

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

MODEL UNIFORM NATURAL RESOURCE TRUST LAW

SECTION 1. FINDINGS.

- 1) The legislature hereby finds and declares that:
 - a) The state's Natural Ecosystems are among its most valuable resources and provide numerous economic, societal, and environmental benefits, including carbon sequestration and climate change mitigation;
 - b) In addition to public lands, large portions of Natural Areas are owned by private individuals, private entities and Indian tribes;
 - c) These natural areas are under threat, facing increased fragmentation, degradation, destruction, urbanization, changing land use needs, climate change, and pollution; and
 - d) There is great concern throughout the state regarding their utilization, degradation, restoration, and protection.

SECTION 2. DEFINITIONS.

"Department" means the [Department of Natural Resources].

"Natural Area" means undeveloped or wild lands and those lands preserved or restored and managed for their natural features, including but not limited to parks, forests, refuges, grasslands, wetlands and shorelines on public and private lands.

"Natural Ecosystem" means an ecosystem that substantially resembles, in terms of species composition, structure, and ecological function, one that is or would be found in a given area in the absence of major human impacts; these include, in particular, land with high carbon stocks and land with a high biodiversity value such as savannahs, grasslands, peatlands and wetlands, such as mangroves; this definition applies to human managed ecosystems where much of the natural species composition, structure, and ecological function are present;

"Person" includes any private individual, organization, partnership, corporation, limited liability company, the state and any department, agency or political subdivision thereof.

SECTION 3. ESTABLISHMENT OF NATURAL RESOURCE TRUST.

- 1) The Natural Resource Trust is hereby established in the Department. The goals of the Natural Resource Trust are to:
 - a) Expand, protect and connect existing Natural Areas and Natural Ecosystems;

- b) Facilitate the restoration of degraded and destroyed Natural Areas and Natural Ecosystems and connect those ecosystems to other Natural Areas and Natural Ecosystems;
- c) Improve the quality, health, resilience and biodiversity of Natural Areas and Natural Ecosystems;
- d) Support the ability of Natural Areas and Natural Ecosystems and communities to adapt to climate change;
- e) Increase the amount of carbon and other greenhouse gases that can be absorbed by Natural Areas and Natural Ecosystems; and
- f) Improve economic, societal, and recreational opportunities from the state's natural resources by, among other things:
 - i) Supporting and improving sustainable timber or biomass harvest;
 - ii) Mitigating the negative impacts of climate change on communities, Natural Areas and Natural Ecosystems;
 - iii) Increasing access to Natural Areas and Natural Ecosystems for state residents for recreational purposes;
 - iv) Increasing environmental tourism; and
 - v) Mitigating water and air pollution.

SECTION 4. NATURAL RESOURCE TRUST ADVISORY COMMITTEE.

- 1) The Department shall establish an advisory committee for the Natural Resource Trust, whose members will be appointed by the Department.
- 2) The advisory committee shall consist of no more than 15 members representing the public, owners of land that include significant areas of Natural Areas or Natural Ecosystems, forestry and environmental consultants, the financial community, environmental and conservation organizations, Indian tribes, local government, and other parties including affected state agencies.
- 3) The advisory committee shall assist the Department in setting policy for the best use and investment of funds available to the Natural Resource Trust and otherwise provide guidance to the Department concerning the Natural Resource Trust and its programs.

SECTION 5. DEPARTMENT MANAGEMENT OF THE NATURAL RESOURCE TRUST.

