the decision making process, the management and local planning efforts. And what is...so this has been done on this wetland here, and what is it providing for the community? And what would we like it to provide to the community? Do we want to manage this for hydrologic control or wildlife habitat as one of the top goals for us? And how can we, with this easement, either preserve that function that is already rated high here, or increase that function that is lacking?

CR: That's kind of important.

AL: Yeah, yeah. And then the people who are sitting around the table can tune into that same "I agree", or "I disagree". Then you work into 'how can it be accomplished' and 'how are each of the contributors able to...each of the participants able to contribute to that function and management'. So, you know, you look at...then you bring in that entity of, you know...that proposed land use that camping or grazing or, you know...other vegetation management. Whether we should plant this to ash forest, or should we let all the seedlings go? And that's going to bring about very different functions. And then the size of the pieces as well is very important. It's like...well, should we break up the size of these easements, I mean... should we have an easement here, and an easement here, and an easement there, and then allow development in between? That's going to do a lot for how well it's going to maintain wildlife habitat or hydrologic flood control.

CR: Right.

AL: How those pieces are fit together.

CR: There's the landscape ecology coming in!

AL: Yeah!

CR: SLOSS: Single large or several small!

AL: Yeah! Definitely. You were going to say something...

CR: Ah, just that something you said triggered a comment that Dennis had made-planting native species and the hybrid poplars for effluent treatment in some of the wetlands.

AL: OK, so that would be in this area here (*referring to the maps*).

CR: Yeah.

AL: So this area, you know what, it's not going to be considered...if they do this project, it's not going to be considered a bona fide wetland. It is no longer jurisdictional, and what you're doing to it really doesn't have... it's a wastewater treatment site, is what it is. And you would put hybrid poplars in a wetland. So this is like a whole different type of approach. If he was saying hybrid poplars, then maybe they're doing that so they can suck as much water and nutrients out as possible to balance things out, but it's...you know... like industrial level water quality control out here, versus out here, water quality control, they're looking at native vegetation cover, and, you know, larger size, holding the water in there and then discharging it out. That's different, for sure...

CR: Do you think that putting easements on these...I mean you just talked about the size of the easements...the size of the wetlands...do you think putting these areas under easements would be conducive to maintaining more of a corridor in here than without easements, because it's maintaining that protection?

AL: Yes, definitely. If that can be one of the goals of the easement to maintain the unity and the connectivity, and just the sheer...keeping the large pieces in tact as much as possible, that would...if the easements can accomplish that, that's one of the goals, that would be valuable, sure.

CR: I think that it should be.

AL: Yes.

CR: And then in light of the Long Tom River Greenway and that whole corridor, this would be connected to that as well, so that...it seems like it would increase connectivity rather than increase fragmentation of this area.

AL: Definitely.

CR: Now when I talked with Jerry Elliot, he said...I was asking him about the size of the Urban Growth Boundary for Veneta, and he said it's huge. And they have tons of land in there, although they're going through the inventory right now I guess to determine how much of it is buildable lands. But he said they don't have the Urban Growth Boundary. I...the way I understood what he said, they don't have to go outside the UGB to find enough land to deal with their effluent spray.

AL: They don't need to go outside the UGB?

CR: Right. That's my understanding of what he said - I hope I'm not wrong. But...and then I asked him about development, he said, you know...maybe there will be some industrial and commercial development by 2020, but not pressing enough so that they need to look at expansion of the UGB. So...

AL: I mean, it depends on what the...kind of what the plans are for this unit, and to what the biggest threats are, what's the priority for putting an easement over, and what's realistic for, you know...based on the agenda as you can see right now, what's it likely to look like in 20 years, and how much can we secure up front...and how much of it are we going to see developed, who's not going to be a willing participant, or what's going to be the matter of what is an easement or...that could be valuable...

CR: That's really important to think about who in the future might not be a willing participant in coming to the table to talk about all these related issues.

AL: The local landowner, you know, Larson...or whoever knows the different landowners...the parcels themselves, it seems like...I don't know who owns...what the ownership layout is as far as the unit size and the number of landowners we're talking about here? I always assumed that it was very few.

CR: Yeah, few and they're kind of large parcels. The City, the OCF, Forrest Larson...

AL: OK...

CR: And then near Forrest Larson's there's some other private landowners, but there's not that many, they're mostly pretty large chunks of ownership here.

AL: So Forrest Larson is the only one that we know that is a private landowner?

CR: Right around here...in this part of the property...I'm pretty sure...

AL: What about like the whole thing that we've got blocked out here? (*referring to the maps*)...Oh, there's the arena, that's the good - I guess that's the different owner, I don't know...

CR: I wish I had brought that ownership map...I regret not having brought it.

AL: That's OK.

CR: Well, just what you said raises an important point, that the plans of the landowner...or the future plans of the landowner is an important question. Especially in light of who in the future might not be willing to come to the table and talk. But, you can't always know who the future landowners will be. So then it comes back to the...

AL: ...But do we know at this point that other people have plans in mind for certain parts of their property, and how does that effect what's decided to be put into easement? I don't know, maybe...I haven't had these discussions so I don't know...

CR: It doesn't seem like Forrest Larson has any great plans for a major development on his property!

AL: Well, it's in the UGB...

CR: He could...

