

WORKING LANDS GUIDEBOOK



OREGON ASSOCIATION OF CONSERVATION DISTRICTS

**With Funding from our partners at the
Oregon Conservation Partnership**

November 2021

Section 1: Natural and Working Lands Overview

What constitutes Working Lands?

Oregon's working lands were described by the OACD Working Lands Committee as:

“Oregon's working lands include managed forests, rangelands and farmland which may encompass natural habitat features such as wetlands, rivers and coastal lands which provide an abundance of natural resources for long-term agricultural, economic and ecological benefit.”

Oregon statutes are limited in reference to working lands definitions. While ORS 541.977-.990 (Oregon Agricultural Heritage Program) defines working lands, that definition is narrowed to agriculture lands:

“Working land” means land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active management in farming or ranching.

Oregon's Department of Land Conservation and Development has a working definition for farm and forest lands that encompasses working lands:

Oregon's farm and forest are working lands, and are sometimes referred to as “resource lands.” “Preserving” these areas, refers to preservation of the land for continued use as a commercial farm or forest. Preserving these areas for resource use also benefits wildlife habitat conservation, recreation opportunities, and protection of the scenery Oregon is well known for providing.

Values Provided by Working Lands

The committee listed a number of values provided by working lands, including:

- Protection of the lands purpose: farmland, rangeland, and aquaculture
- Protection and restoration of natural resource values on the land
- Habitat protection for fish and wildlife
- Water quality maintenance or enhancement
- Mitigation of climate impacts through regenerative agriculture, carbon sequestration, or other conservation strategies
- Protection of viewsheds and landscapes
- Maintenance of contiguous land units to reduce fragmentation
- Promotion of healthy soils
- Provision of economic values and job creation
- Creation of healthy and resilient ecosystems
- Ability to store carbon
- Protection of heritage values of the land

Description of Natural Lands

Natural lands, those not currently under development, include a natural resource lands, such as wetlands, costal zone and other estuaries, riparian habitat, and open

landscapes and greenways. Values include:

- Protection of natural features such as wetlands and estuaries
- Habitat protection for fish and wildlife
- Creation of healthy and resilient ecosystems
- Protection of viewsheds and landscapes
- Water quality protection and enhancement
- Mitigation for climate impacts through storage of carbon and other strategies
- Conservation of natural resources

Natural lands can coincide with working lands when multiple easements occur on the same properties.

Working Land Statistics and Values

Agriculture Lands

The Oregon Department of Agriculture¹ identifies agricultural working lands as representing:

- 15.962 million acres in Oregon contributing \$29.73 billion annually to the state's economy as the second largest sector of the economy, creating 680,000 jobs;
- Supported by 37,200 Oregon farms.



Of the 15.9 million acres of agricultural land, 1.665 million acres were irrigated. Even though the irrigated acres are only 8.3% of the total, it is important to note because the irrigated farmland accounts for 73.1% of the value of production.

Forest Lands

Over half of Oregon's forest lands of 30.9 million acres is owned by the federal government. State and local governments own 1.13 million acres and there are 6.487 million acres in private ownership. Small private landowners (those with 5,000 acres or less) represent 3.7 million acres.²

- Privately owned forest land represents 6.487 million acres, contributing \$12 billion annually to the state's economy and providing 61,556 jobs. Timber harvest represented 65% by large private landowners and 11% by small private users, with the remainder harvested by state and local governments and tribes.

Ownership	Forestland (acres)	Percent of total
U.S. Forest Service	14,093,000	48%
Bureau of Land Management	3,573,000	12%
National Park Service	160,000	1%
Other federal	32,000	<1%
Total federal	17,858,000	60%
State	942,000	3%
County and municipal	187,000	1%
Total state and local	1,129,000	4%
Total government	18,987,000	64%
Large private landowners (>= 5,000 acres)	6,487,000	22%
Small private landowners (<5,000 acres)	3,702,000	12%
Total private	10,189,000	34%
Native American tribal forestland	480,000	2%
TOTAL FORESTLAND, all owners	29,656,000	100%

¹ [Oregon State Board of Agriculture 2021 Report](#)

² [OFRI Annual Report 2021](#)

Grasslands/Pastureland/Rangelands

A number of figures have been reported for this category of working lands with discrepancy between what is pastureland and what equates to grass or rangelands.



Perhaps the most recent analysis done by the American Farmland Trust (AFT)³ provides a good picture of quantity. Their analysis uses satellite remote sensing to measure the acreages. Results indicate:

- Pastureland in 2016: 2,129,100 acres
- Rangeland in 2016: 10,099,800 acres

The Oregon Department of Agriculture shows a value of \$625,158,000 from cattle and other livestock.

Rangelands provide a variety of aesthetic and recreational benefits that it's hard to put a price tag on, from providing the benefit of locally sourced beef to a range of environmental benefits but is exceedingly difficult to quantify with a cost value. A recent study by [researchers at UC Berkeley recently discovered](#) that 300,000 acres protected in the California Rangeland Trust provides up to \$1.4 billion annually in ecosystem benefits, besides the major contributions to food and water supplies. It found additionally that every dollar spent to protect working rangeland returned \$3.43 on investment in ecosystem benefits.

Natural Lands

Natural lands, wetlands, open grasslands, coastal zone lands supply habitat for wildlife and play a key role, along with working lands, in providing environmental and public health benefits by supporting clean air, wildlife, and pollinator habitat, among other benefits. Natural lands can supply a source for carbon sequestration for climate mitigation. In order to achieve our long-term goals, both natural and working lands must play a role. Actions to protect, restore and manage the health of these lands provides long-term sustainability and resilience.



Natural lands include coastal lands. Coastal lands have many values—as habitat for fish and wildlife, aquaculture, wetlands and estuaries. The Oregon Coastal Management Program has certain requirements for land use, including protection for wetlands and estuaries. The value of aquaculture is an important economic factor. In 2020 there was a

total of \$160,325,799⁴ income from commercial fishing and shellfish. When sequestration occurs on wetlands or estuaries it is known as “blue carbon.”

³ Ibid (see page 3)

⁴ AFT (getting link from Jacob Gilley of AFT, Rangeland Director at AFT)

Threats to Natural and Working Lands

LAND USE DEVELOPMENT

One of the biggest threats to natural and working lands is development on, or contiguous to, those lands. The Department of Land Conservation and Development (DLCDD) protects categories of land use in Oregon through its land use goals.



Oregon's passage of SB 100 in 1973 created our statewide land use planning system and has helped curb the loss of farmland substantially. Farmland loss has slowed by nearly 60% per year since the introduction of policy tools like exclusive farm use zones and urban growth boundaries, according to 1000 Friends of Oregon.⁵

Farmland

Statewide Planning Goal 3 protects farmland⁶ to preserve and maintain agricultural lands. Oregon's agricultural protection program is based on statute and administrative rule, governed by the department (DLCDD) and, the Land Conservation and Development Commission, with appeal authorization to the Land Use Board of Appeals (LUBA) and the courts.

- Statewide Planning Goal 3 requires counties to identify and inventory agricultural land, apply the statutory EFU (exclusive farm use) zoning in ORS Chapter 215⁷ to those lands, and review applications for farm and non-farm use as enacted by the legislature in 1973.
- This process is also managed under administrative rule OAR Chapter 660, Division 33⁸. The same provisions also incorporate statutory minimum lot sizes and standards for land divisions.

Agricultural Land Use Policy in ORS 215.243 protects agricultural land as:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of the state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of

⁵ [Death by 1000 Cuts: A 10-Point Plan to Protect Oregon's Farmland](#) 1000 Friends of Oregon Report

⁶ Department of Land Conservation and Development "[Oregon Farm & Forest Land Use Report of 2018-2019](#)"

⁷ [Statutory Provisions for ORS 215 Land Use](#)

⁸ [Administrative Rule Chapter 660, Division 33 Agricultural Land](#)

such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food.

(3) Limits expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use (EFU) zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.

Farmland taxation policy in Oregon provides a special tax assessment privilege which includes taxation at farm value use rather than true cash value. All land zoned EFU automatically receive the tax benefit unless it is explicitly disqualified since the privilege was established in 1973. In the 40 years since the special assessment has been in place, a 2015 report indicated that nearly \$6 billion in reduced property taxes occurred.

Right-to-farm protections provide insulation from actions on adjoining lands that would impact production.

Other public values as acknowledged in land use policies, assert that private farmland has significant public value beyond the economic contribution to the agricultural sector and the security of food supply. These lands provide a landscape identity, protect our natural resources, and provide the potential for carbon sequestration.

The **definition of agricultural lands** is primarily based on classifications of soil types as defined by the U.S. Natural Resources Service (NRCS) ratings of soil capabilities. Soil classification standards allow for long-term resource decisions rather than decisions based on short-term conditions, individual circumstances and profitability.

Exceptions for development on EFU lands have allowed siting of structures, pipelines, utility transmission and other project since the inception of the land use law protections in 1973. Those exceptions have grown to 60 nonfarm allowable uses. Exceptions were approved by the Oregon Legislature over the past 48 years.

High value farmland protection is provided under ORS 215.705, defining high-value farmland as land in a tract composed predominantly of soils that are classified prime, unique, class I or Class II. Lands zoned in the Willamette Valley can also contain soils that are predominantly Class III or IV. Specific designations for soils in various areas of the state are also described in this section of the statute. Additionally, ORS 195.300 was established more recently to include other factors beyond basic soil classification, such as viticulture use, irrigation, and drainage infrastructure.

Forestland



water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”

Statewide Planning Goal 4 was established to “conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air,

Counties must zone forestland as either forest or mixed farm forest. Mixed farm forest lands may contain farmland as well as forestland. The two categories include about 11.8 million acres in Oregon. Certain provisions include siting of dwellings and activities allowed under the Forest Practices Act (ORS 327.680).

Natural Lands

Natural resource lands often suffer from the same threats as working lands. Goal 5 is a broad statewide planning goal that covers more than a dozen resources. The resources range from wildlife habitat to historic places. To protect and plan for them, local governments are asked to create a number of inventories. The inventories in a local plan may address only a portion of the resources included in Goal 5.

Statewide Planning Goal 16 provides the principal guidance for the planning and management of Oregon's estuaries “to recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long term environmental, economic and social values, diversity and benefits of Oregon’s estuaries”.

Non-Resource Lands

Lands that do not qualify as forest, farm or natural resource lands, are identified as non-resource lands. That land is not subject to land use Goals 3 or 4 protection.

Quantifying the Threat from Development

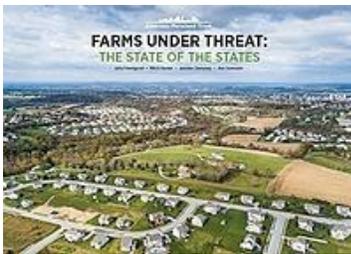
This year the Department of Land Conservation and Development (DLCD) provided a report, based on 2018-2019 statistics, identifying loss of farm and forest lands. Prior to the start of each legislative session, DLCD must provide a biennial report identifying approved or denied uses in EFU and forest zones. In 2010 HB 3647 began requiring DLCD to complete review of soil assessments prepared by private consultants to determine if a land use proceeding could allow zone changes or development siting of nonfarm uses such as home occupation, commercial activities related to farm use, processing solar power generation and communication facilities.

