



Oregon Agricultural Heritage Commission Meeting Agenda June 25, 2018

Port of Cascade Locks
Marine Park Pavilion
395 SW Portage Rd.
Cascade Locks, OR 97014
Directions: <https://goo.gl/maps/XH76P94vc4M2>

The time listed for each agenda item is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:40 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 time before the commission meeting. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (11:00 a.m.)

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

Review and Approval of Minutes (approximately 11:05 a.m.)

The minutes of the May 23 and 24, 2018 meeting will be presented for approval. *Action item.*

Public Comment (approximately 11:10 a.m.)

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

Review and Approval of Draft Rules for Official Public Comment (approximately 11:30 a.m.)

The commission will be presented with a draft of the OAHP rules for approval to be sent to the public for the public comment period, beginning in July, 2018. *Action item.*

Review and Approval of OAHP Budget (approximately 12:00 p.m.)

The commission will be presented with a staff report and OAHP's draft proposed Policy Option Packages and asked to approve these proposals for OWEB's 2019-2021 Agency Request Budget. *Action item.*

Lunch (approximately 12:20 p.m.)

For OAHC Commissioners and OWEB staff only.

Review and Approval of OAHP Proposed Statutory Revisions (approximately 12:50 p.m.)

The commission will be presented with a staff report and redline document describing proposed changes to the OAHP statute, [ORS 541.977 – 541.989](#). The commission will be asked to approve the proposed changes for consideration by the Legislature during their 2019 session. *Action item.*

Review and Approve OAHP Technical Committees (approximately 1:20 p.m.)

The commission will be presented with a staff report describing the technical committees that the commission proposed during the rule making process, and other potential technical committees that could assist the commission in performing its duties. The commission will decide which technical committees to create, if any, and their membership. *Action item.*

Review and Approve Letter of Interest for Covenants and Easements (approximately 2:20 p.m.)

The commission will be presented with a staff report on a proposed Letter of Inquiry solicitation for Working Land Conservation Covenant and Easement Grants. The commission will discuss the contents of a letter of inquiry, and be asked to authorize OWEB staff to initiate a request for letters of inquiry for this grant program. *Action item.*

Summary of Discussion, Location in the Process, and Next Meeting (approximately 3:10 p.m.)

OWEB staff will help the commission summarize the day's discussion and identify next steps in the commission's process.

Break (3:15 p.m.)

Welcome and Introductions (3:30 p.m.)

OAHC Co-Chair Doug Krahmer will welcome the OWEB Board, followed by brief statements from OWEB Board Co-Chairs Randy Labbe and Will Neuhauser. There will be brief introductions around the room. *Information item.*

Description of OAHC Rulemaking Process (approximately 3:35 p.m.)

OAHC Chair Doug Krahmer will describe the commission's accomplishments since being formed in February and their rule making process in particular. *Informational Item.*

Description of the OAHP Work Group (approximately 3:40 p.m.)

OAHP Work Group member and OAHC Commissioner Derek Johnson will describe the Work Group's process in developing the statute, and the "grand bargain" they struck between conservation and agricultural interests. *Informational Item.*

Description of Commission's Work to Integrate Agricultural and Conservation Interests (approximately 3:45 p.m.)

OAHC Commissioners Mary Wahl, representing fish and wildlife habitat and Ken Bailey representing farming and ranching will describe how the commission worked to integrate agricultural and conservation interests in the program rules. *Informational Item.*

Statements from the Commission to the Board (approximately 3:55 p.m.)

Each OAHC Commissioner will share his or her perspective on the program and the rules with the OWEB Board. *Information Item.*

Question and Answer with OWEB Board (approximately 4:10 p.m.)

OWEB Board Co-Chair Will Neuhauser will transition the conversation into a question and answer period between the OWEB Board and the OAHC, which he will facilitate with OWEB Co-Chair Randy Labbe and OAHP Chair Doug Krahmer. *Information item.*

Summary (approximately 4:55 p.m.)

OWEB Board and staff and the OAHC will summarize the conversation.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Wednesday, May 23, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

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

Others Present

Masterson, Laura
Williams, Bari
Unruh, Loren

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

Welcome, Housekeeping, and Introductions

Chair Doug Krahmer welcomed commission members and the public. 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.

Minutes

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

Conservation Management Plan

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the draft conservation management plan (CMP) rules, available in the [materials for this meeting](#). Their recommendations are captured in the revised rules in the meeting materials for the [June 25th meeting](#), and in the notes below.

General

The commission asked OWEB staff to ensure that the rules clarify that the grant program can fund the development, implementation, **and/or** monitoring of CMPs. OWEB staff confirmed that, if the grant program funds CMP implementation, annual payments will still be made for

plan implementation even if the species that the plan was designed to protect is no longer present on that property. The CMP Grant Program will continue to pay for the conservation of that habitat for multiple values, but there might be a mutual modification to update the plan based on the new condition.

The commission added to rule that it may accept (and even solicit) outside funding, as long as the projects it funds meet program requirements. This might include restricting the use of the funds to the geography, habitat, or other goals required by that funding source, so long as it complies with OAHF statute and rules.

The commission confirmed with OWEB staff that they would have the chance to review and approve guidance documents prior to their publication.

Evaluation Criteria

The commission considered the use of the language “extent to which” and “significance” in the criteria and determined that this language was needed. The commission asked if numeric or yes/no criteria would be more objective, and concluded that a numeric approach can also be inherently subjective, because it is based on reviewers’ opinions. OWEB staff explained the evaluation process for other OWEB grants, which includes a thorough review and ranking process that does not use numeric valuations. The commission acknowledged that there was no definition for “significant,” especially since there is not enough data to make this determination for particular properties or regions at this point, and one commissioner stated that all agricultural land is significant. OWEB staff suggested that regional review teams could help determine areas and criteria of “significance” in their regions before the statewide review.

One commissioner asked for water retention to be removed from guidance and placed in rule along with seasonally appropriate flows.

The commission discussed whether the language regarding having farmers and ranchers on the board of the organization holding a CMP should be moved from guidance to rule. It was stated that if it is required for farmers and ranchers to be on these boards, then there should also be requirements for fish and wildlife experts to serve on boards. One commissioner said that farmers and ranchers will tend to choose organizations that have farmers and ranchers on their boards and that this need not be an evaluation criterion as well. The commission asked for covenant and easement rules and guidance to mirror the CMP rules and guidance on this point.

The commission added to guidance the dual priorities of encouraging connectivity as well as encouraging isolated early adopters in areas where connectivity is not yet possible.

The commission added to guidance that, although applications that do not identify specific landowners would be considered, projects with identified landowners should rank higher.

The commission agreed to mirror OWEB’s other grant programs and give the grantee 18 months to meet the grant conditions, after which the funds would be released to OWEB. They will reevaluate this decision after three years.

Working Land Conservation Covenants and Easements

Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the draft rules for the Working Land Conservation Covenant and Easement Grant Program, available in the [materials for this meeting](#). Their recommendations are captured in the revised rules in the meeting materials for the [June 25th meeting](#), and in the notes below.

Evaluation Criteria

The commission discussed whether there should be an initial screening of properties for regionally appropriate agricultural values. The commission decided to add a threshold criterion that requires properties to be “working lands” as defined by statute in order to qualify for the grant program. Other aspects of the property (including threat of development or fragmentation, and the agricultural and natural resource values on the property) are ranking criteria instead of threshold criteria, since they are more subject to interpretation.

The commission asked whether and how to ensure that grantees are committed to the preservation and conservation of working lands in particular, and added “working land” to the evaluation criterion concerning the organization’s capacity and competence.

Regarding eligible covenant and easement holders, the commission did not want to eliminate new easement holders from applying by including expertise and track record in the evaluation criteria. Organizations without prior working lands projects would rank lower in this sub-criterion, but would not be excluded from applying to the program. Guidance for this sub-criterion will also direct less-experienced applicants to the Technical Assistance Grant program.

The commission considered whether ability to mitigate climate change impacts should be a criterion for farm or ranch viability or natural resource concerns. The OAH Fund could potentially receive funding from carbon cap and trade investments, or any other source, so long as the projects comply with OAHP. The commission decided to include climate change in guidance for management plan criteria for covenants and easements, and for CMPs.

Woody Wolfe

Commissioner Wolfe described his experience conveying two conservation easements. The first easement was initiated in 2003/4 with Wallowa Land Trust and was completed in 2011. Commissioner Wolfe had four appraisals before being approved for funding, which the land trust paid for from donated funds. Commissioner Wolfe had to split tax lots to match the value of funding available through the Doris Duke Foundation. He also had to do a bargain sale, taking a charitable donation tax credit for some of the easement value. The easement language was restrictive for that easement, but less restrictive for his easement through NRCS’s ACEP-ALE program.

Commissioner Wolfe stated that the management plan for his easement funded by ACEP-ALE does not require *him* to perform certain actions, but instead recommends that he perform certain actions or requires actions of the land trust or NRCS. He gave up more property rights in the riparian area; grazing is allowed there, but only to achieve an ecological benefit. In the non-riparian area, Commissioner Wolfe gave up development rights and limited impervious surfaces to a maximum of 2% of the total surface area. He had a lien against the property that the leinholder would not subordinate, so he had to refinance. However, the new lender put a

UCC filing on all irrigation equipment. Commissioner Wolfe felt that the land trust and NRCS achieved their objectives as well.