AL: Will he be able to...and how far down the line is this? And is the easement like a 20 year easement that you're talking of - has there been any discussion?

CR: Yeah, there's 3 different options in the Wetland Reserves Program - there's a 30 year easement, an easement in perpetuity, and one other I can't remember...

AL: Like really long, like 100 year or something like that?

CR: ...No, maybe...no... there's one that's I think shorter time frame than a 30 year.

AL: OK.

CR: So, maybe some of the OCF Board Members just won't go for perpetuity, maybe they'll go for a 30 year easement. Maybe perpetuity is just too...

AL: ...too permanent.

*(end tape side 1)*

As far as the local protections go, if these are protected as specific as wetlands, the DSL can't proceed to authorize a removal and fill permit if it conflicts with the city ordinances or city legal planning positions. If it conflicts with their ordinances. Tracy Brown would know.

CR: Can you maybe talk for a minute about the fact that Oregon doesn't, in contrast to a lot of other states, doesn't allow for spraying on wetlands?

AL: Well, Joe Edney who's the expert on that, I think...that's his program...I just know that...are you asking for my opinion on why that is?

CR: Yeah...

AL: ...and why that makes sense or doesn't make sense?

CR: Larry touched on it a bit, so I have...kind of historical answer to that...it's just interesting to me that other...that there's other...that there's not consistency throughout the country on that question. And that just raises an interesting point to me about the different jurisdictional strategies in this country for addressing wetland issues. The states have a lot of leeway.

AL: Yeah, they do. I'm not sure what Washington does, do you know?

CR: They...I don't think they allow spraying for ranking.

AL: They definitely have those...

CR: He said they have a different set of criteria for identifying wetlands - he talked about the ...how they designate the most valuable, the middle valued, the least valuable, and then that generates conflict because then people say well, no, I think this is less valuable...

AL: ...and so I can, I can fill in...

CR: Right.

AL: Yeah, they kind of (???) - they bring that in to the Division (???)...and justify the filling of a wetland based on its...what category they stuck it into...based on really, really, broader, broader criteria. And we try to look at the individual, and what's been already convinced...we want to find out if its a wetland. You know, with a situation like this, it's interesting because, you know, there's....there are some wetland functions occurring on a site like this but, I guess ...you know...they're accelerated. You know, they're free to manipulate the site how they want to for their wastewater treatment, because it's not jurisdictional. On one end, you win on that...in that way, however you don't get any credit and you have to replace the wetland.

CR: It kind of raises a more philosophical question - OK, some of the wetlands in here might not be considered so valuable ecologically, but does that mean they shouldn't be protected?

AL: Which - you mean like on this site?

CR: Yeah.

AL: You mean after it...it goes into a wastewater treatment, how it functions?

CR: Sure, even some of the other areas up here, there's remnants of wetland prairie in here somewhere, right? And...but not on all of the wetland areas...so...

AL: These are protected. They're all protected. We have to keep our threshold...but, you know...if they meet the...if they have the hydrology, they're going to meet the other criteria, and they're going to be protected. This wetland is protected right now, and it becomes no longer protected when they replace it with something else, and then they start doing all their maintenance and manipulation. So you haven't lost anything, you know, when you mitigate for these wetlands, because you want to do wastewater treatment on it, you haven't lost anything because, you know, you've replaced it (???)...on the other hand... does that make sense to you?

CR: Yeah.

AL: OK.

CR: And then some people would come in at this point and say well, what's the difference between a naturally occurring wetland and a created one? There is a difference, and then they would contest...

AL: As far as the mitigation goes?

CR: Yeah, yeah. They would contest the fact that it's a 1:1 replacement or 1-1/2:1 and they'll say no, it's not being replaced because it's different. It's created rather than natural.

AL: And you're trying to create those functions - you're trying to replace the functions. The more that we learn about wetland assessment, the more tools we have, the better we can do that kind of replacement. Like with the hydrogeomorphic assessment method, you know, where we look at where these fit in the landscape - based on where they are in the landscape, you know...what kind of functions are affiliated with them. And it's more tangible, and it's more directed towards Oregon...and so...Oregon wetlands, and so you can have a better idea of what you really need to replace when you're filling a wetland. And that's why we asked for more of a ratio, higher than 1:1, because you're not getting everything, and it's hard to (lift???) wetlands off the ground, get it functioning. I guess it's not a perfect world, and you have a managed landscape.

CR: Right! We do!

AL: Well, hopefully we can gain...I mean where there's been impacted wetlands, hopefully we can actually get them to say we're going to restore...you know, we have all these - especially in the City of Eugene - it was a huge dendritic hydric soil pattern for the whole city, and as it's cut up...soils get cut up and lose their hydrology, you know, when it's piecemealed out...

CR: Right, the system is no longer intact.

AL: It's not. And so you can say you want to create a real Willamette Valley wetland, you know, out here and actually fit on the map of what's historically been there. And that can be a gain. And the better, you know, that you can do it in the larger context and your regional ecological management, the more benefit it's going to be. So this kind of project, where it's evaluated (???) , to what's regionally needed and what should be functional - we'd like...we like to see function - highest function. These are..you know, these



really look at all of the wetlands. It's not so much site by site, it looks at, you know, the whole context of the watershed and how this particular wetland is functioning in this context...so...But as far as the wetland planning goals, kind of what I've describe is...this kind of describes the process that Veneta's going through - the Local Wetland Inventory, the Function Value Assessment, the significant wetlands, and then the non-significant are still regulated by us, and the non...excuse me the significant go under the local...local government to figure out how they want to protect those.

