



## Re: OAHP Program Comments from Oregon Agricultural Trust

To whom it may concern,

The following are our suggestions and comments on the conservation easement/covenant title section of the Oregon Agricultural Heritage Program. We thank you for your time and patience in accepting and considering these comments.

### Regarding the Application Process:

Generally, the grant application, ranking, and review should be organized to match NRCS ALE goals and ranking as much as possible. This will make the probability of each program matching for the other more likely. Having a source of non-federal match for federal farmland protection funding is the original intended purpose for OAHP and the goals of the program are quite similar to ALE:

*“Program Purpose The purpose of the 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.”*

- Scoring should reflect stated goals of the program -  $\frac{1}{3}$  increased economic viability of Oregon’s ag operations,  $\frac{1}{3}$  reduce fragmentation of Oregon’s working lands,  $\frac{1}{3}$  habitat and water quality (on working lands).
  - In the NRCS ALE state/national ranking, approximately 76 points of 200 are about development pressure - 100 points are questions relating to farm fragmentation
  - Integrate statutory goals re: climate principles into the three 3rds mentioned above.
- Review Teams
  - Review teams should be consistent with statutory goals as well -  $\frac{2}{3}$  Ag viability and Land Use,  $\frac{1}{3}$  habitat and watershed.
  - For proof, rely only on objective standards, e.g. Oregon Conservation Strategy on habitat, soils map on soils, fragmentation. Let’s avoid being subjective. In the last round we ended up with a property with actual listed/endangered species habitat scoring lower than another without. This shows the problem with subjectivity. The Oregon Conservation Strategy was put together with a lot of



agency effort. Let's use it. Eg: "Is it in a focus area for sage grouse habitat or not?"

- Public Meetings
  - More than one of the applicants wondered what this is adding to the process. The early stages of completing a conservation easement for any landowner can and should be a private process. Let's not unnecessarily discourage landowner participation. Interviews are more effective than "noticing". What information are you actually trying to get from public meetings? What is the goal? Are there other ways to get this information?

Regarding the Program Implementation:

Generally, we would highlight that the program is intended to enhance agricultural viability and resilience, and therefore would caution OWEB as to any requirements which, due to the potential for long periods of review and approval, or because of the high cost of developing plans for that review, may frustrate the implementation of necessary agricultural activities.

OAHP CE Program Comments

- Conservation Easement Template comments - focus on impacts on agricultural viability
  - Management Plans now only require compliance with the CE, i.e. ensuring that activities are not violations. Why is CE monitoring and reporting to OWEB not enough to accomplish protecting the goals/values of the CE. Requiring reviews with uncertain timelines or review criteria just frustrates the ability to implement timely practices/cause harm to the landowner and/or the credibility of the easement holding partner. Either a guarantee of review period, or acceptance of reporting without approval of the management plan should be enough.
  - Ecosystem Service Programs take years and hundreds of thousands of dollars to develop - If OWEB approval at the 11th hour can negate all that work and cost, most landowners will simply avoid ever developing these programs, which actually support agricultural viability and better conservation outcomes.
  - Water rights should be allowed to be traded to other agriculture uses with review and approval - Doesn't have to be just instream. Why not allow the option to lease or trade to other farmers?
- Appraisal - Allow for reimbursement up to 1 year prior to award if it otherwise meets OWEB review standards. Right now, early appraisals can be helpful in developing more accurate grant proposals and even necessary for match funding if they were applied for first. If we are awarded, they should consider the option of reimbursement even if the expense was before award.
- Mineral Remoteness reports - make these reimbursable.



- Do not request release of mineral rights from US as a grant condition - it is impossible without an act of Congress

#### General Comments

- DOJ - Generally, their authority should be limited to legal opinions, not programmatic decisions
  - DOJ legal opinions that create rules outside of the rulemaking process shouldn't be allowed - DOJ de facto rulemaking outside of the legal process in Oregon
    - Easement template development outside of rules
    - Untransparent, and outside of legal standard public comment on rulemaking
  - Hard to understand when something is a DOJ vs. OWEB opinion.
  - E.g., DOJ has no reason to have a position on a management plan
- Farmer Trust is lost when OWEB retains more oversight and control than is needed.
- Farmworker Housing
  - Should be allowed or encouraged to allow for more housing if it is restricted to farmworkers or high cost of living makes labor availability hard for farming. Ensure that housing is clustered to avoid impacts to farmable soils and natural resource areas.

