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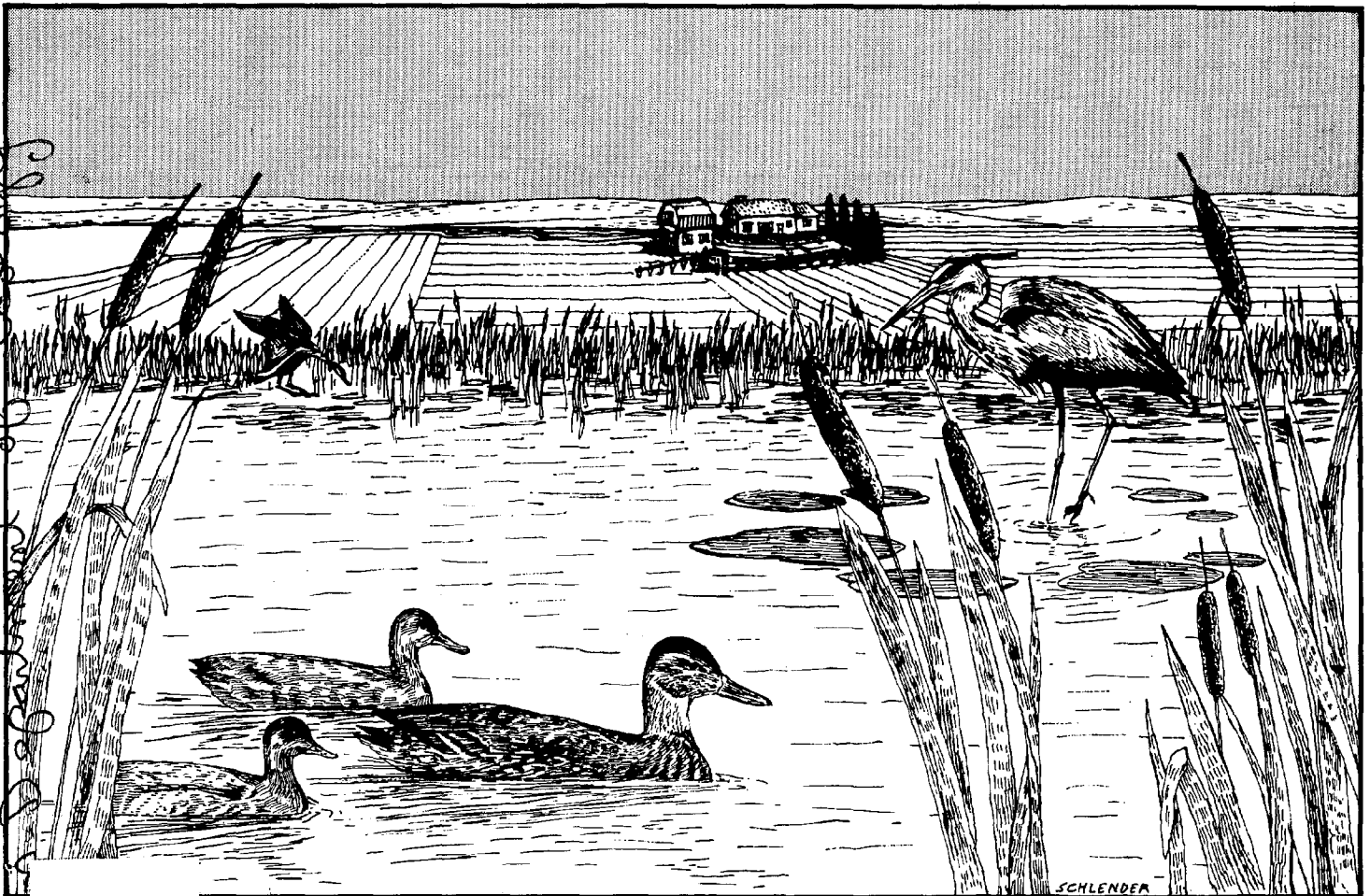
WETLANDS

