



# Oregon Agricultural Heritage Program

## Working Lands Conservation Covenants and Easements

### Grant Application Guidance, 2022

775 Summer Street NE #360  
Salem, Oregon 97301-1290

(503) 986-0178  
[www.oregon.gov/oweb](http://www.oregon.gov/oweb)

## Introduction

The Oregon Agricultural Heritage Program (OAHP) is a program within the Oregon Watershed Enhancement Board (OWEB). The program provides voluntary incentives to farmers and ranchers to support practices that maintain or enhance both agriculture and natural resources such as fish and wildlife habitat on agricultural lands. OAHP was developed by a collaboration of organizations representing natural resource conservation and agriculture, including farmer and rancher representatives.

Through the direction provided by ORS 541.977-ORS 541.989, OAHP offers 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 the following:

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

OWEB encourages applicants to carefully review the following guidance and associated information to ensure that submitted applications are complete and competitive, and to understand what will be expected of successful applicants. This document is not a rule. Please note that in the case of unintended conflicts between the OWEB-provided guidance and OWEB statutes and rules, OWEB statutes and rules will control. All documents referred to below are available on the [Oregon Agricultural Heritage Program \(OAHP\)](#) page on the OWEB website.

Any questions regarding the OAHP Conservation Covenants and Easements grant application may be directed to Taylor Larson at (971) 701-3248, [taylor.larson@oweb.oregon.gov](mailto:taylor.larson@oweb.oregon.gov).

## What You Should Know or Do Before You Apply

### Purpose of Grant

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

### Eligible Applicants

Eligible applicants for OAHP Working Land Conservation Covenant and Easement Grants are *holders* as defined in ORS 271.715 other than state agencies, see definitions ([Appendix G](#)).

OWEB does not make acquisition grants directly to state or federal agencies or private landowners. In the case of working land conservation easement projects, the grantee is OWEB's direct partner and is responsible for working with the private landowner to develop and implement the project.

## Eligible properties

Lands that are 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.

## Terms of Covenants and Easements

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

## Evaluation Criteria

Working Land Conservation Covenant and Easement grant applications will be evaluated using the following criteria:

- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the working land conservation covenant or easement.
- 2) The extent to which the working land conservation covenant or easement would protect, maintain, or enhance farming or ranching on regionally significant working land, including:
  - a. Reducing the potential for future conversion or fragmentation of the property and surrounding working land;
  - b. Maintaining or enhancing the ability of the land to be in productive agricultural use after the covenant or easement is in place;
  - c. The potential viability of the property for agriculture; and
  - d. Improving or maintaining the economic viability of the operation, including future transfer of ownership.
- 3) The extent to which the covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, water quality or other natural resource values by:
  - a. Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, and human needs considerations;
  - b. Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality or other natural resource values;
  - c. Protecting, maintaining, or improving the quality and connectivity of wildlife habitat on and around the working land;
  - d. Protecting, maintaining, or improving water quality and/or quantity; and
  - e. Implementing a management plan that is likely to sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition.
- 4) The extent to which the covenant or easement would protect, maintain or enhance significant agricultural outcomes, benefits or other agricultural or conservation values important to the region, including:

- a. The parcel's contribution to long-term conservation of the region's agricultural land base; and
  - b. The regional significance of the agricultural operation, or its suitability based on soils, slope, location or other relevant factors, and its associated infrastructure.
- 5) The capacity and competence of the applicant and the proposed easement or covenant holder to purchase, accept, implement, hold, monitor, steward, and enforce a working land conservation covenant or easement, including:
- a. Accreditation from the Land Trust Accreditation Commission, or implementation of standards and practices that are similar to an organization that is eligible for accreditation;
  - b. Inclusion of working land preservation in the organization's mission, vision or other organizational documents;
  - c. The financial capability of the organization to steward conservation covenants and easements over time;
  - d. Demonstrated relevant commitment, ability, expertise, and track record to purchase, accept, implement, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and
  - e. The strength of the organization as measured by effective governance.
- 6) The extent to which the benefit to the state from the investment may be maximized, based on:
- a. The ability to leverage grant moneys with other funding sources;
  - b. The duration and extent of the agreement, with a preference for longer term agreements;
  - c. The cumulative effect of similar conservation or agricultural investments in the community, including other OAHF funded plans, covenants, or easements;
  - d. Consistency with local comprehensive plans and statewide planning goals;
  - e. The potential for setting an example that will encourage additional working lands projects in the region; and
  - f. The existence and implementation of a conservation management plan.
- 7) The impacts of the covenant or easement or the associated conservation management plan on owners or operators of neighboring lands, and the extent to which there is a plan of engagement with neighboring landowners about how to mitigate any impacts resulting from the covenant or easement, if necessary.
- 8) The level of threat of conversion or fragmentation of the working land.
- 9) The soundness of the legal and financial terms of the proposed real estate transaction.

### **Good-Standing Requirement**

Any grantee that is out of compliance with management planning and reporting requirements of any grant agreement it has with OWEB must become compliant with the obligations prior to executing a grant agreement for a new OAHF Working Land Conservation Covenant or Easement funding award. Delays in executing a grant agreement caused by outstanding reporting obligations may jeopardize a grantee's ability to close a transaction within the required 18 months from the date of Board award. Furthermore, OWEB will not release grant funds to close a transaction if the grantee is not in compliance with all terms of the Working Land Conservation Covenant or Easement grant agreement and management planning, and reporting requirements under all other grant agreements it has with OWEB.

### **Landowner Acknowledgement**

Applications may only be submitted with the knowledge of the landowner, which must be demonstrated with an executed Landowner Acknowledgement Form available on the [OAHF webpage](#). The form must also confirm that, in accordance with the Uniform Relocation and Real Property Acquisitions Policies Act of 1970 (Uniform

Act), the landowner has: (i) been informed in writing by the grant applicant that the purchase will not be completed if mutually agreeable terms and conditions are not negotiated; and (ii) received from the grant applicant a written estimate of the value of the property interest and the basis of the estimate. The Landowner Acknowledgement Form is available on the OAHP page, at the link above.

### **All-inclusive Application Deadline**

All information submitted in association with the application (support letters, maps, title reports, etc.), whether required **or** optional, must be submitted online with the application, by the application deadline. No material will be accepted separately or after the application deadline.

### **Pre-Application Consultation**

Covenant and Easement grant applicants are encouraged to consult with OWEB staff before submitting an application, to discuss: (i) the project's opportunities, benefits, potential challenges, and schedule; (ii) the applicant's community engagement to date and strategy for future engagement; and (iii) the grant application and review processes. An OWEB funding decision is not made during the pre-application consultation.

## **What You Should Know About OAHP & OWEB Requirements**

### **Budget**

Applicants are encouraged to carefully consider all cost factors associated with the project before submitting an application.

Under OAR 698-015-0070, Working Land Conservation Covenant or Easement grant funds may be applied toward costs related to purchasing, implementing, holding, monitoring, stewarding, or enforcing the covenant or easement, including:

- 1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
  - a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources the Uniform Appraisal Standards for Federal Land Acquisitions. The applicant is responsible for working with the landowner on any appraisal required for the Internal Revenue Service if applicable.
  - b. The purchase price for covenants shall be based on an assessment of fair market value for a permanent easement using methodologies similar to those described above and then reduced to a price of 1%/year (example: 20-year covenant = 20% value of permanent easement, 50-year covenant = 50% value of permanent easement);
- 2) The interest on bridge loans needed to secure closure on the property prior to when funding will be available for distribution through the program;
- 3) The staff costs incurred as part of the covenant or easement acquisition process related to the property;
- 4) The cost of due diligence activities, including appraisal, environmental site assessment, survey, title review, and other customary due diligence activities;
- 5) The cost of baseline inventory preparation;
- 6) The legal fees incurred;
- 7) The closing fees, including recording and title insurance costs;
- 8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a conservation management plan approved by the Director; and

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

Additional grant application budget guidance is contained in the GoBig Guidance document, available on the OWEB Grants page, and at the link [here](#). Please be aware there are a few key differences between OWEB budgeting and OAHP budgeting, outlined in [Appendix A](#).

