



## Oregon Agricultural Heritage Commission Meeting Agenda

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Thursday, April 26, 2018

Room 1868

152 NW 4th Street

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

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For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:30 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted at any item before the commission meeting. Written comments from persons not attending the meeting should be sent to Nellie McAdams, [nellie.mcadams@oregon.gov](mailto:nellie.mcadams@oregon.gov).

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Kraemer will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the April 5, 2018 meeting will be presented for approval. *Action item.*

Conservation Management Plan (CMP) (approximately 8:15 a.m.)

OAHP Coordinator Nellie McAdams will present revisions to draft rules resulting from the commission's discussion at its April 5, 2018 meeting.

Conservation Management Plan (CMP) Ranking Criteria (approximately 8:25 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its April 5, 2018 meeting.

Easements and Covenants Ranking Criteria (approximately 9:30 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its April 5, 2018 meeting.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

Easements and Covenants (approximately 12:30 p.m. to 3:15 p.m.)

OWEB staff will introduce components of easement and covenants, and members of the Context and Easement/Covenant Technical Committees will present to the commission and receive questions from the commission.

Context Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47<sup>th</sup> Avenue Farm
- **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)

Easement/Covenant Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47<sup>th</sup> Avenue Farm

For the remainder of the afternoon, commission members will discuss components of easements and covenants to address in rules.

Summary of Discussion, Location in the Process, and Next Meeting (3:15 p.m. to 3:30 p.m.)

OAHC Facilitator Liz Redon will help the commission summarize the day's discussion and identify additional broad subjects that were not discussed today and are not on the agenda for the following meeting.

The commission's next meeting will be on Wednesday, May 23 and Thursday, May 24, 2018.  
*Information item.*



# Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting  
Thursday, April 5, 2018  
Room 1868  
152 NW 4th Street  
Prineville, OR 97754

## MINUTES

### OAHC Members Present

Allen, Chad  
Bailey, Ken  
Jackson, Nathan  
Krahmer, Doug  
Loop, Lois  
Neuhauser, Will  
Taylor, Bruce  
Wahl, Mary  
Wolfe, Woody

### OWEB Staff Present

Fox, Jim  
Loftsgaarden, Meta  
McAdams, Nellie  
Redon, Liz  
Williams, Eric

### Others Present

Beamer, Kelley  
Daniels, Katherine  
Martinez, Amanda (Marti)  
Masterson, Laura  
Mathews, Nelson  
Williams, Bari  
Unruh, Loren

The meeting was called to order at 8:05AM.

### Welcome, Housekeeping, and Introductions

OWEB Executive Director Meta Loftsgaarden and Commission Chair Doug Krahmer welcomed commission members. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined again for commission members the process the commission will follow throughout the spring for rule-making. All those in attendance introduced themselves and their affiliations.

### Minutes

Commission members reviewed the minutes from the March 8th meeting. Nathan Jackson moved to adopt the minutes, with a second from Lois Loop. Minutes were approved unanimously.

### Succession Planning

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the second 'redline' draft of the succession planning rules, available in the [materials for this meeting](#).

The commission decided to remove the definition of "persons advising agricultural owners and operators" as unnecessary. They also decided to move the definition of "fragmentation" to the administrative rules governing the entire program, and to further refine this definition in future

conversations. Lastly, they changed the word “divide” to “transfer” under the definition of “succession planning.”

With these changes, the commission agreed that the [draft succession planning rules](#) were near completion and that the commission would reconsider these rules at the final rulemaking meeting.

### **Review of Conservation Management Plan Rules, Excluding Ranking**

Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the first ‘redline’ draft of the conservation management plan rules excluding ranking criteria, listed under the meeting [materials for this meeting](#). These rules contain all provisions except for ranking criteria, which were discussed afterwards. A summary of the discussion follows.

Commissioners decided that there should be some protocol for resolving differences of opinion when making mutual modifications. They recommended that this protocol be added to the components of a CMP under section 07, and that the meaning of “mutual” be clarified.

Under monitoring (section 12), commissioners agreed to require monitoring “at least” every three years, rather than every three years as a requirement, and to replace monitoring of the “components” of the CMP with monitoring of “compliance with” the terms of the CMP. They also specified that monitoring protocols “must” be established after a modification. See the [revised conservation management plan rules](#).

With these changes, the commission agreed that the draft conservation management plan rules for everything except ranking criteria were near completion and that the commission would reconsider these rules at the final rulemaking meeting.

### **Conservation Management Plan Ranking Rules**

#### **Summary**

Liz Redon led the commission in a point-by-point discussion of the [first draft of the conservation management plan ranking criteria rules](#). Liz and OWEB Grant Program Manager Eric Williams then summarized OWEB’s ranking and review process for land acquisitions and how criteria are evaluated.

#### **Covenant and Easement Ranking Education**

Meta Loftsgaarden explained the origin of and need for OAHF’s easement and covenant grant program. Liz Redon introduced the Context Technical Committee.

#### **OAHF Context Technical Committee**

Technical Committee members **Kelley Beamer** (Executive Director of the Coalition of Oregon Land Trusts and OAHF Work Group member) and **Laura Masterson** (Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47<sup>th</sup> Avenue Farm) explained the definition, origin, purpose, and funding sources of working land conservation easements. They then explained the Work Group’s reasons for supporting each of the 6 statutory ranking criteria for conservation management plans, easements, and covenants under Section 6(3).

## Commission Sharing

Commissioners shared their experiences with easements and covenants, why they are important, how they meet the agricultural and conservation purposes of the statute, and considerations to be aware of in the grant program and for individual participants. Thoughts expressed by commissioners included:

- How can the program ease the perceived conflict between agriculture and conservation, and how can these two goals benefit each other?
- The commission should discuss further whether “fragmentation” meant fragmentation of ownership, and/or land parcels.
- How can a landowner assure that the land will stay in production in perpetuity? Is it easier to make it available for agricultural production in perpetuity?

## Briefing on Appraisal and Ranking Criteria

OWEB Staff Jim Fox shared and took questions from the commission on two whitepapers: one on appraisal of easements and covenants in Oregon, and one on the easement ranking criteria used by other state programs.

Regarding appraisals, the commission discussed the fact that ecosystem services do not have a monetary value according to generally accepted appraisal methods. The commission added to their “refrigerator” list to hold a conversation about how to quantify ecosystem service values and integrate them into payment for OAHP programs.

Regarding other state programs, other states are eager to share information about their programs and ranking criteria. Jim highlighted several findings, including that many states used the Land Evaluation Site Assessment (LESA) model to assign points to rank projects. Delaware uses a 2-phase process, where the landowner first enters a 10-year, voluntary agreement without payment to continue to use their land for agricultural purposes only. Only after this agreement can a landowner qualify to sell their farm’s development rights. Some state programs only purchase development rights and do not address conservation values as well.