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ACQUISITION & PRESERVATION

A Guide for Landowners and Government Agencies

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Department of Ecology

Wetlands Acquisition and Preservation

A Guide for Landowners and Government Officials

CZIC collection

State of Washington

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Department of Ecology

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PREFACE

Many organizations are involved in helping landowners protect the natural values of their lands. Unfortunately, landowners often don't know who they should contact for assistance. To help alleviate this problem the Washington Department of Ecology's Shorelands and Coastal Zone Management Program has developed a clearinghouse for information regarding the preservation of wetlands in Washington. This guide for landowners and government officials is part of that service. It outlines options available for individuals who want to know exactly what they can do with wetlands on their property and includes information on the many organizations in the state that assist landowners in protecting their land.

For more information on the Wetlands Acquisition Clearinghouse contact the Wetlands Section, Shorelands and CZM Program, Department of Ecology, Mail Stop PV-11, Olympia, WA 98504; or call 206/459-6000, ext. 6774.

INTRODUCTION

In recent years, there has been an increase in the variety of methods used to protect and conserve natural areas, including wetlands. Numerous regulations and policies protecting natural areas have been enacted and the acreage preserved through acquisition and self-imposed legal restrictions on development has increased greatly.

Many new organizations have become involved in purchasing or accepting donations of private land and managing them in their natural state. In some instances, lands are transferred to government agencies that will protect them. In addition, these organizations have sought to protect lands by encouraging the adoption of restrictions such as easements and covenants on the land.

While federal and state governments are undoubtedly the largest landholders and managers of land, a few private groups, such as the Nature Conservancy, have become major landholders and managers as well. Several local land trust organizations also seek to preserve lands in their own geographic areas.

CONSERVATION OPTIONS FOR THE LANDOWNER

Property ownership includes a variety of rights such as the right to farm, cut timber, build structures, extract minerals, exclude others from the property, and otherwise develop the land, subject to local regulations. Ownership of all property rights is described as a "fee simple estate." However, these rights can be separated and leased, sold, or donated to other parties. Each of these rights constitutes a less-than-fee interest in the property.

In seeking to protect one's land, the first question a landowner should consider is whether to continue ownership of the land. The answer to this question determines the choices that are available. Landowners have the following options:

Protection by Restriction (continues to own land)

- Conservation Easements
- Mutual Covenants
- Leases

Transfer of Title (parts with land)

- Donations - Outright Donation
- Donation by Devise
- Donation with Reserved Life Estate

- Sale - Sale at Fair Market Value
- Bargain Sale
- Installment Sale
- Sale with Reserved Life Estate

Restrictions before Transfer

- Prior Granting of a Conservation Easement
- Deed Restrictions
- Conditional Transfers

Conservation and Development

PROTECTION BY RESTRICTION

A landowner who wants to continue owning the land can consider: 1) granting a conservation easement to permanently limit future development on the property; 2) entering into a mutual covenant with other landowners; or 3) leasing the land to an agency or organization.

Conservation Easements - A conservation easement is a legal means by which a landowner can permanently restrict the future use of the land. This method is attractive to many landowners because it allows them to retain ownership while protecting particular attributes of the land.

Conservation easements can be tailored to protect specific attributes of all or part of a landowner's property by restricting particular development activities. Easement restrictions can range from keeping the land in a wild, natural state to allowing limited farming, timber harvesting or residential use.

Conservation easements legally bind all present and future owners of the land and thus provide permanent protection. They are recorded in the same manner as a deed to the land and apply to the land whether it is sold or donated in the future.

Conservation easements are usually granted to a government agency or private land trust interested in preserving the natural values of the land. It is their responsibility to ensure that present and subsequent landowners abide by the terms of the easement. They monitor the property and enforce the easement restrictions in court if necessary.

