



Oregon

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Agenda Item I supports OWEB's Strategic Plan priority # 5: The value of working lands is fully integrated into watershed health.

MEMORANDUM

TO: Oregon Watershed Enhancement Board
FROM: Meta Loftsgaarden, Executive Director
Eric Williams, Grant Program Manager
SUBJECT: Agenda Item I-1 – Oregon Agricultural Heritage Program (OAHF) Rules
January 15-16, 2019 Board Meeting

I. Introduction

The Oregon Agricultural Heritage Commission (OAHF) was established by law in 2017 to provide voluntary tools to protect and enhance working lands while maintaining or enhancing valuable fish and wildlife habitat and other natural resource values. The OAHF is nested under the Oregon Watershed Enhancement Board, and is tasked with developing program administrative rules for board adoption governing the grant programs authorized by statute. This includes grants for succession planning, developing and implementing conservation management plans, purchase of conservation easements and covenants, and technical assistance. This item requests board approval of OAHF rules.

II. Background

The OAHF was appointed by the board on January 31, 2018, and held the first of eight public meetings to develop program rules on February 1, 2018. In June 2018, the OAHF released a draft set of program rules for public comment. Two public hearings were held, and in order to accommodate comments from boards and commissions who meet quarterly, the public comment period was extended through October 5, 2018. At its November 1, 2018 meeting, the OAHF developed responses to public comments and approved a revised version of the recommended program rules, which were posted for additional public comment. The OAHF received limited additional comments, made minor technical changes, and forwarded the proposed rules to the board for approval.

III. Rule Content

The proposed rules include five divisions, as follows:

OR 698-005 Administration, including provisions applicable to all programs;

OR 698-010 Conservation Management Plans, including eligibility, plan components, evaluation criteria, and technical review for grants developing or implementing conservation management plans;

OAR 698-015 Working Land Conservation Covenants and Easements, including eligibility, application requirements, evaluation criteria, technical review, public involvement, and compliance requirements for grants to purchase conservation covenants and easements;

OAR 698-020 Working Land Technical Assistance Grants, which provide assistance to organizations that enter into conservation management plan agreements or that acquire working land covenants or easements; and

OAR 698-025 Succession Planning Grants, which help ensure the continued use of working lands for agricultural purposes when the land changes ownership.

With the rules in place, the OAHC will be poised to begin grant-making when funding is available.

IV. Public Comment and Response

In all, the OAHC received 157 comments from 17 entities. The comments resulted in significant revisions to the initial draft rules. Comments and OAHC responses to each comment are summarized in Attachment F.

V. Recommendation

Staff recommend the board adopt the administrative rules as revised by public comment and recommended by the OAHC.

Attachments

- A. OAR 698-005 Administration
- B. OAR 698-010 Conservation Management Plans
- C. OAR 698-015 Working Land Conservation Covenants and Easements
- D. OAR 698-020 Working Land Technical Assistance Grants
- E. OAR 698-025 Succession Planning Grants
- F. Summary of Public Comments

Division 005
Oregon Agricultural Heritage Program Administration

698-005-0010

Purpose

These rules guide the Oregon Agricultural Heritage Commission and the Oregon Watershed Enhancement Board in fulfilling their duties in administering the Oregon Agricultural Heritage Program (OAHP) under the provisions of ORS 541.977-ORS 541.989. The OAHP includes grants for conservation management plans, working land conservation covenants and easements, technical assistance, and succession planning.

The purpose of OAHP is to contribute to the public benefits of:

- 1) Increased economic viability of Oregon's agricultural operations and economic sector;
- 2) Reduced conversion and fragmentation of Oregon's working land; and
- 3) Enhanced fish or wildlife habitat, water quality, and other natural resources on Oregon's working land.

698-005-0020

Definitions

- 1) "Agricultural landowner or operator" means a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a farm or ranch.
- 2) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.
- 3) "Commission" means the Oregon Agricultural Heritage Commission created under ORS 541.986.
- 4) "Conservation management plan" means specific actions planned for working lands to improve or maintain the agricultural and natural resource values. A conservation management plan is independent of a working lands covenant or easement.
- 5) "Conservation management plan holder" means an entity that is eligible to hold a conservation management plan that is or would be responsible for developing, implementing, monitoring or enforcing the agreement under an OAHP grant agreement.
- 6) "Conversion":
 - a. "Conversion" means:
 - i. Cessation of accepted farming practices;
 - ii. Construction of dwellings not occupied by farm operators or workers or other structures not related to agriculture;
 - iii. Removal of infrastructure required for accepted farming practices unless necessary to accommodate a change in accepted farming practices; or
 - iv. Cancelling or transferring rights to use water for irrigation in a manner that reduces the long-term viability of agriculture on the working land.

- b. As used in this definition, “accepted farming practices” shall have the meaning set forth in ORS 215.203(2)(c)
- 7) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director’s designee.
 - 8) “Farming and ranching” means “farm use” as defined in ORS 215.203(2).
 - 9) “Fragmentation” means the division of a working farm or ranch, or the isolation of a farm or ranch from other agricultural operations and/or from the agricultural infrastructure necessary to bring farm products to their appropriate markets.
 - 10) "Grant agreement" means the legally binding contract between the Board and the grant recipient in which the Board is not substantially involved in the funded program or activity other than involvement associated with monitoring compliance with the grant conditions. It consists of the conditions specified in these rules, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.
 - 11) “Grantee” means an organization or individual that is awarded a grant under one or more of OAHP’s grant programs.
 - 12) “Management plan” means a description of the stewardship, monitoring, and uses of working land intended to carry out the purposes of a working lands easement or covenant.
 - 13) "OWEB" means the Oregon Watershed Enhancement Board state agency.
 - 14) "Technical committee” means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.
 - 15) “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 engagement in “farm use” as defined in ORS 215.203(2).
 - 16) “Working land conservation covenant” means a nonpossessory interest in working land for a fixed term that imposes limitations or affirmative obligations for the purposes that support the use of the land for agricultural production and for the maintenance or enhancement of fish or wildlife habitat, water quality or other natural resource values.
 - 17) “Working land conservation easement” means a permanent nonpossessory interest in working land that imposes limitations or affirmative obligations for purposes that support the use of the land for agricultural production and for the maintenance or enhancement of fish or wildlife habitat, water quality or other natural resource values.

698-005-0030

Application Requirements

- 1) Applications must be submitted on the most current form. Current applications will be made available on the OWEB website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the

information required in the application, an applicant may submit additional information that will aid the Commission in evaluating the project.

- 2) All applicants for Oregon Agricultural Heritage Program grants shall supply the following information:
 - a. Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s);
 - b. Name and address of participating agricultural landowners or operators;
 - c. Name and location of the proposed project. For conservation management plan and easement/covenant projects the location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, stream, or stream mile, as appropriate;
 - d. Estimated line item budget for the project using the most current budget form prescribed by the Commission. Current budget forms are available on the OWEB website;
 - e. Identification of specific project elements for which OAHP funds will be used;
 - f. A description of any non-OAHP funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;
 - g. If the project is part of a multi-year project, and a new funding request continues a previously Commission-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;
 - h. Identification of volunteers and partners (if any) and the contribution they will make to the project;
 - i. A project schedule, including times of project beginning and completion; and
 - j. Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.
- 3) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline.

698-005-0040

Application Processing

- 1) Project applications will be reviewed based on application completeness and the evaluation criteria adopted by the Board for each grant type in these rules.
- 2) The Commission may require additional information to aid in evaluating and considering a proposed grant project.

698-005-0050**Grant Agreement Conditions**

- 1) The Board will enter into new grant agreements with prior grantees only if all reporting obligations under earlier agreements have been met.
- 2) If the grant agreement has not been fully executed by all the parties within one year of Board approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board.
- 3) The Director shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions.
- 4) The grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be completed under the agreement.
- 5) Upon notice to the grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board.
- 6) The grantee will account for funds distributed by the Board, using project expense forms provided by OWEB.
- 7) The grantee will obtain all necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy of each permit or license to the Board.
- 8) The Board may place additional conditions in the grant agreement as necessary to carry out the purpose of the program, including:
 - a. An enforceable agreement by the agricultural landowner or operator for continued access by OWEB and its designees for monitoring the project after completion;
 - b. An enforceable agreement by the grantee to maintain the project for a period of time commensurate with the project approved by the Board;
 - c. An enforceable agreement to supply future reports on the project as required; and
 - d. Such other conditions as the Board deems appropriate to the particular circumstances of the project.
- 9) Rules and conditions in place at the time the grant is awarded shall govern throughout the term of the project unless changes are mutually agreeable to all parties.

698-005-0060**Use of Restricted Funding**

The Board may accept contributions to the Oregon Agricultural Heritage Fund from any public or private source and may agree to any conditions for the expenditure of those contributions that are consistent with the purpose of the fund as specified in ORS 541.977 – ORS 541.989.

698-005-0070**Distribution of Funds**

- 1) The Director may withhold payments to a grantee if there are significant and persistent difficulties with satisfying Board requirements.
- 2) Funds will be released upon presentation of a completed fund release request form accompanied by documents as determined by the Director, and proof of completion of specific work elements of the project as identified in the grant agreement.
- 3) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to the Commission. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director.

698-005-0080**Funding Decision Reconsideration by Board**

In the event that the Director determines a grantee has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The grantee will be provided a copy of the written determination. The conditionally encumbered grant funds will remain encumbered until the Board either affirms the Director's determination or authorizes the continued encumbrance of all or part of the funds in accordance with a modified decision of the Board.

Division 698-005-0090**Technical Committees**

In addition to technical committees established by the Commission to rank and evaluate conservation management plan and working land conservation covenant and easement grant applications, the Commission may establish any technical committees it considers necessary to aid and advise the Commission in the performance of its functions, in compliance with ORS 541.988(2).

698-005-0100**Waiver and Periodic Review of Rules**

The Director may waive the requirements of Division 005 unless required by statute, when doing so will result in more efficient or effective implementation of the Oregon Agricultural Heritage Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 010 Conservation Management Plans

698-010-0010

Purpose

The purpose of a conservation management plan as defined in OAR 698-005-0020(4) is to develop and implement conservation measures or other protections for maintaining or enhancing fish or wildlife habitat, water quality or other natural resource values in a manner consistent with the social and economic interests and abilities of the agricultural landowner or operator. The plan may include provisions for addressing particular priorities related to natural resource values, including but not limited to soil, water, plants, animals, energy and human need considerations.

The Conservation Management Plan Grant Program funds the development, implementation, and monitoring of conservation management plans (plans) entered into by agricultural landowners or operators and conservation management plan holders to manage working land in a manner that contributes to the purpose of OAHP in OAR 698-005-0010.

698-010-0020

Definition

- (1) "Mutual Modification" means a change to a conservation management plan that is:
 - a. Material to the plan as defined in Section 0120(5); and
 - b. Agreed to by the agricultural landowner or operator implementing the plan and the conservation management plan holder.
- (2) "Project" means the aggregate of eligible activities included in Section 0060 that comprise an application.

698-010-0030

Eligibility

- 1) Eligible applicants for Conservation Management Plan Grants are:
 - a. Entities eligible to hold a conservation easement as defined in ORS 271.715, other than a state agency;
 - b. Watershed councils; and
 - c. Not-for-profit organizations other than a state agency.
- 2) Individual agricultural landowners or operators are not eligible to apply for a Conservation Management Plan Grant.

698-010-0040

Application

Conservation Management Plan Grant applications shall:

- (1) Be consistent with OAR 698-005; and

- (2) Include the duration and any terminating events for the plan.

698-010-0050

Match Contributions

- 1) All applicants shall demonstrate that some portion of the proposal is being sought as match.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-010-0060;
 - b. Funding commitments made by others as a result of grant applicant efforts; and
- 3) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

698-010-0060

Conservation Management Plan Activities

- 1) Funding may be utilized to develop, implement, carry out or monitor conservation management plans.
- 2) If there is a stream on the project:
 - a) The planning process must present the agricultural landowner or operator with alternatives that address the local Agricultural Water Quality Management Area Plan goals in place at the time of plan preparation.
 - b) If the program pays for plan implementation, the selected alternative must address the local Agricultural Water Quality Management Area Plan goals at the time of plan implementation.

698-010-0070

Term of Payment for Conservation Management Plan Implementation

- 1) If an agricultural landowner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of at least 20 years and no more than 50 years.
- 2) If a plan is associated with a working land conservation covenant that would also be funded by OAHP, the term of the plan must be the same as the term of the covenant.