**(End of Taped Conversation)**



APPENDIX A-11

INTERVIEW 10

Name of Person Interviewed: Dr. Art Farley  
Title: Member  
Agency, organization or affiliation: Eugene Planning Commission, and  
Coordinator, Friends of Eugene/Springfield Habitat  
Date of Interview: Friday, April 3, 1998  
Location of Interview: Department of Computer Science,  
Deschutes Hall Room 362, University of Oregon,  
Eugene, Oregon

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**Question 1:**

What are some of the **conflicts** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 2:**

What are the areas of **compromise** that your agency (organization) might have to address to institute a wetland conservation easement on some of the wetlands on the Oregon Country Fair property?

**Question 3:**

How can a wetland conservation easement, or participating in a Wetland Restoration Program foster a **win-win situation** addressing the conflict between development and wetland protection?

**Question 4:**

Will wetland functions be served by this easement?

**Question 5:**

Is there another administrative way to solve this problem that might be better?

*(Note: This interview is transcribed both from taped conversation and written notes. Background noise from the ventilation system made it difficult to decipher parts of the taped interview).*

**Transcription of Taped Conversation:**

AF: This is Art Farley, good morning!

CR: This is April 3rd and we're at the U of O!

AF: Right. Now we can't talk anymore!

CR: I won't pull a Ken Starr on you though!

AF: Do you want to go through your questions?

CR: Sure. The first one, about the conflicts - in your experience dealing with wetland issues, what are - can you talk about some of the conflicts that you've seen arise that you think might be pertinent to these easements as they are under consideration?

AF: Well, I think, as we were just mentioning, clearly conflicts come from stakeholders that have different perspectives on the issue. At least when we were doing West Eugene Wetlands, the big general conflict one considered there was conflict between those who hoped to develop industrial lands and profit because of the zoning for an industrial site, and the, well...there was the federal government involved in regulations around wetlands, and the no net loss of wetlands policy, you've got that perspective...and then you have the city, maybe in some sense in the middle, a lot of people knowing wetlands then, and at the same time promoting industrial development. Probably out at this site, who are the people involved as stakeholders, it looks like you have the OCF which has economic interests, and you have the COV which has interests in this at least in terms of sewage treatment, they have interests in this in terms of developing (further???) services for the city...clearly I think there's an interest in developing the city - providing as much economic activity as possible, so I imagine the conflicts would be somewhat similar. Then more generally, you have people that like wetlands and like wildlife, that are aware of Fern Ridge and the wildlife reserve, you've got the Applegate area there and all the people that are coming in there...it's a natural extension...you have stakeholders that are bird watchers and others who would support this. And you have Larson's - you have

some private property owners...is another issue - a bigger issue with the Dolan ruling - how to...especially toward coming to an agreement or a compromise, you have to bring those people on board. Otherwise, you have road blocks....(???)...you have to show them the benefits...(???)... Typically if you have an easement given, I assume that one reason they're looking towards that part of the decision is that there's a tax break. So looking at the taxpayers in Veneta and others, (???) they could say 'we don't want people to get more tax breaks'... of course they now have these wetland areas...(???)...they could have a conflict with themselves...(???)

CR: And we have the state government, and the feds...the feds are offering money, and the state government regulates wetlands in Oregon.

AF: Right. And the federal government, as in West Eugene, they have an interest there, especially with Fern Ridge right there...the Corps of Engineers manages Fern Ridge, and clearly, given the money they've got to put into this state to improve the watershed into Fern Ridge, and then wildlife areas (???)...they'll put their money where their mouth is!

AF: And DSL?

CR: Yes, but also, the Department of Environmental Quality is involved, because of Veneta's sewage, and the DEQ has told Veneta they have absolutely have to upgrade their system. So there's actually a lot of stakeholders involved.

AF: I see. There's a lot of pressure. It varies.

CR: So do you think that articulating goals and interests and then trying to negotiate all of those is key to what you've learned out of your experiences in West Eugene?

AF: Well, I think that that's the first step, and you have to do it, otherwise people feel left out and they don't feel like they've been heard in these situations. Like I said before, when Eugene started the discovery of wetlands out in the estuary out in West Eugene initially...(?????)...the city...LCOG working with them to put together a very extensive citizen involvement process. It was open to the citizens - the public at large, but also (?????)...to work with them, get them to come to the table to see what advantages they'd like to get out of the process (?????)

CR: So can you talk about the compromises a bit? What are some of the areas that might cause compromise, or what is it that we would compromise over?

AF: Well, I think in the end, when you're doing compromises, people have to go away with some sense that everybody 'won'. You can do compromise so that everybody loses, or you can compromise so that everybody wins. So that's the managed perception that you have to work hard to find out what people are most interested in and either accept that or seek to change that. But, you know, in the end you can get a compromise, so they often say 'gee...you know'...people have to realize that OK, they weren't (???) all their livelihood...there were some regulations that were going to be preventing them from doing that, so aha...maybe if we do this West Eugene Wetlands Plan, I could get recognition ...and I could get a tax deduction as part of my wetlands work...Also, by looking at the overall system, that that was going to allow us to do this to some of the wetlands actually could be developed - so a developer, some walked away, most of developers (???) as a result of the wetlands - they'd get to develop more of their property than they would without the wetlands...

