



# **ELLIOTT STATE FOREST**

## **Next Step Considerations for Decoupling from Oregon's Common School Fund**

October 2018



An Oregon Consensus Assessment Report to the Oregon  
Department of State Lands and Oregon State Land Board

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**Acknowledgements**

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**About Oregon Consensus**

Oregon Consensus (OC) was established by state statute as the State of Oregon's program for public policy conflict resolution and collaborative governance. The program provides mediation and other collaborative services to public bodies and stakeholders who are seeking new approaches to challenging public issues. OC conducts assessments and designs and facilitates impartial and transparent collaborative processes that foster balanced participation and durable agreements. OC is housed in the National Policy Consensus Center in the Hatfield School of Government at Portland State University.

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# 1. Introduction

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## 1.1. Purpose of report

This report is the product of a series of interviews Oregon Consensus conducted with parties and stakeholders representing key interests related to the Elliott State Forest. The Department of State Lands (DSL) engaged Oregon Consensus to conduct a neutral, third-party assessment for the purpose of gathering perspectives and informing a process and framework for decoupling Elliott State Forest from the State Common School Fund (School Fund) within the framework established by the Oregon State Land Board (Land Board) at its May 9, 2017, meeting.

“Decoupling” is generally intended to mean releasing all or a portion of Elliott State Forest from its asset connection and revenue obligations to the School Fund. This report is intended to provide a reflection of what the Oregon Consensus assessment team heard from interviewees at a singular point in time. It also identifies key issues relevant to a decoupling solution, provides process recommendations, as well as potential next steps for the Land Board’s consideration.

The report begins with an explanation of the Oregon Consensus assessment process, followed by a synthesis of information gathered from interviews conducted, which are reflected in section 2, as well as section 4 of the report. The last section focuses on process recommendations for addressing decoupling of Elliott State Forest from the School Fund. Supplemental information is provided in the appendices.

## 1.2. Background & context

Just northeast of Coos Bay, the Elliott State Forest is situated in Coos and Douglas Counties in the central Oregon Coast Range. About 82,500 acres of the 91,000-acre Forest is a land asset of Oregon’s Common School Fund, overseen by the Land Board and administered by DSL. (See figure 1.) Since Elliott State Forest was established in 1930, timber harvest has served as the primary source of revenue from these lands to address the state’s duty, arising under the federal Oregon Admissions Act and the Oregon Constitution, to maximize School Fund revenue over the long-term.

Due to declining timber revenue and rising management costs (figure 2)<sup>1</sup>, in 2017 the Land Board directed DSL to pursue an effort to decouple these

Figure 1



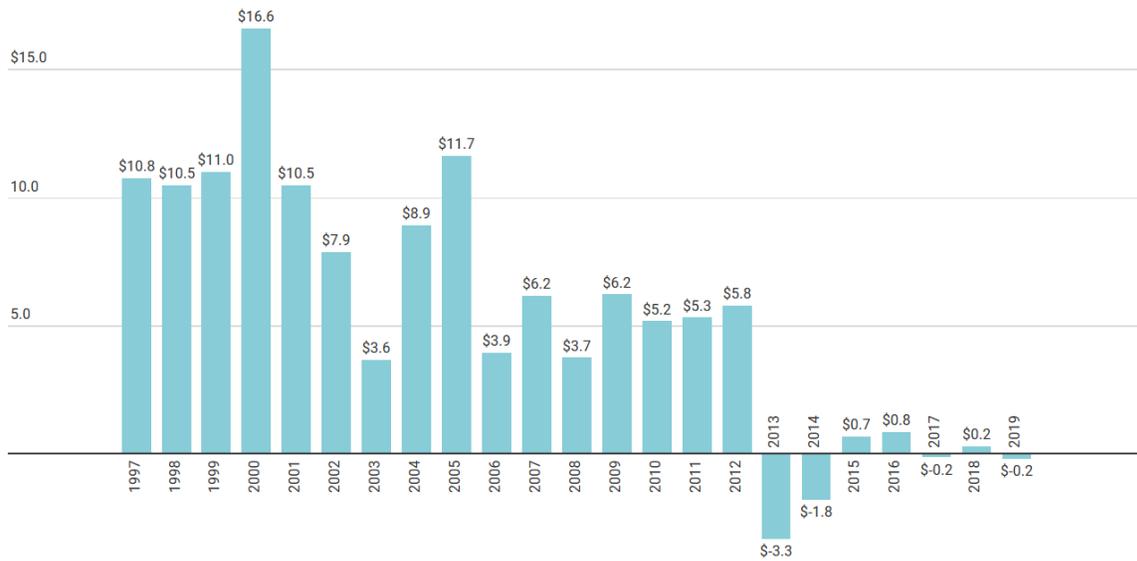
Capital Press graphic

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1. As depicted in figure two, net revenue numbers as presented to the Land Board were actuals through fiscal year 2013 and projections for fiscal years 2014 through 2019.

Figure 2

Oregon no longer is making money from timber sales on the Elliott State Forest. Here's a look at the net revenue generated from timber sales on the property from 1997 through projected sales if the state didn't sell the land.



Figures are in millions

Source: Elliott State Forest Alternatives Project. Presented to the Oregon State Land Board December 9, 2014.

lands from the School Fund—including finding a different public owner—under a framework established by the board to meet public values. For purposes of finding a new owner, Land Board members indicated that “public” means state or federal government agencies, state universities, federally-recognized Oregon tribes, and local governments.

In connection with the Land Board’s direction, the 2017 Oregon Legislature approved \$100 million in state “certificate of participation” bonds<sup>2</sup> (hereinafter referred to as “bonds” or “state bond funding”) to buy down the state’s obligation to the School Fund—partial payment for Elliott State Forest’s 2016 appraised value of \$220.8 million. The bonds are scheduled to be issued in February 2019. This buy down was the initial step in the decoupling sought by the Land Board. While the details of this initial step are still in development, DSL determined the next step is stakeholder outreach, potentially leading to the convening of a stakeholder advisory group. To that end, DSL engaged Oregon Consensus, a program of the National Policy Consensus Center at Portland State University, to serve as a neutral, third party to assist them in this step and overall work toward decoupling. On January 9, 2018, Oregon Consensus signed an intergovernmental agreement with DSL to initiate this effort in three phases of work.

For phase one, Oregon Consensus worked with the DSL director and project management team to establish principles and a process architecture for the complete decoupling effort, including identification of a representative group of parties to be interviewed as part of this assessment. This assessment and subsequent report represent phase two of the work articulated in the

2. See HB 5006, Section 124: <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB5006>; See also: <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/137511>

intergovernmental agreement. In phase two, Oregon Consensus interviewed stakeholders representing a variety of interest groups to assess key issues related to the potential decoupling of Elliott State Forest. The interviews explored topics such as parties' desired outcomes for the decoupling effort, data and information needs, and opportunities and resources that could support a decoupling solution. More information about the assessment process and a list of interview questions are included in appendix b. A third phase of work could be initiated if the and Board deems a stakeholder advisory process necessary or helpful in advancing a decoupling effort.

Independent from the decoupling project, DSL has moved forward on the development of a federal Habitat Conservation Plan (HCP) and associated Incidental Take Permit to comply with the federal Endangered Species Act on School Fund lands within Elliott State Forest. DSL is drafting the HCP with the assistance of ICF, Inc.,<sup>3</sup> and will provide updates to the public. While DSL intends to pursue HCP development regardless of and independent from the decoupling effort's outcomes, the nature of each of these efforts relates to future forest management options, and attracts attention from similar stakeholders. Interviewee perspectives on the relationship between decoupling and the HCP process are discussed later in this report.

It's worth also noting that the vast majority of the interviews were conducted before the Oregon Court of Appeals ruling on August 1, 2018, in the case of *Cascadia Wildlands v. Oregon Department of State Lands*, 293 Or App 127 (2018), (rejecting the 2014 sale of a 788 acre parcel of Elliott State Forest land to Seneca Jones Timber Corporation). The State petitioned the Oregon Supreme Court for review of this appellate court decision on October 2, 2018, and at the time of this report's publication, the implications of the decision on next steps for decoupling Elliott State Forest from the School Fund remain unclear.

### 1.3. Methods

Between March and August of 2018, the Oregon Consensus team conducted forty-six semi-structured interviews with seventy-three individuals representing federal, tribal, state, and local governments, as well as interests representing timber, conservation, school funding beneficiaries, recreation, land trusts, labor, and others. While we were not able to interview everyone with an interest in Elliott State Forest, Oregon Consensus, the DSL project management team, and the Land Board assistants made every effort to ensure that those interviewed represented the diverse interests surrounding Elliott State Forest. A goal was that all interested parties would feel that their perspectives and interests would be represented by those interviewed. A list of individuals interviewed and their affiliations can be found in appendix a. Most interviews were held in person, others were conducted by phone. Before each interview, individuals were asked of their willingness to participate, and were given interview questions and an assessment description (see appendix b). When individuals did not respond to the interview invitation, the team extended additional invitations by phone or email, including a final invitation near the conclusion of the interview stage of the assessment. All interviews were

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3. <https://www.icf.com/work/environment/natural-resources>

voluntary and lasted approximately one to one-and-a-half hours. Interviews were not recorded and interviewer notes were separated from any personal identifier information.

Understanding the critical role that five federally-recognized western Oregon tribes have with respect to Elliott State Forest, the director of DSL sent a letter and follow-up email to the chair of each tribe to invite them and other tribal staff members, as appropriate, to be involved in the assessment process to ensure they had the opportunity to share their perspectives with the assessment team. The assessment team followed up with emails and phone calls. Four tribes agreed to participate and one declined. Interviews often included tribal council members or designated tribal staff members. It's important to note that interviews were not formal government-to-government consultations, nor were the opinions and information shared official tribal statements.