698-010-0080

Conservation Management Plan Components

At a minimum, conservation management plans must include:

- (1) A summary describing how the conservation management plan meets OAHP's purpose;
- (2) The contact and location information for the agricultural landowner or operator and conservation management plan holder;

- (3) Relevant background and context of the working land and operation;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural landowner or operator;
- (6) Resource analysis and identification of resource and management concerns;
- (7) Identification of potential plan activities and a justification for the activities that were selected for implementation;
- (8) The implementation plan, including a budget;
- (9) If applicable, a maintenance plan for infrastructure associated with the plan that may affect neighboring lands if not maintained over time;
- (10) The expected agricultural, fish or wildlife, water quality or other natural resource outcomes, and related social outcomes of the plan once implemented;
- (11) How the conservation management plan will be evaluated and managed;
- (12) A conflict resolution protocol for the agricultural landowner or operator and the conservation management plan holder if the grant program would fund the implementation of the plan; and
- (13) The term of the plan.

698-010-0090

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the conservation management plan(s).
- 2) The extent to which implementation of the plan(s) would protect, maintain, or enhance farming or ranching on working land, including how implementation of the plan(s) would:
 - a) Maintain or improve the economic viability of the operation; and
 - b) Reduce the potential for future conversion or fragmentation of the property and surrounding working land
- 3) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, water quality, or other natural resource values by:
 - a) Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality, or other natural resource values;
 - c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land subject to the plan;

- d) Protecting, maintaining, or improving water quality or quantity; and
 - e) Sustaining ecological values, as evidenced by the conservation management plan or inherent site condition.
- 4) The extent to which implementation of the plan(s) would protect, maintain or enhance significant agricultural outcomes, benefits, or other investment gains, including the regional significance of the agricultural operation, or its suitability based on soils, slope, location or other relevant factors.
 - 5) The capacity and competence of the prospective conservation management plan holder to enter into and (if implementation funding is awarded) monitor and carry out implementation of a conservation management plan, including:
 - a) The financial capability to manage the plan(s) over time;
 - b) The demonstrated relevant commitment, expertise, and track record to successfully develop, implement, carry out, and monitor plan(s); and
 - c) The strength of the conservation management plan holder as measured by effective governance.
 - 6) The extent to which the benefit to the state may be maximized, based on:
 - a) The ability to leverage grant moneys from other funding sources;
 - b) The duration and extent of the conservation management plan, with a preference for longer term agreements if implementation funding is awarded; and
 - c) The potential for setting an example that will encourage additional working land projects.
 - 7) The impacts of plan implementation on owners or operators of neighboring lands, including:
 - a) A plan for communicating with neighboring owners and operators once a conservation management plan is ready to be implemented about how to mitigate potential impacts; and
 - b) A maintenance plan for infrastructure that may impact neighboring lands if not maintained over time.
 - 8) The level of threat of conversion or fragmentation of the working land.

698-010-0100

Technical Review and Funding Process

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application and technical review team expertise about the area and the project. The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.
- (2) Applications shall be evaluated according to criteria described in OAR 698-010-0090.

- (3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement.
- (4) The technical committee(s) shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.
- (5) The Commission shall review and consider the recommendations of the technical committee(s) and consult with the Board concerning grant applications.
- (6) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (7) The Board approves Conservation Management Plan Grants. The Board may fund a grant application in whole or in part.

698-010-0110

Grant Agreement Conditions

- (1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural landowner(s) or operator(s) to the roles and responsibilities under the conservation management plan.
- (2) All conservation management plan grant agreements for conservation management plan development authorized by the Board shall have a clause that requires the retention of up to 10 percent of project funds until the final report, as required in the grant agreement, has been approved. Any unexpended program funds must be returned to the Commission.
- (3) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed amendments are submitted and approved by the Director prior to the beginning of any work proposed in the amendment.
- (4) The Director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.
- (5) All changes to the conservation management plan must be reflected in writing and provided to the Commission.

698-010-0120

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Any changes to conservation management plans must achieve the same or greater level of benefits as the original plan, as evaluated by the criteria in OAR 698-010-0090.
- (2) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.

- (3) Any change in the conservation management plan must be mutually agreed to by both the agricultural landowner or operator and the conservation management plan holder.
- (4) To ensure consistent review of all conservation management plans, the conservation management plan holder and the agricultural landowner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.
- (5) The agricultural landowner or operator must contact the conservation management plan holder immediately if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:
 - (a) Changes in management or ownership of the property;
 - (b) Changes in the grazing or cropping system(s) not identified in the plan. For changes in grazing or cropping systems, the landowner must notify the conservation management plan holder in advance;
 - (c) A natural disaster occurs that will impact implementation of the conservation management plan; or
 - (d) Other changes that are outside the agricultural landowner's or operator's control.
- (6) The conservation management plan holder must contact the agricultural landowner or operator if changes in site conditions significantly affect the expected outcomes of conservation management plan implementation.
- (7) Modifications to the plan may include:
 - (a) The addition of new conservation practices, measures or benefits; or
 - (b) Changes to practices, measures, or benefits in response to:
 - i. Changes in management approaches based on new scientific understanding of expected outcomes;
 - ii. Changes in management or ownership of the working land;
 - iii. Changes in the grazing or cropping system;
 - iv. A natural disaster; or
 - v. Other changes outside the agricultural landowner's or operator's control.

698-010-0130

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) Notwithstanding (2), the conservation management plan holder must conduct at least one site visit to the property every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the implementation of the conservation management plan.
- (2) The agricultural landowner or operator and the conservation management plan holder may agree to establish specific monitoring protocols and site visit intervals more

frequent than once every three years to identify trends in fish or wildlife habitat, water quality or other natural resource values, and must establish protocols if a modification of the conservation management plan results in specific monitoring or site visit needs. Protocols must be in writing and agreed to by both the agricultural landowner or operator and the conservation management plan holder. The Commission may provide guidance for consistent monitoring protocols.

- (3) The Commission or its designees may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. The agricultural landowner or operator shall allow site access to the Commission, OWEB, or their contractors or representatives upon reasonable notification by the Commission.
- (4) The Commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

698-010-0140

Grant Reporting Requirements

- 1) For grants that include funding for conservation management plan implementation:
 - a. At least once per year, the agricultural landowner or operator must meet with the conservation management plan holder and provide this holder with a written report of the conservation management plan activities completed that year on a form approved by the Commission. Reports may also include photo points or other methods that appropriately track plan implementation.
 - b. Annual reporting must identify any mutual modifications to the conservation management plan.
 - c. Reports must be submitted to the Commission on a date set by the Commission.
- 2) Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date specified in the grant agreement.
- 3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved, the final payment shall be promptly processed.

698-010-0150

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 010 unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The

administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

DIVISION 015

Working Land Conservation Covenants and Easements

698-015-0010

Purpose

The purpose of a working land conservation covenant or easement is to preserve and protect the continued use of a working land for agricultural purposes, and maintain or enhance fish or wildlife habitat, water quality, or other natural resource values on the land.

Covenants and easements funded under this program:

- 1) Must contribute to the public benefits in OAR 698-005-0010; and
- 2) Must provide for carrying out a purpose of a conservation easement, as defined in ORS 271.715.

698-015-0020

Definitions

- 1) “Project” means the aggregate of eligible activities included in sections 0060 and 0070 that comprise an application.
- 2) “Stewardship” means monitoring, maintaining, managing, and improving land protected by an easement or covenant, including providing signage, controlling access, providing enforcement actions and resolving violations.
- 3) “Stewardship fund” means a restricted fund that is used to cover the holder’s long-term costs for stewardship of the land protected by the covenant or easement and payment of taxes and insurance associated with that land. If the funding source allows investment of stewardship funds, funds may be used for investment management costs. Stewardship funds may not be used for overhead or indirect costs.

698-015-0030

Eligible Applicants

Eligible applicants for Working Land Conservation Covenant and Easement Grants are holders as defined in ORS 271.715 other than state agencies. Individual owners of working land are not eligible to apply for a Working Land Conservation Covenant and Easement Grant.

698-015-0040

Eligible Properties

Eligible properties for Working Land Conservation Covenant and Easement Grants are working lands as defined in ORS 541.977(2).

698-015-0050

Application

- 1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications to acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations.
- 2) Working Land Conservation Covenant and Easement Grant applications shall:

- a. Be consistent with OAR 698- 005;
 - b. Be submitted on the most current form and process prescribed by the Commission;
 - c. State the amount and type of match contribution; and
 - d. If the application is for a covenant, include the duration of the covenant.
- 3) If the covenant is identical in duration to a conservation management plan for the working land that is funded by the OAHP Conservation Management Plan Grant Program, the covenant must refer to the conservation management plan in the text of the covenant.
 - 4) If there is a stream on the project, the covenant or easement application shall describe how either the easement or the management plan and associated monitoring addresses the local Agricultural Water Quality Management Area Plan goals. Easement monitoring shall include any riparian monitoring identified in the application.
 - 5) If a pre-existing or new conservation management plan is proposed as part of an application for a covenant or easement under this program, the proposed plan must be agreed to by the landowner, applicant, and commission before closing.
 - 6) The Commission may consider proposals that are received for covenants or easements that were acquired by the applicant after the previous application deadline.

698-015-0060

Match Contributions

- 1) All applicants shall demonstrate that at least 25% match is being sought, based on the total OAHP grant request for the covenant or easement project.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-015-0070;
 - b. Funding commitments made by others as a result of grant applicant efforts;
 - c. A donated portion of a sale; and
 - d. Funds deposited in a stewardship fund before the time that OWEB funds are released for acquisition of the covenant or easement.
- 3) The OWEB Director retains the discretion to determine whether specific proposed match contributions not specifically identified above can be recognized as qualifying match.

698-015-0070

Use of Grant Funds

Working Land Conservation Covenant and Easement Grant funds may be applied towards costs related to purchasing, implementing, holding, monitoring, stewarding, or enforcing the covenant or easement, including:

- 1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
 - a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if

required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.

- b. The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-015-0070 (1)(a);
- 2) The interest on bridge loans needed to secure closure on the property prior to when funding will be available for distribution through the program;
- 3) The staff costs incurred as part of the covenant or easement acquisition process related to the property;
- 4) The cost of due diligence activities, including appraisal, environmental site assessment, survey, title review, and other customary due diligence activities;
- 5) The cost of baseline inventory preparation;
- 6) The legal fees incurred;
- 7) The closing fees, including recording and title insurance costs;
- 8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a conservation management plan approved by the Director; and
- 9) Up to 50% match for the value of a stewardship fund, but program funds contributed to a stewardship fund may not exceed 5% of the total appraised value of the covenant or easement.

698-015-0080

Terms of Covenants and Easements

- 1) A working land conservation easement shall last in perpetuity.
- 2) A working land conservation covenant shall last for a term of no less than twenty and no more than fifty years.
- 3) The covenant term shall be set at 12-month increments only and not partial years.
- 4) The first day of the term of a covenant shall be the date that both of these events have occurred:
 - a. The covenant holder and the owner of working land conveying the covenant sign the agreement; and
 - b. The owner of working land has received Working Land Conservation Covenant and Easement Grant funding from this program for the covenant.

698-015-0090

Evaluation Criteria

Working Land Covenant and Easement Grant applications will be evaluated on:

- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the working land conservation covenant or easement.
- 2) The extent to which the working land conservation covenant or easement would protect, maintain, or enhance farming or ranching on regionally significant working land, including:

- a) Reducing the potential for future conversion or fragmentation of the property and surrounding working land;
 - b) Maintaining or enhancing the ability of the land to be in productive agricultural use after the covenant or easement is in place;
 - c) The potential viability of the property for agriculture; and
 - d) Improving or maintaining the economic viability of the operation, including future transfer of ownership.
- 3) The extent to which the covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, water quality or other natural resource values by:
- a) Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality or other natural resource values;
 - c) Protecting, maintaining, or improving the quality and connectivity of wildlife habitat on and around the working land;
 - d) Protecting, maintaining, or improving water quality and/or quantity; and
 - e) Implementing a management plan that is likely to sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition.
- 4) The extent to which the covenant or easement would protect, maintain or enhance significant agricultural outcomes, benefits or other agricultural or conservation values important to the region, including:
- a) The parcel's contribution to long-term conservation of the region's agricultural land base; and
 - b) The regional significance of the agricultural operation, or its suitability based on soils, slope, location or other relevant factors, and its associated infrastructure.
- 5) The capacity and competence of the applicant and the proposed easement or covenant holder to purchase, accept, implement, hold, monitor, steward, and enforce a working land conservation covenant or easement, including:
- a) Accreditation from the Land Trust Accreditation Commission, or implementation of standards and practices that are similar to an organization that is eligible for accreditation;
 - b) Inclusion of working land preservation in the organization's mission, vision or other organizational documents;
 - c) The financial capability of the organization to steward conservation covenants and easements over time;
 - d) Demonstrated relevant commitment, ability, expertise, and track record to purchase, accept, implement, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and

- e) The strength of the organization as measured by effective governance.
- 6) The extent to which the benefit to the state from the investment may be maximized, based on:
 - a) The ability to leverage grant moneys with other funding sources;
 - b) The duration and extent of the agreement, with a preference for longer term agreements;
 - c) The cumulative effect of similar conservation or agricultural investments in the community, including other OAHF funded plans, covenants, or easements;
 - d) Consistency with local comprehensive plans and statewide planning goals;
 - e) The potential for setting an example that will encourage additional working lands projects in the region; and
 - f) The existence and implementation of a conservation management plan.
- 7) The impacts of the covenant or easement or the associated conservation management plan on owners or operators of neighboring lands, and the extent to which there is a plan of engagement with neighboring landowners about how to mitigate any impacts resulting from the covenant or easement, if necessary.
- 8) The level of threat of conversion or fragmentation of the working land.
- 9) The soundness of the legal and financial terms of the proposed real estate transaction.

