



COALITION OF OREGON LAND TRUSTS

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October 13th, 2026

To: Private Forest Accord Mitigation Advisory Committee

From: Coalition of Oregon Land Trusts

RE: Conservation Easement Template Revisions

Members of the Mitigation Advisory Committee:

On behalf of the Coalition of Oregon Land Trusts (COLT), thank you for the opportunity to provide feedback on the draft Private Forest Accord conservation easement template. COLT is a network of 33 organizations working across Oregon to protect our natural world – our water, wildlife, and open space – for all people, forever. Together, our statewide community of land trusts, soil and water conservation districts, and conservation organizations have protected more than 981,000 acres of land.

We appreciate the Committee's continued engagement in developing a land transactions pathway that is viable, impactful, and ensures public investments deliver lasting benefits for the covered species. We have reviewed the Conservation Easement template provided by ODFW and would like to share our feedback on several provisions in the template that could be amended to create a more workable program.

Oregon's land trusts bring extensive experience partnering with private landowners and funders to advance conservation easements through every stage of the process, from initial project development and funding to closing, followed by ongoing stewardship and monitoring.

Conservation Easement Template Revisions

Management Plan

The relationship between the management plan and the conservation easement is one of our most significant concerns. Specifically, it's a problem that Section 4 makes the purpose of the easement dependent in part on consistency with the management plan, while Sections 7 and 8 establish restrictions and obligations that may be determined or changed through the management plan.



22 MEMBER ORGANIZATIONS: Blue Mountain Land Trust • Center for Natural Lands Management • Columbia Land Trust
Deschutes Land Trust • Ducks Unlimited • Forest Park Conservancy • Friends of the Columbia Gorge Land Trust

Greenbelt Land Trust • Lower Nehalem Community Trust • McKenzie River Trust
North Coast Land Conservancy • Oregon Agricultural Trust • Oregon Desert Land Trust

Pacific Forest Trust • Southern Oregon Land Conservancy • The Conservation Fund • The Nature Conservancy in Oregon
Trust for Public Land • The Wetlands Conservancy • Wallowa Land Trust • Western Rivers Conservancy • Wild Rivers Land Trust

10 ASSOCIATE MEMBER ORGANIZATIONS: Bird Alliance of Oregon • Black Oregon Land Trust • Cerro Gordo Land Conservancy •
Clackamas Soil & Water Conservation District • East Multnomah Soil & Water Conservation District • Helvetia Community Association
Tualatin Soil & Water Conservation District • View the Future • Willamette River Preservation Trust •
Yamhill Soil & Water Conservation District

This reverses the appropriate and legally established relationship between the conservation easement and management plan. The recorded conservation easement should establish the permanent restrictions, reserved rights, and enforceable obligations governing the property. The management plan should provide guidance for implementing those terms, not a method for imposing additional restrictions, new restoration obligations, or other requirements not identified in the recorded easement. The management plan may identify restoration goals and desired future conditions to guide stewardship activities, but those should not create new obligations unless established in the conservation easement.

Similarly, conservation values defined in Section 3 include future conditions from planned restoration that must also be captured in the Baseline Inventory Documentation. A baseline documentation report should document the property's existing conditions and serve as a reference point for monitoring and enforcing the conservation easement over time. It should not assume future restoration conditions as an obligation, particularly when restoration is not a general requirement of the PFA program. Instead, the baseline should reflect conditions at the time the easement was established and any changes in conditions addressed through management planning, stewardship, and monitoring.

We have provided written comments on the template that address the above concerns, including recommending a statement in the conservation easement that says its terms govern over any conflicting terms in the management plan.

Over the past 20 months, we have worked with the Oregon Watershed Enhancement Board (OWEB) to navigate similar concerns in their conservation easement template. This work was requested by Governor Kotek in 2024, who directed the agency to “conduct a thorough review to eliminate non-essential requirements at both the front and back end of the process to better meet statutory and program intent.” It has culminated in a set of recommendations approved by the OWEB Board and outlined in [Item I: Land Acquisition Modernization Update and Initial Recommendations](#), see rows 2-C, 2-D, 2-E, and 2-H.

Possessory vs. Non-possessory Interests

We caution that having too many rights granted within the conservation easement itself can create a document which fails to create a statutory conservation easement under Oregon law. ORS 271.715 defines a conservation easement as... “a *nonpossessory interest* of a holder in real property imposing limitations or affirmative obligations the purposes of which...” Possession, as a property law concept, means the legal right to occupy, control and use a property, whether those use rights are total, or limited to specific time periods or purposes, as you would see with either property ownership, a lease or a contract for use.

The totality of rights granted to the easement holder and ODFW under the easement, as is, creates too broad a possessory interest. Conservation easements, by their nature, grant the easement holder a right of control over many aspects of the property management, but control alone does not create a possessory interest. In addition to control, however, the current template grants the holder and ODFW a right of access for extremely broad purposes beyond monitoring and enforcement of the easement, including to enact their own restoration, and even access for any ODFW mission purposes. It also provides use rights to the parties for education and research purposes, and gives the holder and ODFW a role to play in "vetoing" sales to parties not approved by those parties (prohibitions on a landowners ability to alienate themselves from a property may be illegal).

Our written comments on the conservation easement template provide specific suggestions about how to make these sections of the easement consistent with non-possessory interest. We recommend revisiting Sections 6b and 6e, and reviewing the conservation easement template for the Oregon Agricultural Heritage Program (OAHP), Sections 6a-d.



In our experience, both funders and easement holders adamantly avoid holding possessory interests, which can create liability and other problems. Holding possessory interests changes the status of the holder and ODFW's legal relationship to the property. As a possessor, they would share in liability risks without the ability to be indemnified, as well as a myriad of other complications. Conservation easements themselves tend to have a high degree of control, which is why most of them prescribe very narrow access, use, and occupation rights limited solely to monitoring and enforcement of their control rights.

Agricultural Prohibitions

The categorical prohibition on agricultural use is overly broad and may restrict land uses compatible with the conservation values. Section 7(e) broadly prohibits commercial, industrial, and traditional agricultural activities, with limited exceptions for specific habitat management activities. Conservation easements often allow management of property for both agricultural uses and conservation goals, and the prohibition of revenue activities in this template eliminates future management options and existing uses regardless of the impacts of the proposed activity. We recommend replacing the prohibition with a more targeted approach that allows compatible uses subject to clearly defined safeguards.

Program applications can require a statement of allowed commercial uses and why they do not conflict with the conservation values. Those uses will have to be further elaborated upon in the management plans with opportunities for the easement holder and ODFW to reject any potentially harmful activities planned in the future. Without these revisions to the template, we believe these narrow limitations on eligibility will do significant harm to our ability to recruit landowners to the program.

Thank you again for your engagement and the engagement of ODFW staff as you work to develop this program. COLT welcomes the opportunity to continue working with the Committee and agency to address these concerns and ensure the conservation easement template supports the program's goals while providing clear, enforceable, and lasting protections for covered species.

We have enjoyed working with the staff, and have provided specific comments and clarifications beyond the general comments here for them to incorporate in the easement template.

Sincerely,



Joe Buttafuoco
Executive Director
Coalition of Oregon Land Trusts