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## 2. Cross-Cutting Themes

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The assessment team asked interviewees a variety of common questions (see appendix b). Questions included a focus on interviewees' perceived challenges and opportunities related to potential decoupling of Elliott State Forest, what major topics would need to be addressed, and what success looks like from their perspective. Additionally, interviewees were asked their thoughts on specific ownership options, the timeline between the HCP and decoupling, and what success looks like. Interviewees offered their thoughts on additional topics. Some topics were notable for how frequently they were mentioned and others for offering a unique perspective. It is worth noting that the relevance and merit of a topic or opinion is not determined by the frequency with which it was mentioned. Key themes emerged during analysis of interview responses. This section of the report is meant to summarize these cross-cutting themes in no particular order. It is not intended to be a comprehensive list of all issues discussed during the interviews or all topics that are related to Elliott State Forest.



### 2.1. Trust

Many interviewees spoke directly about trust and it was also woven through other topics. Two of the key interests, timber and conservation, have a long history of conflict on Elliott State Forest-related issues in western Oregon, including the past, present and future of the forest. This history, past litigation, and perceived motivations lead many members of these interest groups to approach the other with skepticism and a lack of trust. Many interviewees saw this history of

conflict and the resulting lack of trust as a key challenge in achieving decoupling of Elliott State Forest.

Trust for the Land Board as a decision-making body for Elliott State Forest was also frequently discussed. For some interviewees, the 2017 decision by the Land Board to conclude its protocol process<sup>4</sup> and not move forward with the proposal<sup>5</sup> from Lone Rock Timber Management Company (Lone Rock)/ the Cow Creek Band of Umpqua Tribe of Indians (Cow Creek Tribe)/the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) increased their level of distrust in the Land Board and any future process to decouple Elliott State Forest. They saw the decision as an example of political expediency outweighing other important factors. Some interviewees articulated the 2017 decision as a lack of leadership and highlighted the need for political leadership that can withstand pressure from stakeholders and other interest groups. Many interviewees questioned whether the Land Board is the best governance structure for decision-making and management related to Elliott State Forest, noting that the political nature of the Land Board results in frequently shifting circumstances that can motivate parties to hold back or engage depending on other political calculations.

## 2.2. Lack of clarity

When discussing the potential to decouple Elliott State Forest from the School Fund, many interviewees described a lack of clarity about Land Board direction related to the forest. This lack of clarity was also evident in the diversity of perspectives Oregon Consensus heard—across and within common categories of stakeholders—on Land Board direction on key topics. The lack of clarity may be the result of how decisions were made and specifically which topics were unanimously decided versus those that were individual Land Board member positions. The lack of clarity could also be related to stakeholders interpreting Land Board actions through their own lens or interests. Regardless, uncertainty or lack of clarity about the topics below is likely creating discord between key interests and potentially moving parties in divergent directions. Topics of uncertainty for interviewees included:

- *Definition of public ownership.* Among interviewees, varying interpretations seemed to exist over what the Land Board meant by “public” when it indicated its desire for Elliott State Forest to remain in public ownership. Some felt public was understood as remaining in state ownership, while others felt that public was to be defined more broadly to include tribal, federal, county, and state ownership.
- *Use of the \$100 million dollars.* Interviewee perspectives on the application of the \$100 million in bond funds vary dramatically. The one common theme, however, was a lack of clarity over how specifically these dollars are to be used to preserve non-economic benefits of Elliott State Forest, as directed in the legislation.<sup>6</sup> Otherwise, stemming from

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4. See “Appendix A and related Supplements” at:

[https://www.oregon.gov/dsl/Land/Documents/Elliott/slb\\_dec2016\\_item2.pdf](https://www.oregon.gov/dsl/Land/Documents/Elliott/slb_dec2016_item2.pdf)

5. See “Appendix B” at: [https://www.oregon.gov/dsl/Land/Documents/Elliott/slb\\_dec2016\\_item2.pdf](https://www.oregon.gov/dsl/Land/Documents/Elliott/slb_dec2016_item2.pdf)

6. <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB5006>

the lack of clarity, parties tend to resort to diverging perspectives that generally support their view on how future management of Elliott State Forest should look. The particular perspectives can be categorized and summarized as follows:

- *Parcelization.* Interviewees assert that—or question whether—use of the \$100 million could happen immediately, applying it first to specific parts of Elliott State Forest that have particularly high ecological value, and covering these parcels with a conservation easement or other legal protection afforded by a portion of the \$100 million. These high-ecological-value parcels may have an already low likelihood of being managed for timber harvest (due to the Endangered Species Act or other issues) and therefore a relatively low price tag. Funds remaining after use on these parcels could then be applied to achieving conservation outcomes on remaining parcels where timber value (and thus appraised value) may be higher. This parcelization approach is based on the perspective that the \$100 million should buy something tangible and above-and-beyond what an HCP would otherwise achieve in the absence of such funds.
- *Buy-down.* Interviewees assert that—or question whether—the \$100 million is best regarded as a buy-down of the total asset value of Elliott State Forest, thereby enabling decoupling options by reducing the cost of the forest to a new public owner or, if not decoupled, reducing the amount of revenue it would need to produce if retained as a School Fund asset under DSL management. When the bonds sell (estimated February 2019), revenues would be deposited into the School Fund. While not defining specific parcels that would be served by the \$100 million, this approach would address School Fund responsibilities by placing revenue into the fund in the near-term, and it could be combined with the application of a legal instrument as well as the HCP process to achieve outcomes for conservation and other potential non-economic values that would not have otherwise occurred without the \$100 million.
- *Cap-and-harvest.* Interviewees assert that—or question whether—the \$100 million is meant to define the state's contribution to achieving conservation, recreation, and non-revenue values on Elliott State Forest. Whether retained by DSL and managed as a School Fund asset, or owned and managed by another entity through decoupling, the \$100 million would be applied towards achieving these values. The remainder of Elliott State Forest would be placed under timber management. The HCP would define the relevant acres for protection up to \$100 million, and the level and intensity of harvest on other acres could be varied, depending on landscape conditions, stand-management conditions, and relevant state forest practices rules. This approach has some similarities to the two approaches above, but would attempt to circumscribe the HCP's potential impact on timber production prior to HCP negotiations, and it rests on certain perspectives and assumptions about land allocation that may limit other management and revenue options other than timber harvest.

- *Relationship between the Elliott State Forest decoupling and the HCP.* Interviewees expressed varying opinions and confusion over the connection between the state’s pursuit of an HCP and the path for decoupling Elliott State Forest from the School Fund. There was general agreement among interviewees over the importance of an HCP to achieving more management certainty for a variety of values, as well as the value of an HCP to securing a new public owner and achieving complete decoupling. However, for many, considerable confusion remains about whether there is or should be a single process for HCP development and decoupling, or separate efforts, or a blend. This topic is discussed in greater detail in section 4.

### **2.3. Broader implications of Elliott State Forest**

Many of the topics involved in the Elliott State Forest decoupling conversation (e.g., harvest levels, stream buffers, habitat protection, rural economies, and public land values) are not unique to Elliott State Forest. As a result, some interviewees expressed concern that decisions about the forest would be applied to or influence a broader landscape. For example, some wondered whether decisions about an HCP on Elliott State Forest might influence HCP efforts on other School Fund or non-School Fund state forest lands such as the Clatsop and Tillamook State Forests. In this way, decisions about Elliott State Forest take on heightened importance and may reduce parties’ willingness to compromise or find innovative ways to reach agreement on the forest.

### **2.4. Symbolism of Elliott State Forest**

As is common in many natural resource issues across Oregon, the issues surrounding Elliott State Forest are complicated by fraying relationships and increased polarization across sectors. This fraying is perhaps even more pronounced in the forest context where the landscape and issues have taken on heightened importance—for real and symbolic reasons. The following summaries are not intended to put words in the mouths of interviewees but are Oregon Consensus’ extrapolation of symbolic themes related to Elliott State Forest taken from what the assessment team heard in interviews.

The timber industry, broader forest products sector and county governments tend to see Elliott State Forest with a context of increased diminishment and threats to long-standing as well as current jobs, economies, cultural fabric and livelihoods. They see the forest as a symbol of more urban and/or environmental voices pulling Oregon away from its natural resource assets or timber-based roots in a manner detrimental to rural communities, but they also view the forest as a potential opportunity for improved economic and community vitality. The environmental community sees an ongoing history of habitat and species in decline, with few remaining areas across a broad landscape where they can thrive or be preserved. They see the forest as an ecological opportunity. Tribal interests tend to see the forest in the context of landscapes once theirs—places rich in natural and culturally-significant resources, where tribal practices, traditions, communities, and economic opportunity once thrived but that, from their perspective, have been greatly and unjustly diminished over time. They see the forest as part of this history and as an opportunity to address the past in more equitable ways that support tribal

interests moving forward. For education beneficiaries and supporters of schools, Elliott State Forest is an unfulfilled mandate and promise. They desire to see Oregon's youth well served by the School Fund, and feel they have become caught in the middle of a classic Oregon natural resource battle in a way that is unfair or neglectful of foundational legal obligations.

For many categories of interests, Elliott State Forest holds a significant symbolic importance, and within each interest there is a sentiment that a line must be drawn somewhere. Whether Elliott State Forest alone can address or solve their larger symbolic concerns or interests is a question, but it is somewhat beside the point; it is the significance of Elliott State Forest to different interests in symbolic terms that makes resolving Elliott State Forest's challenges difficult but also an opportunity.



