

New Director Orientation

2021



**OREGON
DEPARTMENT OF
AGRICULTURE**

Housekeeping

- Please mute your microphone and/or telephone.
- The session will be recorded.
- I am not a lawyer – this is not legal advice.
- Feel free to ask questions at any time via the chat box or verbally.
- This only scratches the surface of important topics.
- Recordings and reference materials available on ODA website.



Training Overview

- Who are you? ORS 568
- ODA/SWCD Program Organization – Who's Who and What We Do
- Board of Director Powers
- How do we pay for this?
- Public Meeting Law
- Public Records Law
- Ethics



ORS 568

- Primary Statute relating to formation and governance of Oregon's Soil and Water Conservation Districts
- Definitions
 - Oregon Revised Statute (ORS): Law enacted by legislative assembly of the state.
 - Oregon Administrative Rule (OAR): A directive, standard, regulation or statement of general applicability that implements, interprets, or prescribes law or policy or describes an agency's procedure or practice requirements.



ORS 568

- 568.225 Policy of the Legislature
- 568.550 General powers of board of directors
- 568.554, 580, 590, 610 5 Basic legal requirements
- 568.803 – 568.808 Bonds and tax levying authority



Who are you?

ORS 568.225 Policy

- (1) In recognition of the ever-increasing demands on renewable natural resources of the state and of the need to conserve, protect and develop such resources, it is hereby declared to be the policy of the Legislative Assembly to provide for the conservation of the renewable natural resources of the state...
- (2) It is further the policy of the Legislative Assembly to authorize soil and water conservation districts...to participate in effectuating the policy...