- Since 2008, for example, 179 renewable energy facilities were permitted at the local level covering 63,000 acres, and 24 additional facilities on 2,900 acres of

land were approved under a Goal 3 exception. Oregon has 3,400 Megawatts of wind energy, much of it on farmland; Oregon ranks 10th in wind energy in the nation. There has been a sharp increase in solar facilities in the Willamette Valley on high-value farmland, as well as the siting of transmission facilities.

- In 2018 and 2019 the expansion of urban growth boundaries results in 1,350 acres of EFU agricultural land lost. During the same period 44 acres of forest-land were lost to UGB expansion.
- Agri-Tourism and recreational services provided \$16 million in 2017 revenues, an increase of 51% since 2012. However, agri-tourism can create conflicts with neighboring farms as the result of events held on farmland. Agri-tourism accounted for a quarter of the total non-residential permits issued in 2018-2019.

The American Farmland Trust identified in its “State of the States” estimate that lands converted from agriculture to other uses totaled 65,800 acres lost between 2001 and 2016.



- ✓ Of those acres, 32,800 acres were converted to urban and highly developed uses.
- ✓ Another 33,000 acres were converted to low-density residential uses.

DROUGHT AND WILFIRE

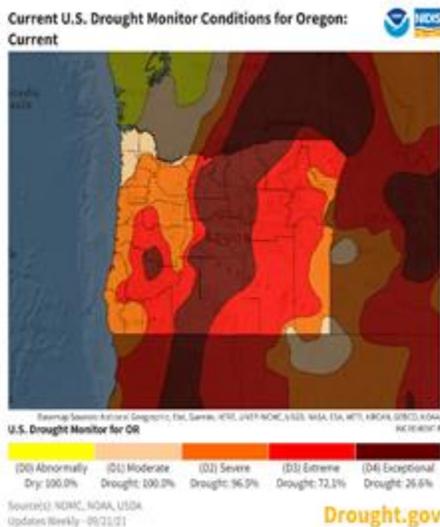
Drought

These two threats often go hand-in-hand as drought conditions subject natural and working lands to vulnerable fire conditions.

A total of 3.8 million people in Oregon are impacted by the current drought. The USDA has designated 34 counties in Oregon (94% of 36 total) with disaster designations.

Oregon’s Governor has approved drought declarations in 25 counties, or about 69% of the counties. Over the past 127 years, 2021 was the 12th driest year to date.

Among those hardest hit by the drought in Oregon are those who plant, grow and harvest the crops that



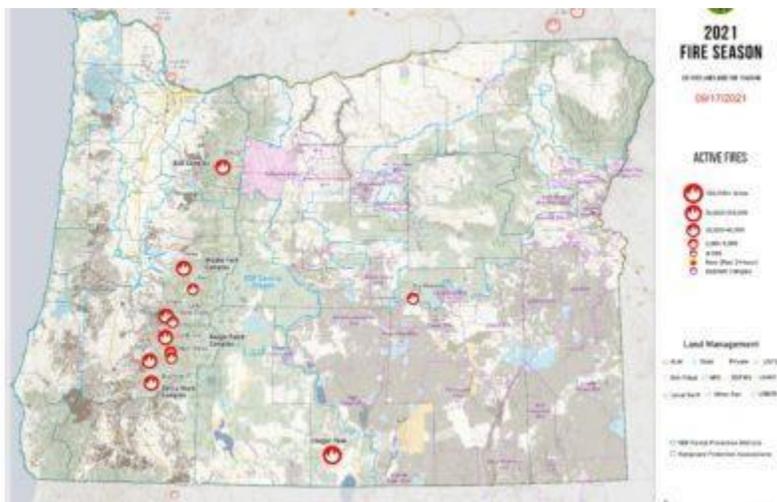
feed the country and keep our economy moving. The lack of water is forcing farmers to leave swaths of land empty while revenues plummet.

In the case of multi-year droughts that we are now experiencing, soil moisture does not recover before the next growing season. In addition to surface water impacts, groundwater levels also do not rebound. These factors set the stage for poor grazing, fewer crops, and forest fires, as well as necessary streamflows for fish.

We are seeing similar impact on our forests from drought conditions. Dying Douglas firs have been a common sight in western Oregon, exacerbated by drought and disease stress.

Wildfire

Oregon has experienced year after year record-breaking wildfires that threatened communities, businesses and ecosystems. In 2020, over one million acres were burned from a number of wildfires, mirroring the drought conditions that year. So far in 2021, there have been 24 large fires burning 503,913 acres. Given the severity of wildfires, the 2021 legislature enacted SB 762, which is intended to develop a statewide fire map and define defensible space standards to protect vulnerable areas from fire. The law also requires electric utilities to ensure safe operation both prior to and during fires. Funding will be made available to groups and property owners to manage resources to diminish vulnerability from fires. The legislature funded over \$200 million for the 12 programs under SB 762.



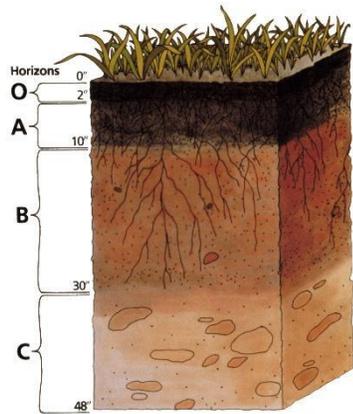
ODF/OSFM fire report for Sept. 23, 2021

Fires in the last 5 years have impacted farm and forest land creating significant economic damages. In addition, fire significantly affects soil properties because organic matter located on, or near, the soil surface is rapidly combusted. The changes

in organic matter in turn affect chemical, physical and microbiological properties for the underlying soil.

SOIL DEGREDEATION

The threat of soil degradation to natural and working lands occurs not only from the impacts of fire. Soil degradation, the loss of land's production capacity in terms of loss of soil fertility, soil biodiversity, and degradation, can be caused by unsustainable agricultural or forestry practices and long-term climatic impacts. According to a recent



report recent report to the United Nations, almost one-third of the world's farmable land has disappeared in the last four decades. It was also reported that all of the World's topsoil could become unproductive within 60 years if current rates of loss continue. Soil sequestration practices (see later section on Regenerative Farming and Sequestration Practices) can slow degradation.

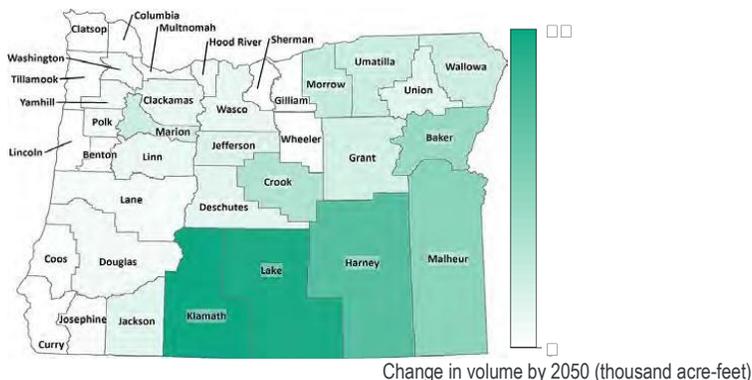
SUSTAINABLE MANAGEMENT PRACTICES

Sustainable management practices for both agriculture and forestland will need to be implemented to decrease the risk that may occur in the future. Farmers have implemented holistic systems such as integrated pest management and rotational grazing. They have also embraced new technologies. A suite of management processes that reduce soil disturbance through minimum tillage, maintenance of crop residue in the soil following harvest, and crop rotation are among tools available for sustainable management. Such practices reduce erosion through increased groundcover, improve soil moisture and nutrient retention while lowering machinery, labor and maintenance costs. Tools of regenerative agriculture reduce input costs as well as fertilizer and chemical use while improving profits and reducing environmental impact.

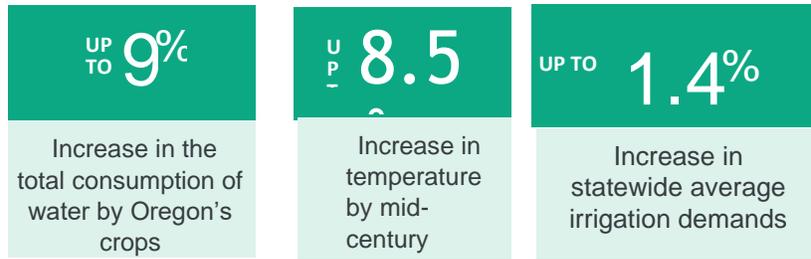
DIMINISHING WATER SUPPLY

The lack of snowpack continues to deplete the water supply. Even though it is estimated that with climate conditions there will be more rain, it is the snowpack melting from the mountains that stabilizes the supply. The long-term outlook for water supply as depicted by these charts from the Oregon Water Resources Department tells the story of what may be coming in regard to agricultural water supply. Oregon could be faced with a need for 1.3 million additional acre-feet per year to meet statewide agricultural water needs by the year 2050. Changes in agricultural water demand are expected from a range of possible changes in the climate that result in: prolonged agricultural growing seasons, increased day-to-day crop water consumption, and a larger annual water demand for sustaining Oregon's current agricultural lands.

CHANGES TO COME by 2050

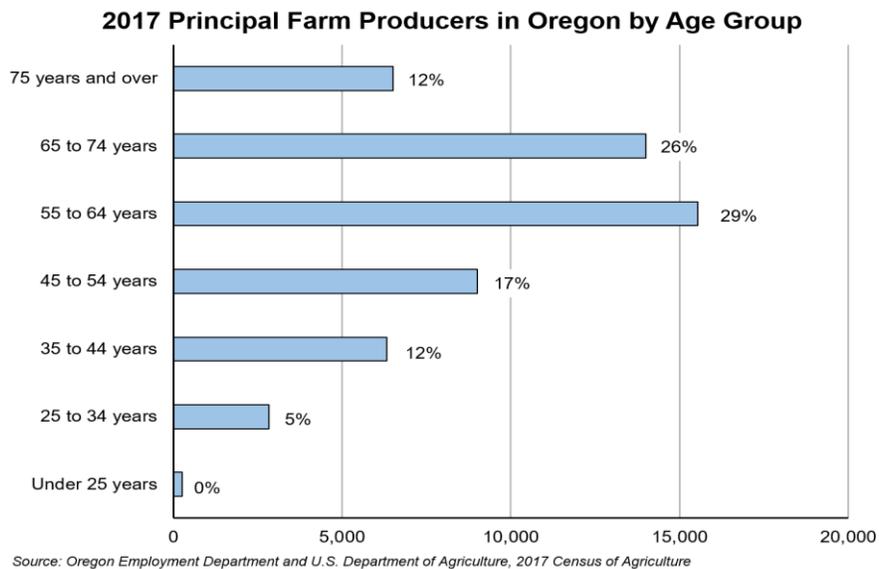


INCREASES IN AGRICULTURAL DEMANDS



LACK OF SUCCESSION PLANNING

According to the Agricultural Census produced in 2017 for Oregon, the age of farm producers was 58.9 in that year. Wheeler County's average age was 63.8, while



Farmers 55 years of age and older represent 66% or about 2/3 of all farmers. This compares to 23% of workers across all other industries. The concern is that there could be a major turnover in land management when many of Oregon's farmers and ranchers may consider leaving the farm. Beginning farmers find it difficult to step into the industry given the cost of land and the necessary equipment purchases. Harney County averaged 55.6 in age, for example. Producers aged 55 to 64 represented about 29% of all producers, as the following chart details.⁹ (Refer to Succession planning in the funding section of this guidebook in the Oregon Agricultural Heritage Program.

