



Oregon Agricultural Heritage Commission Meeting Agenda

Thursday, April 5, 2018

Room 1868

152 NW 4th Street

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:30 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted on any item before the commission. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Krahmer and OWEB Executive Director Meta Loftsgaarden will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the March 8, 2018 meeting will be presented for approval. *Action item.*

Farm and Ranch Succession Planning (approximately 8:15 a.m.)

OAHP Coordinator Nellie McAdams will present revisions to draft rules resulting from the commission's discussion at its March 8, 2018 meeting.

Conservation Management Plan (CMP) (approximately 8:30 a.m.)

OAHP Coordinator Nellie McAdams will present revisions to draft rules resulting from the commission's discussion at its March 8, 2018 meeting.

Conservation Management Plan (CMP) Ranking Criteria (approximately 9:00 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its March 8, 2018.

Easements and Covenants Ranking Criteria (approximately 9:45 a.m. to 3:30 p.m.)

OWEB staff will introduce easement and covenants ranking, and the Context and Easement/Covenant Technical Committees will present to the commission and receive questions from the commission.

Context Technical Committee members in attendance (tentative):

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Dylan Kruse:** Policy Director at [Sustainable Northwest](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Jerome Rosa:** Executive Director of the [Oregon Cattlemen's Association](#) and OAHP work group member
- **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)

Easement/Covenant Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Katherine Daniels:** former Farm and Forest Lands Specialist at [Department of Land Conservation and Development](#)
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Dan Roix:** Conservation Director at [Columbia Land Trust](#)
- **Loren Unruh:** Assistant State Conservationist – Programs – at [NRCS](#)
- **Bari Williams:** Easement Program Specialist at [NRCS](#)

For the remainder of the morning and afternoon, commission members will discuss the ranking criteria for easements and covenants.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

Summary of Commission's Discussions, Location in the Process, and Next Meeting (3:00 p.m.)
OAHC Facilitator Liz Redon will help the commission summarize the day's discussion and identify additional broad subjects that were not discussed today and are not on the agenda for the following meeting.

The commission's next meeting on Thursday, April 26, 2018. *Information item.*



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, March 8, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Bennett, Mark
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Neuhauser, Will
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Cooper, Mary Anne
Masterson, Laura
Moberg, Dean
Salzer, Tom

The meeting was called to order at 8:05AM.

Welcome, Housekeeping, and Introductions

OWEB Executive Director Meta Loftsgaarden welcomed commission members. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined the process the commission will follow throughout the spring for rule-making. All those in attendance introduced themselves and their affiliation.

Minutes

Commission members reviewed the minutes from the February 22 meeting. Ken Bailey noted that these minutes did not mention public comment received at the meeting. The commission agreed to refer to public comment in the minutes, and Nathan Jackson moved to adopt the revised minutes, with a second from Lois Loop. Minutes were approved unanimously.

Succession Planning

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the 'redline' document of the draft succession planning rules, available in the [materials for the commission's third meeting](#) on March 8. A summary of the discussion follows.

General

The words “farmers” and “ranchers” were removed from the program title. Definitions in the statute referred to applicants by the statutory phrase of “owner of working land,” for which Commission members requested a definition. Several definitions had been drafted, including one for a “person advising owners of working land.” Commissioners requested a definition for “fragmentation” that could be used throughout OAH rules. Finally, the purpose of the succession planning program was expanded to include language from the statutory ‘Whereas’ statements. This purpose is referred to in the evaluation criteria and grant reporting requirements.

Eligible Entities

The draft rule added Tribes and listed general categories of entities as eligible applicants to the program. The commission decided to add agricultural co-operatives to the list and agreed that individual owners of working land and persons advising them should not be eligible to apply directly.

Eligible Activities

The commission added two criteria to evaluate the eligibility of grant activities: the applicant’s capacity and the success of their prior projects related to succession planning. The commission asked OWEB staff to review the entire rule to ensure that the revised version did not create a preference for train-the-trainer projects, but rather added such activities as one option. The commission recommended guidance to clarify that training should result in the ultimate objective of helping owners of working land develop succession plans.

Evaluation Criteria

Commission members discussed adding evaluation criteria that included an applicant’s capacity and their prior experience delivering successful programs. They also requested that references to the purpose statement identify where the purpose statement is in rule.

Match

Commissioners stated that match was not required for either applicants to or participants in grant-funded activities.

Commission members suggested a set of specific changes to the draft rules. Those are contained in the [Draft Succession Planning Rules document](#) in the meeting materials for the April 5th commission meeting, and will be provided to the commission for review at this meeting.

Conservation Management Plans

OWEB staff discussed with the commission the importance of approaching this rule-making by considering how the program will work regardless of other funding sources and other similar programs. At future meetings, staff and commission will discuss how the program the commission designs will coordinate with other state or federal programs. Staff asked for individuals to help set up this conversation appropriately for a future commission meeting. Ken Bailey and Mary Wahl volunteered.

Nellie McAdams presented the conservation management plan (CMP) draft rules, listed under the meeting [materials for this meeting](#), and led the commission in discussing the rules sections with the greatest policy considerations: plan components, mutual modification, and monitoring. The commission's recommendations from this meeting are captured in the "red line" draft conservation management plan rules in the materials for [the April 5 meeting](#) and summarized below.

General

The commission decided that the rules should tie the overall purpose of OAH into the purpose of CMPs, recognizing fragmentation of working land as an ecological risk to the landscape.

Eligibility

The commission clarified that in order to be eligible to hold a CMP under section (a), it need not actually hold easements, but rather need only be authorized to do so.

Term

The commission discussed whether the rules should set specific, permissible term lengths for CMPs between 20 and 50 years, as is required for working land conservation covenants. The commission decided to revisit this topic when discussing the term lengths for covenants.

Plan Components

The commission decided to add the term (or duration) of the CMP and the expected conservation, social, and economic outcomes to the list of plan components. They also decided to require the implementation plan to include a budget, and clarified that the landowner's goals might include short- and long-term social, economic, and conservation goals.

Mutual Modification

The commission decided that, although change in ownership, cropping systems, and other changes listed under section 4 of this rule should only result in mutual modifications to the CMP if the change will impact either implementation of the conservation management plan or its expected outcomes, the landowner should still inform the grantee of these changes. In the case of changes to grazing and cropping that are not identified in the plan, the landowner should inform the grantee before the changes occur.

The commission discussed allowing mutual modification to account for changes in the cost of implementing the CMP. This item is included under sub-section (4)(d), "Other challenges that are outside the agricultural owner or operator's control."

It was clarified that grantees and landowners are only required to comply with the mutual modification process described in rule if they receive funding to implement, and not just create, the plan. Subsection 6 (types of modifications) was also modified to mirror subsection 4 (notification of changes).

Monitoring

The commission agreed to require annual meetings of agricultural owners or operators and grantees, which may be virtual. They decided that site visits should occur at least once every three years, or earlier if required by a match funder. It was noted that if the CMP is attached to

an easement, that annual monitoring is required. Finally, it was clarified that the CMP is between the agricultural owner or operator and the grantee, not OWEB.

Payment

Following up on an initial conversation at the February 22, 2018 commission meeting, commission members discussed factors for payment of conservation management plans, including:

- Cost of action + economics of acreage
- Public Benefit Value
- Should we consider payments differently if protected by easement or not?
- Should we consider the cost associated with wildlife impact?
- Water Quality – Clean Water Services. What is the value of clean water?
- Ex. Giving up development rights – methods of compensation that are not payment
 - Could landowner contribute portion of value for charitable contribution
- Urgency- Can we factor in since high rate of ag lands loss?
- How can we pay for near term, while you earn in long-term compensation for service?
- Ex. Open space tax credit – can use tax benefit for long term
- Indexing for future \$ value
- Feasibility tests of how payments work
- Paying for practices
 - Filling gaps from other programs
 - Paying for “not messing things up”

OWEB staff recommended to the commission that, although excellent information was gathered from the commission’s discussions today and on February 22, the issue of payment would benefit from further research and discussion. They asked commissioners if anyone would like to join a CMP payment committee, and Chad Allen, Lois Loop, Chad Allen, and Doug Kraemer volunteered.

Guidance

The commission discussed placing in guidance the recommendation that CMPs integrate with area-specific programs, such as Greater Sage-grouse Candidate Conservation Agreements with Assurances.

Public Comment

No members of the public submitted public comment.

Ranking Criteria for Conservation Management Plan Grants

Meta Loftsgaarden and Liz Redon provided the commission with a big picture context of the ranking of CMPs. Nellie McAdams walked the commission through the OAH [work group's letter of recommendation on CMPs](#) including ranking considerations, with the assistance of OAH Context Technical Committee members:

- **Mary Anne Cooper:** Public Policy Council at Oregon Farm Bureau and OAH work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm

The commission's discussion on this letter and CMP ranking included:

- Are OWEB's ranking criteria applicable?
- **Criterion b** – the commission discussed whether plans should pay to meet standards, exceed standards or both, and whether ranking should be different in each case.
- **Criterion c** – the commission discussed whether additional plans should be added, as well as discussing how to create good criteria for community benefit
- **Criterion d** - Capacity- how strong is the organization? (e.g. Board)
- **Criterion f** could include investment in neighboring properties. Specify if positive impacts on neighbors. Prioritize geographic grouping of CMPs in criterion f or in leveraging other investments (e)

The commission then divided into three small groups to discuss how to interpret the 6 statutory criteria and whether other criteria are needed. The notes from these break-out groups are as follows:

Nellie's Group

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

- Business helps preserve the land. Business is not an end in itself? Or management with co-benefits? Financial benefit as a goal in itself too? Fragmentation affects both conservation and financial benefit.
- Criterion (a) Doesn't specify fragmentation. Understand that economic viability decreases as fragmentation increases in the long term, but don't ask grantee to prove this
- Increased **carrying capacity** or **productivity**
- **Reduced inputs**
- Increased **management efficiency**

Criterion 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

- You can meet regulations in different ways – Some are more effective/ expensive
- Might maintain one feature but get more uplift in another – a focused holistic natural resource progress

- Not losing existing resource is uplift in itself. Articulate that you get credit for “protect and maintain.” Maintenance is easier than creation - Humpty Dumpty’s rule
- Work lands provide corridors
- Invasives → here and criterion f also?
- Listed species – higher ranking? Guidance? Leveraging other \$ or federal/ state plan/ strategy
- Point source and non-point source water quality
 - Water quantity – including seasonal flows
 - Soil management → water quantity
- Carbon sequestration

Criterion c - The extent to which the plan, covenant or easement would protect agricultural outcomes, benefits or other investment gains

- Succession **or** long-term viability secure property for whoever owns it to be farmland in the future
- Prevent other restoration projects on land that prevent it from being farmable
- **Community** (also in (f)?) preserve community, **identity, economic viability** as related to ag
- Decreased inputs protects investment in land
- Water rights – maintains viability of operation. Keep ability to use enough to run operation into the future
- Utilization of innovative conservation techniques – water and more (leverage of other grant \$)

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

Have experts on conservation and ag innovative solutions. Straightforward. More important for a covenant/ easement

Criterion 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

Duration might not be as important as outcomes for CMP

Criterion f – The extent and nature of plan, covenant or easement impacts on owners or operators of neighboring lands

Include positive impacts leveraging outcomes, not just \$. Infrastructure maintenance

Eric’s Group

- OAHC targeted strategic priorities
 - (Projects) – Targeted solicitation
 - May be different for CMP with easement
- Cost/ Benefit (including public benefit) – Plan should address (project criteria)
- Equitability – ensure geographic distance and serving underserved populations (project and grantee)

- Land leases – How does plan address lessees? (project)
- Long-term viability of investment – What factors might detract from investment (project)
- Capacity – ensure that grantee board includes a diversity of interests, including owner/ operator (look at FSA requirements)
- Fish/ Wildlife – Include benefits to groundwater recharge/ water quantity
- Capacity – how will organization (grantee) ensure financial capability and staff training to manage investment over long term ~ stewardship endowment
- Leveraging complimentary investments, such as FIP, RCPP, larger geographies (project criteria)

Liz's Group

Do existing criteria capture breadth of ranking needs?

- **Socio** – Farms can be a place to gather (e.g. events)
- How would project benefit underserved populations/ landowners (could go under community bullet)
- How do we craft criteria that includes, not includes?
- Try to keep applications anonymous
- Flag opportunity – may have higher risk
 - Risk/ reward rating
- Consider as investment portfolio
 - Most likely to succeed—to→ risk but potential gains
 - So do not only choose sophisticated applicants, not exclude people with opportunity but less tech.

Gaps in existing

- Lifecycle of farming in criteria
 - E.g. expense to get started
 - Fit into socio/ economic
- Should there be connection with succession plan?
- Keep (how) to necessary criteria – avoid being too onerous?

Which existing criteria need more detail?

- C – How do you measure? E.g. how does farm benefit economy
- F – “neighboring lands” – who’s perspective to determine this?
- Metrics for review team to use to help stay objective
- Add enhancement after protect©
 - Understand outcomes
- F – Should explain why they think it is positive
- E – “prior” – Are there limits of universe to consider?
 - Balancing need measure vs. history of success
 - Guard against double dipping
 - Explicit whether \$ vs. work

Integration with other programs

OWEB staff asked the commission if anyone would like to volunteer to participate in a committee, including one or two calls, to discuss how to integrate CMPs with other grant programs. Ken Bailey and Mary Wahl volunteered.

OWEB staff informed the commission that they would edit the draft Succession Planning rules and CMP rules and draft new CMP ranking rules for the commission's review by their next meeting on April 5.

Items in the commission's "refrigerator" list for future discussions were:

- How to ensure site visit is performed by qualified person? "Qualified" planner? "Define qualified" – familiar with plan & methods used
- Serving underserved areas
- How do we help people before application to be successful competing with more experienced applicants?
- How do we make it simple/not unnecessarily onerous? Keep to necessary?

The meeting was adjourned at 3:00 p.m.

Division XXX
Succession Planning Grants

XXX-XXX-XX01

Purpose

The Oregon Agricultural Heritage Commission (commission) shall provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (OWEB board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations and economic sector,
- (2) Reduced fragmentation of Oregon's working land,
- (3) Reduced conversion of Oregon's working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon's working land.

XXX-XXX-XX02

Definitions

(1) "Agricultural cooperative" means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.

(2) "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.

~~(1)(3)~~ "Owner of working land" means an "agricultural owner or operator" as defined in statute.

(4) "Person advising owners of working land agricultural owner or operator" means a person or an organization that provides training and resources to persons who provide succession planning services to owners of working land.

~~(2)~~(5) "Fragmentation" is the division of a working farm or ranch into smaller parcels.

~~(3)~~(6) "Succession planning" means an ongoing process for ensuring the continuation and economic viability of a business. It may include strategies to identify, develop, and empower the next generation of agricultural owners and operators, a plan to divide business and family assets, and arrangements for each generation's retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

~~(4)~~(7) Additional definitions to be determined.

Comment [ML1]: Since in the previous definition, you had owner of working land mean owner or operator, it just seemed more simple to make the wording the same everywhere

XXX-XXX-XX03

Succession Planning Priorities

The commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant proposals and make recommendations to the legislature. The commission may modify these priorities from time to time at its discretion.

XXX-XXX-XX04

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Not-for-profit organizations,
 - (iii) Units of local government, ~~and~~
 - (iv) Tribes, ~~and~~
 - ~~(iv)(v)~~ Agricultural cooperatives
- (2) Individual ~~owners of working lands~~ agricultural owners or operators and individual persons advising ~~owners of working land~~ them are not eligible to apply for a -Succession Planning Grant.

XXX-XXX-XX05

Application Requirements

Succession Planning Grant applications shall:

- (1) Be consistent with general program guidance {similar to ORS XXX Division 005}.
- (2) Not require match contributions.
- (3) Be submitted on the most current form and process prescribed by the commission.
- (4) *Other application requirement in general administrative section.*

XXX-XXX-XX06

Eligible Activities

The following activities benefitting ~~owners of working land~~ agricultural owners and operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources,
- (2) Trainings on topics related to succession planning,
- (3) Development and distribution of educational materials and curriculum related to succession planning, and
- (4) Advising ~~owners of working land~~ agricultural owners and operators on succession planning.

XXX-XXX-XX07

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR XXX-XXX-XX01,
- (2) The capacity of the applicant to deliver the proposed program.
- (3) The applicant's background and experience in delivering successful succession planning programs, including both prior programs funded through this grant program and projects funded outside this grant program.
- ~~(2)~~ The success of the applicant's prior projects funded through this grant program,
- ~~(3)~~(4) _____ The cost-effectiveness of the proposed project,
- ~~(4)~~(5) _____ The extent to which the application reaches diverse audiences, including: producers of diverse commodities, owners of working lands agricultural owners or operators in diverse geographic locations in Oregon and participants in diverse stages of succession planning. The commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity.
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

XXX-XXX-XX08

Succession Planning Grant Application Technical Review and Funding Process

- (1) The commission may fund projects submitted through an open solicitation for proposals, or by requesting proposals from a specific eligible entity or eligible entities.
- (2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.
- (3) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XXXX.
- (4) The commission may use technical committees to evaluate Succession Planning Grant applications.
- (5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the commission.
- (6) The commission may rank projects and shall provide funding recommendations to the board.
- (7) The board may fund a grant application in whole or in part.

XXX-XXX-XX09

Grant Agreement Conditions

- (1) The grantee must submit a report at completion of the project describing the work completed as described in OAR XXX-XXX-XXXX.
- (2) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed modifications are

submitted and approved by the director prior to the beginning of any work proposed in the modification.

- (3) The director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

XXX-XXX-XX10

Grant Reporting Requirements

- (1) Upon project completion, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon owners of working land agricultural owners and operators and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program,
 - (ii) The geographic, commodity, and other demographic diversity of participants in the program;
 - (iii) Documented improved understanding of succession planning by program participants; Documented measurable changes in behavior of participants, including the percentage or number of owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
 - (iv) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land to nonfarm uses and promote economic viability and ecological sustainability of agricultural operations; and
 - (v) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The OWEB Director or the commission may authorize an independent performance audit of any Succession Planning Grantee, and if the director determines the grantee is not complying with the rules of the Farm and Ranch Succession Planning Grant program, may restrict future grant funds.
- (4) In addition to project evaluations, the commission may conduct program evaluations that may include changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of owners of working land agricultural owners and operators on the status of succession plans, and other trends in farmland-working land ownership and use.

XXX-XXX-XX11

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the [Farm and Ranch](#) Succession Planning Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for [Farm and Ranch](#) Succession Planning Grants shall be periodically reviewed by the commission and revised as necessary and appropriate.

DRAFT

Division XXX
Conservation Management Plans

XXX-XXX-XX01

Purpose

The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations,
- (2) Reduced fragmentation of Oregon's working land,
- (3) Reduced conversion of Oregon's working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon's working land.

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. Conservation management plans 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.