Oregon Dept. of Agriculture



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Organizational Chart

Created 11/6/20

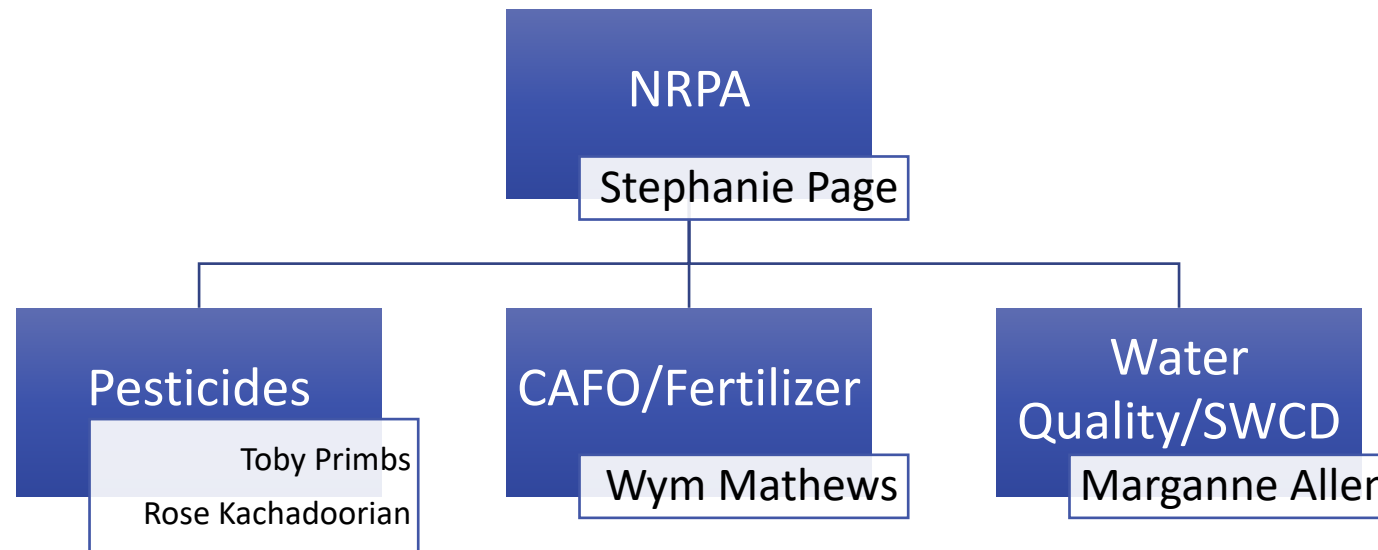


Market Access & Certification Programs Jess Paulson	Food Safety & Animal Health Programs Isaak Stapleton	Natural Resources Programs Stephanie Page	Plant Protection & Conservation Programs Helmuth Rogg
<ul style="list-style-type: none"> • Ag. Dev. & Marketing • Commodity Commissions • Farm to School • Farm Direct Nutrition • Mach. & Equip. Certification <p>Casey Prentiss</p> <ul style="list-style-type: none"> • Commodity Inspection • Specialty Crop Grants • Smoke Management <p>Susanna Pearlstein</p> <ul style="list-style-type: none"> • Certification Services • Produce Safety <p>Elizabeth Savory</p> <ul style="list-style-type: none"> • Hops/Hay/Grain Insp. • Plant Health & Lab • Seed Regulatory <p>Steven Harrington</p> <ul style="list-style-type: none"> • Metrology Lab • Motor Fuel Quality • Weights & Measures • Egg Laying Hens 	<p>Jack Noble</p> <ul style="list-style-type: none"> • Animal Identification • Predator Control <p>John Burr</p> <ul style="list-style-type: none"> • Food Processing • FDA Contracts • HACCP <p>Karel Smit</p> <ul style="list-style-type: none"> • Dairy • Shellfish Biotoxin Testing • Shellfish Plat Leasing <p>Rusty Rock</p> <ul style="list-style-type: none"> • Cannabis • Retail Food • State Meat Inspection <p>Ryan Scholz</p> <ul style="list-style-type: none"> • Animal Health & Lab • Animal Rescue • Commercial Animal Feeds • NPIP • Feeds <p>Kathleen Wickman</p> <ul style="list-style-type: none"> • Laboratory Services 	<ul style="list-style-type: none"> • Land Use <p>Marganne Allen</p> <ul style="list-style-type: none"> • Agricultural Water Quality • Soil & Water Conservation Districts • GIS Mapping <p>Rose Kachadoorian</p> <ul style="list-style-type: none"> • Pesticides Certification, Training & Registration • Pesticide Analytical & Response Center • Pesticide Stewardship <p>Toby Primbs</p> <ul style="list-style-type: none"> • Pesticide Investigations <p>Wym Matthews</p> <ul style="list-style-type: none"> • Confined Animal Feeding Operations • Fertilizers 	<ul style="list-style-type: none"> • Oregon Invasive Species Council <p>Chris Benemann</p> <ul style="list-style-type: none"> • Nursery & Christmas Tree <p>Jake Bodart</p> <ul style="list-style-type: none"> • Insect Pest Prevention & Management • Apiary <p>Tim Butler</p> <ul style="list-style-type: none"> • Hemp* • Noxious Weed Control • Weed Grants • Native Plant Conservation