⁹https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Census_by_State/Oregon/index.php

Section 2: Building a District Working Lands Programs

As a district considering whether to develop a working lands program, what components need to be addressed in your planning process? In Section 5 of this guidebook, three districts have outlined their experiences and decision-making process for setting up their own programs. Their examples share what works, what doesn't, lessons learned and other useful information that form a basis for discussion.

District Authorization to Hold Easements

Oregon Revised Statute 271.715(3) authorizes a “**holder**” of easements as “The state, any county, metropolitan service district, **soil and water conservation district**, tribal entity, city or park and recreation district”. Those entities can hold a conservation easement “acting alone or in cooperation with any federal or state agency, public corporation or political subdivision.” ORS 271.715(1) states a “ ‘**Conservation easement**’ means a nonpossessory interest of a **holder** in real property imposing limitations or affirmative obligations the purposes of which include retaining for protecting natural, scenic, or open space values of real property, ensuring the availability 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”. Land trusts may also hold easements under other statutes and regulations.



A number of districts are being approached by landowners seeking to secure working land or other easements on their property. Some landowners seek to have the district acquire their property as they don't have children to inherit their property. If your district wants to take advantage of holding an easement or other land agreements, there are a number of issues the district needs to address.

Working in Partnership with a Land Trust or Going it Alone?

A district may want to ease into a program by beginning its program through a partnership with a land trust that can provide the professional services, expertise and guidance while allowing the district to eventually hold the easement. Section 3 of this guidebook provides information on partnering. Various land trusts have particular focus or geographic areas in which they operate. The Oregon Agricultural Trust (OAT), for example, focuses on working land easements and acquisitions so that agricultural activities can continue on the land. It's important for partner land trusts have an understanding of working lands and a farming philosophy to protect the land and complement the conservation work districts are perhaps already doing on the property.

In Section 5 you will see the example from Clackamas SWCD that involved a land trust, a federal grant, a loan process, partners, and a community advisory committee. This project is an acquisition of property with eventual ownership by the district. East Multnomah SWCD cites their experience in Section 5 in holding both acquisitions and easements. East Multnomah has developed an alternative process of buy-protect-sell, developing easements through temporary fee ownership rather than outright acquisition.

Developing a District Program

Whether the district decides to work with a land trust partner or within its own process, the district needs to discuss, plan, and implement its strategy for a program.



Often the first step is to put together a committee of district board members and employees who will be part of the program and determine:

- Does the district have the financial capability to provide staff support for a program, with or without a partner?
- Does the district have the ability to monitor the property to assure it meets the terms of the easement or purchase?
- Does the district have the ability to maintain the property if it is an acquisition or if the easement requires the district to maintain it?
- Does the district have staff to seek funding resources for properties?
- Does the district workload allow staff time to develop and take part in an easement or acquisition program?
- Can the district develop an outreach program for landowners to educate them regarding easements and acquisitions and create public support and identification of potential projects?

In addition, the district will need to:

- Contract with professional services to complete transactions (accounting, appraisal, surveying, etc.)
- Develop procedures for administration and implementation for the program
- Develop forms, such as a rating form to make choices
- Determine a management or business plan to support the program



An agreement between the district and a landowner for a conservation easement or acquisition could involve a funding mechanism to provide the maintenance and district oversight in the agreement through definition of responsibilities and funding. Land acquisitions in the Yamhill SWCD identify funding for long term maintenance, for example.

Consider priorities of which lands the districts wants to protect, such as these examples:

- Adjacent to developed areas that may need to be protected in order to avoid development
- On high-value farmland
- Meet the district's criteria and may be more amenable to acquiring because of experience with the landowner; landowner cooperativeness; those with secondary amenities (white oak, for example); landowners already involved in conservation programs
- Fit a funding category that is available to the district
- Subject to ballot measure 37 or 49, having grandfathered development rights that could be used in the future
- Readily available on the market as an opportunity investment
- Property consistent with district's mission and goals
- Adjoining landowners or community members supportive of the project
- Permitted use under Oregon Land Use Law
- Potential to fragment land areas within the district
- Protection as part of a succession plan
- Protect food systems as agriculture land continues to diminish



The conservation easement or acquisition process requires the use of professional services for appraisal, legal services, perhaps, surveying, or other needs. Those will have a cost that must be borne as part of the transaction. The cost of acquiring the easement or acquisition, the long-term monitoring and maintenance, legal enforcement costs and other unanticipated long-term costs must be considered. The district's current relationship with the landowner may be a part of the decision process.

Landowners will need to determine before an agreement can be reached with the district or land trust what items the landowner wants to protect or exclude from the transaction, such as these potential identified items:

- Disposition of water rights
- Protection of home site and buildings
- Consideration of tax credits and other tax benefits
- Mineral rights



Surveys, may be required to determine the location of the land to be included in the easement as well as defining the exception areas.



What other terms are important to the parties must be determined because once the agreement is in place it is difficult to make future changes:

- Terms regarding assumption of ownership and conditions regarding resale
- Specifications on how working lands for agriculture or forestry are to be implemented on the property
- Other natural resource protections that may be included (stream buffers for water quality, etc.)
- Agreements related to carbon sequestration regarding marketing value



In addition to working land easements, there are a number of other restoration values that could be included in an easement, or as an alternative to a working lands easement to still protect the proper from future development:

- Open space to protect viewscales
- Sustainability of the rural economy and lifestyle
- Protection of economic benefits
- Wildlife or fishery habitat protection
- Rehab of wetlands or other natural resource features

Section 3: Working with Land Trust Partners

What is a Conservation Easement?

The most traditional tool for conserving private land, a “conservation easement” (also known as a conservation restriction) is a legal agreement between a landowner and a land trust or government entity that permanently limits uses of the land in order to protect its conservation values. Easements are tailored to the interest of the property owner. Landowners can continue to own and use their land, and they can also sell it or pass it on to heirs. When you enter into a conservation easement, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners also will be bound by the easement’s terms.

The holder of the easement is responsible for verifying and sometimes enforcing the terms of the easement through legal remedies. This is managed through “stewardship” and monitoring by the holder of the easement. Conservation easements offer great flexibility in what outcomes can be achieved through specific restrictions and prohibitions. An easement on property containing rare wildlife habitat might prohibit any development, for example, while an easement on a farm might allow continued farming and the addition of agricultural structures as part of a “working lands easement.” An easement may apply to all or a portion of the property and does not need to require public access. An easement may also provide certain tax incentives. A working lands easement may be part of a succession plan or estate development.

Who has authority to hold a Conservation Easement?

Under Oregon Revised Statute 271.715(3) authority to be a “**holder**” of easements can be “The state, any county, metropolitan service district, **soil and water conservation district**, tribal entity, city or park and recreation district”. Those entities can hold a conservation easement “acting alone or in cooperation with any federal or state agency, public corporation or political subdivision.” ORS 271.715(1) states a “**Conservation easement**” means a nonpossessory interest of a **holder** in real property imposing limitations or affirmative obligations the purposes of which include retaining for protecting natural, scenic, or open space values of real property, ensuring the availability 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”. Land trusts may also hold easements under other statutes and regulations.



What is a Land Trust?

A land trust is a charitable organization that acquires land or conservation easements to achieve one or more conservation purposes. Protecting natural habitat, water quality, scenic views, or other natural resources is the goal of non-profit land trusts. Easements can be on natural lands, or they can occur on farm and forestlands, allowing landowners to take advantage of the economic benefits of farming or forestry operations. Land trusts are generally accredited with the Land Trust Accreditation Commission (www.landtrustaccreditation.org) that requires strong standards verified by an independent body. Land trusts have access to Terrefirma insurance to defend conservation easements from legal challenges. *Land Trust Standards and Practices* guide the work of land trusts.

Why work with a Land Trust Partner?

Land trusts can collect, solicit, and manage private donations that can be applied to specific projects. Donations of land, or easements on private land, may be tax deductible and may also produce future estate and property tax savings for the donor, subject to the limits of the tax laws. Land trusts can also act as the enforcing conservation entity on deed restrictions and are experienced in the drafting and monitoring of restrictions. A conservation district partnering with a land trust can avail the district with the expertise, financial and legal mechanisms to secure easements if the district chooses to secure those additional services rather than provide them itself.

A conservation district may choose to work with a land trust partner when beginning its working lands program to take advantage of the expertise of a land trust.

What tasks do Land Trusts perform?

- Seek donations or grants to fund an easement
- Arrange appraisal determination
- Review tax consequences
- Prepare a legal agreement with restrictions agreed among the parties
- Investigate the land title and perform recording
- Provide active monitoring

More information is available in the Coalition of Oregon Land Trusts legal library: <https://oregonlandtrusts.org/legal-document-library/>

Examples from COLT Legal Resources Library

- Sample agriculture easement
- Assignment of rights
- Natural resource easement
- Donation agreement
- Escrow instructions
- ACEP/ALE deeds
- Purchase and sales agreement
- Request for proposals
- Term sheet
- Option agreement

- Title insurance guidelines
- Trail easement
- Wetland mitigation bank easement



LAND TRUSTS IN OREGON

OREGON AGRICULTURAL TRUST

The Oregon Agricultural Trust was formed in 2020 to help Oregon farmers and ranchers permanently protect their land while keeping it in production. In return farmers can receive a charitable tax credit and/or cash which may be useful in succession planning or expansion of the farm's business. The organization (OAT) was founded by farmers, ranchers, and ag land preservation stakeholders. OAT also partners with other organizations to help landowners complete **working lands easements**. Landowners may either donate property or convey a working land easement to remove development rights that interfere with farming.

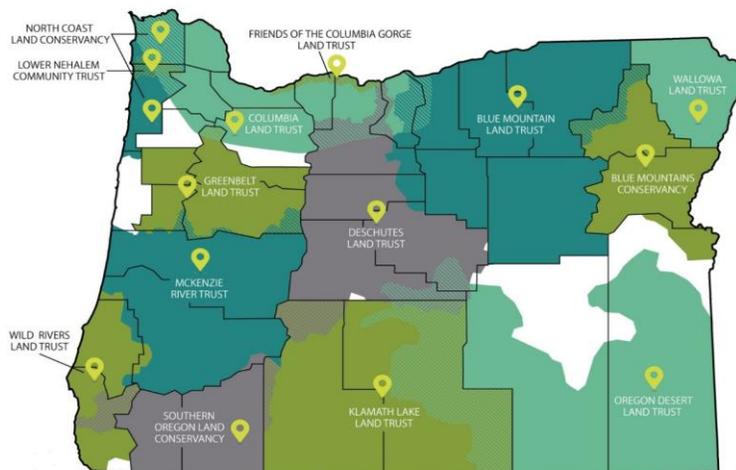
Office: P.O. Box 7359, Salem, OR 97303 **Phone:** 503.835.2683

Email: hello@oregonagtrust.org **Website:** www.oregonagtrust.org

COALITION OF OREGON LAND TRUSTS

The Coalition of Oregon Land Trusts, known as COLT, represents 15 regional land trusts in its membership. Associate members include some SWCDs and other community associations.

Where are Land Trusts Located in Oregon?