Commissioner Wolfe said that, from his experience, it would be hard to place a value on a covenant. He asked how a landowner would have an incentive to sell an easement after conveying a covenant.

Public Comment

Public comment was submitted by the Oregon Historic Barn Society, asking the commission to consider making OAHP funds available for the maintenance, rehabilitation and/or adaptive reuse of historic agricultural barns and other outbuildings. The commission discussed the comment and decided that historic barn restoration might be a feature of social values. They decided that this purpose could potentially be included in guidance, but did not belong in rule.

The commission discussed Katherine Daniels' letter to the commission, which expressed concern about the lack of numeric ranking, lack of agricultural expertise on OWEB's current staff, and the lack of extensive reference to the land use system. Regarding measurable criteria, OWEB staff explained that OWEB's scoring system does not use numeric criteria and instead uses a comparative, process-oriented ranking system. Regarding agency expertise, OWEB staff explained that the technical committees that will review each grant application and offer recommendations for funding and ranking will include individuals with agricultural expertise in relevant regions and crop production. Also, OWEB intends to add positions with agricultural expertise to staff the Oregon Agricultural Heritage Program.

Regarding land use, the commission noted that compatibility with land use is a rule criterion. They stated that the expense of purchasing property rights in Urban Growth Boundaries (UGBs), or urban or rural reserves and such projects would likely cause those projects to not rank as high. Commission members said that there are some exceptional properties inside UGBs and urban or rural reserves and that they do not want to prohibit funding from being used in these areas in special situations. They also did not want to limit themselves before they have a chance to see what projects are presented and how they rank. Some commissioners said that if lands within a UGB are important that the local community should pay to protect them, and local match could even be a funding requirement for such properties.

The commission decided to send a letter to Katherine Daniels thanking her for her comments and explaining their conclusions.

Technical Assistance

The commission discussed whether to have a program ranking criterion for "underserved populations." The proposed definition was unclear, and several commissioners felt that there should be no such ranking criteria. NRCS shared their definitions of historically underserved, socially disadvantaged, and beginning farmer or rancher. The commission decided to allow a ranking priority for beginning farmers and ranchers, using the NRCS definition of someone who has owned or managed an agricultural operation for 10 years or fewer, and to add to that definition young farmers (under 35 years old). The commission will wait to decide on other underserved populations until staff has provided them with a definition.

Conclusion and Gallery Walk

The meeting was adjourned at 3:00PM. The commission then read the program rules posted on the room walls and added their comments, corrections, and questions on sticky notes.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, May 24, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

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

Others Present

Kruse, Dylan
Masterson, Laura
Rosa, Jerome
Williams, Bari
Unruh, Loren
Udelhoven, Jay

The meeting was called to order at 8:04AM.

Welcome, Housekeeping, and Introductions

OAHP Chair Doug Krahmer welcomed commission members and the public. 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.

Review of All Rules

OWEB Executive Director Meta Loftsgaarden and Liz Redon led the commission in a point-by-point discussion of their discussion the previous day, available in the [materials for this meeting](#). A summary of the discussion follows.

Succession Planning

The commission decided to keep “cost-effectiveness” as a criterion of the Succession Planning Grant Program, since it refers to the number of people reached and the impact of the service.

Conservation Management Plans

The commission added to the purpose: “protect, maintain, or enhance farming or ranching on a working land” in order to integrate farming and natural resource values. It was asked how this purpose statement would be measured.

OWEB confirmed that “eligible activities,” could include just the monitoring of an existing CMP. The commission added to the “eligible activities” section language from Section 2(2) of HB 3249 to rules, stating: “The board may accept contributions to the fund from any public or private source and may agree to any conditions for the expenditure of those contributions that are consistent with the purposes of the fund.”

In response to a question about the confidentiality of Candidate Conservation Agreements with Assurances (CCAAs), OWEB stated that their technical reviewers can review the plans, but cannot keep the information on file.

It was noted that the statute requires some match funding for conservation management plans. The commission decided to add a match section, but not to require a specific percentage.

Working Land Covenants and Easements

The commission added “regionally significant” to criterion 2 regarding agricultural land.

NRCS stated that their ACEP-ALE program does not pay for stewardship funds, but that landowners can voluntarily provide up to 20% of the easement value for a stewardship endowment. As part of this process, NRCS interviews landowners to ensure that they understand that they are not required to provide funds to the easement holder.

Commissioners stated that stewardship endowments are a stumbling block for many easement holders. They recommended that stewardship endowment be allowed as part of the project costs at a 25% match, but that the stewardship endowment be limited to no more than a certain percentage of appraised value, and require that it be matched. The Nature Conservancy uses 20% of easement value as an endowment goal, but NRCS limits landowner donations to stewardship endowments to 2% of the appraised value. The commission decided on allowing a 1:1 match for stewardship endowments capped at 10% of the appraised value of the property.

The commission decided to keep the term “social values” in the evaluation criteria, although it is only mentioned in the “Whereas” statements of the statute. The modified “social values” with the word “relevant” and will define this term in guidance. They also substituted “ecological” values with “natural resource” values, to be more consistent with the statute.

Working Land Conservation Covenant and Easement Technical Committee member, Laura Masterson, asked the commission to consider, again, excluding land in Urban Growth Boundaries. The commission reaffirmed their decision to let the ranking determine whether a project is either exceptional, or too expensive or impractical to fund, and not to determine this in rule or guidance.

The commission added a ranking sub-criterion to criterion 3 on the extent to which the covenant or easement will sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition. They also added this to CMP criteria.

The commission also decided to remove fragmentation and conversion to non-farm uses and make it its own criterion: “The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the covenant or easement would reduce those threats.”

Commissioners decided to combine the water quality and quantity criteria for CMPs and covenants/easements and move definitions of seasonally appropriate flows and appropriate water retention to guidance.

Administrative Rules

The commission deleted “into smaller parcels” from the definition of fragmentation.

Public Comment

There was no public comment.

Integration of OAHP and OWEB’s Other Programs

The commission asked if members of technical committees that review grant applications are over-burdened with the time that it requires. OWEB staff noted that many participants in review teams for other OWEB grants consider this role to be an important and worthwhile activity and report enjoying serving on the review teams.

It was asked how covenant and easement proposals would be directed to OWEB’s existing acquisition program that uses Measure 76 funding or to OAHP for a covenant or easement. OWEB staff responded that OAHP will have its own program staff, and there will be a program manager for both OAHP and the Measure 76 acquisition program who can direct projects to one program or the other.

OWEB staff described the current process for mitigating conflict of interest and bias among technical committee members. Governmental agency representatives often have less conflict of interest for particular projects than landowners, but landowners might be the best experts on agriculture and conservation in a region. OWEB has a process for disclosing, preventing, and identifying conflict of interest and bias throughout the process.

Next Steps Regarding OAHP Budget and Procedure

OWEB stated that it will propose an agency budget and a Policy Option Package (POP) requesting funding for OAHP, which the commission will review at their June meeting. The program budget will be for a certain amount, which the legislature will decide whether to appropriate, and the commission will create a spending plan for how to distribute those funds. If the legislature awards funding, funds would become available by July 1, 2019.

The commission was informed that the program could not fund covenants or easements with state bonds because OWEB would not retain an ownership right in OAHP projects. OWEB can only hold funds for 6 years, but funding could be “continuously appropriated” for annual payments for CMP implementation and distributed from an account. OWEB is researching this.

The commission was reminded of their CMP payment sub-committee, which will be developing recommendations over the next few years.

The OWEB Board approves rules and final grant decisions. A commissioner hoped that it was clear to OWEB’s Board that OAHP is different from their other grant programs. OWEB staff explained that the Board has been informed from the beginning that the OWEB Board’s role is to ensure that the commission is being fiscally responsible, and not to second guess the purpose of the program or the ranking of grant projects. If the OWEB Board disagreed with the

commission, a vote would be postponed and OWEB would call a subcommittee of Board and commission to discuss a resolution.

One commissioner proposed holding a discussion about other revenue streams that could come to OAHP.

Context Technical Committee

The OAHP Context Committee shared their perspectives on the program, responding to these three questions:

- Why did your organization begin to engage in creating OAHP?
- What do your members or constituents care about regarding this program?
- What are the deal breakers for your organization and members/constituents?

Context Technical Committee members who were present were:

Dylan Kruse: Policy Director at Sustainable Northwest 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 47th Avenue Farm

Jerome Rosa: Executive Director of the Oregon Cattlemen's Association and OAHP work group member

Jay Udelhoven: Executive Director of East Multnomah Soil and Water Conservation District, representing the Oregon Association of Conservation Districts (OACD), and OAHP work group member

Doug Kraemer and Derek Johnson, who served on the OAHP work group, also shared their perspectives.

Jay said that OACD is interested in agriculture and the sustainability of agriculture throughout the state. Many SWCDs already offer similar or complementary programs and OAHP could help provide funding for implementation. A deal breaker for OACD's membership was that the program must support agricultural land, because agriculture can be good for the environment if done right. Several concerns that remain are that the rules are somewhat complicated and long and simpler rules might be easier for implementation. In particular, for CMP requirements, consider how to monitor and enforce requirements in the rule and consider changing them to recommendations. For easements and covenants, the situation where a covenant and then an easement is conveyed on the same property can be clarified by stating that the rules reflect OAHP payments, not all of the funds that are invested in the project.