- 1) The Department shall manage the Natural Resource Trust, distribute funds and establish programs to achieve the goals listed in Section 3. Actions that the Department may take in connection with the Natural Resource Trust shall include, but are not limited to:
 - a) Acquiring lands to create continuous Natural Areas and/or Natural Ecosystems;
 - b) Acquiring lands to improve the quality, health, resilience and biodiversity of Natural Areas and/or Natural Ecosystems;
 - c) Acquiring conservation easements and covenants to protect, expand or improve the quality, health, resilience and biodiversity of Natural Areas and/or Natural Ecosystems;

- d) Providing financial, technical and related assistance to private and local government landowners to establish and expand Natural Areas for wildlife, water quality, carbon sequestration and other environmental purposes; and
 - e) Providing financial, technical and related assistance to improve the quality, health, resilience and biodiversity of Natural Areas and/or Natural Ecosystems.
- 2) The Department may partner with any person, in the Department's discretion, to meet the goals in Section 3 and develop programs under the Natural Resource Trust.
 - 3) In establishing programs under the Natural Resource Trust, the Department may consider, consistent with the goals in Section 3, the following factors:
 - a) Measurable anticipated public benefits of a program such as job creation, tax revenue, reduction of pollution, climate resilience, carbon sequestration, savings to other state programs, improved health outcomes, increased and sustainable timber supply, and environmental improvement;
 - b) Whether the measurable anticipated public benefits of a program reasonably justify the costs of a program;
 - c) Whether the program will be financially sustainable through, among other things, the Department's ability to charge fees, offset costs to other Department programs, or enter into resource sharing or other agreements with program users; and
 - d) The extent to which landowner contributions of money, labor, or other resources reduce the financial burdens on the Natural Resource Trust.
 - 4) The Department may adopt rules, policies and procedures consistent with [the applicable state administrative procedures law] with respect to the implementation of the Natural Resource Trust programs.

SECTION 6. NATURAL RESOURCE TRUST FUND.

- 1) The Natural Resource Trust Fund shall be created in the State Treasury, separate and distinct from the General Fund.
- 2) The Natural Resource Trust Fund shall consist of all moneys received from whatever source to carry out the duties, functions and powers of the Natural Resource Trust.
- 3) There shall be an initial appropriation to the Natural Resource Trust Fund from the General Fund of \$[_____].
- 4) All earnings on moneys in the Natural Resource Trust Fund shall be retained in the Natural Resource Trust Fund. All moneys in the Natural Resource Trust Fund shall be appropriated continuously to the Department to carry out the duties, functions and powers of the Natural Resource Trust, and cover administrative expenses.
- 5) The Department may accept contributions, gifts, or grants from any source to carry out the duties, functions, and powers of the Natural Resource Trust. All such moneys received by the Department shall be deposited in the Natural Resource Trust Fund.

- 6) The Department may apply for grants to support the Natural Resource Trust Fund from any sources, including federal grants and private grants.
- 7) The Department may charge fees for persons to use the programs administered under the Natural Resource Trust.
- 8) The Department may use the Natural Resource Trust Fund to acquire property and easements to meet the goals listed in Section 3.
- 9) Consistent with the goals listed in Section 3, the Department may enter into agreements to purchase and/or manage land on behalf of a third party as part of that third party's obligation to offset carbon emissions, provided that such agreement is made pursuant to:
 - a) A cap and trade system of this state or of another state, the federal government, or a foreign government, including any department, agency, or political subdivision thereof;
 - b) A business entity with a policy approved by its board of directors and implemented by its officers to reduce carbon and offset greenhouse gas emissions, or
 - c) An agreement drafted by the Department that binds the parties to reducing carbon dioxide and other greenhouse gas emissions.

SECTION 7. COOPERATION WITH PRIVATE LANDOWNERS.

- 1) The Department shall work with private landowners and local governments to meet the goals of Section 3.
- 2) The Department shall identify privately owned lands that:
 - a) Would be suitable to establishing stands of trees and continuous Natural Areas and/or Natural ecosystems;
 - b) Could have a sustainable impact on sequestering greenhouse gas emissions;
 - c) Could have a substantial impact on improving the quality, health, and biodiversity of Natural Areas and/or Natural Ecosystems; or
 - d) Could have a substantial impact on improving the economic, societal, and recreational opportunities from the state's natural resources.
- 3) The Department shall reach out to the owners of such lands identified in subsection (2) and:
 - a) Provide information on how the landowner could better manage their land to meet the goals of Section 3;
 - b) Encourage the landowner to manage their property in a way that advances the goals of Section 3; and
 - c) Provide information on applicable Natural Resource Trust programs.
- 4) The Department through the Natural Resource Trust shall provide technical and other management assistance to landowners that wish to meet the goals of Section 3.
- 5) For landowners participating in Natural Resource Trust programs, the Department shall:
 - a) Monitor compliance with Natural Resource Trust programs by participating landowners;