## 2.5. Litigation

Many interviewees discussed the topic of litigation. Some interviewees pointed to the ongoing litigation resulting from the Land Board's decision not to move forward with its protocol process and the Lone Rock/Cow Creek Tribe/CTCLUSI proposal as an impediment to any meaningful advisory process and the ability to decouple Elliott State Forest from the School Fund. Numerous interviewees specifically mentioned a lack of trust in the Land Board to follow through on any potential advisory group's recommendation. Interviewees also referred to the significant role of repeated litigation in shaping the current situation surrounding the forest and forestry issues in western Oregon more broadly. This includes litigation related to the marbled murrelet, the past sale of Elliott State Forest parcels (including the recent Cascadia Wildlands court decision), as well as lawsuits from county and environmental interests related to Board of Forestry (BOF) state lands.

Some interviewees shared skepticism that DSL or any future Elliott State Forest owner could chart a path that is void of litigation threats, in particular from environmental interests. These interviewees saw potential litigation as a barrier and strong risk factor to the future of the forest's ownership and management. Many interviewees also noted that if the status quo continued, then new litigation was likely on Elliott State Forest, in particular by School Fund beneficiaries related to revenue production. This could set up a legal showdown between arguments related to the Land Board's fiduciary obligations to the School Fund on the one hand, and the Endangered Species Act on the other. Some interviewees noted litigation has been and could be an effective tool to bring about change they desire. However, nearly all saw litigation as a less efficient, durable, or desirable approach to resolving outstanding issues related to Elliott State Forest.

## **2.6. Limited active work on Elliott State Forest**

From the interviews, it was evident that few parties have been actively working to advance resolution of the issues surrounding Elliott State Forest since the Land Board decision in May 2017. While several interests indicated a desire to see a particular ownership structure for the forest (or to be a lead or partnering participant in that ownership structure), their comments were largely aspirational and based on what would best support their interests for the forest (e.g., timber production, forest protection, cultural resource enhancement, or revenue to schools and counties). No entity represented that it has raised funds to supplement the \$100 million in state bonds to support complete decoupling, and especially not at the level required to meet Elliott State Forest's 2016 appraised value.

## **2.7. Looking beyond Elliott State Forest and its School Fund lands**

Many interviewees suggested that broadening discussions beyond Elliott State Forest and its geographic boundary may increase the potential to satisfy interests, enhance outcomes, and increase buy-in on a final potential decoupling solution. Interviewees identified several areas or topics where this broadening of a potential solution space could be relevant. These areas are identified and discussed in section 4.7.

## **2.8. Timing for decoupling is ripe**

With a couple of notable exceptions, there was general agreement that the timing is right to decouple Elliott State Forest from the School Fund. Most interviewees expressed a desire to participate in a resolution. Those who felt the timing was right often noted the uncertainty of the present situation, suggesting that, if proactive action is not taken now, then outside forces such as litigation, the legislature, or future Land Board decisions would likely compel or shape action in ways that could limit current potential opportunities for their interests. Interviewees who presented exceptions to this view did so based on a similar risk assessment but from differing points of view, noting that either (a) continued retention of the forest as a School Fund asset may provide the greatest impetus for future timber production, or (b) that decoupling and ownership by a different party could reduce their ability to advance political or legal pressure to limit tree cutting. These perspectives are largely focused on how to best maximize leverage for their interests, and they recognize limitations of that perspective on a sustainable outcome.

## **2.9. Science and data**

The availability of credible technical information and science is nearly always a critical component of resolving a policy issue like Elliott State Forest. Interviewees were asked whether there are data gaps that would make it difficult to reach resolution on decoupling. While many noted that additional information, particularly regarding the marbled murrelet, would be valuable, the majority of interviewees did not see a lack of technical information as a significant hurdle.

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### 3. Framing a Path Forward

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Oregon Consensus framed options related to potential paths forward in an effort to remain consistent with assumptions derived from Land Board documents, conversations, and direction to date. Stating these Land Board-based assumptions here is intended to help clarify and focus the space relevant to further potential work and avoid re-opening issues previously decided. As the decision makers with respect to Elliott State Forest, the Land Board may choose to disagree with or alter assumptions. But for purposes of this report, Oregon Consensus has attempted to verify assumptions through Land Board assistants in order to promote consistency and clarity related to expectations for future pathways.

Land Board assumptions are as follows:

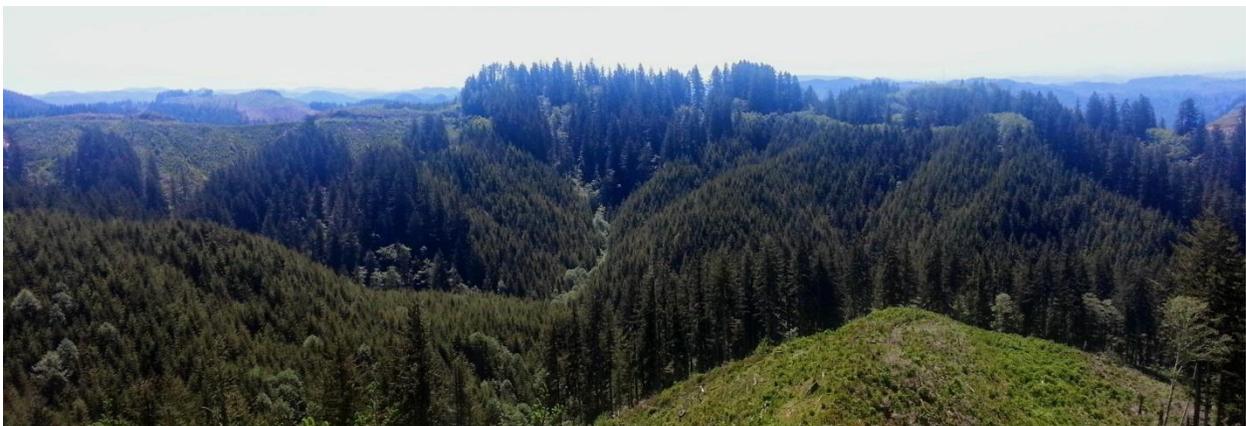
- *Common School Fund responsibility.* Honoring the state's fiscal duty to the School Fund remains a primary driver and outcome. DSL has indicated that, at present, managing Elliott State Forest as a timber land asset costs the state more than it yields in revenue to the School Fund. The amount of decoupling-based revenue needed to address School Fund fiscal responsibilities and the source of that revenue need resolution. Given the Land Board's expressed level of urgency and desire for certainty in an outcome, re-appraising the forest may not promote expediency. That said, the 2016 Elliott State Forest appraised value has a shelf life, and given the Land Board's sense of urgency, the likelihood of this amount of funding satisfying the Land Board's fiduciary duty to the School Fund is highest if presented in the very near term. Such funds would become School Fund cash assets and, relative to the forest's revenue productivity as a publicly-managed timber land asset, could be invested to produce a potentially higher return to the School Fund. The \$100 million in state bond revenue contributes to the Land Board's fiduciary duty whether the forest remains a School Fund asset or is completely decoupled, but it does not fully address this fiduciary duty alone and, relevant to any decoupling proposal, would need to be applied as part of a broader, comprehensive financing approach.
- *Complete decoupling.* Although continued DSL ownership as a School Fund asset remains an option, removing Elliott State Forest's connection to the School Fund and transferring title as well as management remains the Land Board's preferred approach. In addition, the Land Board prefers a decoupling approach that applies to the entire forest. It does not support an approach—through the use of the \$100 million in state legislative bonds or otherwise—that applies decoupling and financial or legal transactions only to certain parcels rather than a forest-wide vision and approach to ownership, management, and the use of funds. Should the effort to achieve complete decoupling not yield results on a new owner, the \$100 million in bond funds would be applied to "preserve non-economic benefits for the public"<sup>7</sup> on all or a portion of the forest and relieve those areas from

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7. See section 124 at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB5006>

School Fund revenue production obligations, consistent with legislative intent and as part of a broader plan for the forest as a School Fund asset.

- *Public ownership and access.* The Land Board remains committed to public ownership of Elliott State Forest as opposed to sale to a private owner. Public ownership would include public access consistent with meeting fiduciary, public safety, and forest management responsibilities. The legislature's advancement of \$100 million in bonds is connected to this intent and securing public values. That said, the Land Board's vision would not prohibit a public owner from partnering with private entities for management, fundraising, or other Elliott State Forest work.
- *Conservation values.* The Land Board seeks an outcome that secures conservation values for Elliott State Forest, including protecting ecologically important areas and species, but it does not intend human use and management of the overall forest acreage to be limited as in national parks or wilderness areas. An HCP for the entire forest remains a primary desired approach to securing conservation values. Other conservation options may also exist, including legal instruments or approaches that apply the \$100 million in state bond funds towards advancing conservation outcomes within the HCP process or independent of it (so long as funds are part of a complete decoupling approach).
- *Working forest features.* Elliott State Forest would sustain some level of timber harvest and active management to address economic, job and community interests as well as forest ecosystem health (and possibly related opportunities for forest management research, education, and practice). The HCP (and associated Incidental Take Permit) plays an important role in securing this objective.
- *Workforce and local community benefit.* Elliott State Forest is an important asset to surrounding communities and any decoupling solution should support family wage jobs, community services, and quality of life in rural Oregon.



- *Tribal engagement.* The Land Board desires tribal involvement in shaping Elliott State Forest decoupling and, at a minimum, expects tribal consultation around future potential ownership options.

