



Oregon Agricultural Heritage Program Rulemaking Advisory
Committee (RAC)

RAC Meeting #2 Agenda

Tuesday, July 9, 2024

2 pm – 4 pm

Virtual meeting: [RECORDING](#)

2:00 – 2:10 Welcome and Introductions

2:10 – 3:40 Division 15 Draft Rule Language Discussion

3:40: – 3:55 Public Comment

3:55 – 4:00 Next Steps/Conclude

Oregon Agricultural Heritage Program - Chapter 698

Division 5

Oregon Agricultural Heritage Program Administration

[698-005-0010](#)

Purpose

These rules guide the Oregon Agricultural Heritage Commission and the Oregon Watershed Enhancement Board in fulfilling their duties in administering the Oregon Agricultural Heritage Program (OAHP) under the provisions of ORS 541.977-ORS 541.989. The OAHP includes grants for conservation management plans, working land conservation covenants and easements, technical assistance, and succession planning. The purpose of OAHP is to contribute to the public benefits of:

(1) Increased economic viability of Oregon's agricultural operations and economic sector;

(2) Reduced conversion and fragmentation of Oregon's working land; and

(3) ~~The maintenance or enhancement of~~ fish or wildlife habitat, water quality, and other natural resources on Oregon's working land.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

[698-005-0020](#)

Definitions

(1) "Agricultural landowner or operator" means a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a farm or ranch.

(2) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.

(3) "Carbon Sequestration" means the process of capturing and storing atmospheric carbon dioxide.

(4) "Carbon Storage" means the storage of carbon in plants, soils, geological formations, and the ocean.

(5) "Commission" means the Oregon Agricultural Heritage Commission created under ORS 541.986.

(6) "Conservation management plan" means specific actions planned for working lands to improve or maintain the agricultural and natural resource values. A conservation management plan is independent of a working lands covenant or easement.

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Commented [LO1]: Possible area for adjustment. RAC meeting 1 discussed
How will program increase economic viability? Does every project need to increase the economic viability? Suggested change: increase economic resiliency. Suggested change: Maintain or increase economic viability. Suggested change: Protect, maintain, or enhance.

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Deleted: (5) "Conservation management plan holder" means 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.

(7) "Conversion":

(a) "Conversion" means:

(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.

(b) As used in this definition, "accepted farming practices" shall have the meaning set forth in [ORS 215.203\(2\)\(c\)](#)

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Commented [LO3]: RAC Meeting 1 Considered removing reference to land use statute and decided to leave as is for now in this definition.

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(8) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

[\(9\) "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.](#)

(10) "Farming and ranching" means "farm use" as defined in [ORS 215.203\(2\)](#).

Commented [LO4]: RAC Meeting 1 considered implications of the reference to land use statute in this definition and will revisit after working on Div 15.

(11) "Fragmentation" means 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.

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(12) "Grant agreement" means 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.

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(13) "Grantee" means an organization or individual that is awarded a grant under one or more of OAHP's grant programs.

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[\(14\) "Local Communities Disproportionately Impacted by Climate Change" includes communities such as Native American tribes, communities of color, rural communities, coastal communities, communities experiencing lower incomes, and other communities traditionally underrepresented in public processes, including seniors, youth, and persons with disabilities.](#)

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Deleted: (12) "Management plan" means a description of the stewardship, monitoring, and uses of working land intended to carry out the purposes of a working lands easement or covenant.

(15) "OWEB" means the Oregon Watershed Enhancement Board state agency.

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(16) "Technical committee" means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

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(17) "Working land" means land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in "farm use" as defined in ORS 215.203(2).

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Commented [LO6]: RAC Meeting 1 considered implications of the reference to land use statute in this definition and will revisit after working on Div 15. Working Land is defined in the definition section 541.977(2) of the OAHF statute as "land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching."

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

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(19) "Working land conservation easement" means a permanent nonpossessory interest in working land that imposes limitations or affirmative obligations for purposes that support the use of the land for agricultural production and for the maintenance or enhancements of fish or wildlife habitat, water quality or other natural resource values.

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Deleted: Current applications will be made available on the OWEB website.