### **Match**

Applicants must demonstrate that they are seeking or have secured an amount of match that is equal to at least 25 percent of the total amount of funds they are requesting from OAHP.

The following funds and activities qualify as match:

- 1) In-kind contributions to activities listed under OAR 698-015-0070;
- 2) Funding commitments made by others as a result of grant applicant efforts;
- 3) A donated portion of a sale; and
- 4) Funds deposited in a stewardship fund before the time that OWEB funds are released for acquisition of the covenant or easement.

The OWEB Director retains the discretion to determine whether specific proposed match contributions not specifically identified above can be recognized as qualifying match. Costs incurred in the same timeframes as described in the Budget section above may qualify as matching contributions, subject to approval by OWEB.

### **Solicitation Schedule**

August 15, 2022: Staff opens solicitation window for CE grant applications

October 31, 2022: Application deadline for CE grant applications.

February 15, 2023: Complete external expert review

March 15, 2023: OAHP Commission meets to make funding recommendations to OWEB Board.

April 25-26, 2023: OWEB Board makes funding decisions

### **Due Diligence**

A funding award will be conditioned on certain transaction requirements being fulfilled prior to closing. OWEB will require review of all appropriate due diligence information relevant to the property interest being purchased, including, but not limited to: appraisals; title reports; environmental site assessments; surveys; water rights documentation; rights of first refusal; option agreements; purchase and sale agreements; leases; licenses; rental agreements; permits; easements; security instruments; UCC financing statements; fixture filings; documents pertaining to litigation, encroachments, disputes (including boundary line disputes), or prescriptive rights; a description of any work performed on or use made of the property by parties other than the seller; and other documents and information that OWEB determines are reasonably necessary to review before disbursing grant funds.

***If due diligence materials exist at the time of application, they must be submitted with the application.*** Provided the documents are uploaded correctly into the online application system, the following items *will not* be maintained in OWEB's public facing grant database: appraisals and information relating to appraisals, options, purchase and sale agreements, title reports and exceptions documentation, vesting deeds, environmental site assessments, landowner acknowledgements, financial and sensitive business information. Refer to the section on confidentiality, below, for related information.

Grantees are strongly encouraged to seek the assistance of experienced attorneys and to work closely with OWEB staff throughout the due diligence phase of the acquisition project.

### **1. Binding Commitment to Sell**

The binding transaction agreement between the grantee and landowner must be submitted to OWEB for review. If the grantee is seeking compensation for a completed acquisition which qualifies for reimbursement, the transaction agreement for the completed transaction must be submitted to OWEB for review. OWEB encourages applicants to use contemporary option or purchase and sale agreements when negotiating the purchase of the property interest and offers templates for discretionary use by grant applicants.

### **2. Appraisal**

The purchase price for a property interest, acquired with OAHP grant funds must be supported by an appraisal and an OWEB appraisal review, completed in accordance with OAHP's appraisal guidance ([Appendix B](#)) and applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by another funding entity, the Uniform Appraisal Standards for Federal Land Acquisitions.

The grant applicant is responsible for selecting and hiring the appraiser and must be the sole client of the appraisal. Any appraiser preparing a report for use by OWEB after the grant application deadline may contact the OWEB review appraiser before beginning work to discuss any initial issues related to the appraiser's adherence to the OAHP appraisal guidelines.

Applicants are strongly encouraged to: (i) use the OAHP appraisal contracting worksheet when completing the scope of work for the appraisal ([available on the OAHP webpage](#)); and (ii) incorporate OWEB's appraisal guidance into the scope of work for the appraisal.

If the applicant is seeking grant funds to secure a termed conservation covenant, they should submit an appraisal for the value of the permanent conservation easement along with their application materials. OWEB will determine the value of the covenant based on the value of the permanent easement at a rate of 1% per year, e.g. a 30 year covenant = 30% of permanent easement value.

### **3. Environmental Site Assessment**

Grantees must demonstrate that properties are free of hazardous materials or that hazardous materials, if present, can be remediated in a reasonable manner. Usually, a Phase 1 Environmental Site Assessment will satisfy this requirement. The environmental site assessment must be conducted by a qualified third party in compliance with the current, relevant American Society for Testing and Materials (ASTM) standards approved by the U.S. Environmental Protection Agency. Additional information about ASTM standards and environmental site assessments is contained in the Environmental Site Assessment Guidance document ([Appendix C](#)).

### **4. Encumbrances**

A property interest acquired with OWEB funds must be free of encumbrances (e.g., reserved mineral rights or incompatible easement rights) that conflict with the purpose of the grant. Furthermore, mortgages and liens must be subordinated or paid off when a conservation easement is acquired.

### **5. Title Insurance**

A property interest acquired with OWEB funds must be insured in a manner and for an amount which sufficiently insures OWEB's investment. Further title guidance is available in [Appendix D](#).

## 6. Relocation of Displaced Persons

OWEB will comply with laws regarding displaced persons by providing advisory services and relocation benefits to residential and business tenants that are displaced as the result of an OWEB-funded acquisition. The grant applicant is not responsible for complying with the Uniform Act. **However, the grant applicant and landowner must not take any action that is inconsistent with the Uniform Act (e.g., attempt to negotiate a lease or rental agreement termination with the tenant).** The grant applicant may work with the landowner to ensure that any agreements with new tenants are structured in a manner that avoids additional relocation obligations but should consult with OWEB when doing so.

## 7. Access

If the OWEB Board awards conditional funding for the purchase of an easement, the grant agreement will require that both the grantee and OWEB are provided legal and sufficient access to the property encumbered by the easement. Access must be in a form acceptable to OWEB and include the right of access over other land owned by the seller of the easement if the easement area does not have direct legal and sufficient access.

If the preliminary title report for the property reflects a lack of legal and sufficient access, the exception to title must be removed prior to closing, unless otherwise agreed by OWEB.

A grant application may be submitted if legal and sufficient access does not exist at the time of application, subject to the applicant having a reasonable plan for securing legal and sufficient access prior to closing.

## 8. Legal Description and Survey

The property's legal description must accurately describe legally conveyable land. Some acquisitions may require a boundary survey. Survey matters must be completed in accordance with applicable law and in a manner that is acceptable to OWEB. Applicants are encouraged to discuss survey matters with OWEB staff before initiating survey actions.

## 9. Easement and Covenant Requirements

Working Land Conservation Easement acquisitions will require the use of a conservation easement consistent with requirements provided for in OAHP's conservation easement guidance ([Appendix E](#)). The guidance is accompanied by an easement template available on [OAHP's webpage](#). The easement template is intended to provide an example of terms that are acceptable to the OAHP and the Oregon Department of Justice to meet the requirements of the program. Using the template is not mandatory. It is provided to applicants to demonstrate an acceptable approach to meeting the program's obligations. Applications proposing the purchase of a conservation easement **must** be accompanied by a draft of the conservation easement at the time the application is submitted.

All title-related matters must be approved by OWEB prior to closing.

## 10. Water Rights

If an applicant is proposing to acquire a conservation easement with the authority to use appurtenant water rights, the use of those rights shall be consistent with the terms of the conservation easement, including use of water for agriculture, habitat restoration or in-stream purposes. Grantees may be required to take specific actions necessary to comply with this expected outcome as a condition of a grant award.

## 11. Land Use Information Form

Applicants are required to submit OWEB's Land Use Information Form signed by the appropriate planning official, either with the grant application, or upon a conditional funding award. The land use information is needed, in accordance with ORS 197.180, to determine if the proposed project complies with statewide

planning goals and is compatible with local comprehensive plans. The form can be found on [OAHP's webpage](#).

### **Confidentiality**

OWEB understands that much of the information provided in support of an OAHP Working Land Conservation Covenant or Easement grant will contain sensitive details. In recognition of this, OWEB will endeavor to restrict access to the following documents: title reports, exceptions documentation, and vesting deeds; environmental site assessments; and landowner acknowledgements; supporting documentation regarding the applicant or landowners' financial or sensitive business information.

