



# Conservation Easements

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# What is a Conservation Easement?

- A voluntary agreement between a private landowner and a qualified entity that creates permanent limits on the use of the land.
- Deed restrictions that run with the land regardless of future ownership or transfer
- Qualified entity – government entities, land trusts or other nonprofit organizations, and soil and water conservation districts



# Conservation Easement requirements

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- IRC Section 170
- Removes the right to subdivide the land
- Extinguishes or severely restricts development rights
- Perpetual
- Qualified conservation purpose
  - Public use for hiking or nature preserves
  - Maintaining or preserving natural habitats
  - Scenic enjoyment of the general public
  - Pursuant to a federal, state or local government conservation objective

# Riparian area protections

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- Removes subdivision or development rights from land adjacent to riparian areas
- Preserves native vegetation and limits their removal
- Prohibits mining, logging, road development, etc.
- Can exclude or place limitations on agricultural use
- Can protect restored areas from conflicting or detrimental uses
- Allow for restoration
- Can create “riparian management zones” for specific actions and restrictions



# Due Diligence

How an easement is completed



April 15, 2023

# Funding Easements

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## PURCHASED

- Nonprofits, state or federal agencies pay the value of the conservation easement
- Agency Funders:
  - Natural Resource Conservation Service
  - Oregon Watershed Enhancement Board
  - Oregon Agricultural Heritage Program
  - Washington Recreation and Conservation Office
  - Bonneville Power Administration
- Payment to landowner at closing

# Funding Easements

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## DONATED

- Income tax savings – IRC 170(h)
- Qualified rancher or farmer can deduct their income taxes for up to 15 years
- Qualifying farmer or rancher = someone who receives more than 50% of his or her gross income from “the trade or business of farming.”

# Appraisal

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- Determines the value of the fee acquisition or conservation easement
- Conservation easement appraisal values the property “before” and “after” an easement
  - CE value = unencumbered fair market value of the property – value of property restricted by the easement
- If donated or bargain sale, required by the IRS to support the tax deduction
- Required by state and federal agencies to justify purchase price and grant funds



Harry and Rachel's farm is worth \$4,000,000 today unencumbered.

Removing the right to subdivide and develop the property reduces the value of the property to \$3,000,000.

Current value of the land – value of the land with an easement = the market value of the easement

\$4,000,000 (current value) - \$3,000,000 (value w/ easement)

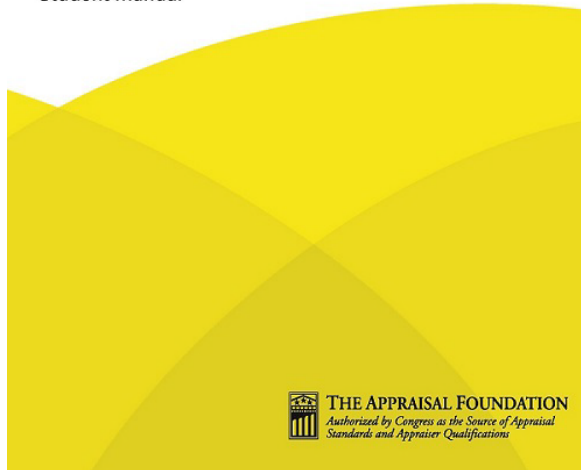
Value of the easement is \$1,000,000

# Appraisal Standards

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## UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS YELLOW BOOK COURSE

*Student Manual*



# Title

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- Review the property's title to ensure it's marketable and free of mortgages, liens and other encumbrances.
- Analyze any encumbrances to identify any existing or potential impacts to the property's conservation values
  - Remove existing encumbrances, if possible
  - Subordinate mortgages
  - Map encumbrances such as right of way easements, utility line easements, etc.
  - Timber reservations
  - Mineral reservations – check federal land patents

**Phase One** – a report prepared for a property that identifies potential or existing environmental contamination liabilities.

- Addresses both the underlying land and the physical improvements.
- Identifies whether there are or could be recognized environmental conditions (RECs) on the property.

**Phase Two** – evaluates the presence, or absence of, petroleum products or other hazardous substances in the subsurface of the site.

- Tailored to assess the contamination based on what's appropriate for the site and the types of contaminants potentially present – soil and ground water testing, soil vapor tests, etc.
- Determines whether mediation of the site is required.

# Environmental Site Assessment



## Survey uses:

- Legally describe and map the conservation easement area when it is a portion of an existing property.
- Identify special use areas, such as building envelopes or management zones.
- Resolve boundary disputes to establish existing property lines.
- Carve out areas excluded from the conservation easement area.
- Resolve title discrepancies or relocate encumbrances that may impact the conservation values.

