



**PACIFIC FOREST TRUST**  
Private Forests. Public Treasures.

September 28<sup>th</sup>, 2025

## **Re: Land Acquisition Manual and Application Questions Comments**

To the members of the Private Forest Accord Mitigation Grant Committee,

We provide these public comments for discussion regarding the Land Transaction Manual. We appreciate the hard work and effort it takes to assemble a manual for a program which requires broad thinking and potentially significant expenditures of public funds. Recognizing it is a significant effort, there are areas under which we have significant concerns with the manual.

### **Disqualification of nongovernmental entities as applicants**

Pg. 3 defines an eligible easement holder as any entity that meets the qualifications as defined in 271.715(3). That definition specifically includes subsection 3(c) which designates, “...*a charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property;*...” as legal conservation easement holders. That is the statutory basis for the hundreds of thousands of acres protected in Oregon by land trusts with conservation easements.

However, the section on page 4 of the manual defining eligible applicants for easement funding under the PFA mitigation fund program specifically excepts land trusts and other charitable entities from being able to apply. It does so under authority of ORS 271.725, which does not, in fact make mention of land trusts or other charitable entities. Further review makes it clear that 271.275 does not at all define eligible conservation easement holders, so much as it defines the acceptable methods and provides limitations on where and how *governmental entities* may acquire conservation easements. Specifically, and relevant to governmental entities, the provisions make clear that easements may not be acquired by condemnation, and that scenic highway easements must be acquired in areas relevant governmental roadway interests.

We understand that the relevant conservation easement statutes may have been confused. 271.725 was not, of course, intended to be used to determine the eligibility of easement, only the ineligibility of governmental entities in acquiring them in certain ways. Nor does any aspect of the mediated forest accords and the authorizing legislation contemplate grant funding being limited to just governmental organizations. The goals of the accords and the mitigation funding being to benefit covered species and their habitat,



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we do have questions as to why the main wildlife and conservation nonprofits focused on species protection, and the land trusts who specialize in the use of conservation easements are, were exempted from being able to apply. Especially given that there are no restrictions or prohibitions on these groups' application for restoration and management funding.

### **Eligible Costs**

On page 5 eligible costs, they are generally defined as, "eligible costs include those directly related to securing an interest in land to establish a conservation easement, including associated administrative, legal, technical, and due diligence expenses." We believe that this is a good general description of typical and appropriate costs reimbursement typical to most land acquisition grant programs. We are supportive that the program tries to be encompassing to the large variety of costs which may be engaged in the process of acquiring a conservation easement, and consider them as eligible project costs. However, we have concerns that the breakdown of costs may be overbroad in some cases or inadequately defined in others.

Most land acquisition programs are committed to paying for those costs associated with the acquisition of real estate or appurtenant interests, such as easements and water rights. Capital expenses for the improvement and restoration are sometimes covered in programs that include fee-land acquisitions, however the program here is limited to conservation easements. When purchasing a conservation easement, there is no purchase of possessory interest in the property, meaning any improvements made to a property are owned by the property owner, and do not financially or legally benefit the easement holder. The benefits of any improvements to the property entirely accrue to the property owner.

Which is the basis of our concern for much of the allowed expenses to be reimbursed. Examples of non-typical costs are equipment, fencing, noxious weed control, debris removal, well decommissioning, and more. Demolition of ineligible structures is named without an explanation of what an ineligible structure is. These are not expenses relevant to a conservation easement acquisition and many of them potentially benefit private benefit avoidance which is a foundational ethic to most grant programs. Most concerning is the payment of delinquent taxes. *There is no precedent, nor statutory authority, for the use of government funds to pay for unpaid financial obligations owed to the government.* If a landowner must pay obligations to remove title restrictions benefitting the sale, then they should be paid out of the proceeds of the sale. No extraneous funds should be made available to benefit the landowner above and beyond what is being purchased. As there is a separate manual and rules for restoration and management, we recommend that any needs or requests related to private lands restoration and management be treated



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separately and applied for under that grant programs, or at least under the guidance in that manual.

Other categories of expense are vague, such as “Advertising.” Advertising for what, and what kind of acceptable activities? What is “Advance Payment” as indicated, and who may it be paid to? The applicant, the landowner, or contractors and consultants? Other broad payment categories that are singularly described below require further explanation are: Communication, Consultation, Correspondence, Meetings, Post-Project Meeting Funding Requests, and Publications. Without exposition, it may result in confusion during application and conflict when it comes to grant management.

Other eligible costs raise questions as to the programs intent, such as National Environmental Policy Act compliance costs. There are no known NEPA requirements for state-funded conservation easement acquisitions. Similarly, there is no reason for wetland delineation to be necessary to the acquisition of a conservation easement. Does that imply intent to require these costs under certain circumstances? How does the program foresee engaging in those cost requirements?

### **Ineligible Projects**

One of the ineligible project categories are “Land with sufficient revenue producing potential to finance the project’s cost.” This raises several questions as to what is intended. Are we looking at the base land productivity, or the conservation easement? Conservation easements have no revenue development potential and are by their nature financial liabilities. If we are looking at the base revenue potential of a property – is a working land property producing \$40/acre considered be able to finance a conservation easement worth \$400/acre? We are unclear as to the purpose of the ineligibility category and its relevant program goals overall.

### **Public Access Requirement**

We are significantly concerned that the PFA funding in this case requires public access on private land. It is not common to provide any form of public access via conservation easements and is a significant burden to private landowners to expect to provide that access. Nor is it in keeping with the requirements of the private forest accord’s goal of benefitting covered species. In some cases, public access is a managerial conflict which can be detrimental to protecting covered species. This concern covers both the requirements for eligibility and ranking of projects.

### **Public Workshop and Discussion of Program Details**



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We do have other concerns and questions regarding the manual and the application questions, including the fact that many of the questions work from a presumption of land ownership and not as conservation easements. Given the short notice and lack of public meetings specific to conservation easement acquisitions we do not have adequate resources to provide a full analysis at this time. Conservation has seen the successes it has because of a commitment to collaboration and conservation, and Pacific Forest Trust also embraces those values. We would very much like to engage in a public workshop with the committee, individual committee members and/or staff in a constructive format which assists everyone in crafting the best program possible. Both so we can share our perspectives on how conservation easement programs are successful in application on the ground, but also to capture ODFW and the committee's perspective on what works best in administration and governance. We have not, thus far, been able to engage in that conversation, and encourage it, if not with us, but with members of the land trust community.

### **Summary**

Given the significant questions we have about the manual, ranging from who is eligible to apply and what is eligible to be paid for, we have concerns as to its use without serious discussions and revisions. In that spirit, we would happily engage in that discussion along the lines the committee feels best.

Thank you for your time,

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Pacific Forest Trust