OWEB staff explained that the cost recovery protocol for CMP enforcement would be the termination of annual payments. Since the landowner receives annual payments from the commission, OWEB holds the funds until their disbursed, and that disbursement would be conditioned upon compliance.

Dylan expressed gratitude for the commission's work in drafting the program rules. Sustainable Northwest's interest was to preserve working landscapes and develop new voluntary tools to

preserve them. They wanted the program to support working lands, but also to reward and promote strong conservation values. They are interested in supporting funding for OAHP.

Jerome stated that the proposal had come forward years previously and had not been successful until OWEB and the Governor's Office stewarded the work group process. Many of the groups on the work group had not worked together frequently in the past. They came to the table because they saw a need and examples from other states. They also see the program as an opportunity for generational transfer. Properties have a higher value for recreation and trophy homes than rangeland, and without assistance it will be difficult for the next generation to afford agricultural land. Oregon Cattlemen's Association's members care about keeping working lands working. Many farmers and ranchers are asset-rich and cash-poor, so if landowners must sell land generation-after-generation, they are selling their future. The deal breaker for Oregon Cattlemen's Association is if the program doesn't allow the land to remain in production. While OAHP might not be appropriate for all producers, it is important for some.

Laura appreciated the commission and referred to conversations about working lands easements that began in 2008. What would be important to say 10 years from now is that the program has protected regionally significant agriculture and natural resource values.

Derek stated that there are opportunities to partner, a great need in the community, and not enough resources to meet that need.

Doug stated that this program began when he was leaving the Board of Agriculture and OWEB's Board. He has a long history of working in agriculture and conservation, and stated that farmers who maintain conservation values should be rewarded. Doug wanted to make sure that the program represents conservation and has a strong agricultural practitioner presence, and he feels that this balance has been created with OAHP. His initial deal breaker was that OAHP needs to be an agricultural program, and he feels that it has been successful.

One commissioner expressed satisfaction with how the various commission members have come to agreement, but wondered if that meant that they had missed an important issue. It was suggested that the work group's difficult discussions two years before the bill was passed might have made it easier for the commission to come to agreement now.

Final Discussion

The commission was asked these questions:

1. Can you say yes to the rules? Did you meet the grand bargain?
2. Do the rules create a sound/definitive pathway for tools that warrant public funding and will it:
 - a. Keep Oregon farms and ranches as farms and ranches without discriminating among any type of agriculture or geography;
 - b. Integrate protecting agriculture and natural resource values; and
 - c. Prevent fragmentation or conversion from agricultural use?
3. Is there anything you personally gave up that is giving you heartburn that you want to discuss?

Commissioners generally felt that they had struck the necessary balance with conservation and agriculture and other requirements of the statute. They felt that there were likely elements that could be improved, but that it was difficult to anticipate before the program is established. One commissioner thought that the rules lacked some specificity, but that the commission will review guidance and include more specificity as necessary. Another commissioner hoped the rules would become less complex over time. One commissioner hoped the program could better tap the power of integration of agriculture and conservation for mutual benefits. Another commissioner appreciated the diversity of views in the room and felt that the program should also reflect the diversity of Oregon agriculture.

OWEB staff shared their appreciation for the commission's dedication and their excitement to help the commission develop a new program.

Conclusion and Next Steps

Agenda items for the next meeting are:

- Approval of the rules
- Establishing technical committees (e.g. CMP payment)
- Budget approval
- Discussing and authorizing OWEB staff to proceed with a Letter of Interest application

Agenda items for following meetings:

- Review teams
- Measurements of program success

The meeting was adjourned at 3:02 p.m.



Staff Report: Proposed OAHP Draft Rules for Public Comment

Introduction

The Oregon Agricultural Heritage Program (OAHP) statute authorizes the Oregon Agricultural Heritage Commission (commission) to “assist the Oregon Watershed Enhancement Board with the development of rules for the administration of the programs under ORS 541.977 ... to 541.989...” ([ORS 541.989\(1\)\(a\)](#)).

Background

Between February, 2018 and June, 2018, the commission held 5 meetings for the purpose of rulemaking. During these meetings, the commission developed draft rules for OAHP administration, conservation management plan grants, working land conservation covenant and easement grants, technical assistance grants, and succession planning grants.

Next Steps for Rulemaking

Once the commission approves a draft set of rules for public comment, staff will initiate a formal public comment period with the Secretary of State. If the draft rules are approved at the commission’s June 25, 2018 meeting, public comment is estimated to begin on July 1 and last until July 31.

Staff will compile public comment and convene the commission in August to discuss the comments and potential changes to the draft rules. Once the commission has voted to approve a final version of the draft rules, OWEB’s Board will vote at their October 16-17 Board meeting on whether to approve the rules. The rules do not take effect until and unless they receive a vote of approval by OWEB’s Board.

Recommendation

Staff recommends that the commission approve the OAHP rules in attachments A – E of this staff report to be submitted for public comment.

Attachments

- A. OAHP Administrative Draft Rules
- B. Conservation Management Plan Draft Rules
- C. Covenant and Easement Draft Rules
- D. OAHP Technical Assistance Draft Rules
- E. succession Planning Draft Rules

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 fragmentation of Oregon’s working land and conversion of Oregon’s working land from agricultural production; and
- 3) Enhanced fish and wildlife habitat, water quality, and other natural resources on Oregon’s working land.

698-005-0020

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.
- 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) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director’s designee.
- 5) “Fragmentation” means 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.
- 6) "Grant agreement" means the legally binding contract between the Board and the grant recipient. 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.
- 6)7) "Grantee" means an organization or individual that is awarded a grant under one or more of OAHP’s grant programs.
- 7)8) "OWEB" means the Oregon Watershed Enhancement Board state agency.
- 8)9) "Technical committee" means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

~~9)~~10) “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 farming or ranching.

~~10)~~11) _____ “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 and wildlife habitat, improvement of water quality or support of other natural resource values.

~~11)~~12) _____ “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 and wildlife habitat, improvement of water quality or support of other natural resource values.

698-005-0030

Application Requirements

- 1) Applications must be submitted on the most current form prescribed by the Commission. Current applications are 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 and the required attachments, 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 owners or operators;
 - c. Name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, 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) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all participating landowners of the existence of the application and has also advised all landowners that all monitoring information obtained on their property is public record. If contact with all landowners was not possible at the time of application, the applicant must explain why.
 - 4) 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. A commitment by the agricultural owner or operator for continued access for monitoring the project after completion;
 - b. A commitment by the grantee to maintain the project for a period of time as deemed appropriate by the Board;
 - c. A commitment 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 both 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 purposes of the fund.

698-005-0070

Distribution of Funds

- 1) The Director may withhold payments to a grantee in a situation where 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 an applicant has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The applicant 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 Board and 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) and (3).

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 Conservation Management Plan Grant Program funds the development, implementation and/or monitoring of conservation management plans (plans) entered into by agricultural owners or operators and organization to manage working land in a manner that supports one or more natural resource values. Conservation management plans funded under this program:

- 1) Must contribute to the public benefits in OAR 698-005-0010;
- 2) Must be for the purpose of developing and/or 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;
- 3) Must protect, maintain, or enhance the agricultural values of the working land and/or operation; and
- 4) 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.

Comment [NM1]: Are these covered in the general purpose statement OAR 698-005-0010? If so, remove here.

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 both the agricultural owner or operator implementing the plan and the conservation management plan holder.

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. Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code.
- 2) Individual agricultural owners or operators are not eligible to apply for a Conservation Management Plan Grant.

Comment [NM2]: The commission had wanted to open this to nonprofits that are not 501(c)(3)s, but the (c)(3) requirement is in statute. There would need to be a statutory fix to change this.

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.

Comment [NM3]: Guidance: An application may be for:
•one CMP or multiple CMPs, and
•specifically identified properties or a target region

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
 - c. Funds deposited in a Stewardship Endowment before the time that OWEB funds are released for acquisition of the property.
- 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.

Comment [NM4]: Question: should covenant/easement stewardship funds count as CMP match? If so, can they be double counted if they're applying for both programs?

698-010-0060

Eligible Activities

Funding may be utilized to develop, implement, and/or monitor conservation management plans. *(Additional information to be developed as part of payment conversations.)*

698-010-0070

Term of Payment for Conservation Management Plan Implementation

- 1) If an agricultural owner 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 owner or operator and 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 owner or operator;

Comment [NM5]: In Guidance: Conservation goals should be as measurable and specific as possible.

DRAFT OAHF Conservation Management Plan Rules

- (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 conservation, social, and economic agricultural, natural resource, 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 owner or operator and the grantee 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 fragmentation and conversion from agricultural uses on the working land subject to the plan(s).
- 3) 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 by:
 - a) Protecting, maintaining, or improving priority natural resource values applicable to the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of local, regional, state, federal, or tribal priorities or plans;
 - 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 and/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 significant agricultural outcomes, benefits, or other investment gains, including the regional significance of the agricultural operation and its associated land base.

Comment [NM6]: In guidance: the plan should use affordable, feasible, and effective methods.