## OAHP Easement & Covenant Technical Committee

Nellie introduced the Easement/Covenant Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Katherine Daniels:** former Farm and Forest Lands Specialist at [Department of Land Conservation and Development](#)
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47<sup>th</sup> Avenue Farm
- **Nelson Mathews:** Northwest Land Conservation Director, West Division for the [Trust for Public Land](#)
- **Loren Unruh:** Assistant State Conservationist – Programs – at [NRCS](#)
- **Bari Williams:** Easement Program Specialist at [NRCS](#)

**Katherine Daniels** addressed easement ranking criteria in the context of threats to agricultural lands. She noted UGB expansions, conflicting non-farm uses, and fragmentation/land divisions as primary threats to agricultural land. Her recommendations included excluding areas inside the Urban Growth Boundary and urban reserves from consideration for an easement or covenant, and requiring alignment of projects with state and local land use plans.

**Bari Williams** described NRCS's easement program, the Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE). She explained that once the eligibility of the landowner, land, and easement holder were verified, NRCS ranked projects according to a point system with national and statewide criteria.

**Nelson Mathews** gave background on the Trust or Public Land, an entity that acquires easements, but does not hold them long-term. Nelson recommended clear and concise criteria and flexibility with other funders. He said that affirmative obligations can be challenging to implement and enforce, and instead recommended prohibitions where necessary to achieve natural resource objectives. Other points included that Land Trust Alliance accreditation would make it easier for the commission to gauge organizational capacity, that the commission might want to reserve the option to waive the match requirement, and that it might be difficult to evaluate impacts to neighboring properties.

**Laura Masterson** described East Multnomah Soil and Water Conservation District's evaluation process, which uses criteria that are measurable but not numeric.

### Public Comment

No members of the public submitted public comment.

### Ranking Criteria for Conservation Management Plan Grants

The commissioners were divided into groups to review each of the statutory criteria and any additional criteria first from the perspective of ranking conservation management plans, and then from the perspective of ranking working land conservation easements and covenants. The notes are below and their feedback is compiled in the [draft conservation management plan ranking rules](#) in the materials for the April 26 meeting.

#### Conservation Management Plan Ranking Notes from Flipcharts

- a) The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area – **All small groups agreed on this CMP evaluation criterion**
- b) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
  1. **Two groups felt this belonged in CMP rules only, and one group said this belonged in both CMP and easement/covenant rules:** Extent to which implementation of the plan(s) would improve the economic viability of the operation and maintain viability into the future. Parcel doesn't have to be viable, but operations should be. Manage regulatory requirements. Easement/covenant payment itself supports farm viability

2. **CMP should require a business plan, Easement/ Covenant should require a succession plan:** Consider quality of plans if it addresses easement/ covenant.
  3. **Both CMP and easement/covenant rules:** The cost-benefit of plan implementation; and
  4. **Both CMP and easement/covenant rules:** The extent to which implementation of the plan(s) would reduce the potential for fragmentation, development (define), or non-farm use of working lands.
- c) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
- One group said “significant” was ambiguous. If in a regional plan, it might be significant
1. **Both CMP and easement/covenant rules:** Extent to which the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, **water**, plants, animals, energy and human needs considerations;
  2. **Both CMP and easement/covenant rules:** Extent to which the plan(s) support(s) implementation of state, federal or tribal conservation or recovery plans; Helps leverage other funding.
  3. **Both CMP and easement/covenant rules:** Extent to which conservation becomes a revenue stream - explain (**more Easement/Covenant**) \* And is part of integrated management of the whole
  4. **Both CMP and easement/covenant rules:** Water quality (see easement/covenant)
  5. **Both CMP and easement/covenant rules:** Water quantity (see easement/covenant) including timing (seasonal) water quality and water quantity
  6. **Both CMP and easement/covenant rules:** Connectivity
  7. **Both CMP and easement/covenant rules:** Quality of habitat (refer to plans to determine “quality” & “importance”)
- d) The extent to which the plan(s) would protect significant agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;
1. “Investment gains” means the Commission’s investment gain?
  2. Need to define social benefits associated with continued agriculture use, like viewsheds.
- e) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:
1. **Both CMP and easement/covenant rules:** The financial capability of the organization to manage the plan(s) over time;

2. **Both CMP and easement/covenant rules:** Demonstrated relevant expertise to develop and implement plan(s); And success/ track record
  3. **Both CMP and easement/covenant rules:** Organization stability (including Board composition, staff/ leader turnover. Modify to organization strength
- f) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources, and on the duration and extent of the conservation management plan;
1. **Both CMP and easement/covenant rules:** Extent to which it aligns with federal, state or regional plans
  2. **Both CMP and easement/covenant rules:** Presence of critical habitat for threatened and endangered species and water quality & quantity (Connection to public benefit)
  3. Ecosystem services – efficient (unsure how) (export to nebulous) **(-goes under ag outcomes)**
  4. **Both CMP and easement/covenant rules:** Longer is better
  5. **Both CMP and easement/covenant rules:** Cumulative effect
  6. **Both CMP and easement/covenant rules:** “Protect 1st” – quality of acres
- g) The extent and nature of the plan(s)’s impacts on owners or operators of neighboring lands, including:
1. Benefits of the plan(s)’s development and implementation on neighbors;
  2. Negative impacts of the plan(s)’s implementation on neighbors;
  3. Communication with neighboring landowners to discuss how to mitigate any negative impacts;
  4. The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

#### Easement/Covenant Ranking Notes from Flipcharts

- (a) The extent to which the plan, covenant or easement would protect, maintain or enhance farming or ranching on working land
1. Extent to which non-farm uses are prohibited through the covenant/ easement. How would use for sustainable energy production be categorized?
  2. Ability for the land to remain in productive agriculture (vs – **at least one group disagreed restored/ retired**) – whole property won’t be taken out of production.
  3. “Protect the viability” (also NRCS criteria) or maintain agricultural value. Instead of focusing on the owner’s viability, focus on the **land’s** ability to remain viable. Do not require the operation to be a “commercial” farm/ranch. – **at least one group disagreed** proximity to markets – very relative
    - (a) 2a) Soils – USDA
    - (b) 2b) Retain and maintain sufficient water rights to support a viable operation