#### **Written Notes:**

*In West Eugene, regulations were preventing people from developing, and people couldn't do what they wanted. So developers walked away feeling they'd get to develop more of their land than they would without the West Eugene Wetlands Plan (WWWP) because they didn't have to go through the individual process- because the WWWP gave rise to the designation of mitigation areas, many of which were identified as already being impacted.*

*On the environmental side, they get a better wetland system by creating connecting wetlands - interconnect the better wetlands then create a better system. They found a vast majority of people were willing to live within the solutions. So the compromise was some wetlands were lost to effluent use but there was a commitment to get an interconnected, better system, and restore where possible.*

#### **Transcription of Taped Conversation - continued:**

CR: Does that actually change perception?

AF: Well, yes and no. I mean, well, I think they also saw that they were going to have a process that at least had been decided. A lot of those things (?????) it's an individual process. If we didn't have the West Eugene Wetlands Plan, generally we'd have to go through the individual process to try to get designated in a certain way for development that could be costly and could take a lot of time. And to get a policy - we may not have been able to do it. One thing that came with the Wetlands Plan was the designation of mitigation areas. And so then, a developer could ID not only his land designated for development under the Plan, but

also so those wetlands that I'm going to develop on, we have a place that I can mitigate them. So once we're freed, (???)...develop those wetlands myself...but what it really was, it will allow you to develop these wetlands, and in exchange, you'll be provided other resources towards mitigating that restoration of other wetlands.

On the environmentalists side, you have the fact that OK, we've got all these wetlands and we'd like to maintain all those wetlands as much as we can. I'm always there to support them. So now we could...the environmentalists could then be upset with this - with what I just said about their side of the equation. On the other hand they could say, really, of these wetlands have been highly impacted already. To some extent they're isolated. They're not top quality wetland. We're not talking about ancient forest that have been covered and impacted...(???)...a lot of them have developed because of pastures and activities. So you could say, OK, well, I'll give up some of those wetlands but I want in return is really trying to get a better functioning wetland...trying to restore some of the interconnectivity of wetlands...(???).. Clearly, the better, larger and more functioning wetland areas could be maintained. (if we interconnect the better wetlands than we create a better system???).. But in the future, we hope to have a better functioning system. We'll be criticized by some who say 'oh yeah, right'...(???)... But generally, I think, one can never say consensus, but a vast majority of people who are willing to live within a balanced solution to the problem. So, I think one of the compromises you make...you're willing to say OK, that these wetlands here will no longer be wetlands, but these are not (mitigated???) wetlands, they've been impacted by agricultural activity or something previous after that. But what we'll get is we're going to make sure that what we (???) at Fern Ridge (???) and so we try to create something connected to that and so the functions provide a buffer for that area...and some access to that for educational purposes, and that's a 'win'. Some wetlands over here it appears are given up for effluent use but at the same time there's a commitment that it will connect and be a better system than it would otherwise. So it's kind of a win-win perspective trying to be developed there as well.

CR: Sometimes it's just going through the process of negotiation and discussion so that it gives rise to a change in perception. Just by virtue of being together at the table.

AF: That's a big part of it. And making people see that there's other alternatives, you know...so through that, I mean you go through a process of people initially come and say 'no way, I'm not going to give that up...' and "no way, I want all this", you know. But in the end, they find out that there's a course you can take that...where we all win (???)...You know, in a perfect world they might have preferred something else. But in a sense, sometimes you go away feeling you got more than you might have had - you have to put it in perspective...you believe if things go well, so there's a risk...that's one thing you might have here - that there's the hope that you have...you know...the sense that these easements would be well maintained...there are provisions - if you have that, then you can kind of figure OK, the (???) justifies the loss of these wetlands at the end, but you have a more and better functioning system. So getting commitments, getting people to realize there's a decision to be made in a timeline and in the future how to manage, not just what is some decision right now. That's a problem with the early wetland mitigation methods (???)...if people put a commitment to funding or managing the easement then it will work. Any effort...any compromise that isn't supported by a commitment - then it could be a lose-lose situation (???)..

CR: So that kind of leads into the third question about how can easements or participation in the Wetland Reserves Program foster a win-win situation between wetland and development conflicts?

AF: Oh yeah. I think you made a good point...I mean just participating kind of raises the level of awareness and complexities of issues that a lot of times people don't understand on the other side....why. (???)...learn about what will make it successful. And also, throwing in the equation, OK, just as the City of Veneta and the Country Fair...is the wetland...or general stakeholders in the future that will depend on the ecosystem - so that kind of is elevated - kind of the silent partners get heard for something...the silent partners ...the federal government's wetland policies...environmental activists and others...have a direct voice (???) - so it really doesn't have a voice or direct economic (???).. So I think the big thing, is right...you know....accepting of the other side - educating the uneducated. Only after you do that can you then hope to find a solution.

CR: Do you think that maybe without something like an easement where it's just a regulation that it's less likely for people to become part of a dialogue?