REGIONAL LAND TRUSTS

COAST

LOWER NEHALEM COMMUNITY TRUST

<https://oregonlandtrusts.org/land-trust/lower-nehalem-community-trust>

NORTH COAST LAND CONSERVANCY

<https://oregonlandtrusts.org/land-trust/north-coast-land-conservancy/>

WILD RIVERS LAND TRUST

<https://oregonlandtrusts.org/land-trust/wild-rivers-land-trust/>

PORTLAND METRO

COLUMBIA LAND TRUST

<https://oregonlandtrusts.org/land-trust/columbia-land-trust/>

FOREST PARK CONSERVANCY

<https://oregonlandtrusts.org/land-trust/forest-park-conservancy-colt/>

COLUMBIA GORGE

FRIENDS OF THE COLUMBIA GORGE LAND TRUST

<https://oregonlandtrusts.org/land-trust/friends-of-the-columbia-gorge-land-trust/>

WILLAMETTE VALLEY

GREENBELT LAND TRUST

<https://oregonlandtrusts.org/land-trust/greenbelt-land-trust/>

McKENZIE RIVER LAND TRUST

<https://oregonlandtrusts.org/land-trust/mckenzie-river-trust/>

SOUTHERN OREGON

KLAMATH LAKE LAND TRUST

<https://oregonlandtrusts.org/land-trust/klamath-lake-land-trust/>

SOUTHERN OREGON LAND CONSERVANCY

<https://oregonlandtrusts.org/land-trust/southern-oregon-land-conservancy>

CENTRAL OREGON

DESCHUTES LAND TRUST

<https://oregonlandtrusts.org/land-trust/deschutes-land-trust/>

OREGON DESERT LAND TRUST

<https://oregonlandtrusts.org/land-trust/oregon-desert-land-trust/>

EASTERN OREGON

BLUE MOUNTAIN LAND TRUST

<https://oregonlandtrusts.org/land-trust/blue-mountain-land-trust/>

WALLOWA LAND TRUST

<https://oregonlandtrusts.org/land-trust/wallowa-land-trust/>

STATEWIDE LAND TRUSTS

CENTER FOR NATURAL LANDS MANAGEMENT

<https://oregonlandtrusts.org/land-trust/center-for-natural-lands-management/>

DUCKS UNLIMITED

<https://oregonlandtrusts.org/land-trust/ducks-unlimited/>

PACIFIC FOREST TRUST

<https://oregonlandtrusts.org/land-trust/pacific-forest-trust/>

THE CONSERVATION FUND

<https://oregonlandtrusts.org/land-trust/the-conservation-fund/>

THE NATURE CONSERVANCY

<https://oregonlandtrusts.org/land-trust/the-nature-conservancy/>

THE TRUST FOR PUBLIC LAND

<https://oregonlandtrusts.org/land-trust/the-trust-for-public-land/>

THE WETLANDS CONSERVANCY

<https://oregonlandtrusts.org/land-trust/the-wetlands-conservancy/>

WESTERN RIVERS CONSERVANCY

<https://oregonlandtrusts.org/land-trust/western-rivers-conservancy/>



COALITION OF OREGON TRUSTS (COLT)

WWW.OREGONLANDTRUSTS.ORG

OTHER RESOURCES – NATIONAL

AMERICAN FARMLAND TRUST <https://farmland.org/>



LAND TRUST ALLIANCE
<https://www.landtrustalliance.org/>



Section 4: Funding Programs Available for Conservation Easements and Acquisitions

There are a variety of funding mechanisms available to support entities wishing to finance conservation easements or acquisitions. The choice of source will depend on the qualifications of the entity seeking financing, the amount of required cost share, and other conditions for the particular agreement. Programs for financing are not always fully funded so the time in which financing is acquired will also factor into what may be available.

FEDERAL

Land and Water Conservation Fund (LWCF): U.S. Department of Interior



The Land and Water Conservation Fund is based on \$900 million in revenue deposited into a designated account in the U.S. Treasury each year. The fund was established in 1964. Congress does not generally appropriate full funding each year. When the program was reauthorized in 2019, recent results showed about 2/3 of the funding was diverted to other programs. The LWCF is an umbrella act for several federal programs. Using zero taxpayer dollars, the fund invests earnings from offshore oil and gas leasing to help strengthen communities, preserve our history and protect our national endowment of lands and waters.

LWCF supports voluntary conservation partnerships with private landowners that help keep working farms, forests and ranches in production while supporting rural communities across America. Many of the grants are funded at the state and local level by the LCWF, or they may be funded through the federal agencies partnering in the program: U.S. Fish and Wildlife Service, National Parks Service, Bureau of Land Management and the U.S. Forest Service. <https://www.doi.gov/lwcf>

Forest Legacy Program: U.S. Forest Service

Funded through the LWCF, the Forest Legacy Program has been administered by the U.S. Forest Service since 1990. The program has funded financial incentives to landowners to protect forest areas that are threatened by conversion to development and non-forest uses. Conservation easements on a voluntary basis from interested landowners are encouraged and supported through the program. Representative projects can be viewed at the legacy program website. Oregon and Washington projects were funded in 2021. Grant applications for 2022 are now open.

<https://www.fs.usda.gov/managing-land/private-land/forest-legacy>

Community Forest Program: U.S. Forest Service

The Community Forest and Open Space Conservation Program (Community Forest Program) of the Forest Service offers an opportunity for communities to acquire and

conserve forests that provide public access and recreational opportunities, protect vital water supplies and wildlife habitat, serve as demonstration sites for private forest landowners, and provide economic benefits from timber and non-timber products.

This program is for acquisitions only. Community forests can be owned by local governments, tribal governments and qualified nonprofit entities. The program provides 50% of the project costs and requires a 50% non-federal match. Public access is required for projects funded under this program. Lands acquired through the program



are actively managed in accordance with a community forest plan. Several Washington and Oregon projects have been funded under this program.

The Clackamas Soil and Water Conservation District funded the 319 acre Eagle Creek Community Forest in 2018 under this program with \$550,000 from the program and a loan from an entity providing financing to local governments for

\$750,000 at a low interest rate. The Trust for Public Lands was a partner in acquiring the project. <https://www.fs.usda.gov/managing-land/private-land/community-forest>

Grassland Easements: U.S. Fish & Wildlife

Grassland easements through the U.S. Fish and Wildlife Service pay the landowner to permanently keep their land in grass. Land protected by a grassland easement must not be cultivated. Haying and mowing must be delayed until after July 15 each year to



protect grassland habitat for nesting species. The land must be within a county approved for these easements where habitat for species is of value. Priorities include lands with most valued habitat or wetlands, or lands most likely to be converted to cropland.

https://www.fws.gov/refuge/waubay_wmd/easements/grassland.html

America the Beautiful

In January 2021 the Biden Administration endorsed the goal of protecting 30% of the nation's lands and waters by 2030 to conserve biodiversity, protect natural resource value lands and curb greenhouse gas emissions. This act is also known as "30 x 30". Between 2001 and 2017 the U.S. lost more than 24 million acres to development. Today just 12% of U.S. land (both public and private) is protected. As directed by President Biden's Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, the Department of the Interior has partnered with the Departments of Agriculture, Commerce, the National Ocean and Atmospheric Administration, and the

White House's Council on Environmental Quality to develop initial recommendations on how to advance an inclusive and collaborative conservation vision.

Federally deductible conservation easements are one of the important programs that can be funded under this program. The program recognizes the strong stewardship tradition on working lands among ranchers, farmers and forest owners by supporting collaborative and voluntary conservation efforts on working lands and other natural resource valued lands. The program would provide new resources to landowners for programs provided by the U.S. Department of Agriculture and agencies under the U.S. Department of Interior and the U.S. Department of Commerce. Additional program funding is anticipated to be made available soon as the program unfolds.

<https://www.doi.gov/priorities/america-the-beautiful>

Farm Bill Programs

By far the largest source of federal funding for conservation generates from the 2018 Farm Bill, supporting conservation easements on farmland, rangeland, forestland and grasslands, as well as other natural resource lands. In addition, programs under the Farm Bill support sustainable land management practices.

For programs including easements, please contact Chris of the Oregon NRCS office:

Chris Chapa, Easement Program Specialist

Email: chris.chapa@usda.gov

Phone: 503-414-3248

Major Farm Bill programs that provide for funding of easements and acquisitions are the

- Healthy Forest Reserve
- Agriculture Conservation Easement Programs: ACEP/ALE
- Conservation programs that can support easement work such as EQIP and RCPP

<https://www.nrcs.usda.gov/wps/portal/nrcs/main/or/programs/farmbill/>

Healthy Forest Reserve

The purpose of the Healthy Forests Reserve Program (HFRP) is to assist landowners, on a voluntary basis, in restoring, enhancing and protecting forestland resources on private lands through easements, 30-year or 10-year cost-share agreements.



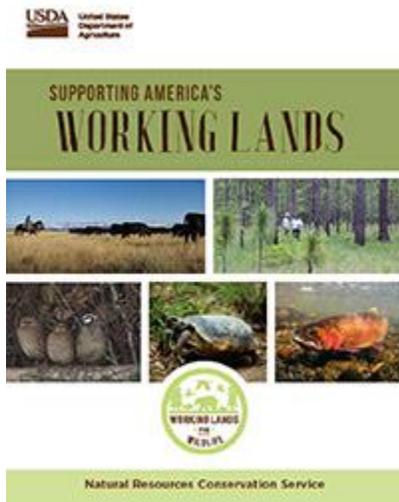
The objectives of HFRP are to promote the recovery of endangered and threatened species under the ESA, to improve plant and animal biodiversity, and to enhance carbon sequestration. Eligible lands include private or Tribal lands which meet these objectives.

There are 3 different options:

- 10-year restoration cost-share agreement; landowner receives 50% of the average cost of the approved conservation practices;
- 30-year easement; landowner receives 75% of the easement value of the enrolled land plus 75% of the average cost of the approved conservation practices; and
- 30-year contract on acreage owned by Indian Tribes
- Permanent easements providing 100% of the easement value of the enrolled land plus 100% the average cost of the approved conservation practices.

NRCS Oregon has a history of working in HFRP for the restoration of habitat. Recent projects have focused on the Northern Spotted Owl habitat as a federally listed species. Partners include the U.S. Fish and Wildlife Service and the Oregon Department of Forestry. In 2021 NRCS and the partners are focusing specifically on restoration agreements with non-industrial private landowners and Tribes.

Working Lands for Wildlife



This program targets conservation efforts to improve agricultural and forest productivity enhancing wildlife habitat on working lands. NRCS provides technical and financial assistance to participants who voluntarily make improvements on their lands, in partnership with the U.S. Fish and Wildlife Service. Landowners are provided the means to make on-the-ground improvements that also benefit habitat of threatened or endangered species.

To date the WLFW has helped landowners conserve more than 7.1 million acres of wildlife habitat while protecting ESA species. The program was expanded in 2017.

In Oregon the program has been a tool for protecting the Greater Sage Grouse. NRCS programs that were used to implement WLFW included RCPP (Regional Conservation Partnership Program) and EQIP (Environmental Quality Incentives Program), among others.

The Agricultural Conservation Easement Program

The Agricultural Land Easements Program (ACEP-ALE) is a voluntary program of the Natural Resources Conservation Service (NRCS). The purpose is to protect working lands by limiting non-agricultural purposes. Agricultural Land Easements protect the long-term viability of the nation's food supply by preventing conversion of productive working lands. Land protected by agricultural land easements provides additional public benefits, including environmental quality, historic preservation, wildlife habitat and protection of open space.