698-015-0100

Technical Review and Funding Process

- (1) The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission
- (2) Applications shall be evaluated according to criteria described in OAR 698-015-0090.
- (3) The Commission shall review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.
- (4) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (5) The Board approves Working Land Conservation Covenant and Easement Grants. The Board may fund a grant application in whole or in part.

698-015-0110

Board Approval and Delegation of Authority

- 1) The Commission shall recommend and the Board shall approve grants in accordance with guidance adopted by the Board and made available to the public.
- 2) The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grantee.

- 3) Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, unless recommended by the Commission and approved by the OWEB Board.

698-015-0120

Public Involvement

The public shall be provided with meaningful opportunities to comment on grant applications being considered by the Board or Commission. In a manner consistent with this requirement, the governing bodies of cities and counties with jurisdiction in the area of the proposed covenant or easement acquisition, as well as affected governmental agencies and tribes, will be provided with written notice of the Board's or Commission's intent to consider:

- 1) Written comments received prior to the Board or Commission meeting at which the Board or Commission will consider the application;
- 2) Comments made at public hearings held and publicized in accordance with ORS 271.735; and
- 3) Comments made at the Board or Commission meeting at which the grant application is considered.

698-015-0130

Director Funding Approval and Distribution of Funds

(1) The Director may approve the distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and the covenant or easement closing as the following conditions are met:

- a. A grant agreement is executed by the Director and the grantee that includes a signed statement of understanding and agreement to the roles and responsibilities under the working land conservation covenant or easement by the participating owner of working land;
- b. The funding conditions, if any, imposed by the Board are satisfied to the full satisfaction of the Director;
- c. The legal and financial terms of the proposed real estate transaction are approved by the Director;
- d. The required title restrictions are approved by the Director;
- e. The Director has reconciled conditionally approved funding with actual project costs;
- f. The grantee has satisfied the match requirements under OAR 698-015-0060;
- g. The Board is notified in writing of the Director's intent to hold or recover the grant funds pending Board consideration under OAR 698-015-0140(1).

(2) For grants established under these rules, the Director is authorized to reimburse the grantee for allowable costs identified in OAR 698-015-0070 and to recognize match

contributions under OAR 698-015-0060 that were incurred no earlier than 18 months before the applicable grant application deadline.

698-015-0140

Compliance and Enforcement

- 1) The ongoing use of the property encumbered by a covenant or easement that received funding from the Working Land Conservation Covenant and Easement Grant Program shall be consistent with the purposes specified in ORS 541.977-ORS 541.989. If significant compliance issues cannot be resolved to the full satisfaction of the Director, the Director, after informing the Commission and the Board and providing reasonable written notice to the Grantee, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OAHP grant funds that were used to purchase the covenant or easement, and reasonable interest and penalties at the option of the Director.
- 2) OWEB and its designees will be provided sufficient legal access to property encumbered by a covenant or easement acquired with OAHP funds, given reasonable notice, for the purpose of completing covenant or easement inspections.

698-015-0150

Grant Reporting Requirements for Covenants

Upon completion of the term of a working land conservation covenant, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

698-015-0160

Payment Relationship Between Covenants and Easements

If a working land conservation covenant is funded through the Oregon Agricultural Heritage Program and a later application is submitted to the Commission for the same property for a working land conservation easement:

- 1) If the term of the covenant has not expired, the fair market value of the easement will be reduced by a proportion equivalent to the time remaining on the covenant.
- 2) If the term of the covenant has expired, no reduction of fair market value will be taken for the subsequent easement.

698-015-0170

Subsequent Conveyances

If a covenant or easement acquired with OAHP funds is subsequently transferred, it must:

- 1) Be made subject to prior approval by the Commission; and
- 2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and OAR 698-015.

698-015-0180

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 015 unless required by statute, when doing so will result in more efficient or effective implementation of the Working Land

Conservation Covenant and Easement Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Working Land Conservation Covenant and Easement Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 020 Working Land Technical Assistance Grants

698-020-0010

Purpose

The purpose of technical assistance grants is to provide assistance to organizations that are eligible to enter into agreements resulting in conservation management plans, or that acquire or propose to acquire working land conservation covenants or working land conservation easements. Grant funding must support the public benefits in OAR 698-005-0010.

698-020-0020

Definitions

(1) "Technical assistance" means supporting the development of working land projects or programs as described in ORS 541-981 and division 010 (conservation management plans) and ORS 541-982 and division 015 (working land conservation covenants and easements).

(2) "Young or beginning farmer or rancher" means someone who has been an agricultural landowner or operator for 10 consecutive years or fewer, or an agricultural landowner or operator who is 35 years old or younger.

(3) "Socially disadvantaged farmer or rancher" means an agricultural landowner or operator who is a member of a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan natives, Hispanics, and Asians or Pacific Islanders.

(4) "Veteran farmer or rancher" means a person who served in United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof, and who was discharged or released therefrom under conditions other than dishonorable.

(5) "Limited Resource Farmer or Rancher" means an applicant with direct or indirect gross farm sales that are not more than the current indexed value in each of the previous 2 years, and who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years. An entity or joint operation can be a Limited Resource Farmer or Rancher if all individual members independently qualify.

698-020-0030

Eligibility

- 1) Eligible applicants for Technical Assistance Grants are eligible to enter into agreements resulting in a conservation management plan under division 010 or acquire a working land conservation covenant or easement under division 015.
- 2) Individual agricultural landowners or operators are not eligible to apply for a Technical Assistance Grant.

698-020-0040**Application Requirements**

Technical Assistance Grant applications shall be consistent with OAR 698-005.

698-020-0050**Technical Assistance Activities**

- 1) Technical Assistance Grant funding cannot be used to fund specific conservation management plans, working land conservation covenants, or working land conservation easements.
- 2) The Commission will only consider technical assistance projects that will lead to or are likely to lead to the development of conservation management plans, working land conservation covenants, or working land conservation easements.

698-020-0060**Evaluation Criteria**

Technical Assistance Grants will be evaluated on:

- 1) The extent to which the proposal will improve upon the ability of the entity or its partners to enter into conservation management plans, or acquire working land conservation covenants or easements.
- 2) The extent to which the outcomes of the technical assistance project would lead to activities that:
 - a. Protect, maintain, or enhance farming or ranching on working land;
 - b. Protect, maintain, or enhance significant fish or wildlife habitat, water quality, appropriate seasonal water flows, appropriate water retention, or other natural resource values;
 - c. Protect, maintain, or enhance significant agricultural outcomes, benefits, or other investment gains;
 - d. Maximize the benefit to the state based on the ability to leverage grant moneys; and
 - e. Limit negative and maximize positive impacts on owners or operators of neighboring lands.
- 3) The extent to which the applicant demonstrates a plan to engage one or more underserved populations, including young or beginning farmers or ranchers, socially disadvantaged farmers or ranchers, veteran farmers or ranchers, or limited resource farmers or ranchers.

698-020-0070**Technical Review and Funding Process**

- 1) Applications shall be evaluated according to criteria described in OAR 698-020-0060.
- 2) The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.

- 3) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff, who will review technical committee recommendations and provide funding recommendations to the Commission. If a technical committee is not used, OWEB staff will provide funding recommendations to the Commission.
- 4) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- 5) The Board approves Technical Assistance Grants. The Board may fund a grant application in whole or in part.

698-020-0080

Grant Agreement Conditions

- 1) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- 2) The Director may consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project and the proposed activity is within the same geographic area.
- 3) The Director may authorize minor changes within the scope of the original project plan.
- 4) The grantee must submit a report at completion of the project in accordance with reporting requirements described in the grant agreement.
- 5) Rules and conditions in place at the time funding for the Technical Assistance Grant is formally approved shall govern throughout the term of the project unless changes are mutually agreeable to both parties.

698-020-0090

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 020 unless required by statute, when doing so will result in more efficient or effective implementation of the Technical Assistance Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Technical Assistance Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 025 Succession Planning Grants

698-025-0010

Purpose

The purpose of succession planning is to help ensure the continued use of working lands for agricultural purposes when the land changes ownership. The Oregon Agricultural Heritage Commission may provide funding recommendations to the Oregon Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board, to provide training and support to agricultural landowners or operators or persons advising them regarding succession planning for the lands. Recommendations and grant funding must support the program purpose in OAR 698-005-0010.

698-025-0020

Definitions

- (1) "Agricultural cooperative" means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural landowners or operators.
- (2) "Succession planning" means an ongoing process for ensuring the continuation and economic viability of a business over generations of owners or operators. It may include strategies to identify, develop, and empower the next generation of owners or operators, a plan to transfer business and family assets, and arrangements for each generation's retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

698-025-0030

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Nonprofit entities,
 - (iii) Political subdivisions of the state that are not state agencies,
 - (iv) Tribes, and
 - (v) Agricultural cooperatives.
- (2) Individual agricultural landowners or operators and individual persons or business entities not listed above that are advising them are not eligible to apply for a Succession Planning Grant.

698-025-0040

Application Requirements

Succession Planning Grant applications shall:

- (1) Not require match contributions; and
- (2) Comply with Oregon Agricultural Heritage Program general grant application requirements in OAR 698-005.

698-025-0050

Eligible Activities

The following activities benefitting agricultural landowners or operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources;
- (2) Trainings on topics related to succession planning;
- (3) Development and distribution of educational materials and curriculum related to succession planning; and
- (4) Advising agricultural landowners or operators on succession planning.

698-025-0060

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR 698-005-0010;
- (2) The capacity and competence of the applicant to deliver the proposed program;
- (3) The applicant's relevant background and experience in delivering successful succession planning programs, including prior projects funded through this or other grant programs.
- (4) The cost-effectiveness of the proposed project;
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural landowners or operators in diverse geographic locations in Oregon, young or beginning farmers or ranchers, socially disadvantaged farmers or ranchers, veteran farmer or ranchers, limited resource farmers or ranchers, and participants in diverse stages of succession planning. The Commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity; and
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

698-025-0070

Succession Planning Grant Application Technical Review and Funding Process

- (1) The Commission may fund projects submitted through an open solicitation for applications, or by requesting applications from one or more specific eligible entities.

- (2) Applications shall be evaluated according to criteria in OAR 698-025-0060.
- (3) The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.
- (4) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (5) The Board may fund a grant application in whole or in part.

698-025-0080

Grant Agreement Conditions

- (1) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (2) The Director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

698-025-0090

Grant Funding Conditions

- 1) All Succession Planning Grant agreements authorized by the Board shall have a clause that requires the retention of up to ten percent of project funds until the final report, as required in the grant agreement, has been approved.
- 2) Final reports are due within 60 days of project completion. Any unexpended OAHF funds must be returned to the Commission with the final report.
- 3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval.
- 4) Once the final report has been approved the final payment shall be promptly processed.

698-025-0100

Grant Reporting Requirements

- (1) Upon project completion, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon

agricultural landowners or operators and their service providers. Evidence of this may include, but is not limited to:

- (i) The number of people who participated in the program;
 - (ii) The geographic, commodity, and other demographic indicators of participation in the program;
 - (iii) Documented improved understanding of succession planning by program participants;
 - (iv) Documented measurable changes in behavior of participants, including the percentage or number of agricultural landowners or operators who take the next step toward succession planning, complete a plan, and implement the plan;
 - (v) Documented improved understanding by participants of tools to reduce conversion or prevent fragmentation of working land, and promote economic viability and ecological sustainability of agricultural operations; and
 - (vi) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The Director or the Commission may authorize an independent performance audit of any Succession Planning Grant grantee. The Director may restrict future grant funds if the Director determines the grantee is not complying with the rules of the Succession Planning Grant Program.
- (4) In addition to project reports, the Commission may conduct program evaluations that may include:
- a. Changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning by Oregon agricultural landowners or operators;
 - b. Surveys of agricultural landowners or operators on the status of succession plans; or
 - c. Other trends in working land ownership and use.