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## 4. Issues and Considerations for Achieving Decoupling

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The following is a compilation of issues that need further clarification, direction, and resolution in order to reach a complete decoupling of Elliott State Forest from the School Fund. This list is not exhaustive but is intended as a summary of priority issues identified through Oregon Consensus's assessment interviews. Following each issue description, Oregon Consensus has also included a description of options for addressing them. The options are informed by Oregon Consensus's professional opinion as applied to the current Elliott State Forest context, including what the assessment team heard from interviewees. This report attempts to describe primary approaches for potentially addressing each issue, but direction and decisions relative to any option ultimately need to come from the Land Board. Options below are best understood as Oregon Consensus's assessment-based view of opportunities for increasing needed clarity, narrowing disagreements, and expanding solutions, either through near-term Land Board direction or additional work with stakeholders.

### 4.1. Public ownership

Interviewee responses differed regarding who should own Elliott State Forest and whether this ownership would be viable. Perspectives also varied on what constitutes an acceptable public owner. Note that Oregon Consensus's interviews occurred before the August 2018 court decision in *Cascadia Wildlands v. Oregon Department of State Lands*, which has relevance to the issue of future ownership. The Oregon Consensus assessment team discussed the following factors regarding future public ownership of Elliott State Forest with interviewees:

- *Whether a potential owner has access to resources necessary to buy out the School Fund.* Any potential owner would need to obtain additional funds to satisfy School Fund fiduciary responsibilities (if assumed to be the 2016 appraised value this would mean \$120.8 million in addition to \$100 million in bonding). Based on interviews, no entity or group of entities appears to have the funds; however, some potential owners appear more or less likely to be able to gather the resources to buy out the School Fund.
- *Whether a potential owner has forest management capacity.* While opinions about the appropriate harvest level varied widely, there was general agreement that timber harvest would continue under a decoupled scenario. Tribes, Oregon State University, and counties were frequently cited as examples of entities that have forest management experience, but some interviewees raised concerns about their current management capacity for Elliott State Forest given its size. Others were quick to point out that an owner may well work with others (i.e., contract or partner in order to ensure capacity) to manage the forest.

- *Whether a potential owner has stakeholder support.* Interviewees spoke frequently about the need for broad stakeholder support as a key factor in the long-term success of any owner and manager of Elliott State Forest. Many reflected that lack of broad support was a key factor in the dissolution of past efforts to decouple or resolve the issues facing the forest and similar lands. They suggested that any future owner would have to have broad support both in who the entity or entities are and how they intend to manage Elliott State Forest.
- *Whether a proposed new owner itself desires to own and/or manage Elliott State Forest.* Another factor that Oregon Consensus assessed is whether potential owners—when suggested as good candidates by another interviewee—actually wanted to own Elliott State Forest and actively work to address the associated complexities.

#### 4.2. Potential public owners:

There were a limited number of potential public owners that interviewees discussed frequently. The following section describes potential public owners and challenges and opportunities interviewees associated with each. Although we have described each individually, some interviewees also suggested that a coalition of public partners could be joint-owners or exist in an owner-manager relationship.

##### 4.2.1. State agencies

- All state agencies reported that they feel at capacity in their current programs. Without a way to cover the assumed cost of \$120+ million to completely decouple Elliott State Forest, as well as a corresponding appropriation or other path to increasing their capacity to own and manage it, state agencies are reluctant to take on the forest. That said, Oregon Department of Forestry (ODF) has managed the Elliott State Forest since its establishment, possesses significant data about the forest, and shares an interest in a similar role as a future public owner or manager if cost and capacity issues could be addressed.

ODF believes in its mission and ability to manage public forest land, and could manage Elliott State Forest as a public forest for a range of state mandates. The agency would implement a management plan consistent with a future HCP and the Land Board or Oregon Legislature's direction. It could do so if Elliott State Forest were to remain a School Fund asset or under a complete decoupling scenario as title holder or in partnership with others. Stakeholders were skeptical about whether ODF has the culture, management cost structure and capacity to satisfy conservation or timber interests. They also questioned where ODF would obtain funds, and whether the legislature or other source would provide the needed management capacity.

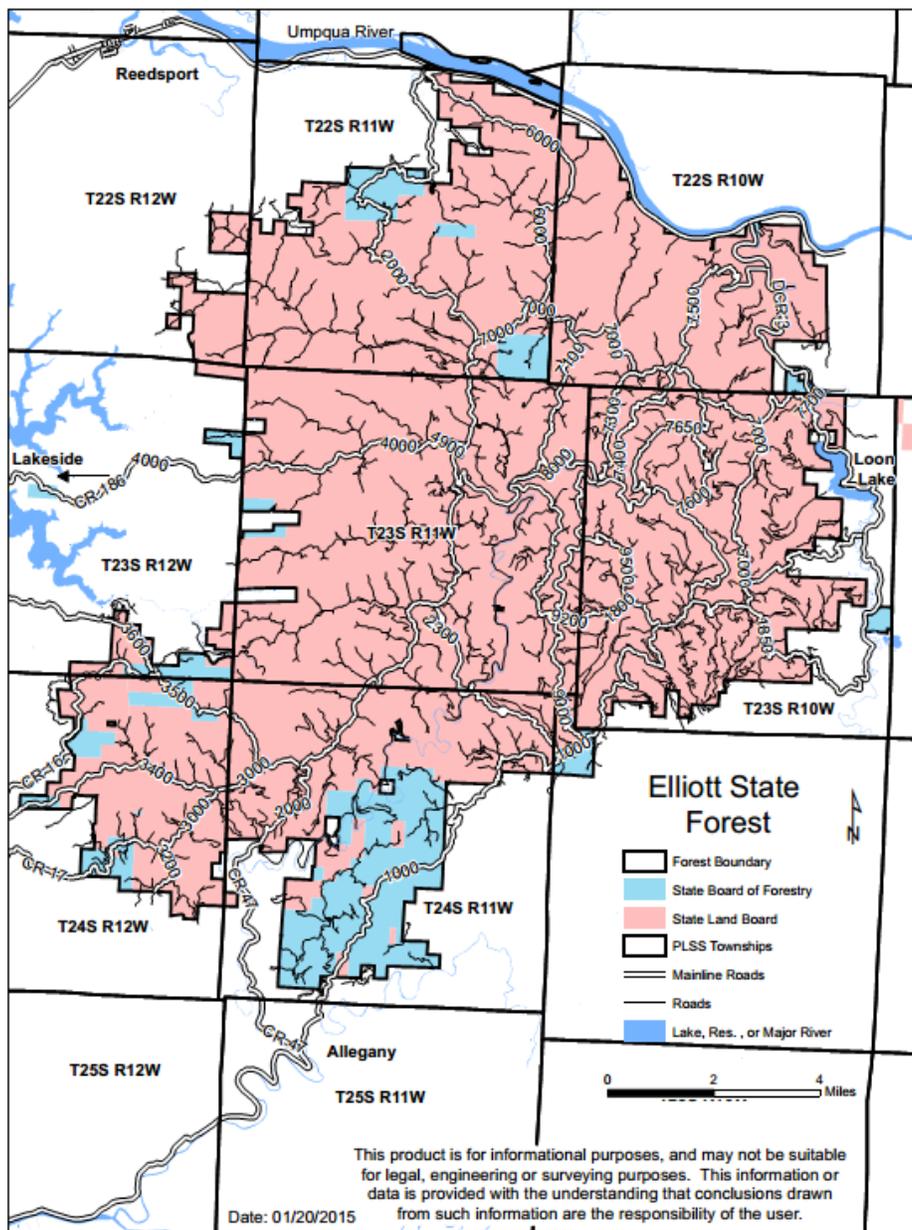
- Approximately 9,000 acres of BOF lands are within the Elliott State Forest boundary. (See figure 3.) Any decoupling would need to consider the effect of ownership and management of these BOF lands relative to their location within and adjacent to the

Elliott State Forest. Opportunities may exist to support a broader decoupling solution through options that look across state-owned lands (i.e., BOF lands as well as School Fund lands). All of this involves collaboration and partnership with ODF and perhaps the BOF or beyond.

DSL ownership remains a default option, under which Elliott State Forest would remain a School Fund asset. However, many interviewees were skeptical about DSL's ability to meet the fiduciary responsibilities to the School Fund given Elliott State Forest history, as well as the agency's limited timber land management experience and capacity. While some felt an HCP would help address these concerns, others were dubious of DSL's ability to negotiate an HCP that properly honors Elliott State Forest's timber production capacity and revenue responsibility to the School Fund. Indeed many interviewees suggested that maintaining DSL management of Elliott State Forest as a School Fund asset that derives revenue from timber production would likely result in litigation from education beneficiaries, assuming revenue production from that approach remained significantly less than other potential investment or revenue approaches. It is worth noting that some interviewees were more enthusiastic about Elliott State Forest remaining a School Fund asset because they view the School Fund revenue production mandate as a driver that favors public timber resource management in a manner that produces local jobs, economic outputs, and contributes directly to the education of future generations.

- Other agencies, such as Oregon Department of Fish and Wildlife and Oregon Parks and Recreation Department, are interested in participating in conversations about Elliott State Forest management—including HCP development—and finding synergies between their missions, programs, and forest management approaches. But they do not want to own and manage Elliott State Forest on their own.

Figure 3



#### 4.2.2. United States Forest Service

As an adjacent landowner and manager, the United States Forest Service (USFS) indicated interest in seeing Elliott State Forest consolidated into and managed as part of the Siuslaw National Forest. The similar forest type and proximity were seen as advantages, as well as the historic connection between acreage on the Elliott State Forest and National Forest lands. USFS indicated they would likely need a congressional appropriation to pay the School Fund.