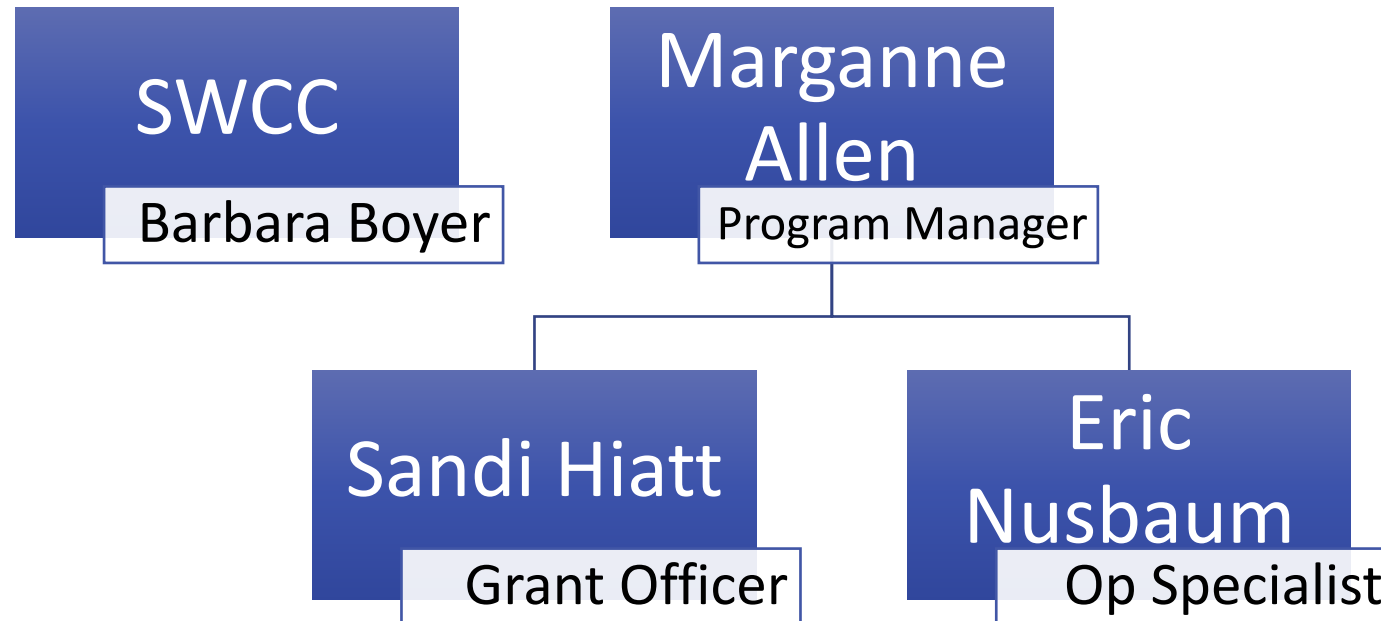


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Natural Resource Program Area



SWCD Program



SWCD Program

- Services
 - SWCD Support Grant Management
 - Coordinate Director Elections
 - Operational Technical Assistance
 - Phone, on-site
 - Trainings
 - Facilitation Services
- Oversight
 - Review Annual Work Plans and Long Range Business Plans
 - Receive Annual Reports and Financial Reports
 - Public Hearings and Approval of Boundary Changes/Mergers



Water Quality Program

- Agricultural Water Quality Management Act
- Local Management Agency/Local Advisory Committee
- Water Quality Staff
- District Capacity Grant
- Scope of Work/Focus Areas
- Strategic Implementation Areas

More in depth sessions on WQ Program:
Monday @1pm and Thursday @10am



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District Board of Directors

- Director Responsibilities
 - Fiduciary
 - Budgets
 - Financial Reports
 - *Approval of Expenses
 - Oversight
 - Performance Review of Manager/Staff
 - Approval and Monitoring of Annual Work Plan
 - Public Contracting
 - Long Range Planning
 - Develop, Approve, and Monitor Strategic Plan
 - Represent Interests of Constituents



District Board of Directors

- Director Responsibilities
 - Individual board members do not have individual powers and authorities under statute unless granted by the district board.
 - Individual board members may be given authority or power to act on behalf of the board in specific, limited tasks.



District Board of Directors

- Director Responsibilities
 - Power is granted through board action (resolution, motion, policy, etc.) and must be recorded in the minutes.
 - Examples:
 - Staff supervision
 - Obligation of district funds
 - Serving as a district spokesperson for public presentations, media, etc.
 - Managing projects
 - Obligating or committing district staff time or other district resources
 - Signing documents



District Board of Directors

- Relationship to Employees
 - Direct or Delegated Supervision of Employees
 - Personnel Committee, Individual Board Member, Manager
 - Does not preclude communication between board members and employees.
 - Supervision vs. Providing/Requesting Information



District Board of Directors

- Liability (generally...but I'm not a lawyer)
 - Board as a whole is covered by your liability insurance (check with carrier for details).
 - In lawsuits, individually named board members are folded into lawsuit against the district (Corporate Shield).
 - “Willful neglect” or “dereliction of duty” removes individual protections and possibly liability insurance coverage.



5 Basic Legal Requirements

1. Annual Work Plan
2. Long-Range Plan
3. Annual Meeting and Notice
4. Annual Report
5. Annual Financial Report



Funding, Reports and Due Dates

- District Capacity Grant
 - Operations
 - Scope of Work/Focus Area/Technical Assistance
- Quarterly Reports – *Due 15th of 1st month of each quarter.*
 - *Financial*
 - *SOW/Focus Area Task Reporting*
- End of Year Reports - *Due July 15th.*



Funding, Reports and Due Dates

- Financial Review or Audit – *Due December 31st to Secretary of State and ODA*
- Annual Report – *Due June 30th to ODA*
- Annual Meeting - *No set timetable*
 - Must be timed to present Annual Report and Audit
 - Must be properly noticed (a different procedure than noticing regular meetings).