698-025-0110

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 025 unless required by statute, when doing so will result in more efficient or effective implementation of the Succession Planning Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Rules: General Comments

Commenter(s)	Comments	OAHC Recommendation	
		Response	Rule Change
Pete Schreder ¹ , Lake County Rancher <i>Oral Comment, at Burns Hearing 7/17/18</i>	Mr. Schreder is excited about the support features for ranch succession planning, including helping the next generation update their operations and make them more productive. OAHF seems to be a good, comprehensive package of programs with menus that landowners can explore. It can help preserve conservation efforts and tie conservation back into the rural communities that are vital to supporting this work. It will be important to have regional review teams who know local agriculture to diversify projects. And it is important to have a regional contact who can explain the program to landowners and organizations so it actually gets used and is not too daunting.	Thank you for your comment. Consistent with OWEB's grantmaking process, review team membership will represent diverse geographies and areas of expertise.	N/A N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #1</i>	COLT is excited to see a new program in Oregon that is designed to protect agricultural lands from fragmentation and conversion, and leverage the federal Agricultural Land Easement program. COLT applauds Oregon Agricultural Heritage Commission for shaping this program and for leading a conversation about the need to integrate conservation and working lands.	Thank you for your comment.	N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #2</i>	COLT strongly encourages OWEB staff or a Commission-appointed body to walk through the proposed OAHF rules with staff from NRCS Oregon or their national office to ensure the intended complementary nature of the two programs are borne out in the OAHF rules.	NRCS has been engaged in the rulemaking and will be asked to review the final draft rules.	N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #3</i>	COLT recommends that rules provide consistency in various purposes and definitions.	OWEB will work to create consistency in purposes and definitions.	Yes
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #4</i>	COLT supports changing the statute to "maintaining or enhancing fish or wildlife habitat, water quality, or other natural resource values on the land."	OWEB has proposed this statutory change, and it will be reflected in rule.	Yes
Department of Land Conservation and Development (DLCD), <i>Gen. Comm. #1</i>	DLCD expresses general support for OAHF, which can help access federal funding for the preservation of working agricultural lands and natural resources, including voluntary conservation easements and covenants that can be used to compliment land use regulations (especially Goals 3 and 5). Support for farm succession planning.	Thank you for your comment.	N/A
Department of Land Conservation and Development (DLCD),	DLCD recommends that the grant evaluation criteria not be eligible for waivers under OAR 698-005-0100, 698-010-0150, 698-015-0180, 698-020-0090, and 698-025-0120, to prevent the use of a waiver to approve grant applications in	Limitations on the Director's right of waiver address this issue. Rules state that: "The Director may waive the requirements ...	No

¹ All comments were submitted in writing, except for Pete Schreder's oral comment, recorded at the public hearing in Burns on 7/17/18

<i>Gen. Comm. #2</i>	locations that are inconsistent with statewide planning goals or local comprehensive plans, and/or locations that would not prevent fragmentation or conversion of working lands.	<u>unless required by statute...</u> ” Since ORS 197.180 requires state agencies to take actions that comply with land use goals and rules, and are compatible with comprehensive plans and rules, this cannot be waived.	
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #1</i>	EMSWCD offers general support for OAHP and the rulemaking process.	Thank you for your comment.	N/A
East Multnomah Soil & Water Cons. District (EMSWCD) <i>Gen. Comm. #2</i>	EMSWCD recommends that the evaluation criteria’s references to water quality be changed to read “maintaining existing acceptable water quality or improving unacceptable water quality.”	OWEB has proposed a similar statutory change: “the maintenance or enhancement of fish and wildlife habitat, water quality or other natural resource values.” It will also be reflected in rule.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #3</i>	EMSWCD recommends that OWEB review OAHP rules for consistency with ACEP-ALE to ensure the two programs operate in harmony. E.g., achieving the maximum enhancement of habitat value on a property might be achieved through the conversion of all/most farmland to another habitat type. And maximizing outcomes associated with some of OAHP’s purposes could create challenges in securing ACEP-ALE funding.	NRCS has been engaged in the rulemaking and will be asked to review the final draft rules.	N/A
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #4</i>	EMSWCD asks the commission to consider designating some purposes as primary and some as secondary, stipulating that pursuit of the secondary purpose(s) may not conflict with or significantly diminish the primary purpose(s).	Prioritization of some values over others would conflict with the statute’s and commission’s intention to integrate agricultural and conservation objectives. Limited funding and ranking criteria will result in the funding of only projects with high agricultural and conservation values.	No
Friends of Family Farmers (FoFF)	FoFF is generally supportive of efforts to encourage family farm ownership and farmland conservation, as well as efforts to help farmland owners plan for succession as a means to support young, new, beginning, low-income, and socially disadvantaged farmers and ranchers gaining access to farmland.	Thank you for your comment.	N/A
McKenzie River Trust (MRT)	MRT appreciates the potential that OAHP has to transform the funding landscape and lead to meaningful conservation of Oregon’s valuable agricultural heritage.	Thank you for your comment.	N/A
National Young Farmers Coalition (NYFC)	NYFC applauds Oregon for creating a comprehensive package of programs that includes grants for conservation management plans and technical assistance and covenants and easements.	Thank you for your comment.	N/A
Oregon Department of	ODFW supports the development of new tools or programs to address the	Thank you for your comment.	N/A

Fish and Wildlife (ODFW) <i>Gen. Comm. #1</i>	challenges in a changing landscape, e.g. the critical need for succession planning, and recognizes the natural resource value that working lands provide, including fish and wildlife habitat.		
Oregon Department of Fish and Wildlife (ODFW) <i>Gen. Comm. #2</i>	ODFW encourages OWEB and the OAH Commission to discuss how the Department's Wildlife Habitat Conservation and Management Program (WHCMP) or the Riparian Lands Tax Incentive Program (RLTIP) (ORS 308A and OAR 635-430) can be integrated or improved upon with the implementation of the OAHP to support and strengthen the tools available, and needed, for working land conservation.	OWEB will work with ODFW to schedule a presentation and discussion for the OAH commission on these programs at a future meeting of the commission.	N/A
Oregon Department of Fish and Wildlife (ODFW) <i>Gen. Comm. #3</i>	ODFW requests at least one Department representative to participate on the technical committee(s) for evaluating and ranking conservation management plans and working land conservation covenants and easements.	Consistent with OWEB's grantmaking process, review team membership will represent diverse areas of expertise, including ODFW as appropriate.	N/A
Southern Oregon Land Conservancy	This is a great program and we support it fully. We hope that it receives funding and results in projects with long-lasting benefits.	Thank you for your comment.	N/A
WaterWatch	WaterWatch states that, if public funds are to be distributed to conservation projects, OWEB should ensure that the projects result in demonstrable public environmental benefits. WaterWatch states that the rules as currently written do not ensure this.	The evaluation criteria were designed by the commission to ensure that the grant programs provide public and environmental benefits.	No
Yamhill Soil and Water Conservation District	Give the highest priority and consideration to applications that: 1) ensure lands remain in agricultural production, and 2) provide protections for the longest timeframe possible, with the highest priority given to projects that provide permanent protection with conservation easements.	The evaluation criteria are designed to maintain the viability of agricultural operations. 698-015-0090(6)(b) prioritizes the duration and extent of the agreement, with a preference for longer term agreements.	No
Oregon Board of Agriculture <i>Gen. Comment #1</i>	The Board strongly believes the OAHP's main focus should be on working lands. While we believe implementing conservation management plans and improvements to soil health, water quality and fish and wildlife habitat are important objectives, the integration of conservation values with the protection of agricultural lands as working lands is critical to the OAHP success.	The commission agrees.	N/A
Oregon Board of Agriculture <i>Gen. Comment #2</i>	Because most Oregon farmers and ranchers have little experience in the use of easements today, ensuring that information about the program is disseminated in a form that is accessible and understandable will be critical in developing the trust needed in an easement program involving working lands. The Board recognizes that rules inherently can be lengthy documents however simplifying the rules, where possible, and ensuring the materials and forms available to producers are simple and easily filled-out is vital to building that trust.	OWEB agrees and will take this into account when developing guidance, forms, and other materials supporting the program.	N/A
Oregon Board of	Additionally, the Board was extremely interested in how the Commission and	OWEB agrees that regional expertise is	N/A

Agriculture <i>Gen. Comment #3</i>	the Oregon Watershed Enhancement Board (OWEB) would use regional review teams to analyze and evaluate issues related to “regional significance” and other agricultural criteria. The Oregon Department of Agriculture (ODA) has expertise and connections to the agriculture community in all regions of the State. We strongly encourage and recommend that OWEB and the Commission utilize that expertise in the development of any regional review teams.	required among technical review teams and will seek input from ODA regarding membership.	
Oregon Board of Agriculture <i>Gen. Comment #4</i>	Likewise, the Board requests OWEB work with ODA staff on several outstanding definitional questions we have.	OWEB will work with ODA staff on definitional questions.	Follow-up required
Oregon Association of Conservation Districts <i>Gen. Comment #1</i>	First, the variety of conservation strategies OAHP will support through its four grant foci (Conservation Management, Covenants and Easements, Technical Assistance, and Succession Planning) is critical to achieving conservation goals in Oregon. We commend OWEB and the Commission for supporting multiple approaches and stages of conservation. While OAHP's emphasis on easements and covenants is important for encouraging the longevity of conservation practices, the value of other technical assistance and conservation planning on working lands should not be underestimated.	Thank you for your comment.	N/A
Oregon Association of Conservation Districts <i>Gen. Comment #2</i>	Second, we strongly support the emphasis, throughout the OAHP rules, on monitoring the on-site conditions of funded projects. Site-specific monitoring is critical to ensuring conservation practices are achieving desired goals, and to continuing to improve the work of the many state and local partners in the Oregon Action Plan, the U.S. Fish and Wildlife Candidate Conservation Agreement and Assurances program, mitigation credits, and other conservation programs in Oregon. Monitoring is essential to making informed decisions about how to most effectively and efficiently dedicate resources in these efforts. We applaud OWEB and the Oregon Agricultural Heritage Commission's inclusion of monitoring in the eligible activities for grant funding throughout OAHP.	Thank you for your comment.	N/A
Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #1</i>	We are among the original supporters of this program and write to express our general support for the rules developed by the Commission.	Thank you for your comment.	N/A
Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #2</i>	Decision-Making Authority (throughout): For all three programs, the role of the Commission in reviewing and ranking applications for funding appears to be much more limited than our statutory intent. When we helped design the OAHP, it was intended that the Commission would be charged with reviewing and ranking the applications, taking into the account the recommendations of	The rule was changed to make it clear that the commission has the final authority to recommend funding of projects.	Yes

	<p>any technical advisory committees and staff. The make-up of the Commission was created with this purpose in mind, to ensure that we had an appropriately crafted body making the final call about which projects should move forward. The draft rules are not clear that the Commission has the final authority to review, rank, and fund applications regardless of the recommendations made by the supporting committees and staff. For our organizations, it is critical that the Commission must have full authority decisions around ranking and funding. We recommend modifying the rules for CMPs, covenants and easements to clarify that the Commission has an independent obligation to review and make recommendations on grant applications under this program.</p>		
<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #3</i></p>	<p>For CMPs, covenants and easements, we think it is critical that the grantee organizations have an agricultural mission, farmers and ranchers on their board, and experience working with farmers and ranchers in Oregon. Whether this appears in rule or guidance, we think that the background, interest, and experience of the grantee organizations must demonstrate a commitment to maintaining agriculture in Oregon and previous work with farmers and ranchers in the state.</p>	<p>OWEB agrees with the information outlined by OFB and will elaborate on the importance of farming and ranching expertise on staff and boards in program guidance.</p> <p>The CMP evaluation criteria include “the demonstrated relevant commitment, expertise, and track record to successfully develop, implement, and/or monitor plans” [698-010-0090 (5) (b)], which rewards applicant organizations who have experience working with farmers and ranchers.</p> <p>The covenant and easement criteria include both having a working land preservation mission and demonstrated expertise in holding, monitoring, stewarding, and enforcing working lands easements and covenants [698-015-0090 (5) (b) and (d)].</p>	N
<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #4</i></p>	<p>Throughout the rules, there are references to the “proposed project.” This term is confusing, as it not entirely clear whether the project is something broader than a conservation management plan, covenant or easement or whether the broader project may be seeking a combination of OWEB funds under difference programs. OCA and OFB would prefer that instead of referencing a “proposed project,” the rules simply reference the proposed conservation management plan, covenant or easement as appropriate.</p>	<p>The intent of the word “project” is to include all eligible grant activities. For CMPs, eligible activities include developing, implementing, and monitoring plans; therefore, referring to just the plan is too narrow a reference. Similarly, for covenants and easements, eligible activities include a lengthy list of due diligence activities in addition to simply referencing the easement or covenant. To clarify, OWEB will include a definition of “project” in the rules.</p>	Yes

Rules: Administrative Rules (OAR 698-005)

Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Department of Land Conservation and Development (DLCD)	DLCD recommends amending the definition of “fragmentation” include “conversion of working lands to uses not associated with commercial agriculture” or alternatively referencing “fragmentation or conversion” in all instances, similar to OAR 609-015-0090(2)(b) and (8).	OWEB will include “conversion” where “fragmentation” is named, with “conversion” listed before “fragmentation.” OWEB worked with DLCD to develop this definition of “conversion:” (1) (a) Cessation of accepted farming practices; (b) Construction of dwellings not occupied by farm operators or workers or other structures not related to agriculture; (c) Removal of infrastructure required for accepted farming practices unless necessary to accommodate a change in accepted farming practices; or (d) Cancelling or transferring rights to use water for irrigation in a manner that reduces the long-term viability of agriculture on the working land. (2) As used in this definition, “accepted farming practices” shall have the meaning set forth in ORS 215.203(2)(c); ORS 215.203(2)(c) (2)(c) As used in this subsection, “accepted farming practice” means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.	Yes
Friends of Family Farmers (FoFF) <i>Admin. Comm. #1</i>	FoFF recommends amending 698-005-0010 to read “Increased economic viability of Oregon’s <u>family owned</u> agricultural operations and economic sectors.”	Family owned operations are a valuable component of agriculture, but the term “family owned” is too limiting for the various types of family business ownership that exist. The evaluation criteria will speak to the operation’s connection with the local community and economy, including ownership model.	No
Friends of Family Farmers (FoFF) <i>Admin. Comm. #2</i>	698-005-0010: FoFF recommends adding the additional public benefit of “(4) Increased economic viability and farm ownership opportunities for: (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and	The commission discussed this point extensively, and decided that the program should focus more on the land than the type of owners and operators. However, an application might point to such factors to demonstrate evaluation criterion #4 (agricultural	No, for this section of the

	(d) veteran farmers or ranchers.”	outcomes) for the CMP and covenant/easement program. The Technical Assistance Grant Program evaluation criteria (OAR 698-020-0060(3)) have been revised to include engaging these constituencies.	rules.
Friends of Family Farmers (FoFF) <i>Admin. Comm. #3</i>	698-005-0020: FoFF recommends the following definitions pertaining to the comment immediately above (from USDA programs): <ul style="list-style-type: none"> • “Family farms,” are defined as farms in which the members of the family are primarily responsible for daily physical labor and strategic management. • “Small farms” are family farms that on average generate less than \$500,000 in gross annual sales. • “Medium-sized farms” are family farms that on average generate up to \$1 million in gross annual sales. • “Beginning farmers or ranchers” have owned or operated a farm or ranch for not more than 10 years, are under 35 years of age, and are actively engaged in farming. • “Socially disadvantaged farmers and ranchers” are those who are members of a group that that have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. • “Veteran farmers or ranchers” are those who have served in the Armed Forces and who have (a) not operated a farm or ranch or (b) operated a farm or ranch for no more than 10 years. 	As above, the commission has decided that priorities for easements and covenants will focus on agricultural lands rather than types of owners and operators.	No, for this section of the rules.
Friends of Family Farmers (FoFF) <i>Admin. Comm. #4</i>	FoFF recommends limiting the definition of “agricultural owner or operator” (698-005-0020(1)) to those “actively engaged” in farming activities, i.e. they make significant contributions to the farming operation and participate in the daily physical labor and management of the farm.	See above. OAHF focuses on the land rather than type of owner. Such a provision could limit the extent of the program in unintended ways. For example, this provision would limit participation in grant programs by elderly and retired landowners or family trusts.	No
Friends of Family Farmers (FoFF) <i>Admin. Comm. #5</i>	FoFF recommends limiting the definition of “agricultural owner or operator” (698-005-0020(1)) to “individuals who are Oregon residents,” and exclude corporate entities or “persons,” e.g. out-of-state owned corporations and real estate investment trusts.	See above. OAHF focuses on the land rather than type of owner. Such a provision could limit the extent of the program in unintended ways. For example, this provision could disqualify a property from CMP funding if it is owned by an out-of-state owner but managed by an Oregonian operator.	No
Oregon Department of Fish and Wildlife (ODFW) <i>Admin. Comm. #1</i>	698-005-0020: ODFW recommends defining the terms “conservation management plan” and “conservation management plan holder.” It is unclear if the definition of “management plan” in working land conservation covenant and easement section (698-015-0020(1)) is intended to apply to the CMP section as well.	OAHF will use the definition of “management plan” for easements and covenants and move it to this Admin section of definitions applying to the entire statute. We added a definition of conservation management plan to distinguish between a CMP and	Yes

		an easement/covenant management plan. Eligible “holders” of conservation management plans are determined by the criteria in Section 0030.	
Oregon Department of Fish and Wildlife (ODFW) <i>Admin. Comm. #2</i>	698-005-0050(8)a-c: ODFW recommends clarifying if “commitment” is a formal written agreement. E.g. would it include a commitment to include some sort of legal access easement to allow spot checking by the grantor’s representatives to evaluate project efficacy over time?	The rules will clarify that this is an “enforceable agreement.” The specific conditions that the parties commit to would be described in the grant agreement.	Yes
Southern Oregon Land Conservancy (SOLC) <i>Admin. Comm. #1</i>	SOLC recommends that the commission consider fee title ownership of qualifying lands, for example for the option of a land trust to implement ground leases to farmers.	The OAHP statute does not authorize OWEB to fund fee title acquisitions.	No
Southern Oregon Land Conservancy (SOLC) <i>Admin. Comm. #2</i>	698-005-0010(3): SOLC supports enhancing fish and wildlife, but recommends a clearer definition in rules, e.g. purpose statement, definitions, and criteria which all have differing language. What happens in the event of an unforeseen conflict, e.g., between irrigation and water for fish?	Purpose statements will be revised for consistency.	Yes
WaterWatch <i>Admin. Comm. #1</i>	WaterWatch recommends adding definitions for: <ul style="list-style-type: none"> • Natural Resource Value, as “other aspects of the natural environment,” clarifying intent to fund projects that benefit the environment, not e.g. extractive natural resource values • Conservation and/or Conservation Measure: tied to statutory purpose of “maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values” as opposed to e.g. an irrigation piping/lining project that does not go through the Oregon Conserved Water Act to dedicate legally protected instream water. Rules should require evidence of demonstrable benefits rather than assumptions e.g. that it will enhance stream flow. • Conservation Management Plan: WaterWatch finds no definition in legislative record and none in statute except CMP components (698-010-0080). Explain how CMPs interplay with other statutory plans (e.g. Water Management and Conservation Plans) • Fish and wildlife: understand the purpose is to protect/enhance habitat for native fish and wild animals 	There is no need to define natural resource values. As the comment explains, in context, this term refers to conservation because of the list it is in. Conservation is clearly tied to the statutory definition of “maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values.” The Conserved Water Act is not applicable because the CMP grant program funds the plan implementation. Clarification on what will be funded in plan implementation will be provided in guidance. A definition will be added to the statute (see above under Oregon Department of Fish & Wildlife #1). Evaluation criteria 698-010-0090(3)(b) asks applicants to describe interplay with other plans. The definition of “fish and wildlife” is clear from context, but may be included in guidance.	No No Yes No
WaterWatch <i>Admin. Comm. #2</i>	698-005-0030(2)(c): WaterWatch recommends that the location of the project also include information on the county and any stream (in addition to stream mile)	County is already included in the list, but rules will be revised to include stream.	Yes

WaterWatch <i>Admin. Comm. #3</i>	698-005-0050(3): WaterWatch recommends that Grant Agreement Conditions include remedies for if the project does not achieve the stated natural resource gains, e.g. return monies to the state.	Remedies exist within the conservation management plan itself, including annual monitoring and mutual modification, to ensure that the land is managed according to the plan.	No
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Admin. Comm. #1</i>	Notice to Landowners (OAR 698-005-0030(3)): The rules state that where applications involve physical changes or monitoring on private land, the application must state that landowners have been informed that the monitoring results will be public. For this program, this requirement does not seem necessary or appropriate. All necessary monitoring should be conducted on the property of the landowner who has enrolled in the program, and we are unclear why monitoring would need to occur on land belonging to others. To ensure that agricultural landowners in Oregon generally feel positively about the program, we recommend deleting this section and limiting monitoring requirements to land owned by the landowner who is the subject of the application.	This rule was drawn from general OWEB program rules is less applicable to the types of projects that will be funded by OAHP. The rule was deleted.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Admin. Comm. #2</i>	Maintenance of the Project (OAR 698-005-0050(8)(b)): The rules contain a provision that authorizes the Board (not Commission) to place additional conditions on a grant agreement, including an agreement to maintain the project for a period of time deemed appropriate by the Board. This is a confusing requirement for this program. The program rules already state both minimum and maximum time periods for program participation based up whether the landowner seeks an easement, covenant or conservation management plan. It is unclear why the Board would need to designate an alternate timeframe, and it almost suggests they could designate a timeframe otherwise inconsistent with the rules. We recommend clarifying the intent of this section.	The Board rather than the commission is indicated in this section because it is the board that is legally responsible to execute the grant agreements to carry out the program. Regarding maintenance commitment, the intent is to run with whichever length of time is authorized by the particular grant project; we will clarify this rule.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Admin. Comm. #3</i>	Restricted Funding (OAR 698-005-0060): We are happy the fund can accept outside dollars from other programs or donors. However, we recommend adding "and ORS 541.977- ORS 541.989" to ensure that any funds accepted also must be consistent with the purposes of the statute.	The rules will be clarified to include reference to the statute.	Yes
Oregon Board of Agriculture <i>Admin. Comm. #1</i>	OAR 698-005-0020(5) defines the term "fragmentation." This term is used throughout the draft rule. As defined it focuses on the division of lands or isolation from other agricultural lands. The issue of conversion is much broader and involves more than "fragmentation." Land divisions and the orphaning of land from other agricultural operations are problematic however conversion relates to change of use that would render the land unsuitable for farm use. Urbanization, nonfarm	The rules will include define the terms "fragmentation" and "conversion" and both terms will be used throughout the rules.	Yes

	development, etc. also need to be a part of the equation.		
Oregon Board of Agriculture <i>Admin. Comm. #2</i>	OAR 698-005-0020(10) defines “working land” in relation to active management in “farming or ranching.” These terms are not defined anywhere. You might consider replacing “farming and ranching” with the term “farm use” as defined in ORS 215.203(2). This definition is used in other statutes (e.g. land use, taxation, right to farm) and is broadly understood and accepted. This would also promote consistency and compatibility with other programs geared towards protecting agricultural lands.	“Farm use” was added to the definition of “working land.”	Yes
Oregon Board of Agriculture <i>Admin. Comm. #3</i>	OAR 698-005-0030(b) and 0050(8)(a). Suggest clarification that “agricultural owners” means (or includes) agricultural land owners. As drafted, it could be interpreted to mean the owner of the operation which could exclude a land owner who rents or leases the land to someone else to farm from participating.	This change was made throughout the draft rules.	Yes

Rules: Conservation Management Plan Grant Program Rules (OAR 698-010)

Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Friends of Family Farmers (FoFF)	698-010-0090: FoFF recommends evaluation criterion prioritizing projects that address the unique challenges of affordable access to land for (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and (d) veteran farmers or ranchers.	The Conservation Management Plan Grant program is not designed to address the affordability of agricultural land.	No
Myron, Jim	Mr. Myron recommends that establishing riparian buffers where no agricultural activities would occur be a requirement of every conservation management plan funded through the OAHP.	If there is a stream in the project area, the planning process must present the landowner with alternatives that help achieve the local Ag Water Quality Management Area Plan goals. If the program pays for plan implementation, the selected alternative must support implementation of the local Ag Water Quality Management Area Plan goals in place at the time of plan preparation and of plan implementation.	Yes

Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #1</i>	698-010-0010(2)/0090(3): ODFW recommends additional clarification on how enhancement of fish or wildlife habitat would be evaluated. Potentially acknowledge existing programs to maintain working landscapes and support natural resource values, such as the Wildlife Habitat Conservation and Management Program.	Technical review teams will apply evaluation criteria for fish and wildlife habitat using OWEB's current grant review process. Guidance will elaborate on how to apply these criteria.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #2</i>	698-010-0010: ODFW recommends clarifying the terms "energy" and "human need considerations", how they will be evaluated in relation to "addressing particular priorities related to natural resource values," and consider how to prioritize when energy and human need consideration conflict with natural resource values.	Recommended for guidance. The program is designed to integrate agricultural and conservation values.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #3</i>	698-010-0080: ODFW recommends providing more detail on the preparation and content of a conservation management plan, e.g. what details of the site, such as habitat structure, should be included in the CMP inventory.	Recommend for guidance.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #4</i>	698-010-0090: ODFW states that the capability and capacity evaluation criteria are robust and well thought out. The Department appreciates the consideration of supporting implementation of the Oregon Conservation Strategy, including a specific reference to connectivity of wildlife habitat, in the evaluation criteria.	Thank you for your comment.	N/A
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #5</i>	698-010-0120(7): ODFW requests clarification of the term "changes in science." Does it include habitat restoration techniques?	OWEB will change rules to read "changes in management approaches based on new scientific understanding of expected outcomes" and clarify in guidance.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #6</i>	698-010-0120: ODFW recommends additional clarification on the modification process for the plan holder.	Recommended for guidance.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #7</i>	698-010-0130: ODFW recommends clarification as to which instrument will guarantee access to site spot checks.	This will be included in the grant agreement.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #8</i>	698-010-0130: ODFW supports development of monitoring protocols on a programmatic (e.g., regional approach) level, which would allow for a more thorough evaluation of the program. Site by site monitoring protocols may create some challenges with data collection to show efficacy of the program over time.	The commission will provide guidance for consistent monitoring protocols under sub-3, and may establish monitoring protocols to evaluate the outcomes of CMP implementation on a programmatic level under sub-4.	No
Southern Oregon Land Conservancy (SOLC) <i>CMP Comment #1</i>	SOLC offers strong support for funding management plans. Be sure to protect fish and wildlife habitats in CMP implementation.	Thank you for your comment. Maintenance and enhancement of fish and wildlife habitat is one of OAHP's goals, and part of evaluation criteria 3.	N/A