Stakeholder support for USFS ownership is relatively limited to conservation interests, with opposition from many other interests.

#### 4.2.3. County

- Douglas and Coos County are closest to Elliott State Forest. Both counties already own and manage forest lands, and the counties expressed interest in owning Elliott State Forest. Elliott State Forest is larger than the counties' current ownership and management base, but the counties could manage in partnership with the private sector, tribes, or others. The counties, however, also recognize the legal, political, and financial challenges associated with Elliott State Forest. Funding necessary to acquire the forest through a School Fund payment does not currently appear to be at the counties' disposal.
- Some at the county level envisioned Elliott State Forest generating timber revenue to support funding needs for other county services and local jobs. Others envisioned economic benefits through a different owner who manages with local community interests in mind.
- Support for county ownership is relatively limited to the forest product sector and potentially others such as tribes if done in partnership. Conservation interests are skeptical about or oppose county ownership.

#### 4.2.4. Tribal

- Several federally-recognized tribes have voiced an interest in future ownership and management of Elliott State Forest; however, no tribe appears to be crafting a proposal for ownership. Tribes may be interested in partnering with others on an ownership and management framework or in other ways that ensure tribal interests are addressed. Tribal history and connections to Elliott State Forest are complicated. Past non-tribal government actions (i.e., reservation termination and military and policy actions) have increased this complexity through the resulting movement of people and family members off of and across ancestral lands.
- Numerous interviewees spoke of the potential for restoration of tribal lands through a forest decoupling process. Some suggested that Elliott State Forest lands be transferred to tribal communities and others suggested transfer of other lands outside the forest boundary to achieve a decoupling approach that supports tribal interests.
- All five federally-recognized western Oregon tribes own and manage forest lands. With the inclusion of lands recently restored through the Western Oregon Tribal Fairness Act of 2018 (H.R. 1306),<sup>8</sup> relative acres of tribal forest land ownership is in the order of the Cow Creek Tribe, CTCLUSI, Confederated Tribes of Grand Ronde (Grand Ronde Tribe), Coquille Indian Tribe (Coquille), and Confederated Tribes of Siletz Indians of Oregon (Siletz Tribe). Tribal management, and related programs as well as staff, includes timber

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8. <https://www.congress.gov/115/bills/s508/BILLS-115s508rs.pdf>

production on these lands. But tribal forest management interests and approaches also cover conservation, goods and material gathering, and other uses tied to culture and history. Many interviewees also described the unique historic ties of certain tribes to the Elliott State Forest area.



- Stakeholder support for tribal ownership is relatively broad. County and forest product sector members have working relationships with tribes and are open to partnership. Several conservation organizations also have working relationships with tribes, and some are actively interested in promoting an Elliott State Forest decoupling outcome with a strong tribal role (ownership or otherwise). Other conservation interests indicated some concern that tribal ownership and management could potentially advance timber harvest to the detriment of conservation outcomes. Within as well as beyond the tribal and conservation categories of interests, some interviewees noted the protocol process had resulted in tension between some in the tribal and conservation community, and that relatively recent history likely influences parties' willingness to engage with one another in the current context.

#### 4.2.5. Oregon State University

- OSU provided a written framework to the Land Board in April 2017 articulating the university's position at that time related to its engagement as a potential Elliott State Forest owner. OSU is further examining ownership and management considerations related to the forest. OSU anticipates communicating the results of its evaluation to the Land Board as early as December 2018.
- OSU's College of Forestry currently owns and manages approximately 15,000 acres of research forest land across the state,<sup>9</sup> which supports student work and education as well as timber production, public recreation, and conservation. Timber sales from these forests are used to support the college and its mission. Many interviewees questioned OSU's capacity to take on an additional 80,000 acres farther away from Corvallis. Capacity could be enhanced through partnerships.
- Stakeholder support for OSU ownership and management is varied. Interests generally hold OSU in high regard as an educational institution. Some in the forest products sector question whether OSU has the capacity or should play an increased role in forest land

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9. <http://www.Forestry.oregonstate.edu/about>

ownership and timber management. Members of the conservation community range from being open to further conversation over a potential OSU management scenario to skeptical that the College of Forestry would manage in a manner consistent with conservation values (as opposed to timber production).

### **4.3. Habitat Conservation Plan**

Nearly all interviewees saw the successful development and implementation of an HCP (and associated Incidental Take Permit) as critical—or at least very valuable—to achieving future economic, revenue, management efficiency, and conservation outcomes related to Elliott State Forest. That being said, the current lack of clarity over the forest’s future ownership caused many interviewees to question the HCP process or their level of support. In general, interviewees said that obtaining an HCP before decoupling would provide additional certainty related to forest ownership and management; however, most interviewees acknowledged that the time is ripe to advance decoupling, and that the HCP’s formal process is likely to take too long to provide clarity about ownership.

Some felt that DSL should continue its pursuit of an HCP concurrent with discussions related to decoupling, while others saw a need to determine ownership first, since a new owner would likely wish to be involved in HCP development. Others expressed skepticism and distrust in the ability to get agreement and closure on a reasonable HCP, particularly in light of other efforts that have failed in this and similar landscapes. Because these interviewees, like most others, see an HCP as a necessary element in reaching resolution on decoupling, they were skeptical of the state’s ability to achieve decoupling. The option of advancing a terrestrial species-only HCP with one Endangered Species Act agency is a viable and potentially necessary option in their eyes. Further, by signaling an intent to decouple Elliott State Forest and remove the School Fund connection as well as advancing \$100 million in bond funds, these interests view the state as already having conceded significant leverage in negotiating an HCP.

Finally, it is worth noting that a number of interviewees suggested that the blend of forest type, condition, and conservation opportunities associated with Elliott State Forest may uniquely afford the opportunity to advance timber harvest approaches such as longer rotation harvest (in combination with early seral management, and riparian management). Such an approach they suggested would capitalize on unique market values of the forest and would perhaps be a more creative approach to harvest than those used on adjacent private and federal lands for meeting conservation and timber objectives. An HCP was viewed as critical to achieving these approaches.

### **4.4. Use of the \$100 million in state bond funds**

Nearly all interviewees discussed the 2017 Oregon Legislature’s advancement of \$100 million in state bonds as a significant development and significant factor in changing the potential shape of Elliott State Forest’s future. Additional agreement exists that the \$100 million has relevance to the forest’s future regardless of whether the forest remains a Common School Fund asset or is decoupled and transferred to new ownership. However, as stated in section 2 of this report, a great deal of uncertainty remains over how the \$100 million would be applied. Gaining clarity

about this \$100 million is relevant to new ownership, satisfying the fiduciary responsibility to the School Fund, decoupling, and the HCP process.

The 2017 Oregon Legislature included language about the purpose and use of these bond funds. In relevant part, they exist “to finance the release of all or a portion of the Elliott State Forest from restrictions from ownership of that forest by the Common School Fund, or to compensate the Common School Fund for the preservation of noneconomic benefits of the forest...”<sup>10</sup> While this language is specific to Elliott State Forest and the particular bond funds, it is not exactly clear to interviewees how those funds will be applied in practice.



Interviewees generally understand that February 2019 is the estimated date for formal bond sale and issuance of funds. But what happens from there remains unclear to most interviewees. In order to address competing stakeholder views and create a clear framework for moving forward, Land Board direction remains needed on how and when these funds will be used.

#### 4.5. Revenue

Many interviewees said they believe the value of Elliott State Forest is higher than the current 2016 real estate appraised value, especially if viewed strictly from a timber productivity perspective (although, interviewees often noted that whether timber can be accessed and legally harvested is another question.) However, only a limited number of interviewees suggested that reappraisal is necessary, and even fewer felt pushing for it now would be helpful in achieving decoupling. Some indicated re-appraising could cut in the opposite direction of their interests by either resulting in a potentially lower value, or at least by prolonging the path to a potential solution and introducing uncertainty. All but a few interviewees agreed that the 2016 appraisal value of \$220.8 million, if contributed to the School Fund in the near-term, could allow for a plausible decoupling solution. Many also noted that this appraised value has a limited shelf life, suggesting that, should a path to decoupling not emerge fairly quickly, reappraisal may be appropriate. Again, Oregon Consensus conducted its interviews before the decision in *Cascadia Wildlands v. Oregon Department of State Lands*.

There was general agreement across interviewees that timber harvest is likely to be part of the revenue that would allow decoupling. Questions remain about how much it will contribute and from what Elliott State Forest locations. Other revenue options that interviewees offered for consideration are included below.