AF: Well I guess it depends on what value the easement gives the project, and I guess that's why I'm a little fuzzy on this project. And that's why I'm going to ask you about that choice that they're making. But clearly, I mean...we just discussed it, so why don't I tell you again - regulation or there's an easement. And what is it...so the easement...I take it is there some tax break - they're also still getting some ability to use it for certain things but not other things.

CR: Right...right.



AF: So there's a nice way to (???)...

CR: Yes, they definitely get the tax break, and then the Federal government pays all the surveying costs which adds up to *thousands* of dollars.

AF: Well, it makes it almost feasible and without that probably aren't interesting in giving it an easement. You know, they're still...they have to modify how they're using that area, but they're still using it (????). One area they can spray effluent on and apparently the other they can provide access to. So it becomes an asset to the City in other ways (????)... It becomes a nice tool...it's kind of a kind of compromising tool already.

CR: Leslie talked at length about the educational component of all this. And...educational and recreational...you know... not active recreation but having benches here and there so people can go birding in there and bringing local school programs out there and how important that is.

AF: Yeah, (???) you gain by doing this. Which is kind of the...again, that's where you change your perspective on things. You may have one idea for this land and you're seeing people come out for this, for other things...that we don't have that are clearly valued wetland relations (???)

CR: Yeah, the functions...the wetland functions....how...are they, and how are they served by easements or are they served well?

AF: What do you mean by easements?

CR: By easements...

AF: In general?

CR: Yes and, you know...what's the advantage of using easements and why is it more effective... or is it? Are the wetland functions going to be better served by instituting it?

AF: I don't think easements on their own could do the job. The question is where, how easements are designated and where, how they're managed over time. They're just one of the steps in protecting wetland functions. (???)...other development and activities we know will vary - that's step 1- because you already have a chance. Now where is the area and how is that area being connected? (???) - these are key steps. Now overlay that over your key wetland areas and connect it to the other wetlands on the site, you've got a good start.

**Written Notes:**

*Easements on their own won't do the job - they are one step towards protecting wetland function. How can it provide connecting drainage, if for example all parties disagree and are unwilling to put an easement on one area? That won't serve the wetland functions because you're not getting the key areas. What's needed is **commitment** - because how enforceable is it otherwise, how do you ensure that the City of Veneta **will** put in access trails and **will** revegetate. There must be a commitment for ongoing work.*

**Transcription of Taped Conversation - continued:**

CR: But hard, I'm telling you, because it's voluntary. No-one's forcing an easement on anybody - it's not regulated.

AF: Right. I'm not saying it's harder, but they would have to accept some enforced commitment. (???)  
Again, these easements are effective, but not on their own.

CR: Right.

AF: That's the first step.

CR: Absolutely. So...talking about other administrative tools, do you think that there are maybe better, more effective ways to protect wetlands than easements?

AF: I don't know. You could say if the Board of Oregon had a lot of money they could go buy them and protect them 100%! There's a conflict though and so you have to negotiate...I don't know other administrative ways to do it.

CR: There's zoning, natural resource designations, buying the land...

AF: Zoning - you're talking about buying the land outright. Well, zoning and natural resources designation, in a way, I'm seeing them as being more imposed right? So, as opposed to an easement where we agree to come to an easement on the land.

**Written notes:**

*There are more strident ways for a city to do things, like zoning etc. - which sometimes are quicker and provide for more general settings. An advantage to an easement is that it can be a longer process that allows people to optimize what they can get out of it - they associate an easement with a negotiation process, versus other administrative tools that are more legislative. If you have lots of sites you may begin with a blanket design, for example no net wetland losses, but allow local jurisdictions to come to these negotiating sessions.*



**Transcription of Taped Conversation - continued:**

CR: I mean it would be nice if we could say all wetlands will be protected, and no wetlands will be lost. It's impossible. But all wetlands **should** be protected.

AF: Right, and I guess that's the difference- all wetlands should be protected but all wetlands should be **protected and interconnected**. OK, we'll try to keep the same amount of wetlands we have right now, we'll give up some of these (???) so...you're right, it's perspective...(???)

**Written notes:**

*Interconnection is critical for wetland areas so that flora and fauna have a chance to move between a wetland that isn't just a wetland of one particular type.*

**Transcription of Taped Conversation - continued:**

CR: That's a really important aspect, and maybe a component that isn't as seriously considered as it should be...(???)

AF: Yeah, yeah...and I think that's where you get down into the discussions of how...and as I understand it wetland functions and values(???)  
(?????)

AF: We're making decisions a little bit in the dark....(????).

CR: We don't really know though...I mean they're systems, and I mean...look how long Engineers study air-conditioning systems and **still** build buildings that don't function, that have bad air...(???)...

AF: (???)...we're shooting in the dark...At least we have some commitment to protect what we have. Over time, and some education and experience we can get the community doing things like this and involving the community...(???)...seen as the jewels of our cities...it's going to be hard...our cities will be coming out and saying "**Where's our wetland area? Let's put it back together!**"...(???)

CR: I like that! Maybe I can bring that into the opening of the paper - you know...**what do we need to do to get people to see wetlands as being jewels? What do we need to do to bring the people's jewels (???)?**

AF: Well, once you have that perspective, that really one hopes this evolves over time (???)...