Comment [NM7]: Guidance would include:

- Integration of agriculture and conservation that increase protection of both
- Define "social values"

Comment [NM8]: Guidance would include

- Increased productivity, carrying capacity, and/or water retention of the land (retention defined in guidance)
- Reduced use of inputs like fertilizer, pesticides/herbicides, energy use
- Increased management efficiency
- Ensuring long term availability of water rights sufficient to support farming on the land (some transference and temporary leasing might be acceptable)

Comment [ML9]: Guidance would include:

- Increased soil health
- Mitigation of climate change, including increased carbon sequestration
- Amelioration of the impacts of climate change on the property
- Increased ecosystem function and resilience
- Strategies to protect vulnerable species, species of concern, and/or ESA listed species, but does not necessarily create a single-species management plan
- This does not exclude forestry

Comment [ML10]: Guidance would include:

- Plans for or presence of vulnerable or listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program

Comment [NM11]: Guidance would include:

- Establishment of habitat corridors or blocks

Comment [NM12]: Guidance would include:

- TMDL improvement
- Temperature reduction

Comment [NM13]: Guidance: Including seasonally appropriate flows, and appropriate water retention, to be defined in guidance

Comment [NM14]: Define social benefits associated with continued ag use, and "investment gains" (might refer to surrounding agricultural infrastructure)

DRAFT OAHF Conservation Management Plan Rules

- 5) The capacity and competence of the organization that filed the application to enter into and (if implementation funding is awarded) oversee implementation of a conservation management plan, including:
 - a) The financial capability of the organization to manage the plan(s) over time;
 - b) The demonstrated relevant commitment, expertise, and track record to successfully develop, implement, and/or monitor plan(s); and
 - c) The strength of the organization 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 lands projects in the region.
- 7) The impacts of plan implementation on owners or operators of neighboring lands, including:
 - a) A plan for communicating with neighboring landowners once the conservation management plan(s) is/are ready to be implemented about how to mitigate any impacts, if necessary;
 - b) A maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.
- 8) The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the conservation management plan would reduce those threats.

Comment [NM15]: Guidance includes:

- Dedicated staff capacity (e.g. in their job description and work plan), staff training, and years of experience
- If implementation funding is awarded, ability to manage staff transitions and a plan to assign project administration to another entity if needed
- Working relationships with funders, project partners, and the community.

Comment [NM16]: Guidance would include: May be demonstrated by mission, vision, or other organizational statement.

Comment [NM17]: Guidance would include:

- Agricultural owners or operators on the Board;
- Likelihood of long-term viability

Comment [NM18]: Guidance will include the cumulative benefits of similar conservation and/or agricultural investments in the community, including OAHF

Comment [NM19]: Guidance to include:

- Connectivity to both wildlife habitat and protected agricultural lands;
- The impact on shared drainage systems.

Comment [NM20]: Guidance: Maintenance plans should use affordable, feasible, and effective methods.

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.
- (2) Applications shall be evaluated according to criteria described in OAR 698-010-0080.
- (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 to be separate from the ranking of working land conservation covenants and working land conservation easements.
- (4) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans.
- (5) 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.

Comment [NM21]: Dependent upon statutory fix

DRAFT OAHP Conservation Management Plan Rules

- (6) The Commission shall review and consider the recommendations of the technical committee(s) appointed under 698-005-0040(4) and consult with the Board concerning grant applications.
- (7) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (8) 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 owner(s) or operator(s) to the roles and responsibilities under the conservation management plan.
- (2) All Conservation Management Plan Grant agreements 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 OAHP funds must be returned to the Commission with the final report.
- (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.

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 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 must be mutually agreed to by both the agricultural owner or operator and the grantee.
- (4) 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.

DRAFT OAHP Conservation Management Plan Rules

- (5) The agricultural owner or operator must contact the grantee 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/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.
- (6) The grantee must contact the agricultural owner or operator if changes in science 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:
 - a. Changes in science;
 - b. Changes in management or ownership of the property;
 - c. Changes in the grazing/cropping system(s);
 - d. A natural disaster; or
 - e. Other changes outside the agricultural owner's or operator's control.

698-010-0130

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- ~~(1) Each year, the agricultural owner or operator must meet with the grantee and provide the grantee with a written report on 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.~~
- ~~(2)(1) Annual reporting must identify any mutual modifications to the conservation management plan.~~
- ~~(3)(1)~~ Notwithstanding ~~(24)~~, the grantee 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.
- ~~(4)(2)~~ The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols and site visit intervals more frequent than once every three years to identify trends in habitat, water quality or other natural resource values, and must establish protocols if a modification of the conservation management plan

DRAFT OAHP Conservation Management Plan Rules

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)~~(3) The Commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. The agricultural owner or operator shall allow site access upon reasonable notification by the Commission.

~~(6)~~(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 fund conservation management plan implementation

a. ~~Each year~~At least once per year, the agricultural owner or operator must meet with the grantee and provide the grantee with a written report on 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.

~~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) 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.

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. 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

DRAFT OAHP Conservation Management Plan Rules

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

DRAFT Working Land Conservation Covenant and Easement Rule

DIVISION 015

Working Land Conservation Covenants and Easements

698-015-0010

Purpose

An agricultural owner or operator may enter into a working land conservation covenant (covenant) with or grant a working land conservation easement (easement) to an organization that is a holder, as defined in ORS 271.715, other than a state agency. Covenants and easements funded under this program:

- 1) 1) Must contribute to the public benefits in OAR 698-005-0010;
- 2) Must be for the purpose of ~~ensuring the~~ **providing the opportunity for** continued use of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land; and
- 3) May provide for carrying out any purposes of a conservation easement, as defined in ORS 271.715.

Comment [NM1]: Proposed statutory fix

698-015-0020

Definitions

- 1) “Management plan” means a description of the planned future management of a property proposed for easement or covenant acquisition that addresses agriculture, habitat and natural resource management practices; stewardship; monitoring; and uses of the property. If applicable, it also addresses any proposed agricultural projects, habitat restoration projects, public access, or educational or research projects on the property.
- 2) “Profit” means the positive difference between the original purchase price of the covenant or easement interest acquired with OAHP grant funds and a subsequent purchase price for the same property interest, minus the landowner’s property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.
- 3) “Stewardship endowment” means the fund that is used to cover the holder’s costs for the monitoring, stewardship, resolution of violations, and any enforcement of the covenant or easement.

DRAFT Working Land Conservation Covenant and Easement Rule

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 agricultural owners or operators 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 for the purposes that support the use of land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality, or support of other natural resource values.
- 2) Working Land Conservation Covenant and Easement Grant applications shall:
 - a. Be consistent with OAR 698 Division 001;
 - b. Be submitted on the most current form and process prescribed by the Commission;
 - c. State the amount and type of match contribution;
 - 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; and
- 4) If a pre-existing or new management plan is proposed as part of an application for a covenant or easement under this program, the proposed management plan must be agreed to by the landowner, applicant, and commission before closing.
- 4)5) 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

Matching Contributions

- 1) All applicants shall demonstrate at least 25% of the covenant or easement project costs is being sought as match as demonstrated by a formal application or agreement.
- 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. The donated portion of a sale; and

DRAFT Working Land Conservation Covenant and Easement Rule

- d. Funds deposited in a Stewardship Endowment before the time that OWEB funds are released for acquisition of the covenant or easement.
- 3) The Working Land Conservation Covenant and Easement Grant Program will provide up to a 50% match for the value of a stewardship endowment, but program funds contributed to a stewardship endowment may not exceed 5% of the total appraised value of the covenant or easement.
- 4) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

698-015-0070

Use of Grant Funds

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

Comment [NM2]: From statute

- 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 loans;
- 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 cost of preparation of the initial Management Plan, including consideration of any restoration needs;~~
- ~~7)6) The legal fees incurred;~~
- ~~8)7) The closing fees, including recording and title insurance costs;~~
- ~~9)8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a Management Plan approved by the Director; and~~
- ~~10)9) _____ Funding for a stewardship endowment.~~

Comment [NM3]: Redundant with Management Plan section below.

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0080

Conservation Covenant Term

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

698-015-0090

Evaluation Criteria

- 1) The significance of the agricultural, ~~ecological~~ 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 to reduce future fragmentation of the property and its surrounding area;
 - b) Reducing the threat of conversion from being working land;
 - c) Maintaining or enhancing the ability of the land to be in productive agricultural use after the covenant or easement is in place;
 - d) The potential viability of the property for agriculture; and
 - e) 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, improve water quality, or support other natural resource values by:
 - a) Protecting, maintaining, or improving priority natural resource values applicable to the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of local, regional, state, federal or tribal priorities or plans;
 - c) Protecting, maintaining, or improving the quality and connectivity of wildlife habitat on and around the working land; and
 - 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 significant agricultural outcomes, benefits or other investment gains to the region, including:

Comment [NM4]: In Guidance:
•Integration of agriculture and conservation that increase protection of both.
•Define “social values”

Comment [NM5]: In Guidance: includes threat of conversion and urgency

Comment [NM6]: In Guidance: the entire property need not be available for agriculture, especially portions that are not productive for agriculture.

Comment [NM7]: In Guidance, includes:
•Soils
•Where appropriate, water retention in soils (defined in guidance)
•Maintenance of sufficient water rights to support a viable operation long term (leasing water rights is fine)

Comment [NM8]: In Guidance: may be demonstrated by the presence of a succession plan.