XXX-XXX-XX02

Definitions

- (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) *Definitions to be determined.*

XXX-XXX-XX03

Eligibility

Eligible applicants for Conservation Management Plan Grants include:

- (a) An entity eligible to hold a conservation easement ~~or covenant holder~~, as defined in ORS 271.715, other than a state agency;
- (b) A watershed council; or
- (c) An entity who is tax exempt under section 501(c)(3) of the Internal Revenue Code

XXX-XXX-XX04

Application Requirements

Conservation Management Plan Grant applications shall:

- (1) Be consistent with general program guidance *{similar to OAR XXX Division 005}*;

- (2) Be submitted on the most current form and process prescribed by the commission;
- (3) Include the duration or terminating event for the plan; and
- (4) *Other application requirements included in general administrative section.*

XXX-XXX-XX05
Eligible Activities

Funding can be utilized to purchase, implement and monitor conservation management plans.
(Additional information to be developed as a part of payment conversation.)

Comment [ML1]: This language may change in a technical statutory fix

XXX-XXX-XX06
Term of Payment for Conservation Management Plan Implementation

If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of between twenty and fifty years. If a plan is associated with a working land conservation covenant, the term of the plan must be the same as the term of the covenant.

XXX-XXX-XX07
Conservation Management Plan Components

At minimum, conservation management plans will include:

- (1) A summary describing how the conservation management plan meets OAHF's purpose;
- (2) Contact and location information for the operator agricultural owner or operator;
- (3) Relevant background and context;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural owner(s) or operator(s);
- (6) Resource analysis and identification of resource and management concerns;
- (7) Alternative identification and selection;
- (8) The implementation plan, including a budget; ~~and~~
- (9) The conservation, social and economic outcomes of the plan once implemented;
- (10) How the conservation management plan will be evaluated and adaptively managed;
and-
- (11) The term of the plan.

XXX-XXX-XX08
Evaluation Criteria

To be determined by commission

XXX-XXX-XX09

Conservation Management Plan Technical Review and Funding Process

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XX08.
- (3) The commission may use technical committees to evaluate Conservation Management Plan grant applications.
- (4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission.
- (5) The commission may rank projects and shall provide funding recommendations to OWEB's Board.
- (6) The board may fund a grant application in whole or in part.

XXX-XXX-XX10

Grant Agreement Conditions

- (1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the commission at least annual reports from the agricultural owner or operator regarding plan implementation.
- (2) The grantee must submit a report at completion of the project describing the work completed. Monitoring must be completed as described in OAR XXX-XXX-XXXX.
- (3) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed modifications amendments are submitted and approved by the Director prior to the beginning of any work proposed in the modificationamendment.
- (4) The director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

~~(4)~~(5) All changes to the conservation management plan must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.

Comment [ML2]: NELLIE/LIZ – I had a note that this should be 'moved separately'. I think it meant to move it here, but wanted to check with you guys

XXX-XXX-XX11

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (2) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.

~~(3)(1) All changes must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.~~

~~(4)(3)~~ To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.

~~(5)(4)~~ The agricultural owner or operator must contact the grantee at any time if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:

~~(a) Changes in management or ownership of the property;~~

~~(b) Changes in the grazing/cropping system(s) not identified in the plan. For changes in grazing/cropping systems, the landowner must notify the grantee in advance.~~

~~(c)~~ A natural disaster occurs that will impact implementation of the conservation management plan; or

~~(b) Changes occur in the grazing/cropping system(s) not identified in the plan;~~

~~(c) Changes occur in management or ownership of the property; or~~

(d) Other changes ~~occur~~ that are outside the agricultural owner's or operator's control.

~~(6)(5)~~ The grantee must contact the agricultural owner or operator if changes in science significantly affect the effectiveness of conservation management plan implementation.

~~(7)(6)~~ Modifications may include:

(a) Addition of new conservation practices, measures or conservation benefits;

(b) Changes in practices, measures or benefits based on:

a. changes in science;

~~b. Changes in practices, measures or benefits based on~~ changes to farm property management or ownership;

~~b-c. management changes in~~ grazing/cropping systems; ~~or~~

d. Changes in practices, measures or benefits based on natural disasters; or

~~c-e. Other changes outside the agricultural owner's or operator's control.~~

~~(8) Conservation management plan modifications are not required if both the agricultural owner or operator and the grantee determine the new conservation measures proposed will achieve the same conservation outcomes as identified in the conservation management plan.~~

Comment [ML3]: Reordered so 11(4) and 11(6) match

XXX-XXX-XX12

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) The agricultural owner or operator must meet annually with the grantee and provide a written report of conservation management plan activities completed each year to the grantee on a form approved by the commission. Reports may also include photo points or other methods that appropriately track plan implementation.

- (2) Annual reporting must identify any mutual modifications to the conservation management plan.
- (3) ~~Notwithstanding (4), s~~Site visits by the grantee to the property must occur ~~at least~~ every ~~three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the components of the conservation management plan.~~
- (4) The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols ~~and site visit intervals~~ to identify trends in habitat, water quality or other natural resource values, ~~or if a modification of the conservation management plan results in specific monitoring or site visit needs.~~ Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee. The commission may provide guidance for consistent monitoring protocols.
- (5) ~~If funding is provided for conservation management plan implementation,~~ the commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting.
- (6) The commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

XXX-XXX-XX13

Grant Reporting Requirements

Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

Comment [ML4]: Possibly move to the OAHF administrative rules that apply to all of the various programs and leave it out of this specific division.

XXX-XXX-XX14

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Comment [NM5]: Might also belong in OAHF Administrative Rules section

Draft Conservation Management Plan Evaluation Criteria Rules

XXX-XXX-XX08

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The extent to which the application ~~proposes to develop~~would result in plans for multiple agricultural owners or operators in an identified area;
- 2) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
 - a) Whether the plan(s) would improve the economic viability of the operation;
 - b) Whether the agricultural owner(s) or operator(s) have a succession plan;
 - c) The cost-benefit of plan implementation; and
 - d) The extent to which implementation of the plan(s) would reduce the potential for fragmentation of working lands.
- 3) The extent to which the plan would protect, maintain or enhance fish or wildlife habitat, improve water quality or support other natural resource values, including:
 - a) Whether the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
 - b) Whether the plan(s) support(s) implementation of state, federal or tribal conservation or recovery plans;
- 4) The extent to which the plan(s) would protect agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;
- 5) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:
 - a) The financial capability of the organization to manage the plan(s) over time;
 - b) Demonstrated relevant expertise to develop and implement plan(s);
- 6) 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;
- 7) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:

Comment [NM1]: So that the application itself need not propose multiple plans, but can be one application as part of a regional strategy

Comment [ML2]: Guidance would include:

- Increased productivity or carrying capacity of the land
- Reduced use of inputs like fertilizer, pesticides, energy use
- Increased management efficiency
- Ensuring water rights sufficient to support farming on the land

Comment [ML3]: Guidance would include:

- Increased soil health
- Increased carbon sequestration
- Increased water quality

Comment [ML4]: Guidance would include:

- Establishment of habitat corridors or blocks
- Presence of listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program

Comment [ML5]: Guidance would include:

- Employer in community
- Hiring underserved populations
- Purchasing or selling locally
- Supplier for local processing
- Testing innovative approaches or technologies

Comment [ML6]: Guidance would include:

- Board balance including landowner members;
- Staff training and years of experience
- Specifically identified staff who will be working with landowners

Comment [ML7]: Guidance would include:

- Long-term impacts of investment;
- Specific duration doesn't matter

Draft Conservation Management Plan Evaluation Criteria Rules

a) Benefits of the plan(s)'s development and implementation on neighbors;

b) Negative impacts of the plan(s)'s implementation on neighbors;

~~b)c)~~ Communication with neighboring landowners to discuss how to mitigate any negative impacts;

~~c)d)~~ The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

Comment [ML8]: Other items for discussion:

- Include working with underserved populations in the TA grants portion of the program rather than here
- Does commission want to reference risk/reward in rule or just as a part of your deliberations?
- Life-cycle of farming – was referenced, not sure how to incorporate

Recommendations of the Oregon Agricultural Heritage Program (OAHP) Work Group to the Oregon Agricultural Heritage Commission Regarding Working Land Conservation Covenants and Easements

Background

During its 2017 session, the Oregon Legislature passed HB 3249: legislation that creates the Oregon Agricultural Heritage Program (OAHP). This legislation was developed with the input of a work group of agricultural and conservation organizations and representatives. The work group's conversations about the ranking of working land conservation covenants ("covenants"), working land conservation easements ("easements"), and conservation management plans resulted in the 6 statutory criteria listed in Section 6(3) of HB 3249.

The work group re-convened after HB 3249 was passed to write this document, which gives context to those criteria and offers recommendations for how those criteria could be defined in rules. The following recommendations are provided with the intent of aiding the Oregon Agricultural Heritage Commission ("the Commission") in their decision making on **working land conservation covenants and easements**. A letter containing the work group's recommendations on conservation management plans was included in the materials of the commission's March 8 meeting.

It is fully understood by the work group that the Commission and ultimately the OWEB Board have complete decision-making authority over OAHP's rules and administration, and that the final decisions may vary from what is recommended here.

1. Match Recommendation

The work group offers these general recommendations for the Commission's consideration:

- Requiring a minimum match contribution of 25% of the total project costs for OAHP grants for working land conservation covenants and easements.
- Allowing eligible match contributions for a covenant or easement grant to be entirely in-kind, which could include landowner donation of easement value.
- Defining project costs to include both purchase price and acquisition-related non-purchase costs for the purpose of calculating match. Non-purchase costs include staff time spent negotiating, conducting an appraisal and other due diligence, and attorney fees.
- Not ranking projects on the amount or type of match, since it is already required.
- Ensuring that the total combined covenant and easement payments from OAHP for a property never exceed the appraised value of a permanent easement. The purpose of this provision was to prevent "double-dipping" by paying more than the value of an easement through multiple agreements (potentially including one or more covenants

and an easement), adjusted to present day value. Some work group members thought the concept may not be appropriate unless covenants are structured as “lease-to-own” arrangements that predictably lead to permanent easements. Their thought was, without such lease-to-own arrangements, expired termed covenants would have no effect on the present-day value of a future perpetual easement on the same property. In that case, “double dipping” only exists where a covenant and an easement overlap in time, and the approach may dis-incentivize a landowner to convey an easement after a covenant’s term had ended.

2. Recommendations for Ranking Criteria

The work group recommends limiting the ranking criteria to the 6 outlined in statute, and potentially clarifying these criteria in rules and guidance.

For most of the 6 statutory ranking criteria, the work group recommends refining them with qualitative sub-criteria that applicants may describe using factors that are applicable to the project. If this approach is used, these factors would be optional and customizable to each project, giving applicants flexibility in their narrative response. The work group felt that this flexible approach would best reflect the diversity of Oregon agriculture, landscapes, and landowners. The work group recommends locating these factors in rule, rather than only in guidance or the application, because rules receive public comment and are less likely to change over time.

3. Recommendations for Each Ranking Criterion

Statutory Criterion a

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

The work group suggests that the Commission consider the project's ability to address or ameliorate the threats of development, fragmentation, or conversion from agricultural to non-agricultural uses. In their narrative responses, applicants could discuss various factors including but not limited to: the property’s attributes (important soils, connectivity to other agricultural land, zoning, etc.); the county’s agricultural landscape (data from agricultural census, population trends, etc.); or other threats to the property remaining in agriculture.

Statutory Criterion 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

The work group suggests that the Commission consider:

- Whether the project is in alignment with federal, state, tribal and/or county natural resource/conservation plans or strategies.

- Whether the applicant is compliant with, or will be implementing actions to meet or exceed, applicable point source and non-point source laws and regulations including applicable requirements such as USDA's highly erodible/wetland determinations, Oregon Agricultural Water Quality Act, Confined Animal Feeding Operation permits, etc.
- The extent to which the project protects, maintains, or enhances fish and wildlife habitat, water quality, and other natural resource values, which could be demonstrated through factors including but not limited to the applicant's plans to maintain or restore habitat; the size of habitat and its connectivity to adjacent habitat corridors; conservation practices to improve water quality or reduce water use; or other benefits to fish, wildlife or water quality.

Statutory Criterion c

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

The work group suggests that the Commission consider:

- How the project aligns with federal, state, tribal and/or county natural resource/conservation plans or strategies that protect agricultural lands, where applicable.
- The community benefits that would result from the project, including but not limited to those related to jobs and agricultural land use, such as how the farm contributes to the local economy, the farm's long-term viability, sufficient water rights, or other relevant information.

Statutory Criterion d

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

The work group suggests that the Commission consider:

- If the organization has the legal authority to purchase and hold covenants or easements, where applicable (perhaps as an eligibility criterion).
- Whether the applicant or organization holding a working land conservation covenant or easement has language in its mission statement, vision statement, strategic plan, and/or organizational goals indicating its dedication to protecting agricultural land and related conservation values by limiting conversion of agricultural land to nonagricultural uses.

- Whether the applicant organization has the capacity to acquire, manage, monitor, enforce, and steward the project. This could include information about the number of working land conservation covenants or easements the organization has; their staff or other capacity; how they fund long-term monitoring and enforcement; or other organizational capacity.

Statutory Criterion 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

The work group suggests that the Commission consider:

- Whether, all other ranking considerations being equal, the ranking of covenants and easements, with or without associated conservation management plans (CMP), should be in this order:
 1. Easement with a CMP,
 2. Covenant with a CMP; covenants with longer terms ranking higher,
 3. Easement without a CMP,
 4. Covenant without a CMP; covenants with longer terms ranking higher,
- Whether the project leverages or builds off of prior public, private, or voluntary investments in the property, which may be demonstrated through factors including but not limited to participation in soil, water, habitat, or other natural resource conservation programs.

Statutory Criterion f

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

The work group suggests that the Commission ask applicants:

1. What impacts (positive and negative) the proposed conservation project is likely to have on project neighbors. Examples of impacts could include changes to hydrology, e.g. too much (flooding), or too little (diversion or reduced flows), and whether these changes may also lead to changing wildlife impacts; or increased weed or other pest pressures.
2. The Commission should also ask applicants to share the extent of their interaction with neighbors regarding these impacts, and what will be done to mitigate any negative impacts



Issue Brief: State Conservation Easement Program Eligibility Requirements, Evaluation Criteria, and Easement Requirements

Background

There is a wide variation in state grant programs to preserve working lands through the use of conservation easements, including eligibility requirements, ranking criteria and easement requirements. All of the state programs investigated herein share a common goal of preventing the loss of farm and ranch land through conversion to non-agricultural uses. This is accomplished through acquisition of some or all of the development rights on the farm or ranch and in some states placing additional restrictions on things like subdivision, area of impervious surfaces and building envelopes, and retention of water rights. In addition to preventing the loss of agricultural lands, some states also have goals regarding conservation of natural resources such as fish and wildlife habitat and water quality. The states discussed in this paper were selected to illustrate a variety of approaches to working land preservation.

Minimum requirements to apply for a working land conservation easement

The legislation creating the Oregon Agricultural Heritage Program (OAHP), HB 3249, states that the purpose of a conservation or covenant is 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.” Easements or covenants must be for working land, defined 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,” leaving the decision to the OAH Commission whether and how to define the terms farming, ranching, and eligible lands and whether to designate permitted or prohibited activities on those lands.

California

The goals of the [California Farmland Conservancy Program*](#) are to protect farms and ranches from non-farm and non-ranch land uses and to encourage long-term conservation of productive agricultural lands. To be eligible, the proposed parcel must be viable for future agricultural production (size, markets, infrastructure), likely to be converted to non-agricultural uses in the near future, and in a city or county with a long-term agricultural conservation plan.

Delaware

The goal of the [Delaware Agricultural Lands Preservation Program*](#) is to preserve farmland through the acquisition of development rights. The program, established in 1991, allows landowners to voluntarily preserve their farms through a 2-phase process. The first phase, which does not include any payment to the landowner, is a 10-year, voluntary agreement where landowners agree to continue to use their land for agricultural purposes only. This agreement runs with the land and is effectively a term or temporary conservation easement, described as a “covenant” in OAHP. In phase 2, the landowner is paid to sell their farm’s

development rights. To be eligible, farms must have entered into the 10-year agreement and must receive a score of 170 or greater in the [Land Evaluation and Site Assessment \(LESA\)*](#) which addresses many factors associated with long term agricultural viability.¹

Pennsylvania

The [Pennsylvania Agricultural Conservation Easement Purchase Program's*](#) goals are to “strengthen Pennsylvania’s agricultural economy and protect prime farmland.” To be eligible for grants, farms must be in a county with a certified farmland protection program, exceed a minimum size, have a minimum soil capability and have an approved conservation plan.

Texas

The [Texas Farm and Ranch Lands Conservation Program*](#) was established by the Texas Legislature in 2005 “for the purpose of conserving working lands with high values for water, fish and wildlife, and agricultural production, especially lands at risk of development.” Funds are awarded to “assist with the acquisition of conservation easements on working lands that conserve important natural resources.” To be eligible for a grant, a farm or ranch must meet the requirements for a property tax reduction—a requirement that even very small farms can meet. However, the program targets large “heritage farms and ranches” that have been owned by multiple family generations and are likely to be so in the future.

Washington State

The goal of the [Washington State Farmland Preservation Program*](#) is to “buy development rights on farmlands to ensure the lands remain available for farming in the future.” Grant

¹ **Land Evaluation and Site Assessment (LESA)** is an analytical tool developed by Natural Resource Conservation Service (NRCS) to facilitate identification and protection of important agricultural land and assist in implementing farmland protection policies. The tool is designed to be tailored to local or state-wide needs and provides a systematic and transparent method to rate and rank sites for agricultural importance.

The land evaluation part of LESA includes one or more factors addressing soil quality, including soil productivity, soil potential and land capability.

The site assessment (SA) portion of LESA addresses non-soil conditions:

- SA-1 measures **limitations on farm productivity** such as the size and shape of the site, availability of support services, stewardship, environmental limitations, and availability of water;
- SA-2 measures **development pressure or likelihood of land conversion** and addresses factors such as zoning and nearby urban development; and
- SA-3 measures **other public values** such as historic, cultural, environmental, and scenic.

The factors to be included in the assessment, ideally developed with stakeholder input at a local or state level, are each assigned a range of points (for example 0-10) and then assigned weights (for example, how much to weight habitat value compared to agricultural potential) and the results combined to produce a final score.

* The electronic version of this document contains a link to this item.

Oregon Agricultural Heritage Commission: State Conservation Easement Programs

recipients also can use grant funds to develop stewardship plans and restore ecological functions of the preserved farmland. To be eligible for a grant, a farm or ranch must qualify for a property tax reduction under the state's Open Space Tax Act, which defines what is meant by farmland and addresses minimum acreage and gross income.