Statutory/Other Authority: ORS 541.979, ORS 541.988, ORS 541.984
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

Deleted: In addition to the information required in the application, an applicant may submit additional information that will aid the Commission in evaluating the project.

698-005-0030
Application Requirements

Deleted: (2) All applicants for Oregon Agricultural Heritage Program grants shall supply the following information:

(1) Applications must be submitted on the most current format required by OWEB. An explanation must accompany the application if any of the information required on the application cannot be provided.

Deleted: (a) Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s);

Deleted: (b) Name and address of participating agricultural landowners or operators;

Deleted: (c) Name and location of the proposed project. For conservation management plan and easement/covenant projects the location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North ...

Deleted: (d) Estimated line item budget for the project using the most current budget form prescribe ...

Deleted: (e) Identification of specific project elements for which OAHF funds will be used;

Deleted: (f) A description of any non-OAHF funds, services or materials available or secured for the proje ...

Deleted: (g) If the project is part of a multi-year new funding request continues a previously ...

Deleted: (h) Identification of volunteers and partners and the contribution they will make to the project;

Deleted: (i) A project schedule, including times of project beginning and completion; and

Commented [LO7]: RAC Meeting 1 concurred with suggested deletion.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

Deleted: (j) Any information requested that is necessary to evaluate the project based on the ...

698-005-0040
Application Processing

Deleted: (3) Applications will be considered complete as submitted. Clarification of information may be ...

Commented [RD9]: Correct typo

(1) Project applications will be reviewed based on application completeness and the evaluation criteria adopted by the Board for each grant type in these rules.

(2) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline.

Commented [LO10]: RAC Meeting 1 recommended moving to from Application Requirements 698-005-0040 to Application Processing 698-005-0040

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Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

Deleted: (2) The Commission may require additional information to aid in evaluating and considering a proposed grant project.

698-005-0045
Climate-Related Evaluation Criteria

In addition to the evaluation criteria for [Conservation Management Plans \(OAR 698-010-0090\)](#), [Working Land Conservation Covenants and Easements \(OAR 698-015-0090\)](#), [Working Land Technical Assistance Grants \(OAR 698-020-0160\)](#), and [Succession Planning Grants \(OAR 698-025-0060\)](#), grant applications shall also be evaluated, whenever possible, on:

Commented [LT*O12]: RAC Meeting 1 supported the suggested Insertion (OWEB Climate Criteria)

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

(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.

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

Statutory/Other Authority:
Statutes/Other Implemented:
History:

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.

Deleted: The Board

(2) If the grant agreement has not been fully executed by all the parties within one year of Board approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board for purposes of the Oregon Agricultural Heritage Program.

(3) The Director shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions.

(4) The grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be completed under the agreement.

(5) Upon notice to the grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board for purposes of the Oregon Agricultural Heritage Program.

(7) The grantee will obtain all necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy of each permit or license to the OWEB.

Deleted: (6) The grantee will account for funds distributed by the Board, using project expense forms provided by OWEB...

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(8) OWEB may place additional conditions in the grant agreement as necessary to carry out the purpose of the program, including:

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(a) An enforceable agreement by the agricultural landowner or operator for continued access by OWEB and its designees for monitoring the project after completion;

(b) An enforceable agreement by the grantee to maintain the project for a period of time commensurate with the project approved by the Board;

(c) An enforceable agreement to supply future reports on the project as required; and

(d) Such other conditions as OWEB deems appropriate to the particular circumstances of the project.

Deleted: the Board

(9) Rules and conditions in place at the time the grant is awarded shall govern throughout the term of the project unless changes are mutually agreeable to all parties.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-005-0060

Use of Restricted Funding

The Board may accept contributions to the Oregon Agricultural Heritage Fund from any public or private source and may agree to any conditions for the expenditure of those contributions that are consistent with the purpose of the fund as specified in ORS 541.977 – ORS 541.989.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-005-0070

Distribution of Funds

(1) The Director may withhold payments to a grantee if there are significant and persistent difficulties with satisfying [OWEB](#) requirements.

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(2) Funds will be released upon [receipt of a completed request, as prescribed by OWEB](#), accompanied by documents as determined by the Director, and proof of completion of specific work elements of the project as identified in the grant agreement.

Deleted: presentation of a completed fund release request form

(3) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to [OWEB](#). Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director.