**(End of Taped Conversation)**

**Written notes:**

*Wetlands evolve slowly over time - they are very complex. At least in the United States, we've made a commitment to wetland protection, and over time where these protected and restored sites exist will become jewels of our cities. Once a commitment is done, then perceptions change so it's **seen** as the "jewel" versus the conflict. There are short and long term values considered and perceived, so it becomes a long term value that's thought of as "we've got a jewel to value".*

**(End of Written Notes)**

APPENDIX A-12

INTERVIEW 11

Name of Person Interviewed: Dr. Mary E. Kentula  
Title: Wetland Ecologist  
Agency, organization or affiliation: United States Environmental Protection Agency,  
Research Lab  
Date of Interview: E-mail response, Thursday, April 2, 1998  
Location of Interview: E-mail response

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**Question 1:**

*What are some of the **conflicts** that your agencies and organizations must address during the process of preparing and implementing wetland conservation easements?*

**Mary Kentula:** Dealing with conflicting objectives. Differing points of view of neighbors to the easements.

**Question 2:**

*What are the areas of **compromise** that agencies and organizations must address during the process of preparing and implementing wetland conservation easements?*

**Mary Kentula:** Same as the areas of conflict. Whether it's a compromise or a conflict depends on the people involved and their flexibility.

**Question 3:**

*How can/does a wetland conservation easement, or participation in a Wetland Restoration Program foster a **win-win situation** addressing the conflicts between development and wetland protection?*

**Mary Kentula:** Yes. The primary factor is education. Both the Developer and the Land owner need to understand the ecological and economic benefits. Many people do not realize the amenity value of natural areas.

**Question 4:**

*Will wetland functions and values be served by this easement?*

**Mary Kentula:** Yes, depending on what they are. Perhaps the most important aspect is education. The wetland may function marginally, but because of the potential for people to learn about and appreciate wetlands the value of the site may be quite large. An informed citizenry is important.

**Question 5:**

*Are there other more effective administrative tools that can be used to solve this problem (i.e. development/wetland conflicts)?*

**Mary Kentula:** I am impressed with the utility of easements. They seem to be one of the most 'win-win' of the options for balancing the need for environmental protection/regulation and property rights.

# City of Veneta



## MEMORANDUM

To: City of Veneta Sewer Service Customers

From: Veneta City Councilors

Date: January 29, 1998

Subject: Wastewater Improvement Project - Proposed Sewer Rate Increases.

**NOTE: This memo contains important information concerning proposed sewer rate increases that will effect the amounts paid by City of Veneta sewer service customers. Please take a few minutes to read this memo carefully and completely.**

In January, 1996, the Oregon Department of Environmental Quality (DEQ) issued a Notice of Noncompliance notifying the City that it is not meeting discharge standards and will not likely be able to meet these discharge standards in the future without major improvements to the wastewater treatment facilities. In October, 1996, the City of Veneta signed a Mutual Agreement and Order (MAO) with the Oregon Department of Environmental Quality (DEQ) which sets forth a schedule for wastewater system improvements which would forestall DEQ enforcement action. As long as the City is meeting the timelines identified in the MAO for wastewater system improvements, DEQ will not impose civil penalties or issue an abatement order for violations of the City's discharge permit. In short, the City's sewer plant is not functioning correctly, we are a potential source of pollution to the Long Tom River, and we must take the actions necessary to bring our sewer plant into compliance.

The wastewater system improvement project being proposed is the lowest cost alternative of those evaluated by the City's engineering consultant. Please be advised that the City of Veneta must take these actions to comply with Oregon Law. In fact, if the City fails to proceed with this project, DEQ can levy significant fines on the City and/or carry out the project themselves, passing the costs on to rate payers by issuing bonds on

behalf of the City and making rate payers responsible for the repayment of those bonds. The rate increase necessary to pay these bonds could come all at once and may not involve any grant funding, therefore making the project more costly to individual sewer rate payers.

The City of Veneta will soon embark on the design and construction of the long awaited wastewater system improvements. The DEQ approved Wastewater Facilities Plan identifies the total cost of the project to be \$7,238,000. The City anticipates the receipt of \$2,642,000 in direct grants and \$4,596,000 in low interest loans. It is this loan amount which will have a direct effect on the rates paid by all sewer service customers.

It is the City Council's desire to phase-in the projected rate increase over a year and a half period to lessen the financial impact on local sewer rate payers. Local sewer rate payers must amortize a loan of \$4,596,000 at 4.5% interest over a forty year period. The projected rate increase will be \$26.91 per month (this is in addition to the already existing sewer rate of \$20.00 per month) phased-in as follows: On March 1, 1998, there will be a \$10.00 per month sewer rate increase; on September 1, 1998, there will be another \$10.00 per month sewer rate increase; and on September 1, 1999, there will be a sewer rate increase for the balance of the amount necessary to amortize the loan, now scheduled to be \$6.91 per month. City staff is diligently trying to obtain additional grant funds to reduce the amount of the loan. If these efforts are successful, the third rate increase may not be necessary or, it may be much smaller than currently projected.

