



Conservation Easements

Oregon Land Title Association

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Seely Farm, courtesy of
Oregon Agricultural Trust

Introductions



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DISCLAIMER

The general information provided in this presentation is for educational purposes only.

It is not intended to be nor should it be treated as legal, tax, investment, accounting, or other professional advice. Before making any decision or taking any action, you should consult a qualified professional advisor who has been provided with all pertinent facts relevant to your particular situation.



What is a conservation easement?

- A legal agreement between a landowner and an eligible entity, called a holder, that imposes restrictive or affirmative obligations on a property to protect natural or historic resources.
- Established under state law: ORS 271.715 to 271.795
 - Legal definition at ORS 271.715(1)
- Recognized under federal tax law: IRC § 170 (h)

Basic nomenclature

- Grantor = landowner
- Grantee = holder
- Holder falls into 3 groups:
 - Select government bodies
 - Conservation charitable organizations
 - Indian tribes defined in ORS 97.740

ORS 271.715(3)



Photo: Tyler Roemer/Deschutes Land Trust

How is a conservation easement different than a traditional easement?



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How is a conservation easement different?

- There is no separate benefited parcel
 - Easement in gross not appurtenant to an interest real property
- Can be assigned to another qualified holder
- Recording needed to make document effective against the parties. ORS 271.725(4)
- Other potential common law impediments do not invalidate CEs. ORS 271.745(1)-(7)

Similarities with traditional easements?

- Express easement in writing
- Signed by grantor and grantee
- Nonpossessory interest in “land of another”
 - Cannot grant easement to oneself
- Once recorded, it runs with the land and binds future owners
- May be created, amended, ... etc. in the same manner as other easements. ORS 271.725(2)
- Common clauses and structure of instrument

Different labels, Still a Conservation Easement

- Covenant, equitable servitude, restriction, easements
 - ORS 271.765
- Term is usually perpetual
 - Can be for term of years – example Wetland Reserve Easement Program



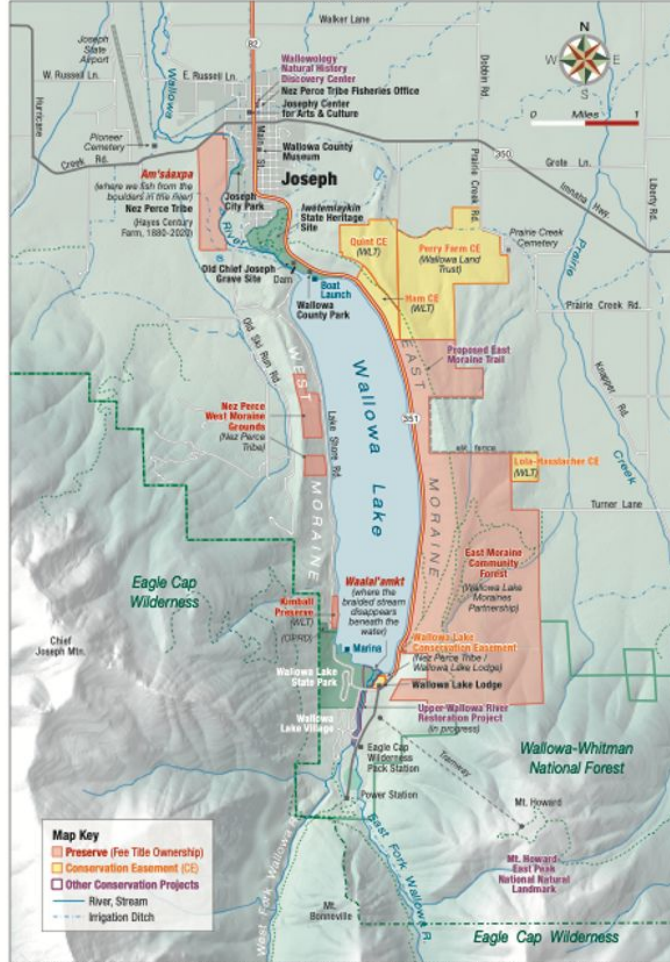
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Wallowa Lake Area

Great example of a large conservation project, using CEs and fee title acquisitions



Summer 2023



Status of Land Acquisitions, Conservation Easements and Restoration Projects throughout the Willows Lake Basin, sponsored by Niz Perce Tribe, Oregon State Parks, Willows County, Willows Land Trust, Willows Resources, Eastern Oregon Legacy Lands, and private landowners and businesses.



