Purpose
An agricultural owner or operator may enter into a working land conservation covenant (covenant) with or grantor easement is to preserve and protect the continued use of a working land conservation easement (easement) to an organization that is a holder, as defined in ORS 271.715, for agricultural purposes, and maintain or enhance fish or wildlife habitat, water quality, or other than a state agency—natural resource values on the land.

Covenants and easements funded under this program:

1) Must contribute to the public benefits in OAR 698-005-0010; and
2) Must be for the purpose of 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.

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.
1) “Project” means the aggregate of eligible activities included in sections 0060 and 0070 that comprise an application.
2) “Stewardship endowment” means the means monitoring, maintaining, managing, and improving land protected by an easement or covenant, including providing signage, controlling access, providing enforcement actions and resolving violations.
3) “Stewardship fund” means a restricted fund that is used to cover the holder’s costs for the monitoring and long-term costs for stewardship of the land protected by the covenant or easement and payment of taxes and insurance associated with that land. If the funding source allows investment of stewardship, resolution of violations, and any enforcement of the covenant or easement funds, funds may be used for investment management costs. Stewardship funds may not be used for overhead or indirect costs.
698-015-0030
Eligible Applicants
Eligible applicants for Working Land Conservation Covenant and Easement Grants are holders as defined in ORS 271.715 other than state agencies. Individual agricultural owners or operators of working land are not eligible to apply for a Working Land Conservation Covenant and Easement Grant.

698-015-0040
Eligible Properties
Eligible properties for Working Land Conservation Covenant and Easement Grants are working lands as defined in ORS 541.977(2).

698-015-0050
Application
1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications to acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations 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 001-005;
   b. Be submitted on the most current form and process prescribed by the Commission;
   c. State the amount and type of match contribution; and
   d. If the application is for a covenant, include the duration of the covenant.

3) If the covenant is identical in duration to a conservation management plan for the working land that is funded by the OAHP Conservation Management Plan Grant Program, the covenant must refer to the conservation management plan in the text of the covenant; and

4) If there is a stream on the project, the covenant or easement application shall describe how either the easement or the management plan and associated monitoring addresses the local Agricultural Water Quality Management Area Plan goals. Easement monitoring shall include any riparian monitoring identified in the application.

4) If a pre-existing or new conservation management plan is proposed as part of an application for a covenant or easement under this program, the proposed management plan must be agreed to by the landowner, applicant, and commission before closing.

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 that at least 25% of match is being sought, based on the total OAHP grant request for 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
   d. Funds deposited in a Stewardship Endowment fund 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 contributions not specifically identified above can be recognized as qualifying matching contributions.

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 enforcing the covenant or easement, including:

1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
   a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.
   b. The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-015-0070 (1)(a);

2) The interest on bridge loans needed to secure closure on the property prior to when funding will be available for distribution through the program;

3) The staff costs incurred as part of the covenant or easement acquisition process related to the property;

4) The cost of due diligence activities, including appraisal, environmental site assessment, survey, title review, and other customary due diligence activities;

5) The cost of baseline inventory preparation;

6) The legal fees incurred;

7) The closing fees, including recording and title insurance costs;

8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a Management Plan approved by the Director; and
DRAFT Working Land Conservation Covenant and Easement Rule

9) Funding for a stewardship endowment.

9) Up to 50% match for the value of a stewardship fund, but program funds contributed to a stewardship fund may not exceed 5% of the total appraised value of the covenant or easement.

698-015-0080
Conservation Covenant Term Terms of Covenants and Easements

1) A working land conservation covenant shall last in perpetuity.

1)-2) A working land conservation covenant shall last for a term of no less than twenty and no more than fifty years.

2)-3) The covenant term shall be set at 12-month increments only and not partial years.

3)-4) The first day of the term of a covenant shall be the date that both of these events have occurred:

a. The covenant holder and the agricultural owner or operator of working land conveying the covenant sign the agreement; and

b. The agricultural owner or operator of working land has received Working Land Conservation Covenant and Easement Grant funding from this program for the covenant.

698-015-0090
Evaluation Criteria

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

1) The significance of the agricultural, natural resource, and related social values of the working land subject to the working land conservation covenant or easement.

2) The extent to which the working land conservation covenant or easement would protect, maintain, or enhance farming or ranching on regionally significant working land, including:

a) Reducing the potential for future conversion or fragmentation of the property and surrounding agricultural lands or conversion of the property that would preclude future agricultural uses of working land;

b) Maintaining or enhancing the ability of the land to be in productive agricultural use after the covenant or easement is in place;

c) The potential viability of the property for agriculture; and

d) Improving or maintaining the economic viability of the operation, including future transfer of ownership.

