

# Making the Most of It: Watershed Councils as Non-profits

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# WHO ARE YOU?

## WATERSHED COUNCIL

- ORS 541.351(15)
  - Voluntary local organization
  - Designated by local government group
  - Brought together by County governing body
  - Goal: sustaining natural resource, protection, restoration & enhancement within watershed

# WHO ARE YOU?

## WATERSHED COUNCIL

- ORS 541.388
  - Majority of local residents including local officials
  - Balance of interested and affected persons within watershed
  - High level citizen involvement for watershed action program

# Who Are You? Possibilities...

Governmental Entity

Corporation: Nonprofit or For Profit

Nonprofit Membership Corporation

Association: Nonprofit or For Profit

Tax-Exempt

501(c)(3) 501(c)(\_\_\_)

governmental entity

# Who Are You?

## Why Do We Care?

Applicable Law

Purpose/Mission

Power

Control

Liability

Taxes

\$

# WHO ARE YOU?

## Legal Structure

### NONPROFIT (Corporation or Association)

- Exemptions from many federal, state and local taxes
- Ability to attract grants, donations

# WHO ARE YOU?

## Legal Structure

FOR-PROFIT or SPONSORED or  
GOVERNMENTAL ENTITY

- Can be less organizational paperwork, applications to governmental agencies, annual filings, records and fees
- Income can be used for any purpose during course of business and upon dissolution subject to sponsor and government entities requirements
- Not subject to “tax-exempt” penalties

# WHO ARE YOU?

## Legal Structure\*\*

(Following Slides concern nonprofit (nongovernmental entity))

### **Association**

**Group control of  
organization**

**Flexibility of  
management**

**Subject to Fiscal  
Sponsor agreement**

### **Corporation**

**Owned by the public  
for nonprofit  
purposes**

**Governed by a board  
of directors**

**Subject to ORS 65  
(nonprofit corporation  
law)**

# WHO ARE YOU?

## Legal Structure

### Association

Individual has all powers to...

contract, borrow,  
grant, leases, own  
property,

### Corporation

Corporation has all powers to...

conduct business,  
taxes and continue  
in existence

# WHO ARE YOU?

## Legal Structure

Association

Liability of  
individuals in  
control.

Corporation

*Generally* not  
personally liable  
for the acts or  
debts of the  
corporation.

# WHO ARE YOU?

## Legal Structure

### **WATERSHED COUNCIL SELF-INSURANCE** (Corporation or Association)

ORS 541.388 (4) Oregon Dept. of Administrative Services may provide local watershed councils with liability insurance for officers, employees and agents acting within scope of duties.

WHO ARE YOU?

Legal Structure

Association      Corporation

Can obtain 501(c)(3) provided  
proper formation documentation  
and follow federal tax-exemption  
laws. Deductions for donors

# WHO ARE YOU?

## Legal Structure

Association

Corporation

No annual filings  
with state

Initial and  
**annual filing**  
with OR  
Corporation  
Division & OR  
DOJ (CT-12)

# WHO ARE YOU?

## Legal Structure

Association

Corporation

**990 Annual Filing** with IRS if 501(c)(3)

(no longer only for revenue generally  
over \$25,000—990 N)

# WHO ARE YOU?

## Legal Structure

Association

Corporation

OWEB grants available (no impact)

Other grants, donations dependent on 501(c)(3) status or fiscal sponsorship by another organization.

# FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)

- Preparing and Filing the Articles of Incorporation with the Secretary of State of Oregon
- See Sample from State [www.filinginoregon.com/forms](http://www.filinginoregon.com/forms)  
Articles of Incorporation-Nonprofit Recommended  
Optional Provisions—Attorney draft or Attorney review
- Membership Organization or Non-membership

## **FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)**

- Preparing and Filing the Articles of Incorporation with the Secretary of State of Oregon (cont.)
- 501(c)(3) Internal Revenue Code provisions required
- \$50 filing fee
- Incorporation date set by State used for all purposes including IRS exemption
- Incorporator can be individual, corporation, group etc.

# FORMING AN OREGON NONPROFIT CORPORATION

## Tax-Exempt under 501(c)(3)

### □ Preparing Bylaws [\[1\]](#)

- Oregon law required to be followed (ORS 65-nonprofit corporation statute)
- (public record and public meeting laws not usually applicable)
- [\[1\]](#)Associations often prepare bylaws to govern their organization. These do not have to follow ORS 65.