Surveys are incorporated into the conservation easement as an exhibit and are recorded with the county.

Surveys



# Other Potential Due Diligence

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- Water rights analysis
  - Certificates associated with the property
  - Determine water right standing and location of water right on the property
  - Map POD and acreage
- Mineral rights assessment
  - Split estate minerals
  - Assessment of Resource Potential or Mineral Remoteness Evaluation
    - IRS requires likelihood of future resource development to be “so remote as to be negligible” for conservation easements
  - Mapping of split estate in relation to conservation values

For every acquisition, a Baseline Documentation Report, including a baseline map, is completed prior to closing and signed by the landowner and land trust at closing. The Baseline documents the important conservation values protected by the easement and the relevant condition of the property as necessary to monitor and enforce the easement.

- Land Trust Alliance, Practice 11B Land Trust Standards and Practices
- Compliance with Treasury Regulations §1.170A-14(g)(5)(i)(A-D)

# Baseline Documentation Report



# Baseline Components pt. 1

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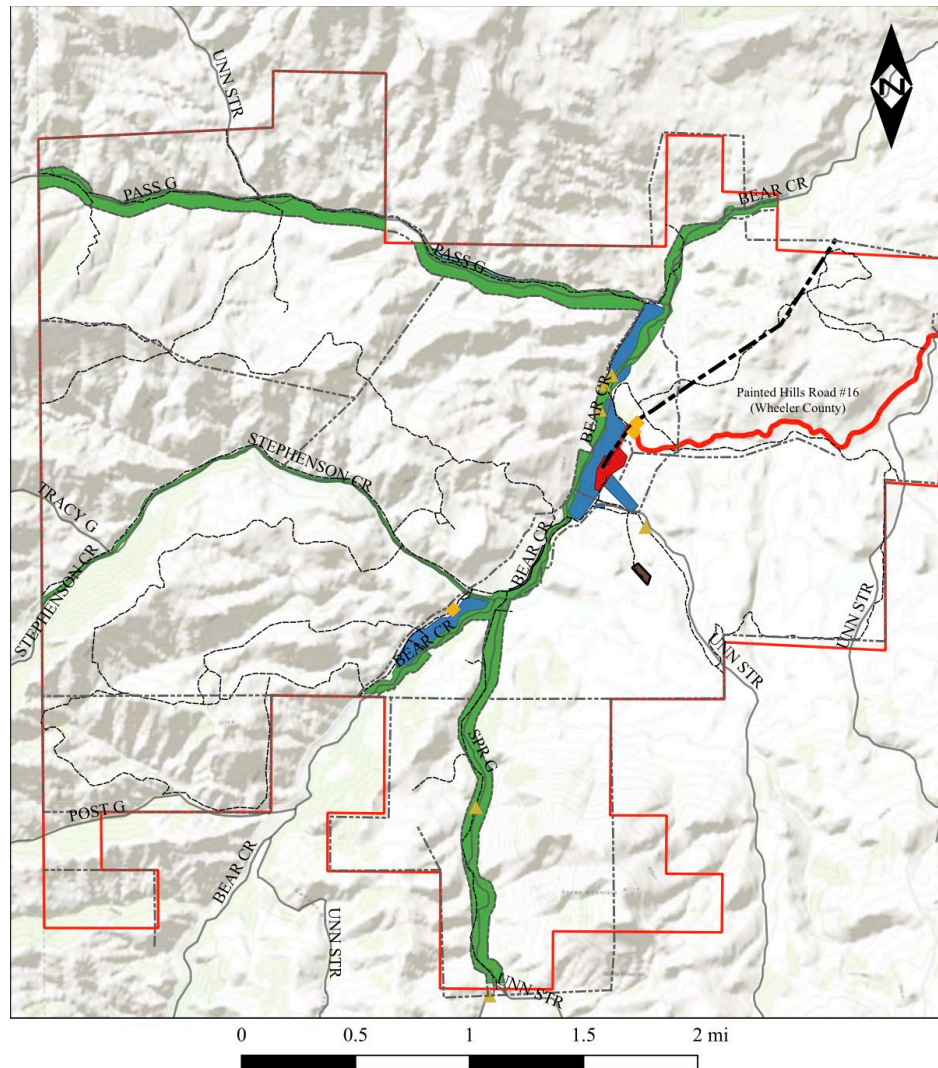
- Date of baseline completion
- Authorship and qualifications of baseline preparer(s)
- Date(s) of baseline documentation site visits
- Combination of dated signatures and/or acknowledgements that would make the material admissible as a business record in court.
- Property description and location
  - Legal description and map
- Property history and current use
- Background information that may help in enforcement or monitoring – seasonal or unusual circumstances during data gathering and site visits



