



August 5, 2022

Oregon Agricultural Heritage Commission
(submitted via email to April.mack@OWEB.oregon.gov)

Re: OAHP Program and Planned Solicitation

OAHP Commissioners and OWEB program staff:

Blue Mountain Land Trust (BMLT) is a bi-state, nonprofit land trust with a mission to protect the scenic, natural, and working lands that characterize the Blue Mountain region through collaboration with communities and landowners. We provide conservation services to landowners across four counties in Southeastern Washington and seven counties in Eastern Oregon – Baker, Gilliam, Grant, Morrow, Wheeler, Umatilla, and Union. Since our founding in 1999, we have completed 18 conservation easements and 1 fee acquisition, protecting over 23,000 acres of land. We currently have over 21,000 acres of protected land in Oregon across four working lands conservation easements.

BMLT is interested in applying to and encouraging other organizations to apply to the Oregon Agricultural Heritage Program (OAHP) funding to support farm and ranchland preservation. As a potential applicant, we appreciate the opportunity to comment on the draft solicitation materials. We hope these comments and recommendations are helpful as you develop the program and begin grant solicitation.

1. Align the OAHP grant cycle with the Natural Resources Conservation Service (NRCS) Agricultural Conservation Easement Program - Agricultural Lands Easements (ACEP-ALE).

NRCS' ACEP-ALE program, designed specifically to protect farms, ranches, and working forests, is the ideal and likely source of matching funds for grantees and applicants. We encourage the OAHP commission and OWEB staff to schedule the OAHP grant application cycle so project reviews and grant awards align with the ACEP-ALE cycle. By scheduling these two programs to work together, grantees and applicants will be better poised to secure matching federal funds and increase the number of fully funded farmland preservation projects.

Currently, the NRCS ACEP-ALE application cycle occurs annually in February/March. Applicants must disclose their source of project match at the time

of application. OWEB's current land acquisition grants are due in October, evaluated over the fall and winter, and grants are not awarded until April. This timing, if also employed for OAHP, would not allow OAHP applicants to claim their grant awards as match when applying to the NRCS program. If OAHP can either award funds prior to the NRCS grant cycle or work with the NRCS easement program staff to delay their respective application process until after April, applicants and the landowners they represent will have better knowledge of their project's funding circumstances. In turn, applicants will be better able to schedule project components and complete due diligence tasks.

2. Provide opportunity for grantee clarification and/or project refinement prior to final submission.

In complex grant application cycles, opportunities for clarification and project refinement, such as a technical review period prior to final submission, can be invaluable to both applicant and program staff. As a bi-state land trust, BMLT also works with the Washington Wildlife and Recreation Program (WWRP)'s Farmland Preservation program to complete working lands conservation easements in Washington state. The WWRP program requires applicants to submit a pre-application early in the grant process. The pre-application is reviewed and feedback is provided by a team of technical reviewers and the applicant's regional grant manager. The applicant then has several weeks to make corrections, clarifications, provide additional information, and evaluate/change the project before a final submission. This back and forth enables an applicant to understand areas of funder concern and improve the overall project. It also helps the administering agency, the Washington Recreation and Conservation Office (RCO), receive higher quality and more competitive applications for funding. It also "weeds out" projects unlikely to be successful by providing an applicant input on barriers to funding early on.

This year, WWRP pre-applications were due on June 1st, technical review feedback was completed by the second week of July, and final applications were due August 4th. This additional step in the process, while not adding much time overall to the grant cycle, enables both applicant and agency to complete and receive better overall grant applications and projects. We encourage OAHP to consider a similar feedback process between applicant and program staff.

3. Ensure OAHP's easement terms and project component requirements do not conflict with NRCS-ACEP ALE terms and project components.

As previously mentioned, ACEP-ALE is the likely source of match for OAHP conservation easement projects. Therefore, it is critical that project components such as appraisal standards, appraisal shelf life, baseline documentation requirements, and most importantly, conservation easement minimum deed terms, do not conflict between programs. Conflicts will cause additional cost, time and burden on applicants and landowners.