## **FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)**

- Holding Organizational Meeting
  - Board of Directors seated (appointed, designated, elected)
  - Election of Officers (President and Secretary required offices)
  - Adoption of Bylaws (final decision-making)
- Incorporation Complete

## FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)

- ❑ Registering with the Department of Justice of Oregon
- [www.doj.state.or.us./charigroup/howtoreg.shtml](http://www.doj.state.or.us./charigroup/howtoreg.shtml)
- Attach Articles, Adopted, signed Bylaws (no fee)
- Can't accept charitable contributions prior to registering

# FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)

## □ Applying for a Federal Tax ID Number

- On-line from IRS– [www.irs.gov/](http://www.irs.gov/) (on-line ein application)
- New filing if change legal status (association to corporation)

## FORMING AN OREGON NONPROFIT CORPORATION TAX-EXEMPT UNDER 501(c)(3)

- ❑ Preparing and Filing Application for Recognition—Form 1023 (15 months plus extension)
- See IRS [www.irs.gov](http://www.irs.gov) [forms and publications]
- Advanced or Definitive Ruling (need 8 months)
- Filing Fee: \$750 (> \$10,000) \$300 (< or =\$10,000)

# Operating a Nonprofit Corporation 501(c)(3) tax-exempt

- Maintaining Corporate Status
  - ACT LIKE A CORPORATION:
    - Board of Directors have authority
    - Follow the Bylaws
    - Maintain Corporate Records
  - REMEMBER YOUR CREATOR
    - Secretary of State Corporation Division: ANNUAL FILING (\$50.00 filing fee)

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining OR Charitable Status
  - Who is Watching Over You?  
(Can the nonprofit ask for and receive donations in Oregon?)
  - Annual Filing of CT-12 with fee to **Oregon Department of Justice** (15<sup>th</sup> day, 5 mos after end of tax-year)
    - May 15—CY =TY
    - November 15—6/30 end for TY
  - Fundraising Laws

# Operating a Nonprofit Corporation 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - Who is Watching Over You with the Heavy Hand?
    - IRC (the “Code”) and IRS
  - Exclusive Purpose
    - Activities
      - Incidental Permissible
    - 1023 Filing
    - Unrelated Business Income Taxable

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - Exclusive Purpose: Public Charity
    - Publicly Supported
    - Fee Activity Supported
  - Otherwise Private Foundation
    - Impact: Rules, Reporting, Donation

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - NO: Private Inurement/ Private Benefit  
"no part of the net earnings inures to the benefit of any private shareholder or individual".
  - Exception:
    - reasonable and necessary compensation and
    - expenditures for operations.
  - Why: assets and income are for benefit of charitable class of beneficiaries--and the public.

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - Audits for these rules-IRS looks at transactions and relationship with organization (those who can exert influence). Must be arms-length.
  - Excess Benefit Transaction
  - Conflicts of Interest

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - Political Campaigns and Political Lobbying
    - NO Campaigns
      - Exceptions: Voter Education

# Operating a Nonprofit Corporation

## 501 (c)(3) tax-exempt

- Maintaining Tax-Exempt Status
  - Lobbying: Influencing Legislation
  - What is not Lobbying?
    - Public Education and Advocacy:
    - Influencing Executive Branch and Agency Decisions: If not about legislation but about policy, decisions, regulations, yes.

# Operating a Nonprofit Corporation

## 501(c)(3) tax-exempt

- Maintaining Tax-Exempt Status
- **Lobbying Restrictions**
  - **Insubstantial test.** Less than 5% of total activities, time and expenses (even volunteer).
  - 501(h) Election: Benefits of election: more \$ can be spent, fines vs. revoking tax-exempt status if violate, only report expenses, not volunteer, better audit results.
- Form 5768, no fee, file within first tax year of election, Good for all years unless revoked.

# Operating a Nonprofit Corporation 501(c)(3) tax-exempt

- **Maintaining Tax-Exempt Status**
  - **Reporting and Disclosure Requirements**
    - **Donations**
    - **990 Annual Filing**
      - **Due Date: 15<sup>th</sup> day of 5<sup>th</sup> month after end of FY**
      - **990 N: electronic notice**
      - **990: \$25,000 revenue**

# Operating a Nonprofit Corporation

## Who Else Are You?

- Fiduciary/Financial Management
- Employer
- Contractor or Contracted Party
- Lessee or Lessor
- Grantee or Grantor
- Partner
- .....

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