Applicants should consider that Oregon Public Records law provides that, in general, any document used or retained by a public agency is a public record subject to disclosure in response to a public records request unless an exemption applies. In general, OWEB will make all its public records, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours as described in OAR 695-003-0020(3). Many of the exemptions to disclosure in Oregon Public Records law are conditional exemptions where, when presented with a public record request, the public agency must weigh the public interest in disclosure against the agency and public interest in nondisclosure. ORS 192.345 lists the categories of public records conditionally exempt from disclosure in a particular instance. This list includes, but is not limited to, "trade secrets" (192.345(2)), production and business records (192.345(5)), information relating to the appraisal of real estate prior to its acquisition (192.345(6)), and information regarding habitat, location or population of threatened or endangered species (192.345(13)). In the event of a public records request related to any of these documents, OWEB will inform the applicant of the request and will analyze whether public records law requires disclosure.

### **Management Plan**

Grant applicants must clearly demonstrate the intent to manage the acquired property interest in accordance with an OWEB-approved management plan which will ensure the protection of the present and evolving agricultural, habitat and natural resource conservation values of the property. To this end, a grant application must include a management plan *outline* specific to the property interest being acquired. If the grant is awarded, grantees must submit a completed management plan for OWEB acknowledgment prior to the property interest being acquired. Applicants should carefully review OAHP's management plan guidance ([Appendix F](#)) to better understand OWEB's expectations of the management plan outline and the full management plan in relation to the program.

### **How To Apply**

The OAHP Working Lands Conservation Covenants and Easements grant application is part of [OWEB's online grant application system](#). An OWEB Grant Management System (OGMS) username and password are required to access the online application.

### **How Applications Will Be Reviewed**

Once a grant application is submitted, the following process will be used to review all applications:

- 1) The Oregon Agricultural Heritage Commission will appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission
- 2) Applications will be evaluated according to criteria described above in the Evaluation Criteria section and in OAR 698-015-0090.
- 3) The Commission review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.



- 4) The Commission make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- 5) The Board approves Working Land Conservation Covenant and Easement Grants. The Board may fund a grant application in whole or in part.

### **Oregon Agriculture Heritage Commission**

There are 12 members appointed by OWEB, with one member appointed by the board to serve on an ex officio basis as a nonvoting member of the commission, each serving a term of four years. A current list of OAHP Commissioners can be found on the [OAHP website](#).

- Four members 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.
- One member recommended by the Director of Oregon State University Extension Service.
- Two members recommended but the State Fish and Wildlife Commission who have expertise regarding fish and wildlife habitat
- One member shall be a person recommended by the State Board of Agriculture who has expertise in agricultural water quality
- One member recommended by the Land Conservation and Development Commission who has expertise in conservation easements and similar land transfers
- One member selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests
- One member shall be a person selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests

### **Grant Applicant Participation**

Grant applicants are expected to participate in the public review components of the grant application evaluation process.

### **Public Comment**

OWEB will conduct a public notification and comment process for each OAHP acquisition application, with assistance from the grant applicant. The process will give the public a meaningful opportunity to receive information about the project and provide input for the Commission's and Board's consideration. Applicants are encouraged to engage with the community, including local government officials, about the proposed project prior to submitting an application to facilitate a more fully informed public process.

Shortly after the grant application deadline, applicants will be asked to provide OWEB with a mailing list of parties that are interested or potentially interested in the proposed project. The list must include contacts at the counties and cities with jurisdiction in the area, affected governmental agencies and tribes, applicable watershed councils and soil and water conservation districts. The applicant is encouraged to include contact information for neighboring landowners, project supporters and partners, and any known project opponents. OWEB will send a public comment notice to the entities on the mailing list and federally recognized tribes. A public notice soliciting written public comment will also be published in a newspaper of general circulation serving the project geography and published through OWEB's GovDelivery listserv.

Public comments will be solicited in late 2022. Public notice will include a summary of the project and instructions for accessing the public facing components of the submitted application. These comments will be included in the packet provided to the Commission prior to their March 2023 meeting to make funding

recommendations to the OWEB Board. The public will also be invited to provide verbal comment at the March 2023 Commission meeting and the April 2023 OWEB Board meeting.

## **What to Expect if a Grant Is Conditionally Awarded**

### **Grant Agreement and Conservation Easement**

The standard form grant agreement and conservation easement templates have been pre-approved as legally sufficient by the Oregon Department of Justice. The conservation easement template is provided as an example of an approach to easement drafting that is consistent with the purpose of OAHF's Working Land Conservation Covenant and Easement acquisition funding. Applicants are encouraged to review the template and discuss alternate easement form approaches with OWEB staff before applying for a grant. The document is available on the [OAHF webpage](#).

Applicants conditionally selected to receive funding will be required to sign a standard form grant agreement soon after the Board awards funds. The release of the grant funds will be conditioned on the grantee meeting the requirements specified in the grant agreement.

### **Availability of Grant Funds**

If the OWEB Board makes a conditional funding award for a project, the funds will be held and made available for that project, consistent with the terms of the grant agreement, while the grantee fulfills the funding conditions.

#### **1. Prior to Closing**

Grant funds may be distributed to the grantee, prior to the transaction closing, for due diligence activities specified in OAR 698-015-0070(4), including appraisal, environmental site assessment, survey, title review, and other customary due diligence activities, **provided:** (i) the due diligence items or activities are included in the Contracted Services category of the approved project budget; (ii) the grantee obtains the written approval of the OWEB project manager prior to incurring the expenses if the expenses are incurred after the grant award; (iii) the due diligence items comply with all applicable grant funding conditions; and (iv) the due diligence items have been reviewed and approved by OWEB. OWEB may require the grantee to meet threshold requirements, such as obtaining an executed option approved by OWEB, before OWEB authorizes due diligence activities for which the grantee will request reimbursement prior to closing. OWEB may require the grantee to conduct certain due diligence in a stepwise manner for the purpose of limiting grant funds that are spent before an identified project soundness concern is addressed.

#### **2. At Closing**

Grantees have 18 months after the award of grant funds to fulfill funding conditions related to the purchase of the property interest and close the transaction. Grant funds for purchase of the property interest will be distributed only if the grantee meets all related grant requirements, and only if the purchase closes. If a grantee does not meet the conditions and close the transaction by the deadline, the OWEB Board must decide whether to extend the closing deadline or rescind the remaining grant funds. If the approved project budget includes funds for preparation of the property management plan, those funds will be distributed to the grantee upon completion and OWEB acknowledgement of the management plan.

### **Grantee Insurance Requirements**

OAHF Working Land Conservation Covenant and Easement grantees are required to carry, at a minimum: (i) general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in aggregate; and (ii) auto liability insurance in the amount of \$1,000,000 for a combined single limit. The grantee must continue

this coverage throughout the project and require that all contractors or consultants hired to develop or implement the project also carry these insurance types and amounts.

If requested by OWEB, grantees must provide OWEB with certificates of insurance for all required insurance. As proof of insurance, OWEB has the right to request copies of insurance policies and endorsements relating to the insurance requirements. Grantees or insurers must provide at least 30 days' written notice to OWEB before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

### **More Information**

Contact Taylor Larson at (971) 701-3248, [taylor.larson@oweb.oregon.gov](mailto:taylor.larson@oweb.oregon.gov) if you need more information about OAHP Working Land Conservation Covenant and Easement grants.

## Appendix A



### Oregon Agricultural Heritage Program

#### Introduction

This document supplements OWEB's Guidance on Budgeting in Grants (GoBig), which covers all grant programs. To access OWEB's standard GoBig document, visit <https://www.oregon.gov/oweb/Documents/GoBIG.pdf>.

The items outlined in this supplement are specific to the Oregon Agricultural Heritage Program (OAHP) and different from other grant programs. The reasons for these differences are due to the General Fund (tax dollar) source used to fund this program and the Legislative intent for these funds.

#### Budget Differences from "Regular" OWEB Grants

- **Contingencies** are not allowed
- **Equipment purchase** is not allowed.