OUR MISSION

We serve and strengthen the land trust community in Oregon.

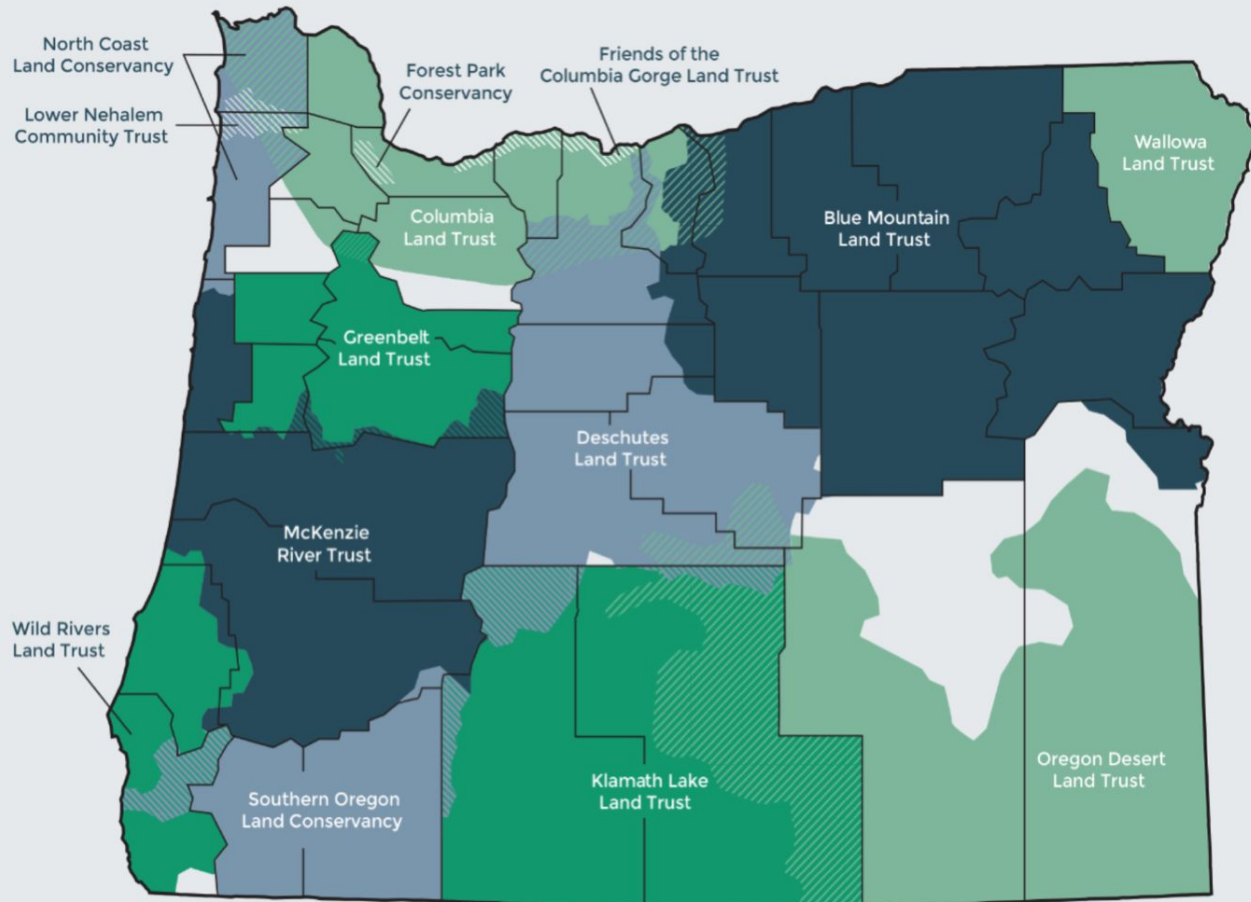
We do that by building connections and advancing policies that help protect our natural world—our water, wildlife and open space—for all people, forever.