4. Consider removing the community engagement requirement for conservation easement and covenant projects.

BMLT is concerned about OAHP's requirement to engage the public in a private landowner's decision to protect their property. Conservation easements and covenants are voluntary and individualized agreements that affect a landowner's private assets and family. Landowners engage in these transactions for a host of private and personal reasons, such as succession planning for their family, to receive the tax and financial benefits of an easement, or to protect resources they have stewarded for decades. Requiring the involvement of neighbors and others in the community, who are not privy to these personal and private reasons or financial circumstances, into a landowner's negotiations of their retained and restricted private property rights can, and likely will, prevent landowners from pursuing this program. This requirement may cause landowners to turn away from the program, for fear of community judgment of their decisions, uninvited feedback on their personal choices, and the publicity around their projects.

Thank you, OAHP commissioners and OWEB program staff, for reviewing our comments and recommendations. BMLT is excited about Oregon's investments into working lands conservation and recognition of their critical value in our landscape and economy. Over the last several years, we have heard from increasing numbers of agricultural landowners and operators about the need and desire for permanent land protection on working lands in Eastern Oregon. We look forward to working with you and participating in this program to further protection of our state's incredible agricultural assets.

Thank you,



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August 5, 2022

Oregon Agricultural Heritage Commission

(submitted via email to april.mack@OWEB.oregon.gov)

Re: OAHP Program and Planned Solicitation

To Oregon Agricultural Heritage Commission Commissioners and OWEB OAHP staff:

Thank you for the opportunity to comment on the draft Oregon Agricultural Heritage Program (OAHP) solicitation for Conservation Management Plans and easements/covenants. We submit these comments on behalf of Oregon Agricultural Trust (OAT) - a nonprofit organization that partners with farmers and ranchers to protect agricultural lands for the benefit of Oregon's economy, communities, and landscapes. OAT works with agricultural producers throughout the state to preserve their farms and ranches, leveraging public funds and private contributions to acquire permanent working lands conservation easements that prevent conversion to uses incompatible with agriculture. We also partner with other conservation and agricultural organizations to collectively increase the pace and scale of ag. land protection in Oregon. Because of our interest in applying to - and encouraging partners to apply to - OAHP for funding to support our conservation easement acquisitions, we respectfully make the following comments and recommendations as you develop a robust and successful inaugural grant solicitation.

General Comments

- 1. In order to fully leverage NRCS ACEP-ALE match funds, OAHP should accommodate a rolling conservation easement project list and/or grant agreements that allow for extensions.**

The primary funding for agricultural conservation easements in Oregon is the USDA NRCS Agricultural Conservation Easement Program - Agricultural Land Easement (ACEP-ALE). NRCS Oregon was awarded \$6,765,000 in ACEP-ALE funding for 2022. It is critical that OAHP applicants are able to leverage ACEP-ALE funds to secure full funding for conservation easement purchases. However, ACEP-ALE can take several years to approve and disperse funding for a project depending on the backlog of projects and NRCS staff capacity, so it is necessary that OAHP take that into consideration in creating its own timeline. This can mean having a rolling grant cycle throughout the year or multiple cycles in the same year. Additionally, allowing for sufficient extensions of funding agreements can help to ensure that promising projects are not timed out due to unanticipated delays with ACEP-ALE timelines. For example, Washington's RCO WWRP-Farmland Preservation program utilizes project agreements with an initial term of 4 years that can be extended for an additional 4 years term in order to accommodate ACEP-ALE's timeline.



2. Establish clear project criteria and a multi-phase application process that invites preliminary project information and allows for project refinement before final submission.