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Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

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Deleted: 698-005-0080

Deleted: Funding Decision Reconsideration by Board¶
In the event that the Director determines a grantee has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The grantee will be provided a copy of the written determination. The conditionally encumbered grant funds will remain encumbered until the Board either affirms the Director's determination or authorizes the continued encumbrance of all or part of the funds in accordance with a modified decision of the Board.¶
Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

698-005-0080

Technical Committees

In addition to technical committees established by the Commission to rank and evaluate grant applications, the Commission may establish any technical committees it considers necessary to aid and advise the Commission in the performance of its functions, in compliance with ORS 541.988(2).

Deleted: Statutes/Other Implemented: ORS 541.977-541.989

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Commented [LO14]: RAC meeting 1 supported removing section

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

Deleted: [OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019...](#)

698-005-0090

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 005 unless required by statute, when doing so will result in more efficient or effective implementation of the Oregon Agricultural Heritage Program. Any waiver must be

Deleted: 698-005-0090

Deleted: conservation management plan and working land conservation covenant and easement

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in writing, included in the grant file to which the waiver applies, and reported to the Commission at the next meeting. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the Commission, [Board, and OWEB](#) and revised as necessary and appropriate.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

Oregon Agricultural Heritage Program - Chapter 698

Division 15

Working Land Conservation Covenants and Easements

698-015-0010

Purpose

~~A working land conservation covenant or easement must be to ensure the continued use of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land.~~

Covenants and easements funded under this program:

- (1) Must contribute to the public benefits in OAR 698-005-0010; and
- (2) Must provide for carrying out a purpose of a conservation easement, as defined in ORS 271.715.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0020

Definitions

~~(1) "Management plan" means a description of the stewardship, monitoring, and uses of working land intended to carry out the purposes of a working lands easement or covenant.~~

~~(2) "Project" means the aggregate of eligible activities included in sections 698-015-0060 and 698-015-0070 that comprise an application.~~

~~(3) "Stewardship" means monitoring, maintaining, managing, and improving land protected by an easement or covenant, including providing signage, controlling access, providing enforcement actions and resolving violations.~~

~~(4) "Stewardship fund" means a restricted fund that is used to cover the holder's long-term costs for stewardship of the land protected by the covenant or easement and payment of taxes and insurance associated with that land. If the funding source allows investment of stewardship funds, funds may be used for investment management costs. Stewardship funds may not be used for overhead or indirect costs.~~

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0030

Eligible Applicants

~~Eligible applicants for Working Land Conservation Covenant and Easement Grants are holders as defined in ORS 271.715 other than state agencies. Individual owners of working land are not eligible to apply for a Working Land Conservation Covenant and Easement Grant.~~

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Deleted: is 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

Commented [MO16]: As previously written and published, the language did not pair with the purpose of a working land conservation easement language in OAHF statute. Suggested edits bring language into alignment with statute.

Commented [LO17]: Moved from Div 5.

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Commented [MO18]: Consider revisiting within the specific context of an easement. Easement stewardship is defined by the Land Trust Alliance as monitoring and enforcement and associated costs.

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Commented [MO19]: Consider revisiting for clarity in light of comment on definition of "Stewardship" above.

Commented [MO20]: This eligible applicant requirement is directly from OAHF statute. Land trusts, conservation districts, Indian Tribes (among other types of entities) are all included in the referenced statutory definition.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0040
Eligible Properties

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

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0050
Application Requirements

(1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications to acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations.

(2) Working Land Conservation Covenant and Easement Grant applications shall:

- (a) Be consistent with OAR 698-005;
- (b) Be ~~submitted on the most current format that conforms with the process prescribed by OWEB.~~
- (c) State the amount and type of match contribution; and
- (d) If the application is for a covenant, include the duration of the covenant.

¶

~~(6) The Commission may consider proposals that are received for covenants or easements that were acquired by the applicant after the previous application deadline.~~

~~(7)~~

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0060
Matching Contributions

(1) All applicants shall demonstrate that at least 25% match is being sought, based on the total OAHP grant request for the covenant or easement project.