Established in 2014, NRCS partners with applicants from local and state governments, Tribal entities and certain nongovernmental organizations such as land trusts who arrange for the purchase of development rights through conservation easements on private lands. The entity holds and manages these easements in perpetuity.

To enroll land through agricultural land easements, eligible partners may submit proposals to the NRCS state office to acquire conservation easements on eligible land.

NRCS generally contributes up to 50% of fair market value on approved parcels. Parcels are ranked within the program on their own merits and priorities are established for funding in a statewide competitive process. Entities applying must provide the cost of appraisals, surveys as needed, title search, and legal and closing costs, and will be required to monitor and enforce the easement. Currently conservation easements on funded parcels must close by March 31, 2024. Entities must bear the cost of appraisals, surveys when needed, title search, legal and closing costs, and monitoring and enforcement of the easement.

Eligibility requires

- a commitment to long-term conservation of agricultural lands
- a capability to acquire, manage, and enforce easements
- sufficient staff dedicated to monitoring and easement stewardship
- the availability of matching funds

Criteria: Eligible land must

- be privately owned
- must meet at least one of the four following requirements:
 - contain at least 50% prime, unique, statewide, or locally important farmland
 - contain historical or archeological resources
 - protect grazing uses and related conservation values
 - further a State or local policy consistent with the purposes of the program
- be the subject of a pending offer from the entity
- contain cropland, grassland, pastureland, or forest land that contributes to the economic viability of an agricultural operation
- not include forest land of greater than two-thirds of the easement
- possess on-site and off-site conditions which will allow the easement to be effective in achieving the purposes of the program

- the eligibility of the land and the landowner for each parcel must be established at the time the parcel is submitted for potential funding.

Oregon's participation in the program has been minimal because there is not a state cost share here as there are in many of the states who have received grants for projects. (See the OAHP program later in this document which is an attempt to obtain a cost share to provide Oregon with workable opportunities to take part in the program.)

Additional cooperative programs are cited at <https://www.nrcs.usda.gov/wps/portal/nrcs/main/or/programs/financial/>

REGIONAL PROGRAMS

Bonneville Power Administration:

Willamette Wildlife Mitigation Program (WWMP)

BPA works with land conservancies, tribes, states and others to identify and protect key parcels for wildlife habitat. Land acquisitions or conservation easements to protect these parcels are negotiated with applicants. The conservation easements can include working lands agreements so that timber harvest, farming or cattle ranching can continue as compatible with the fish and wildlife habitat goals of the property. Applicants also improve the land as needed, removing noxious weeds and replacing them with native vegetation, installing fences or providing other actions that preserve the land for wildlife habitat.

The Fish and Wildlife Lands Deskbook helps guide BPA staff in acquiring, managing, monitoring and protecting property interests that benefit fish and wildlife. Refer to the Lands Deskbooks features:

[The Lands Deskbook \(pdf\)](#)

[The Lands Deskbook Appendices \(word\)](#)

[The Lands Deskbook Combined \(pdf\)](#)



BPA signed an agreement with the State of Oregon in 2010, The Willamette River Basin Memorandum of Agreement Regarding Wildlife Habitat Protection and Enhancement, to establish goals for mitigation in cooperation with BPA. The agreement requires them to jointly acquire at least an additional 16,880 acres of wildlife mitigation property to protect 26,537

Funding for the program comes from BPA's electric ratepayers. There is also a long-term fund for habitat maintenance for the program when the agreement expires.

A list of easements and acquisitions can be seen at https://www.dfw.state.or.us/wildlife/willamette_wmp/index.asp.

STATE PROGRAMS

Oregon Watershed Enhancement Board (OWEB)

The following entities are able to hold OWEB-funded interests in land or water, as long as the entity continues to use the land for the purposes specified in the constitution:

- Local, state, and federal agencies
- Tribes
- Not-for-profit land conservation organizations and trusts
- State institutions of higher education; and
- Independent not-for-profit institutions of higher education or political subdivisions of the state.

Generally, easements or acquisitions need to provide benefits to maintain or restore watersheds and habitat for native fish or wildlife. A management plan is required consistent with the guidelines. If a conservation easement allows farming, ranching forestry or other economic uses, the management plan must address the economic uses and specifically address how the activities will be carried out in a manner that clearly protects the property's conservation values.

A working land easement protects the property's conservation values while maintaining the right of the grantor to use the land for specified farming, ranching or forestry activities that are consistent with the purpose of the conservation easement. OWEB encourages applicants for working land easements to show zones for each type of use or protection so that conservation uses are not diminishing the habitat protection needs.

A 25% match is required for any easement or acquisition project. Costs incurred may in some instances qualify as part of the match.

Instructions and examples can be viewed at the OWEB acquisitions page: <https://www.oregon.gov/OWEB/grants/Acquisitions/Pages/land-acquisitions.aspx>



Oregon Agricultural Heritage Program (OAHP)

More than one-quarter of Oregon's 63 million acres are private working lands that produce agricultural crops valued at close to \$6 billion annually, the state's second largest economic driver. These same lands protect fish and wildlife habitat and other resources. Yet these lands are threatened by development and by loss in succession of ownership when there are no immediate heirs to take over the operation of these farms and ranches. (See threats to farm and forest lands in the first section of this guidebook.)

Legislation

In 2017 the Oregon legislature passed the Oregon Agricultural Heritage Program establishing grant programs to support working farms and ranches while also maintaining or enhancing fish and wildlife habitat and other natural resource values. Programs identified in the legislation include:

Direct Grants

- Working land conservation covenants that protect working lands from development for 20-50 years
- Working land conservation easements that permanently protect working lands
- Annual payments for 20-50 years to implement conservation management plans
- Succession planning to assist agricultural landowners with succession planning.

Technical assistance grants

The program establishes a technical assistance grant program to improve capacity of entities that enter into agreements to hold plans, covenants, and/or easements.

Oregon Agricultural Heritage Fund

The fund would cover the grants listed above.

Legislative Policy and Research Office

The policy and research office is directed to study the effects of Oregon's tax policy on agricultural land transfer and succession planning.

Oregon Agricultural Heritage Commission

The commission is established to oversee the program and make funding recommendations to the Oregon Watershed Enhancement Board (OWEB).

The 2017 legislation only provided funding for the commission to set up the program. Rules for the program were developed in 2019 at Oregon Administrative Rules, Chapter 698, Division 15.



Ranking Criteria for Projects

- Extent to which the project would protect, maintain, or enhance farming or ranching on working lands
- Extent to which the project would protect, maintain or enhance fish or wildlife habitat, improve water quality or support other natural resource values
- Extent to which the project would protect agricultural outcomes, benefits or other investment gains
- Capacity and competence of the organization that filed the application on behalf of the project
- Extent to which the benefit to the state may be maximized based on the ability to leverage other grant moneys with other funding sources and on the duration and extent of the project; and
- Extent and nature of the project impacts on owners or operators of neighboring lands.

Grant Requirements

- Matching contributions in cash or in-kind services
- Meeting technical committee review as established by the OAHP commission
- Evaluation based upon statutory and regulatory ranking criteria (as above)
- Review and recommendation for funding by the OAHP Commission to the OWEB Board for concurrence of funding

Current Status of OAHP

The Commission has been formed and acting, passing rules in 2019 for the program's operation. However, the legislature has not funded the program yet, mainly due to a misunderstanding of the program's intentions in the 2019 session. The original group of supporters will be working to secure funding in the 2022 and 2023 sessions. The Oregon Global Warming Commission and OWEB have discussed the potential of adding the carbon sequestration program to OAHP in the future. That may secure more support for the program to move forward.

A feasibility document entitled "[Review and Feasibility Determination of Methodologies for Valuing Agricultural Conservation Management Action](#)" produced by Highland Economics of Portland was requisition by OWEB. It discusses various practices that benefit the environment that farmers and ranchers might undertake under an OAHP program, including carbon sequestration to mitigate for climate change.

LAND TRUSTS

Land trusts also have the capability of financing projects through donations or grants they receive. See “Land Trust Partners” later in this guidebook.

Section 5

The following examples from Soil and Water Conservation Districts identify projects their districts have secured through their easement and acquisition programs.

- Clackamas Soil and Water Conservation District
Jason Faucera
- East Multnomah Soil and Water Conservation District
Andrew Brown
- Yamhill Soil and Water Conservation District
Larry Ojua



CLACKAMAS SOIL AND WATER

CONSERVATION
DISTRICT

Good dirt. Clean water.

DISTRICT NAME: Clackamas SWCD

WORKING LANDS PROGRAM OVERVIEW: Easements and acquisitions are tools that Clackamas SWCD has only more recently considered for achieving conservation goals. Over the past five years, the District has operated in the easement and acquisition space without a formal program and instead has relied on their Working and Natural Lands Protection Committee to evaluate and make recommendations on these projects to the full board.

As the District's obligations to manage easements and acquisitions have grown with the purchase of their 15-acre farm in Beavercreek where they now house their staff, a 317.7 acre working community forest, and holding a Willamette Wildlife Mitigation Program conservation easement on a forested property in the community of Colton, the District has recently considered formalizing a program around working and natural lands protection.

Recently the committee went through the exercise of considering desired internal and external outcomes across 9 categories that a formal program might look to realize:

- Land Protection
- Habitat Improvement Investment Protection
- Working Lands Conservation and Stewardship
- Generational Land Transfer
- Climate Impact Reduction and Carbon Sequestration
- Diversity, Equity, Justice, and Inclusion
- Community Engagement and Education
- Advocacy and Policy Development
- Organizational Capacity

From those categories, desired outcomes were sorted based on their relative interest across the committee and grouped into tiers to facilitate future conversations. Here are some of the outcomes that generated the most support within the committee:

- Develop a management plan and related policy statements for land protection
- Have staff and systems in place to deliver a comprehensive district program
- Coordinate heavily with partners to achieve strategic impacts
- Develop scoring systems for decision making in acquisition and/or protection
- Reach out to the community to understand their priorities around working and natural lands protection
- Consider easements as a tool for long term protection of District restoration sites

- Seek opportunities that combine restoration and production components of working lands
- Develop a proactive review process of land use issues, following up with policy actions that are moved to conversations with other Districts through OACD

Throughout all of these outcomes, the committee wants to infuse the District's efforts around Diversity, Equity, Justice, and Inclusion.

The District will be embarking on a District-wide strategic planning effort, and these early exercises to identify desired outcomes will factor into how a formal program might look. We'll have conversations with partners, the community, and other SWCDs as our process for considering acquisitions and easements evolves. Regardless of the final shape CSWCD's program takes, it's clear that the acquisitions and easements we've already taken on have shown that CSWCD considers acquisitions and easements as important tools for conservation.

PROJECT SPOTLIGHT: Eagle Creek Community Forest

TYPE OF PROJECT: Acquisition

PROJECT DESCRIPTION: In 2019, Clackamas Soil and Water Conservation District (CSWCD) acquired 317.7 acres of forestland to create the Eagle Creek Community Forest along Eagle Creek in Clackamas County, Oregon. The Forest has been established with a Community Forest Grant from the USDA Forest Service.