In addition to the satisfaction gained by protecting land they deem valuable, landowners can receive economic benefits from granting conservation easements. A conservation easement will affect the market value of land to the extent that it limits development and potential use. A reduction in the market value of the land may reduce its assessed value, and thus reduce property taxes and the estate tax due upon the landowner's death. In addition, the landowner may be able to claim any loss in value as a charitable contribution for income tax purposes. Any landowner considering granting a conservation easement should seek financial advice from an accountant or tax attorney.

Mutual Covenants - When no agency or organization can be found to accept a conservation easement, a landowner can limit the future use of the land through the imposition of a mutual covenant. Neighboring landowners having a common conservation interest may sign and record an agreement containing restrictions similar to an easement. The

agreement would then bind subsequent owners just as an easement would. These covenants could be enforced by any of the landowners entering into the agreement or by any future owners of the land.

Drawbacks of mutual covenants include the following:

1) mutual covenants may not be as lasting as easements. By their legal nature, they would be subject to the doctrine of changed conditions: a court could refuse to enforce the covenants if it felt that it was no longer possible to achieve the benefits sought when the covenants were imposed.

2) mutual covenants receive the same tax treatment as easements in regards to property, estate, and gift taxes, but the landowner would not be allowed to claim a loss in market value as a charitable deduction on income tax returns.

Leases - A landowner interested in protecting his/her land in a less-than-permanent agreement may opt for granting a lease to a land management agency or organization. Rental payments can be negotiated between the parties, but no tax benefits accrue to the landowner unless the lease affects the value of the land at the time of the landowner's death.

TRANSFER OF TITLE

Some landowners may not be interested in retaining ownership of the property they want to protect. They may wish to donate or sell their land to a government agency or land trust organization for any number of reasons: they may believe that the land should be used by the public; that a landholding agency is better able to protect the land; or that taxes have climbed too high for them to continue to own the land. Whatever the reasons, the landowner can proceed in a number of ways.

DONATIONS

Outright Donation - This is usually the simplest way to transfer title. The benefits to the landowner include an income tax deduction equal to the appraised value of the land (if given to a government agency or publicly supported private charity) and reduction of estate taxes. In addition, of course, the landowner will pay no further property taxes on the land.

Donation by Devise - A landowner may donate land at the time of death by providing for the gift in a will. The advantages of a donation by devise are that the landowner retains full use of the land until death and may revoke his/her will at any time if circumstances change. Also,

estate taxes will be reduced if the land is donated to a qualified recipient. Disadvantages are that the land owner would not benefit from income tax deductions for the gift and would pay real estate taxes on the land until death.

Donation with Reserved Life Estate - A landowner can donate land and reserve the right to use the property until death. This is accomplished by giving the recipient a deed that includes a provision allowing lifetime use of the land by the landowners or other specified individuals. The donor usually continues to pay real estate taxes on the portion of the land retained for personal use but may be able to claim an income tax deduction on the value of what is actually given up.

SALE

A landowner may wish or need to sell property and want to ensure that its natural values are protected. Two options are available: 1) selling the land to an agency or organization that will manage it for its natural values; or 2) placing restrictions on the use of the property prior to sale. Several alternatives can achieve either of these options.

Sale at Fair Market Value - There is nothing fancy about this option, but there are two potential drawbacks for the landowner. First, it may be difficult to find an agency or organization with sufficient funds or desire to purchase land at its fair market value. Second, the seller would still be liable for capital gains tax on the property at the time of sale.

Bargain Sale - Selling land at a bargain price may circumvent the disadvantages of a fair market value sale. The lower price may make it easier to find a willing buyer. The lower sale price will also lower the capital gains tax. In addition, the seller can claim an income tax deduction for the difference between the price received and the fair market value. This can help compensate for the lower income from the sale.

Installment Sale - An installment sale is an agreement that allows a purchasing agency to either pay for the land in annual installments or buy a portion of the property each year. This is advantageous to the seller because the income from the sale is spread over a number of years, thus minimizing the amount of tax that must be paid. It may also help the purchasing agency because it has to pay only a fraction of the total cost each year.