There are a number of ways the program can be tailored for the initial solicitation to ensure projects that are a good fit for OAHP successfully receive funding. First, clear project selection and scoring criteria is essential to ensuring applications are aligned with OAHP goals. Second, a multi-phase application that is more succinct at the beginning - a check list or a brief project proposal- can make the program more accessible. It also allows for early feedback from OAHP program staff to identify strong projects that progress to full submission, while putting proponents of weaker or less developed projects on notice that they should refine or re-scope the project before submitting a final application. For example, California's Sustainable Agricultural Land Conservation program employs a multi-step application process. There is a pre-application checklist to help prospective applicants understand what is required in the process, followed by an initial screening pre-proposal, and then an application. This schedule allows the state to review a project early for eligibility to determine if it is a good fit early in the process and to identify potential problems. It also gives the applicant the ability to address any concerns or issues that could stop a project from being funded.

3. Enable buy-protect-sell transactions, as they are a key tool for increasing access to agricultural lands for next-generation farmers.

The buy-protect-sell model of agricultural land protection can be a powerful tool for protecting working lands and making them economically viable for next-generation farmers. However, existing public funding programs can act as a hindrance to this technique by limiting the definition of eligible lands or putting undue financial burden on the land trust project manager. For example, in Washington's RCO WWRP-Farmland Preservation program, an entity that is eligible to apply for a grant cannot be an owner at the time of application. This limits the creative options of land trusts and conservation districts to protect high priority agricultural land and facilitate the transfer to a next-generation producer. We were heartened to read in the Commission's May 23, 2018 minutes that: "The commission wanted to allow applicants who have bought land to be eligible to sell the property with a covenant or easement to be eligible [sic] OAHP funding for the price difference of the easement that they retain. They did not think that the rules needed to specify that this was permissible, and that the rules should not preclude this type of transaction." We do not perceive existing statutes or rules to prohibit such transactions, and we believe OAHP should allow buy-protect-sell transactions in its project implementation.

4. Ensure program rules, regulations and procedures all work together for the mission of the program. Recognize multiple benefits, but prioritize core purposes.

Most importantly, OAHP should remain true to the purpose of the program - conserving agricultural land for agriculture. This could mean adding to the easement template or deed terms affirmative language requiring the land to be consistently used (or available) for agriculture. Consider how this and other aspects of the easement

will be enforced, with annual monitoring or self-reporting or a combination of the two. When creating the criteria for project approval, focus on the long-term conservation value of the project - the location of the farm and its future value for agriculture - not just on the current landowner or current agricultural practices.

5. Develop required easement terms but provide the option for land trusts to use their own easement templates so long as they demonstrate that OAHP requirements are met.

OAT recently reviewed four other state-level purchase-of-agricultural-conservation-easement (PACE) programs. We reviewed programs in Washington, California, Pennsylvania, and Colorado. Each state program does have a model or template conservation easement that is provided to land trust applicants. Land trust applicants are encouraged but not required to use these templates. They are permitted to use their in-house template, or templates provided by another funder. However, the burden is on the land trust to demonstrate that the template they choose meets the requirements of the grant program's model or template conservation easement. OAHP should provide applicants with required language that can be inserted into the applicant's preferred template easement. Agricultural easements can vary significantly based on production type, size, location and flexibility/adaptability to changing agricultural practices and conditions. By providing required easement terms and allowing them to be incorporated into easements that best suit the project, OAHP will be able to efficiently meet its programmatic goals while also supporting easements that are tailored to diverse agricultural operations statewide.

6. Ensure OAHP's required easement terms do not conflict with NRCS-ACEP ALE easement terms.

ACEP-ALE is the most likely program for land trust applicants to seek match funding for OAHP projects. It is critical that OAHP easement terms do not conflict with ACEP-ALE minimum deed terms.

7. Right of assignment to a new land trust is a reasonable third-party remedy to lack of monitoring and enforcement by land trust grant recipients.

Granting agencies take a variety of approaches to third-party enforcement rights and obligations. Many retain third party right of enforcement, but none goes so far as to make annual monitoring inspections (absent cause for concern) or hold a second easement over the property. For example, Great Outdoors Colorado utilizes a right of assignment - an adaptable approach that gives it the authority to assign an easement that is going unenforced or unmonitored to a higher capacity land trust. This approach protects the agency from the cost of conservation easement enforcement and ensures that no easements will be neglected by inactive land trusts.