Grant Evaluation and Ranking Criteria

Oregon Agricultural Heritage Program

Oregon evaluation criteria from Section 6(3) of HB 3249 are:

- a) Protection, maintenance or enhancement of farming/ranching;
- b) Protection, maintenance or enhancement of natural resource values;
- c) Protection of agricultural outcomes, benefits or other investment gains;
- d) Capacity of the organization to accept a covenant or easement and the competence of the organization;
- e) Ability to leverage grant moneys with other funding sources and the duration and extent of the covenant or easement;
- f) Impacts on neighboring lands;

HB3249 allows the OAH Commission to develop additional criteria.

California Farmland Conservancy Program

- Quality of the land, including productivity, land capability
- Meets multiple natural resource conservation objectives, including habitat and scenic open space
- City or county long-term commitment to agricultural land conservation
- Technical capability of applicant
- Cost
- Match

Delaware Agricultural Lands Preservation Program

Ranking is determined only by the percent discount a landowner offers from the appraised value of the conservation easement (sometimes called a "reverse auction"). There are no other ranking criteria.

Pennsylvania Agricultural Conservation Easement Purchase Program

Ranking systems are adopted by counties using LESA, including the evaluation of:

- Soils
- Likelihood of conversion
- Clustering potential, including proximity to other eased properties and protected land
- Stewardship

Texas Farm and Ranch Lands Conservation Program

- Threat
- Value (cost, cost effectiveness, additional sources of funding)
- Watershed value

Oregon Agricultural Heritage Commission: State Conservation Easement Programs

- Fish and wildlife value
- Contribution to a conservation landscape
- Easement terms (easement is perpetual, prevents fragmentation, and encourages stewardship)
- Holder's accreditation and stability

Washington State Farmland Preservation Program

- Agricultural viability (soil, suitability, water)
- Threat of conversion
- Access to markets
- On-site infrastructure
- Building envelope
- Stewardship practices in place
- Benefits to the community
- Match
- Easement duration (perpetual or term); term easements score so low that they are not competitive

Required provisions of the conservation easement

Oregon Agricultural Heritage Program

- "Ensures the continued use of the land for agricultural purposes"
- "Maintains or enhances fish or wildlife habitat, improving water quality or supporting other natural resource values on the land"
- Details to be established by the OAH Commission

California Farmland Conservancy Program

- Prohibits activities that would diminish productivity
- Prohibits activities that would diminish scenic, historic, and natural resource values
- No subdivision

Delaware Agricultural Lands Preservation Program

- Only addresses acquisition of development rights
- Subdivision and additional residential units are allowed if farmed

Pennsylvania Agricultural Conservation Easement Purchase Program

- Requires that all agricultural practices be conducted in accordance with an approved conservation plan
- Must be used solely for agricultural production
- Limits buildings and envelopes
- May allow subdivision if it does not harm the economic viability for agricultural production
- May allow one additional residential structure for the landowner or immediate family member

Oregon Agricultural Heritage Commission: State Conservation Easement Programs

Texas Farm and Ranch Lands Conservation Program

Most grants are awarded to land trusts that develop the conservation easement. Examples include:

- No subdivision
- Limits to building envelopes and impervious surfaces
- Must remain available for agriculture, livestock
- Requirement to develop and use a wildlife and range management plan

Washington State Farmland Preservation Program

- Number of buildings and area of building envelopes
- Impervious surface area
- Subdivision and additional residential units are allowed if farmed

Oregon HB 3249 Working Land Conservation Covenants and Easements Grants

Minimum Requirements

Land is actively used for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching.

+?

Evaluation Criteria

- Protection, maintenance or enhancement of farming/ranching
- Protection, maintenance or enhancement of natural resource values
- Protection of agricultural outcomes, benefits or other investment gains
- Capacity of the organization to accept a covenant or easement and the competence of the organization
- Ability to leverage grant moneys with other funding sources and the duration and extent of the covenant or easement
- Impacts on neighboring lands
- +?

Eligible Costs

Acquisition and conservation

Easement

- “Ensures the continued use of the land for agricultural purposes”
- “Maintains or enhances fish or wildlife habitat, improving water quality or supporting other natural resource values on the land”
- Details to be established by the OAH Commission

California Farmland Conservancy Program

Minimum Requirements

- Viable for future agricultural production (size, markets, infrastructure)
- Likely to be converted to non-agricultural uses in the near future
- In a city or county with a long-term agricultural conservation plan

Evaluation Criteria

- Quality of the land, including productivity, land capability
- Meets multiple natural resource conservation objectives, including habitat and scenic open space
- City or county long-term commitment to agricultural land conservation
- Technical capability of applicant
- Cost
- Match

Oregon Agricultural Heritage Commission: State Conservation Easement Programs

Eligible Costs

Acquisition and conservation

Easement

- Prohibits activities that would diminish productivity
- Prohibits activities that would diminish scenic, historic, and natural resource values
- No subdivision

Delaware Agricultural Lands Preservation Program

Minimum Requirements

- Enrollment in a 10-year agreement to maintain their farm (for no \$)
- Land Evaluation and Site Assessment (LESA) score of ≥ 170 (long term viability)
- minimum acreage and annual sales

Evaluation Criteria

% discount from appraised value of the conservation easement.

Eligible Costs

Acquisition only

Easement

Only addresses acquisition of development rights; subdivision allowed if farmed.

Pennsylvania Agricultural Conservation Easement Purchase Program

Minimum Requirements

- Minimum size
- Minimum soil capability
- In a county with a certified program
- Approved conservation plan

Evaluation Criteria

Ranking systems are adopted by county. Ranked using the Land Evaluation and Site Assessment (LESA):

- Soils
- Likelihood of conversion
- Clustering potential, including proximity to other eased properties
- Stewardship

Eligible Costs

Acquisition only

Oregon Agricultural Heritage Commission: State Conservation Easement Programs

Easement

- Requires that all agricultural practices be conducted in accordance with an approved conservation plan
- Must be used solely for agricultural production
- Limits buildings and envelopes
- May allow subdivision if it does not harm the economic viability for agricultural production
- May allow one additional residential structure for the landowner or immediate family member

Texas Farm and Ranch Lands Conservation Program

Minimum Requirements

Land is under ad valorem tax valuation for farming, ranching, timber or conservation.

Evaluation Criteria

- Threat
- Value (cost, cost effectiveness, additional sources of funding)
- Watershed value
- Fish and wildlife value
- Contribution to a conservation landscape
- Easement terms (easement is perpetual, prevents fragmentation, and encourages stewardship)
- Holder's accreditation and stability

Eligible Costs

Acquisition only

Easement

Unique to holder: EX. No subdivision; limits building areas, impervious surfaces; remain available for ag and livestock; requires creation and use of a wildlife and range management plan.

Washington State Farmland Preservation Program

Minimum Requirements

Qualifies as a farm under the Open Space Tax Act (minimum acreage, gross income).

Evaluation Criteria

- Agricultural viability (soil, suitability, water)
- Threat of conversion
- Access to markets
- On-site infrastructure
- Building envelope
- Stewardship practices in place
- Benefits to the community
- Match
- Easement duration (perpetual or term); term easements score so low that they are not competitive

Eligible Costs

Acquisition, stewardship plan development and restoration.

Restoration costs may not be more than half of the total acquisition costs, including match toward acquisition.

Easement

- Number of buildings
- Building envelopes
- Area of impervious surfaces
- Subdivision allowed if farmed



Issue Brief: State Conservation Easement Program Eligibility Requirements, Evaluation Criteria and Easement Requirements

State	Minimum Requirements	Evaluation Criteria	Eligible Costs	Easement
Oregon HB 3249 Working Land Conservation Covenants and Easements Grants	Land is actively used for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching. +?	<ul style="list-style-type: none"> • Protection, maintenance or enhancement of farming/ranching • Protection, maintenance or enhancement of natural resource values • Protection of agricultural outcomes, benefits or other investment gains • Capacity of the organization to accept a covenant or easement and the competence of the organization • Ability to leverage grant moneys with other funding sources and the duration and extent of the covenant or easement • Impacts on neighboring lands • +? 	Acquisition and conservation.	<ul style="list-style-type: none"> • “Ensures the continued use of the land for agricultural purposes” • “Maintains or enhances fish or wildlife habitat, improving water quality or supporting other natural resource values on the land” • Details to be established by the OAH Commission
California Farmland Conservancy Program	<ul style="list-style-type: none"> • Viable for future agricultural production (size, markets, infrastructure) • Likely to be converted to non-agricultural uses in the near future • In a city or county with a long-term agricultural 	<ul style="list-style-type: none"> • Quality of the land, including productivity, land capability • Meets multiple natural resource conservation objectives, including habitat and scenic open space • City or county long-term commitment to agricultural land conservation • Technical capability of applicant • Cost 	Acquisition and conservation.	<ul style="list-style-type: none"> • Prohibits activities that would diminish productivity • Prohibits activities that would diminish scenic, historic, and natural resource values • No subdivision

OAHF Issue Brief: State Conservation Easement Program Eligibility Requirements, Evaluation Criteria and Easement Requirements

State	Minimum Requirements	Evaluation Criteria	Eligible Costs	Easement
	<p>conservation plan</p>	<ul style="list-style-type: none"> • Match 		
<p>Delaware Agricultural Lands Preservation Program</p>	<ul style="list-style-type: none"> • Enrollment in a 10-year agreement to maintain their farm (for no \$) • Land Evaluation and Site Assessment (LESA) score of ≥ 170 (long term viability) • minimum acreage and annual sales 	<p>% discount from appraised value of the conservation easement.</p>	<p>Acquisition only</p>	<p>Only addresses acquisition of development rights; subdivision allowed if farmed.</p>
<p>Pennsylvania Agricultural Conservation Easement Purchase Program</p>	<ul style="list-style-type: none"> • Minimum size • Minimum soil capability • In a county with a certified program • Approved conservation plan 	<p>Ranking systems are adopted by county. Ranked using the Land Evaluation and Site Assessment (LESA):</p> <ul style="list-style-type: none"> • Soils • Likelihood of conversion • Clustering potential, including proximity to other eased properties • Stewardship 	<p>Acquisition only</p>	<ul style="list-style-type: none"> • Requires that all agricultural practices be conducted in accordance with an approved conservation plan • Must be used solely for agricultural production • Limits buildings and envelopes • May allow subdivision if it does not harm the

OAHP Issue Brief: State Conservation Easement Program Eligibility Requirements, Evaluation Criteria and Easement Requirements

State	Minimum Requirements	Evaluation Criteria	Eligible Costs	Easement
				economic viability for agricultural production • May allow one additional residential structure for the landowner or immediate family member
Texas Farm and Ranch Lands Conservation Program	Land is under ad valorem tax valuation for farming, ranching, timber or conservation.	<ul style="list-style-type: none"> • Threat • Value (cost, cost effectiveness, additional sources of funding) • Watershed value • Fish and wildlife value • Contribution to a conservation landscape • Easement terms (easement is perpetual, prevents fragmentation, and encourages stewardship) • Holder’s accreditation and stability 	Acquisition only	Unique to holder: EX. No subdivision; limits building areas, impervious surfaces; remain available for ag and livestock; requires creation and use of a wildlife and range management plan.
Washington State Farmland Preservation Program	Qualifies as a farm under the Open Space Tax Act (minimum acreage, gross income).	<ul style="list-style-type: none"> • Agricultural viability (soil, suitability, water) • Threat of conversion • Access to markets • On-site infrastructure • Building envelope • Stewardship practices in place • Benefits to the community • Match • Easement duration (perpetual or term); term easements score so low 	Acquisition, stewardship plan development and restoration. Restoration costs may not be more than half of the total	<ul style="list-style-type: none"> • Number of buildings • Building envelopes • Area of impervious surfaces • Subdivision allowed if farmed

OAHP Issue Brief: State Conservation Easement Program Eligibility Requirements, Evaluation Criteria and Easement Requirements

State	Minimum Requirements	Evaluation Criteria	Eligible Costs	Easement
		that they are not competitive	acquisition costs, including match toward acquisition.	



Issue Brief: Appraisal of Working Land Conservation Easements in Oregon

Associated with every parcel of land is what is often called a “bundle” of property rights. These include the right of the landowner to use the land; sell, lease or bequeath it; control access; and to develop it. A **working land conservation easement**—a deed restriction that landowners voluntarily place on their property to protect resources such as productive farm or ranch land, ground and surface water, wildlife habitat, historic or cultural sites and scenic views—conveys some of the property rights to the easement holder, for example to a nonprofit land trust or soil and water conservation district. One example, intended to prevent loss of agricultural land to non-agricultural uses, separates the right to convert the property to more intensive uses (“**development rights**”) from the other property rights through the landowner selling or gifting the rights to the easement holder. The easement would limit or prohibit subdivision and prohibit non-agricultural uses.¹

Working land conservation easements can address more than development rights. For example, many working land easements also restrict the number and location of buildings, size of building envelopes, the area of impervious surfaces, and areas where farming is or is not allowed. In addition to prohibited uses, easements may also specify **permitted uses**, such as the ability to farm so long as it does not negatively affect conservation farm infrastructure (barns, storage facilities), farming in specific areas, farming so as not to negatively impact conservation values, conservation practices, and one or more residential structures. A conservation easement can also include actions required of the landowner, called **affirmative obligations**. Common examples include the requirement to continue agricultural activities (potentially in accordance with an approved conservation plan), to develop and implement a conservation plan, and to farm in a way that retains organic certification.

Conservation easements are typically appraised using the “**before and after**” method. First, the fair market value of the property is determined based on highest and best use. Then the value of the property without the rights conveyed in the easement is determined. The difference between the two appraisals is the value of the property rights conveyed in the easement. Two common appraisal standards used in the United States are the Uniform Standards for Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), usually referred to as the “Yellow Book.” The Yellow Book standards are more rigorous and are generally required by federal agencies such as the Natural Resource Conservation Service when federal dollars are used for the acquisition of property rights.

¹ This issue brief is based on the report *Appraisals for Working Land Easements: Considerations in Oregon*, by Tom Morgan (2017) found at <https://static1.squarespace.com/static/55f645a6e4b0818e9744a34f/t/5a0b27dee4966b79a740644c/1510680551957/Appraisals+for+working+land+easements+in+Oregon+-+final.pdf>

The value of the property rights conveyed in an easement is highly dependent on a number of factors, especially the highest and best use of the property. For example, if the highest and best use of a hypothetical 40-acre farm is for agriculture and the zoning requires a parcel size to be 40 acres or greater, the value of the easement could be fairly small. However, if the highest and best use is residential development in quarter-acre lots, the value of an easement that proposes to purchase those development rights could be significant.

Although Oregon's land use program limits the non-farm or forest uses on land outside of Urban Growth Boundaries, it is still possible to place structures and non-farm uses on these working lands. This includes vested Measure 37/49 Home Site Authorizations, accessory or "farm help" dwellings, dwellings on properties where owners meet certain farm income requirements, mining of aggregate, community centers, schools, and more. These property rights, or the legal ability to apply to the county planning department to exercise these property rights, have varying degrees of appraisable value, depending on the possibility and financial feasibility of the use and whether it contributes to the highest value of the property.

In addition to the appraisable property rights listed above, there are other property attributes associated with land that potentially have value to the landowner and the public but do not have accepted appraisal methods to value them. These include historic, cultural and ecological values. For example, setting aside a riparian buffer from crop production (the cost of which can be calculated) also provides ecosystem services such as reducing nutrient, sediment and pesticide transport to the stream and producing shade that reduces water temperature. These ecosystem services have economic value, but in most cases have no accepted way to appraise them.



Oregon Agricultural Heritage Commission

Thursday, April 5, 2018

Materials for Today's Meeting

- ▶ Agenda
- ▶ Minutes
- ▶ Draft Rules for Succession Planning
- ▶ Draft Rules for Conservation Management Plan - everything but ranking
- ▶ Draft Rules for Conservation Management Plan - ranking criteria
- ▶ Recommendation Letter from OAHP Work Group
- ▶ Whitepaper on ranking criteria from other states & table
- ▶ Whitepaper on appraisal of property rights

Succession Planning Rules

Definitions

- ▶ “Agricultural cooperative” - also added to eligible applicants under XX04
- ▶ “Agricultural owner or operator” same as elsewhere in statute
- ▶ “Fragmentation” - the division of a farm or ranch into smaller parcels

Succession Planning Rules

Evaluation Criteria

- ▶ The capacity of the applicant to delivery the proposed program
- ▶ The applicant's background and experience in delivering successful succession planning programs, including both
 - ▶ prior programs funded through this grant program and
 - ▶ projects funded outside this grant program.

Conservation Management Plan Rules

- ▶ **Purpose (XX01)** - from statute's whereas statements
- ▶ **Eligibility (XX03)** - the organization need not *actually* hold easements, but just be eligible to
- ▶ **Term (XX06)** - to be decided after covenant term determined whether there should be limited, permissible term lengths and if so, what they should be

Conservation Management Plan Rules

CMP Components (XX07)

- ▶ Add term
- ▶ Add expected conservation, social, and economic outcomes
- ▶ Short- and long-term conservation, social, and economic goals of the agricultural owner or operator
- ▶ Add budget to implementation plan

Conservation Management Plan Rules

Mutual Modification (XX11): Triggering conditions for notice made consistent with modifications

Monitoring (XX12)

- ▶ Annual meeting and report from agricultural owner or operator with grantee
- ▶ Three years (or fewer if required by other grant) site visits

Conservation Management Plan Ranking

Six statutory criteria - Section 6(3)

1. protect, maintain or enhance *farming or ranching* on working land
2. protect, maintain or enhance fish or wildlife *habitat*, improve *water quality* or support other *natural resource values*
3. protect *agricultural outcomes*, benefits or other investment gains
4. the *capacity* of the organization that filed the application
5. Maximize public benefit with *leveraged funds* and *duration/extent*
6. impacts on owners or operators of *neighboring lands*.

Potentially refine in rules

Conservation Management Plan Ranking Criteria

- 1) The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area;
- 2) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
 - a) Whether the plan(s) would improve the economic viability of the operation;
 - b) Whether the agricultural owner(s) or operator(s) have a succession plan;
 - c) The cost-benefit of plan implementation; and
 - d) The extent to which implementation of the plan(s) would reduce the potential for fragmentation of working lands.