In June, 1992, the City of Veneta established a Systems Development Charge (SDC) for all new connections to the sewer system to help offset capital improvement costs. On February 10, 1997, the City Council passed Resolution 719 which increased the sewer SDC from \$475 to \$3,250 per connection. This means that all new and future connections to the sewer system will pay their fair share of the capital costs associated with overall system improvements. In addition, all new and future connections to the system will also share in the repayment of the total debt of \$4.6 million. The City currently has 865 sewer accounts. When new connections to the sewer system occur, a larger number of accounts are created and more customers share in the repayment of the outstanding debt. Over time, as the number of connections to the sewer system increase, and the debt is retired, the individual monthly rate for sewer service customers may decline.

As City Councilors, we are fully aware of the financial burden these rate increases will have on the individual sewer rate payers in Veneta. We have worked closely with the DEQ and our consulting engineer to develop a plan which is in full compliance with Oregon environmental law and is cost effective. Although this action is a financial imposition to every sewer rate payer, it does provide clear direction for management of wastewater over the next 20 years, ensures the City of Veneta's future, and significantly reduces the public health and environmental risks associated with current operations.



APPENDIX C  
CHECKLIST I: MODEL CONSERVATION EASEMENT  
COMPLETE OUTLINE\*

CAPTION (Parties and Date)	10. Assignment
RECITALS	11. Subsequent Transfers
• Title Representation	12. Estoppel Certificates
• Legal Description of Property	13. Notices
• Generic Conservation Values	14. Recordation
• Qualitative Description of Property	15. General Provisions
• Baseline Documentation	15.1 Controlling Law
• Continuation of Existing Uses	15.2 Liberal Construction
• Conveyance of Right to Protect Conservation Values	15.3 Severability
• Qualifications of Grantee	15.4 Entire Agreement
• Grantee's Commitment	15.5 No Forfeiture
GRANT	15.6 Joint Obligation
PROVISIONS	15.7 Successors
1. Purpose	15.8 Termination of Rights and Obligations
2. Rights of Grantee	15.9 Captions
(a) Protection of Conservation Values	15.10 Counterparts
(b) Inspection	HABENDUM
(c) Enforcement (Including Restoration)	SIGNATURES AND ACKNOWLEDGEMENTS
3. Prohibited Uses	SCHEDULE OF EXHIBITS
[Insert Express Restrictions]	SUPPLEMENTARY PROVISIONS**
4. Reserved Rights	[5.2] Arbitration
[Insert Express Reservations, if desired]	[5.3] Mediation
5. Notice of Intention to Undertake Certain Permitted Actions	[Between 9 and 10] Amendment
5.1 Grantee's Approval	[Between 10 and 11] Executory Limitation
6. Grantee's Remedies	[Between 10 and 11] Subordination
6.1 Notice of Violation; Corrective Action	
6.2 Injunctive Relief	
6.3 Damages	
6.4 Emergency Enforcement	
6.5 Scope of Relief	
6.6 Costs of Enforcement	
6.7 Forbearance	
6.8 Waiver of Certain Defenses	
6.9 Acts Beyond Grantors' Control	
7. Access	
8. Costs, Liabilities, Taxes, and Environmental Compliance	
8.1 Costs, Legal Requirements, Liabilities	
8.2 Taxes	
8.3 Representation and Warranties	
8.4 Remediation	
8.5 Control	
8.6 Hold Harmless	
9. Extinguishment and Condemnation	
9.1 Extinguishment	
9.2 Valuation	
9.3 Condemnation	
9.4 Application of Proceeds	

\* This is a generic outline; formal requirements for a conservation easement vary from state to state, reflecting the particular state real property, income tax, and property tax laws that a drafter must take into account.

\*\* The designation of these provisions as "supplementary" is not meant to imply that everything else is essential, but only that a decision to include them is likely to turn more on particular facts or involve stronger preferences than the other provisions.

Source: Barrett and Nagle, 1996:6-7.

## APPENDIX D

### CHECKLIST II: SHORT FORM CONSERVATION EASEMENT

#### THE ESSENTIALS OF CONVEYANCE\*

CAPTION (Parties and Date)

RECITALS

- Title Representation
- Legal Description of Property

GRANT

PROVISIONS

1. Purpose
- 2(b) Right of Entry for Inspection
3. Prohibited Uses
4. Reserved Rights
7. Access (if desired)
- 15(g) Successors (and Run with the Land)

HABENDUM

SIGNATURES AND ACKNOWLEDGEMENTS

SUPPLEMENTARY PROVISIONS

[Between 10 and 11] Executory Limitation (if desired)

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\* Other provisions may be required by state law.

Source: Barrett and Nagel, 1996:8.