(2) The following funds and activities qualify as match:

- (a) In-kind contributions to activities listed under OAR 698-015-0070;
- (b) Funding commitments toward the project made by others as a result of grant applicant efforts;

Commented [MO21]: This is a reference to OAHP statutory definition of working land, which is used in the statutory provision about what a working land easement is. OAHP rules 005 uses a similar, but different definition of working land. OWEB staff suggest the rules should rely on the statutory definition and adjust the OAHP Div 5 rule to track the OAHP statutory definition.

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Deleted: on the most current form and process prescribed by the Commission;

Commented [MO22]: Consider removing as an application requirement because this is better addressed in guidance for easements and covenants if that scenario is ever applicable. Statute requires: "If identical in duration to a conservation management plan for the working land, refer to the conservation management plan in the text of the covenant or easement."

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

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

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

Commented [MO25]: Do we need a rule to address a scenario where an application comes in that requests additional funds for a previously funded OAHP easement project? Is there a better process that could be described to address this type of scenario?

(c) A donated portion of ~~the sale of a conservation easement or covenant~~; and

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(d) Funds deposited in a ~~Stewardship Fund~~ before the time that OWEB funds are released for acquisition of the covenant or easement.

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(3) The OWEB Director retains the discretion to determine whether specific proposed match contributions not specifically identified above can be recognized as qualifying match.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0070

Use of Grant Funds

Working Land Conservation Covenant and Easement Grant funds may be applied towards 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 ~~and covenants~~ shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.

~~(2) The interest on bridge loans needed to secure closure on the easement or covenant prior to when funding will be available for distribution through the program;~~

Deleted: (b) The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-015-0070 (1)(a);

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(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 ~~by the grantee related to the proposed transaction~~;

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

~~(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.~~

Deleted: (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...¶
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Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0080

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.

Commented [MO28]: Consider revising. Easement stewardship obligations are not dependent on the value of the conservation easement. Is there a more relevant way to cap the request on these funds?

- (3) The covenant term shall be set at 12-month increments only and not partial years.
- (4) The first day of the term of a covenant shall be the date that both of these events have occurred:
- (a) The covenant holder and the 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.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0090
Evaluation Criteria

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

- (1) The regional significance of the agricultural, natural resource, and related social values of the working land that will be 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 the 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 that can support a viable agricultural operation.
 - (c) The potential viability of the property for agriculture; and
- (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:
 - (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 plant or wildlife habitat on and around the working land;
 - (d) Protecting, maintaining, or improving water quality ; and
- (4) Whether the project includes the development and implementation of a management plan that supports the integrated maintenance or enhancement of the agricultural and natural resource values on the working land.
- (5) The extent to which the covenant or easement would protect agricultural outcomes, benefits or other investment gains, 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 based on location, its associated infrastructure, and other relevant factors including supporting agricultural values important to the region.
- (6) 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:

- Commented [MO29]:** This criteria is not in statute and was hard for staff and reviewers to evaluate because of the lack of guidance on "significance". Recommend including some additional context around the meaning of "significance" to the Program in this grant offering.
- Deleted:** regionally significant
- Deleted:** after the covenant or easement is in place;
- Commented [MO30]:** This criteria is better suited to the determination of the working lands' significance. Suggest moving to be a sub-criteria under evaluation criteria 1.
- Commented [MO31]:** Added additional consideration to (2)b to incorporate spirit of this sub-criteria
- Deleted:** (d) Improving or maintaining the economic viability of the operation, including future transfer of ownership.
- Deleted:** ¶
- Deleted:** (a) Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, and human needs considerations;¶
- Commented [MO32]:** Speaks to the significance of the working land. Add as a sub-criteria to Evaluation Criteria 1.
- Deleted:** and/or quantity
- Deleted:** e
- Deleted:** Implementing a
- Deleted:** that is likely
- Commented [MO33]:** Consider revising.
- Deleted:** to sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition.
- Deleted:** 4
- Commented [MO34]:** Edits help align better with statutory language for this specific evaluation criteria.
- Deleted:** ,
- Deleted:** maintain or enhance significant agricultural outcomes, benefits or other agricultural or conservation values important to the region
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- (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

~~7~~ 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;

~~8~~ The potential for setting an example that will encourage additional working lands projects in the region; and

~~9~~ The extent and nature of the impacts of the covenant or easement on owners or operators of neighboring lands.