Conservation Management Plan Ranking Criteria

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

a) Whether the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;

b) Whether the plan(s) support(s) implementation of state, federal or tribal conservation or recovery plans;

4) The extent to which the plan(s) would protect agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;

Conservation Management Plan Ranking Criteria

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

a) Whether the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;

b) Whether the plan(s) support(s) implementation of state, federal or tribal conservation or recovery plans;

4) The extent to which the plan(s) would protect agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;

Conservation Management Plan Ranking Criteria

5) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:

a) The financial capability of the organization to manage the plan(s) over time;

b) Demonstrated relevant expertise to develop and implement plan(s);

6) 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;

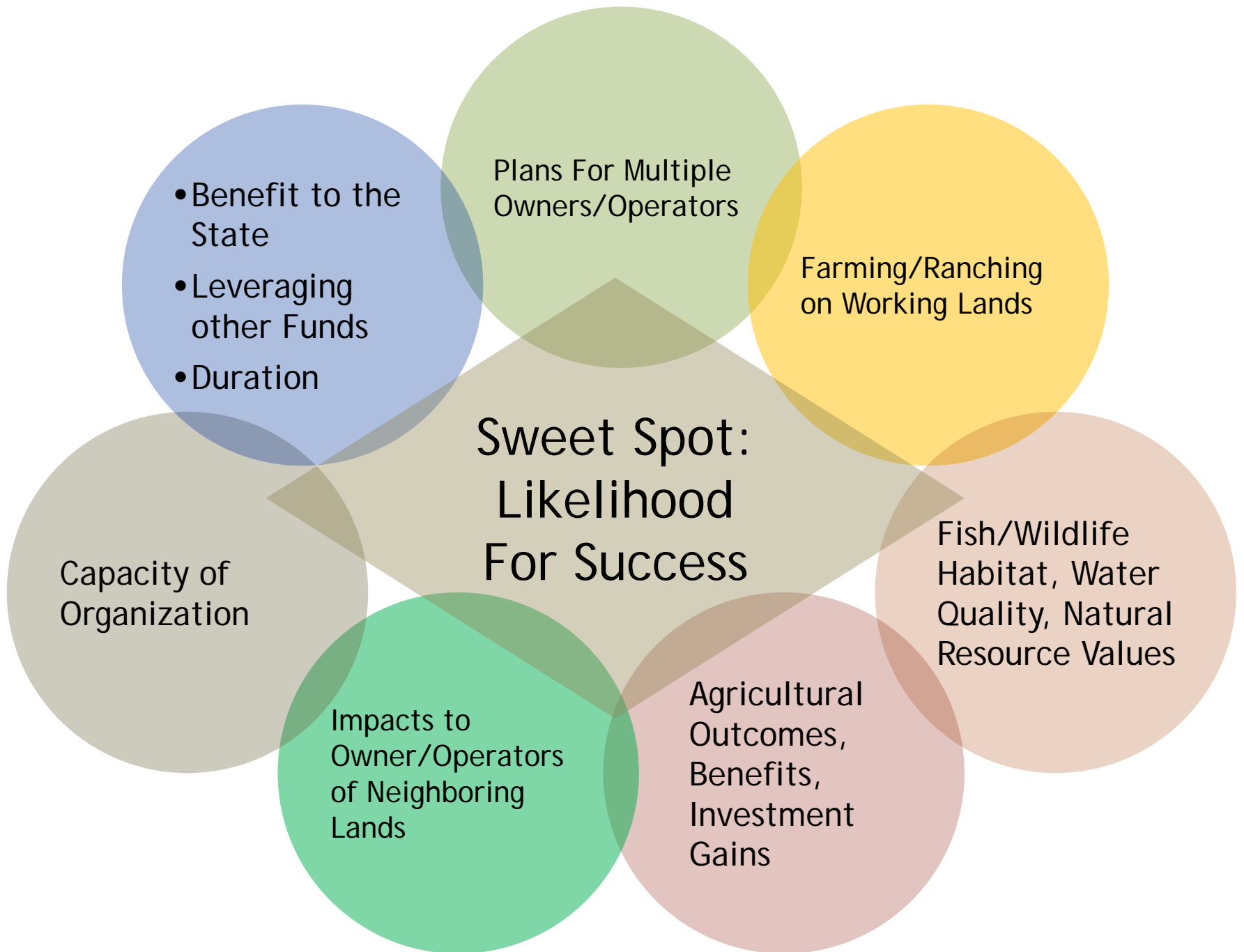
Conservation Management Plan Ranking Criteria

7) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:

a) Benefits of the plan(s)'s development and implementation on neighbors;

b) Negative impacts of the plan(s)'s implementation on neighbors; c) Communication with neighboring landowners to discuss how to mitigate any negative impacts;

d) The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.



Easement/Covenant Technical Committee

- ▶ **Katherine Daniels:** former Farm and Forest Lands Specialist at Department of Land Conservation and Development
- ▶ **Bari Williams:** Easement Program Specialist at NRCS
- ▶ **Kelley Beamer:** Executive Director of the Coalition of Oregon Land Trusts (COLT) and OAHP work group member
- ▶ **Nelson Mathews:** Trust for Public Lands
- ▶ **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm

Easement Ranking Criteria and Threats to Agricultural Land

Katherine Daniels

April 5, 2018

Primary Threats to Agricultural Land

- ▶ UGB Expansions
 - ▶ Block path of growth in most productive direction
- ▶ Conflicting Non-Farm Uses
 - ▶ Monetize aggregate M37, M49, and non-farm dwellings
- ▶ Fragmentation/Land Divisions
 - ▶ Prioritize larger properties

Ranking Criteria Recommendations

- ▶ More Specific or Measurable = More Transparent
 - ▶ Look to NRCS ACEP and East Multnomah County SWCD criteria
 - ▶ Priority easement acquisition areas
- ▶ Eligibility Criteria
 - ▶ Only outside UGBs and urban reserves
- ▶ Verify Applicant Information

Ranking Criteria Recommendations (cont.)

▶ Additional Criteria

- ▶ Minimum parcel size - at least 2x the mls
- ▶ Minimum proportion of income from agriculture
- ▶ Contributes significantly to local, regional, or state economy
- ▶ Provides significant support to local or regional agricultural infrastructure

▶ Easement Restrictions

- ▶ Farm-related uses only; no land divisions
- ▶ No transfer of water rights

Balance Agricultural Land and Other Natural Resource Values

- ▶ Require Alignment of Projects with State and Local Land Use Plans
- ▶ Rank Easements without CMPs at least as high as covenants with CMPs

Easement Ranking Criteria and Threats to Agricultural Land

Katherine Daniels April 5, 2018

Primary Threats to Agricultural Land

- UGB Expansions

- Block path of growth in most productive direction

- Conflicting Non-farm Uses

- Monetize aggregate mining; M37, M49 & non-farm dwellings

- Fragmentation/Land Divisions

- Prioritize larger properties

Ranking Criteria Recommendations

- More Specific or Measurable = More Transparent
 - Look to NRCS ACEP & East Multnomah County SWCD criteria
 - Priority easement acquisition areas
- Eligibility Criteria
 - Only outside UGBs & urban reserves
- Verify Applicant Information

Ranking Criteria Recommendations

(cont.)

- **Additional Criteria**

- Minimum parcel size – at least 2x the mls
- Minimum proportion of income from agriculture
- Contributes significantly to local, regional or state economy
- Provides significant support to local or regional agricultural infrastructure

- **Easement Restrictions**

- Farm-related uses only; no land divisions
- No transfer of water rights

Balance Agricultural Land & Other Natural Resource Values

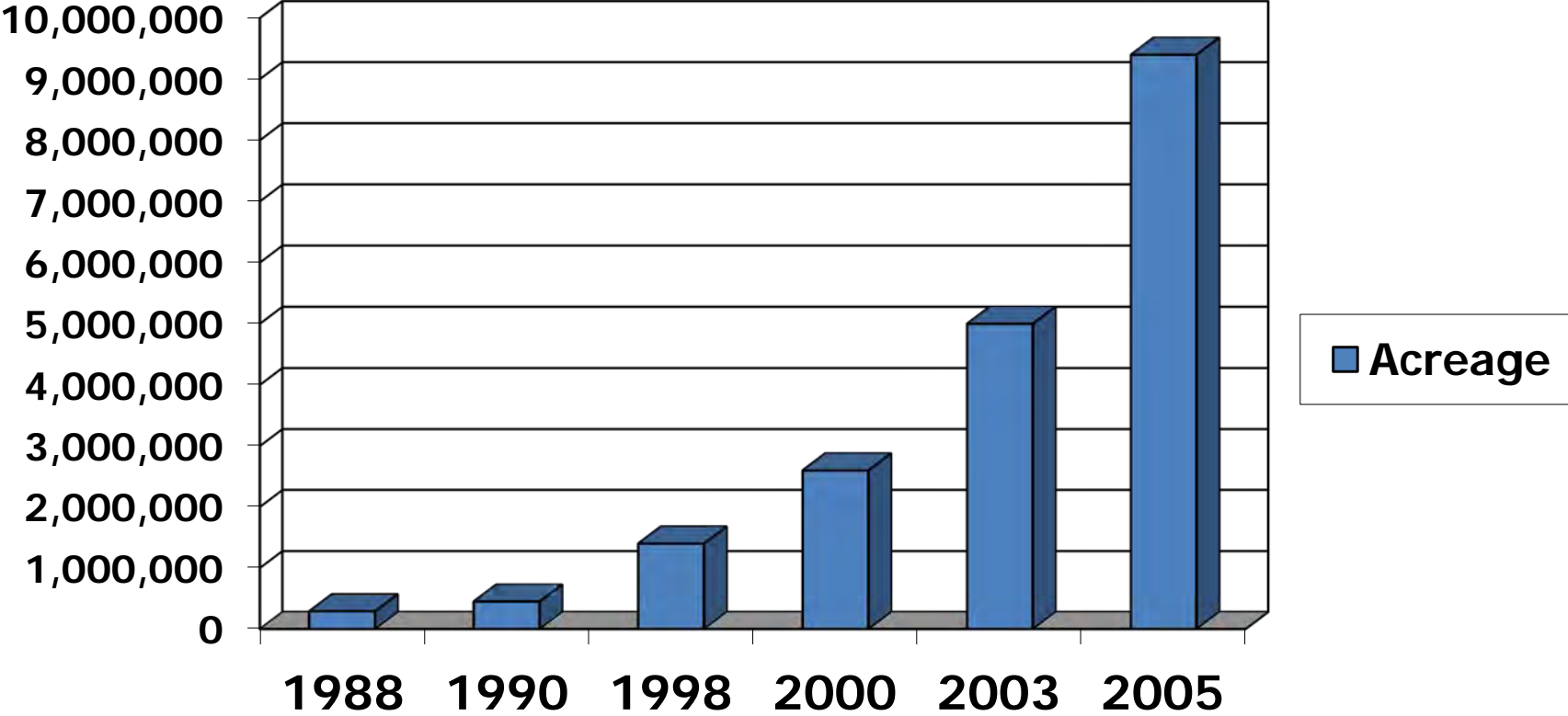
- Require Alignment of Projects with State & Local Land Use Plans
- Rank Easements without CMPs at least as high as covenants with CMPs

History of Conservation Easements

- Developed in the late 1800s
- Limited use until 1950s
- 16 states had statutes enabling private acquisition and retention of conservation easements by mid 1970s
- In 1980, Congress enacted I.R.C. § 170(h)
 - Deductions for donated conservation easements granted in perpetuity to qualified charitable organizations
- Pension Protection Act of 2006 - expanded deduction limit and timeline for reporting the deduction



Growth in Number of Easements Nationwide



The Basics

What is a Conservation Easement (CE)?

- A voluntary legal agreement that restricts uses allowed on property in order to protect land's conservation values
- Granted in perpetuity
- Requires a third party "Holder" – typically a land trust or governmental agency

The Basics

What Conservation Easements do:

- Permanently protect land's conservation values
 - Natural resources
 - Agricultural uses
- Limit uses allowed on property
- Partnership between CE holder & landowner
- May provide income or tax savings to landowners

How They Protect Land

- Restrict intensity of use or development of land
- Give holder the right to enforce restrictions
- Flexible: can be drafted to accomplish holder and landowner goals

Why Grant a Conservation Easement?

- Leaves property in private ownership
- Income and estate tax benefits
- Flexible
- Permanent

Fee vs. Easement

Financial Benefits

- Sale of CE = cash or land
- Donation of CE = tax savings
- Tax credit in some states

“Qualified” Organization- ORS 271.715

- a) **Indian tribe**
- b) **charitable corporation-** purposes include protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest.....
- c) **The state, any county, metropolitan service district, soil and water conservation district, city or park and recreation district** or a county service district established under ORS 451.410 to 451.610



What Are the Grantee's Responsibilities?

- Enforcing the restrictions
- Monitoring the property

OAHP Ranking criteria section 6 (3)

a. Keep in production

- Prevent development, fragmentation, conversion

b. Fish and wildlife habitat- protect, maintain, enhance

- aligns with state, federal, tribal plans
- supports good management- operating in compliance with state and federal laws
- fish and wildlife habitat

c. Protects agricultural outcomes and investment gains

- aligns with plans to protect agricultural outcomes
- supports local economy, is viable long-term

d. Capacity of organization

- has legal authority to hold an easement (statute)
- has language in mission statement/plan
- capacity: staff, demonstrated success, board

e. Investment is maximized based on leveraging other \$

- biggest bang for buck

f. Impact neighbors

- demonstrate outreach to neighboring landowners



Land Trusts Protecting Working Lands



Southern Oregon Land Conservancy



Southern Oregon

LAND
CONSERVANCY

“Our Conservation Plan is driven by two key goals: (1) **to conserve areas of high agricultural**, ecological, and community importance, and (2) to conserve lands in key locations across the region.”- 2012-2020 Conservation Plan

Focus on suitability of soils: Land Capability Classes I-IV remaining in Josephine and Jackson counties



C2 Ranch Cattle Ranch, Jackson County





Wild Rivers Land Trust

*Protecting Lands that Enrich our Lives—
our Heritage Forests, Farms, Ranches*



Wild Rivers Land Trust Conservation Strategy

1. Headwater Lands Projects

Securing the refuge: Protecting our best examples of watershed health.

2. Working Lands Projects

Defending our heritage forests, ranches, and family farms.

3. Community Lands Projects

Heightening awareness of our natural heritage.





Wallowa Land Trust

THE
CONSERVATION FUND



ORT

OREGON RANGELAND TRUST



The Audacity of Perpetuity



To Ease or Not to Ease...

Organizational:

- Does the easement **advance the organization's or funder's mission** and goals?
- Does the organization have staff and/or volunteer capacity to monitor and enforce the easement?
- How will ongoing easement responsibilities be funded?





Oregon Agricultural Heritage Commission Meeting Agenda

Thursday, April 26, 2018

Room 1868

152 NW 4th Street

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:30 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted at any item before the commission meeting. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Kraemer will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the April 5, 2018 meeting will be presented for approval. *Action item.*

Conservation Management Plan (CMP) (approximately 8:15 a.m.)

OAHP Coordinator Nellie McAdams will present revisions to draft rules resulting from the commission's discussion at its April 5, 2018 meeting.

Conservation Management Plan (CMP) Ranking Criteria (approximately 8:25 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its April 5, 2018 meeting.

Easements and Covenants Ranking Criteria (approximately 9:30 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its April 5, 2018 meeting.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

Easements and Covenants (approximately 12:30 p.m. to 3:15 p.m.)

OWEB staff will introduce components of easement and covenants, and members of the Context and Easement/Covenant Technical Committees will present to the commission and receive questions from the commission.

Context Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)

Easement/Covenant Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

For the remainder of the afternoon, commission members will discuss components of easements and covenants to address in rules.

Summary of Discussion, Location in the Process, and Next Meeting (3:15 p.m. to 3:30 p.m.)

OAHC Facilitator Liz Redon will help the commission summarize the day's discussion and identify additional broad subjects that were not discussed today and are not on the agenda for the following meeting.

The commission's next meeting will be on Wednesday, May 23 and Thursday, May 24, 2018.
Information item.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, April 5, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Bailey, Ken
Jackson, Nathan
Krahmer, Doug
Loop, Lois
Neuhauser, Will
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Fox, Jim
Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Beamer, Kelley
Daniels, Katherine
Martinez, Amanda (Marti)
Masterson, Laura
Mathews, Nelson
Williams, Bari
Unruh, Loren

The meeting was called to order at 8:05AM.

Welcome, Housekeeping, and Introductions

OWEB Executive Director Meta Loftsgaarden and Commission Chair Doug Krahmer welcomed commission members. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined again for commission members the process the commission will follow throughout the spring for rule-making. All those in attendance introduced themselves and their affiliations.

Minutes

Commission members reviewed the minutes from the March 8th meeting. Nathan Jackson moved to adopt the minutes, with a second from Lois Loop. Minutes were approved unanimously.

Succession Planning

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the second 'redline' draft of the succession planning rules, available in the [materials for this meeting](#).

The commission decided to remove the definition of "persons advising agricultural owners and operators" as unnecessary. They also decided to move the definition of "fragmentation" to the administrative rules governing the entire program, and to further refine this definition in future

conversations. Lastly, they changed the word “divide” to “transfer” under the definition of “succession planning.”

With these changes, the commission agreed that the [draft succession planning rules](#) were near completion and that the commission would reconsider these rules at the final rulemaking meeting.

Review of Conservation Management Plan Rules, Excluding Ranking

Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the first ‘redline’ draft of the conservation management plan rules excluding ranking criteria, listed under the meeting [materials for this meeting](#). These rules contain all provisions except for ranking criteria, which were discussed afterwards. A summary of the discussion follows.

Commissioners decided that there should be some protocol for resolving differences of opinion when making mutual modifications. They recommended that this protocol be added to the components of a CMP under section 07, and that the meaning of “mutual” be clarified.

Under monitoring (section 12), commissioners agreed to require monitoring “at least” every three years, rather than every three years as a requirement, and to replace monitoring of the “components” of the CMP with monitoring of “compliance with” the terms of the CMP. They also specified that monitoring protocols “must” be established after a modification. See the [revised conservation management plan rules](#).

With these changes, the commission agreed that the draft conservation management plan rules for everything except ranking criteria were near completion and that the commission would reconsider these rules at the final rulemaking meeting.

Conservation Management Plan Ranking Rules

Summary

Liz Redon led the commission in a point-by-point discussion of the [first draft of the conservation management plan ranking criteria rules](#). Liz and OWEB Grant Program Manager Eric Williams then summarized OWEB’s ranking and review process for land acquisitions and how criteria are evaluated.

Covenant and Easement Ranking Education

Meta Loftsgaarden explained the origin of and need for OAHF’s easement and covenant grant program. Liz Redon introduced the Context Technical Committee.

OAHF Context Technical Committee

Technical Committee members **Kelley Beamer** (Executive Director of the Coalition of Oregon Land Trusts and OAHF Work Group member) and **Laura Masterson** (Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm) explained the definition, origin, purpose, and funding sources of working land conservation easements. They then explained the Work Group’s reasons for supporting each of the 6 statutory ranking criteria for conservation management plans, easements, and covenants under Section 6(3).

Commission Sharing

Commissioners shared their experiences with easements and covenants, why they are important, how they meet the agricultural and conservation purposes of the statute, and considerations to be aware of in the grant program and for individual participants. Thoughts expressed by commissioners included:

- How can the program ease the perceived conflict between agriculture and conservation, and how can these two goals benefit each other?
- The commission should discuss further whether “fragmentation” meant fragmentation of ownership, and/or land parcels.
- How can a landowner assure that the land will stay in production in perpetuity? Is it easier to make it available for agricultural production in perpetuity?

Briefing on Appraisal and Ranking Criteria

OWEB Staff Jim Fox shared and took questions from the commission on two whitepapers: one on appraisal of easements and covenants in Oregon, and one on the easement ranking criteria used by other state programs.