Sale with Reserved Life Estate - A landowner may sell property to an agency or organization with a reserved life estate so that the landowner and others specified in the agreement may continue to use the land during their lifetimes. This is handled similarly to a donation with reserved life estate.

RESTRICTIONS BEFORE TRANSFER

If an appropriate managing agency cannot be found, a landowner may ensure protection of property that is donated or sold by placing restrictions on future use of the land prior to selling it. Three options are available.

Prior Granting of a Conservation Easement - The prior granting of a conservation easement provides an excellent way of controlling future use of the land if it is sold on the open market. The landowner may be able to claim the loss of fair market value resulting from the easement as a charitable deduction for income tax purposes. However, the landowner should expect a lower sale price for the land as a result of the easement. In the case where a recipient of an easement is not available a deed restriction may be useful.

Deed Restrictions - Deed restrictions are similar to conservation easements but differ in three important ways. First, deed restrictions may be less permanent because they are limited by the doctrine of changed conditions (see mutual covenants). Second, enforcement of the restrictions must be carried out by the landowner. Third, the landowner cannot claim any reduction in value from the deed restrictions as a charitable deduction.

The latter two disadvantages may be overcome by the use of an intermediary agency. The landowner can transfer (sell or donate) the land to an intermediary conservation agency which then transfers it to a landholding agency which holds title permanently. The intermediary agency inserts the restrictions and enforces them, thus allowing the landowner to claim the unrestricted value of the land as an income tax deduction (if it is donated) and avoid the problems of enforcement.

Conditional Transfers - A landowner may also control the future use of land by using a form of deed that spells out the restrictions on use and states that title will transfer to a certain named party if the restrictions are violated. This provides more force than deed restrictions because breaking the conditions would result in a loss of title.

There may be legal qualifications which make this approach less desirable. State laws may limit the duration of the conditions, and courts may not enforce the conditions through forfeiture of title if litigation becomes necessary.

The economic advantages are similar to deed restrictions; the landowner may claim a tax deduction if the land is given to an appropriate agency. Because the restrictions reduce

the value of the land, transferring the land to an intermediary agency which imposes the restrictions will maximize the income tax deduction.

CONSERVATION AND DEVELOPMENT

In some cases it may be beneficial for a landowner to consider using one of the conservation options discussed previously in combination with some type of development. This can be accomplished in a couple of ways.

A landowner might use one of the conservation techniques to protect a portion of the property s/he most wants to preserve and leave another portion open for development. However, the landowner needs to consider whether unrestrained development in the unprotected portion is compatible with the values s/he is trying to preserve in the protected portion. The potential for development may also discourage a recipient agency from cooperating in the protection of the remainder.

Another alternative is for the landowner to protect the entire property with one of the conservation techniques while allowing for specific types of development in certain

locations on the property. This could be done using a conservation easement or deed restriction.

The conservation options discussed here can be used in a number of variations to allow for both protection and development. The success of the particular variation will depend on the characteristics of the land, the desires of the landowner, and the availability of a cooperating agency.

LAWS RELATING TO WETLANDS ACQUISITION

FEDERAL LAWS

Many federal laws pertain to the acquisition and preservation of wetlands. Some of the laws are specific to wetlands, while others relate to wetlands under the heading of conservation and recreation lands or waterfowl protection.

Migratory Bird Hunting and Conservation Stamp Act (1934)

This Act established the Migratory Bird Conservation Fund supported by the sale of "duck stamps" to all waterfowl hunters and any other interested parties. The funds are used by the U.S. Fish and Wildlife Service to purchase migratory bird habitat for the National Wildlife Refuge System. Since its inception this program has provided over \$300 million toward the acquisition of 3.7 million acres. Wetlands constitute a large percentage of these areas (no figures available).

Wetlands Loan Act (1961)

This Act authorized the expenditure of up to \$200 million for the preservation of wetlands. These funds were treated as a loan without interest to the Migratory Bird Conservation Fund to purchase wetlands for bird habitat. These loans were due to be repaid with duck stamp receipts

beginning October 1, 1986. However, with the passage of the Emergency Wetlands Resources Act, (see below) this act is extended through 1988.