Southern Oregon Land Conservancy (SOLC) <i>CMP Comment #2</i>	698-010-0050: SOLC states that the flexibility in match amount is helpful.	Thank you for your comment.	N/A
WaterWatch <i>CMP Comment #1</i>	WaterWatch recommends splitting CMP rules into three subsections: (1) funding the development of a plan, (2) funding implementation of the plan and (3) funding monitoring. Each of these should have distinct requirements, with funding for the implementation of CMP projects needing the most specificity.	It is not the intent of statute or commission to establish separate criteria or requirements for each activity.	No
WaterWatch <i>CMP Comment #2</i>	698-010-0050: WaterWatch recommends, at least for implementation projects, requiring a specific minimum match. They state that the term “some portion” does not provide enough guidance.	The statute requires some cash match, but few match programs exist for CMPs. The commission wants to test implementation of the program prior to requiring a specific match percentage.	No
WaterWatch <i>CMP Comment #3</i>	698-010-0040/0090: WaterWatch recommends that applicants should have to provide evidence that the proposed project will enhance or protect fish or wildlife habitat, improve water quality or support other natural resources values.	Grant application evaluation criteria require consideration of “the extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values.”	No
WaterWatch <i>CMP Comment #4</i>	689-010-0080: WaterWatch recommends looking at OAR 635-430-0040, Preparation and Content of a Wildlife Habitat Conservation and Management Plan as an example of what components as an example of additional requirements (e.g. maps identifying rivers/ponds/lakes, T/E species, vegetation types, description of objectives to be achieved, management practices to be used, etc.)	Staff will review OAR 635-430-0040 as an example of plan components and will include them in guidance as appropriate.	N/A
WaterWatch <i>CMP Comment #5</i>	698-010-0090(3)(a): WaterWatch states that the rules weaken the statutory protections for fish and wildlife habitat, improving water quality, or supporting other natural resource values by merging different directives of the statute into one single directive which, among other things, would allow human needs considerations to qualify as a natural resource value.	OAHP and the CMP grant program are designed to integrate agricultural and conservation values. The term “human needs” mirrors language in a federal program that could be a match.	No
WaterWatch <i>CMP Comment #6</i>	698-010-0090(3)(a): WaterWatch recommends that the rules include more parameters connected to protecting, maintaining or improving fish and wildlife habitat, improving water quality and supporting other natural resource values, e.g., if the landowner commits to put a project through the Conserved Water Act which will result in legally protected water instream, or commits to transferring water instream, this should garner high scores. See other funding sources for examples, e.g. SB 839.	Any information included in the grant application will be considered by the review team, but the grant evaluation process does not use numeric scoring.	No
WaterWatch <i>CMP Comment #7</i>	698-010-0090(3)(a): WaterWatch notes that the list includes some state programs/regulations but not all, e.g. it includes the Oregon Conservation	OWEB will change this section to read “(a) Protecting, maintaining, or improving the	Yes

	Strategy, but not the Conserved Water Act. The “catch all” phrase in (b) is not narrowed to habitat improvement plans/tools but would rank projects higher for conformance with any type of local, regional, state, federal or tribal priorities or plans. And it is not qualified by “including but not limited to”.	land, including soil, water, plants, animals, energy, or human needs considerations; (b) Supporting implementation of the Oregon Conservation Strategy, Oregon’s Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal conservation priorities or plans <u>that support fish or wildlife habitat, water quality, or other natural resource values;”</u>	
WaterWatch CMP Comment #8	698-010-0090(3)(a): WaterWatch notes that the list is tied together by “and”, meaning that to score competitively, it would need to meet all the provisions on this list	OWEB will change the connector to “or.”	Yes
WaterWatch CMP Comment #9	698-010-0090(3)(e): WaterWatch states that it makes no sense that the CMP qualifies as evidence of sustaining ecological values. Same for “inherent site conditions”.	The grant review team will evaluate the plan and its stated outcomes. Monitoring will evaluate compliance with the plan, and mutual modifications allow for changes to the plan that support ecological outcomes.	No
WaterWatch CMP Comment #10	698-010-0090(1): WaterWatch recommends striking this section, since limiting the program to “significant” agricultural operations appears to conflict directly with the statute’s directive that the type of agricultural operation conducted on the working land cannot be considered in the ranking of a project, and “significance” is subjective.	The type of agricultural operation in ORS 541.984(4) refers to the type of agricultural products grown on the property. Ranking targets “significant” properties for grant funding, as demonstrated by each applicant, and elaborated on in guidance.	No
WaterWatch CMP Comment #11	698-010-0090(3): WaterWatech recommends that the rules provide for the evaluation of any negative, as well as positive, effects of a proposed conservation measure on fish/wildlife habitat, water quality, etc.	This is implied by the words “extent to which” at the beginning of the sentence.	No
WaterWatch CMP Comment #12	698-010-0100: WaterWatch recommends guidance as to the make-up of the technical review team, e.g. include ODFW, WRD, DEQ, and affected Indian Tribes and exclude project consultants.	This issue will be clarified in guidance.	N/A
WaterWatch CMP Comment #13	698-010-0100(1): WaterWatch recommends striking the requirement that the review be limited to information provided in the grant application, as it does not take into account technical review team expertise about the area and project.	The section was amended to include technical review team expertise about the area and the project.	Yes
Yamhill Soil and Water Conservation District CMP Comment #1	The criteria identified in section 698-010-009 include several categories and elements that should be considered. However, the rule provides no guidance of how individual criterion will be ranked. It would be useful to list the most important criterion or standards (e.g. Tier 1 Criteria) that must be met for an application to be considered. This might include item #2, #3, #4 and #8.	The commission discussed whether to give preference to specific evaluation criteria and decided that the goal is to fund projects that have the highest likelihood of success in achieving the purposes of the program. In	No

	Reviews could consider other criteria if the application addresses the Tier 1 Criteria. Ranking or weighing the criteria in this section will help applicants understand and focus on the most important factors for ranking.	that context, the commission decided that it would not be possible to pre-determine which evaluation criteria are more important than others in reaching this determination.	
Yamhill Soil and Water Conservation District <i>CMP Comment #2</i>	In section 698-010-009 item #4, the definition of "regional significance" should be defined. Item #5(c), includes in part, "... as measured by effective governance." It is unclear how OWEB would evaluate effective governance. If this cannot be better defined or clarified in rule, then clarification should be provided in guidance documents.	The commission discussed regional significance at length and decided that due to the variation of working lands from region to region it would be difficult to adequately define the term for statewide application. The commission will rely on regional expertise on technical committees to help determine regional significance. The commission will develop guidance on evaluating effective governance.	No
Yamhill Soil and Water Conservation District <i>CMP Comment #3</i>	Section 698-010-0100. The OAHF has its primary focus on agricultural lands. The district suggests the rules specifically include the requirement to include representation from the Oregon Department of Agriculture and Oregon State University Extension Service on all technical committees.	While the commission intends to engage experts from ODA and OSU Extension on technical committees, it decided not to specify committee membership in rule. Generally, technical committee representation will be reflective of the commission membership, which includes both representatives selected by the Board of Agriculture and Extension, along with Land Conservation and Development Commission, Fish and Wildlife and OWEB.	No
Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #1</i>	Purpose of CMP (OAR 698-010-0010(2,3)): We would prefer that you leave subsections 2 and 3 in this section, as they add clarity and consistency to the purposes of CMPs.	The text retains the language of subsections (2) and (3)	N/A
Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #2</i>	Match Contributions (OAR 698-010-0050(2)(c)): This section seems to indicate that conservation management plans are an "acquisition of the property." They are simply a contract between the grantee and a landowner, so this section should be changed to reflect that CMPs are not acquisitions.	There is no section (2) (c) in the CMP rule; the provision cited is in Section 015 Covenants and Easements.	N/A
Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #3</i>	Reporting Requirements (OAR 698-010-0140(2)): This section requires accounting and reporting within 60 days of the project completion date. For CMPs, we are not clear which date would be the project completion date, or if that date would vary depending on the application. This may warrant	The rules will clarify that the project completion report is due 60 days after the project completion date listed in the grant agreement to ensure that the completion	Yes

	clarification.	date varies and would align with the individual project.	
Oregon Board of Agriculture <i>CMP Comment #1</i>	OAR 698-010-0090(2)(a) Evaluation criteria for conservation management plans. The term “fragmentation” should be redefined or teamed with the term “conversion” as found in other areas of the draft rule.	The definition of “conversion” was expanded and the term “conversion” combined with “fragmentation throughout the draft rules.	Yes
Oregon Board of Agriculture <i>CMP Comment #2</i>	OAR 698-010-0090(4) assesses the “regional significance” of an “agricultural operation.” This could be a very narrow consideration without better defining “operation.” Agricultural operations and practices can and do change. The suitability of land to be used for a “significant operation” is just, if not more important just what is the current operation character or use.	This was expanded to include suitability of soils, slope, location or other relevant factors.	Yes
Oregon Board of Agriculture <i>CMP Comment #3</i>	OAR 698-010-0090(8). Good use of the term “fragmentation” with the term “conversion.” See #1 and #4 above.	See CMP Comment #1 above.	Yes

Rules: Covenant and Easement Rules (OAR 698-015)

Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #1</i>	COLT recommends that 698-015-0010 Purpose be changed to read “An agricultural owner or operator willing agricultural owner may enter into a working land conservation covenant (covenant) with or grant a working land conservation easement.” Owner of working land: A conservation easement or conservation covenant must be entered into by the person or entity listed on the title of a property; an agricultural operator, generally, does not have the legal authority to sign a conservation easement or covenant. This would also bring the rule into line with the corresponding ORS (541.982), which reads, “An owner of working land may enter into a working land conservation covenant with or grant a working land conservation easement ...” Adding “willing” here (or elsewhere in the rules) will help clarify that the OAH Willing: Program emphasizes that it is voluntary and accomplished through willing landowners. Land acquisition grants include this: “OWEB may consider grant applications that propose the acquisition of interests in lands from willing sellers for the purpose of...”	The purpose statement was completely revised so that it now reads as a purpose statement. The language in the comment was dropped from rule.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #2</i>	698-015-0020(3), 698-015-0060 and 698-015-0070: COLT recommends changing the term “stewardship endowment” to “stewardship fund” here and throughout. The word “endowment” refers to a very specific type of	OWEB will change “stewardship endowment” to “stewardship fund.”	Yes

	financial account, and we do not recommend the rules implicitly or explicitly require an “endowment” for land trusts or other entities to manage their stewardship funds.		
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #3</i>	698-015-0020(3): COLT recommends that this be changed to read “...resolution of violations, and <u>or</u> any enforcement of the covenant or easement.” <ul style="list-style-type: none"> Stewardship funds are meant to monitor and steward the conservation easement, Legal defense funds are meant to enforce or defend any potential violation matter involving a conservation easement. <p>For some organizations, these are managed as the same fund, while for others they are different. Encourage commission and OWEB to discuss with COLT</p>	This language was incorporated in section 0070 to clarify that use of grant funds can be for any one of the components of stewardship. OWEB will encourage the commission to discuss this distinction with COLT.	Yes N/A
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #4</i>	698-015-0050(1): COLT recommends making (1) consistent with the purpose sections contained in 698-015-0010 and refer to the overall purpose in 698-005-0010	OWEB will work to create consistency in purposes and definitions.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #5</i>	698-15-0050(4): COLT recommends reconsidering the requirement that a pre-existing or new management plan must be agreed to by the landowner, applicant, and commission before closing. Challenging to fulfill within 18 months.	While it is challenging to fulfill this requirement within 18 months, if it is not complete, a waiver may be granted.	No
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #6</i>	698-015-0060: COLT recommends using the current language in OWEB’s land acquisition program rules (695-045-0175): “All applicants shall demonstrate at least 25% of the actual land acquisition project cost is being sought as match”.	To be consistent with OWEB programs, this language was amended to require that all applicants demonstrate that at least 25% match is being sought, based on the total OAHP grant request for the covenant or easement.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #7</i>	698-015-0060(3): COLT recommends that the match for stewardship section is better suited in the next section, 698-015-0070, Use of Grant funds.	OWEB will move this section.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #8</i>	698-015-0060(3): COLT recommends leaving it up to OWEB staff, the review team, and the Commission to determine reasonable grant funds for stewardship on a per project basis. 5% is arbitrary, stewardship doesn’t depend on appraisal value, but on other factors.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
Coalition of Oregon Land Trusts (COLT)	698-015-0070 (1)(b): COLT strongly recommends the Commission establish a methodology for appraising covenants, or establish a process to develop a	The commission is in the process of doing so.	For future