3) The extent to which the covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values by:

a) Protecting, maintaining, or improving habitats and species identified as Oregon Conservation Strategy priorities, Oregon’s Agricultural Water Quality Management Program priorities, and/or other natural resource values applicable to the land, including soil, water, plants, animals, energy, and human needs considerations;
b) Supporting implementation of the Oregon Conservation Strategy, Oregon’s Agricultural Water Quality Management Program, and/or other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality or other natural resource values;

c) Protecting, maintaining, or improving the quality and connectivity of wildlife habitat on and around the working land;

d) Protecting, maintaining, or improving water quality and/or quantity; and

e) Implementing a management plan that is likely to sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition.

4) The extent to which the covenant or easement would protect, maintain or enhance significant agricultural outcomes, benefits or other agricultural or conservation values important to the region, including:

a) The parcel’s contribution to long-term conservation of the region’s agricultural land base; and

b) The regional significance of the agricultural operation, or its suitability based on soils, slope, location or other relevant factors, and its associated infrastructure.

5) The capacity and competence of the applicant and/or the proposed easement or covenant holder to purchase, accept, 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 purchase, accept, implement, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and

e) The strength of the organization as measured by effective governance.

6) The extent to which the benefit to the state from the investment may be maximized, based on:

a) The ability to leverage grant moneys with other funding sources;

b) The duration and extent of the agreement, with a preference for longer term agreements;

c) The cumulative effect of similar conservation and/or agricultural investments in the community, including OAHP other OAHP funded plans, covenants, or easements;

d) The effects of land use consistency with local comprehensive plans and statewide planning on the long-term investment goals;
e) The potential for setting an example that will encourage additional working lands projects in the region; and

f) The existence and implementation of a conservation management plan.

7) The impacts of the covenant or easement and/or the associated conservation management plan on owners or operators of neighboring lands, and the extent to which there is a plan of engagement with neighboring landowners about how to mitigate any impacts resulting from the covenant or easement, if necessary.

8) The level of threat of conversion or fragmentation or conversion from agricultural uses of the working land.

9) The soundness of the legal and financial terms of the proposed real estate transaction.

698-015-0100
Technical Review and Funding Process

(1) Technical review of Working Land Conservation Covenant and Easement Grant applications shall occur based on information provided in the grant application.

(1) The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to the commission to inform the commission’s final ranking and funding recommendations to the OWEB board.

(2) Applications shall be evaluated according to criteria described in OAR 698-015-0090.

(3) The ranking system shall provide for the ranking of a working land conservation covenant or easement alone and not as part of an application that includes conservation management plan(s).

(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)(3) 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)(4) The Commission shall review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.

(7)(5) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.

(8)(6) The Board approves Working Land Conservation Covenant and Easement Grants. The Board may fund a grant application in whole or in part.

698-015-0110
Board Approval and Delegation of Authority

1) The Commission shall recommend and the Board shall approve grants in accordance with guidance adopted by the Board and made available to the public.

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

698-015-0120
Public Involvement
The public shall be provided with meaningful opportunities to comment on grant applications being considered by the Board or Commission. In a manner consistent with this requirement, the governing bodies of cities and counties with jurisdiction in the area of the proposed covenant or easement acquisition, as well as affected governmental agencies and tribes, will be provided with written notice of the Board’s or Commission’s intent to consider:

1) Written comments received at least 14 days before prior to the Board or Commission meeting at which the Board or Commission will consider the application;

2) Comments made at public hearings held and publicized in accordance with ORS 271.735; and

3) Comments made at the Board or Commission meeting at which the grant application is considered.

698-015-0130
Director Funding Approval and Distribution of Funds
(1) The Director may approve the distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and the covenant or easement closing as the following conditions are met:

a. A grant agreement is executed by the Director and the grant applicantgrantee 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 of working land;

b. The funding conditions, if any, imposed by the Board are satisfied to the full satisfaction of the Director;

c. The legal and financial terms of the proposed real estate transaction are approved by the Director;

d. The required title restrictions 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 applicantgrantee 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 recover the grant funds pending Board consideration under OAR 698-015-0140.(1).
(2) For grants established under these rules, the Director is authorized to reimburse the 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, given reasonable notice, for the purpose of completing covenant or easement inspections and evaluations.

698-015-01600150
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.

698-015-01700160
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.

698-015-01800170
Subsequent Conveyances
Subsequent conveyances of working land conservation covenants if a covenant or easement acquired with OAHP grant funds by the easement or covenant holder shall subsequently transferred, it must:

1) Be made subject to prior approval by the Commission; and

2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and OAR 698-015; and.
3) Not result in profit to the holder.

698-015-01990180

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.