Land and Water Conservation Fund Act (1965)

This act provides funds appropriated by Congress for a variety of conservation and recreation purposes. Federal and state agencies have used this fund to purchase valuable wetland areas, but no figures are available on acreage or dollar amounts.

Waterbank Program (1970)

This program, now expired, provided funds for annual payments to landowners in exchange for not degrading wetlands on their property. It was used primarily in the prairie-pothole region, and it expired in 1984.

Food Security Act (1985) - commonly known as the Farm Bill

This Act contains a number of provisions relating to conservation of wetlands and erodible land. The two that relate to wetlands are described below.

a. Swampbuster provisions - agricultural producers will no longer be eligible for federal subsidies for altering wetlands to produce agricultural commodities.

b. Conservation easements - in situations where farmers cannot repay an FHA loan, they may grant a conservation easement to the government on wetlands on their property for periods of 50 years or more to cancel part of their debt.

Emergency Wetlands Resources Act (1986)

This Act contains many provisions concerning wetlands acquisition. These include:

- * authorization of entrance fees at wildlife refuges to be designated by the Secretary of the Interior. 70% of this income will go to the migratory bird conservation fund.
- * extension of the Wetlands Loan Act through September 30, 1988 and deletion of the requirement for repayment.
- * an increase in the price of the duck stamp from \$7.50 to \$15.00 gradually over a five year period.
- * the transfer of an amount equal to that collected yearly on import duties on arms and ammunition to the migratory bird conservation fund.
- * the establishment of a national wetlands priority conservation plan with authorization to purchase wetlands consistent with the plan.

STATE AND LOCAL LAWS

Many state and local laws regulate the use and development of wetlands and other valuable natural areas. The primary state laws relating to acquisition and restrictions are described below.

Open Space Tax Act - (RCW 84.34) provides incentive for the protection of natural areas, including wetlands, through an open space tax program. This Act requires counties to provide a mechanism for evaluating agricultural, timber or "open space lands" and enacting a property tax reduction in exchange for an agreement to preserve the land in its current condition. To qualify for the tax reduction, an area must meet criteria established by county ordinance. Once begun, property owners can continue to receive the tax exemption into perpetuity as long as they abide by the original agreement.

A landowner who decides to withdraw from the agreement is subject to paying back taxes saved over the years as well as future property taxes. Thus, once enrolled, individuals have a strong incentive to continue participating and leaving lands in their current condition.

Some counties have adopted a rating system which evaluates the public benefit of protecting a property and takes into account such features as the degree of public access. The amount of the resulting tax reduction is based on the public value rating of the property as well as the reduced development potential.

Natural Areas Preserve Act - (RCW 79.70) allows landowners to protect certain aspects of their property through the dedication of land. Similar to conservation easements, this program allows landowners to enter into an agreement with the Department of Natural Resources to protect certain resources on the landowner's property. The terms and length of the protection are specified in the agreement. This Act also grants authority to the Department of Natural Resources to purchase lands meeting criteria specified in the Natural Heritage Plan.

State Duck Stamp Act - (RCW 77.12.670) Similar to the federal duck stamp program, this act authorizes the sale of a state duck stamp to duck hunters and collectors. The funds from this five dollar stamp go to the Department of Game for use in wetlands enhancement and acquisition. Funds raised through the sale of related artwork may be used by the Department of Game to assist private non-profit organizations involved in wetlands enhancement and acquisition.

Aquatic Lands Enhancement Account - (RCW 79.24) The Aquatic Lands Enhancement Account (ALEA) was established in 1984 and is funded by the lease of state-owned aquatic lands managed by the Department of Natural Resources. This fund is used to support a variety of projects including "the purchase, improvement or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects...".

These funds are allocated to state and local public bodies through an open competitive process. Applications are accepted annually and are reviewed and rated by a technical advisory committee with the final selection made by the Commissioner of Public Lands. A local match of at least 25% is required.