<i>Cov/Ease Comm. #9</i>	methodology to do so.		consideration.
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm.# 10</i>	698-015-0090(4): COLT recommends that the language be changed to "...benefits or other agricultural or conservation <u>values</u> important to the region..."	OWEB will make this change.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. 11</i>	698-015-0090: COLT recommends adding wording in this section similar to existing OWEB acquisition rules under 695-045-0180, where "the soundness of the legal and financial terms of the proposed real estate transaction" is considered in the application process.	OWEB will add "the soundness of the legal and financial terms of the proposed real estate transaction" to the covenant and easement ranking criteria.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #12</i>	698-015-0110(3): COLT recommends "Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, <u>unless approved by the OWEB director.</u> " For flexibility	OWEB will add "unless approved by the OWEB Board" to this section.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #13</i>	698-015-0130(1)(d): COLT notes that the section refers to title restrictions under OAR 698-015-0110, but it doesn't. The land acquisition program (695-045-0195) refers to title restrictions in ORS 541.960	OWEB will change this section to read "the required title restrictions are approved by the director."	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #14</i>	698-015-0130(1)(g): COLT notes that the section refers to the Director's right to hold the grant funds pending Board consideration under OAR 698-015-0140, which refers to the director's ability to issue penalties, "including recovery of the OAHF grant funds." But it doesn't refer to withholding.	OWEB will make these provisions consistent: <ul style="list-style-type: none"> • Add "recover" funds to 0130(1)(g) 	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #15</i>	698-015-0170 (1): COLT recommends changing this section to read: "If the term of the covenant has not expired, the fair market value of the easement will be reduced by a proportion equivalent to the time remaining on the <u>easement covenant.</u> "	OWEB will make this change.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #16</i>	698-015-0170: COLT asks: What is the underlying concern and corresponding definition of "profit" in OAR 698-015-0020? Acknowledges that similar language appears in 695-045-0210. There is potential opportunity for a future landowner to steward the project.	This section was amended to address only the transfer of a covenant or easement. The reference to "cash" was omitted and the definition of "profit" deleted.	Yes
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #1</i>	DLCD recommends that the proposed rule OAR 698-015-0090(6)(d) be amended to require grant awards for conservation easements and covenants to be consistent with local comprehensive plans and statewide planning goals.	OWEB will amend 0090(6)(d) to read "Consistency with local comprehensive plans and statewide planning goals"	Yes
Department of Land Conservation and Development (DLCD)	DLCD recommends that the proposed rules be amended to prioritize acquisition of conservation easements rather than covenants on rural lands whenever possible	698-015-0090(6)(b) already prioritizes the duration and extent of the agreement, with a preference for longer term agreements.	N/A

<i>Cov/Ease Comm. #2</i>			
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #3</i>	If an easement is not possible, DLCD recommends that covenants be pursued on rural lands before conservation management plans, which provide relatively limited opportunities to prevent fragmentation and conversion of working lands.	The covenant and easement program, and the CMP program perform distinct functions. Also, the statute requires CMPs alone to be ranked separately from covenants/easements. ORS 541.984(3)	No
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #4</i>	DLCD strongly encourages OAH and OWEB to adopt language prohibiting easements and covenants within Urban Growth Boundaries (UGBs) and urban reserves as this might otherwise reduce supplies of urban land planned for development and result in attempts to expand UGB boundaries into adjacent agricultural and forest lands, among other reasons.	See the response to comment #1 above. OAH will be implemented consistent with local comprehensive plans and statewide planning goals. Any projects inside a UGB or Urban Reserve would need to demonstrate consistency with land use laws.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #1</i>	EMSWCD recommends that 698-015-0060(1) be modified to simply state that “a match must be sought,” since timeframes might make it impossible to have matching cash or agreement in hand at the time of OAH application.	OWEB will delete “as demonstrated by a formal application or agreement.”	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #2</i>	EMSWCD recommends that 698-015-0090(2) include evaluation criteria around the easement’s prospects for improving future farmland affordability (e.g. through limiting residential size or incorporating an Option to Purchase at Agricultural Value). And, going forward it would be instructive for OAH to track the sales of eased properties to identify impact of the easement (or covenant) on land values.	Applicants may describe the agricultural benefits for affordability and access in their narrative description for evaluation criteria 2 or 4. OWEB supports the evaluation of future sales of properties with covenants or easements to identify the impact of easements/covenants on land values.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #3</i>	698-015-0090, 2, 3 & 4: EMSWCD recommends that the commission consider establishing qualifying criteria tied to the agricultural capability of a property, and qualifying criteria of a non-agricultural nature, e.g. enhancement of natural resource values, capacity or competence of the easement holder and benefit to the state.	The only qualifying criterion in rule is that the property must be working land to participate. Agricultural capabilities in different regions of the state are very different. Therefore, the ranking process will establish the agricultural (and natural resource) values.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #4</i>	698-015-0090, 5(a): EMSWCD agrees that a considered and rigorous approach to land transactions and stewardship is vital, and yet that accreditation under the Land Trust Alliance is not the best fit for all organizations.	Thank you for your comment. OWEB agrees with this statement.	N/A
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #5</i>	698-015-0100, 4 – 8: EMSWCD asks the commission to consider ways to reduce the number of entities responsible for reviewing and making recommendations on program applications, while still maintaining appropriate and effective oversight. Similarly, for 698-015-0130(1)(c),	A streamlined system is established for the use of technical committees in the review of OWEB grant proposals.	N/A

	ensure that Director review and comment on specific transactions (e.g. proposed Purchase and Sale Agreements) does not have substantial timing implications for transactions.	OWEB will heed this advice.	
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #6</i>	698-015-0140(1): EMSWCD asks the commission to consider removing the allowance for OWEB to recapture grant funds and the ability to require punitive damages and instead work toward the satisfactory resolution of compliance issues.	Recovery only happens if “significant compliance issues cannot be resolved to the full satisfaction of the Director” and the Director first informs the commission, Board, and grantee. Even then, recovery remedies are at the Director’s discretion.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #7</i>	698-015-0140(2): EMSWCD recommends that this language be modified to state that legal access by OWEB, its contractors, and cooperating agencies to a property encumbered by an easement or covenant acquired with OAHF funds be consistent with those access rights granted by the easement to the easement holder.	The purpose of OWEB’s monitoring obligation differs from a grantee’s, in that OWEB monitors to confirm that the grantee is accurately monitoring the investment. Therefore, the type of access and the designees that OWEB might assign might differ from those specified in the grantee’s and landowners’ agreement.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #8</i>	698-015-0140(2): EMSWCD recommends removing right of access to “cooperating agencies” as a broad allowance, and one that may be unacceptable to prospective easement Grantors.	OWEB will remove “cooperating agencies” from this section.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #9</i>	698-015-0140(2): EMSWCD recommends deleting “and evaluations” and limiting the ability to enter to the sole purpose of determining compliance.	OWEB will remove “and evaluations” from this section.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #10</i>	698-015-0160(1): Since a covenant might not have only a negative effect on easement value, EMSWD recommends modifying the text to state that the appraised fair market value of a proposed easement shall account for the impact – if any – of an extant working land conservation covenant.	This provision does not refer to the covenant’s impact on fair market value, but rather to the use of public funds to purchase nearly identical sets of property rights that overlap in time. Therefore, the easement will be reduced by the remaining value of the covenant, regardless of its impact on fair market value.	No
Friends of Family Farmers (FoFF)	698-015-0090: FoFF recommends including in evaluation criteria prioritization for projects that address the unique challenges of affordable access to land for (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and (d) veteran farmers or ranchers.	As with CMPs, the Commission discussed this point extensively, and decided that the program should focus more on the land than the type of owners and operators. However, an application might point to such factors to demonstrate evaluation criterion #4	No, for this section of the rules.

		(agricultural outcomes). The Technical Assistance Grant Program evaluation criteria (OAR 698-020-0060(3)) have been revised to consider these constituencies.	
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #1</i>	MRT recommends that the rule give guidance for OWEB staff on how to address conflicts between agricultural values (e.g. 698-015-0090(2)) and habitat values (e.g. 698-015-0090(3)) by prioritizing working land values over habitat values. Without such a priority, easement holders could be forced to require landowners to discontinue an agricultural practice that was permissible in an easement funded by OAHP, but which is later found to not maintain the baseline habitat or water quality values. Specifying a priority could allow flexibility for producers due to climate change, changing agricultural markets, and changes to the land, and make it less difficult to find agricultural landowners willing to participate in the program. There are other programs that protect conservation values.	OAHP and the CMP grant program are designed to integrate agricultural and conservation values. To rank high with the review team, a project must demonstrate the maintenance or enhancement of both agriculture and natural resource values.	No
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #2</i>	698-015-0060 and 0070: MRT appreciates the inclusion of a stewardship endowment in regards to its allowance as match and an allowed cost, but recommends the term “long term stewardship funds,” instead of “endowment,” as endowment has specific accounting definitions.	OWEB will change “stewardship endowment” to “stewardship funds”	Yes
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #3</i>	698-015-0060(3): MRT recommends removing the cap on funds contributed to a stewardship endowment to 5% of the total appraised value of the easement, and recommends negotiating the contribution to stewardship endowment as part of each grant award process. Estimates that agricultural easement values will likely be low (due to land use) and the stewardship costs high compared to a habitat easement, depending on the management plan.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #4</i>	698-015-0060(1): MRT recommends deleting “as demonstrated by a formal application or agreement,” since NRCS ACEP conservation easements which call for secured match before they can be applied for.	OWEB will delete “as demonstrated by a formal application or agreement.”	Yes
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #5</i>	698-015-0090: MRT states that the evaluation criteria is vague and it is difficult to have meaningful comments without understanding how the words “significant,” “important,” and “viability” will be assessed.	Given the diversity of Oregon agriculture, it is preferable to allow the applicant to make the case that a particular project is “significant,” which will be assessed by the review team, OWEB staff, commission, and OWEB Board.	No
Myron, Jim	Mr. Myron recommends that establishing riparian buffers where no agricultural activities would occur be a requirement of every easement and covenant funded through the OAHP.	If there is a stream in the project area, the covenant or easement application shall describe how either the easement or the management plan and associated monitoring addresses the local Ag Water Quality	Yes

		Management Area Plan goals. Easement monitoring shall include any riparian monitoring identified in the application.	
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #1</i>	NYFC recommends prioritizing funding for projects that encourage protected farmland to remain affordable and in the hands of farmers.	Applicants may describe the agricultural benefits for affordability and access in their narrative description for evaluation criteria 2 or 4.	No
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #2</i>	NYFC supports 75% program match for project costs with in-kind matching funds allowed for 100% of the landowner contribution	Thank you for your comment.	N/A
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm.#3</i>	NYFC supports 698-015-0010(2) “providing for the opportunity for continued use of the land for agricultural purposes,” in the program purpose and 698-015-0090(2)(d) “Improving or maintaining the economic viability of the operation, including future transfer of ownership,” in the evaluation criteria	Thank you for your comment.	N/A
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #4</i>	<p>698-015-0090: NYFC recommends that OAHP encourage applicants to utilize innovative strategies to promote farmer ownership and affordability of farmland. Specifically, NYFC recommends that:</p> <ul style="list-style-type: none"> the ranking criteria prioritize farmer ownership and affordability tools in easements/covenants funded by the program, including the Option to Purchase at Agricultural Value (OPAV) easement provision. OAHP allows covenant/easement applicants to apply for funds to place a covenant or easement on property that they own while they are in the process of identifying, and transferring ownership to, a farmer (a.k.a. buy-protect-sell). Easement holders be given the flexibility – and encouraged – to write easements that do not consider ground leases to be an impermissible subdivision of land. Ground leases are land affordability tools that split ownership of the property, so that the organization owns the land and provides a long-term—such as 99-year—lease to the farmer, while the farmer owns the infrastructure. The program give weight to projects that utilize easement funds to facilitate the transition of the farm from one generation to the next and provide access to a young or beginning farmer. 	<p>As stated above, applicants may refer to affordability in criterion 2 or 4.</p> <p>It will be made clear in guidance that the rules do not prohibit “buy-protect-sell” arrangements.</p> <p>Permission to use ground leases will be included in guidance and grant agreement.</p> <p>As with affordability, applicants may refer to the project’s effect on intergenerational transition in criterion 2 or 4.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.# 1</i>	698-015-0090: ODFW believes that the capability and capacity evaluation criteria are robust and well thought out. The Department appreciates the consideration of supporting implementation of the Oregon Conservation Strategy, including a specific reference to connectivity of wildlife habitat, in the evaluation criteria.	Thank you for your comment.	N/A

Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#2</i>	698-015-0020(1): ODFW recommends that the rules clarify the entities that may develop a “management plan.”	The definition for conservation management plan was moved to the Administrative rules. All eligible CMP holders are listed in 698-010-0030.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#3</i>	698-015-0020(3): ODFW recommends that the rules clarify “stewardship endowment” and/or clarify in a separate section of the rule the applicable standards for an endowment. This may include details on calculating the initial funding, maximums per acre and other limitations for the landowner, such as using the funds for payment of taxes. Does this include the opportunity for these funds are set up as an endowment that provides interest funds yearly for operations and maintenance costs? How will the stewardship endowments be tracked or monitored by the program? Will there be an annual stewardship report to the program on spending and investment performance?	OWEB will change the term “stewardship endowment” to “stewardship fund.” Calculation, etc. of a stewardship fund can be included in guidance, the grant agreement, or a link to best practices/ accreditation.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm. 4</i>	698-015-0080: ODFW recommends that the rules include terms and expectations for easements (as well as covenants), i.e. permanent per the definition.	OWEB will change the title of 0080 to “Terms of Covenants and Easements” and specify that easements are permanent.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm. #5</i>	698-015-0140(2): ODFW recommends that the rules clarify if third party right of enforcement can be assigned.	After consulting with DoJ, OWEB can assign third party rights of enforcement if such language is included in the easement document, which is currently standard practice for OWEB’s land acquisition program.	No
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#6</i>	ODFW prefers easements over covenants because of their permanence. This could be accomplished during the application reviews, such as the establishment of a point system where covenants would be ranked significantly lower than projects with permanent easements.	698-015-0090(6)(b) provides ranking criterion that “The duration and extent of the agreement, with a preference for longer term agreements”	No
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#7</i>	ODFW recommends clarification in how a covenant would be appraised for payment.	The commission is currently valuation methods for covenants, which will be included in rule when finalized.	For future consideration
Restore Oregon’s Heritage Barns Task Force <i>Cov/Ease Comm.#1</i>	698-015-0090: Restore Oregon recommends that the rules include language that specifically calls for the preservation of historic buildings, structures, or objects associated within the agricultural fabric of the lands under review. Specifically, Restore Oregon recommends that the rules encouraging the maintenance and use of historic barns as agricultural buildings and/or their adaptive reuse when their historic use is no longer viable.	OWEB will include this in program guidance.	No

Restore Oregon's Heritage Barns Task Force <i>Cov/Ease Comm.#2</i>	Restore Oregon recommends that the rules encourage the application for conservation easements on lands with historic agricultural buildings or structures as a tool in holistic succession planning.	OWEB will include this in program guidance.	No
Restore Oregon's Heritage Barns Task Force <i>Cov/Ease Comm.#3</i>	698-015-0090(4)(b): Restore Oregon recommends that the presence of a historic barn on the property represent one way of demonstrating the regional significance of the agricultural operation's associated infrastructure.	OWEB will include this in program guidance.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#1</i>	698-010-0010: SOLC recommends that the purpose language be consistent with other rules re: fish and wildlife, and agriculture practices.	OWEB will work to create consistency in purposes and definitions.	Yes
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#2</i>	698-015-0060: SOLC recommends removing the requirement to have match already approved because this makes it difficult to rely on another grant program – NRCS – as a match because of timing of grants and each requiring secured funds; they have to work together	OWEB will delete "as demonstrated by a formal application or agreement."	Yes
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#3</i>	698-015-0060: SOLC recommends that the commission remove the 5% of appraisal cap for stewardship funds. This is arbitrary and may not reflect real stewardship needs.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#4</i>	698-015-0070: SOLC expresses strong support for funds for interest on loans and for stewardship.	Thank you for your comment.	N/A
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#5</i>	698-015-0090: SOLC recommends that the rules clarify "regionally significant" language. Concern that it appears to favor large-scale operations over smaller farms, without good rationale.	Given the diversity of Oregon agriculture, it is preferable to allow the applicant to make the case that a particular project is "significant," which will be assessed by the review team, OWEB staff, commission, and OWEB Board. These words will be clarified in guidance.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.# 6</i>	698-015-0090: SOLC notes that there is no criterion to evaluate the type of agriculture, which have differing impacts and economies: e.g., grazing, versus food crops for local markets.	Given the diversity of Oregon agriculture, ORS 541.984(4) prohibits considering the type of agricultural production on the working land.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#7</i>	698-015-0090(5)(b): SOLC states that while Land Trust Accreditation is probably a good thing overall, there is a concern for requiring costly participation in a private organization so the option to demonstrate sufficient practices is a good and necessary option.	Thank you for your comment.	N/A

Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#8</i>	698-015-0090(5)(b): SOLC states that it cannot understand why "working land preservation" has to be in a mission statement (I imagine land trusts might be tempted to change their missions statements as a result). The language here seems to be flexible enough though.	This ranking criterion (and all others under 0090) are not required, but are rather the set of factors considered by the review team, OWEB staff, commission and board in conducting ranking. An applicant with "working land preservation" in its mission statement may rank higher, but the ranking process is holistic in considering all criteria.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#9</i>	698-015-0090 (8): SOLC states that, in some cases, it is difficult to demonstrate threat of fragmentation with certainty especially with larger properties (e.g., ranches).	Given the diversity of Oregon agriculture, each applicant can make a case for the threat of fragmentation and conversion for the parcel at hand. Guidance will advise how to demonstrate this.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#10</i>	698-015-0160: SOLC recommends limiting the time period between when a covenant and subsequent easement are conveyed to avoid intentional working of the funding system to one's advantage.	An easement may be conveyed after a covenant for many reasons, including new ownership.	No
WaterWatch	698-015-0120: WaterWatch recommends adding more specificity to the public involvement section of the rules, including: <ul style="list-style-type: none"> • opportunity to comment on applications (1) before the technical team review, and (2) to the Commission based on the technical team recommendations to the Commission. • Each review period should be a minimum of thirty days. • Applications and review team recommendations should be posted on OWEB's website and notice should be send to OWEB's mail serve list, as well on the OWEB website. 	The public involvement process is described in ORS 271.735. Additional procedures may be added in guidance.	No
Yamhill Soil and Water Conservation District	The district suggests terms of covenants be no less than 30 years, nor longer the 100 years, instead of 20 years and 50 years, respectively. As stated previously, permanent easements should be prioritized over covenants.	The statute prescribes that covenants shall have terms between 20 and 50 years [ORS 541.989 (1)(b)].	No
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #1</i>	Purpose of Covenants and Easements (OAR 698-015-0010(2)): We prefer the original language of this section, which provides for "ensuring" the continued use of the land for agricultural purposes. We think that the mandate of this program – particularly at the application stage – is greater than to simply ensure land is available for agriculture. Land should be actively used in farming or ranching when enrolled in the program or have a definite plan to return the land to farm or ranch use. While we agree that no one can mandate that the land remain in production, without interruption, in perpetuity, we think that a purpose of the covenant or easement should be ensuring the continued use of the land for agriculture production.	The purpose has been changed to "preserve and protect the continued use of a working land for agricultural purposes..." consistent with proposed changes to the enabling statute.	Yes

Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #2</i>	Definitions (OAR 698-015-0020(1)): The final sentence is a little difficult to read. We recommend rewording it to "If applicable, it may also address any proposed agricultural projects..." We recommend leaving out the reference to public access, as that is not a purpose of this program.	This subsection was moved to Division 005 Program Administration since it may apply to both CMP and easement/covenant projects. The reference to public access was deleted.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #3</i>	CMPs vs. Management Plans (OAR 685-015-0050): While we understand that they are separate plans, we think it would be useful if the rules clarified the difference between a Conservation Management Plan and a management plan for easements and covenants. We recommend that the rules either come up with a different term for "management plan" or always capitalize "Conservation Management Plan" to reduce the potential for confusion between the two.	Created a separate definition for "management plan" and moved both definitions to the administrative rules (division 005).	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm.#4</i>	Stewardship Endowment (OAR 698-015-0060(3)): We are not clear what a stewardship endowment fund is as outlined in the rules, and believe the term could use additional clarification.	A definition of "stewardship" was added and the definition of "stewardship fund" was revised.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm.#5</i>	Evaluation Criteria (OAR 698-015-0090): We appreciate the thought that went into the evaluation criteria for the statutory factors. a. For both the agricultural and conservation factors, we note that an "or" is more appropriate in the list than an "and" because all factors may not present for all applications, and all factors should not be required to fund a project. b. On comment NM7, we recommend adding infrastructure to the comments. c. On comment NM12, water quality goals should be driven by the local area plans, which is the plan for achieving any applicable TMDL. d. On comment NM17, we recommend adding "economic value/contribution to the local economy." e. For 6(c), we recommend changing "including OAHF" to "including other OAHF funded plans, covenants or easements"	a. The evaluation criteria are based on the "extent to which" the project addresses the agricultural and conservation factors, and does not require a project to address all of them. b. We will add infrastructure to the list of topics addressing agricultural viability. c. Agreed. Guidance on water quality will reference local area plans as the plan for achieving any applicable TMDL.. d. Guidance on regional significance will include economic value/contribution to the local economy. e. Agreed.	a-no b-yes c-yes d-no e-yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #6</i>	Payment Relationship (OAR 698-015-0170(1)): The last word in this sentence should be "covenant" and not "easement".	Agreed	Yes
Oregon Board of Agriculture <i>Cov/Ease Comm. #1</i>	OAR 698-015-0090(2)(a) Evaluation criteria for working lands easements and covenants. Similar to previous comments, use of the term "fragmentation" as currently defined or without the addition of consideration of other types of land conversion. See items #4 and #6 above.	The definition of "conversion" was expanded and the term "conversion" combined with "fragmentation throughout the draft rules.	Yes
Oregon Board of Agriculture	OAR 698-015-0090(3) Working lands and conservation management plans. It appears that this criterion limits the consideration of working lands to	Definitional changes address this issue.	Yes

<i>Cov/Ease Comm. #2</i>	those that also have “conservation management” issues. We are concerned that important working lands under the threat of conversion to nonfarm development with no conservation management issues will not be given consideration for needed protection.		
Oregon Board of Agriculture <i>Cov/Ease Comm. #3</i>	OAR 698-015-0090(4) Over all, this section does a great job considering the assets needed to maintain viable farm use in a given region. OAR 698-015-0090(4)(b) Assesses the “regional significance” of an “agricultural operation.” This could be a very narrow consideration without better defining “operation.” Agricultural operations and practices can and do change. The suitability of land to be used for a “significant operation” is just as, if not more important than what is the current operation character. Lands that are currently “under-utilized” yet are capable of high value production based on capability and suitability should be given strong consideration as viable agricultural land.	This was expanded to include suitability of soils, slope, location or other relevant factors.	Yes

Rules: Technical Assistance Rules (OAR 698-020)

Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Friends of Family Farmers	698-020-0060: FoFF recommends the commission define the term “underserved populations” to include (a) small- and medium-sized family farms and ranches, (b) socially disadvantaged farmers or ranchers, and (c) veteran farmers or ranchers using the definitions recommended above, in addition to ‘beginning or young farmers and ranchers’	OWEB recommends including as criteria and matching the USDA the definitions of “underserved populations” to include “socially disadvantaged farmers or ranchers,” “veteran farmers or ranchers,” and “limited resource farmer or rancher” and using the USDA definitions for these terms.	Yes
Oregon Farm Bureau and Oregon Cattlemen’s Association	Evaluation Criteria (OAR 698-020-0070): We agree with the recommendation to change the criteria around unserved populations to reference beginning farmers and ranchers.	Agreed.	Yes

Rules: Succession Planning Rules (OAR 698-025)

Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
None.			



Oregon

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Agenda Item I supports OWEB's Strategic Plan priority # 5: The value of working lands is fully integrated into watershed health.

MEMORANDUM

TO: Oregon Watershed Enhancement Board
FROM: Meta Loftsgaarden, Executive Director
Eric Williams, Grant Program Manager
SUBJECT: Agenda Item I-2 – Oregon Agricultural Heritage Commission Appointments
January 15-16, 2019 Board Meeting

I. Introduction

The Oregon Agricultural Heritage Commission (OAHC) was established by law in 2017 to provide voluntary tools to protect and enhance working lands while maintaining or enhancing valuable fish and wildlife habitat and other natural resource values. By statute, the OAHC is nested under the Oregon Watershed Enhancement Board. The board is tasked with appointing commissioners. This item requests board approval to reappoint two commissioners to the OAHC.

II. Background

The OAHC was appointed by the board on January 31, 2018, with four-year terms that were initially staggered from one to four years. Two initial one-year appointments expire at the end of January: one recommended by the Board of Agriculture and one recommended by the Fish and Wildlife Commission. Both of these boards/commissions have recommended reappointing their representative commissioners: Ken Bailey, representing the Board of Agriculture, and Mary Wahl, representing the Fish and Wildlife Commission.

III. Recommendation

Staff recommend the board reappoint Ken Bailey and Mary Wahl to the Oregon Agricultural Heritage Commission for four-year terms.