Funds may be used to offset purchase options fees associated with the property interest or interest on bridge loans needed to secure closure on the property interest prior to when funding will be available through the program.

OWEB grant funds may not be applied to property taxes, or to legal fees or other costs incurred by the seller.

#### Billing

OAHP grant funds are only released on a reimbursement basis or to an escrow for closing a transaction. OWEB does not issue grant fund advances for this grant program.



# Oregon Agricultural Heritage Program

## Appraisal Guidelines and Supplemental Standards

---

### Introduction

These appraisal guidelines and supplemental standards are meant to ensure high quality appraisals that provide a sound basis for OAHWP Working Land Conservation Covenant and Easement acquisition grants. 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, the Uniform Appraisal Standards for Federal Land Acquisitions

### Section 1. Intended User

OWEB must be an intended user of any appraisal submitted to support an OWEB grant. Any other public entity that will fund the acquisition should also be an intended user of the appraisal if required by that entity. If public funders are possible but not confirmed at the time of the appraisal, the OWEB grantee should inquire whether the appraiser is willing to include “other public funders, if any, later identified” as intended users of the appraisal.

The OWEB grantee’s supplemental assignment instructions must require the appraiser to distribute copies of the appraisal report to the client and intended users and authorize the appraiser to discuss the appraisal with the intended users.

The appraisal must include a copy of the engagement letter and any supplemental assignment instructions in the report addenda.

### Section 2. Client of the Appraisal

The OWEB grantee is responsible for selecting and hiring the appraiser and must be the sole client of the appraisal. The property owner may not be involved the appraisal process, except to the extent allowed under *Involvement of the Property Owner*, below.

### Section 3. Appraiser Qualifications and Selection

All real property appraisers performing appraisals must be an Oregon state-certified general real property appraiser, or obtain a temporary practice permit equal to the Oregon state-certified general real property appraiser. In addition, if UASFLA applies, the appraiser should have successfully completed a UASFLA appraisal course from a recognized appraisal education provider within the last 5 years and include a statement in the appraisal certifying which courses(s) the appraiser completed and the date(s) of completion.

The OWEB grantee’s supplemental assignment instructions must require the appraiser to include a copy of their appraiser certification from the State of Oregon in the appraisal report.

### Section 4. Information from the Client

#### Responsibilities

It is the responsibility of the OWEB grantee, who is the client of the appraiser, to provide the appraiser with this document and guidance, if any, from other entities that will fund the acquisition. If appraisal guidance of

any other party conflicts with OWEB's appraisal requirements, the appraiser should consult with OWEB's Review Appraiser to determine an appropriate course of action regarding the inconsistency.

The OWEB grantee is also responsible for providing the appraiser with all pertinent information about the property, including physical, economic, and legal characteristics; property sales and use history; and the property rights to be appraised. Typical items to be provided include a current preliminary title report (PTR); plot plans, maps, or surveys; water rights information; and signed agreements or contracts. The OWEB grantee should promptly provide new or updated property information to the appraiser. OWEB expects the grantee to provide all relevant property information to the appraiser at the beginning of the appraisal assignment, to avoid appraisal cost increases caused by separately incorporating previously overlooked information.

### **Preliminary Title Report (PTR)**

An appraisal's title information should be consistent with the current PTR for the property. If the OWEB grantee thinks the PTR is in error, the grantee should obtain corrections from the title company before engaging the appraiser. The grantee should not address errors in the PTR by having the appraiser make an extraordinary assumption or rely on a hypothetical condition that is contrary to the information in the PTR (see Section 12, As-is Market Value Appraisals).

## **Section 5. Consultation with OWEB Review Appraiser**

Any appraiser preparing a report for use by OWEB *after* the grant application deadline should contact the OWEB Review Appraiser before beginning work to discuss the appraiser's approach to the appraisal problem and clarify any issues before beginning the assignment. Appraisers should ask their clients for the Review Appraiser's contact information, which OWEB staff will provide. The applicant is encouraged to participate in all discussions between the OWEB Review Appraiser and the contracted appraiser.

It is highly recommended, but not required, that appraisers preparing reports *prior* to the grant application deadline also consult with the OWEB Review Appraiser, if the client is certain that they will submit an OWEB grant application.

## **Section 6. Role of the OWEB Review Appraiser**

All appraisal reports submitted to OWEB must be reviewed by an OWEB Review Appraiser and approved before they may serve as a basis for an OAHP Working Land Conservation Covenant or Easement acquisition grant. Once the appraisal assignment is complete, a copy of the appraisal report will be given to OWEB's Review Appraiser for technical review. Appraisers must agree to work with the OWEB Review Appraiser as needed to obtain an approvable report. In addressing any corrections requested, the report's principal appraiser will be required to communicate directly with the OWEB Review Appraiser.

OWEB may share review appraisals with match funders, if the engagement letter also states that the match funders are intended users of the appraisal.

## **Section 7. Involvement of the Property Owner**

If a UASFLA report is being prepared, the appraiser is required to give the property owner or designated representative of the property owner the opportunity to accompany the appraiser on the property inspection. This practice is also recommended for USPAP reports. The property owner is also invited to present pertinent information regarding property characteristics, history, and current uses as well as relevant area sales, if known, during the appraiser's interview with the owner.

## **Section 8. Appraisal Standards**

If federal funds will be used for the property purchase, a UASFLA appraisal is typically required. Otherwise, the report must be written to USPAP standards using OWEB’s supplemental reporting standard (see Section 22 below). The supplemental reporting standard applies only to USPAP reports. UASFLA specifies its own reporting requirements. Both are aimed at presenting a logical narrative with adequate supporting data. If preparing a UASFLA compliant appraisal report, the appraisal should rely on the market value definition as contained within UASFLA. If the appraisal is not intended to be UASFLA compliant, but instead USPAP compliant, the definition of market value should be that which is recommended in the Oregon Department of Transportation (ODOT) Guide to Appraising Real Property.

## **Section 9. Scope of Work**

The appraiser’s scope of work must result in credible assignment results for the intended use.

## **Section 10. Date of Valuation**

The date of valuation should be the date of final inspection. OWEB grantees are encouraged to ensure that the date of valuation is no more than 60 days apart from the date of the appraisal report. Furthermore, the report delivery date should be no more than 120 days from the date of the appraisal report.

## **Section 11. Property Inspection**

The appraiser must make an onsite inspection of the appraised property. Allowing the property owner, or property owner’s representative, the opportunity to accompany the appraiser on the property inspection is required by UASFLA and OWEB supplemental standards.

## **Section 12. “As-is” Market Value Appraisals**

OWEB requires that appraisals must be “as-is” market value appraisals using all applicable approaches to value. Therefore, any assignment conditions, or “extraordinary assumptions” or “hypothetical conditions” developed as a part of the appraisal project must be discussed with the OWEB Review Appraiser and preapproved for use in the report. An exception to this rule is the use of the hypothetical condition in the after valuation: that the property is already encumbered with the easement.

## **Section 13. Highest and Best Use**

The appraiser must base the highest and best use of the property on an economic use. A *non-economic* highest and best use, such as *conservation, natural lands, preservation*, or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Nor may a highest and best use be speculative or conjectural. A highest and best use requires showing reasonable probability that the land is both physically adaptable for such use and that there is an economic need or demand for such use in the reasonably near future. A point-by-point highest and best use analysis is required in the report covering the four tests of physically possible, legally permissible, financially feasible, and maximally productive.

## **Section 14. Appraisal of OAHP Working Land Conservation Easements**

The following guidelines apply to the appraisal of OAHP Working Land Conservation Easements.

- All conservation easement appraisals will be based on the “before and after” methodology. The appraiser may refer to USPAP, UASFLA or to the Appraisal Institute’s or ASFMRA’s courses on appraising conservation easements for further guidance.
- The “substantially agreed upon” or final copy of the conservation easement must be provided to the appraiser. Changes in the document will require the appraiser be given an opportunity to consider and

address any possible impact to the valuation. The appraiser must assume a hypothetical condition in the “after” valuation, that the property is already encumbered with the conservation easement.