Comment [ML9]: Guidance would include:
• Increased soil health
• Increased carbon sequestration
• Increased water quality
• Increased ecosystem function and resilience
• Support for vulnerable species, species of concern, and/or ESA listed species.
• Includes climate change impacts from Management Plan activities.
• Does not exclude properties that contain some forestry

Comment [ML10]: Guidance would include:
• Plans for or presence of vulnerable or listed species or associated habitat
• Addresses priorities in local area plans for the state’s agriculture water quality program

Comment [NM11]: Guidance would include: Establishment of habitat corridors or blocks

Comment [NM12]: Guidance would include:
• TMDL improvement
• Temperature reduction

Comment [NM13]: Guidance: Including seasonally appropriate flows, and appropriate water retention, to be defined in guidance

Comment [EW14]: Guidance on specific factors that describe significant agricultural outcomes, including social outcomes, and ...

Comment [NM15]: Guidance: This refers to surrounding agricultural infrastructure

DRAFT Working Land Conservation Covenant and Easement Rule

- a) The parcel’s contribution to conserving the region’s agricultural land base; and
 - b) The regional significance of the agricultural operation and its associated infrastructure.
- 5) The capacity and competence of the organization that filed the application applicant and/or the proposed easement or covenant holder to purchase, implement, carry out, 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 create, 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 and/or agricultural investments in the community, including OAHF;
 - d) The effects of land use planning on the long-term investment;
 - 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 management plan, including how the plan mitigates or addresses the effects of climate change.
- 7) The impacts of the covenant or easement and/or the associated 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.
- 7)8) The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the covenant or easement would reduce those threats.

Comment [NM16]: In Guidance:
•Includes connectivity and adjacency to other agricultural parcels

Comment [NM17]: Guidance would include:
•Employer in community
•Hiring underserved populations
•Purchasing or selling locally
•Supplier for local processing
•How this parcel helps avoid a “tipping point” where regional agricultural businesses and working lands are lost
•How this parcel supports regional economies of scale

Comment [NM18]: Guidance: may include:
•processing, storage, and distribution facilities,
•historic barns.

Comment [NM19]: Guidance includes:
•Stewardship endowment
•Dedicated staff with knowledge of agriculture who have sufficient capacity (e.g. in their job description and work plan), staff training, and years of experience
•Ability to manage staff transitions and a plan to assign project administration to another entity if needed
•Working relationships with funders, project partners, and the community

Comment [NM20]: Guidance will refer organizations with less experience to the Technical Assistance grant program.

Comment [NM21]: Guidance would include Agricultural owners or operators on the Board;

Comment [NM22]: Guidance to include:
•Connectivity to both wildlife habitat and protected agricultural lands;
•The impact on shared drainage systems.

698-015-0100

Technical Review and Funding Process

- (1) Technical review of Working Land Conservation Covenant and Easement Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR 698-015-0090.

DRAFT Working Land Conservation Covenant and Easement Rule

- (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 to be separate from the ranking of working land conservation covenants or easements.
- (4) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements.
- (5) The technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.
- (6) The Commission shall review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.
- (7) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (8) The Board approves Working Land Conservation Covenant and Easement Grants. The Board may fund a grant application in whole or in part.

Comment [NM23]: Clarify in statute.

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 grant applicant.
- 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.

Comment [NM24]: Guidance: this is after closing.

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, will be provided with written notice of the Board's or Commission's intent to consider:

- 1) Written comments received at least 14 days before 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.

DRAFT Working Land Conservation Covenant and Easement Rule

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 grant applicant 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 agricultural owner or operator.
- 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 title restrictions required under OAR 698- 015-0110 are approved by the Director.
- e. The Director has reconciled conditionally approved funding with actual project costs.
- f. The grant applicant has satisfied the match requirements under OAR 698-015-0060.
- g. The Board is notified in writing of the Director’s intent to distribute the grant funds or hold the grant funds pending Board consideration under OAR 698-015-0140.

(2) For grants established under these rules, the Director is authorized to reimburse the grant applicant for allowable costs identified in OAR 698-015-0070 and to recognize matching 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, its contractors, and cooperating agencies will be provided sufficient legal access to property encumbered by a covenant or easement acquired with OAHP funds, for the purpose of completing easement and covenant inspections and evaluations.

Comment [NM25]: Guidance: Easement from OAHP takes precedents over other easement documents

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0160

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.

698-015-0170

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 easement.
- 2) If the term of the covenant has expired, no reduction of fair market value will be taken for the subsequent easement.

698-015-0180

Subsequent Conveyances

Subsequent conveyances of working land conservation covenants or easements acquired with OAHF grant funds by the easement or covenant holder shall:

- 1) Be made subject to prior approval by the Commission;
- 2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and 698-015; and
- 3) Not result in profit to the holder.

698-015-0190

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.

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Division 020
Working Land Technical Assistance Grants

698-020-0010

Purpose

The Oregon Agricultural Heritage Commission (Commission) may provide grant funding for technical assistance to organizations that enter into or ~~propose~~ are eligible to enter into agreements resulting in conservation management plans, or that accept or propose to accept 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 OAR 698-010 (conservation management plans) and ORS 541-982 and OAR 698-015 (working land conservation covenants and easements).

(2) "Young or beginning farmer or rancher" means someone who has owned or operated an agricultural operation for 10 years or fewer or who is 35 years old or younger.

698-020-0030

Eligibility

- 1) Eligible applicants for Technical Assistance Grants are eligible to enter into agreements resulting in a conservation management plan under OAR 698-010-0080 or accept a working land conservation covenant or easement under OAR 698-015-0080.
- 2) Individual agricultural owners 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.

Comment [NM1]: In Guidance: projects include
●outreach, education,
●staff and board training,
●engagement in community activities, and
●other investments in infrastructure and staff time to support the development of the program

698-020-0070

Evaluation Criteria

Technical Assistance Grants will be evaluated on:

DRAFT Document

- 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 enter into 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, and appropriate water retention or other natural resource values;
 - c. Protect significant agricultural outcomes, benefits, or other investment gains;
 - d. Maximize the benefit to the state based on the ability to leverage grant; 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.

Comment [NM2]: Guidance: May include ag infrastructure.

Comment [NM3]: Remove or change to beginning or young farmer or rancher.

698-020-0080

Technical Review and Funding Process

- 1) Technical review of Technical Assistance Grant applications shall occur based on information provided in the grant application.
- 2) Applications shall be evaluated according to criteria described in OAR 698-020-0070.
- 3) The Commission may use technical committees to evaluate technical assistance grant applications.
- 4) 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.
- 5) The Commission may rank projects and shall provide funding recommendations to the Board.
- 6) The Board approves Technical Assistance Grants. The Board may fund a grant application in whole or in part.

698-020-0090

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

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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.

698-020-0100

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 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 owners of working land, or persons advising owners of working land, regarding succession planning for the lands. Recommendations and grant funding must support the program purpose in OAR 698-005-0010.

Comment [NM1]: Statutory fix from "shall" to "may"

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 owners 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.

Comment [NM2]: Statutory fix to make this program apply to ag owners or operators

698-025-0030

Succession Planning Priorities

The Commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant applications and make recommendations to the Oregon Legislative Assembly. The Commission may modify these priorities from time to time at its discretion.

698-025-0040

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Nonprofit entities,
 - (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.

698-025-0050

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.

698-025-0060

Eligible Activities

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

698-025-0070

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 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. And,
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

698-025-0080

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) 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 in OAR 698-025-0070.
- (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.

Comment [NM3]: Guidance: describe how the expectations for delivery of the program will be modified if it is funded in part.

698-025-0090

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.

698-025-0100

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 OAHP 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.

Comment [NM4]: META: remove as redundant with 0110(1) below?

Comment [NM5]: Add to other programs or 001?

698-025-0110

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 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 owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
 - (v) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land from agricultural production, 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 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 owners or operators;
 - b. Surveys of agricultural owners or operators on the status of succession plans; and
 - c. Other trends in working land ownership and use.

Comment [NM6]: META: what future funds? Just the 10% that is withheld? This isn’t a reimbursement program. Does this refer to future grants? Can the director demand repayment?

DRAFT succession Planning Grant Rules

698-025-0120

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.



Staff Report: Proposed OAHP Agency Request Budget

Introduction

This report requests the Oregon Agricultural Heritage Commission's approval of budget proposals relating to the Oregon Agricultural Heritage Program (OAHP), which will be included in OWEB's Agency Request Budget for the 2019-2021 biennium.

Background

The Oregon Legislature approves budgets for state agencies on a biennial basis. In preparing for the next biennium, budgets are structured so that each agency's current (or "base") budget is recalibrated and submitted without need for specific policy description or justification. Any resources requested to be added to the base budget by agencies must be identified separately with policy narratives and justification. The requested additions to an agency's base budget are called "Policy Packages."

OWEB must submit its ARB narrative to the Governor and the Department of Administrative Services by August 31, 2018. The Governor's Office will then develop state budget recommendations in partnership with agencies, known as the Governor's Recommended Budget. This budget proposal may also include additional Policy Packages that reflect the Governor's priorities and initiatives. The Governor's Budget is the starting point for agency budget discussions at legislative hearings. During the legislative session, agencies may advocate for their individual Policy Packages only to the extent that they are included in the Governor's Budget.