# Baseline Components pt. 2

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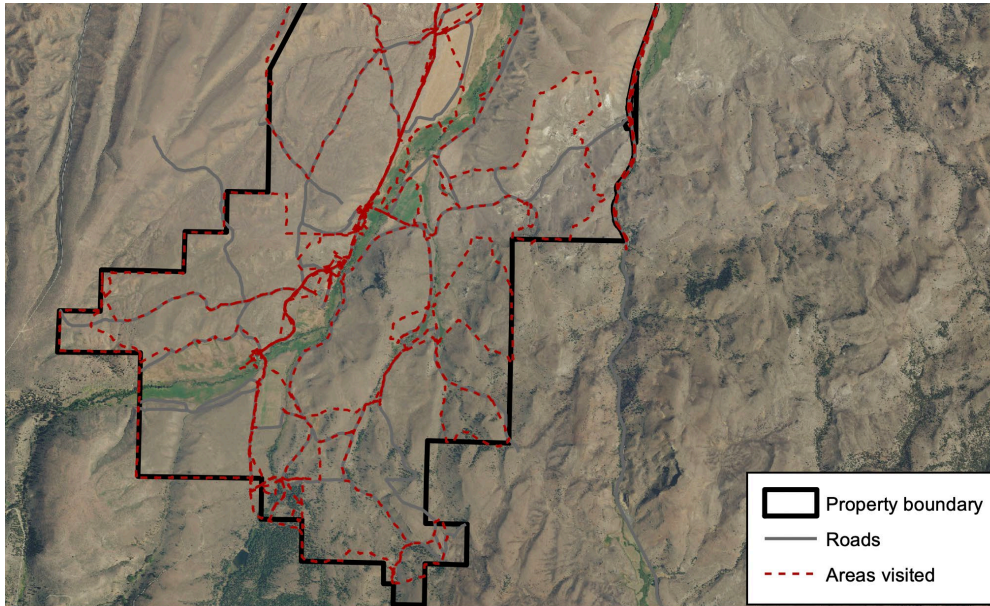
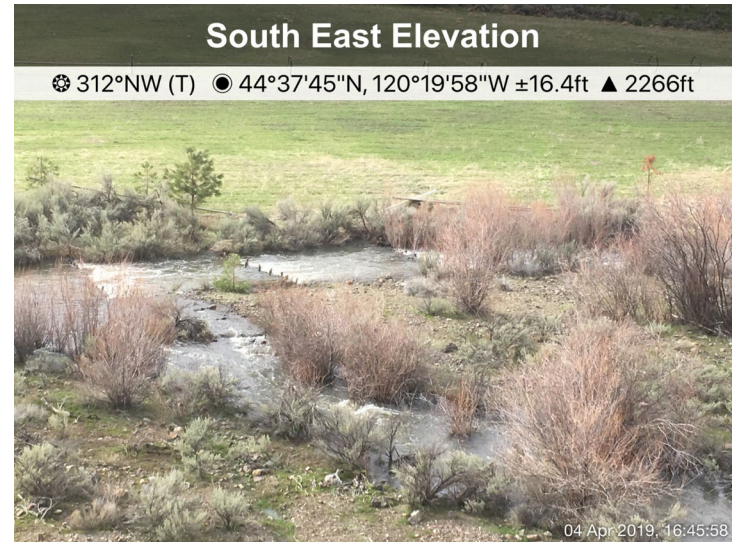
- Documentation of conservation values
  - Maps, photographs, written summaries or inventories of property features, plant communities, habitat types and quality, fish and wildlife presence, etc.
  - Restoration activities completed or identified opportunities.
- Documentation of existing conditions related to reserved rights and restricted uses
  - Location and condition of man-made improvements, areas of concern, pre-existing conditions otherwise prohibited, features or uses that may threaten the conservation values, data that would influence the use of reserved rights
- Append other due diligence materials – maps of title encumbrances, surveys, water rights analysis, mineral rights assessment, etc.