Regarding appraisals, the commission discussed the fact that ecosystem services do not have a monetary value according to generally accepted appraisal methods. The commission added to their “refrigerator” list to hold a conversation about how to quantify ecosystem service values and integrate them into payment for OAHP programs.

Regarding other state programs, other states are eager to share information about their programs and ranking criteria. Jim highlighted several findings, including that many states used the Land Evaluation Site Assessment (LESA) model to assign points to rank projects. Delaware uses a 2-phase process, where the landowner first enters a 10-year, voluntary agreement without payment to continue to use their land for agricultural purposes only. Only after this agreement can a landowner qualify to sell their farm’s development rights. Some state programs only purchase development rights and do not address conservation values as well.

OAHP Easement & Covenant Technical Committee

Nellie introduced the Easement/Covenant Technical Committee members in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Katherine Daniels:** former Farm and Forest Lands Specialist at [Department of Land Conservation and Development](#)
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Nelson Mathews:** Northwest Land Conservation Director, West Division for the [Trust for Public Land](#)
- **Loren Unruh:** Assistant State Conservationist – Programs – at [NRCS](#)
- **Bari Williams:** Easement Program Specialist at [NRCS](#)

Katherine Daniels addressed easement ranking criteria in the context of threats to agricultural lands. She noted UGB expansions, conflicting non-farm uses, and fragmentation/land divisions as primary threats to agricultural land. Her recommendations included excluding areas inside the Urban Growth Boundary and urban reserves from consideration for an easement or covenant, and requiring alignment of projects with state and local land use plans.

Bari Williams described NRCS's easement program, the Agricultural Conservation Easement Program – Agricultural Land Easements (ACEP-ALE). She explained that once the eligibility of the landowner, land, and easement holder were verified, NRCS ranked projects according to a point system with national and statewide criteria.

Nelson Mathews gave background on the Trust or Public Land, an entity that acquires easements, but does not hold them long-term. Nelson recommended clear and concise criteria and flexibility with other funders. He said that affirmative obligations can be challenging to implement and enforce, and instead recommended prohibitions where necessary to achieve natural resource objectives. Other points included that Land Trust Alliance accreditation would make it easier for the commission to gauge organizational capacity, that the commission might want to reserve the option to waive the match requirement, and that it might be difficult to evaluate impacts to neighboring properties.

Laura Masterson described East Multnomah Soil and Water Conservation District's evaluation process, which uses criteria that are measurable but not numeric.

Public Comment

No members of the public submitted public comment.

Ranking Criteria for Conservation Management Plan Grants

The commissioners were divided into groups to review each of the statutory criteria and any additional criteria first from the perspective of ranking conservation management plans, and then from the perspective of ranking working land conservation easements and covenants. The notes are below and their feedback is compiled in the [draft conservation management plan ranking rules](#) in the materials for the April 26 meeting.

Conservation Management Plan Ranking Notes from Flipcharts

- a) The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area – **All small groups agreed on this CMP evaluation criterion**
- b) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
 1. **Two groups felt this belonged in CMP rules only, and one group said this belonged in both CMP and easement/covenant rules:** Extent to which implementation of the plan(s) would improve the economic viability of the operation and maintain viability into the future. Parcel doesn't have to be viable, but operations should be. Manage regulatory requirements. Easement/covenant payment itself supports farm viability

2. **CMP should require a business plan, Easement/ Covenant should require a succession plan:** Consider quality of plans if it addresses easement/ covenant.
 3. **Both CMP and easement/covenant rules:** The cost-benefit of plan implementation; and
 4. **Both CMP and easement/covenant rules:** The extent to which implementation of the plan(s) would reduce the potential for fragmentation, development (define), or non-farm use of working lands.
- c) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
- One group said “significant” was ambiguous. If in a regional plan, it might be significant
1. **Both CMP and easement/covenant rules:** Extent to which the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, **water**, plants, animals, energy and human needs considerations;
 2. **Both CMP and easement/covenant rules:** Extent to which the plan(s) support(s) implementation of state, federal or tribal conservation or recovery plans; Helps leverage other funding.
 3. **Both CMP and easement/covenant rules:** Extent to which conservation becomes a revenue stream - explain (**more Easement/Covenant**) * And is part of integrated management of the whole
 4. **Both CMP and easement/covenant rules:** Water quality (see easement/covenant)
 5. **Both CMP and easement/covenant rules:** Water quantity (see easement/covenant) including timing (seasonal) water quality and water quantity
 6. **Both CMP and easement/covenant rules:** Connectivity
 7. **Both CMP and easement/covenant rules:** Quality of habitat (refer to plans to determine “quality” & “importance”)
- d) The extent to which the plan(s) would protect significant agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;
1. “Investment gains” means the Commission’s investment gain?
 2. Need to define social benefits associated with continued agriculture use, like viewsheds.
- e) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:
1. **Both CMP and easement/covenant rules:** The financial capability of the organization to manage the plan(s) over time;

2. **Both CMP and easement/covenant rules:** Demonstrated relevant expertise to develop and implement plan(s); And success/ track record
 3. **Both CMP and easement/covenant rules:** Organization stability (including Board composition, staff/ leader turnover. Modify to organization strength
- f) 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;
1. **Both CMP and easement/covenant rules:** Extent to which it aligns with federal, state or regional plans
 2. **Both CMP and easement/covenant rules:** Presence of critical habitat for threatened and endangered species and water quality & quantity (Connection to public benefit)
 3. Ecosystem services – efficient (unsure how) (export to nebulous) **(-goes under ag outcomes)**
 4. **Both CMP and easement/covenant rules:** Longer is better
 5. **Both CMP and easement/covenant rules:** Cumulative effect
 6. **Both CMP and easement/covenant rules:** “Protect 1st” – quality of acres
- g) The extent and nature of the plan(s)’s impacts on owners or operators of neighboring lands, including:
1. Benefits of the plan(s)’s development and implementation on neighbors;
 2. Negative impacts of the plan(s)’s implementation on neighbors;
 3. Communication with neighboring landowners to discuss how to mitigate any negative impacts;
 4. The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

Easement/Covenant Ranking Notes from Flipcharts

- (a) The extent to which the plan, covenant or easement would protect, maintain or enhance farming or ranching on working land
1. Extent to which non-farm uses are prohibited through the covenant/ easement. How would use for sustainable energy production be categorized?
 2. Ability for the land to remain in productive agriculture (vs – **at least one group disagreed restored/ retired**) – whole property won’t be taken out of production.
 3. “Protect the viability” (also NRCS criteria) or maintain agricultural value. Instead of focusing on the owner’s viability, focus on the **land’s** ability to remain viable. Do not require the operation to be a “commercial” farm/ranch. – **at least one group disagreed** proximity to markets – very relative
 - (a) 2a) Soils – USDA
 - (b) 2b) Retain and maintain sufficient water rights to support a viable operation

4. Protect the integration of agriculture and conservation that increases both at the same time. One group said make #1. Another group felt this was the mission of OAHF and didn't know which criteria it fit in
 - (a) 3a) Reduce management time and inputs
 - (b) b) Increase agriculture **and** conservation outcomes. Integrated effort
 5. **Consider for criterion C** Consistent with agriculture plans (on county level) proximity to other protected agricultural land.
- (b) The extent to which the plan, covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values. **Comments included:** OWEB and others have done this – borrow language. “The extent to which” – Does this language address quality of habitat?
1. Supports regional conservation plans
 - (a) ESA, ODFW, Oregon Conservation strategy, etc.
 - (b) Tribe cultural concerns (or new?)
 - (c) Nonprofit strategic plans (land trust)
 2. Supports water quality, e.g. TMDL streams (there is a list), temperature. More than not contributing to TMDL or just meeting standards, but contributes back, etc.
 3. Connectivity – Habitat and protected lands (size will vary by region – don't include size requirements)
 4. Protect integration of ag and conservation (like criterion a)
 5. Quality of habitat measured by types of species affected (e.g. ESA) “importance” or impact.
 6. Water quantity – season appropriate flows, balance.
- (c) The extent to which the plan, covenant or easement would protect agricultural outcomes, benefits or other investment gains. **Comments included:** The language is unclear
1. **Both CMP and easement/covenant rules:** Extent AND significance
 2. **Both CMP and easement/covenant rules:** Need specific factors that describe ag outcomes ← critical mass for ag industry
 3. **Agreement:** What makes one parcel stand out more than another?
 - (a) E.g. availability of water, soil, scale
 - (b) - Flexibility to produce many products **Disagreement with this**
 - (c) How easement improves long-term economic viability and future transfer
 4. **Agreement:** Need regional criteria
 5. **Both CMP and easement/covenant rules:** Preservation of ag footprint (land base)
 6. **Both CMP and easement/covenant rules:** Need to define social outcomes

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

1. **Both CMPs and easements/covenants:** Better phrased in CMP * History of organization handling easement or relevant grant program → Include info on failed easement/ response
2. **Agreement:** Consider accredited or on pathway
3. Land conservation/ easement is part of mission & plan. + bylaws (include indicator beyond habitat)
4. Financials indicate capacity for work (include adequate staff)
5. Have standards/ practices → includes plan for worst case scenario
6. funding for long term stewardship, monitoring & enforcement/ also plan
7. **Both CMP and easement/covenant rules:** Working relationship w/ funders/ partners
8. **Both CMP and easement/covenant rules:** Working relationship with the community
9. **Both CMP and easement/covenant rules:** Board composition
10. Consider how to make space for “new” organization to easement

(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

1. Needs to include ability to compare different lands with different crops in different regions (changes/ threats). **Agreement:** Comparison within region/ locally relevant
2. Consider how value different habitats
3. **Both CMP and easement/covenant rules** threatened or endangered species
4. Consider level of risk with conversion
5. Qualifies/ Ranks with NRCS programs (or priorities), or other sources. **(Timing challenges)**
6. **Some disagreement** Landowner donation and/or match
7. Cumulative effect of investment
8. Longer is better, permanent is best
9. Potential for recruiting more projects locally
10. “Protect 1st, Restore 2nd” – Quality of existing **habitat - Feels more like habitat, not working lands**
11. Need to consider protecting working ag lands, not just habitat
12. Exclude covenants from rural reserve areas
13. Are there other areas where investment is not bang for buck?

- (f) The extent and nature of plan, covenant or easement impacts on owners or operators of neighboring lands
1. (Demonstration of good communication) → Good communication is good enough
 2. **Agreement** More to do with plan than easement
 3. **Both CMP and easement/covenant rules:** Adds connectivity of habitat
 4. **Both CMP and easement/covenant rules:** Connectivity with other protected ag parcels
 5. **Both CMP and easement/covenant rules:** Consider shared drainage systems

Conclusion and Next Steps

Liz asked commissioners if they would be available for a meeting in June, potentially in conjunction with OWEB's Board meeting. The commission could meet on Monday, June 25, in the late morning and then meet with OWEB's Board in the late afternoon. Commissioners were generally in agreement, with agricultural operators expressing that their availability would depend upon the weather.

The meeting was adjourned at 3:15 p.m.

Division XXX
Succession Planning Grants

XXX-XXX-XX01

Purpose

The Oregon Agricultural Heritage Commission (commission) shall provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (OWEB board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations and economic sector,
- (2) Reduced fragmentation of Oregon’s working land,
- (3) Reduced conversion of Oregon’s working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon’s working land.

XXX-XXX-XX02

Definitions

(1) “Agricultural cooperative” means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.

~~(2) “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.~~

~~— “Person advising owners of working land agricultural owner or operator” means a person or an organization that provides training and resources to persons who provide succession planning services to owners of working land.~~

~~(3) “Fragmentation” is the division of a working farm or ranch into smaller parcels.~~

~~(4)~~(2) “Succession planning” means an ongoing process for ensuring the continuation and economic viability of a business. It may include strategies to identify, develop, and empower the next generation of agricultural owners and operators, a plan to ~~divide-transfer~~ business and family assets, and arrangements for each generation’s retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

~~(5)~~(3) *Additional definitions to be determined.*

Comment [NM1]: Use the statutory definition and revise the statute to apply to “agricultural owners and operators” in succession planning

Comment [NM2]: Not necessary to define.

Comment [NM3]: To be refined and moved to the admin section applying to all rules

XXX-XXX-XX03

Succession Planning Priorities

The commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant proposals and make recommendations to the legislature. The commission may modify these priorities from time to time at its discretion.

XXX-XXX-XX04

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Not-for-profit organizations,
 - (iii) Units of local government,
 - (iv) Tribes, and
 - (v) Agricultural cooperatives
- (2) Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Succession Planning Grant.

XXX-XXX-XX05

Application Requirements

Succession Planning Grant applications shall:

- (1) Be consistent with general program guidance {similar to ORS XXX Division 005}.
- (2) Not require match contributions.
- (3) Be submitted on the most current form and process prescribed by the commission.
- (4) *Other application requirement in general administrative section.*

XXX-XXX-XX06

Eligible Activities

The following activities benefitting agricultural owners and operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources,
- (2) Trainings on topics related to succession planning,
- (3) Development and distribution of educational materials and curriculum related to succession planning, and
- (4) Advising agricultural owners and operators on succession planning.

XXX-XXX-XX07

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR XXX-XXX-XX01,
- (2) The capacity of the applicant to deliver the proposed program.

- (3) The applicant’s background and experience in delivering successful succession planning programs, including both prior programs funded through this grant program and projects funded outside this grant program.
- (4) The cost-effectiveness of the proposed project,
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural owners or operators in diverse geographic locations in Oregon and participants in diverse stages of succession planning. The commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity.
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

XXX-XXX-XX08

Succession Planning Grant Application Technical Review and Funding Process

- (1) The commission may fund projects submitted through an open solicitation for proposals, or by requesting proposals from a specific eligible entity or eligible entities.
- (2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.
- (3) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XXXX.
- (4) The commission may use technical committees to evaluate Succession Planning Grant applications.
- (5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the commission.
- (6) The commission may rank projects and shall provide funding recommendations to the board.
- (7) The board may fund a grant application in whole or in part.

XXX-XXX-XX09

Grant Agreement Conditions

- (1) The grantee must submit a report at completion of the project describing the work completed as described in OAR XXX-XXX-XXXX.
- (2) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the director prior to the beginning of any work proposed in the modification.
- (3) The director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

XXX-XXX-XX10

Grant Reporting Requirements

- (1) Upon project completion, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon agricultural owners and operators and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program,
 - (ii) The geographic, commodity, and other demographic diversity of participants in the program;
 - (iii) Documented improved understanding of succession planning by program participants; Documented measurable changes in behavior of participants, including the percentage or number of owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
 - (iv) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land to nonfarm uses and promote economic viability and ecological sustainability of agricultural operations; and
 - (v) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The OWEB Director or the commission may authorize an independent performance audit of any Succession Planning Grantee, and if the director determines the grantee is not complying with the rules of the Succession Planning Grant program, may restrict future grant funds.
- (4) In addition to project evaluations, the commission may conduct program evaluations that may include changes in UDSA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of agricultural owners and operators on the status of succession plans, and other trends in working land ownership and use.

XXX-XXX-XX11

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Succession Planning Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Succession Planning Grants shall be periodically reviewed by the commission and revised as necessary and appropriate.

Division XXX
Conservation Management Plans

XXX-XXX-XX01

Purpose

The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations,
- (2) Reduced fragmentation of Oregon’s working land,
- (3) Reduced conversion of Oregon’s working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon’s working land.

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. Conservation management plans 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.

XXX-XXX-XX02

Definitions

~~(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.

~~(1)(2)~~ “Mutual Modification” means a change to a conservation management plan that is agreed to by both the agricultural owner and operator subject to the plan, and the conservation management plan holder.

~~(2)(3)~~ Definitions to be determined.

Comment [NM1]: Located in admin section of all OAHF rules

XXX-XXX-XX03

Eligibility

Eligible applicants for Conservation Management Plan Grants include:

- (a) An entity eligible to hold a conservation easement, as defined in ORS 271.715, other than a state agency;
- (b) A watershed council; or
- (c) An entity who is tax exempt under section 501(c)(3) of the Internal Revenue Code

XXX-XXX-XX04

Application Requirements

Conservation Management Plan Grant applications shall:

- (1) Be consistent with general program guidance *{similar to OAR XXX Division 005}*;
- (2) Be submitted on the most current form and process prescribed by the commission;
- (3) Include the duration or terminating event for the plan; and
- (4) *Other application requirements included in general administrative section.*

XXX-XXX-XX05

Eligible Activities

Funding can be utilized to purchase, implement and monitor conservation management plans.
(Additional information to be developed as a part of payment conversation.)

Comment [ML2]: This language may change in a technical statutory fix

XXX-XXX-XX06

Term of Payment for Conservation Management Plan Implementation

If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of between 20 and 50 years. If a plan is associated with a working land conservation covenant, the term of the plan must be the same as the term of the covenant.

XXX-XXX-XX07

Conservation Management Plan Components

At minimum, conservation management plans will include:

- (1) A summary describing how the conservation management plan meets OAHF's purpose;
- (2) Contact and location information for the agricultural owner or operator;
- (3) Relevant background and context;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural owner(s) or operator(s);
- (6) Resource analysis and identification of resource and management concerns;
- (7) Alternative identification and selection;
- (8) The implementation plan, including a budget;
- (9) The conservation, social and economic outcomes of the plan once implemented;
- (10) How the conservation management plan will be evaluated and adaptively managed;
- ~~(10)~~(11) A conflict resolution protocol if plan implementation is being funded; and
- ~~(11)~~(12) The term of the plan.

XXX-XXX-XX08

Evaluation Criteria

To be determined by commission

XXX-XXX-XX09

Conservation Management Plan Technical Review and Funding Process

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XX08.
- (3) The commission may use technical committees to evaluate Conservation Management Plan grant applications.
- (4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission.
- (5) The commission may rank projects and shall provide funding recommendations to OWEB's Board.
- (6) The board may fund a grant application in whole or in part.

XXX-XXX-XX10

Grant Agreement Conditions

- (1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the commission at least annual reports from the agricultural owner or operator regarding plan implementation.
- (2) The grantee must submit a report at completion of the project describing the work completed. Monitoring must be completed as described in OAR XXX-XXX-XXXX.
- (3) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed amendments are submitted and approved by the Director prior to the beginning of any work proposed in the amendment.
- (4) The director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.
- (5) All changes to the conservation management plan must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.

XXX-XXX-XX11

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (2) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.
- (3) To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.
- (4) The agricultural owner or operator must contact the grantee at any time if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:
 - (a) Changes in management or ownership of the property;
 - (b) Changes in the grazing/cropping system(s) not identified in the plan. For changes in grazing/cropping systems, the landowner must notify the grantee in advance.
 - (c) A natural disaster occurs that will impact implementation of the conservation management plan; or
 - (d) Other changes that are outside the agricultural owner's or operator's control.
- (5) The grantee must contact the agricultural owner or operator if changes in science significantly affect the effectiveness of conservation management plan implementation.
- (6) Modifications may include:
 - (a) Addition of new conservation practices, measures or conservation benefits;
 - (b) Changes in practices, measures or benefits based on:
 - a. changes in science;
 - b. changes to property management or ownership;
 - c. changes in grazing/cropping systems;
 - d. natural disasters; or
 - e. Other changes outside the agricultural owner's or operator's control.

