



COALITION OF OREGON LAND TRUSTS

2540 NE MLK JR BLVD, PORTLAND, OR 97212 • 503-719-4732 • OREGONLANDTRUSTS.ORG

July 10th, 2026

To: Private Forest Accord Mitigation Advisory Committee

From: Coalition of Oregon Land Trusts

RE: Land Transaction Guidance Documents

Members of the Mitigation Advisory Committee:

On behalf of the Coalition of Oregon Land Trusts (COLT), thank you for the opportunity to provide comments as the Mitigation Advisory Committee (MAC) continues to refine the Land Transactions manual and guidance documents for the Mitigation Grant Program.

COLT is a network of 32 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 hard work and dedication of the Department of Fish and Wildlife staff and this Committee in crafting this program, and today we would like to provide some comments specific to the Land Transaction manual, conservation easement template, and evaluation criteria. Given the complexity of the documents before you, and the technical expertise needed to craft a conservation easement program that is impactful, flexible, and practical for both ODFW and its partners, **we recommend establishing a working group of internal staff, external stakeholders, and land transaction experts to collaboratively refine the guidance documents and support successful implementation.**

Land Transactions Manual Review

Eligible Land Transaction Types

We encourage the Committee to adopt a broad interpretation of eligible land transactions that reflects both the statutory purpose of the program and the intent expressed within the Private Forest Accord Authors



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 • Willowa 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

Report. The authorizing legislation (S.B. 1501) allows for conservation easements “on land other than forestland to protect riparian areas.” We encourage this Committee to structure the program so that funded acquisitions *protect riparian resources*, rather than requiring conservation easements to be limited exclusively to riparian acreage. Such a limitation would be significantly narrower than the statutory mandate and also would not be feasible to implement in practice, due to the need for land acquisitions to mesh with the legal lot system and land title system.

Consistent with the statutory requirement to “protect riparian areas,” we suggest that funded conservation easement acreage must include or be adjacent to riparian areas that will benefit HCP-covered species. “Riparian area” is defined by the PFA rules (definition 109) as “the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.” As used in that PFA definition of “riparian area,” “water of the state” (definition 158), includes “lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands” and other water areas. The manual should make clear that the PFA rules definitions of “riparian area” and “water of the state” apply for purposes of this program.

Also, for purposes of this program, we would suggest that adjacent lands serving to “protect riparian areas” be defined as lands with a demonstrable and significant surface streamflow, sheetflow or groundwater connection to the riparian area serving the covered species.

Small Forestland Owners

The PFA Authors Report states, “easements on covered lands may be useful to help small forestland owners comply with new standards,” so we respectfully urge the Committee to explicitly recognize this intended use of the program and provide a pathway for easement projects that support small forestland owners. This inclusion would provide an additional voluntary, and incentive-based option for landowners facing new requirements, help maintain working forests in private ownership, and secure long-term conservation outcomes for covered species.

Forestland Definition

While the text of the legislation currently restricts the program from funding forestland, forestland as defined under legislation is defined as lands where trees are grown and commercially harvested (ORS 527.620). There are a number of forestlands in Oregon that, though forested, do not otherwise meet that definition, and some of them are necessary to meet the goals of the Accords. Riparian forests are essential for protection of in-stream habitat, and oak woodlands are certainly not grown for commercial harvest purposes. We request that in defining the areas of eligibility, the exclusion of forestland be limited to just those areas strictly defined in the Accord.

Match Eligibility

Regarding the ineligible match types, we counsel against ruling out other ODFW grant funds or mitigation funding. While state funds are not typically matched against state funds, there is no legislated restriction against PFA mitigation funds being matched against state dollars. Further, a percentage of the PFA mitigation funding are private dollars, and those state dollars provided to the program are provided as mitigation, and not regular programmatic funding. Additionally, the manual requires no match, so we are uncertain as to the logic for restricting viable match funding if that match funding doesn’t otherwise restrict its use against PFA dollars.



Other mitigation dollars, particularly for habitat impact should be viable so long as that mitigation funder is not claiming mitigation benefits associated with the portion of funds. In other words, if they are providing 25% of the funding, they should not be able to claim more than 25% of the impact.

Management Plan

We believe that the manual and the template may confuse the role of management plans in conservation easements. Management plans are adaptive management tools, allowing landowners flexibility to engage in multiple different management practices to meet the goal of the conservation easement. The easement is the contract agreement, whereas the management plan is the place the landowner described how they may take any number of different paths to meet the goals of the conservation easement and not violate its terms.

The proposed management plan has several opportunities for refinement. First, it allows the easement holder to require new and elevating land management expectations over time. Not only does this change the nature of the notice and approval nature of the document, but it fundamentally impacts and undermines the ability to value the conservation easement. When the appraiser evaluates the property, they review the restrictions in the conservation easement and value the impact of those restrictions on the market value of the property. Burying restrictions in the management plan which isn't completed until after the easement closes places the landowner in the position of agreeing to restrictions for which they are not being compensated.