**WASHINGTON STATE ORGANIZATIONS INVOLVED IN
WETLANDS ACQUISITION and PRESERVATION**

Below are some of the organizations in the state of Washington involved in helping landowners protect the natural value of their property. The following pages include brief descriptions of each organization and the names, addresses, and phone numbers of people to contact.

- A. Hood Canal Land Trust
- B. The Nature Conservancy
- C. The San Juan Preservation Trust
- D. Trust for Public Land
- E. Washington Parks Foundation
- F. Washington State Interagency Committee for
Outdoor Recreation
- G. Washington Wildlife Heritage Foundation
- H. Whatcom County Land Trust
- I. The Whidbey-Camano Land Trust
- J. Yakima River Greenway Foundation

A. Hood Canal Land Trust

PURPOSE: This trust helps conservation-minded communities and citizens preserve wildlife habitat, agricultural land, historic sites, scenic or open spaces, and wetlands along the Hood Canal and neighboring areas.

EXPERTISE: The Trust has experience in assisting landowners preserve their land through conservation easements, reserved life estates, donations, and sales. A board member of the Trust can meet with the landowner and explain the procedures and benefits involved in any of these choices and, if the landowner is interested, the Trust can expedite the entire procedure.

REQUIREMENTS/STIPULATIONS: An initial meeting to assess the land and its suitability for the Trust's goals is necessary.

CONTACT: Celia Parrott

ADDRESS: P.O. Box 861, Belfair, WA 98528

PHONE: 206/275-3925

B. The Nature Conservancy

PURPOSE: The Conservancy identifies, protects, and manages natural areas that are significant for the preservation of natural diversity. They assist governmental agencies and other land trusts in land acquisitions, own and manage the largest private system of nature preserves in the world, facilitate the protection of important elements on public lands, and promote legislation beneficial for the protection of diversity.

EXPERTISE: The Conservancy has expertise in all legal options. They purchase, take donations, negotiate conservation easements, and work with landowners in voluntary Registry programs. They have also leased natural areas and have the greatest amount of experience of any organization in the management of natural areas. The Conservancy is primarily interested in Natural Heritage Program identified sites. They generally are involved only in what they consider to be ecologically significant sites.

REQUIREMENTS/STIPULATIONS: Site significance.

CONTACT PERSON(S): Elliot Marks, Fayette Krause, Laura Smith

ADDRESS: 1601 Second Avenue, #910, Seattle, WA 98101

PHONE: 206/728-9696

C. The San Juan Preservation Trust

PURPOSE: The Trust is dedicated to preserving scenic open spaces, forests, agricultural lands, habitats, vital wetlands, and shorelines in the San Juans. The Trust does this by accepting and managing donations of conservation easements or gifts of land.

EXPERTISE: The Trust has expertise in counselling property owners on preservation techniques available to them, and on tax benefits which might be available to them from donations of land or easements.

REQUIREMENTS/STIPULATIONS: none

CONTACT: Bob Myhr

ADDRESS: Route 1, Box 2114, Lopez, WA 98261

PHONE: 206/468-2258

D. The Trust for Public Land

PURPOSE: The Trust for Public Land (TPL) is a national non-profit land conservation organization which works with community groups and local, state, and federal agencies to acquire lands for parks and resource protection. TPL serves as an intermediary landowner and facilitator in the transfer of land from private to public ownership.

EXPERTISE: TPL has expertise in assisting landowners complete private market transactions which protect their land and provide maximum tax benefits. Since its founding in 1973, TPL has transferred 316,000 acres of recreational, rural, wilderness and urban open space, either in fee or as conservation easements, to public agencies or other non-profit organizations such as land trusts. TPL's Land Trust Program works with community groups to protect land and water resources in their communities. TPL has assisted 8 land trusts in Washington and over 80 nationally.