- All other documents pertaining to the property’s conditions and anticipated uses under the conservation easement, such as draft baseline inventory documentation, the draft management plan or management plan outline, easement zone maps, and zone acreages should be provided to the appraiser.
- Comparable sales used in the “after” valuation should be properties similarly encumbered, if possible.

## **Section 15. Property Photographs and Maps**

Required map exhibits include an aerial photo with parcel boundary overlay, assessor’s plat map, and a topographical map. The appraiser should also include other illustrative maps as appropriate, e.g. plot plan, soils, wetlands, floodplain, location/access, proposed conservation easement configuration etc. Color photos taken at ground level should show both the exteriors and interiors of major improvements, views of road access to the property, any significant or unusual features, and views of the property’s land types taken from enough locations to provide an adequate understanding of the property’s physical characteristics to someone who has not visited the property.

## **Section 16. Data Analysis**

The appraiser must include a separate narrative for each comparable sale explaining what value it indicates for the subject, together with an overall summary conclusion. The preferred method of adjusting comparable sales is through supported quantitative adjustments (percentage, dollars per acre, etc.); qualitative adjustments (similar, inferior, or superior) are to be used only when the market variables cannot be quantified. Quantitative adjustments without support cannot be accepted. When the appraiser must resort to qualitative analyses, a discussion of the appraiser’s reasoning why a comparable sale is similar, inferior, or superior to the subject property is required. A summarization of the appraiser’s analysis in an adjustment grid is highly recommended and may allow for a more concise narrative. The final reconciliation must clearly state which indicators of value are the most reliable and explain how each indicator affects the appraiser’s conclusion of value.

## **Section 17. Limited Market Conditions**

OWEB recognizes that the appraisal assignment may involve a limited or inactive market. To the extent possible, the appraiser should use only private transactions for comparable sales. Valuations based entirely or mostly on government or land trust transactions are not acceptable unless there are no other reasonable alternatives. If it is necessary to base the appraisal on such transactions, their confirmation is subject to the requirements of UASFLA Sections 4.4.2.4 and 4.4.2.4.2(5), (6) and (7). If market data is limited in the market area of the subject property, it may be necessary for the appraisal to include additional market analysis to support the highest and best use conclusion.

## **Section 18. Analysis of Agreements Impacting the Subject Property**

The appraiser must analyze and report all agreements of sale, options, or listings of the subject property as of the effective date of the appraisal. Any contracts with the Natural Resources Conservation Service (NRCS), such as Conservation Reserve Program (CRP) or Conservation Reserve Enhancement Program (CREP) entitlements should also be analyzed.

## **Section 19. Report Format**



Appraisal report narratives must follow the outline published by the applicable appraisal standard used – USPAP or USFLA. Appraisal reports submitted to OWEB must be in final form and signed by the appraiser.

If a grantee receives an appraisal, and before transmitting it to OWEB, obtains any revision to any portion of the appraisal, including the cover letter, for any reason, then the grantee must submit all versions of the appraisal to OWEB, accompanied by a written summary of the revisions requested of the appraiser. Additionally, if a grantee's contractual agreement with an appraiser includes the appraiser first providing a draft appraisal to the grantee for review, all such draft appraisals, whether signed or unsigned, must be submitted to OWEB together with the final appraisal.

## **Section 20. Supplemental Reporting Standard**

As a public agency, OWEB requires full explanation and complete analyses to support stated value opinions. Therefore, for USPAP reports, OWEB will continue to require a self-contained report as defined in the 2012-2013 USPAP, Standard 2-2(a) regardless of subsequent reporting definitions in the 2014-2015 USPAP and later versions thereof. UASFLA reports must meet the standards described in Part One (Appraisal Development) and Part Two (Appraisal Reporting). Areas that are sometimes overlooked but are expected in a UASFLA report include the following:

- Title report exceptions and their potential impact on value
- Type and extent of any water or mineral rights and their potential impact on value
- Area/neighborhood description including land use pattern and economic trends
- A detailed description of access to the property, both physical and legal, including directions to the nearest major arterial
- For partial acquisitions, a determination of the larger parcel with consideration given to all three elements of ownership, use, and contiguity
- Point-by-point highest and best use analysis
- Full explanation of exclusion of any approaches to value (per USPAP 2-2 (a) (viii))
- Either a full narrative of how each sale compares to the subject and the value indication thus derived, or a shorter narrative supplemented using Adjustment Grids for the Valuation Analyses (preferred)
- Proper analysis of the sales defining the value components recognized in the marketplace and analyzing the contribution each makes to the entire sales price. For rural properties, components would typically include irrigated cropland, dry cropland, pasture, woodlot, floodplain, or bottomland, etc. Other common allocations include home sites, residences, and outbuildings.

## **Section 21. Waiver from Reporting Standard for Low-value USPAP Reports**

The standard for self-contained reports is waived if the appraisal problem is uncomplicated and the property is estimated by the OWEB grantee to be worth less than \$100,000 based on current comparable sales within the applicable market area.

## **Section 22. Comparable Sales Data**

Under both the USPAP self-contained and UASFLA reporting standards, complete comparable sales write-ups are required with analyses/allocations of the contributory value of the various property elements.

Documentation of each comparable sale should include the following information, which should be summarized for each sale on comparable sales sheet and included in the report or in the addenda of the report:

- Name of buyer and seller
- Date of sale
- Legal description or tax parcel number
- Type of sale instrument

- Document recording information
- Price
- Terms of sale
- Location
- Zoning
- Present use
- Highest and Best Use (intended use)
- Brief physical description of the property
- Allocation of the sales price into appropriate contributory components
- A description of pertinent circumstances surrounding the transaction including buyer motivation
- Photograph (on the ground or aerial with property boundary delineation; aerial is preferred)
- Plat map and/or topo map of the property
- Name and phone number of the party that confirmed the transaction and the party's role in the transaction

### **Section 23. Comparable Sales Location Map(s)**

Sales map(s), showing the relative location of the comparable sales in relation to the property being appraised are required. Either this map or the maps used for each comparable sale should be detailed enough to locate the property on the ground using Google Maps or other digital mapping programs.



# Oregon Agricultural Heritage Program

## Environmental Site Assessment Guidance

---

### Introduction

If the OWEB Board awards conditional funding for an OAHP Working Land Conservation Covenant or Easement acquisition project, the grant agreement will require the grantee to employ all appropriate inquiries to determine if the real property in question, including any improvements, is subject to environmental hazards known as recognized environmental conditions. The inquiries must also be sufficient to determine if and how any recognized environmental conditions can be remediated and ensure that the purpose of the OWEB grant can be met. An Environmental Site Assessment (ESA) performed in compliance with the American Society for Testing and Material (ASTM) standards specified below will satisfy these requirements.

### Standards and Procedures

ESAs must be conducted by qualified third parties in compliance with current, relevant ASTM standards approved by the U.S. Environmental Protection Agency (EPA).

Standard E1527-21, regarding Phase 1 ESAs, was published by ASTM in November 2021 and, as of February 1, 2022, was under review by EPA. Until Standard E1527-21 is approved by EPA, Phase 1 ESAs must be conducted in compliance with Standard 1527-13.

When hiring a contractor to complete a Phase 1 ESA, grantees should inquire about the status of Standard E1527-21. If Standard E1527-21 has been approved by EPA, grantees must ensure their contractor conducts the Phase 1 ESA in compliance with that standard.

The findings of a Phase 1 ESA may result in the recommendation of additional investigations, including, but not limited to, a Phase 2 ESA, to further assess environmental conditions. Applicants must consult with OWEB before proceeding to a Phase 2 ESA.

### Inspection and Report Requirements

If an ESA is conducted for more property than is proposed for OWEB funding:

- 1) The contractor must make a reasonable effort to inspect the area proposed for OWEB funding;
- 2) The report's text must clearly explain which findings pertain to the area proposed for OWEB funding;
- 3) The report's maps and figures must clearly delineate the area proposed for OWEB funding; and
- 4) The report's text and maps must clearly indicate if and how any recognized environmental conditions found on any relevant parcel may affect any other parcel.