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10. See Section 124 of HB5006 at: <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB5006>

- *Carbon.* Many interviewees expressed interest in the potential for carbon to contribute financial resources but there is general skepticism about the reality of the carbon market to contribute significant resources. Among the constraints cited were the relatively large and older class of trees already on Elliott State Forest, which reduces their potential carbon uplift and, therefore, value on the carbon market. In addition, carbon markets are relatively new and some interviewees also described challenges, perhaps not insurmountable, to the ability of publicly-owned land to enter and achieve valuable credits in the current carbon market.
- *Recreation.* Some interviewees noted recreational permits such as hunting fees as one opportunity for funding, though most noted likely opposition from the public and others. Many interviewees felt recreation and public access in particular is a critical component of a decoupling solution, and interviewees noted the potential in Elliott State Forest for enhanced public recreational opportunities (e.g., biking and hiking trails, campgrounds, and hunting). Some interests have put work into concepts related to recreational opportunities and/or would like to see efforts advanced. But few, if any, saw recreation as a significant source of revenue, particularly given the rugged landscape and limited opportunities for developed recreation on the forest. While interest and potential exists for recreational enhancements in Elliott State Forest, this work will come with costs, and several interviewees noted that increased resources and capacity around management and enforcement of even current recreational use is a matter that needs attention.
- *Concessionaire approach.* By itself, Elliott State Forest is a relatively large, isolated, and wild piece of land. To some, however, this may be an attribute, and interviewees indicated the potential of revenue from research permits. In addition, some expressed interest in working with surrounding communities around lodging and other business opportunities—whether enhancement of existing or creation of new lodging or other business—that could connect to recreational enhancement, promotion of Elliott State Forest and local communities, and generation of potential value. Some ideas around this included lodging tax revenue, private concessionaire businesses working with existing local lodging businesses, or use of existing relevant private land or DSL land parcels to promote a concessionaire model (lodging or other forms of concessions). Some concepts related to this form of concession revenue (research, lodging, or other concessions) stem from approaches advanced by the National Park Service on other public lands.
- *Local support.* Some existing local capacity may exist to partner in advancing a revenue package related to Elliott State Forest and decoupling. While this was not a focus for many interviewees, some noted that local entities have a demonstrated ability to put revenue into models or programs that support local jobs, conservation, and cultural heritage. Should local support be a component of interest in a decoupling effort, then conversations would benefit from a more specific form of engagement with entities such as the Wild Rivers Coast Alliance, tribal casinos, and others.

- *Legislative.* Most interviewees shared skepticism regarding the legislature providing the remaining funding needed for complete decoupling, believing that the legislature provided \$100 million in state bonds towards decoupling in 2017 and is unlikely to have a strong appetite for providing the remaining funds. That said, depending on the scope of a decoupling solution, the nature of partnership and outcomes to be attained, and the opportunity to leverage non-state funds, many interviewees expressed that continued connection with the legislature should not be taken off the table. Further, the Trust Land Transfer bill<sup>11</sup> passed in the 2017 Oregon Legislative session was mentioned frequently as a potential mechanism to help resolve Elliott State Forest’s future, although interviewees acknowledged that the legislature had not allocated resources to the program, leaving it as a potential tool but not a viable mechanism at present.
- *Equity investors and philanthropy.* Numerous interviewees described the potential that an entity, philanthropic organization, or individual might consider investing resources in Elliott State Forest based on an outcome that advances their values or those of their investors. Most often, this was voiced by interviewees as a potential mechanism for supporting long-term conservation or tribal equity values for the forest. Some other interviewees viewed it with skepticism, noting it hadn’t happened over the forest’s long history of debate to date or believing that philanthropic dollars were unlikely to fund protection of lands that were already public. In addition, some raised the potential for investment by entities whose missions are tied to rural communities or economic health, or from timber equity investors, believing this option should remain on the table so long as the ownership entity was public.

#### 4.6. Tribal considerations

Elliott State Forest’s history is nested in a broader landscape of tribal relationships and history. Many interviewees described the importance of the forest as a culturally-significant location for tribal communities and suggested approaches to tribal engagement. While this report does not attempt to describe all aspects of tribal relationships and interests related to Elliott State Forest, the following issues were seen by many as components that should be considered in future Elliott State Forest work.

The CTCLUSI, Grand Ronde, Siletz, Coquille, and Cow Creek tribes are all sovereign, federally-recognized tribes with varying connections to Elliott State Forest. Aboriginal or ancestral land title has not been determined regarding the forest, a matter which some interviewees described as sensitive. This report does not attempt to delve into or settle that matter, other than to note that (a) within the tribes interviewed, there does not appear to be a consensus that a single tribe is recognized as the primary entity associated with Elliott State Forest and its geography, and (b)

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11. Senate Bill 847 was signed into law on August 8, 2017, with an effective date of January 1, 2018. It does not appear to have been assigned an Oregon Revised Statute citation number as of the writing of this report, but contents can be viewed at: <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB847/Enrolled>

any decoupling conversation or potential solution should understand that this is an unsettled issue. Further, tribes generally support any conversation or intentional effort the state seeks to advance related to the restoration of tribal homelands, whether tied to Elliott State Forest or beyond.

Many interviewees saw the Lone Rock/Cow Creek/CTCLUSI proposal during the protocol process as an opportunity for some tribes to regain and maintain stewardship of land that is culturally and economically important to tribal communities. More specifically, the proposal was seen as an opportunity to preserve culturally significant resources as well as a mechanism to support tribal communities, including through potential future tribal ownership of certain forest lands. For this reason, many interviewees—including but not limited to tribes—expressed disappointment with the Land Board’s 2017 decision not to move forward with an Elliott State Forest protocol process, and indicated a negative impact on their trust in working with the state. Despite this disappointment, and while no single tribe appeared to have an ownership proposal in mind at present that would also meet the Land Board’s assumed fiduciary duty, all the tribes interviewed wished to remain apprised of and engaged in future conversations related to the forest. Tribes expressed multiple values and ways in which future Elliott State Forest management could support tribal interests. Some noted, in particular, the potential for developing a comprehensive inventory of cultural resources in the forest.

Many interviewees suggested that in considering the future of Elliott State Forest, it is important—irrespective of who owns the forest—for DSL or any potential owner to further engage all five tribes around any options under consideration. This would hold true if any particular tribe decided to pursue ownership but also around a potential partnership or the shape of any other entity’s potential ownership and management scenario, including HCP development. Additionally, it was suggested that if the Land Board decides to use an advisory group, all five tribes should be invited to participate.



#### 4.7. Additional considerations

##### 4.7.1. Looking beyond Elliott State Forest and its School Fund lands.

In addition to the above topics, interviewees raised a number of issues that they felt could or should be addressed through a decoupling process. In some cases these issues were raised as topics where broader buy in for a decoupling solution might be achieved by increasing the opportunity to meet the diversity of interests around Elliott State Forest. The following are examples that arose during interviews:

- Given the diversity of tribal interests and history related to Elliott State Forest, some suggested it may be beneficial to explore other geographic areas to achieve goals like restoration of tribal lands. It is worth noting that in 2017, the CTCLUSI and Cow Creek tribes received restoration of land through the Western Oregon Tribal Fairness Act of 2018 (H.R. 1306).<sup>12</sup> The act placed 17,519 acres of federal land (previously managed by the Bureau of Land Management) into trust for the Cow Creek Tribe, and 14,742 acres of federal land to the CTCLUSI. This tribal ownership is in addition to land already owned and managed by the Coquille, Cow Creek, and Siletz tribes. Interviewees did not suggest that an approach of exploring other areas beyond Elliott State Forest should mean leaving tribal interests out of the forest decoupling conversation, but rather that satisfying the many tribal interests within just Elliott State Forest's limited land area may not be possible. Further, tribes do not regard the passage of the Western Oregon Tribal Fairness Act as a full measure of equity (i.e., that no further or future work is needed by non-tribal sovereign governments to address or restore tribal homelands and interests).
- Some suggested looking to BOF lands outside Elliott State Forest, but in areas relevant to the tribes, as a partial solution. Such an approach could also trigger discussion of exchanges with other, non-Elliott State Forest School Fund lands, or what to do with the approximately 9,000 acres of BOF lands within Elliott State Forest.
- Interviewees reported that these approaches could potentially help consolidate ownership boundaries related to Elliott State Forest and elsewhere for the benefit of fire management, timber management, habitat conservation, or other values including tribal equity. The Trust Land Transfer legislation passed by the Oregon Legislature in 2017 could be a relevant vehicle for such conversations.
- Others raised the potential for the South Slough National Estuarine Research Reserve (South Slough Reserve) to be a part of a forest decoupling deal. The South Slough Reserve is a 5,900-acre natural area located in the Coos estuary on the south coast of Oregon that is managed by DSL. Due to its proximity to the forest, it was viewed by these interviewees as a natural component of an Elliott State Forest deal, particularly if the forest has a future research component.

#### 4.7.2. Recreation

Many interviewees expressed an interest in enhanced public recreation in Elliott State Forest. Interests ranged from potential motorized and/or non-motorized (biking, hiking or pack) trails, to increased hunting and fishing opportunities, to wildlife watching. Partnerships with and opportunities for local businesses in marketing or serving these opportunities often arose during these recreation-focused conversations. Those engaged or working in the recreation sector also often indicated opportunities in expanding connections with students and volunteers. Several

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12. <https://www.congress.gov/115/bills/s508/BILLS-115s508rs.pdf>

interviewees also expressed concern over management of current recreation being inadequate, with resource impacts or human conflicts as a current or likely reality needing attention. They expressed a desire to see more management and enforcement capacity.

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## **5. Process Recommendations for Addressing Issues and Considerations**

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### **5.1. Public ownership**

Changing ownership and management of Elliott State Forest is a significant undertaking, especially given the timelines associated with an HCP and addressing the Land Board's other values, such as public ownership of the forest, active management, conservation, equity, and community and economic benefit. Stakeholder and tribal interests will have only a measure of clarity and certainty before Land Board decisions about a potential new ownership pathway will likely need to be made. Given this reality, there may be significant value in the future owner developing a governance structure sooner than later.