- b) Encourage the active involvement of the landowner in the program;
- c) Encourage the use of private contractors, consultants, forestry extension programs, nongovernmental organizations and landowner cooperatives;
- d) Develop project plans in cooperation with landowners that establish clear benchmarks for compliance with terms of the plan;
- e) In the Department's discretion, release a landowner from program obligations for any portion of the Natural Area or Natural ecosystem included under Natural Resource Trust programs and irretrievably lost to insects, disease, fire, storm, flood or other natural destruction through no fault of the landowner; and
- f) Secure provisions for access to the land by the Department.

SECTION 8. VOLUNTARY LOAN PROGRAM.

- 1) Under the Natural Resource Trust, the Department shall establish a voluntary loan program to partner with private landowners to establish stands of trees, continuous tracts of Natural Areas and Natural Ecosystems for sustainable timber harvesting and to provide financial, technical and related assistance to improve the management, yield, and environmental benefits of such land.
- 2) In advancing money and providing other assistance for stand and ecosystem establishment, the Department shall prioritize lands with moderate to high probability of success for long-term stand and ecosystem establishment and improved forest management activities.
 - a) The Department may assist landowners in securing payments for ecosystem services.
- 3) The Department, on behalf of the Natural Resource Trust, shall enter into contracts with eligible landowners to carry out the provisions of the voluntary loan program. The contracts may include, but are not limited to:
 - a) Partial to full financing to the landowner, as the Department may specify in its rules, policies and procedures, from such moneys as may be available in the Natural Resource Trust Fund;
 - b) Any obligations of the landowner for repayment of money advanced including, but not limited to:
 - i) Terms for sharing the revenue gained from the sales of timber or other forest products or natural resources, including salvage, from the lands enrolled under the voluntary loan program;
 - ii) Acknowledgment that the rights and obligations of the landowner and the Natural Resource Trust and all of the terms of the contract are covenants that run with the land upon sale, lease, or transfer of the land benefiting from the voluntary loan program until all future obligations of the contract are met;
 - iii) Financial terms allowing the landowner to terminate the contract;
 - iv) Agreement that there is no obligation to repay the moneys advanced prior to sale of timber, other forest products, or other natural resources from the land;
 - v) Terms prohibiting contract modification unless both parties consent to modification;
 - vi) Allowance for different prescriptions for stand and/or ecosystem management; and
 - vii) Repayment in full with interest if the landowner fails to meet any terms of the contract; and

- c) Acknowledgment by the landowner that the Department may require a statutory lien on the forest or other natural resource products.
- 4) The Department, on behalf of the Natural Resource Trust, may require landowners to execute security agreements in favor of the trust to secure any repayment or other obligations of the landowner. Any security interest required shall have priority from the date of recording or filing.
- 5) The Department shall record a contract described in subsection (3) of this section as required by law.

SECTION 9. SPECIAL CONSIDERATIONS.

- 1) When developing programs, the Department and the advisory committee of the Natural Resource Trust shall consider whether such program will:
 - a) Mitigate climate change, including whether the project will have a positive impact on the state's carbon storage capability;
 - b) Mitigate air and water pollution;
 - c) Reduce habitat loss for native plants and animals; and
 - d) Reduce the risk of fires, floods, and other natural disasters.

SECTION 10. BIENNIAL REPORT.

The Department, after consultation with the advisory committee, shall prepare and submit a biennial report to the legislature that contains the following information regarding the Natural Resource Trust:

- 1. Programs established by the Natural Resource Trust, including an analysis of the effectiveness of such programs;
- 2. Financial assistance payments to participating landowners;
- 3. Revenues received by the Natural Resource Trust Fund; and
- 4. Expenditures made from the Natural Resource Trust Fund.