XXX-XXX-XX12

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) The agricultural owner or operator must meet annually with the grantee and provide a written report of conservation management plan activities completed each year to the grantee on a form approved by the commission. Reports may also include photo points or other methods that appropriately track plan implementation.
- (2) Annual reporting must identify any mutual modifications to the conservation management plan.
- (3) Notwithstanding (4), site visits by the grantee to the property must occur at least every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the ~~components of compliance with implementation of~~ the conservation management plan.
- (4) The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols and site visit intervals to identify trends in habitat, water quality or other natural resource values, ~~or and must establish protocols~~ if a modification of the conservation management plan results in specific monitoring or site visit needs. Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee. The commission may provide guidance for consistent monitoring protocols.
- (5) The commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting.
- (6) The commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

XXX-XXX-XX13

Grant Reporting Requirements

Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

Comment [ML3]: Possibly move to the OAHF administrative rules that apply to all of the various programs and leave it out of this specific division.

XXX-XXX-XX14

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Draft Conservation Management Plan Evaluation Criteria Rules

XXX-XXX-XX08

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The extent to which the proposal meets the purpose of the program as defined in OAR XXX-XXX-XX01
- 2) The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area;
- 3) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:
 - a) The extent to which implementation of the plan(s) would improve the economic viability of the operation and maintain viability into the future;
 - b) Whether the agricultural owner(s) or operator(s) have a business plan;
 - c) The cost-benefit of plan implementation; and
 - d) The extent to which implementation of the plan(s) would reduce the potential for fragmentation, or development of non-farm uses on, the property.
- 4) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
 - a) The extent to which the plan(s) holistically address(es) natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
 - b) The extent to which the plan(s) support(s) implementation of local, regional, state, federal or tribal conservation or recovery plans;
 - c) The quality and connectivity of wildlife habitat;
 - d) The extent to which the easement or covenant maintains or improves water quality;
 - e) The extent to which the easement or covenant improves seasonally appropriate water flows.

Comment [ML1]: Guidance would include:

- Increased productivity or carrying capacity of the land
- Reduced use of inputs like fertilizer, pesticides, energy use
- Increased management efficiency
- Ensuring water rights sufficient to support farming on the land

Comment [NM2]: Define

Comment [ML3]: Guidance would include:

- Increased soil health
- Increased carbon sequestration
- Increased water quality

Comment [ML4]: Guidance would include:

- Establishment of habitat corridors or blocks
- Presence of listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program

Comment [NM5]: Guidance would include:

- TMDL improvement
- Temperature reduction

Draft Conservation Management Plan Evaluation Criteria Rules

- 5) The extent to which the plan(s) would protect significant agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy;
- 6) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:
- a) The financial capability of the organization to manage the plan(s) over time;
 - b) Demonstrated relevant expertise and track record to successfully develop and implement plan(s);
 - c) The strength of the organization, including the composition of the board and ability to manage staff transitions;
 - d) Working relationships with funders, project partners, and the community;
- 7) 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, including but not limited to:
- a) Provision of ecosystem services;
 - b) The duration of conservation management plan implementation funding;
 - c) The cumulative benefits of investments including OAHF and other sources;
- 8) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:
- a) Benefits of the plan(s)'s development and implementation on neighbors;
 - b) Negative impacts of the plan(s)'s implementation on neighbors;
 - c) Documented communication with neighboring landowners to discuss how to mitigate any negative impacts;
 - d) The extent to which the plan(s) include(s) a maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

Comment [NM6]: Define social benefits associated with continued ag use, and "investment gains"

Comment [ML7]: Guidance would include:

- Employer in community
- Hiring underserved populations
- Purchasing or selling locally
- Supplier for local processing
- Testing innovative approaches or technologies

Comment [ML8]: Guidance would include:

- Board balance including landowner members;
- Staff training and years of experience
- Specifically identified staff who will be working with landowners

Comment [ML9]: Guidance would include:

- Long-term impacts of investment;
- Specific duration doesn't matter

Comment [NM10]: Consider locating under (4) above, agricultural outcomes.

Comment [ML11]: I'm not sure what this means – would need clarification if it stays

Comment [ML12]: Yes – covered above

Comment [ML13]: Other items for discussion:

- Include working with underserved populations in the TA grants portion of the program rather than here
- Does commission want to reference risk/reward in rule or just as a part of your deliberations?
- Life-cycle of farming – was referenced, not sure how to incorporate

Draft Easement and Covenant Evaluation Rules

XXX-XXX-XX09

Evaluation Criteria

- 1) The extent to which the proposal meets the purpose of the program as defined in OAR XXX-XXX-XX01.
- 2) The extent to which the easement or covenant would protect, maintain or enhance farming or ranching on working land, including:
 - a) The extent to which the easement or covenant prohibits fragmentation, development, and non-farm uses on the property;
 - b) The ability of the land to remain in productive agriculture;
 - c) The potential viability of the property for agriculture;
 - d) Whether the agricultural owner(s) or operator(s) have a succession plan;
 - e) The cost-benefit of the project;
 - f) How the covenant or easement contributes to the long-term viability of the operation, including future transfer of ownership;
 - g) The level of risk of farmland conversion;
- 3) The extent to which the easement or covenant would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:
 - a) The extent to which the easement or covenant holistically addresses natural resource priorities applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
 - b) The extent to which the easement or covenant supports implementation of local, regional, state, federal or tribal conservation or recovery plans;
 - c) The extent to which the easement or covenant maintains or enhances the quality and connectivity of wildlife habitat;
 - d) The extent to which the covenant or easement improves water quality;
 - e) The extent to which the covenant or easement improves seasonally appropriate flows; and
- 4) The extent to which the covenant or easement would protect significant agricultural outcomes, benefits or other investment gains, including:

Comment [NM1]: In Guidance: Integration of agriculture and conservation that increase protection of both

Comment [NM2]: Define

Comment [NM3]: In Guidance: including soils and retention and maintenance of sufficient water rights to support a viable operation

Comment [ML4]: Guidance would include:

- Increased soil health
- Increased carbon sequestration
- Increased water quality

Comment [ML5]: Guidance would include:

- Establishment of habitat corridors or blocks
- Presence of listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program
- Plans might include: Conservation Management Strategy, Tribal Plans, ESA plans, etc.

Comment [NM6]: Guidance would include:

- TMDL improvement
- Temperature reduction

Comment [EW7]: Need guidance on specific factors that describe significant agricultural outcomes, including social outcomes, and what constitutes critical mass for the ag industry. Also need regional criteria.

Comment [EW8]: Whose investment gains?

Comment [NM9]: Guidance would include:

- Employer in community
- Hiring underserved populations
- Purchasing or selling locally
- Supplier for local processing

Draft Easement and Covenant Evaluation Rules

- a) The extent to which the parcel is unique or significant to agricultural outcomes beyond the parcel;
 - b) The extent to which the parcel helps conserve the agricultural land base.
 - c) The regional importance of the agricultural operation;
- 5) The capacity of the organization that filed the application to accept a working land conservation covenant or working land conservation easement, and the competence of the organization, including:
- a) Accreditation from the Land Trust Alliance, or exhibiting the characteristics of an organization eligible for accreditation ;
 - b) Inclusion of ownership and management of working land conservation easements in the organization’s mission;
 - c) The financial capability of the organization to manage and steward conservation easements over time;
 - d) Demonstrated relevant expertise and track record to own and manage conservation easements or other relevant projects;
 - e) The strength of the organization, as measured by board involvement, staff and organizational succession plans.
- 6) 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 working land conservation covenant or working land conservation easement, including but not limited to:
- a) The cumulative effect of similar investments;
 - b) Duration of the agreement, with a preference for working land conservation easements over working land conservation covenants, and for longer terms of covenants;
 - c) The effects of land use planning on the long-term investment; and
 - d) The potential for recruiting additional working lands projects.
- 7) The extent and nature of covenant or easement impacts on owners or operators of neighboring lands, including:
- a) Benefits of the plan(s)’s development and implementation on neighbors;
 - b) Negative impacts of the plan(s)’s implementation on neighbors;
 - c) Demonstration of effective communication with neighboring landowners and the community;

Comment [NM10]: IF in guidance, these should be well defined:
•Composition of board
•Working relationships with funders, project partners, and the community

Comment [NM11]: Include a preference for CMP as well?

Comment [NM12]: Guidance may include:
•Program funds may not be used in rural reserve areas or within Urban Growth Boundaries

Comment [NM13]: Guidance to include:
•Connectivity to both wildlife habitat and protected agricultural lands;

Comment [NM14]: Guidance to include:
•The impact on shared drainage systems.

Comment [NM15]: a) Consider CMP point: “Communication with neighboring landowners to discuss how to mitigate any negative impacts;”



Issue Paper: Land Evaluation and Site Assessment (LESA)¹

Background

The Land Evaluation and Site Assessment (LESA) is an analytical tool developed by the Natural Resources Conservation Service (NRCS) to facilitate identification and protection of important agricultural land and assist in implementing farmland protection policies. The tool is designed to be tailored to local, regional or state-wide needs and provides a systematic and transparent method to rate and rank sites for agricultural importance. A 2001 study by the American Farmland Trust indicated that at that time LESA was used in 26 states at the state or county level or both to designate important agricultural lands and for agricultural conservation easement programs.

As the name suggests, LESA contains two components. The **land evaluation** part (LE) of LESA includes one or more factors addressing soil quality, including soil productivity, soil potential and land capability. The **site assessment** (SA) portion of LESA addresses non-soil conditions. When LESA is applied to a specific site, the value for land evaluation is combined with the value for site assessment. The higher the total value for a site, the higher the capabilities of that site are for agricultural activities and, if they were included in the analysis, for meeting other objectives such as wildlife habitat or environmentally sensitive areas.

Land Evaluation

The land evaluation component of LESA rates the soil-based qualities of a site by applying one or more land classification systems:

- **Soil potential ratings**, which can take into consideration revenues associated with a soil's productivity and costs associated with managing soils for specific indicator crops;
- **Soil productivity ratings**, which utilize data from local indicator crops, including estimated yields;
- The USDA **land capability classification system**, which identifies soil limitations for agricultural use;
- **Important farmlands classification**, which uses national criteria for identifying prime and unique farmland.

The choice of these classification systems depends on time, budget, data availability, and policy objectives. Typically, only one or two of these factors are used in order to avoid redundancy and minimize costs.

¹ From: Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands, second edition. Prepared for the U.S. Department of Agriculture Natural Resources Conservation Service by James R. Pease and Robert E. Coughlin, 1996. 240 pages.

Site Availability

The site availability component of LESA rates non-soil factors affecting a site's importance for agricultural use. The factors are grouped into 3 types:

- SA-1 measures **factors affecting farm productivity** such as:
 - Size and shape of the site
 - Compatibility of adjacent and surrounding uses
 - Percent of the site in agricultural use
 - Percent of the site feasible for agricultural production
 - Level of on-farm investment
 - Availability of agricultural support services
 - Stewardship of the site
 - Environmental limitations on agricultural practices
 - Availability and reliability of water
- SA-2 measures **development pressure or likelihood of land conversion** and includes factors such as:
 - Land use policy designation
 - Percent of surrounding land in urban or rural development
 - Distance to public water and sewer
 - Distance to urban feeder highway
 - Distance to urban center or urban growth boundary
 - Length of public road frontage of site
 - Proximity to protected farmland
- SA-3 measures **other public values supporting retention of agriculture** such as:
 - Open space value
 - Educational value
 - Historic value
 - Significant artifacts or relics
 - Wetlands and riparian areas
 - Scenic values
 - Wildlife habitat
 - Environmentally sensitive areas
 - Floodplain protection

The factors to be included in the site assessment, ideally developed with stakeholder input, depend on data availability, selection of criteria that are appropriate for the region, and on policy goals and objectives for preserving farm and ranch land and the ecological and other values of that land. Each factor is evaluated and scored (for example, on a scale of 0-10) and then each factor or group of factors is assigned a weight (for example, how much to weight habitat value compared to agricultural potential) and the results combined to produce a final score.

LESA is used by some state conservation easement programs to determine *eligibility* of a farm or ranch land project, and in other states to *evaluate and rank* projects. Some states depend on local jurisdictions to use LESA to select projects to submit to state or federal programs. The Pennsylvania Agricultural Conservation Easement Purchase Program applies the land evaluation portion of LESA at the state level but the site assessment portion of LESA is developed and evaluated at the county level.

Modern innovations that can be incorporated in LESA include the use of geographic information systems to analyze mapped data. This allows application of LESA not only at a regional or parcel level, but also for different areas within a parcel, for example where soil attributes or development pressures differ.



Issue Paper: Buy-Protect-Sell Arrangements

Background

For a variety of reasons, organizations involved in farmland preservation might purchase or receive the donation of land in fee title, as opposed to a conservation easement on the property. One example is if a high-quality parcel of farmland with important conservation values is listed for sale and there is not an opportunity to obtain a conservation easement to protect the property. In such instances, the organization might acquire property in fee with the intent of selling the property later but retaining a conservation easement, a strategy known as “buy-protect-sell.”

Such transactions are either prohibited or challenging under other easement match funding programs, including NRCS’s Agricultural Conservation Easement Program (ACEP-ALE) because they have statutory authority to provide funding only for the purchase of conservation easements, not purchase of lands in fee.

This whitepaper seeks to understand:

- How other state working land preservation programs have addressed this scenario,
- If it is possible for the NRCS ACEP-ALE program to provide matching funds, and
- How the OAHP can provide funding in such instances.

Other States

The **California Farmland Conservancy Program (CFCP)** addresses buy-protect-sell by allowing grant funds to be used by a grant recipient to obtain temporary fee title to agricultural lands. To qualify, the grant recipient must:

- Agree, upon acquisition of the property, to treat the property as if it were encumbered with an agricultural conservation easement,
- Sell the fee title subject to an agricultural conservation easement to a private landowner within 3 years of the acquisition of the fee title, and
- Reimburse the CFCP Fund by an amount equal to the fair market value of the land, less the value of the easement and associated transaction costs, within 30 days after the sale of the restricted fee title.

For the OAHC to use this approach, it is likely that the OAHP statute would need to be amended to allow temporary fee title acquisition.

The **Washington State Farmland Preservation Program (FPP)** utilizes two approaches to funding buy-protect-sell projects. Like the OAHP, this program does not have statutory authority to provide grants for fee simple farmland acquisition. However, if a potential grant applicant is planning to purchase land in fee for the purpose of reselling it with a conservation easement, the applicant can apply for a waiver stating that the intent was to sell the land with an easement on it, which allows the purchase of the property and the ability to apply for a grant for the conservation easement later. The waiver is good for 4 years (2 grant cycles).

On occasion, in addition to the waiver, the FPP has participated in development of the easement prior to the sale of the property and signs the easement at closing, stipulating that if the project receives FPP funding, the Recreation and Conservation Office will remain a third party on the easement. If a grant is not awarded, they will not be a third party on the easement. This approach has helped coordinate funding with ACEP-ALE grants when funding cycles do not coincide.

Both of these approaches used by Washington's FPP should be available to the Commission without additional statutory authority.

NRCS's Agricultural Land Easement program - ACEP-ALE

Buy-protect-sell projects seeking both NRCS ACEP-ALE and OAHP funding face an additional hurdle. A preliminary analysis suggests that if the applicant sells the land to a private entity without the conservation easement in place, but with an agreement that the new owner will sell the easement once the initial transaction has occurred, that the project would be eligible for funding. This is a likely scenario, since the party holding the temporary fee title cannot hold a conservation easement at the same time since that would result in merger of titles. Land trusts engaging in buy-protect-sell strategies have avoided this through a side agreement with the prospective landowner or by placing the property in an LLC or using a partner that is also authorized to hold the land in fee or to hold the easement.

A disadvantage of the above approach is that it is likely that there will not be time for a property targeted for buy-protect-sell to go through the OAHP application and grant evaluation process. Thus, granting a waiver to allow for a later application introduces some uncertainty as to whether the applicant will receive grant funding upon later sale of the property (or separation of the easement from fee title).



Issue Paper: Appraisal of Working Land Conservation Covenants

Background

Oregon HB3249 authorizes the Oregon Watershed Enhancement Board to provide grants for acquiring working land conservation covenants (elsewhere often called term easements or temporary easements) for a term to be established in rules.¹ As is the case for perpetual working land conservation easements, acquisition of conservation covenants requires a method to establish their monetary value.

Most conservation easements, including working land conservation easements, are perpetual and as a result there are well-established appraisal methods to determine their value. Temporary conservation easements are rare for several reasons. First, the Internal Revenue Service does not grant an income tax deduction for charitable donation of conservation easements that are not perpetual. Second, acquiring conservation easements that are not permanent is inconsistent with the goals and objectives of most working land preservation programs. Third, the states that have statutory authority to provide grants for temporary conservation easements (for example, Texas and Washington) have reported little interest or demand.

Due to the infrequent use of temporary conservation easements, there are no widely agreed upon and tested appraisal methods. In addition, information on acquisition of temporary easements has proven difficult to find. Some states enter into short-term contracts that resemble temporary easements, intended to keep agricultural land from being converted (for example, 8-year agreements in New Jersey and 10-year agreements in California and Delaware). However, these contracts do not involve payment to the private landowner but instead depend upon a variety of tax incentives to stimulate enrollment in their programs. Thus, no appraisal is necessary.

An important consideration in appraising working land conservation covenants is that upon expiration of the covenant, the landowner's property will increase in value. This future benefit to the landowner makes the current value of the covenant less than if it were a perpetual easement. Two approaches that have been used to take this into consideration are: 1) using an economic model that is commonly used to discount future value to "net present value," 2) and applying a flat discount from the value of a perpetual easement, used by the Natural Resources Conservation Service (NRCS) in the Wetlands Reserve Program.

Net Present Value Method

The promise of receiving an amount of money in the future is worth less than receiving the same amount of money today. This is due to a number of factors including inflation, which reduces the future value of the promised money, and to opportunities that make the money

¹ HB 3249 Section 5(1)

more valuable today. To express the value of future money in today's dollars, economists apply a "discount rate." If the value of the future money is declining only due to inflation, the discount rate would be based on forecasts of the inflation rate. However, the discount rate can also be based on other economic factors. For example, will the land in question appreciate at a greater rate than general inflation? Are there additional factors that make future dollars more valuable today, such as the ability to invest in capital improvements on the farm? How does uncertainty and risk enter into the calculations?