Governance structure work could occur in tandem with near-term efforts to secure a future public owner. The Land Board, however, would first need to narrow the pathway to ownership. Interviews revealed several entities potentially interested in owning Elliott State Forest. Because of this interest and the Land Board's urgency to resolve School Fund fiduciary responsibility, the Land Board could narrow the decision space by setting a deadline for communication to DSL of an affirmative response or formal indication of interest from any potential owner in response to this report, and requiring that such a response be, in substance, less than a formal proposal for purchase but more than a letter of interest. This approach could be used to distinguish between entities who are interested in being part of future conversations about Elliott State Forest and those who have a serious interest in owning and managing the forest. Relevant considerations in evaluating the seriousness of any potential ownership interest include:

- How an entity would secure the money necessary to meet the Land Board's School Fund responsibilities, and approximately when.
- How they would ensure public values and other Land Board's assumptions (see section 3) are met.
- What partners they have or anticipate in any ownership and management scenario.

After having narrowed the ownership pathway, the Land Board could then direct entities to work on a governance structure that helps ensure that other interests are represented in the forest's future. This approach could increase support for decoupling and management decisions, thereby providing value to the Land Board and any future owner.

There are numerous ways to structure a governance arrangement, ranging from informal to formal and with decision making authority ranging from high to advisory only. ORS 190.010 and the formation of an ORS 190 entity (see appendix c for additional information) is a potentially useful option for consideration in developing an intergovernmental entity. Any additional process or advisory group work could engage in this governance work along with other areas of focus deemed relevant by the Land Board.

## 5.2. Habitat Conservation Plan

To some degree, a chicken-and-egg situation exists: The existence and shape of an HCP is critical to any entity's ability to fully commit to future ownership of Elliott State Forest, and sorting out future ownership is critical to informing the existence and shape of an HCP. Most interviewees acknowledged that, while perhaps not ideal, the HCP process and decoupling effort would need to be managed on parallel paths. Some noted this could be challenging given that the National Environmental Policy Act (NEPA) analysis, public input, and decision process associated with obtaining any HCP is often lengthy in time (relative to the Land Board's stated level of urgency around decoupling) and would likely occur subsequent to relevant Land Board action related to a proposed decoupling approach. How that proposed action and thus any HCP process is informed by, connected to or related to a decoupling scenario (and vice-versa) remains less than clear. To address this and other issues above, interviewees suggested the Land Board could:

- *Clarify the HCP path and its connection to the decoupling effort.* This clarification has two facets:
  - Direction on HCP development. The Land Board could address the chicken-and-egg problem by indicating that, given the lack of an entity with the desire and funding to pay for Elliott State Forest, the state will negotiate the HCP based on the status quo. DSL would lead HCP negotiations. The Land Board could indicate that any negotiated HCP would be transferable to another public owner.
  - Direction on connection to decoupling. Assuming the Land Board uses a process or advisory group to shape ownership and management of a decoupled Elliott State Forest, the Land Board could direct that the process or group both be informed by and inform the HCP process. This approach would connect the decoupling and HCP before any formal NEPA process tied to the HCP, thereby potentially clarifying and narrowing the focus of any approaches analyzed through the NEPA process once it begins. It would precede and potentially help shape a formal, final proposal to satisfy School Fund obligations to achieve decoupling.

- *Clarify how the \$100 million in bonding can be used to support HCP development.* As part of clarifying the use of the \$100 million in state bond funding (see section 5.3), the Land Board should clarify how these funds relate to the state’s positioning in the HCP process. More explicitly, Land Board clarification could be beneficial to understanding what the \$100 million’s existence means for the state in its



negotiation with the federal agencies over the shape of the HCP’s commitments as compared to pursuing an HCP on Elliott State Forest in the absence of such bond funding.

- *Advance alignment between state agencies.* There seems to be work within other state agencies that relates to or directly impacts Elliott State Forest-related topics of either an HCP or decoupling (e.g., the ODF/BOF land within the forest boundary, marbled murrelet reviews, and coho recovery plans). Limited communication and coordination appears to be occurring across those agencies. Better integrated communication during HCP development—through a multi-agency technical and/or advisory team—could help advance agency program objectives and advance a unified voice from the family of state agencies when negotiating with HCP federal consultation agencies.
- *Clarify connection to other governments.* It is not clear how the HCP will connect, integrate with or benefit from management on adjacent lands or with other governments. USFS, Bureau of Land Management, county, and tribally-owned lands all exist adjacent to or near Elliott State Forest. Management strategies on those lands may assist the state’s HCP negotiations by offering opportunities to integrate efforts or advance conservation and/or management options. Further, whether it is through the NEPA process or otherwise, how the HCP process will involve or engage tribal, federal, or county governments is unclear. The Land Board could help clarify this in conversation with DSL.

### 5.3. Use of \$100 million in state bond funds

In order to be consistent with the Land Board’s framework and direction to date (as articulated in section 3 of this report), and based on conversations with Land Board assistants, the following clarification of the use of the \$100 million appears to exist. That said, in light of current lack of clarity among stakeholders and competing stakeholder views, Land Board verification of this or any other approach is important.

- The \$100 million represents a buy-down of the total asset value of Elliott State Forest. If the forest remains a School Fund asset under DSL management, the amount of revenue

the forest would need to produce for School Fund-related fiscal obligations would be reduced correspondingly based on the legislative direction regarding the “release of a portion of the Elliott State Forest from restrictions”<sup>13</sup> related to the School Fund’s otherwise applicable revenue production mandate. This has implications for future management including timber harvest levels.

- If decoupling of Elliott State Forest occurs and ownership is transferred to a new public entity, the \$100 million enables complete decoupling by reducing the cost of the forest to a new public owner. That potential new owner could articulate how it proposes to satisfy the Land Board’s overall School Fund fiduciary responsibilities and the Legislature’s bond-related direction through a proposal that includes application of the \$100 million in the context of additional financing of a complete decoupling vision.
- When the bonds sell, revenues would be deposited into the School Fund. This would in part contribute to, but not fully resolve, the Land Board’s fiduciary responsibilities to the School Fund with respect to Elliott State Forest.
- The HCP process would be employed to secure outcomes tied to the legislature’s intended use of the bond funds. The particular “portion of” the Elliott State Forest or overall approach that is dedicated to preserving “non-economic benefits of Elliott State Forest” (conservation values in particular) would be identified through this process. While the \$100 million need not be the limit or the only approach to securing conservation and other public values, it should be clear how these values have been secured on Elliott State Forest due to the existence of the \$100 million relative to what would have otherwise occurred without the funds.

#### 5.4. Revenue

It would be helpful for the Land Board to clarify the following:

- Given its expressed sense of urgency, as well as the sense of a limited shelf life for the 2016 appraisal, how soon it wants to see a proposal for potential decoupling that meets its School Fund fiduciary duties and related direction, as detailed earlier in this report (see assumptions beginning on page 14).
- Whether and/or to what degree it desires other approaches to revenue than timber to be considered as part of any decoupling proposal that aims to meet its fiduciary responsibilities to the School Fund and its broader desired public values. The Land Board could leave deeper examination of whether other revenue sources are viable to the consideration of a particular entity interested in pursuing forest ownership or a related advisory group.

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13. <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB5006>

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## 6. Process Elements and Next Steps

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Oregon Consensus's assessment revealed that, in order to advance success and stability, no one entity considering ownership or management of Elliott State Forest should operate in a vacuum. Any future ownership and management of the forest, or pathway the Land Board chooses, will require partnership, collaboration, and meaningful engagement with the relevant stakeholders and interests. Given the diverse and high level of interest in future ownership and management of the forest, any future approach to decoupling with a future interested entity or entities should



also engage representation from the range of interests associated with the forest. One near-term mechanism for advancing such an effort is an advisory group or similar collaborative group. Oregon Consensus does not recommend that the Land Board or DSL form such a group as a matter of course or without consideration, but should either entity determine that conditions argue for moving an advisory group process forward around a particular pathway, the following key process elements are likely to support group success:

- *Communicate a clear scope and charge.* If an advisory committee is formed, the issues to be addressed, the level of influence that parties will have on the process, and a clear timeline and work plan will all be necessary.
- *Use a neutral process manager and facilitator.* Oregon Consensus recommends the use of a neutral third-party facilitator to support any advisory or collaborative process, maintain meeting structure, and provide a balanced participatory process. This is especially important in the decoupling context, where one entity (i.e., DSL) is the current forest owner and an interested buyer might be stepping forward. Having either entity lead a group or process would create a situation where other stakeholders limit their participation due to perceptions of bias, or where the potential owner's ability to participate in shaping an outcome is compromised.
- *Engage a stepwise approach to a consensus-based process.* Given the complexity of potential issues being considered, and related questions at hand, Oregon Consensus recommends using a stepwise approach to collaboration beginning with the following:
  - *Identifying values and interests.* There are diverse interests and values around forest management in western Oregon and in Elliott State Forest. Most often, these values

are discussed among parties as positions (i.e., what parties want) rather than as the underlying interests that motivate their positions (i.e., why it is important to them). Formation of an advisory committee would provide an opportunity for parties to understand the underlying interests that shape positions.

- *Clarifying purpose and vision for Elliott State Forest:* A consensus-based approach benefits from clarity of purpose and vision. The Land Board can help promote this clarity by verifying the assumptions identified in this report and clarifying the issues and options in need of attention before any process. In the absence of an agreed-upon vision and purpose, the advisory or collaborative group can work to further develop the purpose and vision for a particular issue, project, or group. The vision strives to address the multiple interests of the advisory group or collaborative process, and articulates a shared outcome or future state the group would like to see.
- *Representation:* Invite a balanced group of participants from across sectors who have a genuine interest in participating in good faith (i.e., they feel themselves as likely, if not more likely, to achieve their overall goals through using a collaborative advisory approach as they would through other alternatives available to them).