4. Protect the integration of agriculture and conservation that increases both at the same time. One group said make #1. Another group felt this was the mission of OAHP and didn't know which criteria it fit in
    - (a) 3a) Reduce management time and inputs
    - (b) b) Increase agriculture **and** conservation outcomes. Integrated effort
  5. **Consider for criterion C** Consistent with agriculture plans (on county level) proximity to other protected agricultural land.
- (b) The extent to which the plan, covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values. **Comments included:** OWEB and others have done this – borrow language. “The extent to which” – Does this language address quality of habitat?
1. Supports regional conservation plans
    - (a) ESA, ODFW, Oregon Conservation strategy, etc.
    - (b) Tribe cultural concerns (or new?)
    - (c) Nonprofit strategic plans (land trust)
  2. Supports water quality, e.g. TMDL streams (there is a list), temperature. More than not contributing to TMDL or just meeting standards, but contributes back, etc.
  3. Connectivity – Habitat and protected lands (size will vary by region – don't include size requirements)
  4. Protect integration of ag and conservation (like criterion a)
  5. Quality of habitat measured by types of species affected (e.g. ESA) “importance” or impact.
  6. Water quantity – season appropriate flows, balance.
- (c) The extent to which the plan, covenant or easement would protect agricultural outcomes, benefits or other investment gains. **Comments included:** The language is unclear
1. **Both CMP and easement/covenant rules:** Extent AND significance
  2. **Both CMP and easement/covenant rules:** Need specific factors that describe ag outcomes ← critical mass for ag industry
  3. **Agreement:** What makes one parcel stand out more than another?
    - (a) E.g. availability of water, soil, scale
    - (b) - Flexibility to produce many products **Disagreement with this**
    - (c) How easement improves long-term economic viability and future transfer
  4. **Agreement:** Need regional criteria
  5. **Both CMP and easement/covenant rules:** Preservation of ag footprint (land base)
  6. **Both CMP and easement/covenant rules:** Need to define social outcomes

(d) The capacity of the organization that filed the application to enter into a conservation management plan, accept a working land conservation covenant or working land conservation easement, and the competence of the organization

1. **Both CMPs and easements/covenants:** Better phrased in CMP \* History of organization handling easement or relevant grant program → Include info on failed easement/ response
2. **Agreement:** Consider accredited or on pathway
3. Land conservation/ easement is part of mission & plan. + bylaws (include indicator beyond habitat)
4. Financials indicate capacity for work (include adequate staff)
5. Have standards/ practices → includes plan for worst case scenario
6. funding for long term stewardship, monitoring & enforcement/ also plan
7. **Both CMP and easement/covenant rules:** Working relationship w/ funders/ partners
8. **Both CMP and easement/covenant rules:** Working relationship with the community
9. **Both CMP and easement/covenant rules:** Board composition
10. Consider how to make space for “new” organization to easement

(e) The extent to which the benefit to the state from the **investment may be maximized**, based on the ability to **leverage** grant moneys with other funding sources and on the **duration and extent** of the conservation management plan, working land conservation covenant or working land conservation easement

1. Needs to include ability to compare different lands with different crops in different regions (changes/ threats). **Agreement:** Comparison within region/ locally relevant
2. Consider how value different habitats
3. **Both CMP and easement/covenant rules** threatened or endangered species
4. Consider level of risk with conversion
5. Qualifies/ Ranks with NRCS programs (or priorities), or other sources. **(Timing challenges)**
6. **Some disagreement** Landowner donation and/or match
7. Cumulative effect of investment
8. Longer is better, permanent is best
9. Potential for recruiting more projects locally
10. “Protect 1st, Restore 2nd” – Quality of existing **habitat - Feels more like habitat, not working lands**
11. Need to consider protecting working ag lands, not just habitat
12. Exclude covenants from rural reserve areas
13. Are there other areas where investment is not bang for buck?

- (f) The extent and nature of plan, covenant or easement impacts on owners or operators of neighboring lands
1. (Demonstration of good communication) → Good communication is good enough
  2. **Agreement** More to do with plan than easement
  3. **Both CMP and easement/covenant rules:** Adds connectivity of habitat
  4. **Both CMP and easement/covenant rules:** Connectivity with other protected ag parcels
  5. **Both CMP and easement/covenant rules:** Consider shared drainage systems

### Conclusion and Next Steps

Liz asked commissioners if they would be available for a meeting in June, potentially in conjunction with OWEB's Board meeting. The commission could meet on Monday, June 25, in the late morning and then meet with OWEB's Board in the late afternoon. Commissioners were generally in agreement, with agricultural operators expressing that their availability would depend upon the weather.

The meeting was adjourned at 3:15 p.m.

## Division XXX Succession Planning Grants

### XXX-XXX-XX01

#### Purpose

The Oregon Agricultural Heritage Commission (commission) shall provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (OWEB board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations and economic sector,
- (2) Reduced fragmentation of Oregon’s working land,
- (3) Reduced conversion of Oregon’s working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon’s working land.

### XXX-XXX-XX02

#### Definitions

(1) “Agricultural cooperative” means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.

~~(2) “Agricultural owner 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.~~

~~— “Person advising owners of working land agricultural owner or operator” means a person or an organization that provides training and resources to persons who provide succession planning services to owners of working land.~~

~~(3) “Fragmentation” is the division of a working farm or ranch into smaller parcels.~~

~~(4)~~(2) “Succession planning” means an ongoing process for ensuring the continuation and economic viability of a business. It may include strategies to identify, develop, and empower the next generation of agricultural owners and operators, a plan to ~~divide-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.

~~(5)~~(3) *Additional definitions to be determined.*

**Comment [NM1]:** Use the statutory definition and revise the statute to apply to “agricultural owners and operators” in succession planning

**Comment [NM2]:** Not necessary to define.

**Comment [NM3]:** To be refined and moved to the admin section applying to all rules

### XXX-XXX-XX03

#### Succession Planning Priorities

The commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant proposals and make recommendations to the legislature. The commission may modify these priorities from time to time at its discretion.

#### **XXX-XXX-XX04**

##### **Applicant Eligibility**

- (1) Eligible applicants for Succession Planning Grants are:
  - (i) Public institutions of higher learning,
  - (ii) Not-for-profit organizations,
  - (iii) Units of local government,
  - (iv) Tribes, and
  - (v) Agricultural cooperatives
- (2) Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Succession Planning Grant.

#### **XXX-XXX-XX05**

##### **Application Requirements**

Succession Planning Grant applications shall:

- (1) Be consistent with general program guidance {similar to ORS XXX Division 005}.
- (2) Not require match contributions.
- (3) Be submitted on the most current form and process prescribed by the commission.
- (4) *Other application requirement in general administrative section.*

#### **XXX-XXX-XX06**

##### **Eligible Activities**

The following activities benefitting agricultural owners and 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 owners and operators on succession planning.

#### **XXX-XXX-XX07**

##### **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 XXX-XXX-XX01,
- (2) The capacity of the applicant to deliver the proposed program.

- (3) The applicant's background and experience in delivering successful succession planning programs, including both prior programs funded through this grant program and projects funded outside this grant program.
- (4) The cost-effectiveness of the proposed project,
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural owners or operators in diverse geographic locations in Oregon 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.
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

#### **XXX-XXX-XX08**

##### **Succession Planning Grant Application Technical Review and Funding Process**

- (1) The commission may fund projects submitted through an open solicitation for proposals, or by requesting proposals from a specific eligible entity or eligible entities.
- (2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.
- (3) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XXXX.
- (4) The commission may use technical committees to evaluate Succession Planning Grant applications.
- (5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the commission.
- (6) The commission may rank projects and shall provide funding recommendations to the board.
- (7) The board may fund a grant application in whole or in part.