Further, the agency may mandate new restrictions every 5 years thereafter, potentially adding new costs and lost value without compensation. We recommend that all obligations to the landowner be included in the conservation easement terms only. While the easement holder/agency may recommend better management practices than what is proposed in the management plan, they do not typically have the authority to require the best practices if the ones proposed by the landowner otherwise meet the goals of the easement or violate its terms.

We also advise ODFW to consider their perpetual role in reviewing and approving management plans. Unlike the applicants who invest funds with every new conservation easement so that their capacity scales with the number of obligations they take on, ODFW staff are reliant on a fixed contribution from the mitigation fund or the general fund to maintain their capacity. As the number of conservation easements funded by the program grows, so will ODFW's review obligations. Because ODFW review will be required, landowners will be dependent on the agency's capacity to complete those reviews, creating the potential for delays if staff resources are limited.

Active Restoration Expectations

Throughout the manual, restoration and intensive habitat management appear to be treated as the expected condition for nearly all conservation easement projects. Several provisions (agriculture prohibition and commercial activity restrictions) suggest that ongoing agricultural, forestry, and other working land uses are generally inconsistent with the program. Many sections of the manual (Property Management Plans, Baseline Document requirements), emphasize restoration planning, adaptive management, and ODFW approval of management changes, rather than the traditional conservation easement approach of permanently prohibiting incompatible uses while protecting a property's conservation values.

Conservation Easement Template

Required Template vs. Required Terms. We encourage ODFW to select required conservation easement terms, rather than an entire conservation easement template itself. This is how OWEB has developed their



template easement – as usable in its entirety as applicants wish, but for which there are mandatory sections to include in applicant conservation easements. As the perpetual holder of the conservation easement, easement holders often have good reasons for the form and construction of a conservation easement which may not be captured in the template.

Recreational Uses. As written the template allows for only 6 recreational uses on the Property, entirely in a non-commercial format. We feel this is overly restrictive to private landowner uses, both in potentially unconsidered forms of recreational use with a low likelihood of harm to covered species (such as rock climbing), or for which the commercial version of the activity is unlikely to be more harmful than the non-recreational (photography). Rather than specific allowances and prohibition of everything else, most easement holders identify specific restrictions (recreational motor vehicle use) while indicating others may be restricted if found to be harmful.

Commercial Prohibitions. As the program already restricts inclusion of commercial forestland, a whole prohibition of commercial agriculture use, of commercial recreation, and to even build new structures, the easement functionally forbids any income generating activities on the property. While restricting any activity which is necessarily harmful to the conservation values, a wholesale restriction of income generating activities makes the cost of the conservation easement so high it is almost equal to the cost of buying the land outright, and tends to attract landowners who have little interest, or economic means, to ensure beneficial property management for the future. A balance of sustainable economic activities which aren't harmful to covered species and specific species protections is the middle ground most easement holders are trying to strike. We are not aware of any conservation easement program nationwide as restrictive as the one proposed.

ODFW Approval of Liens and Mortgages. The conservation easement requires ODFW approval before any liens or mortgages may be placed on the property. We are unclear about the purpose of this provision, as subsequent liens or mortgages would be subordinate to the recorded conservation easement and therefore would not appear to diminish its legal protections. We also encourage the Committee to clarify how this review process would function in practice, including the criteria ODFW would use to evaluate requests, the circumstances under which approval could be granted or denied, and whether the agency has the appropriate expertise and capacity to conduct these reviews efficiently.

Funds Recovery. Though we appreciate the dedication to having strong leverage for enforcement, we question the legal validity of full funds recovery of grant funds which paid for a conservation easement, when that conservation easement still exists. Damage assessments against the loss of conservation values are a normal action when pursuing violations, but a demand for repayment of funds towards the acquisition of an interest which is legally still in force is unprecedented.

Evaluation Criteria

Impact to Covered Species. As it currently stands, covered species impacts, though the largest individual points category, represents only 20% of the overall project score. This means that an application could theoretically provide minimal covered species benefits, while otherwise remaining competitive for funding. We recommend that benefits to covered species constitute half of the available points.

Eligibility vs. Scoring. We recommend removing the points categories for Subsurface and Mitigation Compliance and Clarity and Technical Precision, as these should be treated as issues of eligibility, not scoring. Applicants are either meeting requirements, or providing understandable applications, or not.



Water Rights. Last, there should be some level of clarification as to the evaluation of the water rights. Generally, for covered species, water rights placed in-stream are the most beneficial (though not always). While a conservation easement can make certain treatments to water rights as an appurtenant property right, it is limited by the many other strictures surrounding property law. It will be hard for applicants to know what constitutes a good or bad score under this criteria without further guidance from the committee.

COLT and our members appreciate the tremendous effort that ODFW staff and the Committee have invested in developing this program, and we thank you for the opportunity to provide comments and for your partnership throughout this process. We remain committed to helping make this program a success and encourage the Committee to continue refining these documents to ensure they are practical to implement and work to achieve meaningful, long-term conservation outcomes.

Sincerely,



Joe Buttafuoco
Executive Director
Coalition of Oregon Land Trusts