~~10~~ The level of threat of conversion or fragmentation of the working land.

~~11~~ The soundness of the legal and financial terms of the proposed real estate transaction.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHF 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0100

Technical Review and Funding Process

(1) The Commission shall appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements. ~~To fulfil this responsibility, the Commission shall coordinate with OWEB on technical committee appointments.~~

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

~~(3) OWEB shall convene the technical committee(s) to evaluate and rank applications for grants. Those rankings will be provided to OWEB. OWEB will provide technical committee rankings to the Commission, along with a funding recommendation.~~

~~(4) The Commission shall review and consider the technical committee(s) rankings and the recommendations of OWEB staff and consult with the Board concerning grant applications.~~

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

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

Deleted: (e) The strength of the organization as measured by effective governance.¶

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Commented [MO35]: consider removing

Deleted: (f) The existence and implementation of a conservation management plan.¶

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Deleted: 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....

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Commented [MO36]: Edits to this section are suggested to better align with statute (541.984 (3)) and OWEB agency practice.

Deleted: Those rankings will be provided to the Commission. OWEB staff. OWEB staff will review

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Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0110

Board Approval and Delegation of Authority

- (1) The Commission shall recommend and the Board shall approve grants in accordance with ~~this OAR Chapter 698, Division 15.~~
- (2) The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grantee.
- (3) Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB [for purposes of the Oregon Agricultural Heritage Program](#) if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, unless recommended by the Commission and approved by the OWEB Board.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0120

Public Involvement

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

- (1) Written comments received prior to the Board or Commission meeting at which the Board or Commission will consider the application;
- (2) ~~Comments made at public hearings held and publicized in accordance with ORS 271.735;~~ and
- (3) Comments made at the Board or Commission meeting at which the grant application is considered.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAH 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0130

Director Funding Approval and Distribution of Funds

- (1) The Director may approve the distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and the covenant or easement closing ~~when~~ the following conditions are met:
 - (a) ~~A grant agreement is executed by the Director and the grantee that includes a signed statement of understanding and agreement to the roles and responsibilities under the working land conservation covenant or easement by the participating owner of working land;~~

Deleted: guidance adopted by the Board

Deleted: and made available to the public.

Commented [MO37]: SWCDs and counties or cities, which are eligible holders, would be required to have a hearing prior to acquiring a conservation easement by this statute. The statute applies to those entities regardless of whether OAH rules say so, but by including this statement in our rules the agency is being transparent with the application that comments from those hearings would be relevant to the Commission/Board discussion, and will be tracked by staff and presented to the Commission and Board.

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Commented [MO38]: Consider removing or relocating to the Application Requirements section. This type of statement is atypical for GAs, as the grant agreement is between the Grantee and OWEB, not the landowner. Under statute, there needs to be a demonstration that the landowner is aware of the commitments proposed in the easement/covenant project and understands their role. There are other ways to address this than in the grant agreement.

- (b) The funding conditions, if any, imposed by the Board are satisfied to the full satisfaction of the Director;
- (c) The legal and financial terms of the proposed real estate transaction are approved by the Director;
- (d) The required title restrictions are approved by the Director;
- (e) The Director has reconciled conditionally approved funding with actual project costs;
- (f) The grantee has satisfied the match requirements under OAR 698-015-0060;

(g) The Board is notified in writing ~~if the Director intends~~ to hold or recover the grant funds, pending Board consideration under OAR 698-015-0140(1).

(2) For grants established under these rules, the Director is authorized to reimburse the grantee for allowable costs identified in OAR 698-015-0070 and to recognize match contributions under OAR 698-015-0060 that were incurred no earlier than 18 months before the applicable grant application deadline.

~~(3) Notwithstanding OAR 698-015-0130(1)(b)-(f), funds may be distributed prior the full satisfaction of all funding conditions and the transaction closing for due diligence activities specified in OAR 698-015-0070(4) and included in the application budget.~~

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Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0140
Compliance and Enforcement

(1) The ongoing use of the property encumbered by a covenant or easement that received funding from the Working Land Conservation Covenant and Easement Grant Program shall be consistent with the purposes specified in ORS 541.977-ORS 541.989. If significant compliance issues cannot be resolved to the full satisfaction of the Director, the Director, after informing the Commission and the Board and providing reasonable written notice to the Grantee, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OAHP grant funds that were used to purchase the covenant or easement, and reasonable interest and penalties at the option of the Director.