REQUIREMENTS/STIPULATIONS: None

CONTACT PERSONS: Craig Lee or Donna McBain

ADDRESS: 625 Commerce Street, Suite 330D, Tacoma, WA 98402

PHONE: 206/ 627-7774

E. Washington Parks Foundation

PURPOSE: The Washington Parks Foundation provides a resource for Park and Recreation contributions and serves as a conduit to cities, counties, and state agencies for land, facilities, equipment, and money.

EXPERTISE: The Foundation has expertise in providing personal consultation and referrals regarding donations, third party agreements, and governmental regulations. They also have a resource library.

REQUIREMENTS/STIPULATIONS: NONE

CONTACT PERSON: Pam Earle

ADDRESS: 111 W. 21st, Olympia, WA 98501

PHONE: 206/786-1212

**F. Washington State Interagency Committee for
Outdoor Recreation**

PURPOSE: Assists local governments with funds and planning assistance for the acquisition, development, and use of outdoor recreation resources in a manner which maximizes preservation of the natural quality of the environment. Encourages programs which will promote outdoor education, skill development, participation opportunities, and proper husbandry of recreation resources.

EXPERTISE: Providing funding and technical assistance to governmental agencies for the acquisition and/or development of wetlands. Directing landowners to agencies and organizations that can assist them.

REQUIREMENTS/STIPULATIONS: Funding is only available to governmental agencies.

CONTACT: Jim Webster

ADDRESS: 4800 Capitol Blvd., Tumwater, WA 98504

PHONE: 206/ 753-7140

G. Washington Wildlife Heritage Foundation

PURPOSE: To preserve, protect, enhance, and perpetuate fish, wildlife, and natural resources through the development, promotion, support and/or management of comprehensive programs and projects.

EXPERTISE: The Foundation has expertise in land sale and donation, easements, estate and tax planning, refuges and preserves, wetlands enhancement and cooperative land and income programs.

REQUIREMENTS/STIPULATIONS: Accurate and specific information on the property.

CONTACT: Larry Minkler

ADDRESS: 32610 Pacific Highway S, Federal Way, WA 98003

PHONE: 206/ 824-1579

H. Whatcom County Land Trust

PURPOSE: To provide a private means for individual landowners to protect the agricultural, scenic, and recreational uses of their land into posterity.

EXPERTISE: Advising landowners on the legal steps and likely tax benefits involved in the donation or sale of their land or the enactment of specific easement constraints, particularly involving agricultural lands.

REQUIREMENTS/STIPULATIONS: Landowners interested in protecting their resources and who have land that, in the evaluation of the board of directors of the trust, has value in protecting for the future.

CONTACT: Roger Van Dyken

ADDRESS: 1251 Garden Circle, Lynden, WA 98264

PHONE: (206) 354-5770, or 671-4300

I. The Whidbey-Camano Land Trust

PURPOSE: The Trust is dedicated to the preservation of open farmland, the shoreline, and the forests which contribute to the unique rural quality of Whidbey and Camano Islands.

EXPERTISE: The Trust has experience in assisting landowners plan for their land in ways that will protect its natural qualities. This includes preserving the land through conservation easements, transferable development rights, or donations. In addition, the Trust assists landowners in meeting their economic needs and passing on their land as they desire.

REQUIREMENTS/STIPULATIONS: none

CONTACT: Ken Pickard

ADDRESS: P.O. Box 207, Coupeville, WA 98236

PHONE: 206/ 678-5666

J. Yakima River Greenway Foundation

PURPOSE: The Foundation was created to preserve, enhance, and maintain a 3600 acre river corridor adjacent to the Yakima urban area as a continuing living resource for future generations.

EXPERTISE: The Foundation usually acquires land outright but has professionals who can help with a variety of transactions. They are willing to work with landowners who have property both within or outside the designated corridor.

REQUIREMENTS/STIPULATIONS: none

CONTACT: Marc Smiley, Rita Howard Pilgrim

ADDRESS: 103 S. 3rd St, #201

PHONE: (509) 453-8280

Written by Andrew McMillan

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