## MODEL CONSERVATION EASEMENT

## Model Conservation Easement

*Note: The boxed numbers inserted in the text of the easement correspond with the subheading numbers in the commentary that follows.*

DEED OF CONSERVATION EASEMENT <sup>1</sup>

THIS GRANT DEED OF CONSERVATION EASEMENT is made this \_\_\_\_\_ day of [month], [year], by \_\_\_\_\_ and \_\_\_\_\_, husband and wife, having an address at \_\_\_\_\_ ("Grantors"), in favor of \_\_\_\_\_, a nonprofit [state of incorporation] corporation [qualified to do business in [state where property is located]], having an address at \_\_\_\_\_ ("Grantee"). <sup>2</sup>

## WITNESSETH:

WHEREAS, <sup>3</sup> Grantors are the sole owners in fee simple of certain real property in \_\_\_\_\_ County, [state], more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"), and <sup>4</sup>

WHEREAS, the property possesses [e.g., natural, scenic, open space, historical, educational, and/or recreational] values (collectively, "conservation values") of great importance to Grantors, the people of [county, locale, or region], and the people of the State of \_\_\_\_\_; and <sup>5</sup>

WHEREAS, in particular, \_\_\_\_\_ [describe specific conservation values]; and <sup>6</sup>

WHEREAS, the specific conservation values of the Property are further documented in an inventory of relevant features of the Property, dated \_\_\_\_\_, [on file at the offices of Grantee or attached hereto as Exhibit B] and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and <sup>7</sup>

WHEREAS, Grantors intend that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses relating to [e.g., farming, ranching, or timber production] existing at the time of this grant; and <sup>8</sup>

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and <sup>9</sup>

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Internal Revenue Code"), whose primary purpose is [e.g., the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition]. <sup>10</sup>

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of [state where Property is located] and in particular [specific state statutory authority], Grantors hereby voluntarily grant and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement"). <sup>11</sup>

**1 Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever [predominantly] in its [e.g., natural, scenic, historical, agricultural, forested, and/or open space] condition and to prevent any use of the Property that will [significantly] impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving [e.g., farming, ranching, timber production, public recreation, or education], as are not inconsistent with the purpose of this Easement. <sup>12</sup>

**2 Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with section 6; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in section 6. <sup>13</sup>

**3 Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited: <sup>14</sup>

[Insert Express Restrictions] <sup>15</sup>

**4 Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others



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to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. [Without limiting the generality of the foregoing, and subject to the terms of paragraph 3, the following rights are expressly reserved:] <sup>16</sup>

[Insert Express Reservations, if desired] <sup>17</sup>

### 5. Notice and Approval.

**5.1 Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs \_\_\_\_\_, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required Grantors shall notify Grantee in writing not less than [e.g., thirty (30)/sixty (60)] days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

**5.2 Grantee's Approval.** Where Grantee's approval is required, as set forth in paragraphs \_\_\_\_\_, Grantee shall grant or withhold its approval in writing within [e.g., thirty (30)/sixty (60)] days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. <sup>18</sup>

### 6. Grantee's Remedies.

**6.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

**6.2 Injunctive Relief.** If Grantors fail to cure the violation within [e.g., thirty (30)] days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a [thirty (30)] day period, fail to begin curing such violation within the [thirty (30)] day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**6.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic,

or environmental values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**6.4 Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section 6 without prior notice to Grantors or without waiting for the period provided for cure to expire.

**6.5 Scope of Relief.** Grantee's rights under this section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. <sup>19</sup>

**6.6 Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs. <sup>20</sup>

**6.7 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

**6.8 Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription. <sup>21</sup>

**6.9 Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. <sup>22</sup>

**7. Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement. <sup>23</sup>



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**8. Costs, Liabilities, Taxes, and Environmental Compliance.**

**8.1 Costs, Legal Requirements, and Liabilities.** Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors. <sup>24</sup>

**8.2 Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. <sup>25</sup>

**8.3 Representations and Warranties.** Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:

(a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

(c) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**8.4 Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or

requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

**8.5 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and [corresponding state statute]. <sup>26</sup>

**8.6 Hold Harmless.** Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and [corresponding state statute], by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 8.1 through 8.5. <sup>27</sup>

**9. Extinguishment and Condemnation.**

**9.1 Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 9.2. <sup>28</sup>

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**9.2 Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9.1, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2)  $\frac{x}{y}$ , which is the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. [The values at the time of this grant (are—or—shall be) those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.]<sup>29</sup>

**9.3 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 9.2.<sup>30</sup>

**9.4 Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this section 9 in a manner consistent with its conservation purposes, which are exemplified by this grant.<sup>31</sup>

**10. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under [state statute] (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least [e.g., twenty (20)] days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.<sup>32</sup>

**11. Subsequent Transfers.** Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least [e.g., twenty (20)] days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.<sup>33</sup>

**12. Estoppel Certificates.** Upon request by Grantors, Grantee shall within [e.g., twenty (20)] days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within [e.g., thirty (30)] days of receipt of Grantors' written request therefor.<sup>34</sup>

**13. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

To Grantee: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or to such other address as either party from time to time shall designate by written notice to the other.<sup>35</sup>

**14. Recordation.** Grantee shall record this instrument in timely fashion in the official records of \_\_\_\_\_ County, [state], and may re-record it at any time as may be required to preserve its rights in this Easement.<sup>36</sup>

#### 15. General Provisions.

**15.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of [state].

**15.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of [state statute]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**15.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**15.4 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of

APPENDIX E

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which are merged herein. [No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph \_\_\_\_\_. (See supplementary provisions on amendment.)]

15.5 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

15.6 **Joint Obligation.** The obligations imposed by this Easement upon Grantors shall be joint and several.

15.7 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

15.8 **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.9 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

15.10 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling. [37]

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever. [38]

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Grantors \_\_\_\_\_  
\_\_\_\_\_

Grantee \_\_\_\_\_  
by \_\_\_\_\_  
its [official capacity] \_\_\_\_\_

[Acknowledgments]