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|-----|---|---|--|
| --- | Fences  | ■ | Building Envelope (7.43 ac.)             |
| ▲   | Historic Structures                                 | ■ | Gravel Removal Areas (4.12 ac.)          |
| ◆   | Structures Outside BE                               | ■ | Dump Site (2.02 ac.)                     |
| --- | Private Roads                                       | ■ | Riparian Management Zone (302.07 ac.)    |
| --- | Canyon Creek Ranch Easement Boundary (6,783.97 ac.) | ■ | Agricultural Management Zone (62.60 ac.) |
| --- | Power Line  | □ | Upland Management Zone (6,405.75 ac.)    |
| --- | Streams   |   |  |

# Technology & Accuracy

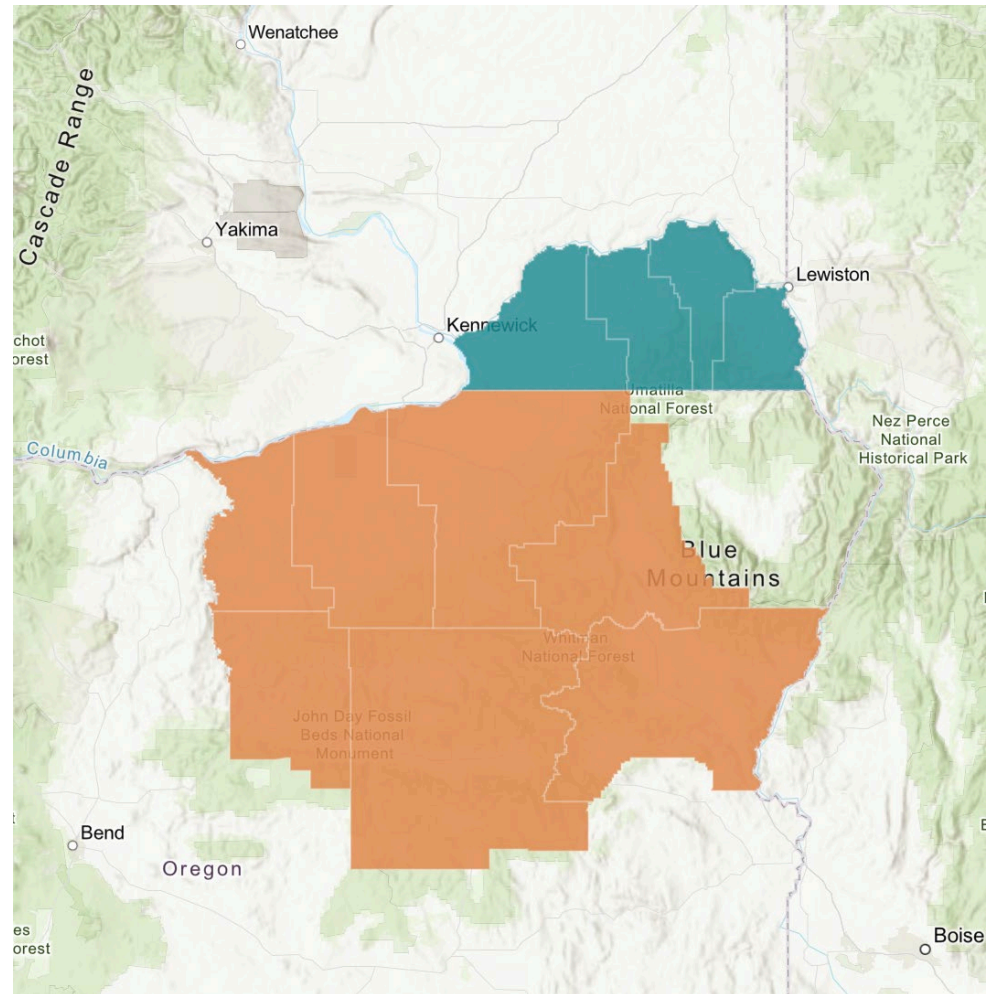
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# Blue Mountain Land Trust

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- 501(c)(3) non-profit organization
- Work in Southeastern Washington and Eastern Oregon
- Staff in John Day, La Grande, and Walla Walla
- Conservation, recreation and education programs
- Nationally accredited by the Land Trust Alliance



# Our Mission

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- Work with communities and landowners to conserve the scenic, natural, and working lands that characterize the Blue Mountain region.
- Protect fish and wildlife habitat and working farms and ranches with conservation easements and land acquisition.
- 18 conservation easements and 1 fee acquisition protecting over 22,575 acres of land and over 32 miles of streams and rivers.

# Our work

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- Riparian area protections within larger CE's
- Riparian area only CE's on restoration projects – in partnership with the Confederated Tribes of the Umatilla Indian Reservation
- Phipps Meadow purchase and restoration projects