The objectives of the community forest are to:

1. Permanently protect this important forest property from residential development
2. Protect and enhance fish and wildlife habitat, water quality and other environmental benefits
3. Expand and enhance recreational benefits, including connections with adjacent conserved lands
4. Create opportunities for forest-based learning and community involvement in active forest management that can inform and support private forestland stewardship in Clackamas County
5. Generate periodic income from sustainable forest management to meet maintenance and restoration needs for the property and to support additional conservation efforts



The forest consists of Douglas-fir plantations that are relatively young with some small scattered older stands left over from previous harvests. Suter Creek runs through a portion of the property and is a productive salmonid stream with a stand of mixed hardwood and conifer that is at least 50 years old. Besides Douglas-fir, tree species present include bigleaf maple, red alder, and black cottonwood in riparian areas, bigleaf maple stump sprouts in young

plantations, and some western redcedar and western hemlock from natural regeneration.

In order to connect people with the land, the District will welcome the public for uses compatible with the mission and values of the District. The District will likely establish trails and will work with neighboring public and conserved lands to explore opportunities to expand access to a larger 1,300+ acre area.

PARTNERS:

- The Trust for Public Land
- US Forest Service
- Friends of Eagle Creek Watershed
- Eagle Creek Community Forest Advisory Committee (Clackamas County Parks & Forests, Clackamas River Basin Council, Oregon Department of Fish and Wildlife, Portland General Electric, Metro Regional Government, Oregon State University Extension, Eagle Creek National Fish Hatchery, US Fish & Wildlife Service)

HOW THE FOREST WAS PURCHASED: Plans for the acquisition of the forest were set forth by a small group of initial proponents comprised of neighboring private and public landowners. Marketed for sale as a potential home site, the threat to both upland and salmonid habitat would increase through infrastructure and home development. Additionally, purchase of this property created a block of over 1,300 acres of contiguous forest, managed by public and private entities with similar interests in sustainable forest and habitat.

These goals were expanded upon by the Community Forest Advisory Committee once the District decided to apply for a Community Forest Grant through the US Forest Service Community Forest Program. Once received, the Community Forest Grant requirements dictated much of the process to acquire the property.



The partnership we had with Trust for Public Land during the acquisition process cannot be understated. They were the go-between for the seller and CSWCD, negotiating the time needed to seek grant funding, conducting due diligence efforts such as the appraisal, and helping to manage the transaction by purchasing the property and transferring it to the District.

To facilitate the purchase, CSWCD sought a loan in the amount of the purchase price obtained on the full faith and credit of the District. We received a loan with favorable terms and used it, combined with the US Forest Service grant, to purchase the property in April 2019. We also retained the services of a land use attorney to ensure that all of the real estate, financing, and other considerations conformed to legal requirements.

Once the property was purchased, the District had 120 days to complete and submit a management plan to the US Forest Service as required by the Community Forest Grant. We formed the Eagle Creek Community Forest Advisory Committee and hired Trout Mountain Forestry to work with the committee to develop the management plan.

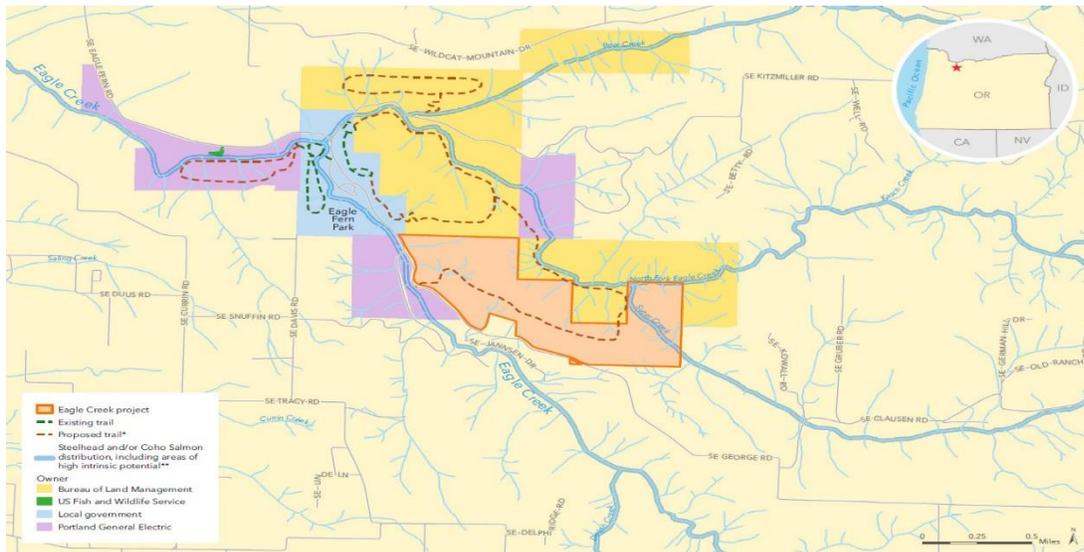
The District is currently managing the property to allow the forest, most of which is relatively young, to mature. Weed control efforts have been undertaken by CSWCD staff, and have focused on maintaining access roads for wildfire safety and fuels reduction with some smaller treatments for stand health.

A large woody debris project was completed in 2020 as part of a larger multi-year restoration effort on Suter and Eagle Creeks by the Friends of Eagle Creek group, adding additional habitat elements to an already productive and important salmonid stream.

Future work at the forest will consist of developing community recreational and educational opportunities focusing on sustainable forestry, climate resilience, and wildlife habitat.

OUTCOMES: Purchasing the Eagle Creek Community Forest with the US Forest Service Community Forest Grant has enabled the District to achieve the local community's goal of protecting the forest from development, providing an important piece of a larger contiguous forest with valuable terrestrial and aquatic habitat.

As we continue to manage the land for community benefits, we hope this forest will continue to evolve and allow us to share the benefits of good forest stewardship that



allows for wildlife and timber management to co-exist. We want the community forest to be a model of sustainable forestry and climate resiliency that we can share with a diversity of groups within the community, providing environmental, economic, and social benefits.

This outcome took over a year to fully develop and couldn't have been achieved without the investment of time and resources from critical public and private partnerships. A project of this magnitude would likely not have been possible had we not had those relationships in place.

LESSONS LEARNED: Since this project is only a few years old, most of our lessons learned revolve around the purchase of the property and around property ownership in general.

Some of the biggest challenges around a District owning property come in the form of drains on capacity and resources. Funding acquisitions and easements can be difficult, and while the district was able to secure a grant to offset a significant portion of the cost, the remaining portion was funded directly by the District. Purchases of this magnitude are an opportunity cost, and the time sensitive nature of a real estate purchase didn't allow for lengthy debate on how to move forward.

In addition, staff time has been diverted to care for the property, impacting existing programs and services to constituents. While the initial staff impacts have been manageable, future recreation and educational activities will increase as will the pressures of visitors and their impacts.

In order to own property, especially property that isn't occupied by staff on a regular basis, a risk management plan will need to be developed and implemented. Trespass and dumping occur with enough frequency to require additional staff and financial resources to address them.

As previously mentioned, having strong partnerships and a network of advisors who have experience with new areas of investment is essential. Our relationship with Trust for Public Land, community partners, agencies, land trusts, and other SWCDs enabled this project to become a reality.



You need to incorporate operational costs within the District budgeting process to offset land management costs over the long term with District owned property. Over time, the bulk of the cost of owning property will come in restoration, maintenance, public use planning, and staff activities. The plan for the Eagle Creek Community Forest is to harvest sustainably, bringing revenue that can be reinvested in the property, programs, and staff over time. Other types of purchases, even donated properties, will need to follow this same process to cover the cost of ownership such as endowments, grants, or private donations.

One final lesson learned was that committing to the community forest grant requirements also made it extremely difficult for the District to divest from the property. The grant required a clause be recorded in the property deed that requires CSWCD to pay the US Forest Service an equivalent the current sale price or the current appraised value of the parcel, whichever is greater if the property is ever sold or converted to a use inconsistent with the grant application.

Discussion: *What could OACD do to help you be more successful with easement/acquisition projects?*

East Multnomah SWCD



Working Lands protection program overview

EMSWCD started pursuing land protection efforts through easements and acquisitions in the late 2000's, in the years after the district got its tax base. At the time the Board established the Land Conservation Fund, a special capital fund created in the EMSWCD budget to support land protection efforts. The work is guided by the Land Legacy Committee, a committee of the board.

EMSWCD's Land Legacy Program has two primary focusses:

1. Protect high value agricultural lands to maintain a viable agricultural economy and improve watershed health and function, and
2. Protect high value natural resource lands to improve watershed health and function and increase access to nature.

EMSWCD has contributed to five park and natural area acquisitions within the district, including Nadaka Nature Park and the Grant Butte natural area in the City of Gresham. As the focus here is on working lands, the rest of the content will focus on the working farmland protection component of the program, focused on protecting high value farmland.

Why Farmland Protection? Threats to farmland and farming in EMSWCD.

Some of the threats to farmland and the viability of farming in the EMSWCD service area, that the Land Legacy Program aims to address, include the following:

Farmland conversion. Like most working lands protection programs, ESWCD aims to protect farmland from being converted and lost to agriculture, for residential or other development. Most of east Multnomah County's highest value soils are now under urban development. The Oregon Land Use program does an effective job of protecting resource lands, but it slows the loss of farmland, and doesn't stop it. There are also risks to the land use program like Oregon Ballot Measure 37.

Keep farmland in production. Being so close to the Portland metro area there is high demand for land from rural residential or rural estate buyers. The EMSWCD service

area has many examples of farm properties with large expensive homes, where little or no farming is taking place, and where farmland is not being used to its productive potential – so called “shadow conversion.”

Farm access and affordability. The limited supply of farmland and competition from the residential market has resulted in very high farmland prices, which are completely out of sync with expected revenues from agricultural production. This is true even for large profitable nurse operations. For first generation farmers, and those without the benefit of generational wealth, the prospect of farmland ownership is seemingly out of reach. Affordable access to farmland is even more acute for communities that have been negatively impacted by racial discrimination and dispossession.

Natural resource protection. From a natural resource conservation perspective, the agricultural operations in the EMSWCD service area vary widely. Soil erosion, soil health, and various water quality issues related to farming operations are concerns present in the EMSWCD service area.

EMSWCD’s approach to easements and acquisitions.

EMSWCD pursues its land conservation efforts through two primary mechanisms:

- Acquiring working farmlands easements on high value farmland from willing landowners, either through purchase or accepting donated easements, and
- Fee simple purchases of priority farmland that may be at risk of being lost to farming, that are then sold subject to a working farmland easement – so called buy-protect-sell.

Geographic focus. The geographic focus of the farmland protection efforts is the area east (outside) of the urban growth boundary (UGB) and the urban reserve. The urban reserve is an area outside of the UGB identified for future urban expansion. The rationale for this approach is to compliment and not conflict with the Land Use Program. Protecting farmland inside the UGB is both much more expensive and, by removing land from being available for urban development, would create more pressure to expand the urban growth boundary sooner.

Criteria and prioritization. Criteria were developed for evaluating the merits of farmland protection opportunities, which includes:

- Qualifying criteria related to soils, size of the property, and water rights.
- Determining features such as the type of purchase, cost, availability of funds, property rights, stewardship responsibilities and other holding considerations.
- Criteria for evaluating competing opportunities such as threat of sale or non-farm development, urgency of sale, proximity to urban development, habitat or scenic values.

A basic prioritization of the farm properties within the EMSWCD focal area was carried out – based on soil class and state classification, parcel size, slope and topography, and available irrigation water rights. In practice EMSWCD has never been in the position of having to choose between more than one competing priorities, so decisions on whether or not to pursue a particular property have been based on thresholds considerations – is it high value farmland or not.