(2) OWEB 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.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989
History:
[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

698-015-0150
Grant Reporting Requirements for Covenants

Upon completion of the term of a working land conservation covenant, the grantee will provide ~~OWEB~~ with a copy of the project completion report ~~in the manner prescribed by OWEB.~~

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989
Statutes/Other Implemented: ORS 541.977-541.989

Deleted: the Commission and OWEB's Board
Deleted: Final project accounting and reporting are due no later than 60 days following the project completion date.

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

[698-015-0160](#)

Payment Relationship Between Covenants and Easements

If a working land conservation covenant is funded through the Oregon Agricultural Heritage Program and a later application is submitted to the Commission for the same property for a working land conservation easement:

- (1) If the term of the covenant has not expired, the fair market value of the easement will be reduced by a proportion equivalent to the time remaining on the covenant.
- (2) If the term of the covenant has expired, no reduction of fair market value will be taken for the subsequent easement.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

[698-015-0170](#)

Subsequent Conveyances

If a covenant or easement acquired with OAHP funds is subsequently transferred, it must:

- (1) Be made subject to prior approval by the Commission and the Board; and
- (2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and OAR 698-015.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

[698-015-0180](#)

Waiver and Periodic Review of Rules

The Director may waive the requirements of OAR Chapter 698, Division 015 unless required by statute, when doing so will result in more efficient or effective implementation of the Working Land Conservation Covenant and Easement Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission by the next meeting. The administrative rules for Working Land Conservation Covenant and Easement Grants shall be periodically reviewed by the Commission, Board, and OWEB and revised as necessary and appropriate.

Statutory/Other Authority: ORS 541.984, ORS 541.988, ORS 541.989

Statutes/Other Implemented: ORS 541.977-541.989

History:

[OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019](#)

541.977 Definitions for ORS 541.977 to 541.989. As used in ORS 541.977 to 541.989:

(1) “Agricultural owner or operator” means a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a farm or ranch.

(2) “Working land” means land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching.

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

(4) “Working land conservation easement” means a permanent nonpossessory interest in working land that imposes limitations or affirmative obligations for purposes that support the use of the land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality or support of other natural resource values. [2017 c.716 §1]

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

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

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

Note: See note under 541.977.

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

- (a) Carry out the programs described in ORS 541.984;
 - (b) Pay reimbursements and staff support expenses associated with the activities of the Oregon Agricultural Heritage Commission established under ORS 541.986;
 - (c) Provide succession planning programs with funding recommended by the commission under ORS 541.989; and
 - (d) Pay the administrative expenses of the board for carrying out ORS 541.977 to 541.989.
- (2) The amount paid from the fund during a biennium for reimbursements and expenses described in subsection (1)(b) and (d) of this section may not exceed 12 percent of the moneys credited to the fund during that biennium. [2017 c.716 §3]

Note: See note under 541.977.

541.981 Conservation management plans for working lands; plan requirements. (1) An agricultural owner or operator may enter into a conservation management plan with an organization for working land to be managed in a manner that supports one or more natural resource values. The conservation management plan may be composed of multiple components addressing different natural resource values as identified in subsection (2) of this section.

(2) A conservation management plan must be for the purpose of developing and implementing conservation measures or other protections for maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values in a manner consistent with the social and economic interests and abilities of the agricultural owner or operator. The plan may include provisions for addressing particular priorities related to natural resource values, including but not limited to soil, water, plants, animals, energy and human need considerations.

- (3) A conservation management plan must:
- (a) Meet the standards established by Oregon Watershed Enhancement Board rules;
 - (b) State the duration or terminating event for the plan;
 - (c) Be specific to the land, and account for the needs of, the agricultural owner or operator;
 - (d) Provide for the parties to review the plan on a regular basis;
 - (e) Provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances;
 - (f) Provide for regular monitoring by the organization to ensure that the agricultural owner or operator is adhering to the plan;

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

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

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

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

(b) A watershed council; or

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

Note: See note under 541.977.