# Oregon Agricultural Heritage Program

## Title Guidance

---

All title matters must be approved by OWEB prior to the release of OWEB funds.

### Encumbrances

All grant agreements will require that the property or property interest acquired with OWEB funds be free of encumbrances that conflict with the purpose of the grant (e.g., mineral rights, see below). Furthermore, mortgages and liens must be paid off at or before closing when fee title is acquired or subordinated when a conservation easement is acquired.

### Mineral Rights

If the OWEB Board awards conditional funding for the purchase of a property or property interest in which mineral rights are held by a party other than the proposed seller of the property (i.e., there is a split estate), the grant agreement will require the grantee to make reasonable efforts to extinguish (see ORS 517.180) or acquire the mineral rights before OWEB funds are released. If a mineral reservation is suspected, in addition to obtaining an OWEB-required preliminary title report, grant applicants are encouraged to review property records maintained by the Bureau of Land Management and the Department of State Lands, as applicable.

If OWEB's grantee demonstrates that extinguishing or acquiring the mineral rights is not feasible due to the specific circumstances associated with those rights, OWEB may allow the grantee, at the grantee's expense, to contract for the services of an Oregon-licensed professional geologist or engineering geologist whose license is in good standing and who possesses the skills and experience necessary to: (i) assess the likelihood that the mineral resources, if any, associated with the mineral rights will be developed; and (ii) describe the likely impacts, if any, of the mineral resource development on the conservation values intended to be protected by the OWEB-funded acquisition project. Upon review and approval of the geologist's assessment, OWEB may reimburse the grantee for the cost of the assessment, if the assessment is included in the approved project budget.

The objective of the geologist's assessment is to conclude that:

- The probability of surface mining on the property that is the subject of the OWEB grant is so remote that it is negligible; and
- The exploration or extraction of subsurface resources associated with the mineral rights (e.g., oil, gas, coal bed methane or geothermal resource) through means other than surface mining (e.g., extraction wells) either: (i) is of such remote probability that it is negligible; or (ii) would likely be limited to activities that would not materially affect the agricultural and habitat conservation values that are intended to be protected by the OWEB-funded acquisition project.

The geologist's assessment must contain and consider the following information at a minimum:

- The specific mineral right(s) severed from the surface estate as identified in the preliminary title report for the property that is the subject of the OWEB grant, including the current holder of the right(s);
- The aerial extent of the severed mineral rights on, and as applicable, adjacent to, the property that is the subject of the OWEB grant;
- The geologic characteristics of the overall geographic area considered by the assessment, along with the mineral commodities (fuel and non-fuel) typically associated with that geologic environment;

- The known presence of non-fuel mineral commodities (e.g., aggregate, gold, etc.) and fuel mineral commodities (e.g., oil, gas, coal bed methane) in the general vicinity of the property that is the subject of the OWEB grant;
- The most recent activity, if any, related to the mineral rights (e.g., title transfer, lease activity) or to the mineral commodities associated with those rights (e.g., seismic exploration);
- Historic and current exploration, mining and extraction activities near the property that is the subject of the OWEB grant, or elsewhere in the region, if relevant;
- Infrastructure that is available to develop and market the mineral resources or plans to develop the necessary infrastructure;
- The feasibility of obtaining permits and any other authorizations necessary to exercise the mineral right(s);
- Mitigation and restoration actions that will likely be required in association with the mineral resource development and how those requirements will relate to the conservation values intended to be protected by the OWEB grant; and
- Other reasonably necessary information to determine the probability of mineral resource development affecting the property that is the subject of the OWEB grant, and the likely impacts of the resource development on the conservation values intended to be protected by the OWEB-funded acquisition project.

The report format: (i) can be flexible; (ii) must include a clear and concise conclusion regarding the probability, type, and extent of impacts from mineral development on or under the property that is the subject of the OWEB grant; and (iii) should incorporate information obtained from reasonable literature reviews, as well as from consultation with knowledgeable individuals relative to the key matters addressed in the assessment (e.g., real property, economic, ecological and permitting matters).

## **Water Rights**

If an applicant is proposing to acquire a conservation easement with the authority to use appurtenant water rights, the use of those rights shall be consistent with the management goals and strategies identified in the management plan, including use of water for restoration or in-stream purposes. Grantees may be required to take specific actions necessary to comply with this expected outcome as a condition of a grant award, including, but not limited to, providing current water rights information in table form. The water rights information table should include applicable certificate or other identifying numbers, acreages, authorized use, and notes as necessary to understand the evolution of a particular water right. The information in the water rights table should be easy to cross reference to the water rights maps submitted with the grant application.

## **Conservation Easements**

Conservation easement acquisitions require the use of a conservation easement consistent with requirements provided for in OAHP's conservation easement guidance, available as Appendix E of this document. The guidance is accompanied by an easement template that contains OAHP/OWEB-required language. This is available on the [OAHP webpage](#).

## **Title Insurance**

All grant agreements will require that the acquired property interest be insured in a manner and for an amount which sufficiently insures OWEB's investment in the property. All conservation easements to which OWEB is a party must include a provision that meets OWEB's requirements for resolving title defects.

Boilerplate title defect provisions are contained in the standard form and example conservation easements, available on the OAHP webpage. The boilerplate assumes that if an applicant is seeking OWEB funds as a reimbursement for a prior purchase of a property interest, the title company will update the applicant's existing title insurance policy to address any OWEB requirements, such as the removal of a lien at the time

OWEB's funds are released. If the title company will not update the applicant's existing title insurance policy, the applicant may be required to purchase a separate policy for OWEB. The applicant should consult with their title company for an understanding of the company's procedures and fees and refer to OWEB's budget guidance for information about allowable closing-related costs for projects that include a prior purchase of a property interest.



# Oregon Agricultural Heritage Program

## Conservation Easement Guidance

---

### Introduction

The Oregon Watershed Enhancement Board (OWEB) considers grant applications for Oregon Agricultural Heritage Program (OAHP) Working Land Conservation Covenants and Easements to preserve and protect the continued use of a working land for agricultural purposes, and maintain or enhance fish or wildlife habitat, water quality, or other natural resource values on the land. Information about OAHP priorities is available on the [OAHP webpage](#) on the OWEB website.

Negotiating the form of a conservation easement is one of the most time-consuming and potentially costly aspects of obtaining easement funding from OWEB. For general guidance on writing a conservation easement, OWEB suggests that project participants consult *The Conservation Easement Handbook* (ISBN 978-1-932807-00-4), written by Elizabeth Byers and Karin Marchetti Ponte, and published in 2005 by the Land Trust Alliance and the Trust for Public Land. Applicants are strongly encouraged to seek the assistance of experienced attorneys and to work closely with OWEB staff during the development of a conservation easement.

In addition to general guidance provided in the above-referenced handbook, OWEB requires conservation easement language to be consistent with the OAHP/OWEB mission, statutes, and rules, as well as statutory language generally applicable to conservation easements in Oregon. Applicants are welcome to use an easement template of their choosing so long as they can demonstrate it meets these requirements. OWEB approval of the final easement draft is required.

A Working Land Conservation Easement template is available on the OAHP webpage. Language in the conservation easement template is consistent with good conservation easement drafting practices, but may be approached differently depending on the specific circumstances associated with the easement. OWEB requires language that establishes the grantee as the party that is responsible for enforcing the conservation easement and meeting other obligations specified in the easement. Language establishing OWEB's third party right to enforce the conservation easement, stating that OWEB may initiate legal remedies available to address easement compliance issues, including recovery of the OWEB grant funds that were used to purchase the easement, together with interest, is also required in the final conservation easement. OWEB's intent is to enforce the conservation easement only if the OWEB grantee does not meet its obligations under the easement.

All draft conservation easements will be reviewed by OWEB, with assistance from the Department of Justice, to ensure that the easement language is consistent with: (i) sound conservation easement drafting protocols; (ii) OAHP/OWEB's mission, statutes and rules; (iii) the grant application for the conservation easement; and (iv) the grant agreement for the conservation easement. Revisions may be required based upon OWEB's review. The OWEB grantee is responsible for negotiating with the landowner to make any easement revisions required by OWEB.