#### **XXX-XXX-XX09**

##### **Grant Agreement Conditions**

- (1) The grantee must submit a report at completion of the project describing the work completed as described in OAR XXX-XXX-XXXX.
- (2) 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.
- (3) 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.

**XXX-XXX-XX10**

**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 owners and 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 diversity of participants in the program;
  - (iii) Documented improved understanding of succession planning by program participants; Documented measurable changes in behavior of participants, including the percentage or number of owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
  - (iv) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land to nonfarm uses and promote economic viability and ecological sustainability of agricultural operations; and
  - (v) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The OWEB Director or the commission may authorize an independent performance audit of any Succession Planning Grantee, and if the director determines the grantee is not complying with the rules of the Succession Planning Grant program, may restrict future grant funds.
- (4) In addition to project evaluations, the commission may conduct program evaluations that may include changes in UDSA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of agricultural owners and operators on the status of succession plans, and other trends in working land ownership and use.

**XXX-XXX-XX11**

**Waiver and Periodic Review of Rules**

The director may waive the requirements of Division XXX 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.

Division XXX  
Conservation Management Plans

**XXX-XXX-XX01**

**Purpose**

The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations,
- (2) Reduced fragmentation of Oregon’s working land,
- (3) Reduced conversion of Oregon’s working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon’s working land.

An agricultural owner or operator may enter into a conservation management plan with an organization for working land to be managed in a manner that supports one or more natural resource values. Conservation management plans must be for the purpose of developing and implementing conservation measures or other protections for maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values in a manner consistent with the social and economic interests and abilities of the agricultural owner 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.

**XXX-XXX-XX02**

**Definitions**

~~(1)~~ “Agricultural owner 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.

~~(1)(2)~~ “Mutual Modification” means a change to a conservation management plan that is agreed to by both the agricultural owner and operator subject to the plan, and the conservation management plan holder.

~~(2)(3)~~ Definitions to be determined.

**Comment [NM1]:** Located in admin section of all OAHF rules

**XXX-XXX-XX03**

**Eligibility**

Eligible applicants for Conservation Management Plan Grants include:

- (a) An entity eligible to hold a conservation easement, as defined in ORS 271.715, other than a state agency;
- (b) A watershed council; or
- (c) An entity who is tax exempt under section 501(c)(3) of the Internal Revenue Code



#### XXX-XXX-XX04

##### Application Requirements

Conservation Management Plan Grant applications shall:

- (1) Be consistent with general program guidance *{similar to OAR XXX Division 005}*;
- (2) Be submitted on the most current form and process prescribed by the commission;
- (3) Include the duration or terminating event for the plan; and
- (4) *Other application requirements included in general administrative section.*

#### XXX-XXX-XX05

##### Eligible Activities

Funding can be utilized to purchase, implement and monitor conservation management plans.  
(Additional information to be developed as a part of payment conversation.)

**Comment [ML2]:** This language may change in a technical statutory fix

#### XXX-XXX-XX06

##### Term of Payment for Conservation Management Plan Implementation

If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of between 20 and 50 years. If a plan is associated with a working land conservation covenant, the term of the plan must be the same as the term of the covenant.

#### XXX-XXX-XX07

##### Conservation Management Plan Components

At minimum, conservation management plans will include:

- (1) A summary describing how the conservation management plan meets OAHF's purpose;
- (2) Contact and location information for the agricultural owner or operator;
- (3) Relevant background and context;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural owner(s) or operator(s);
- (6) Resource analysis and identification of resource and management concerns;
- (7) Alternative identification and selection;
- (8) The implementation plan, including a budget;
- (9) The conservation, social and economic outcomes of the plan once implemented;
- (10) How the conservation management plan will be evaluated and adaptively managed;
- ~~(10)~~(11) A conflict resolution protocol if plan implementation is being funded; and
- ~~(11)~~(12) The term of the plan.

### **XXX-XXX-XX08**

#### **Evaluation Criteria**

*To be determined by commission*

### **XXX-XXX-XX09**

#### **Conservation Management Plan Technical Review and Funding Process**

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XX08.
- (3) The commission may use technical committees to evaluate Conservation Management Plan grant applications.
- (4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission.
- (5) The commission may rank projects and shall provide funding recommendations to OWEB's Board.
- (6) The board may fund a grant application in whole or in part.

### **XXX-XXX-XX10**

#### **Grant Agreement Conditions**

- (1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the commission at least annual reports from the agricultural owner or operator regarding plan implementation.
- (2) The grantee must submit a report at completion of the project describing the work completed. Monitoring must be completed as described in OAR XXX-XXX-XXXX.
- (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 Oregon Agricultural Heritage Commission.

**XXX-XXX-XX11**

**Conservation Management Plan Mutual Modification**

If funding is provided for conservation management plan implementation:

- (1) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (2) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.
- (3) To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.
- (4) The agricultural owner or operator must contact the grantee at any time 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/cropping system(s) not identified in the plan. For changes in grazing/cropping systems, the landowner must notify the grantee 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 owner's or operator's control.
- (5) The grantee must contact the agricultural owner or operator if changes in science significantly affect the effectiveness of conservation management plan implementation.
- (6) Modifications may include:
  - (a) Addition of new conservation practices, measures or conservation benefits;
  - (b) Changes in practices, measures or benefits based on:
    - a. changes in science;
    - b. changes to property management or ownership;
    - c. changes in grazing/cropping systems;
    - d. natural disasters; or
    - e. Other changes outside the agricultural owner's or operator's control.

### XXX-XXX-XX12

#### Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) The agricultural owner or operator must meet annually with the grantee and provide a written report of conservation management plan activities completed each year to the grantee on a form approved by the commission. Reports may also include photo points or other methods that appropriately track plan implementation.
- (2) Annual reporting must identify any mutual modifications to the conservation management plan.
- (3) Notwithstanding (4), site visits by the grantee to the property must occur at least every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the ~~components of compliance with implementation of~~ the conservation management plan.
- (4) The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols and site visit intervals to identify trends in habitat, water quality or other natural resource values, ~~or 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 owner or operator and the grantee. The commission may provide guidance for consistent monitoring protocols.
- (5) The commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting.
- (6) The commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

### XXX-XXX-XX13

#### Grant Reporting Requirements

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.

**Comment [ML3]:** Possibly move to the OAHF administrative rules that apply to all of the various programs and leave it out of this specific division.