541.982 Working land conservation covenants and easements; requirements. (1) An owner of working land may enter into a working land conservation covenant with or grant a working land conservation easement to an organization that is a holder, as defined in ORS 271.715, other than a state agency. The covenant or easement must be for the purpose of ensuring the continued use of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land. A working land conservation covenant must be for a term of years that is established as permissible in Oregon Agricultural Heritage Commission rules.

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

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

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

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

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

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

Note: See note under 541.977.

541.984 Grant programs; technical committees; rules. (1) The Oregon Watershed Enhancement Board shall establish programs to provide grants from the Oregon Agricultural Heritage Fund for the purposes of:

(a) Assisting owners of working land with succession planning for those lands;

(b) Funding the purchasing, implementing, carrying out or monitoring of conservation management plans, working land conservation covenants or working land conservation easements described in ORS 541.981 and 541.982; and

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

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

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

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

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

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

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

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

(d) The capacity of the organization that filed the application to enter into a conservation management plan or accept a working land conservation covenant or working land conservation easement, and the competence of the organization;

(e) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources and on the duration and extent of the conservation management plan, working land conservation covenant or working land conservation easement; and

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

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

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

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

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

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

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

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

(8) An organization that receives a grant from the board for a working land conservation covenant or working land conservation easement, or an owner of working land that enters into a working land conservation covenant or grants a working land conservation easement, may

receive cash contributions, other financial assistance, in-kind services or other forms of investment from any public or private sources for purposes of purchasing, implementing, carrying out or monitoring of the covenant or easement. [2017 c.716 §6; 2019 c.13 §53]

Note: See note under 541.977.

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

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

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

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

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

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

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

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

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

Note: See note under 541.977.

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

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

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

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

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

Note: See note under 541.977.

541.988 Commission rules; advisory or technical committees. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Agricultural Heritage Commission may adopt rules necessary for the administration of the laws that the commission is charged with administering.

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

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

Note: See note under 541.977.

541.989 Commission duties; rules. (1) The Oregon Agricultural Heritage Commission shall:

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

(b) Adopt rules establishing three or more permissible terms of years, that are not less than 20 or more than 50 years, for working land conservation covenants formed under ORS 541.982;

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

(d) Review and consider the recommendations of technical committees appointed under ORS 541.984;

(e) Consult with the board concerning grant applications;

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

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

(2) The commission's recommendations for funding under subsection (1)(g) of this section may include recommendations for funding succession planning programs through the Oregon State University Extension Service only if the university has presented the commission with a program proposal for review. If a commission recommendation for funding succession planning programs through the university extension service is adopted, the university shall provide the commission with an annual report regarding each program. [2017 c.716 §10]

Note: See note under 541.977.

698-015-0090

Evaluation Criteria

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

- (1) The regional significance of the agricultural, natural resource, and related social values of the working land that will be subject to the working land conservation covenant or easement.
 - (a) The potential viability of the property for agriculture;
 - (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;
- (2) The extent to which the working land conservation covenant or easement would protect, maintain, or enhance farming or ranching on the 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 that can support a viable agricultural operation.
- (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 quality and connectivity of plant or wildlife habitat on and around the working land; and
 - (b) Protecting, maintaining, or improving water quality.
- (4) Whether the project includes the development and implementation of a management plan that supports the integrated maintenance or enhancement of the agricultural and natural resource values on the working land.
- (5) The extent to which the covenant or easement would protect agricultural outcomes, benefits or other investment gains, 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 based on location, its associated infrastructure, and other relevant factors including supporting agricultural values important to the region.
- (6) 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; and
 - (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.
- (7) 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 OAHP funded plans, covenants, or easements;
 - (d) Consistency with local comprehensive plans and statewide planning goals;
- (8) The extent and nature of the impacts of the covenant or easement on owners or operators of neighboring lands.
- (9) The level of threat of conversion or fragmentation of the working land.
- (10) The soundness of the legal and financial terms of the proposed real estate transaction.



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

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- DOJ - Generally, their authority should be limited to legal opinions, not programmatic decisions
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 - 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

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:

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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.
 -

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:

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.

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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 5th 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 OAHF grant until they've completed your last one. If so, specify this refers to OAHF 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)