Special attention should be paid to several key components of a conservation easement purchased with OAHP funds, as follows:

### OAHP's Working Lands Conservation Easements Agricultural and Habitat Values

- A working lands conservation easement protects a property’s habitat, water and other natural resource conservation values while also protecting the right of the grantor to use the land for farming, or ranching activities that are consistent with the purpose of the conservation easement.
- To be eligible for funding through OAHP’s Working Land Conservation Covenant and Easement acquisition grant program, a working lands conservation easement must prioritize both the protection of agricultural and habitat, water or other natural resource conservation values. This may or may not be accomplished using zones, i.e., agricultural, fish and wildlife habitat, buildings, etc.
- If helpful to simplify working lands easements, applicants can use of zones to separate farming, ranching, and forestry activities from areas designated for habitat protection or restoration and protection. If zones are used, the easement must state the allowed and prohibited activities for each zone, and clearly define in the easement or baseline inventory documentation, the location of each zone.
- Applicants should consult with OWEB staff early in the process of drafting a working lands easement. OWEB will provide easement concepts and example language that may assist the applicant in crafting a working lands easement that is consistent with the purpose of OWEB’s funding.

### **Management Plan**

- OWEB requires OAHP conservation easements to specify the development and implementation of a management plan that is consistent with OAHP’s guidelines for management plans. The management plan must contain an adequate framework for protection, restoration (if applicable), and monitoring of the property’s agricultural and habitat and other natural resource conservation values in a manner consistent with the terms of the conservation easement and the objective outlined in the grant application.
- The management plan must be approved by OWEB prior to closing.
- For information about OWEB-required management plans, refer to OWEB’s management plan guidance, available as Appendix F of the Oregon Agricultural Heritage Program Working Land Conservation Covenants and Easements Grant Application Guidance document.

### **Ecosystems Services Credits**

An easement may reserve the right of the grantor or grantee to sell, give, or otherwise make available mitigation credits, wetland credits, carbon credits, habitat credits, species credits, and other types of credits as may be established in the future (“Ecosystems Services Credits”). However, in approving any provision for the reservation of Ecosystems Services Credits, OWEB will ensure consistency with its guidelines and policies, including that credits may not in any way be attributable to or derived from: activities that are inconsistent with any terms of the easement or existing laws and regulations.





# Oregon Agricultural Heritage Program

## Management Plan Guidance for Easements and Covenants

---

### General Requirements

OWEB requires OAHP Working Land Conservation Covenant and Easement acquisition grantees to develop and implement a management plan for all property interests purchased with OAHP funds. Management plans allow the landowners and easement holder an opportunity to discuss and plan activities that will protect and improve the conservation values consistent with the terms of the Conservation Easement or Covenant. The management plan should describe how the landowner intends to work with the easement holder to facilitate the protection and/or enhancement of the property's agricultural, habitat, and other natural resource conservation values in a manner consistent with the terms of the grant award and deed restrictions imposed on the property. Grantees may partner with other organizations or with the landowner to prepare the management plan; however, grantees are responsible for obtaining OWEB's approval of the management plan for consistency with the goals of the program and goals of the conservation easement.

### Management Planning Costs

Certain management planning costs are eligible for OAHP funds. For more information, refer to the budget section of OAHP Conservation Covenant and Easement Application Guidance Document.

### Management Plan Outline

The Underlined of this document are required in the management plan outline that must be submitted with your grant application. The information in the management plan outline should contain sufficient detail to enable OWEB and the OAHP Commission to understand how the agricultural and natural resource values are expected to be managed over time. OWEB will require the grantee to complete the management by the closing date established by the OWEB Board when it awards grant funds.

### Management Plan Format

OWEB recognizes the need for flexibility in management plan format and content. Your organization may have its own format, another funding entity may have a required format, or the property may be part of a larger, landscape-scale management plan. Regardless of the format you use, the plan must contain certain minimum elements. The elements should be augmented and organized as necessary to produce a management plan that best addresses the needs of a property and documents the actions that will be taken to manage it. OWEB expects that at a minimum, the plan will include the following items:

- Cover Page
- Table of Contents
- Introduction
- Purpose and Goals
- Inventory and Analysis
- Desired Future Conditions
- Priority Management Strategies
- Implementation Plan and Schedule

- Monitoring, Maintenance and Adaptive Management
- Plan Term and Updates
- Appendices

## **Cover Page**

Include the property name and location, OWEB grant number, and date of the management plan. If the property has been renamed since the time of the grant application, include both names for clarity.

## **Introduction**

The management plan introduction should include the following:

- General description of the property location
- General property description, including any difference between the acreage encumbered by the conservation easement and the larger property
- Date of conservation easement purchase
- The names, organizational affiliations, and qualifications of the person(s) who prepared the management plan
- Summary of OAHF agricultural, habitat and natural resource conservation values consistent with the conservation easement
- Prohibited and permitted uses of the property: a reference to the sections of the conservation easement that contain this information
- A brief, general description (1-2 paragraphs) of the landowner’s intended uses of the property, and a statement that the easement is the controlling document in the event of any inconsistencies between the management plan and the easement
- Adjacent land uses and landscape context: a brief summary (one paragraph), a reference to the section of the baseline inventory documentation (“Baseline”) that provides more information, and a summary of any additional information gathered since the date of the Baseline
- History (land, native people, agricultural use history and ownership): a reference to the section of the Baseline that contains this information

## **Purpose and Goals**

Describe the purpose and goals for acquiring the property interest, consistent with your OWEB grant application. Use clear objectives and goals for any active management expected or anticipated in order to maintain or enhance the conservation values identified in the easement or covenant. Specify the time period covered by the management plan (see Plan Term and Updates, below).

## **Inventory and Analysis**

The purpose of management planning inventories is to collect appropriate agricultural, natural resource, social and economic information for identification of resource concerns and facilitation of the planning process. The inventories should be used to understand management objectives and develop actions, and as a basis for determining the effectiveness of the management plan and its implementation. The Baseline may serve as all or a substantial part of the management planning inventories, depending on the level of detail in the Baseline data and the scope of work necessary to achieve desired future conditions for the property.

Summarize the inventory data, describing the property's land type(s) and its condition (forest, wetland, prairie, streams/riparian, range, cropland, etc.); infrastructure (roads, buildings, power lines, dikes, drains, etc.); invasive species; and cultural, educational, and aesthetic resources if identified as conservation values in the easement or covenant. Append appropriate maps, data, and/or imagery and reference them in the plan's text. The goal of summarizing the data should be to explain the information that exists, setting the stage for an analysis of the data. It is acceptable to refer to the Baseline where appropriate in summarizing inventory data. OWEB does not expect nor want you to copy the Baseline content into this section of the management plan.

Analyze the Baseline inventory data and any additional inventory data gathered as part of the management planning process and identify resource concerns. Identify and prioritize threats to agricultural and habitat conservation values factoring severity, scope, and /or irreversibility.

### **Desired Future Conditions**

Describe the desired future conditions of the property, specifically what it is expected to look like at the end of the term of the management plan (see Implementation Plan and Schedule below). If the conservation easement utilizes management zones, describe the desired future conditions for each management zone. Include a map showing the intended extent of preserved or enhanced land use types accompanied by a descriptive narrative of each type. If you will maintain the property's current condition as the desired future condition, outline specific threats that may impact your ability to maintain the agricultural, habitat and/or natural resource conservation values (economic climate, weeds, etc.).

### **Priority Management Strategies**

Management strategies should be specific to the conservation values protected by the conservation easement and may be specifically associated with management zones if zones are referenced in the conservation easement. The management strategies should serve as a framework for achieving the desired future conditions for the property, including maintaining current agricultural, habitat and/or natural resource conservation values as appropriate.

Describe the preferred management strategies that will best enable the property's agricultural, habitat and/or natural resource conservation values reach their desired future conditions. If maintaining current agricultural, habitat and/or natural resource conservation values is the desired future condition, describe the strategies to minimize the threats that have been identified.