### XXX-XXX-XX14

#### Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan 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 Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Draft Conservation Management Plan Evaluation Criteria Rules

XXX-XXX-XX08

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The extent to which the proposal meets the purpose of the program as defined in OAR XXX-XXX-XX01
- 2) The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area;
- 3) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
  - a) The extent to which implementation of the plan(s) would improve the economic viability of the operation and maintain viability into the future;
  - b) Whether the agricultural owner(s) or operator(s) have a business plan;
  - c) The cost-benefit of plan implementation; and
  - d) The extent to which implementation of the plan(s) would reduce the potential for fragmentation, or development of non-farm uses on, the property.
- 4) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
  - a) The extent to which the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
  - b) The extent to which the plan(s) support(s) implementation of local, regional, state, federal or tribal conservation or recovery plans;
  - c) The quality and connectivity of wildlife habitat;
  - d) The extent to which the easement or covenant maintains or improves water quality;
  - e) The extent to which the easement or covenant improves seasonally appropriate water flows.

**Comment [ML1]:** Guidance would include:

- Increased productivity or carrying capacity of the land
- Reduced use of inputs like fertilizer, pesticides, energy use
- Increased management efficiency
- Ensuring water rights sufficient to support farming on the land

**Comment [NM2]:** Define

**Comment [ML3]:** Guidance would include:

- Increased soil health
- Increased carbon sequestration
- Increased water quality

**Comment [ML4]:** Guidance would include:

- Establishment of habitat corridors or blocks
- Presence of listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program

**Comment [NM5]:** Guidance would include:

- TMDL improvement
- Temperature reduction

Draft Conservation Management Plan Evaluation Criteria Rules

- 5) The extent to which the plan(s) would protect significant agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;
- 6) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:
- a) The financial capability of the organization to manage the plan(s) over time;
  - b) Demonstrated relevant expertise and track record to successfully develop and implement plan(s);
  - c) The strength of the organization, including the composition of the board and ability to manage staff transitions;
  - d) Working relationships with funders, project partners, and the community;
- 7) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources, and on the duration and extent of the conservation management plan, including but not limited to:
- a) Provision of ecosystem services;
  - b) The duration of conservation management plan implementation funding;
  - c) The cumulative benefits of investments including OAHF and other sources;
- 8) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:
- a) Benefits of the plan(s)'s development and implementation on neighbors;
  - b) Negative impacts of the plan(s)'s implementation on neighbors;
  - c) Documented communication with neighboring landowners to discuss how to mitigate any negative impacts;
  - d) The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

**Comment [NM6]:** Define social benefits associated with continued ag use, and "investment gains"

**Comment [ML7]:** Guidance would include:

- Employer in community
- Hiring underserved populations
- Purchasing or selling locally
- Supplier for local processing
- Testing innovative approaches or technologies

**Comment [ML8]:** Guidance would include:

- Board balance including landowner members;
- Staff training and years of experience
- Specifically identified staff who will be working with landowners

**Comment [ML9]:** Guidance would include:

- Long-term impacts of investment;
- Specific duration doesn't matter

**Comment [NM10]:** Consider locating under (4) above, agricultural outcomes.

**Comment [ML11]:** I'm not sure what this means – would need clarification if it stays

**Comment [ML12]:** Yes – covered above

**Comment [ML13]:** Other items for discussion:

- Include working with underserved populations in the TA grants portion of the program rather than here
- Does commission want to reference risk/reward in rule or just as a part of your deliberations?
- Life-cycle of farming – was referenced, not sure how to incorporate

Draft Easement and Covenant Evaluation Rules

XXX-XXX-XX09

Evaluation Criteria

- 1) The extent to which the proposal meets the purpose of the program as defined in OAR XXX-XXX-XX01.
- 2) The extent to which the easement or covenant would protect, maintain or enhance farming or ranching on working land, including:
  - a) The extent to which the easement or covenant prohibits fragmentation, development, and non-farm uses on the property;
  - b) The ability of the land to remain in productive agriculture;
  - c) The potential viability of the property for agriculture;
  - d) Whether the agricultural owner(s) or operator(s) have a succession plan;
  - e) The cost-benefit of the project;
  - f) How the covenant or easement contributes to the long-term viability of the operation, including future transfer of ownership;
  - g) The level of risk of farmland conversion;
- 3) The extent to which the easement or covenant would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
  - a) The extent to which the easement or covenant holistically addresses natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
  - b) The extent to which the easement or covenant supports implementation of local, regional, state, federal or tribal conservation or recovery plans;
  - c) The extent to which the easement or covenant maintains or enhances the quality and connectivity of wildlife habitat;
  - d) The extent to which the covenant or easement improves water quality;
  - e) The extent to which the covenant or easement improves seasonally appropriate flows; and
- 4) The extent to which the covenant or easement would protect significant agricultural outcomes, benefits or other investment gains, including:

**Comment [NM1]:** In Guidance: Integration of agriculture and conservation that increase protection of both

**Comment [NM2]:** Define

**Comment [NM3]:** In Guidance: including soils and retention and maintenance of sufficient water rights to support a viable operation

**Comment [ML4]:** Guidance would include:

- Increased soil health
- Increased carbon sequestration
- Increased water quality

**Comment [ML5]:** Guidance would include:

- Establishment of habitat corridors or blocks
- Presence of listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program
- Plans might include: Conservation Management Strategy, Tribal Plans, ESA plans, etc.

**Comment [NM6]:** Guidance would include:

- TMDL improvement
- Temperature reduction

**Comment [EW7]:** Need guidance on specific factors that describe significant agricultural outcomes, including social outcomes, and what constitutes critical mass for the ag industry. Also need regional criteria.

**Comment [EW8]:** Whose investment gains?

**Comment [NM9]:** Guidance would include:

- Employer in community
- Hiring underserved populations
- Purchasing or selling locally
- Supplier for local processing

Draft Easement and Covenant Evaluation Rules

- a) The extent to which the parcel is unique or significant to agricultural outcomes beyond the parcel;
  - b) The extent to which the parcel helps conserve the agricultural land base.
  - c) The regional importance of the agricultural operation;
- 5) The capacity of the organization that filed the application to accept a working land conservation covenant or working land conservation easement, and the competence of the organization, including:
- a) Accreditation from the Land Trust Alliance, or exhibiting the characteristics of an organization eligible for accreditation ;
  - b) Inclusion of ownership and management of working land conservation easements in the organization’s mission;
  - c) The financial capability of the organization to manage and steward conservation easements over time;
  - d) Demonstrated relevant expertise and track record to own and manage conservation easements or other relevant projects;
  - e) The strength of the organization, as measured by board involvement, staff and organizational succession plans.
- 6) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources and on the duration and extent of the working land conservation covenant or working land conservation easement, including but not limited to:
- a) The cumulative effect of similar investments;
  - b) Duration of the agreement, with a preference for working land conservation easements over working land conservation covenants, and for longer terms of covenants;
  - c) The effects of land use planning on the long-term investment; and
  - d) The potential for recruiting additional working lands projects.
- 7) The extent and nature of covenant or easement impacts on owners or operators of neighboring lands, including:
- a) Benefits of the plan(s)’s development and implementation on neighbors;
  - b) Negative impacts of the plan(s)’s implementation on neighbors;
  - c) Demonstration of effective communication with neighboring landowners and the community;