Because OAHP is housed within OWEB, the agency is responsible for submitting the policy option packages related to the program as a part of its Agency Request Budget.

Budget Outlook

Recent economic forecasts project that revenues will continue to grow at a modest, but slower pace than in recent years. The latest revenue forecast is more positive than previous forecasts, indicating that revenues will be more in line with increasing state costs. This will result in a much lower deficit than indicated in previous forecasts.

Each biennium, agencies are required to submit a report that lists 10 percent reduction options from current service level by priority for all fund sources. Full reductions have not been taken in the past few budget cycles. Future reductions will depend on the revenue outlook and the level of remaining ending balances from the 2017-19 biennium.

OAHP Budget Proposal for the 2019-21 Biennium

OWEB's budget proposals for OAHP for the next biennium are based on an analysis of staffing needs relative to agency functions anticipated to be needed during the 2019-2021 biennium. OWEB proposes that the positions and grant funding identified in Attachment A to the staff report are necessary to carry out OAHP statutes.

Next Steps for Budget Development

Staff will use the budget proposals approved by the commission and the OWEB board at their June 2018 meetings as a foundation for developing policy packages for inclusion in the ARB. At future meetings, staff will keep the commission apprised about the status of the 2019-21 biennium budget process.

Recommendation

Staff recommend that the commission approve the OAHP-related budget proposals included in Attachment A of this staff report, for inclusion in OWEB's 2019-2021 Agency Request Budget.

Attachments

- A. OAHP Draft Proposed Policy Option Packages for OWEB's 2019-2021 ARB

OAHP 2019-2021 Agency Request Budget
Policy Option Package Proposal

1. Oregon Agricultural Heritage Program (OAHP)	Estimated Amount	FTE	Proposed Fund Source	OWEB Strategic Plan Priority*
<p>OAHP Grants – This request is for funding to support grants associated with the Oregon Agricultural Heritage Program. This program offers voluntary tools that help farmers and ranchers maintain land as active farms and ranches while providing incentives and support for conservation on those lands. The request includes \$9.25 million in grants for succession planning, conservation management plans, and working land conservation covenants and easements.</p>	\$9.25 million	N/A	General Funds	5
<p>OAHP Staffing – This request is for funding to support staffing needs associated with the Oregon Agricultural Heritage Program. This program offers voluntary tools that help farmers and ranchers maintain land as active farms and ranches while providing incentives and support for conservation on those lands. The request includes \$750,000 for staffing costs to implement the program. Positions needed to implement this program include: OPA4 to provide overall program coordination; NRS4 or similar position to coordinate the working land covenants and easements; and OS2 (0.5 FTE) to provide program support.</p>	\$750,000	2.5	Primarily General Funds; very modest amount of Lottery Funds for a portion of OPA4	5

*Agencies are typically asked to relate any policy option package to the agency’s strategic plan. On the next page is text from OWEB’s draft strategic plan, which is expected to be approved in June, 2018.

Priority 5 - The value of working lands is fully integrated into watershed health

Oregon's natural resource industries - agriculture, forestry, fishing, recreation – are dependent on healthy watersheds for their sustainability, including on private lands. OWEB will develop strategies to help local partners engage broader participation among those who own and manage working lands. This includes working broadly with partners who own or manage working lands and conservation communities to develop intentional approaches that fully embrace the value of well-managed working lands to habitat, water quality, and local economies.

NOTE: "Working land" means land that is actively used by an agricultural or forest land owner or operator for an agricultural or forestland operation that includes, but need not be limited to, active engagement in farming, ranching or timber management.

Strategies

1. Implement the Oregon Agricultural Heritage Program

Working with partners and the Oregon Agricultural Heritage Commission, finalize rules, solicit for applications, and determine appropriate funding sources for working lands easements, management plans, and succession planning for agricultural landowners. Full implementation is funding-dependent.

2. Strengthen engagement with a broad base of landowners

In partnership with others who have direct experience and knowledge working with a broad range of landowners in Oregon, OWEB will gain an understanding of how to improve conservation on working lands, particularly with landowners who may not have previously received OWEB or other conservation funding.

3. Enhance the work of partners to increase working lands projects on farm, ranch and forestlands

There are many areas in the state where working lands strategies and habitat/water quality priorities intersect. A number of statewide agencies and organizations have strong connections with farmers, ranchers and forest land owners. OWEB will partner with those organizations (formally and informally) to increase landowner involvement in conservation – whether through a program or on their own. OWEB can continue to work with partners at the state and local level to identify strategic areas where the agency can focus its investments on that intersection, highlighting the compatibility of working lands conservation strategies.

4. Support technical assistance to work with owners/managers of working lands

While local organizations are very effective at working with farm, ranch and forest landowners, there are some landowners/managers who have not yet been engaged in conservation for a variety of reasons. OWEB can coordinate with other partners to help local organizations effectively engage new landowners in their community.

5. Develop engagement strategies for owners/managers of working lands who may not currently work with local organizations

Landowner engagement will be an important component of the working lands movement to build understanding and support for the work as well as identify opportunities to work with interested land owners.



Staff Report: Proposed OAHF Statutory Revisions

Background

HB 3249 was passed in the 2017 legislative session. Following the session and throughout the process of establishing rules for the program, a set of needed statutory changes were identified. Attachment A provides a redline version of the statute with comments for each section describing proposed changes.

Statutory Changes

Statutory changes proposed include:

- 1) Shifting language in 541.982 to remove requirement that continued agricultural use be an affirmative obligation of a conservation easement.
- 2) Providing a more accurate description of the individuals who would be eligible to participate in succession planning programs in 541.984.
- 3) Changing wording regarding conservation management plans from 'purchasing' plans to 'developing' plans in 541.981 and 541.984.
- 4) Revising technical assistance grant use in 541.984 to more accurately reflect the purpose of the grant funds, and to expand the eligible applicants to all organizations that are eligible to enter into conservation easements or covenants.
- 5) Changing language to be consistent throughout the statute regarding the relationship between the commission and the Oregon Watershed Enhancement Board in 541.988.
- 6) Revising language to match OWEB's process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly in 541.988.

Recommendation

Staff recommend the commission approve changes as proposed for consideration by the Legislature during their 2019 session.

Attachment

Attachment A: OAHF Proposed Statutory Revisions

OAHP Proposed Statutory Revisions

Working Lands Conservation

541.977 Definitions for ORS 541.977 to 541.989.

As used in ORS 541.977 to 541.989:

(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.

(2) “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 farming or ranching.

(3) “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 and wildlife habitat, improvement of water quality or support of other natural resource values.

(4) “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 and wildlife habitat, improvement of water quality or support of other natural resource values. [2017 c.716 §1]

Note: 541.977 to 541.989 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

541.978 Oregon Agricultural Heritage Fund.

(1) The Oregon Agricultural Heritage Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Agricultural Heritage Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Watershed Enhancement Board for the purpose of carrying out ORS 541.977 to 541.989.

(2) The board may accept contributions to the fund from any public or private source and may agree to any conditions for the expenditure of those contributions that are consistent with the purposes of the fund. [2017 c.716 §2]

Note: See note under 541.977.

541.979 Expenditures from Oregon Agricultural Heritage Fund.

(1) The Oregon Watershed Enhancement Board may expend moneys from the Oregon Agricultural Heritage Fund to:

(a) Carry out the programs described in ORS 541.984;

(b) Pay reimbursements and staff support expenses associated with the activities of the Oregon Agricultural Heritage Commission established under ORS 541.986;

(c) Provide succession planning programs with funding recommended by the commission under ORS 541.989; and

(d) Pay the administrative expenses of the board for carrying out ORS 541.977 to 541.989.

(2) The amount paid from the fund during a biennium for reimbursements and expenses described in subsection (1)(b) and (d) of this section may not exceed 12 percent of the moneys credited to the fund during that biennium. [2017 c.716 §3]

Note: See note under 541.977.

Note: Section 13, chapter 716, Oregon Laws 2017, provides:

Sec. 13. Notwithstanding section 3 of this 2017 Act [541.979], the amounts paid from the Oregon Agricultural Heritage Fund for the administrative expenses of the Oregon Watershed Enhancement Board and the reimbursements and staff support expenses of activities associated with the Oregon Agricultural Heritage Commission incurred on or before June 30, 2019, may exceed 12 percent of the moneys credited to the fund during the biennium ending June 30, 2019. [2017 c.716 §13]

541.981 Conservation management plans for working lands; plan requirements.

(1) 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. The conservation management plan may be composed of multiple components addressing different natural resource values as identified in subsection (2) of this section.

(2) A conservation management plan 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.

(3) A conservation management plan must:

(a) Meet the standards established by Oregon Watershed Enhancement Board rules;

(b) State the duration or terminating event for the plan;

(c) Be specific to the land, and account for the needs of, the agricultural owner or operator;

(d) Provide for the parties to review the plan on a regular basis;

(e) Provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances;

(f) Provide for regular monitoring by the organization to ensure that the agricultural owner or operator is adhering to the plan;

(g) Make any receipt by the agricultural owner or operator of annual payments for carrying out the plan contingent on adherence to the plan; and

(h) Limit any annual payments for carrying out the plan to a term of not less than 20 years or more than 50 years.