BUILDING CONNECTIONS



ADVANCING POLICIES



Legend



Overlapping Service Areas

STATEWIDE WORK

Center for Natural Lands Management
 Ducks Unlimited
 Northwest Rangeland Trust
 Oregon Agricultural Trust
 Pacific Forest Trust
 The Conservation Fund
 The Nature Conservancy in Oregon
 The Trust for Public Land
 The Wetlands Conservancy
 Western Rivers Conservancy

REGIONAL WORK (see map)

Blue Mountain Land Trust
 Columbia Land Trust
 Deschutes Land Trust
 Friends of the Columbia Gorge Land Trust
 Forest Park Conservancy
 Greenbelt Land Trust
 Klamath Lake Land Trust
 Lower Nehalem Community Trust
 McKenzie River Trust
 North Coast Land Conservancy
 Oregon Desert Land Trust
 Southern Oregon Land Conservancy
 Wallowa Land Trust
 Wild Rivers Land Trust

ASSOCIATE MEMBERS

Cerro Gordo Land Conservancy
 Clackamas SWCD
 East Multnomah SWCD
 Helvetia Community Association
 Tualatin SWCD
 Yamhill SWCD

290,099 total acres protected in Oregon



27 land acquisition projects in 2022

That covers 19,877 acres!

At COLT, we build connections and advance policies that protect our natural world—our water, wildlife and open spaces—for all people, forever.



31 MEMBER ORGANIZATIONS

331 OREGON EMPLOYEES

250 BOARD MEMBERS IN OREGON

4,479 OREGON VOLUNTEERS

49,458 OREGON DONORS



National Conservation Easement Database

221,256 Conservation Easements Across the United States

37,982,910 acres conserved

604 Conservation Easements in Oregon

<https://www.conservationeasement.us/>

Increasing Use of Conservation Easements

- Mutually agreed upon, benefits landowner, land trust and public
- Less expensive than fee purchase
- Keeps Land Privately Owned and on Tax Rolls
- Succession Planning – Intergenerational Land Transfers
 - **In the next twenty years, 60% of Oregon's nearly 38,000 farms and ranches are expected to change hands.** Land that passes without a succession plan is more likely to be fragmented, developed, and taken out of production.
- Tribal Access

Nez Perce Tribe Conservation Easement

Wallowa Lake Lodge: “to create personal, lifelong experiences for our guests in a spectacular natural setting preserved for future generations in cooperation with the Nez Perce Tribe.”

“Wallowa Lake is a heart within Nez Perce territory, a heart of our 1885 reservation. Every step taken in protecting it and the lands surrounding it is an important step into our future.” Sam Penny, former Tribal Chair and NPTEC Member



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Nez Perce Tribe Conservation Easement



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Waalal'amkt (where the braided stream disappears into the water)