**Comment [NM10]:** IF in guidance, these should be well defined:  
•Composition of board  
•Working relationships with funders, project partners, and the community

**Comment [NM11]:** Include a preference for CMP as well?

**Comment [NM12]:** Guidance may include:  
•Program funds may not be used in rural reserve areas or within Urban Growth Boundaries

**Comment [NM13]:** Guidance to include:  
•Connectivity to both wildlife habitat and protected agricultural lands;

**Comment [NM14]:** Guidance to include:  
•The impact on shared drainage systems.

**Comment [NM15]:** a) Consider CMP point: “Communication with neighboring landowners to discuss how to mitigate any negative impacts;”





## Issue Paper: Land Evaluation and Site Assessment (LESA)<sup>1</sup>

### Background

The Land Evaluation and Site Assessment (LESA) is an analytical tool developed by the Natural Resources Conservation Service (NRCS) to facilitate identification and protection of important agricultural land and assist in implementing farmland protection policies. The tool is designed to be tailored to local, regional or state-wide needs and provides a systematic and transparent method to rate and rank sites for agricultural importance. A 2001 study by the American Farmland Trust indicated that at that time LESA was used in 26 states at the state or county level or both to designate important agricultural lands and for agricultural conservation easement programs.

As the name suggests, LESA contains two components. The **land evaluation** part (LE) of LESA includes one or more factors addressing soil quality, including soil productivity, soil potential and land capability. The **site assessment** (SA) portion of LESA addresses non-soil conditions. When LESA is applied to a specific site, the value for land evaluation is combined with the value for site assessment. The higher the total value for a site, the higher the capabilities of that site are for agricultural activities and, if they were included in the analysis, for meeting other objectives such as wildlife habitat or environmentally sensitive areas.

### Land Evaluation

The land evaluation component of LESA rates the soil-based qualities of a site by applying one or more land classification systems:

- **Soil potential ratings**, which can take into consideration revenues associated with a soil's productivity and costs associated with managing soils for specific indicator crops;
- **Soil productivity ratings**, which utilize data from local indicator crops, including estimated yields;
- The USDA **land capability classification system**, which identifies soil limitations for agricultural use;
- **Important farmlands classification**, which uses national criteria for identifying prime and unique farmland.

The choice of these classification systems depends on time, budget, data availability, and policy objectives. Typically, only one or two of these factors are used in order to avoid redundancy and minimize costs.

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<sup>1</sup> From: Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands, second edition. Prepared for the U.S. Department of Agriculture Natural Resources Conservation Service by James R. Pease and Robert E. Coughlin, 1996. 240 pages.

## Site Availability

The site availability component of LESA rates non-soil factors affecting a site's importance for agricultural use. The factors are grouped into 3 types:

- SA-1 measures **factors affecting farm productivity** such as:
  - Size and shape of the site
  - Compatibility of adjacent and surrounding uses
  - Percent of the site in agricultural use
  - Percent of the site feasible for agricultural production
  - Level of on-farm investment
  - Availability of agricultural support services
  - Stewardship of the site
  - Environmental limitations on agricultural practices
  - Availability and reliability of water
- SA-2 measures **development pressure or likelihood of land conversion** and includes factors such as:
  - Land use policy designation
  - Percent of surrounding land in urban or rural development
  - Distance to public water and sewer
  - Distance to urban feeder highway
  - Distance to urban center or urban growth boundary
  - Length of public road frontage of site
  - Proximity to protected farmland
- SA-3 measures **other public values supporting retention of agriculture** such as:
  - Open space value
  - Educational value
  - Historic value
  - Significant artifacts or relics
  - Wetlands and riparian areas
  - Scenic values
  - Wildlife habitat
  - Environmentally sensitive areas
  - Floodplain protection

The factors to be included in the site assessment, ideally developed with stakeholder input, depend on data availability, selection of criteria that are appropriate for the region, and on policy goals and objectives for preserving farm and ranch land and the ecological and other values of that land. Each factor is evaluated and scored (for example, on a scale of 0-10) and then each factor or group of factors is assigned a weight (for example, how much to weight habitat value compared to agricultural potential) and the results combined to produce a final score.

LESA is used by some state conservation easement programs to determine *eligibility* of a farm or ranch land project, and in other states to *evaluate and rank* projects. Some states depend on local jurisdictions to use LESA to select projects to submit to state or federal programs. The Pennsylvania Agricultural Conservation Easement Purchase Program applies the land evaluation portion of LESA at the state level but the site assessment portion of LESA is developed and evaluated at the county level.

Modern innovations that can be incorporated in LESA include the use of geographic information systems to analyze mapped data. This allows application of LESA not only at a regional or parcel level, but also for different areas within a parcel, for example where soil attributes or development pressures differ.



# Issue Paper: Buy-Protect-Sell Arrangements

## Background

For a variety of reasons, organizations involved in farmland preservation might purchase or receive the donation of land in fee title, as opposed to a conservation easement on the property. One example is if a high-quality parcel of farmland with important conservation values is listed for sale and there is not an opportunity to obtain a conservation easement to protect the property. In such instances, the organization might acquire property in fee with the intent of selling the property later but retaining a conservation easement, a strategy known as “buy-protect-sell.”

Such transactions are either prohibited or challenging under other easement match funding programs, including NRCS’s Agricultural Conservation Easement Program (ACEP-ALE) because they have statutory authority to provide funding only for the purchase of conservation easements, not purchase of lands in fee.

This whitepaper seeks to understand:

- How other state working land preservation programs have addressed this scenario,
- If it is possible for the NRCS ACEP-ALE program to provide matching funds, and
- How the OAHP can provide funding in such instances.

## Other States

The **California Farmland Conservancy Program (CFCP)** addresses buy-protect-sell by allowing grant funds to be used by a grant recipient to obtain temporary fee title to agricultural lands. To qualify, the grant recipient must:

- Agree, upon acquisition of the property, to treat the property as if it were encumbered with an agricultural conservation easement,
- Sell the fee title subject to an agricultural conservation easement to a private landowner within 3 years of the acquisition of the fee title, and
- Reimburse the CFCP Fund by an amount equal to the fair market value of the land, less the value of the easement and associated transaction costs, within 30 days after the sale of the restricted fee title.

**For the OAHC to use this approach, it is likely that the OAHP statute would need to be amended to allow temporary fee title acquisition.**

The **Washington State Farmland Preservation Program (FPP)** utilizes two approaches to funding buy-protect-sell projects. Like the OAHP, this program does not have statutory authority to provide grants for fee simple farmland acquisition. However, if a potential grant applicant is planning to purchase land in fee for the purpose of reselling it with a conservation easement, the applicant can apply for a waiver stating that the intent was to sell the land with an easement on it, which allows the purchase of the property and the ability to apply for a grant for the conservation easement later. The waiver is good for 4 years (2 grant cycles).