If sections of the property will undergo large-scale restoration, developing alternative strategies and identifying the preferred approach may best be completed as part of the restoration design process. In that case, the management plan should state that the restoration design will contain and evaluate management strategies.

Include subsections on the following topics as applicable.

### **Landowner Reserved Rights and Coordination**

The agricultural activities of the landowner ought to be guided at a high level by the management plan to ensure they are carried out in a manner that is consistent with protection, and where applicable the restoration, of the property's agricultural, habitat and/or natural resource conservation values. If there are distinct plans for grazing, cropping, fencing, and other activities of the landowner that exist outside the management plan, they ought to be appended or incorporated by reference as applicable. This section should also include a summary of landowner-reserved rights that require notice to or approval from you, a list of the

rights the landowner expects to exercise during the first 5-year implementation period (see Plan Term and Updates, below) and a plan for coordination between you and the landowner. OWEB recommends that the management plan specify an annual meeting between you and the landowner, for the purpose of apprising each other of upcoming management actions and other property uses.

### **Coordination with Third Parties**

Some properties are subject to encumbrances (e.g., utility and access easements) that give third parties rights to use the property. In such instances, the management plan should include actions for coordinating with the third parties to ensure their activities are within their rights and obligations, and to minimize impacts to the property's conservation values.

### **Water Rights**

If you acquire a conservation easement with the authority to use appurtenant water rights, the use of those rights should be consistent with the management goals and strategies identified in the management plan, including use of water for restoration or in-stream purposes. You may need to take specific actions necessary to comply with this expected outcome as a condition of a grant award.

### **Ecosystems Services Credits**

The management plan should address the generation of any ecosystem services credits, including but not limited to mitigation credits, wetland credits, carbon credits, habitat credits and species credits. OWEB will support the generation of such credits only if it can be clearly demonstrated that the credits will be accrued and documented in a manner that is consistent with the ecosystems services credits language in the conservation easement for the project.

### **Items Pertaining to Funding Conditions**

If your grant was subject to project-specific conditions pertaining to the management plan, ensure that the Priority Management Strategies section, or other appropriate section, contains the items required by the OWEB Board.

### **Implementation Plan and Schedule**

Prepare a schedule of operations, listing actions organized by management strategy. The schedule should include the specific resource goals, the management actions, the timeframe in which each action will be started and finished, who will be responsible for implementation, and funding sources. Remember to allow space for adaptive management necessary to a successful agricultural operation. Many, but not all, management activities will be appropriate for inclusion in the schedule of operations.

### **Monitoring, Maintenance and Adaptive Management**

A good planning process is dynamic and ongoing. The implementation of management actions should be evaluated for effectiveness on a schedule determined to be appropriate for the actions. The evaluation should determine whether the current management is upholding the purposes of the conservation easement, and if not, how the management ought to be adjusted. The extent and complexity of monitoring can vary, depending on the management needs for the property, the complexity of the property's agricultural and ecological systems, and other factors. At a minimum, the management plan should include:

- An explanation of what will be monitored and maintained, including the frequency and duration of field monitoring and photo points (photo points may include Baseline photos for compliance with the conservation easement terms, but Baseline photos are not necessarily adequate for effectiveness monitoring)
- The monitoring protocols that will be used, and a description of how monitoring data will be analyzed and summarized.

- Maintenance actions that will be taken
- Partners that intend to be involved
- Process (including any consultation with OWEB) by which management activities will be adapted as needed to address any resource concerns.

## Plan Term and Updates

In general, management plans should be long-term documents, containing a framework that is appropriate for approximately 20 years of work. However, because of the need for a dynamic approach to management planning, if the information indicates that new or modified management actions are necessary to achieve the agricultural, habitat conservation and/or natural resource goals for the property the management plan should be updated. Updated management plans must be reviewed and approved by OWEB for consistency with the goals of the program and goals of the conservation easement. OWEB expects management plans to contain a process for review every five years. The review should take into account monitoring, maintenance, and adaptive management information.

## Appendices

- Location and Access Map\*
- Existing Agricultural Use Map\* - overlay exiting agricultural use on aerial photo
- Existing Habitat Map\* – overlay exiting habitat types on aerial photo
- Future Conditions Map\* – overlay desired future conditions on an aerial photo
- Monitoring Map – an aerial photo that depicts locations of photo points, in-stream monitoring reaches, vegetation transects and data points, etc.
- Invasive Species Map - an aerial photo that depicts the spatial extent of invasive species populations, to assist in managing and monitoring changes in the populations over time
- Infrastructure Map – as applicable, an aerial photo with labeled features such as roads, stream crossing, trails, structures, etc.
- Allowed Use Map – as applicable, an aerial photo that depicts areas such as agricultural zones, habitat zones and building sites
- Threats Map – actual and/or potential
- Topographic, Geology, Soils Maps – as appropriate
- Species Lists
- Others as needed

**NOTE:** *\*Required.* Each map must be referenced to specific sections in the plan’s text.



# Oregon Agricultural Heritage Program

## Program Definitions

---

### Definitions

The following definitions are derived under the provisions of ORS 541.977-ORS 541.989, OAR 698-020-0020, and OAR 698-0025-0020 for the Oregon Agricultural Heritage Program.

**Agricultural cooperative** means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural landowners or operators.

**Agricultural landowner or operator:** a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a “farm or ranch”.

**Board:** the [Oregon Watershed Enhancement Board](#) created under ORS 541.900.

**Commission:** the [Oregon Agricultural Heritage Commission](#) created under ORS 541.986.

**Conservation Management Plan (CMP):** the specific actions planned for working lands to improve or maintain the agricultural and natural resource values as defined under ORS 541.981. A conservation management plan is independent of a working lands covenant or easement.

**Conservation Management Plan holder:** an entity that is eligible to hold a conservation management plan that is or would be responsible for developing, implementing, monitoring, or enforcing the agreement under an OAHP grant agreement.

**Conversion:**

- a. Cessation of accepted farming practices;
- b. Construction of dwellings not occupied by farm operators or workers or other structures not related to agriculture;
- c. Removal of infrastructure required for accepted farming practices unless necessary to accommodate a change in accepted farming practices; or
- d. Cancelling or transferring rights to use water for irrigation in a manner that reduces the long-term viability of agriculture on the working land.

**Director:** the [Executive Director](#) of the “Oregon Watershed Enhancement Board” or the Executive Director’s designee.

**Farming and ranching:** the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

**Fragmentation:** the division of a working farm or ranch, or the isolation of a farm or ranch from other agricultural operations and/or from the agricultural infrastructure necessary to bring farm products to their appropriate markets.

**Grant agreement:** the legally binding contract between the Board and the grant recipient in which the Board is not substantially involved in the funded program or activity other than involvement associated with monitoring compliance with the grant conditions. It consists of the conditions specified in these rules, the

notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

**Grantee:** an organization or individual that is awarded a grant under one or more of OAHP’s grant programs.

**Holder:** The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district or a county service district; a charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property; or An Indian tribe as defined in ORS 97.740

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

**Management plan:** a description of the stewardship, monitoring, and uses of working land intended to carry out the purposes of a working lands easement or covenant.

**OAHP:** the [“Oregon Agricultural Heritage Program”](#)

**OWEB:** the [“Oregon Watershed Enhancement Board”](#) state agency.

**Technical committee:** a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the “Commission”.

**Mutual Modification:** a change to a conservation management plan that is:

- a. Material to the plan; and
- b. Agreed to by the agricultural landowner or operator implementing the plan and the conservation management plan holder.

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

**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.

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

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

**Working land:** land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in “Farm use”.

**Working land conservation covenant:** a nonpossessory interest in working land for a fixed term that imposes limitations or affirmative obligations for the purposes that support the use of the land for agricultural production and for the maintenance or enhancement of fish or wildlife habitat, water quality or other natural resource values.

**Working land conservation easement:** 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 enhancements of fish or wildlife habitat, water quality or other natural resource values.

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