Oregon Consensus suggests that before moving forward with decoupling, the Land Board confirm existing direction and assumptions related to the future of the forest (detailed in section 3) and also clarify its direction related to the areas of uncertainty described in section 5.

In addition, it is Oregon Consensus's understanding that at some point following the Land Board's October 2018 meeting and as early as December, OSU will, in accordance with its April 2017 framework, present DSL and the Land Board with an updated evaluation of its potential interest in future ownership of Elliott State Forest. As noted above, several other public entities also expressed potential interest in owning the forest. Given this, Oregon Consensus feels the field of potential serious public ownership entities needs to be clarified. Given the Land Board's desire to move rapidly towards resolution of Elliott State Forest potential decoupling and fulfillment of its obligation to the School Fund, at its October 16, 2018, meeting the Land Board could ensure potentially serious ownership entities are notified of the Land Board's desired timeline for action and have the ability to express their ownership interest to DSL in response to this report. As noted earlier in the report, the Land Board would likely wish to ensure any indication of interest is, while substantively less than a formal proposal for purchase, something more in substance and content than a letter of interest.

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## 7. Conclusion

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The Elliott State Forest is treasured by Oregonians. Not only has Elliott State Forest represented a precious gem to many, it has become for some, the epicenter of broader conversations around public lands, tribal sovereignty, habitat, jobs and economic opportunities, and deep cultural and historic ties to the land. The affinity that people feel for this forest makes finding a solution to the present situation a difficult proposition. Finding a solution for Elliott State Forest will require strong leadership—leadership that can overcome lack of trust, boldly clarify areas



of uncertainty, and provide clear direction and a vision for the future of Elliott State Forest. Numerous substantive challenges remain, including who the new public owner will be, whether an HCP can be achieved, how to balance timber harvest and conservation, and how to finance a complete buyout of the School Fund. The challenge in finding a solution lies in identifying a space that is sufficiently acceptable to the varied interests. But it is likely that no solution will satisfy everyone; there are those who would prefer that no compromises are made. Yet, among those whom we interviewed, there was a persistent theme of practicality and, for many, optimism that now is the time to resolve the issues that have long challenged Elliott State Forest.

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## Appendix A: Interview List

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### State Land Board Members

Jason Miner, Governor Brown's Office  
Steve Elzinga, Secretary of State's Office  
Dmitri Palmateer and Ryan Mann, State Treasurer's Office

### Oregon State Legislature

Representative Caddy McKeown  
Senator Arnie Roblan

### Federal Agencies

Kim Kratz, NOAA Fisheries  
Paul Henson, Richard Szlemp, US Fish and Wildlife Service  
Jerry Ingersoll, US Forest Service-Siuslaw NF

### State Government

Richard Whitman, Oregon Department of Environmental Quality  
Curt Melcher, Doug Cottam, Dave Jepsen, Rod Krahmer, Oregon Department of Fish & Wildlife  
Peter Daugherty, Liz Dent, and Ryan Greco (Coos Unit), Oregon Department of Forestry  
MG Devereux, Oregon Parks and Recreation Department  
Jim Paul, formerly Oregon Department of State Lands

### Education Beneficiaries

Mayor Chuck Bennett, City of Salem  
Morgan Allen, Confederation of Oregon School Administrators  
Laurie Wimmer, Oregon Education Association  
Jim Green & Lori Sattenspiel, Oregon School Board Association  
David Gould, North Bend School District  
Jerry Price

### Recreation

Ken McCall, Oregon Hunters Association  
Bill Richardson, Rocky Mountain Elk Foundation  
Kyle Smith, Trout Unlimited

### County Government

Commissioner John Sweet, Coos County  
Commissioner Chris Boice, Douglas County

### Tribes

Chief Warren Brainard, Doc Slyter, Debbie Bossley, Teresa Spangler, Doug Barrett, Margaret Corvi, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians  
Mike Wilson, Confederated Tribes of Grand Ronde  
Robert Kentta, Mike Kennedy, Confederated Tribes of Siletz Indians of Oregon  
Tim Vredenburg, Cow Creek Band of Umpqua Tribe of Indians

### Timber Interests

Jake Gibbs, formerly with Lone Rock Timber Management Company  
Toby Luther, Lone Rock Timber Management Company  
Heath Curtiss, Oregon Forest and Industries Council  
Scott Folk & Eric Geyer, Roseburg Forest Products  
Matt Hill & Bob Ragon, Douglas Timber Operators  
Jim Geisinger & Ralph Saperstein, Association of Oregon Loggers  
Cameron Krauss & Casey Roscoe, Seneca Jones Timber

### Conservation

Bob Sallinger (and Mike Selvaggio of Direct Action Partners), Audubon Society of Portland  
Josh Laughlin, Cascadia Wildlands  
Maria Farinacci & Clark McMahon, Coast Range Forest Watch  
Evan Smith, The Conservation Fund  
Brent Davies, Ken Margolis & Lisa Watt, EcoTrust  
Andy Kerr, Larch Company  
Peggy Lynch, League of Women Voters  
Paige Spence, Oregon League of Conservation Voters  
Rhett Lawrence, Sierra Club  
Bob Van Dyk, Wild Salmon Center

### Other

John Charles, Cascade Policy Institute  
Julia Meier, City Club of Portland (former Coalition of Communities of Color)  
Kelley Beamer, Coalition of Oregon Land Trusts  
Anthony Davis & Geoff Huntington, Oregon State University  
Keith Tymchuk, Port of Tillamook  
Se-ah-dom Edmo, Western State Center

*Note: Three interviewees (one beneficiary, labor, and tribal nation) were invited to participate but declined or did not respond*

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## **Appendix B: What is an Assessment?**

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A situation assessment is an interview-based information-gathering process undertaken to better understand issues and interests of involved parties and situation dynamics related to a complex public policy issue. Information gathered may include:

- What are the issues and opportunities?
- Who are the key parties and what are their interests?
- What options could be helpful to address those interests and what parameters would help ensure the greatest likelihood for success?

Typically, such an assessment involves a neutral, third-party who interviews a range of affected and potentially affected individuals to understand the interests and substantive issues that need to be addressed, as well as the likely challenges, barriers and opportunities for moving forward. The third party uses information from interviewees to identify cross-cutting themes, challenges and opportunities. Information gained is given freely and analyzed without bias. All interviews are private and no input is attributed to interviewees by name or affiliation. At the conclusion of the interviews, the neutral third party provides a summary report that identifies key issues, themes and options that might be useful. This report is made available to everyone who participated in the assessment and other interested parties. The procedural options that are identified by an assessment are meant to inform, rather than dictate a particular course of action.

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### **Interview Questions**

1. Please share your background, involvement, knowledge and/or role with respect to the Elliott State Forest.
2. What do you perceive are the major topics that, from your perspective, need to be addressed through a decoupling effort?
3. What are the challenges or barriers to addressing these topics? Do you have any suggestions for how they might be overcome? Are there any approaches or ideas that are non-starters for you?
4. What does success look like, from your perspective? What happens if the status quo continues?
5. How would you describe what the financial requirement is for achieving decoupling? What are some of the revenue streams and/or business models to meet financial requirements needed to complete decoupling?
6. Do you have specific thoughts on the timeline and relationship between decoupling and HCP efforts?
7. Do you have specific thoughts on who a long-term public ownership entity could be? Would this entity also be the land manager?

8. Are there lessons learned (positive or negative) from past efforts (on the Elliott State Forest or elsewhere) that should be applied to this process?
9. Are there information, data, or other technical resource needs (sources of data and resources) that you think should be addressed, utilized and considered as part of informing a decoupling solution?
10. What resources do you have that could be brought to bear in support of a decoupling effort?
11. Is there anyone else you think we should interview and why?
12. Do you have any questions for us? Is there anything we didn't ask that we should be asking?

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## **Appendix C: ORS 190.010 Governance Example**

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One formal mechanism for establishing an intergovernmental entity is ORS Chapter 190, which provides for the formation of an intergovernmental cooperative agreement between local governments (ORS 190.010) and between local governments/public agencies and state agencies (ORS 190.110). Intergovernmental agreements (IGA) create the authority and form the basis for the delivery of government services by two or more agencies or local governments. One advantage of establishing an ORS 190 intergovernmental agency is that doing so does not need legislative approval. However, a less formal mechanism may be more appropriate depending on the long-term governance approach taken by the future owner of Elliott State Forest.

One model of a creative approach to governance and partnerships that could be applied to long-term management solutions of Elliott State Forest would be the Salmonberry Trail Intergovernmental Agency (STIA). The Salmonberry Trail is an 86-mile long multi-use non-motorized trail that stretches from the Port of Tillamook Bay to the Portland area. The trail runs through a large number of local government jurisdictions with logistical issues, including permitting development of new construction projects within a trail right-of-way, signage, public safety issues, and sharing of responsibilities associated with operations and maintenance.

In 2016 with the assistance of Oregon Solutions at Portland State University, the group identified opportunities for sharing and leveraging resources between the agencies to coordinate activities across jurisdictional boundaries for trail planning and development, and established the STIA through establishing an intergovernmental agency. The STIA is comprised of the State of Oregon, Oregon Department of Forestry, Oregon Parks and Recreation District, Tillamook County and the Port of Tillamook Bay. Ex-officio members on the board include a coalition of partners such as the Confederate Tribes of Grand Ronde, Tillamook Forest Heritage Trust, Cycle Oregon, Washington County Visitors Association, Governor's Regional Solutions Team North Coast Coordinator, Oregon State Senator from district 16, Oregon State Representative from district 32, among other stakeholders and interest groups.