Public Meeting Law

- Definition of “Public Meeting”
 - Convening of governing body
 - Deliberate to make a decision or deliberate toward a decision
 - Quorum required to make a decision
 - Official actions must be taken by open public vote
- Right of public to attend public meetings does not include the right to participate by giving testimony or comment except in certain cases.



Public Meeting Law

- Do advisory boards, committees, subcommittees, task forces, etc. have to comply with Public Meeting Laws?
 - YES: If group has been given authority by the board to make recommendations to the board, make decisions on behalf of the board, or provide the board with information leading to a decision of the board.
 - NO: If group only provides information not leading to any decision of the board.
- Does not matter who is on the committee if it is appointed by the board.



Public Meeting Law

- Quorum
 - ORS 174.130 defines quorum as a majority, and ORS 568.570 states a majority constitutes a quorum.
 - Majority of board positions must be present, whether or not all positions are filled.
 - Majority vote of **ALL** members of a board must occur in order to make a decision
 - Three Yes votes for five member boards regardless of attendance.
 - Four Yes votes for seven member boards regardless of attendance.

Public Meeting Law

- Meeting Notices

- A meeting without a proper notice is a violation of Public Meeting Law
- Requirements
 - Time and place of meeting.
 - List of principle subjects anticipated to be discussed (agenda). Does not have to be detailed.
 - No set time to notice, but needs to be far enough in advance to give interested persons an opportunity to attend. *Special and Emergency meetings have own noticing requirements (refer to District Guide Book or AG Manual)*
 - Must give notice to those who have stated in writing they wish to be notified of every meeting.



Public Meeting Law

- Meeting Notices
 - Requirements (continued)
 - The notice of any meeting that will include an executive session must state that the executive session is not open to the public and include the statutory reason why it is not.
 - Examples of posting notices
 - Local media representative
 - Press release (not responsible if not published)
 - Mailing and/or interested parties list
 - Notice boards (not sufficient on its own)
 - Website (not sufficient on its own)



Public Meeting Law

- Executive Sessions

- A meeting that is closed to certain persons or organizations for the purpose of discussing sensitive matters.
 - Some examples:
 - To discuss employment of public officers, employees or agents.
 - Discuss discipline public officers or employees
 - Discuss performance evaluations
 - Discuss exempt public records
 - Consulting with legal counsel



Public Meeting Law

- Executive Sessions

- Chair must announce the statutory authority for the executive session before going into executive session.
- News media must be allowed to attend, but are barred from disclosure of discussion unless the board discusses matters outside the scope of the session.
- Minutes are required, but they may be kept in form of sound tape recording.
- If an employee requests a public session for performance evaluation or discipline matters, the meeting must be held in public.
- Board may not reach a final decision in executive session. The board must go to public session to act formally on any matter.



Executive Session

- Violation of Executive Session laws are investigated by Oregon Government Ethics Commission.
- Civil penalties for violations given to individual board members.

More detailed sessions at 9am Friday Feb. 19th and 6pm Wednesday Feb. 24th.



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Public Meeting Law

- Minutes

- *Written* minutes must be provided of all meetings

- Contents

- All members present
- All motions, proposals, resolutions, orders, ordinances, and measures and their disposition.
- The result of all votes and the vote of each member by name.
- The substance of any discussion on any matter (need not be detailed).
- A reference to any document discussed at the meeting (subject to public records law).



Public Meeting Law

- Minutes

- Minutes of executive session should be kept separate from minutes of public meetings.
- District minutes must be retained permanently.
- Distribution
 - Those requesting in writing the minutes



Public Records Law

- ORS 192.410: *Every person has the right to inspect any public record of a public body of this state, except as otherwise expressly provided by ORS 192.501 to 192.505.*
- “Any public record of a public body”
 - “Public record” includes any “writing” containing information relating to conduct of public business.
 - That is prepared, owned, used or retained by a public body.
 - Regardless of physical form or characteristic (electronic and email included).