Working Farmland Easement Provisions. Traditional working farmland easements are legal instruments that restrict the subdivision and/or development of the protected land. EMSWCD has increased the scope of traditional easements to also address farmland access, affordability, and productivity issues. These additional layers of restrictions also help to create value for an easement in some cases.

Beyond restricting future development, EMSWCD has incorporated some or all of the following into working farmland easements:

- Affirmative farming obligation – land must remain in active farm use.
- No new residence, or restrictions on the size of a residence.
- Limit resale to qualified farmers.
- Option to purchase at agricultural value (OPAV) – limits the resale value of a farm to its agricultural use value.
- No soil removal (restriction on ball and burlap, turf grass, etc. operations).
- Protection of riparian areas or other high value natural habitat.
- Agricultural management plans.

Agricultural management plans (AMPs) as a provision of easements are a way of separating the permanent restrictions of an easement from those restrictions that may change over time. For example, to provide a definition of “productive agricultural use” used for the affirmative farming obligation provision, or conservation practices or restrictions that are specific to a particular landowner and their operation.

Funding and cost. All transactions, fee purchases or easements, are based on market value as determined through appraisals.

To date all funding for the property interests EMSWCD has acquired, and for the costs of managing and maintaining them, has come from the district’s tax base. EMSWCD successfully received a grant from the NRCS ACEP/ALE program for an easement project that ultimately did not come to fruition because the landowner decided not to proceed with the deal.

Progress Made

EMSWCD currently holds three conservation easements, two were acquired associated with the sale of a farm EMSWCD owned, and one donated easement that protects high value riparian habitat and adjacent farmland.

The District has purchased five farm properties in fee - one was sold subject to an easement (see below), three are currently leased to farmers, and one is used for EMSWCD's Headwaters Incubator Program.

Case Studies

1. Oxbow Farm.

Oxbow Farm is a 58-acre property with a long history of agricultural production. In 2011 during the aftermath of the great depression when the nursery industry was struggling economically, the property was listed for sale. At the time it was unclear if there was a farmer able to purchase the property, and it was at risk of being sold to a non-farmer rural estate buyer. The previous owner even prepared the property for this, planting an avenue of trees leading to the back of the property which has scenic views of the surrounding area.



In 2017 EMSWCD decided to sell the property subject to an easement, developed the easement terms and had those appraised, and the property listed for sale. Prospective purchasers were asked to make offers based on the easement restrictions and their plan for the use of the farm. The property was eventually sold to a nursery operation, and the sale and easement closed in 2018.

The appraised easement restrictions combined reduced the value of the property by approximately 20%, and consequently reduced the purchase price for the new owner.

Among the provisions, the final easement included:

- Defined residential, farm building, farming, and natural area zones – to protect the limit the future loss of farm soils and protect the natural forest habitat.
- An affirmative farming obligation to ensure productive use.

- A square foot house size limitation, a restriction on the location of the residence near the road, and limiting the resale of the property to qualified farmers only – all aimed at addressing future affordability and access for farmers.
- A restriction on ball-and-burlap nursery practices to protect the high value soils.
- The associated agricultural management plan included provisions to minimize erosion, and restricted the cultivation of sensitive steep areas, amongst other provisions.

Oxbow farm was EMSWCD's first easement. In working with the landowner and monitoring and managing the easement there have certainly been some growing pains and lessons learned – mainly in the drafting of the easement and management plan language, that has helped inform improvement in our easement template and subsequent work.



2. Mainstem Farm

Mainstem farm is a smaller 14-acre farm property adjacent to EMSWCD's Headwaters Farm. The site is close to the urban edge, has great views of Mount Hood, and has an unrestricted home site authorization, making it very attractive to a rural estate buyer. The mainstem of Johnson Creek flows through the property, with a narrow riparian area remaining having been previously cultivated close to the creek. The property was used for evergreen tree nursery production and had significant erosion on the relatively steep slopes on the site.

In 2017 the previous owner wanted to retire from farming and had no family interested in continuing the farm business, so EMSWCD negotiated to purchase the property. The first year of ownership was used to stabilize the site, following the removal of the remaining nursery stock, cover crop was established and a native trees and shrubs were planted to establish a wider riparian buffer along the creek.



Portions of the farm most suitable for cultivation were made available for short-term lease for the 2018 season; and was leased to a graduate of the Headwaters incubator program for her mixed vegetable operation. The lease was subject to an agricultural management plan that included provisions to limit erosion, improve soil health and improve the quality of water entering Johnson Creek.

EMSWCD is currently pursuing a long-term lease of the property with a purchase option subject to an easement. From appraisal work done for the site, removing the residential opportunity or restricting the size of the residence, significantly affects the value of the property reducing the value by up to 40%, which would make the property more affordable for a new farmer to purchase.

Considerations and Lessons Learned **Easement Valuation.**

Most traditional conservation easements protect land by restricting development, and the value of the easement - and payment to a landowner - is based on the value lost from the development restrictions. In Oregon the statewide land use program effectively restricts most development on resource lands, so the appraised value from restricting development is only material in so far as development is permissible under the land use program. In the EMSWCD service area, virtually all the remaining farm properties are already under the minimum size for EFU or MUA20 zoned land in Multnomah County, most having been divided into smaller parcels long before the land use program was established. The reality for this area, is that meaningful easement value is only realized on properties where there is a potential residential opportunity that can be removed or restricted – which is relevant to only about one third of the farm properties.

EMSWCD's approach of layering additional easement restrictions like affirmative farming obligations, or resale only to a qualified farmer is an attempt not just to realize multiple outcomes, but also to create value in the easements to make them financially

attractive to landowners. However, layering restrictions also makes the easements more complex and less attractive to a landowner.

Landowners may want to protect their land for heritage or other non-financial motivations – EMSWCD has one example of this from a donated easement. But for those who are not, the easement values realizable from traditional market-based easement valuation does not create a meaningful value proposition that's attractive to most landowners. To date EMSWCD's land protection efforts have not been limited by available funding, but by available project opportunities.

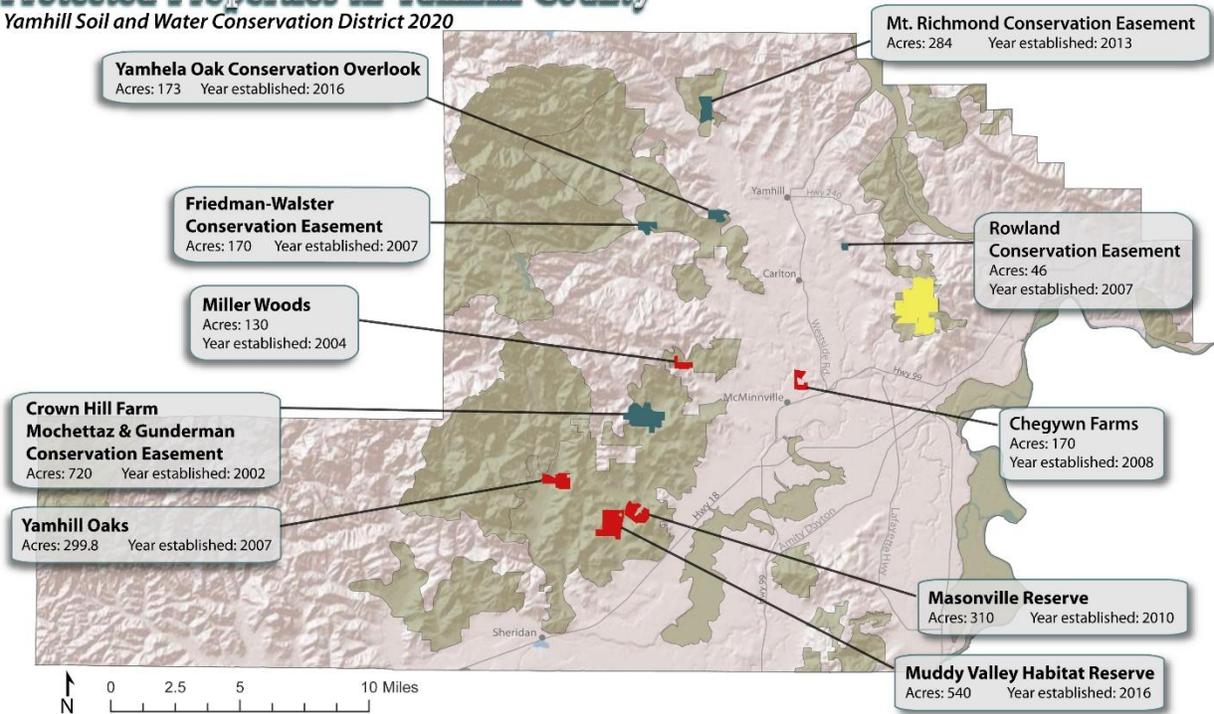
Capacity and Complexity.

There is a trade-off between the complexity of an easement and the capacity it takes to manage and monitor easements. EMSWCD is fortunate to have a stable tax base, and one employee dedicated to managing the Land Legacy Program. For the same staff and funding capacity, having more complex easements with management plans that need to be monitored and updated regularly, means you can have fewer easements in total compared to simpler easements that are less intensive to establish and manage.

Given the easement valuation and other challenges, EMSWCD has also been more successful at buy-protect-sell, getting to easements through temporary fee ownership, rather than acquiring easements outright. But owning land also brings with it a much higher demand on capacity, both staffing and financial, to hold and manage land responsibly. EMSWCD's program was envisaged and designed mainly around easement acquisitions, and the district is currently grappling with reorienting the capacity it has around the property management implications of owning land outright.

Protected Properties in Yamhill County

Yamhill Soil and Water Conservation District 2020




Total acreage Held or Owned by the Yamhill SWCD: 2,842.8 Acres

For more information on long term land protection please contact the Yamhill SWCD at (503) 472-6403

Legend

- Easements held by the Yamhill SWCD
- Properties owned and managed by Yamhill SWCD
- Easements owned or held by BPA or The Confederated Tribes of the Warm Springs
- The Nature Conservancy Conservation Opportunity Areas

DISTRICT NAME:

Yamhill Soil and Water Conservation District
(Yamhill SWCD)

**Program Overview and First Conservation Easement**

Yamhill SWCD initiated its protected lands program in 2002 by agreeing to hold a conservation easement on a 720-acre farm and forest parcel located west of McMinnville. The land is owned by a long-time conservation district client who approached the district in 2000 about holding the easement.

The landowner's primary goal of establishing a conservation easement was to ensure the 720-acre farm and forest parcel remain as one parcel in its entirety and remain protected as working lands for future farm and forest purposes. The easement provided restrictions on future development and parcel divisions, management standards for protect sensitive watershed areas, and limitations on timber harvest. These protections were achieved through the establishment of a donated conservation easement held by the district. The landowner secured legal assistance to draft the conservation easement which was developed through a collaborative planning process with the district.

The district is responsible for conducting annual inspections on the property. The annual inspection report documents compliance status of the easement requirements and conditions, provides photo documentation, and includes review of annual timber harvest receipts with the property owner.