(4) An organization that enters into, or proposes to enter into, a conservation management plan may apply to the board for a grant to fund the ~~purchasing~~ developing, implementing, carrying out or monitoring of the plan if the organization is:

(a) A holder, as defined in ORS 271.715, other than a state agency;

(b) A watershed council; or

(c) Tax exempt under section 501(c)(3) of the Internal Revenue Code. [2017 c.716 §4]

Note: See note under 541.977.

541.982 Working land conservation covenants and easements; requirements.

(1) An owner of working land may enter into a working land conservation covenant with or grant a working land conservation easement to an organization that is a holder, as defined in ORS 271.715, other than a state agency. The covenant or easement must be for the purpose of

Comment [ML1]: Conservation management plans are not purchased. Instead, they are developed or implemented.

~~ensuring the continued use~~ ~~providing opportunity for the continued use~~ of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land. A working land conservation covenant must be for a term of years that is established as permissible in Oregon Agricultural Heritage Commission rules.

Comment [ML2]: This change ensures that continued agricultural use is not a required 'affirmative obligation' in a conservation easement, though it can still be part of an easement agreed to by the landowner and the easement holder.

(2) In addition to the purposes required under subsection (1) of this section, a working land conservation covenant or working land conservation easement may provide for carrying out any purposes of a conservation easement, as defined in ORS 271.715. The covenant or easement must provide for carrying out those additional purposes in a manner consistent with ORS 271.715 to 271.795.

(3) A working land conservation covenant or working land conservation easement must:

(a) Provide for regular monitoring by the organization accepting the covenant or easement to ensure that the owner of the working land is adhering to the covenant or easement provisions; and

(b) If identical in duration to a conservation management plan for the working land, refer to the conservation management plan in the text of the covenant or easement.

(4) An organization that enters into, or proposes to enter into, a working land conservation covenant or accept a working land conservation easement may apply to the Oregon Watershed Enhancement Board for a grant to fund the purchasing, implementing, carrying out or monitoring of the covenant or easement.

(5) An application under subsection (4) of this section may be combined with an application under ORS 541.981 for a grant to fund ~~the development, implementation, carrying out or monitoring of~~ a conservation management plan associated with the working land conservation covenant or working land conservation easement. [2017 c.716 §5]

Comment [NM3]: To clarify that the application can be for writing and/or implementing the plan.

Note: See note under 541.977.

541.984 Grant programs; technical committees; rules.

(1) The Oregon Watershed Enhancement Board shall establish programs to provide grants from the Oregon Agricultural Heritage Fund for the purposes of:

(a) Assisting ~~owners of working land~~ ~~agricultural owners or operators~~ with succession planning for those lands;

Comment [ML4]: This more accurately reflects the individuals who would use a succession planning program

(b) Funding the ~~purchasing, implementing, carrying out or monitoring working land conservation covenants or working land conservation easements; or developing, implementing, carrying out or monitoring of conservation management plans~~ ~~purchasing, implementing,~~

Comment [ML5]: Conservation management plans are not purchased. Instead, they are developed or implemented.

~~carrying out or monitoring of conservation management plans, working land conservation covenants or working land conservation easements~~ described in ORS 541.981 and 541.982; and

(c) Providing ~~development funding or~~ technical assistance to organizations that enter into or ~~propose to enter are~~ eligible to enter into agreements resulting in conservation management plans, or that accept or propose to accept working land conservation covenants or working land conservation easements.

(2) The board, after consultation with the Oregon Agricultural Heritage Commission established in ORS 541.986, shall adopt rules that establish a process for submitting and processing applications for grants under ORS 541.981 and 541.982. To the extent practicable, the board shall design the process to:

(a) Allow flexibility and responsiveness to program participant needs; and

(b) Ensure compatibility with federal working land conservation easement programs and other programs for the conservation of working land.

(3) The board and the commission, shall jointly appoint one or more technical committees to evaluate and rank conservation management plans, working land conservation covenants and working land conservation easements described in applications filed under ORS 541.981 and 541.982. The system used by the technical committee or committees shall provide for the ranking of conservation management plans to be separate from the ranking of working land conservation covenants and working land conservation easements. The ranking for a plan, covenant or easement shall be based on criteria that include, but need not be limited to:

(a) The extent to which the plan, covenant or easement would protect, maintain or enhance farming or ranching on working land;

(b) The extent to which the plan, covenant or easement would protect, maintain or enhance fish or wildlife habitat, improve water quality or support other natural resource values;

(c) The extent to which the plan, covenant or easement would protect agricultural outcomes, benefits or other investment gains;

(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;

(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; and

Comment [ML6]: Adjusted to more accurately reflect how technical assistance funding will be used.

Comment [ML7]: Per conversations with the commission, funds might be used before a specific proposal is being considered to build a working lands easement program or to work with a group of landowners to help develop specific projects.

(f) The extent and nature of plan, covenant or easement impacts on owners or operators of neighboring lands.

(4) The criteria for ranking conservation management plans, working land conservation covenants or working land conservation easements under subsection (3) of this section may not include a consideration of the type of agricultural operation conducted on the working land.

(5) An applicant must demonstrate to the satisfaction of the board that the participants in a conservation management plan, working land conservation covenant or working land conservation easement to be benefitted by a grant under this section understand and agree to their roles and responsibilities under the plan, covenant or easement.

(6) The board may issue a grant to fund a conservation management plan, working land conservation covenant or working land conservation easement described in ORS 541.981 and 541.982 only if:

(a) There is a contribution of cash for the plan, covenant or easement, a contribution of in-kind services or another form of investment in the plan, covenant or easement from a funding source other than the Oregon Agricultural Heritage Fund;

(b) The plan, covenant or easement is reviewed by a technical committee that has expertise relevant to the described plan, covenant or easement; and

(c) The commission reviews and recommends funding of the plan, covenant or easement.

(7) Except as provided in this subsection, an organization that receives a grant from the board for a conservation management plan, or an agricultural owner or operator receiving payments of moneys from an organization grant regarding a conservation management plan, may receive cash contributions, other financial assistance, in-kind services or investments, rental or easement payments, tax benefits or other benefits from a federal, state or private entity in return for practices related to the ~~purchasing~~ developing, implementing, carrying out or monitoring of the conservation management plan. The board or an organization grant may not, however, provide payments that duplicate any federal, state or private payments for the same measures directed to maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values within the plan.

(8) An organization that receives a grant from the board for a working land conservation covenant or working land conservation easement, or an owner of working land that enters into a working land conservation covenant or grants a working land conservation easement, may receive cash contributions, other financial assistance, in-kind services or other forms of investment from any public or private sources for purposes of purchasing, implementing, carrying out or monitoring of the covenant or easement. [2017 c.716 §6]

Note: See note under 541.977.

Comment [ML8]: Conservation management plans are not purchased. Instead, they are developed or implemented.

Comment [NM9]: Question: Does this include tax benefits, i.e. of a bargain sale? CMPs specify tax benefits. Are duplicate payments allowed? Since they're mentioned above but not here, that may be implied.

541.986 Oregon Agricultural Heritage Commission.

(1) The Oregon Agricultural Heritage Commission is established, consisting of 12 members appointed by the Oregon Watershed Enhancement Board. The board shall appoint one board member to serve on an ex officio basis as a nonvoting member of the commission. The board shall appoint 11 voting members from among persons recommended as provided in subsection (2) of this section.

(2)(a) Four members shall be persons recommended by the State Board of Agriculture who are actively engaged in farming or ranching. The members must represent diverse types of agricultural commodities and be from geographically diverse areas of this state.

(b) One member shall be recommended by the Director of the Oregon State University Extension Service.

(c) Two members shall be persons recommended by the State Fish and Wildlife Commission who have expertise regarding fish and wildlife habitat.

(d) One member shall be a person recommended by the State Board of Agriculture who has expertise in agricultural water quality.

(e) One member shall be a person recommended by the Land Conservation and Development Commission who has expertise in conservation easements and similar land transfers.

(f) One member shall be a person selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests.

(g) One member shall be a person selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests.

(3) The term of office of each voting member of the Oregon Agricultural Heritage Commission is four years, but the Oregon Watershed Enhancement Board may remove a member if requested by the authority that recommended the member. Before the term of a member expires, the authority that recommended the member shall make recommendations to the board regarding the appointment of a successor. An authority may recommend the reappointment of a member, but a member may not serve more than two consecutive terms. If there is a vacancy for any cause, the authority that recommended the vacating member shall make recommendations to the board regarding the appointment of a successor to serve for the unexpired term. [2017 c.716 §7]

Note: See note under 541.977.

Note: Section 12, chapter 716, Oregon Laws 2017, provides:

Sec. 12. Notwithstanding the term of office specified by section 7 of this 2017 Act [541.986], of the members first appointed to the Oregon Agricultural Heritage Commission:

(1) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2019.

(2) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2020.

(3) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2021.

(4) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2022.

(5) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2019.

(6) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2021.

(7) The member recommended by the Director of the Oregon State University Extension Service shall serve a term ending January 1, 2020.

(8) The member selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests shall serve for a term ending January 1, 2020.

(9) The member recommended by the State Board of Agriculture who has expertise in agricultural water quality shall serve for a term ending January 1, 2021.

(10) The member recommended by the Land Conservation and Development Commission shall serve for a term ending January 1, 2022.