On occasion, in addition to the waiver, the FPP has participated in development of the easement prior to the sale of the property and signs the easement at closing, stipulating that if the project receives FPP funding, the Recreation and Conservation Office will remain a third party on the easement. If a grant is not awarded, they will not be a third party on the easement. This approach has helped coordinate funding with ACEP-ALE grants when funding cycles do not coincide.

**Both of these approaches used by Washington's FPP should be available to the Commission without additional statutory authority.**

### **NRCS's Agricultural Land Easement program - ACEP-ALE**

Buy-protect-sell projects seeking both NRCS ACEP-ALE and OAHP funding face an additional hurdle. A preliminary analysis suggests that if the applicant sells the land to a private entity without the conservation easement in place, but with an agreement that the new owner will sell the easement once the initial transaction has occurred, that the project would be eligible for funding. This is a likely scenario, since the party holding the temporary fee title cannot hold a conservation easement at the same time since that would result in merger of titles. Land trusts engaging in buy-protect-sell strategies have avoided this through a side agreement with the prospective landowner or by placing the property in an LLC or using a partner that is also authorized to hold the land in fee or to hold the easement.

A disadvantage of the above approach is that it is likely that there will not be time for a property targeted for buy-protect-sell to go through the OAHP application and grant evaluation process. Thus, granting a waiver to allow for a later application introduces some uncertainty as to whether the applicant will receive grant funding upon later sale of the property (or separation of the easement from fee title).



## Issue Paper: Appraisal of Working Land Conservation Covenants

### Background

Oregon HB3249 authorizes the Oregon Watershed Enhancement Board to provide grants for acquiring working land conservation covenants (elsewhere often called term easements or temporary easements) for a term to be established in rules.<sup>1</sup> As is the case for perpetual working land conservation easements, acquisition of conservation covenants requires a method to establish their monetary value.

Most conservation easements, including working land conservation easements, are perpetual and as a result there are well-established appraisal methods to determine their value. Temporary conservation easements are rare for several reasons. First, the Internal Revenue Service does not grant an income tax deduction for charitable donation of conservation easements that are not perpetual. Second, acquiring conservation easements that are not permanent is inconsistent with the goals and objectives of most working land preservation programs. Third, the states that have statutory authority to provide grants for temporary conservation easements (for example, Texas and Washington) have reported little interest or demand.

Due to the infrequent use of temporary conservation easements, there are no widely agreed upon and tested appraisal methods. In addition, information on acquisition of temporary easements has proven difficult to find. Some states enter into short-term contracts that resemble temporary easements, intended to keep agricultural land from being converted (for example, 8-year agreements in New Jersey and 10-year agreements in California and Delaware). However, these contracts do not involve payment to the private landowner but instead depend upon a variety of tax incentives to stimulate enrollment in their programs. Thus, no appraisal is necessary.

An important consideration in appraising working land conservation covenants is that upon expiration of the covenant, the landowner's property will increase in value. This future benefit to the landowner makes the current value of the covenant less than if it were a perpetual easement. Two approaches that have been used to take this into consideration are: 1) using an economic model that is commonly used to discount future value to "net present value," 2) and applying a flat discount from the value of a perpetual easement, used by the Natural Resources Conservation Service (NRCS) in the Wetlands Reserve Program.

### Net Present Value Method

The promise of receiving an amount of money in the future is worth less than receiving the same amount of money today. This is due to a number of factors including inflation, which reduces the future value of the promised money, and to opportunities that make the money

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<sup>1</sup> HB 3249 Section 5(1)

more valuable today. To express the value of future money in today's dollars, economists apply a "discount rate." If the value of the future money is declining only due to inflation, the discount rate would be based on forecasts of the inflation rate. However, the discount rate can also be based on other economic factors. For example, will the land in question appreciate at a greater rate than general inflation? Are there additional factors that make future dollars more valuable today, such as the ability to invest in capital improvements on the farm? How does uncertainty and risk enter into the calculations?

An appraisal using this methodology was done for a 5-year and 35-year temporary conservation easement on a farm near Gresham, Oregon, for the East Multnomah Soil and Water Conservation District.<sup>2</sup> First, the value of a perpetual conservation easement was computed using standard methodology. The value of the temporary easements was then calculated for the 5-year easement using a 5% discount rate (based on trends in property values) and for a 35-year easement using an 8% discount rate (higher due to market uncertainty). The appraisal concluded that the 5-year easement was worth about 22% of the value of a perpetual easement and the 35-year easement was worth about 93% of the perpetual easement. Using the same methodology, the value of a 10-year easement will be 40% - 50% of a perpetual easement (depending on the discount rate chosen) and a 30-year easement would be about 90% of a perpetual easement.

The federal government establishes a generic discount rate called a "social discount rate" based on social as well as economic factors, in general reflecting "societies preference for consumption today." The current rate is 2.7% for 30-year programs.<sup>3</sup> Applying that rate to a 30-year easement results in a value of about 55% of the value of a perpetual easement. For real estate, this probably represents the low end of the range of discount rates that should be applied.

### **Flat Percentage Rate Method**

The Wetlands Reserve Program administered by NRCS provides grants for acquisition of 30-year conservation easements. The program requires appraisal of the easement as if it was perpetual, using standard methodology, and provides grants for a flat 75% of that value. Applying a flat rate, perhaps on a sliding scale based on the term of the covenant, would vastly simplify conservation covenant acquisition. However, a legal analysis would have to be undertaken to determine that there is not a legal requirement to offer fair market value when OWEB provides grant funding to acquire property rights and for the easement holder when acquiring those rights.

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<sup>2</sup> Appraisal Report, Duncan and Brown Real Estate Analysts, 2017.

<sup>3</sup> OMB Circular A-94



## Issue Paper: Definitions of Farmland Fragmentation

### OWEB Staff draft for OAH Commission review

'**Fragmentation**' is the division of a working farm or ranch into smaller parcels, 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.

### Other Definitions of Farmland Fragmentation

The fragmented, scattered, and frequently inaccessible parcels that are not economically viable for individual farming.

From: Sklenika, P. Classification of farmland ownership fragmentation as a cause of land degradation: A review on typology, consequences, and remedies. *Land Use Policy, Volume 57, 30 November 2016, Pages 694-701*

The situation in which a single farm consists of numerous spatially separated parcels.

From: Demetriou, D. Development of an Integrated Planning and Decision Support System (IPDSS) for Land Consolidation. *Chapter 2: Land Fragmentation*. Springer 2014.

The subdivision of farm property into undersized units too small for rational exploitation.

The excessive separation and dispersion of the parcels forming parts of single farm.