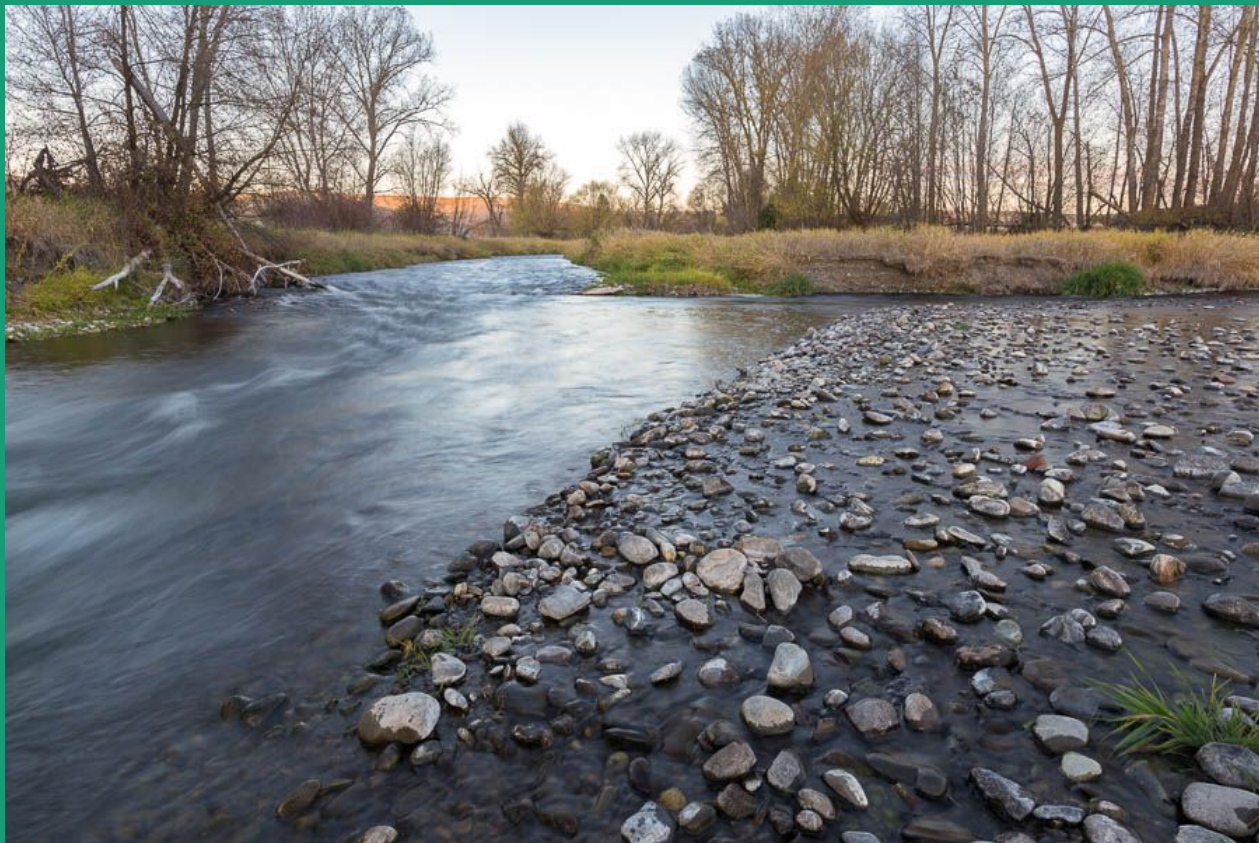
Sockeye Reintroduction

- Historically, sockeye salmon only found in two places in Oregon, Suttle and Wallowa Lakes
- Sockeye spawn in stream but rear in freshwater lakes
- As many as 30,000 sockeye returned to Wallowa Lake annually

Increasing Use of Conservation Easements – Financial

- Federal tax incentives
 - IRC Section 170(h)
- Property tax incentives
 - ORS 308A.450-ORS 308A.465
- More Programs and More \$\$
 - NRCS
 - OAHP
 - OWEB & BPA
- 1031 exchanges

Wolfe Ranch



Title Exceptions, Why Remove?

- Land Trust Review
 - Impact on conservation values
- Funder requirements
- IRS requirements
- Land Trust Alliance (LTA) Standards & Practices





Severed Mineral Rights

- Extinguishment
- Remoteness Test

Subordination of Financial Liens

Can be settled at time of closing



Seely Farm, courtesy of
Oregon Agricultural Trust

Potential For New Surveys

New legal descriptions

Also needed if easement only applies to a portion of the property or the conservation easement creates management zones

Baseline Documentation

- Conservation values and condition of protected property are typically further described in a baseline documentation report
- Includes narrative, maps, photographs that provide accurate representations of the property at the effective date of the easement
- Typically referenced in the CE and not recorded

Appraisals

When will conservation easements be appraised?

- When purchased with government funding
- Donated easements with a federal charitable income tax deduction

“Before and After” Method Used

- Fair market value of CE =
 - FMV of the property before the granting of the easement minus the FMV of the encumbered property after the granting of the easement

Limited number of qualified appraisers of CEs, which can slow down closing process.

What if a CE is donated without an appraisal?

- How do you value it for title insurance purposes?

Extinguishment

If all or a portion of a conservation easement is extinguished,

- Sale proceeds to Grantor and Holder in proportionate shares
- Typically, Holder's share is based on value of the easement at the time of the grant as it bears to the value of the Property as a whole

Distribution of proceeds might be through title company escrow



Thank You! Questions?

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Photo by Brian Chambers.