(11) The member selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests shall serve for a term ending January 1, 2022. [2017 c.716 §12]

541.987 Commission organization and membership.

(1) The Oregon Agricultural Heritage Commission shall select one of its voting members as chairperson and another voting member as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the commission determines.

(2) A majority of the voting members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every 12 months at a time and place determined by the Oregon Watershed Enhancement Board. The commission also may meet at other times and places specified by the call of the chairperson or of a majority of the voting members of the commission.

(4) Members of the commission are not entitled to compensation but, at the discretion of the board, may be reimbursed from funds available in the Oregon Agricultural Heritage Fund for actual and necessary travel and other expenses incurred by the members in the performance of official duties in the manner and amount provided in ORS 292.495.

(5) The board shall provide staff support for the work of the commission. [2017 c.716 §8]

Note: See note under 541.977.

541.988 Commission rules; advisory or technical committees.

(1) In accordance with applicable provisions of ORS chapter 183, the Oregon Agricultural Heritage Commission ~~may assist the Oregon Watershed Enhancement Board with the development of rules~~ may adopt rules necessary for the administration of the laws that the commission is charged with administering.

Comment [ML10]: Changes made to accurately reflect the relationship between the commission and the OWEB board to be consistent with other areas of statute.

(2) The commission may establish any advisory or technical committee the commission considers necessary to aid and advise ~~staff~~ staff and/or the commission in the performance of its functions. The committees may be continuing or temporary committees. The commission shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees. The commission chairperson shall be a nonvoting member of each committee.

Comment [ML11]: Revises to match OWEB process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly.

(3) Members of advisory or technical committees established by the commission are not entitled to compensation but, at the discretion of the commission and with the consent of the Oregon Watershed Enhancement Board, may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by the members in the performance of official duties in the manner and amount provided in ORS 292.495. [2017 c.716 §9]

Note: See note under 541.977.

541.989 Commission duties; rules.

(1) The Oregon Agricultural Heritage Commission shall:

(a) Assist the Oregon Watershed Enhancement Board with the development of rules for the administration of programs under ORS 541.977 to 541.989;

(b) ~~Assist the Oregon Watershed Enhancement Board with the development of rules~~ Adopt rules—establishing three or more permissible terms of years, that are not less than 20 or more than 50 years, for working land conservation covenants formed under ORS 541.982;

Comment [ML12]: Changes made to accurately reflect the relationship between the commission and the OWEB board to be consistent with other areas of statute.

(c) Recommend policies and priorities for use by the board in evaluating the farm or ranch values, and the fish or wildlife habitat, water quality or other natural resource values, on working land described in a grant application filed under ORS 541.981 or 541.982;

(d) ~~Review and consider the recommendations of staff, based on the advice of technical committees appointed under ORS 541.984~~ Use one or more technical committees appointed under ORS 541.984 to review grant applications and make funding recommendations to staff or the commission;

Comment [ML13]: Revises to match OWEB process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly.

(e) Consult with the board concerning grant applications;

(2) The Oregon Agricultural Heritage Commission may:

Comment [ML14]: Revised to separate those items the commission 'shall' do compared with those things the commission 'may' do.

(a) Provide conservation management plan, working land conservation covenant and working land conservation easement funding recommendations to the board based on the availability of funding from the Oregon Agricultural Heritage Fund; and

(b) Provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the board, to provide training and support to owners of working land agricultural owners or operators, or persons advising owners of working land agricultural owners or operators, regarding succession planning for the lands.

Comment [NM15]: To make consistent with changes to succession planning grant rules.

(3) The commission's recommendations for funding under subsection (2)(b) of this section may include recommendations for funding succession planning programs through the Oregon State University Extension Service only if the university has presented the commission with a program proposal for review. If a commission recommendation for funding succession planning programs through the university extension service is adopted, the university shall provide the commission with an annual report regarding each program. [2017 c.716 §10]

Note: See note under 541.977.

Note: Section 14, chapter 716, Oregon Laws 2017, provides:

Sec. 14. Sections 1 to 10 of this 2017 Act [541.977 to 541.989] apply to agreements and interests in land that:

(1) Are created on or after January 1, 2018; or

(2) Are the subject of an application for funding from the Oregon Agricultural Heritage Fund.
[2017 c.716 §14]



Staff Report: Proposed OAHC Technical Committees

Introduction

The Oregon Agricultural Heritage Program statute allows the Oregon Agricultural Heritage Commission to “establish any advisory or technical committee the commission considers necessary to aid and advise the commission in the performance of its functions. The committees may be continuing or temporary committees. The commission shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees. The commission chairperson shall be a nonvoting member of each committee.” ([ORS 541.988\(2\)](#)).

Background

During its 2018 rulemaking meetings, the Oregon Agricultural Heritage Commission (commission) discussed creating several technical committees, and requested that OWEB staff convene the technical committees once the majority of the rulemaking process was complete.

The commission proposed technical committees to make recommendations on the following topics:

1. Integration of conservation management plan funding with other grant programs; and
2. Calculating payment for conservation management plans.

Commissioners Key Bailey and Mary Wahl volunteered to serve on the first technical committee, and Commissioners Chad Allen, Lois Loop, and Chair Doug Krahmer volunteered to serve on the second. OWEB Staff Jim Fox and Nellie McAdams would provide research and administrative support to these committees. Staff has since discussed whether the first technical committee is necessary, since finding match funding is normally the responsibility of the grant applicant.

The commission might consider also creating technical committees on the following topics:

- Calculating payment for working land conservation covenants;
- Reviewing 2018 Letters of Inquiry to the working land conservation covenant and easement grant program, (see the staff report for this meeting); and
- Each of the 4 OAHP grant programs: conservation management plans, covenants and easements, technical assistance, and succession planning.

Recommendation

Staff recommends that the commission approve the creation of technical committees on:

- Calculating payment for conservation management plans,
- Calculating payment for working land conservation covenants;
- Reviewing 2018 Letters of Inquiry to the working land conservation covenant and easement program; and
- Any other technical committees that the commission sees fit.

Staff also recommends that the commission recommend the membership or a process of determining membership of any technical committees it creates. According to statute, the commission Chair serves as a nonvoting member on each technical committee.

Attachments

There are no attachments.



Staff Report: Letter of Interest for Covenants and Easements

Introduction

In addition to establishing the commission and authorizing programs and associated rulemaking, HB 3249 included general funds for startup activities during the current biennium. OWEB's Agency Request Budget for the next biennium, 2019-2021, includes a request for \$10 million to fund OAHG programs. In order to inform the legislative process, it will be helpful to document an estimate of needs, particularly for covenants and easements.

Background

Anecdotally, interest in working lands conservation easements has increased in recent years, particularly in eastern Oregon. Without a systematic way of gathering information to quantify the need, it is difficult to more accurately quantify the demand for conservation easements. The purpose of a solicitation of interest is to provide a robust assessment of need to support a budget request without placing excessive burden on prospective applicants in the absence of available program funding.

Proposed Methodology

The solicitation of interest will be distributed widely to land trusts, soil and water conservation districts, and other interested parties to determine current funding needs for conservation easements. In the interest of simplicity, prospective applicants would be asked to submit two pages of information describing the acreage, value, urgency, conservation value, and agricultural value of a prospective easement.

To provide an appropriate level of seriousness of the prospective project, respondents will be asked to certify that the landowner has expressed interest in, and intent to pursue, a working lands conservation easement. To protect landowner confidentiality, the letter of interest would have limited geographic data, including county, nearest city, and number of acres, but no information identifying the landowner will be provided.

The solicitation would be released in July with responses due in October so that needs can be documented in advance of the 2019 legislative session.

A draft solicitation of interest is provided in Attachment A.

Recommendation

Staff recommends that the commission approve the Letter of Interest in Attachment A and direct staff to solicit interest in accordance with schedule described in this staff report.

Attachments

A. Draft Letter of Interest



Solicitation of Interest Working Lands Conservation Easement Projects

Applicant Organization (include organization name and address, and contact person, telephone, and email address):

[Click here to enter text.](#)

Description of Working Land (describe the current land use and natural features of the property):

[Click here to enter text.](#)

Acreage: [Click here to enter text.](#)

County/Closest Town: [Click here to enter text.](#)

Agricultural Values (see OAR 698-015-0090(2), (4), and (8)) (describe the agricultural values that support consideration for public investment):

[Click here to enter text.](#)

Conservation Values (see OAR 698-015-0090(3)) (describe the conservation values that support consideration for public investment):

Basis for Determining Easement Value (describe the method used to estimate the value of the easement. If no appraisal or other methodology is available, start with the appraisal for the basis of property tax assessment or the [average sales price of EFU land in the county](#) and reduce by the estimated value of the conservation easement restrictions):

Estimated Easement Value: [Click here to enter text.](#)

Estimated OAHP Request: [Click here to enter text.](#)

Likely 25% Match Source(s): [Click here to enter text.](#)

Landowner Interest:

- I certify that the landowner has expressed in writing interest in pursuing a working lands conservation easement on the property.
- I certify that the landowner has verbally expressed interest in pursuing a working lands conservation easement on the property.
- The landowner is willing to share information about their project with the commission.

Timeliness (Provide a timeline to closing and explain why this property should be protected and why now): [Click here to enter text.](#)