Both from: Kalantari, K. et al. Factors Affecting Agricultural Land Fragmentation in Iran: A Case Study of Ramjerd Sub District in Fars Province. *American Journal of Agricultural and Biological Sciences 3 (1): 358-363, 2008*.

The practice of farming a number of spatially separated plots of owned or rented land by the same farmer.

From: Hristov, J. Assessment of the impact of high fragmented land upon the productivity and profitability of the farms-The case of the Macedonian vegetable growers. SLU, Department of Economics Thesis 561. *Degree Thesis in Business Administration, Uppsala, 2009*.





# Oregon Agricultural Heritage Commission

Thursday, April 26, 2018

# Materials for Today's Meeting

- ▶ Agenda
- ▶ Minutes
- ▶ Draft Rules for Succession Planning
- ▶ Draft Rules for Conservation Management Plan - everything but ranking
- ▶ Draft Rules for Conservation Management Plan - ranking criteria
- ▶ Draft Rules for Easement and Covenant ranking criteria
- ▶ Whitepaper on Land Evaluation Site Assessment (LESA)
- ▶ Whitepaper on Buy-Protect-Sell
- ▶ Whitepaper on Valuation of Convenants
- ▶ Proposed definitions for "Fragmentation"

# Conservation Management Plan Rules

- ▶ “Mutual Modification” means a change to a conservation management plan that is agreed to by both the agricultural owner and operator subject to the plan, and the conservation management plan holder
- ▶ **Addition to CMP Components:** A conflict resolution protocol if plan implementation is being funded

# Conservation Management Plan Rules

## Minor changes

- ▶ site visits by the grantee to the property must occur *at least* every 3 years ... to document *implementation of* the conservation management plan.
- ▶ The agricultural owner or operator and the grantee *may* agree to establish specific monitoring protocols and site visit intervals to identify trends in 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.

# Conservation Management Plan Ranking

Six statutory criteria - Section 6(3)

1. protect, maintain or enhance *farming or ranching* on working land
2. protect, maintain or enhance fish or wildlife *habitat*, improve *water quality* or support other *natural resource values*
3. protect *agricultural outcomes*, benefits or other investment gains
4. the *capacity* of the organization that filed the application
5. Maximize public benefit with *leveraged funds* and *duration/extent*
6. impacts on owners or operators of *neighboring lands*.

Potentially refine in rules

# Conservation Management Plan Ranking

Added

1. The extent to which the proposal meets the purpose of the program as defined in OAR XXXXXX-XX01 **To address balance of ag and conservation**
2. The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area;

# Conservation Management Plan Ranking

3) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:

- ▶ The extent to which implementation of the plan(s) would improve the **economic viability** of the operation and maintain viability into the future;
- ▶ Whether the agricultural owner(s) or operator(s) have a **business plan**;
- ▶ The **cost-benefit** of plan implementation; and
- ▶ The extent to which implementation of the plan(s) would reduce the potential for **fragmentation, or development of non-farm uses** on, the property

# Conservation Management Plan Ranking

4) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:

- ▶ The extent to which the plan(s) holistically address(es) natural resource priorities applicable to the **land, including soil, water, plants, animals, energy and human needs** considerations;
- ▶ The extent to which the plan(s) support(s) implementation of local, regional, state, federal or tribal conservation or **recovery plans**;
- ▶ The **quality and connectivity** of wildlife habitat;
- ▶ The extent to which the easement or covenant maintains or improves **water quality**;
- ▶ The extent to which the easement or covenant improves **seasonally appropriate water flows**.



## Conservation Management Plan Ranking

5) The extent to which the plan(s) would protect significant **agricultural outcomes, benefits or other investment gains**, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the **local community or economy**;

# Conservation Management Plan Ranking

6) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:

- ▶ The **financial capability** of the organization to manage the plan(s) over time;
- ▶ Demonstrated **relevant expertise and track record** to successfully develop and implement plan(s);
- ▶ The **strength of the organization**, including the composition of the board and ability to manage staff transitions;
- ▶ **Working relationships** with funders, project partners, and the community;

# Conservation Management Plan Ranking

7) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources, and on the duration and extent of the conservation management plan, including but not limited to:

- ▶ Provision of **ecosystem services**;
- ▶ The **duration** of conservation management plan implementation funding;
- ▶ The **cumulative benefits** of investments including OAHP and other sources

# Conservation Management Plan Ranking

8) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:

- ▶ **Benefits** of the plan(s)'s development and implementation on neighbors;
- ▶ **Negative impacts** of the plan(s)'s implementation on neighbors;
- ▶ **Documented communication** with neighboring landowners to discuss how to mitigate any negative impacts;
- ▶ The extent to which the plan(s) include(s) a **maintenance plan or plans for infrastructure** that may impact neighboring lands if not maintained over time.

# Match Requirements



Conservation Easement Purchase  
\$100,000



Appraisal  
\$10,000



Staff Support  
\$4,000



Legal Review  
\$2,000



Closing  
Costs  
\$1,000



Environmental  
Assessment  
\$3,000

## OWEB Land Acquisition Grants:

### Total Costs:

\$100,000 appraised value  
\$ 20,000 transaction costs  
\$120,000 total

### Required Match:

\$ 25,000 easement purchase  
\$ 5,000 transaction staff  
\$ 30,000 total

### OWEB Contribution:

\$ 75,000 easement purchase  
\$ 15,000 transaction costs  
\$90,000 total

Or 75% of \$120,000 = \$90,000

# Buy-Protect-Sell

- ▶ Jim Fox, OWEB Staff
- ▶ Jay Udelhoven, Executive Director of East Multnomah SWCD

# Covenant Appraisal

Jim Fox, OWEB Staff

# Covenant Term

Nellie McAdams, OWEB Staff

Section 10 The Oregon Agricultural Heritage Commission shall: (b) Adopt rules **establishing 3 or more permissible terms of years**, that are not less than 20 or more than 50 years, for working land conservation covenants formed under section 5 of this 2017 Act



# Double Payments

"[Ensure] that the total combined covenant and easement payments from OAHP for a property never exceed the appraised value of a permanent easement.

The purpose of this provision was to prevent "double-dipping" by **paying more than the value of an easement through multiple agreements** (potentially including one or more covenants and an easement), adjusted to present day value.

Some work group members thought the concept **may not be appropriate unless covenants are structured as "lease-to-own" arrangements that predictably lead to permanent easements.**

Their thought was, without such lease-to-own arrangements, expired termed covenants would have no effect on the present-day value of a future perpetual easement on the same property. In that case, "double dipping" only exists where a covenant and an easement overlap in time, and the approach may dis-incentivize a landowner to convey an easement after a covenant's term had ended."

# Questions

- ▶ Does this balance agriculture and conservation?
- ▶ Are there specific areas where the answer is no?
- ▶ How do we ensure non-discrimination against any type of agriculture (Section 6(4)) geography, commodity, and other type? Did we inadvertently discriminate?