An appraisal using this methodology was done for a 5-year and 35-year temporary conservation easement on a farm near Gresham, Oregon, for the East Multnomah Soil and Water Conservation District.² First, the value of a perpetual conservation easement was computed using standard methodology. The value of the temporary easements was then calculated for the 5-year easement using a 5% discount rate (based on trends in property values) and for a 35-year easement using an 8% discount rate (higher due to market uncertainty). The appraisal concluded that the 5-year easement was worth about 22% of the value of a perpetual easement and the 35-year easement was worth about 93% of the perpetual easement. Using the same methodology, the value of a 10-year easement will be 40% - 50% of a perpetual easement (depending on the discount rate chosen) and a 30-year easement would be about 90% of a perpetual easement.

The federal government establishes a generic discount rate called a "social discount rate" based on social as well as economic factors, in general reflecting "societies preference for consumption today." The current rate is 2.7% for 30-year programs.³ Applying that rate to a 30-year easement results in a value of about 55% of the value of a perpetual easement. For real estate, this probably represents the low end of the range of discount rates that should be applied.

Flat Percentage Rate Method

The Wetlands Reserve Program administered by NRCS provides grants for acquisition of 30-year conservation easements. The program requires appraisal of the easement as if it was perpetual, using standard methodology, and provides grants for a flat 75% of that value. Applying a flat rate, perhaps on a sliding scale based on the term of the covenant, would vastly simplify conservation covenant acquisition. However, a legal analysis would have to be undertaken to determine that there is not a legal requirement to offer fair market value when OWEB provides grant funding to acquire property rights and for the easement holder when acquiring those rights.

² Appraisal Report, Duncan and Brown Real Estate Analysts, 2017.

³ OMB Circular A-94



Issue Paper: Definitions of Farmland Fragmentation

OWEB Staff draft for OAH Commission review

'**Fragmentation**' is the division of a working farm or ranch into smaller parcels, 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.

Other Definitions of Farmland Fragmentation

The fragmented, scattered, and frequently inaccessible parcels that are not economically viable for individual farming.

From: Sklenika, P. Classification of farmland ownership fragmentation as a cause of land degradation: A review on typology, consequences, and remedies. *Land Use Policy*, Volume 57, 30 November 2016, Pages 694-701

The situation in which a single farm consists of numerous spatially separated parcels.

From: Demetriou, D. Development of an Integrated Planning and Decision Support System (IPDSS) for Land Consolidation. *Chapter 2: Land Fragmentation*. Springer 2014.

The subdivision of farm property into undersized units too small for rational exploitation.

The excessive separation and dispersion of the parcels forming parts of single farm.

Both from: Kalantari, K. et al. Factors Affecting Agricultural Land Fragmentation in Iran: A Case Study of Ramjerd Sub District in Fars Province. *American Journal of Agricultural and Biological Sciences* 3 (1): 358-363, 2008.

The practice of farming a number of spatially separated plots of owned or rented land by the same farmer.

From: Hristov, J. Assessment of the impact of high fragmented land upon the productivity and profitability of the farms-The case of the Macedonian vegetable growers. SLU, Department of Economics Thesis 561. *Degree Thesis in Business Administration, Uppsala, 2009*.



Oregon Agricultural Heritage Commission

Thursday, April 26, 2018

Materials for Today's Meeting

- ▶ Agenda
- ▶ Minutes
- ▶ Draft Rules for Succession Planning
- ▶ Draft Rules for Conservation Management Plan - everything but ranking
- ▶ Draft Rules for Conservation Management Plan - ranking criteria
- ▶ Draft Rules for Easement and Covenant ranking criteria
- ▶ Whitepaper on Land Evaluation Site Assessment (LESA)
- ▶ Whitepaper on Buy-Protect-Sell
- ▶ Whitepaper on Valuation of Convenants
- ▶ Proposed definitions for "Fragmentation"

Conservation Management Plan Rules

- ▶ “Mutual Modification” means a change to a conservation management plan that is agreed to by both the agricultural owner and operator subject to the plan, and the conservation management plan holder
- ▶ **Addition to CMP Components:** A conflict resolution protocol if plan implementation is being funded

Conservation Management Plan Rules

Minor changes

- ▶ site visits by the grantee to the property must occur *at least* every 3 years ... to document *implementation of* the conservation management plan.
- ▶ The agricultural owner or operator and the grantee *may* agree to establish specific monitoring protocols and site visit intervals to identify trends in habitat, water quality or other natural resource values, and *must establish protocols* if a modification of the conservation management plan results in specific monitoring or site visit needs.

Conservation Management Plan Ranking

Six statutory criteria - Section 6(3)

1. protect, maintain or enhance *farming or ranching* on working land
2. protect, maintain or enhance fish or wildlife *habitat*, improve *water quality* or support other *natural resource values*
3. protect *agricultural outcomes*, benefits or other investment gains
4. the *capacity* of the organization that filed the application
5. Maximize public benefit with *leveraged funds* and *duration/extent*
6. impacts on owners or operators of *neighboring lands*.

Potentially refine in rules

Conservation Management Plan Ranking

Added

1. The extent to which the proposal meets the purpose of the program as defined in OAR XXXXXX-XX01 **To address balance of ag and conservation**
2. The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area;

Conservation Management Plan Ranking

3) The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land, including:

- ▶ The extent to which implementation of the plan(s) would improve the **economic viability** of the operation and maintain viability into the future;
- ▶ Whether the agricultural owner(s) or operator(s) have a **business plan**;
- ▶ The **cost-benefit** of plan implementation; and
- ▶ The extent to which implementation of the plan(s) would reduce the potential for **fragmentation, or development of non-farm uses** on, the property

Conservation Management Plan Ranking

4) The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values, including:

- ▶ The extent to which the plan(s) holistically address(es) natural resource priorities applicable to the **land, including soil, water, plants, animals, energy and human needs** considerations;
- ▶ The extent to which the plan(s) support(s) implementation of local, regional, state, federal or tribal conservation or **recovery plans**;
- ▶ The **quality and connectivity** of wildlife habitat;
- ▶ The extent to which the easement or covenant maintains or improves **water quality**;
- ▶ The extent to which the easement or covenant improves **seasonally appropriate water flows**.

Conservation Management Plan Ranking

5) The extent to which the plan(s) would protect significant **agricultural outcomes, benefits or other investment gains**, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the **local community or economy**;

Conservation Management Plan Ranking

6) The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization, including:

- ▶ The **financial capability** of the organization to manage the plan(s) over time;
- ▶ Demonstrated **relevant expertise and track record** to successfully develop and implement plan(s);
- ▶ The **strength of the organization**, including the composition of the board and ability to manage staff transitions;
- ▶ **Working relationships** with funders, project partners, and the community;

Conservation Management Plan Ranking

7) 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, including but not limited to:

- ▶ Provision of **ecosystem services**;
- ▶ The **duration** of conservation management plan implementation funding;
- ▶ The **cumulative benefits** of investments including OAHP and other sources

Conservation Management Plan Ranking

8) The extent and nature of the plan(s)'s impacts on owners or operators of neighboring lands, including:

- ▶ **Benefits** of the plan(s)'s development and implementation on neighbors;
- ▶ **Negative impacts** of the plan(s)'s implementation on neighbors;
- ▶ **Documented communication** with neighboring landowners to discuss how to mitigate any negative impacts;
- ▶ The extent to which the plan(s) include(s) a **maintenance plan or plans for infrastructure** that may impact neighboring lands if not maintained over time.

Match Requirements



Conservation Easement Purchase
\$100,000



Appraisal
\$10,000



Staff Support
\$4,000



Legal Review
\$2,000



Closing
Costs
\$1,000



Environmental
Assessment
\$3,000

OWEB Land Acquisition Grants:

Total Costs:

\$100,000 appraised value
\$ 20,000 transaction costs
\$120,000 total

Required Match:

\$ 25,000 easement purchase
\$ 5,000 transaction staff
\$ 30,000 total

OWEB Contribution:

\$ 75,000 easement purchase
\$ 15,000 transaction costs
\$90,000 total

Or 75% of \$120,000 = \$90,000

Buy-Protect-Sell

- ▶ Jim Fox, OWEB Staff
- ▶ Jay Udelhoven, Executive Director of East Multnomah SWCD

Covenant Appraisal

Jim Fox, OWEB Staff

Covenant Term

Nellie McAdams, OWEB Staff

Section 10 The Oregon Agricultural Heritage Commission shall: (b) Adopt rules **establishing 3 or more permissible terms of years**, that are not less than 20 or more than 50 years, for working land conservation covenants formed under section 5 of this 2017 Act

Double Payments

"[Ensure] that the total combined covenant and easement payments from OAHP for a property never exceed the appraised value of a permanent easement.

The purpose of this provision was to prevent "double-dipping" by **paying more than the value of an easement through multiple agreements** (potentially including one or more covenants and an easement), adjusted to present day value.

Some work group members thought the concept **may not be appropriate unless covenants are structured as "lease-to-own" arrangements that predictably lead to permanent easements.**

Their thought was, without such lease-to-own arrangements, expired termed covenants would have no effect on the present-day value of a future perpetual easement on the same property. In that case, "double dipping" only exists where a covenant and an easement overlap in time, and the approach may dis-incentivize a landowner to convey an easement after a covenant's term had ended."

Questions

- ▶ Does this balance agriculture and conservation?
- ▶ Are there specific areas where the answer is no?
- ▶ How do we ensure non-discrimination against any type of agriculture (Section 6(4)) geography, commodity, and other type? Did we inadvertently discriminate?



Oregon Agricultural Heritage Commission Meeting Agenda

Thursday, February 1, 2018

Room 1868

152 NW 4th St.

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period (Agenda Item I.), anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to three to five minutes. Written comments will also be accepted on any item before the board. Written comments should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

A. Welcome, Housekeeping, and Introductions (8:00 a.m.)

OWEB Executive Director Meta Loftsgaarden will welcome the commission and public, and describe the overarching purpose of the Oregon Agricultural Heritage Program. OWEB staff and OAHC Rulemaking Facilitator Liz Redon will explain housekeeping measures and facilitate brief introductions of all attendees. *Information item.*

B. Oregon Agricultural Heritage Program (OAHP) 101 (8:15 a.m.)

OWEB Executive Director Meta Loftsgaarden and OAHP Coordinator Nellie McAdams will present an overview of OAHP, including how and why it was created, and the grant programs and other features that are included in the statute. *Information item.*

C. Commission Visioning Exercise (8:25 a.m.)

OAHC Rulemaking Facilitator Liz Redon will lead the commission in exercises about their hopes, fears, and vision for OAHP. *Information item.*

D. Commission Logistics (8:45 a.m.)

Executive Director Meta Loftsgaarden and OAHP Coordinator Nellie McAdams will lead the commission through a discussion of logistics for today's and future meetings, including a discussion of meeting materials, support staff, public meetings law, and commissioner reimbursement for travel costs. *Information item.*

E. Rulemaking and Consensus Decision Making (9:00 a.m.)

OWEB Grant Program Manager Eric Williams will describe the rule making process and how rules differ from guidance. OAHC Rulemaking Facilitator Liz Redon will explain the purpose and process of consensus decision making and receive the commission's feedback on this goal for OAHC meetings. This discussion will be followed by an exercise in consensus decision making. *Information item.*

F. Commission Vote for Chair and Vice Chair (9:45 a.m.)

Executive Director Meta Loftsgaarden and OAHF Coordinator Nellie McAdams will describe the roles of these positions to administer meetings and votes of the commission. OAHF Rulemaking Facilitator Liz Redon will facilitate nomination and voting. *Action item.*

G. Break (10:15 a.m.)

H. Overview of OAHF Rulemaking (10:30 a.m.)

OAHF Rulemaking Facilitator Liz Redon will describe the overarching timeline of the rule making process and the tools that OWEB staff will use to help the commission achieve its goals, including a graphic depiction of the timeline and parking lots to capture ideas for future discussion. Executive Director Meta Loftsgaarden and OAHF Coordinator Nellie McAdams will explain the sample OAHF rule headers and how the commission might use this document in drafting OAHF rules. *Information item.*

I. Technical Committees and Membership (10:45 a.m.)

Executive Director Meta Loftsgaarden and OAHF Coordinator Nellie McAdams will describe the statutory provisions allowing the commission to appoint advisory or technical committees, and explain the staff recommendation of technical committees and committee membership. OAHF Rulemaking Facilitator Liz Redon will assist the OAHF Chair in facilitating a discussion and vote on the staff recommendation. *Action item.*

J. Public comment (11:30 a.m.)

The OAHF Chair will call members of the public who have signed up to give public comment to speak to the commission about OAHF.

K. Lunch (12:00 p.m.)

Lunch is provided for commissioners, OWEB staff, and invited guest presenters only.

L. OAHP Work Group and Statute Development (12:30 p.m.)

Guest presenters will describe the work group and additional efforts that designed and helped pass OAHP, followed by a question and answer period for the commission. Presenters are:

- Kelley Beamer: Executive Director of the Coalition of Oregon Land Trusts
- Mike Gerel: Director of Programs of Sustainable Northwest
- Dylan Kruse: Policy Director of Sustainable Northwest
- Laura Masterson: farmer and Director on the Board of Agriculture, OWEB's Board, and the East Multnomah Soil and Water Conservation District

Information item.

M. Succession Planning Rulemaking Overview (1:15 p.m.)

OAHC Rulemaking Facilitator Liz Redon will describe the goals of this rulemaking, including discussing the purpose, eligibility criteria, application process, and reporting requirements for Farm and Ranch Succession Planning Grants described under OAHP Sections 10(1)(g) and 10(2).

Information item.

N. Succession Planning Panel (1:20 p.m.)

OWEB staff and guest presenters will share information about farm and ranch succession planning, followed by a brief question and answer period for the commission. Presenters are:

- Nellie McAdams: OAHC Coordinator, describing Farm and Ranch Succession Issue Brief
- Jim Johnson: Interim Department Head, Senior Associate Dean, and Program Leader of Oregon State University College of Forestry's Department of Forest Engineering, Resources, and Management
- Tamara Cushing: Associate Professor at Oregon State University College of Forestry's Department of Forest Engineering, Resources, and Management

Information item.

O. Commission Discussion of Farm and Ranch Succession Planning Rule (1:40 p.m.)

Discussions by the full commission and small groups about the purpose, eligibility criteria, application process, and reporting requirements for Farm and Ranch Succession Planning Grants described under OAHP Sections 10(1)(g) and 10(2). *Information item.*

P. Final Summary and Next Meeting (3:15 p.m.)

OAHC Rulemaking Facilitator Liz Redon will summarize the meeting's accomplishments, summarize what needs to be accomplished between now and the commission's next meeting on Thursday, February 22, 2018, and describe the goals for that next meeting. *Information item.*



Roles and Responsibilities Oregon Agricultural Heritage Commission

Purpose

The Oregon Agricultural Heritage Program was established by the Oregon Legislature in 2017 to provide voluntary incentives to farmers and ranchers to support practices that maintain or enhance agriculture and natural resources on agricultural lands such as fish and wildlife habitat. The Oregon Agricultural Heritage Commission (commission) oversees the Oregon Agricultural Heritage Program and makes funding and policy recommendations to the Board of the Oregon Watershed Enhancement Board (OWEB).

The commission's responsibilities of oversight and management include drafting administrative rules for the OWEB Board's approval. These rules will establish grant applicant eligibility criteria, policies and priorities to be used in grant evaluation criteria, a grant evaluation process, and permissible terms for working land conservation covenants. The commission will also provide recommendations to OWEB's Board for funding from the Oregon Agricultural Heritage Fund for conservation management plans, working land conservation covenants and working land conservation easements, succession planning and technical assistance.

Membership

The commission consists of 12 members appointed by OWEB's Board, including 11 voting members and one member of OWEB's Board who serves as a non-voting ex officio member. Of the voting members:

- Four are recommended by the State Board of Agriculture who are actively engaged in farming or ranching, represent diverse types of agricultural commodities, and are from geographically diverse areas of Oregon
- One is recommended by the Director of the Oregon State University Extension Service
- Two are recommended by the State Fish and Wildlife Commission who have expertise regarding fish and wildlife habitat
- One is recommended by the State Board of Agriculture who has expertise in agricultural water quality
- One is recommended by the Land Conservation and Development Commission who has expertise in conservation easements and similar land transfers
- One is selected by OWEB's Board who is a representative of natural resource value interests
- One is selected by OWEB's Board who is a representative of Indian tribal interests

After staggering described in statute for their first terms, the terms of office of voting members is 4 years and is limited to 2 consecutive terms.

Chair and Vice Chair Roles and Responsibilities

The commission chair and vice-chair are selected by the commission from among its voting members. Duties and powers may be determined by the commission.

Commission Member Duties and Responsibilities

Members are expected to attend commission meetings. For the initial rule making meetings of the commission members will attend meetings in person may not participate remotely.

Committees

The commission may appoint temporary and permanent technical and advisory committees to assist the commission in development of administrative rules and performance of other functions. The commission will determine the representation, membership, terms, roles, responsibilities, and organization of any such committees.

In addition, the commission and the OWEB Board shall jointly appoint one or more technical committees to evaluate and rank grant applications for conservation management plans and working land conservation covenants and easements.

Administrative Support

Contracts, expenses, administration, and staff support shall be provided by OWEB.

Meetings

All scheduled meetings of the commission will follow the open public meetings law requirements as defined in ORS 192.610 to 192.690. The commission's rule-making will solicit input and collect information from interested parties from across the state. Meeting dates, agendas, materials, and minutes will be posted on the [OAHF webpage](#).

Each meeting for rule making from February until May of 2018 will be held at [Room 1868](#), at 152 NW 4th St, Prineville, Oregon from 8:00am until 3:30pm (with the exception of May 23).

Thursday, February 1

Thursday, February 22

Thursday, March 8

Thursday, April 5

Thursday, April 26

Wednesday, May 23 (noon – 5:00pm)

Thursday, May 24

After the completion of the rule-making process, the commission will meet at least once every 12 months at a time and place determined by OWEB and may meet at other times and places specified by the call of the chairperson or of a majority of the voting members, subject to the requirements of the open public meetings laws.

Facilitation

OWEB staff or their designees shall provide meeting facilitation for the rulemaking process.

Meeting Procedure and Parliamentary Authority

A majority of the voting members is considered quorum. The commission shall strive for consensus on matters and issues that are brought before it. In the absence of consensus, a vote may be taken governed by Robert's Rules of Order. The minutes shall reflect majority and minority positions.

Compensation of Members

All voting members of the commission may be reimbursed for travel and meeting expenses from the Oregon Agricultural Heritage Fund, but are not entitled to other compensation.

Website

The Oregon Watershed Enhancement Board has created a web page specific to the Oregon Agricultural Heritage Program. It can be found at www.oregon.gov/OWEB. Information includes the legislation creating the Oregon Agricultural Program and Commission (HB3249), a program overview, meeting materials, minutes, relevant reports, studies and other reference material provided to the commission. Information about opportunities for public involvement will also be posted on the website.