We thank you for your time,

Marc Hudson  
Land Program Director  
Oregon Agricultural Trust

Cc: Nichole Bettinardi, Robin Meacher, Taylor Larson



July 5th, 2024

**Re: OAHP Program Comments from Oregon Agricultural Trust**

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*Regarding the Application Process:*

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- Application length and equitable easy access: In this year’s application cycle, the work hours spent on one OAHP application for less than \$200,000 was more than double the time spent on one NRCS RCPP application, funding 9 conservation easements at the tune of \$14 million dollars. While we appreciate the need for information, there were numerous redundancies, and generally, if this program is to be equitably accessed by a wide number of potential applicant entities, it must be more accessible, easier, and streamlined. This should be double considered in the addition of climate criteria, which adds even greater expectations and time for the applicant.
- Climate Evaluation Criteria #3: The criteria of “ How consideration of greenhouse gas emissions or long-term carbon sequestration or storage has informed the project....” is overly vague and beyond the ability of most applicants to account for. Oregon hasn’t even finalized how they will go about inventorying carbon on working lands. Furthermore, there are hundreds of different crop types, with hundreds of different management styles, leading to thousands of permutations in how carbon and greenhouse gas emissions can be quantified, tracked, and even considered. It’s beyond



the technical ability right now, of even most government agencies to do this. If OWEB wants to engage applicants on this criteria, they need to work with applicants in developing an informational framework.

- Scoring should reflect stated goals of the program -  $\frac{1}{3}$  increased economic viability of Oregon's ag operations,  $\frac{1}{3}$  reduce fragmentation of Oregon's working lands,  $\frac{1}{3}$  habitat and water quality (on working lands).
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- Public Meetings
  - More than one of the applicants wondered what this is adding to the process. The early stages of completing a conservation easement for any landowner can and should be a private process. Let's not unnecessarily discourage landowner participation. Interviews are more effective than "noticing". What information are you actually trying to get from public meetings? What is the goal? Are there other ways to get this information?
  - "Local Communities Disproportionately Impacted by Climate Change" - the definition here is so extremely broad as to be unusable. When applied to OATs current applications, it is inclusive of the entire community in every case. What is failing in this definition, is an actual refinement of the term disproportion. In other words, all communities are likely to be impacted by climate change, what is disproportion, how do we create real criteria to identify those disproportionately impacted communities, and what are the expectations for our outreach. In the meantime however, it is unhelpful to make a requirement for outreach to communities we cannot identify nor define what outreach constitutes.
- Accreditation as an evaluation criteria



- It was obvious from the application there is a misunderstanding as to what accreditation is, or what it guarantees. While we understand it makes the evaluation of applicants for organizational health easier, the alternative questions for non-accredited entities, do not. For example, questions such as “How do you follow GAAP accounting standards?” is redundant and unhelpful. GAAP is a manual for good accounting, the answer is...you follow it.
- General Evaluation Criteria Comments
  - We agree that the “significance” question and social values, is far too broad for any meaningful analysis or comparison, without further refinement of what these mean. It should be stricken altogether or refined.
  - “The potential for setting an example that will encourage additional working lands projects in the region...” This largely relies on hearsay and/or the applicants “general impressions” in the region short of anything but a contingent contract from other landowners where there is some sort of reliance on the closing of the application. In the nearly 40 collective years of easement experience at OAT, this has never happened before.
  - “The extent and nature of the impacts of the covenant or easement on owners or operators of neighboring lands.” - There are a number of vague ways that conservation easements where the applicant may consider multiple hypotheticals, this could apply, but easements and covenants themselves relate only to the Property, and the Property owner’s right. If a landowner is not willing to grant a right to a neighbor, their silencing of that same right via a covenant or easement, is not an impact, it’s a continuation of the baseline. In many ways this criteria is impossible to consider or evaluate.
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#### Compliance and Enforcement:

“OWEB and its designees will be provided sufficient legal access to property encumbered by a covenant or easement acquired with OAHP funds, given reasonable notice, for the purpose of completing covenant or easement inspections.”: This section should define the terms of reasonable notice, as being at least 30 days and/or an emergency inspection need, and be used only under circumstances of the applicant’s failure to monitor or refusal to monitor with sufficiency. These terms are standard for most land trusts and avoid awkward circumstances wherein OWEB has greater rights than the actual interest holder.

#### Regarding the Program Implementation:

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potential for long periods of review and approval, or because of the high cost of developing plans for that review, may frustrate the implementation of necessary agricultural activities.

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- Farmworker Housing



- Should be allowed or encouraged to allow for more housing if it is restricted to farmworkers or high cost of living makes labor availability hard for farming. Ensure that housing is clustered to avoid impacts to farmable soils and natural resource areas.
- Under the Use of Grant Funds: We would agree that the amount of stewardship funds has only so much to do with the appraised value. From hundreds of conservation easements, a \$50,000 cap for the 50% contribution by OWEB should be enough. If stewardship fund needs are in excess of that, it causes to question the either high risk, or high cost nature of the stewardship needs, and why.