Public Records Law

- Email between directors (relating to district business), between office and directors, from office is included and should be retained.
- Text Messages and Voice Mail
- Use of personal devices and email makes them discoverable.
- Records Retention Policy



Public Records Law

- Public Records Requests
 - Need to have Public Record Request policy
 - Include fee structure and custodial information
 - Need to know exemptions
 - If in doubt, get legal counsel
 - Most exemptions are conditional
 - Addresses, telephone numbers, and dates of birth of elected officials are not exempt unless the individual demonstrates that personal safety is in danger.



Ethics

- Who is covered?
 - All “public officials” are subject to ORS Chapter 244 Code of Ethics.
 - *Public Officials* include elected officials, employees, agents and certain volunteers.
 - “Relatives”, “members of the household” and “businesses with which you are associated” are also subject to the Code of Ethics.
- Who is a relative?
 - Spouse
 - Your children or spouse’s children
 - Siblings
 - Your parents and spouse’s parents
 - Any person for whom you have a legal support obligation
 - Person benefitting from a public official when benefits come from employment
 - Person who provides benefits to public official when benefits come from employment



Ethics

- Prohibited use of position:
 - ORS 244.040(1) provides that “a public official may not use or attempt to use official position or office to obtain **financial gain or avoidance of financial detriment** for the public official, a relative or member of the household of the public official, or any business with which the public official or relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would **not otherwise be available but for the public official’s holding of the official position or office.**”



Ethics

- Exceptions
 - Official compensation package;
 - “Honorarium” up to \$50;
 - Reimbursement of expenses;
 - Unsolicited award for professional achievement;
 - “Gifts” from sources that have an “administrative or legislative interest” up to \$50 per calendar year;
 - “Gifts” from sources with no legislative or administrative interest, in an unlimited amount;
 - “Gifts” that fall within ORS 244.020(6) gift exception; and
 - Contributions to a legal defense trust fund.



Ethics

- Additional Prohibitions
 - Public officials may not solicit or receive promise of future employment based on decisions made or actions taken/not taken.
 - Public officials may not use confidential information obtained for personal gain.
 - If the public official has an “actual” or “potential conflict of interest”



Ethics

- Conflict of Interest
 - Public employees must notify appointing official in writing of conflict. District should have a policy!
 - Board members:
 - For potential conflict of interest, must announce publically the nature of the potential conflict prior to taking any action.
 - For an actual conflict of interest must announce publically the nature of the conflict and refrain from participation in any discussion, debate or vote on the issue.



Ethics

- Actual Conflict of Interest
 - “Actual conflict of interest” means “any action or decision or recommendation by a person acting in a capacity of a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or person’s relative or any business with which the person or relative of the person is associated.”
 - Examples of actual conflicts of interest
 - Voting on issuing a contract for services provided by a company owned by a relative.
 - Voting on possible discipline or a raise for a business partner or relative.

Ethics

- Potential Conflict of Interest
 - “Potential conflict of interest” means “any action or decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated.”



Ethics

- Conflict of interest exceptions:
 - An interest/membership in a particular business, industry or occupation required by law as a prerequisite to holding position;
 - Any action or issue that would affect to the same degree others in the same class; or
 - Membership in/member of board of directors of a 501(c) nonprofit
 - “If any public official’s vote is necessary to meet a requirement of a minimum number of votes to take official action, [they are] eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which an actual conflict arises.”



Who is?

- Special Districts Association of Oregon - SDAO
 - Provide services to special districts in Oregon
 - Insurance, Training, Financial Services
- Oregon Association of Conservation Districts – OACD
 - Membership organization that represents and supports Oregon’s SWCDs.
- Oregon Conservation Education and Assistance Network – OCEAN
 - Provides SWCD employees with capacity building, education, and professional development.
- Network of Oregon Watershed Councils – NOWC
 - Supports the work of Oregon watershed councils.
- Oregon Watershed Enhancement Board – OWEB
 - Oregon government agency that provides grants for watershed health.



Resources and Training

- SWCD Program Staff (Marganne, Sandi, Eric)
- SWCD Program Website
- District Guidebook
- ODA, OCEAN and OACD email lists
- Special Districts Association of Oregon
- Manuals and Guides (Attorney General, BOLI, OSHA, Oregon Government Ethics Division/OACD Personnel Management Handbook)



Thank you!

- Questions?

Eric Nusbaum

Operations Specialist

enusbaum@oda.state.or.us

503-510-8930

oregon.gov/oda



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