8. Do not require Agricultural Management Plans or Conservation Management Plans for conservation easement projects as a general practice.

The cost and time associated with agricultural management plans and conservation plans can be a burden on the land trust applicant and their landowner requirements and payment terms are often better suited for a stewardship grant than a real estate contract i.e. an easement. They should only be included in a project if the applicant is requesting funding from OAHP to support the creation of the plan. The existence of other plans or documentation supporting responsible farm management should be taken into account in the evaluation of all project applications.

Specific Comments: OAHP Conservation Management Plan (CMP) Application Template

1. Property monitoring information, such as Monitoring Reports, should be limited to ensure that proprietary or sensitive landowner information is not publicly available.

The CMP application template includes two statements for Landowner Contact Certification. The first option includes the statement “I have advised all of them that all monitoring information obtained on their property is public record.” For landowner privacy, it is critical that monitoring information is not a comprehensive description of a business operation or other proprietary information. We suggest OAHP develop simple monitoring report templates that allow the creator of the report to document whether or not conservation goals are being met and what additional actions will be taken to amend the CMP or bring landowner into compliance. Landowners should also be permitted to review and approve Monitoring Reports, and object to the inclusion of proprietary or sensitive information in these public documents.

2. Develop a list of CMP activities that trigger communications with neighbors instead of implicitly requiring a communication plan for all CMP activity implementation.

In the Project Management section of the application template, the applicant is asked to “Describe the plan for communicating with neighboring owners and operators once a CMP is ready to be implemented, including how to mitigate for impacts.” It is important to understand and respect that not every activity undertaken under a CMP will impact neighboring properties. The intention of this requirement - that landowners and CMP holders are proactively addressing challenges related to neighboring impacts - should be limited to those impact-generating activities. For example, it is unlikely that riparian planting or cover cropping will rise to the level of requiring neighbor consultation. These activities should not require a communication plan. OWEB may choose to create a list of activities that have no or de minimus impact on neighboring properties to provide clarity in meeting this requirement.

Specific Comments: OAHP Conservation Easements and Covenants Application Template



- 1. Property monitoring information, such as Monitoring Reports, should be limited to ensure that proprietary or sensitive landowner information is not publicly available.**

Similarly to OAT's comment on the CMP application template above, we suggest OAHP develop simple monitoring report templates that allow the creator of the report to document whether or not conservation easement or covenant terms are being met. Landowners should also be permitted to review and approve Monitoring Reports, and object to the inclusion of proprietary or sensitive information

- 2. Land Trust Alliance Accreditation is a moderate indicator of sufficient organizational capacity to hold and stewardship conservation easements and should not be a requirement for application.**

The purpose of Land Trust Alliance Accreditation is to ensure that land trusts comply with IRS requirements necessary for a landowner to claim a charitable conservation contribution Federal income tax deduction. This standard is expensive to meet and applications are accepted in a lottery format and may result in years of backlogged applications. The barriers to entry and purpose of the standard makes it an awkward evaluation criteria for an OAHP easement. We suggest removing this from the application.

- 3. Community engagement is not an appropriate requirement for conservation easement and covenant projects.**

Conservation easements and covenants have public benefit but are voluntary, individually negotiated transactions on private land. They typically do not rise to the level of public impact to require community engagement. In addition, this requirement will invite interference in the negotiation of conservation easement terms, resulting in a chill on transactions and distrust between landowners and OAHP.



Specific Comments: CMP and Covenants and Easements Evaluation Criteria

1. Provide weighted percentages or relative points for each criteria.

By providing weighted percentages or relative points for each evaluation criterion, OAHP staff can communicate to applicants the importance of each criterion, making them better informed on the goals of the program and directing them on how to direct their time and efforts in preparing a competitive application.

Thank you for considering our comments and recommendations. We look forward to working with you to build a robust grant program and advance the protection of Oregon's valuable agricultural lands.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nellie McAdams", is written over a light blue horizontal line.

Nellie McAdams
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