Definitions Comments:

“Working Land Conservation Easement and Covenant”: For the definitions here, we do not agree that a working lands conservation easement must exist for the protection of working lands AND for the maintenance and enhancement of habitat. While we do understand that properties that serve both public benefits are ideal, and more likely to be scored higher, you will have good farm properties in peril from development, which may not have a large benefit to habitat, but it is still open space, and saving it for its agricultural productivity, and for future use as open space, is still better than the alternative.

“Stewardship Fund”: We do not believe it is accurate to say a Stewardship Fund can’t pay for overhead or indirect costs, in fact it’s counterintuitive to the purpose of the fund, if the entity is making itself poorer every year paying exactly those costs to do the stewardship. The goal of the stewardship fund is to ensure there is an entity able to uphold the easement. If they can’t, because overhead costs aren’t properly accounted for, then the stewardship fund has failed.

We thank you for your time,

Marc Hudson  
Land Program Director  
Oregon Agricultural Trust

Cc: Nichole Bettinardi, Robin Meacher, Taylor Larson





July 5, 2024

To: Oregon Agricultural Heritage Commission and OAHP Staff

From: Megan Kempe, Executive Director, Oregon Climate and Agriculture Network (OrCAN)

Re: OAHP Rules: Chapter 698 Division 5 Oregon Agricultural Heritage Program Administration

I'm commenting on Division 5 Rules for OAHP based on my review of [staff's recommended changes shared at the June 5<sup>th</sup> OAHP RAC meeting](#) and the staff presentation and discussion at that meeting. I wasn't able to provide comments in advance of that meeting, but it was helpful to hear and reflect on the staff presentation and the Commission's discussion. Current or proposed rule language is in regular text. My comments are in *italics*.

#### **698-005-0010 Purpose**

*Consider adding soil health to purpose as a natural resource concern, if it's not too specific. Soil health is a key strategy and policy objective to enhance the productivity and resiliency of Oregon's agricultural lands.*

#### **698-005-0020 Definitions**

*I'm glad to see that the definitions of carbon sequestration and storage definitions are consistent with the Oregon Climate Action Commission's Natural and Working Lands Report and staff shared that they also match OWEB's Division 5 rules. I support this proposed language.*

Re: (g) "Durable adaptation and resilience for ecosystems" means the extent to which a project is expected to help an ecosystem, including human communities, adjust to, respond to, or recover from the effects of a changing climate.

*The words in quotes are not by themselves directly connected to evaluation. I suggest modifying to remove the reference to "a project" and to change to something like: "capacity of an ecosystem, including human communities, to adjust to, respond to, or recover from the effects of a changing climate". Then in evaluation criteria specify that you are evaluating the extent to which a project meets that criteria.*

*I appreciate staff's suggestion to move "management plan" reference from Division 5 to Div 10, since Conservation Management Plans are also management plans which could be confusing.*

*"Working land" is usually broader than ag land. It seems odd to modify that common definition, but maybe it is appropriate to provide a more limited definition in this case since these are rules for OAHP.*

### **698-005-0045 Climate-Related Evaluation Criteria**

*I recommend removing "whenever possible" in the first paragraph.*

(1) How engagement with, and input from, local communities disproportionately impacted by climate change has informed or will inform the project.

*Engagement in the project seems just as important as informing the project. Suggest modifying to: Engagement by, or and input from, local communities disproportionately impacted by climate change*

(2) How changing climate conditions are incorporated into the project and how the project will contribute to durable adaptation and resilience for ecosystems, including human communities.

*I support inclusion of this criteria.*

(3) How consideration of greenhouse gas emissions or long-term carbon sequestration or storage has informed the project.

*I support inclusion of this criteria. I suggest changing "consideration of GHG emissions" to "potential to reduce greenhouse gas emissions" and add potential before carbon sequestration or storage. We don't just want applicants to consider this, we want to see that the project has potential for these climate benefits.*

### **698-005-0050 Grant Agreement Conditions**

(1) OWEB will enter into new grant agreements with prior grantees only if all reporting obligations under earlier agreements have been met.

*Technically this could be interpreted to mean someone must have done all of their reporting for other agreements, even if those reports aren't due yet. Suggest changing this to something like ..only if any other grants, including reporting requirements are in good standing?*

*Or maybe the intent was that an applicant can't be awarded a new OAHP grant until they've completed your last one. If so, specify this refers to OAHP grants. But it seems like some applicants might have multiple projects going. Make sure this doesn't prohibit an entity from applying when they are managing another awarded grant, as long as that grant is in good standing.*

*Thank you for your consideration of these comments.*



Megan Kemple, Executive Director  
Oregon Climate and Agriculture Network (OrCAN)