The easement has been established for approximately 20 years, and the farm continues to remain in operation and production, and in compliance with the easement. This was the first conservation easement held by the Yamhill SWCD. The district agreed to hold the easement because it:

- Aligned with the priorities of the district's overall long-range plan
- Provided a mechanism and strategy to address the landowner's natural resource priorities and identified concerns (keeping the land in farm and forest)
- Was determined to have a limited and reasonable fiscal impact on the district
- Ensured a long-term commitment to conservation and working lands that would otherwise be difficult to achieve if the parcel was subdivided

Protected Lands Program Development

Over the last 20 years, the district has expanded its protected lands program to include additional conservation easements and fee title ownership of lands within the district. The district currently holds four conservation easements on 1,220 acres and owns seven properties totally 1,759.8 acres. The district acquired the fee title properties through a variety of methods including:

- Bequeaths
- Donations
- Funding through the Willamette Wildlife Mitigation Program
- Direct transfer from other organizations (The Nature Conservancy)
- Life-estate donations

The conservation purposes, management plans, restrictions and allowable uses, and public access conditions on properties differ, depending on the requirement of funders, donors, and other factors. Conservation purposes typically focus on one or more of the following:

- Protection of working lands (farm and forest)
- Protection and enhancement of wildlife habitat
- Watershed protection

Public access is allowed on parcels but is often limited to controlled access for purposes of education, research, and monitoring. Miller Woods, a 130-acre parcel bequeathed to the district in 2004, provides the greatest opportunity for public access within the district, and is generally open to the public from dawn to dusk unless the property is closed for management or safety purposes.

DISTRICT LANDS AND CONSERVATION EASEMENT PORTFOLIO:

A district portfolio map is included showing acreages of lands protected with conservation easements and fee-title ownership (as of 2020). Since 2020, the district has received approval for three additional property acquisitions through the Willamette Wildlife Mitigation Program, totaling approximately 635 acres. The additions will bring the total acreage in the protected lands program to approximately 3,478 acres.

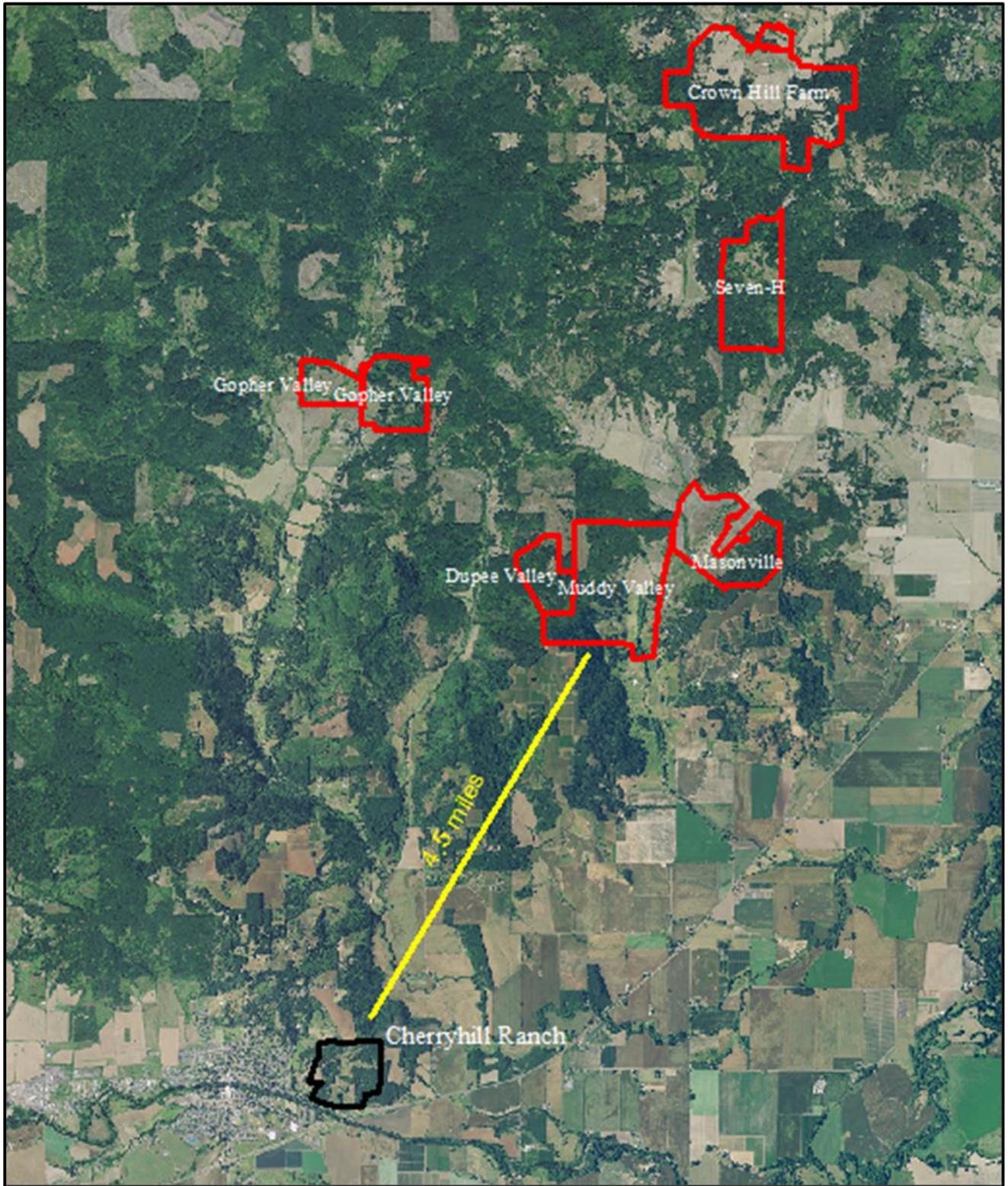
PARTNERS: Conservation partners have been essential to the district from the beginning of program development, through its continued growth over 20 years. Partners have assisted with planning, stewardship, grants and funding, training, and other aspects of the program. Yamhill SWCD has been fortunate to partner with many capable and supportive conservation partners on its protected lands program, including:

- The Trust for Public Land
- US Fish and Wildlife Service
- Oregon Department of Fish and Wildlife (WWMP)
- Bonneville Power Administration (WWMP)
- The Nature Conservancy
- USDA Natural Resources Conservation Service
- Oregon Watershed Enhancement Board
- Columbia Land Trust
- And Others

LESSONS LEARNED:

- Complexity: Evaluate the complexity of the project, easements, donations, or other types of acquisitions. Determine if your organization has the capacity to take on a project that has complexities of reserved rights and covenants, life estate requirements, multiple ownerships (with different objectives), land use and/or wetland restrictions, or other complexities that may require more legal and technical assistance than “simple” transactions.
- Relationship Building / Relationship Management: Consider projects with landowners who have long-term, trusting relationships with the organization. Conservation Easements and acquisitions often require many conversations, plan revisions, time for problem solving, and a clear understanding of expectations. Planning and implementation can take months. It is important to understand the goals and timelines of landowners, and for landowners to understand the district’s capacity to implement a project.
- Capacity and Financial Needs: Analyze and determine the capacity and financial needs for projects for both the landowner(s) and district. The cost to plan and operate a protected lands program can be significant. The long-term stewardship and maintenance needs on properties can also be costly and are typically recurring. Conducting a thorough analysis of all potential costs associated with protecting and stewarding lands is important. This exercise will help the organization determine the finances required to own and manage lands and/or administer conservation easements.
- Partnerships: Develop relationships and partnerships with others who have interest and expertise in protected lands, such as land trusts, conservation agencies, grant organizations, volunteers with protected lands skills, industry organizations, and membership organizations.
- Risk Management: Holding conservation easements and owning conservation properties involves risk. Analyze risk management issues and plan for the identified risks. Some typical areas of risk include trespass, addressing non-compliance of easement requirements, pollution and dumping of waste, poaching and unauthorized hunting, vandalism, fire management, and other related issues. These types of issues require timely follow-up and can be costly. Consider evaluating the location and characteristics of potential land holdings as part of the analysis, and the conditions and requirements of conservation easements to determine feasibility.
- Other Operational Factors/Considerations: The following factors have helped the district become more effective in implementing a protected lands program.
 - Dedicated stewardship funding to finance stewardship staff and contractors
 - District-owned equipment for restoration/maintenance
 - Past success with funding proposals (e.g., 5 WWMP applications)
 - Enrollment of lands in the USFWS *Partners Program*
 - Experienced long-term staff

Yamhill SWCD: Proximity of Protected Lands in South/Central Region of District



Conservation Easement
Yamhill SWCD
Example Photo Points: 2017/2018
Crown Hill Farm Conservation Easement

Site #1: Overlook Facing 309 degrees, 55 feet from fence corner.
9/15/17 and 9/10/18

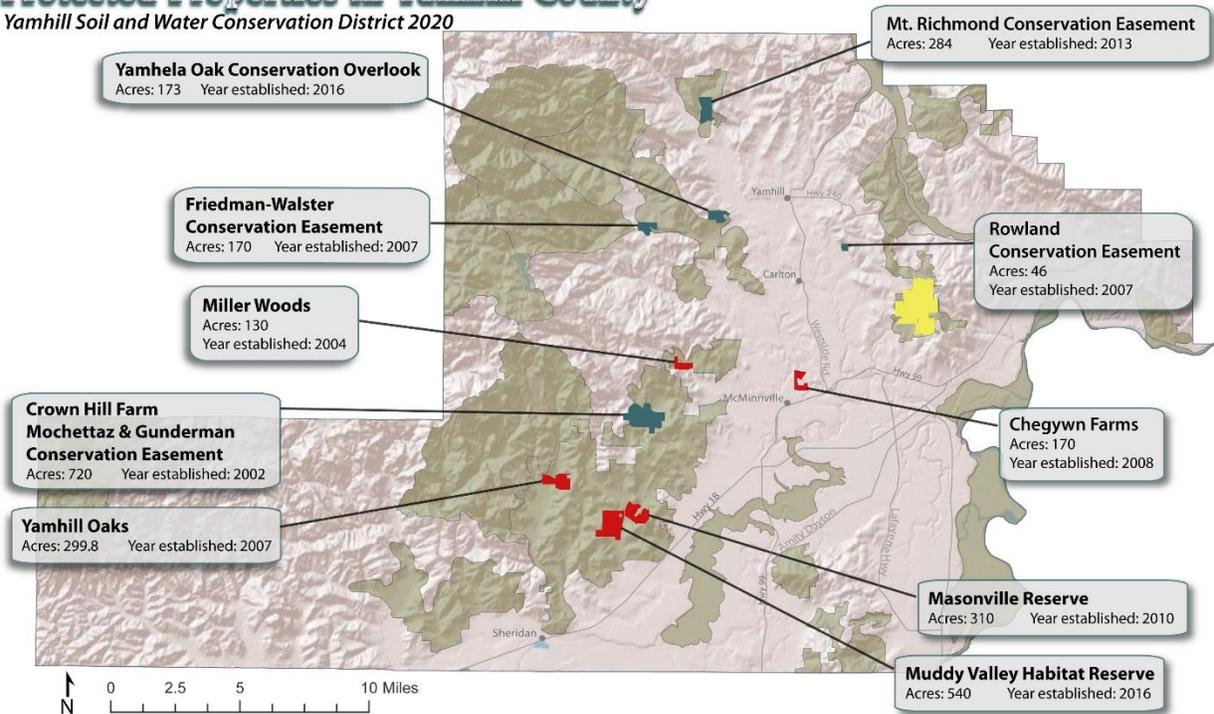


Site #2: At Gate Overlooking Property Facing 312 degrees, 3 feet from fence
9/15/17 and 9/10/18



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