Records

The records of the commission are subject to the requirements of the Oregon Public Records Law, ORS 192.410 to 192.505. Minutes of the commission meetings shall serve as the official record of the meetings and shall be made available upon request. The commission shall determine the scope and content of the minutes. Meeting minutes will be posted on the commission website.



Sample OAHP Rule Headers – Agenda Item G

Purpose

This draft is one potential model for organizing the rules for the Oregon Agricultural Heritage Program (OAHP). The Commission, of course, may add, remove, or reorganize sections in the rules. For example, the draft rule headers below organize each grant program as a sub-section under one overarching rule for OAHP; however, the Commission might decide that separate rules for each of the grant programs.

Draft Headers

- Purpose
- Definitions – include definitions of
 - Conservation Management Plan (CMP) adapted from Land Acquisition rules definition
 - Profit, from Land Acquisition rules Definition OAR 695-045-0010
 - Match – percentage and whether of total project budget or OWEB’s contribution
- Oregon Agricultural Heritage Fund
- Oregon Agricultural Heritage Commission
- Grant Programs Established – summary of all grant programs and how they work together
- Conservation Management Plans
 - Application requirements (including OAR [695-005-0030](#))
 - Evaluation criteria
 - Use of Grant Funds
 - Grant Agreement Conditions (See OAR [695-040-0140](#) or OAR [695-010-0100](#))
- Easements and Covenants
 - Application requirements (including entity eligibility and OAR 695-005-0030)
 - Evaluation criteria
 - Use of Grant Funds
 - Subsequent conveyances (See OAR [695-045-0210](#))
- Technical Assistance
 - Application requirements (including OAR [695-005-0030](#))
 - Evaluation criteria
 - Use of Grant Funds
 - Grant Agreement Conditions (See OAR [695-040-0140](#) or OAR [695-010-0100](#))

- For the above:
 - Nature of the application
 - Match contribution (see OAR [695-045-0175](#))
 - Demonstration of understanding of landowner and project leader
 - Application evaluation process:
 - Technical review team appointment and review;
 - staff funding recommendation
 - OAH Commission Review Process
 - Board Funding Decision and Delegation of Authority
 - Director Funding Approval and Distribution of Funds (See OAR [695-045-0195](#))
 - Funding Decision Reconsideration (See OAR [695-045-0200](#))
 - Compliance and Enforcement (See OAR [695-045-0205](#))
- Succession grants
 - Eligibility Requirements
 - Application Process
 - Reporting Requirements
- Waiver & Periodic Review Process



Oregon Agricultural Heritage Commission Technical Committee Staff Proposal

Background

The following are proposals of OWEB staff to the OAH Commission for types of technical committees and committee membership that could serve the Commission in rulemaking for the Oregon Agricultural Heritage Program (OAHP). OWEB staff recommend that any technical committees convened for the purpose of rulemaking be temporary and that they end after OWEB's Board adopts the final rules.

The Commission will be asked to vote on technical committees and their membership at their February 1, 2018 Commission meeting. The Commission may create or dissolve committees or change committee membership at any time.

OAHP Context Technical Committee

This proposed Technical Committee would provide context for the creation of OAHP and its various grant programs. Most of the proposed members served on the OAHP work group which developed the bill. The OAHP work group's extensive discussions about features of the bill (such as the ranking of conservation management plans and working lands covenants and easements) were not fully encapsulated in the bill's text. An OAHP Context Technical Committee would be one way for the work group to share their insights with the Commission. The Commission might call this technical committee to present any of its rulemaking meetings.

Kelley Beamer: Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member

Mary Anne Cooper: Public Policy Council at [Oregon Farm Bureau](#) and OAHP work group member

Mike Gerel: Director of Programs/Water Program Director at [Sustainable Northwest](#) and OAHP work group member

Dylan Kruse: Policy Director at [Sustainable Northwest](#) and OAHP work group member

Laura Masterson: Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

Jerome Rosa: Executive Director of the [Oregon Cattlemen's Association](#) and OAHP work group member

Jay Udelhoven: Executive Director of [East Multnomah Soil and Water Conservation District](#)

Conservation Management Plan Technical Committee

The proposed members of a Conservation Management Plan Technical Committee have experiential knowledge of the features of conservation management plans, existing funding sources for drafting and implementing plans, and considerations for paying landowners annually over 20-50 years to implement plans. This proposed technical committee could be called to present before the Commission discusses conservation management plan rules on Thursday, February 22 and Thursday, March 8.

Amy Charette: Watershed Restoration Coordinator at the [Confederated Tribes of the Warm Springs Reservation of Oregon](#), John Day Basin Office

Mike Gerel: Director of Programs/Water Program Director at [Sustainable Northwest](#) and OAHF work group member

Laura Masterson: Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

Staff TBD: at the [Natural Resources Conservation Service \(NRCS\)](#)

Tom Salzer: General Manager of the [Clackamas Soil and Water Conservation District](#)

Working Land Covenants and Easements Technical Committee

The proposed members of a Working Land Covenants and Easements Technical Committee have experiential knowledge of programs that provide match funding for these projects, the features of covenant and easement agreements, the differences between termed easements (covenants) and permanent easements, associated project costs, and the ranking of projects. This proposed technical committee could be called to present before the Commission discusses the covenant and easement rules on Thursday, April 5 and Thursday, April 26.

Kelley Beamer: Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHF work group member

Katherine Daniels: Retired Farm and Forest Lands Specialist at the [Oregon Department of Land Conservation and Development](#)

Laura Masterson: Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

Dan Roix: Conservation Director at [Columbia Land Trust](#)

Loren Unruh: Assistant State Conservationist – Programs – at [NRCS](#)

Bari Williams: Easement Program Specialist at NRCS

Technical Assistance Technical Committee

The proposed members of a Technical Assistance Technical Committee have experiential knowledge about how this grant program could best assist current or potential holders of conservation management plans, easements, or covenants with capacity building, program development, and outreach. This proposed technical committee could be called to present before the Commission discusses the technical assistance rules on Wednesday, May 23 and Thursday, May 24.

Amy Charette: Watershed Restoration Coordinator at the [Confederated Tribes of the Warm Springs Reservation of Oregon](#), John Day Basin Office

Jay Gibbs: John Day/Umatilla and Snake River Basin Team Leader at [NRCS](#)

Laura Masterson: Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

Brad Paymar: Northwest Senior Program Manager at [Land Trust Alliance](#) (conditioned upon organizational approval)

Dan Roix: Conservation Director at [Columbia Land Trust](#)

Tom Salzer: General Manager of the [Clackamas Soil and Water Conservation District](#)



Issue Paper: Farm and Ranch Succession Trends and Resources in Oregon

Problem Statement

Farming and ranching is an important sector of Oregon's economy and is a livelihood for many people in rural Oregon. In addition, farm and ranch land is an important part of Oregon's cultural and ecological landscape, contributing to fish and wildlife habitat and other ecosystem services. Yet one-quarter of Oregon's agricultural land will change hands in the next two decades, and it is uncertain who will manage it and how it will be used. This is because the average age of farmers and ranchers is higher than ever (60), yet up to 84% might not have a clear plan for succession. As a result, Oregon farms and ranches may be converted to non-agricultural uses such as subdivisions, vacation homes, and other forms of development.

The Oregon Agricultural Heritage Commission (OAHC) and the Board of the Oregon Watershed Enhancement Board (OWEB) are charged with considering how to best provide assistance to current and prospective farmers and ranchers to reduce the loss of agricultural land due to poor succession planning. Section 10 of the statute directs the OAHC to:

- (1)(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.

Oregon State University's (OSU's) Extension program currently offers succession planning curriculum called Ties to the Land. This curriculum was developed for small woodlands owners who are transitioning their forest land to the next generation, but it has been used by many farm families as well. Today the commission will hear presentations about this program by representatives of OSU's College of Forestry.

Decision Statement

Today, the commission will be asked to discuss what a farm succession grant program needs to offer. They will discuss the purpose, eligibility requirements, application process, and reporting requirements for this grant program. The commission will be presented with draft language between today and the next meeting on Thursday, February 22, at which they will be asked to vote on the draft recommended rule language

Appendix A: Summary of Succession Challenges in Oregon

How Agricultural Land is Changing Hands in Oregon

One-quarter of Oregon’s 63 million acres is in agricultural production (16.3 million acres).¹ Over the next 20 years, **64% of this land (10.5 million acres) will change ownership**. This is because the average farmer and rancher in Oregon has never been older – 59.6 in 2012 – and many of them will sell land for retirement or pass it in their estate. Meanwhile, the number of beginning farmers and ranchers is shrinking, with the percentage declining from 32% of all farmers in 2002 to 24% in 2012.

Who will own that land and how it will be used in the future is uncertain, since researchers estimate that the vast **majority of farms and ranches do not have a succession plan**. This estimate comes from the fact that 84% of Oregon farms and ranches are sole proprietorships – not organized as a business entity. One of the first things that an attorney will do when a client begins succession planning is organize the business as a Limited Liability Company, Corporation, etc. Therefore, it is assumed that most of these businesses have not begun the process.

Meanwhile, **the price of agricultural land in Oregon and around the U.S. is rising**, increasing the value of farm and ranch estates, and making it more difficult for beginning farmers and ranchers to acquire land. For example, actual sales of irrigated land with associated housing averaged nearly \$30,000 per acre in Clackamas County and \$20,000 per acre in Washington County from 2010 to 2015. Land prices in Eastern Oregon are not as high as in the Willamette Valley, but they are increasing at a rapid rate. For example, appraised agricultural land prices in Grant County more than doubled between 2002 and 2012 from \$391 to \$804 per acre.

Increasing prices of agricultural land is attributed, in part, to increasing demand from non-agricultural purchasers of land. Agricultural land is often a better long-term investment than the stock market, incentivizing investment companies to buy this land. Land is also purchased by development speculators, who hold the land with the hope that the Urban Growth Boundary will someday encompass it. And “amenity owners” who enjoy the surroundings but do not use the land productively are also purchasing and fragmenting land, increasing demand and price.

To summarize, the large amount of land coming on the market as the aging farmer and rancher population retires or passes away will be expensive, and **there might not be easy avenues for ownership of the land by beginning farmers and ranchers** – whether or not they are family members.

¹ All data in this section is from Brekken, C.A., et al. *The Future of Oregon’s Agricultural Land*. Corvallis: OSU, 2016.

What are Succession and Estate Planning?

Succession planning helps ensure the continuity of business leadership between generations. It includes identifying and preparing new leaders who can replace old leaders when they leave, retire, or pass away, and it takes into account the goals of the elder leaders (e.g. retirement), new leaders (e.g. income generation), and the business (e.g. viability, resilience and adaptability). In a family business, it also includes **estate planning** - preparing for the transfer of the elder leader's assets after his or her death. In short, succession planning involves more than a will and trust. It's a process, that includes:

- Identifying the **goals** of current and future leaders, as well as their families
- Addressing and resolving **family disputes**
- Planning for the elder leader's **retirement**
- Managing risk and saving assets with **insurance** policies (e.g. life and long-term care)
- Identifying and training and assisting the **next generation**
- Deciding what each of the **heirs** will receive
- Minimizing federal and state **estate and income tax** liability, including gift planning
- Ensuring **business viability**

A family's succession team might include these professionals:

- Attorney
- Accountant
- Banker Financial advisor
- Realtor
- County assessor
- OSU Extension
- Family counselor or mediator
- Friends and neighbors

Why is Succession Planning More Difficult for Farmers and Ranchers?

Succession planning is difficult for all family businesses, but it can be especially challenging for farm and ranch businesses.

The process is long, complicated, and expensive. Many people find it difficult to begin succession planning because it forces them to think about their mortality or to address difficult family dynamics. Many small business owners have a difficult time prioritizing this long-term planning among their daily tasks. Farmers and ranchers who operate on slim and unpredictable margins find it difficult to justify the cost. Moreover, succession planning requires families to have challenging discussions and address old disputes, which can be a difficult process to initiate and persevere through without professional assistance from a family mediator or counselor, which can also be expensive.

Farmers and ranchers often benefit from **events** that encourage them to start thinking about planning, and from **personalized family counseling** to address difficult emotional and financial issues before they see their attorney, accountant, and/or financial advisor.

Some families do not have a successor in the family and are reluctant to look outside the family for future leadership. Even if they have a successor in the family, farmers and ranchers think of their profession as their identity and often envision dying on the tractor or in the saddle. This might make them reluctant to train and empower successors to take leadership roles within a meaningful timeframe, leaving them unprepared to operate the business when the leader dies.

Emotion plays a similar role with agricultural real estate. A farm or ranch is unlike most other family businesses in that it is dependent upon particular locations. For example, a widget factory can relocate as needed, but agriculture is dependent upon particular soil, water, and climate as well as infrastructure such as transportation, processing, or equipment support. The land not only supports the business, but has emotional and recreational values to each family member. It supports production and is the location of business infrastructure, but it also is often the site of the family homestead, and streams and woodlands used for fishing and hunting. Emotions can run high during estate planning and administration, because each family member has different, deep, and sometimes conflicting ties to the land.

Additionally, as agricultural land prices continue to rise in Oregon and across the United States, it becomes more difficult for many farm and ranch families to divide their estates between their heirs. Farms and ranches are often land-rich and cash-poor, but farmers and ranchers often want to divide their estate's value evenly between their children. An heir who wants to farm must either take on significant debt to pay off his or her siblings to compensate for their larger portion of the estate, or sell off land and farm assets, hamstringing the business into the future.

Potential Results of Poor Succession Planning

When someone dies without a will or trust, the estate is divided among the person's heirs, as determined by state law. When this happens, assets are assessed and divided through the court system. Heirs might dispute the value of the assets and/or who receives which asset.

If the person who died (the decedent) without a will owned a family business, most business assets also pass through this process. When a family member wishes to continue the business, it can be even more difficult for families to agree on who receives which assets and their value. When a decedent does not create a will giving the business assets to a particular heir, or giving a greater value of assets to the farming heir than to non-farming heirs, the farming heir must negotiate for these assets. This often results in increased legal costs for the estate and all heirs. In addition, if descendants inherit an undivided interest in a farm or ranch, those interested in continuing the business must find a way to buy out disinterested inheritors.

If the decedent does not plan, the estate might also owe significant Oregon estate tax. Estates worth over \$1 million owe Oregon estate tax. Most farm and ranch estates include millions of dollars of assets in land alone. Oregon's Natural Resources Tax Credit offers relief from this tax if more than half of the gross estate is in qualified agricultural, fishing, or forestry assets. However, the decedent or their family members must have operated the business for 5 of the 8 years prior to the decedent's death, and the assets must be operated by the decedent's family members for 5 of the following 8 years. Families that have not prepared to use this credit, or decedents who pass the land to non-family members, might not be able to use this credit.

In short, when there is no succession plan, there is a higher likelihood of:

- Family strife, as families and courts divide the assets
- Higher costs through attorney fees and Oregon estate tax
- Less likelihood that a beginning farmer or rancher, family or otherwise, will own the assets and operate the business

And thus a greater likelihood of the land being converted to non-agricultural uses.

Appendix B: Succession Planning Resources in Oregon

Austin Family Business Program² at the Oregon State University College of Business prepares family businesses to balance the well-being of the business, the family and individuals in day-to-day decision making and during succession. The program offerings include:

- **Family Business 360° Events** 1.5-hour breakfasts covering current family business issues
- **Excellence in Family Business Awards** competitive peer-reviewed awards for family-owned businesses across all industries, regardless of size or revenue
- **Family Business Advisor List** of attorneys, accountants, counselors, and more, built solely from the recommendations of Excellence in Family Business winners and finalists.

University Courses for Students and Community Members, include:

- Chemeketa Community College Agribusiness Management Class³
- Oregon State University courses for undergraduates who anticipate inheriting a farm.

Northwest Farm Credit Services (FCS)⁴ offers:

- Online succession guides and webinars
- Business consultants for smaller issues – free to customers
- One-day succession workshops and multi-day succession retreats
- One-on-one consulting resources from Northwest FCS and third-parties for a fee.

Oregon State Bar Referral Service⁵ connects people with attorneys throughout the state.

Oregon State University Extension:

- **Ties to the Land**⁶ OSU Extension’s curriculum for forest succession planning, which it describes as “the human side of estate planning.” Materials are also applicable to farm and ranch businesses. Interactive curriculum utilizes videos, exercise, and a workbook.
- Some individual Extension agents advise or direct farmers toward resources for succession planning. Extension also occasionally receives grants for workshops.

Rogue Farm Corps⁷ offers on-farm, hands-on internships and their Farm Preservation Program helps Oregon farmers and ranchers preserve land from development and pass it to the next generation via research, succession and land access workshops, and outreach.

Oregon Small Business Development Center (SBDC) Network⁸ – 19 throughout the state, offer one-on-one counseling and workshops for business and succession planning. The Network is developing a focus area on farm and ranch business and succession planning.

² <http://business.oregonstate.edu/familybusinessonline>

³ <https://www.chemeketa.edu/programs-classes/training-certificates/agribusiness-management/>

⁴ <https://www.northwestfcs.com/Resources/family-business>

⁵ <https://www.osbar.org/public/ris/>

⁶ <http://tiestotheLand.org/>

⁷ <http://www.roguefarmcorps.org>

⁸ <https://bizcenter.org/>



Oregon Agricultural Heritage Commission

Thursday, February 1, 2018

OAHP Purpose

Develop voluntary tools to keep lands in farming and ranching to support:

- ▶ Oregon's economy;
- ▶ healthy rural Communities; and
- ▶ healthy fish and wildlife and other natural resources

Why Focus on Working Lands?

- ▶ Oregon's second-largest **economic** driver - \$5.4 billion
- ▶ Agricultural lands support valuable **fish and wildlife habitat** and enhance other **natural resources**
- ▶ Cornerstone of state's **rural communities**
- ▶ Oregon's land use **laws are not enough** to protect farms and ranches from fragmentation

Goals

- ▶ Incentives to **keep farms and ranches in production**
- ▶ Incentives to **support fish, wildlife or other natural resource values**
- ▶ Flexible approaches that are **tailored to individual landowners**
- ▶ **Balance** landowner and conservation needs
- ▶ **Leverage federal money** mostly untapped in Oregon

Statutory Programs

Provides funding for:

- ▶ Farm and ranch succession planning
- ▶ Permanent working land easements
- ▶ 20-50 year working land covenants
- ▶ Conservation management plan implementation
- ▶ Technical Assistance for organizations

Study of tax related and other financial barriers to farm and ranch land transfer

Statutory Administration

- ▶ Oregon Agricultural Heritage Fund for grant programs
- ▶ Oregon Agricultural Heritage Commission to oversee program development and investments

Timeline

September, 2017

Hired Staff

October, 2017 - January, 2018
appointments

Administered OAH Commission

February - May, 2018

Draft rules

July, 2018

Public comment on rules

August, 2018

Revise rules based on public comment

August - November, 2018

Call for project prospecti

October, 2018

OWEB Board vote on rules

February, 2019

Legislative Session

Commission Visioning Exercise

- ▶ Write down what about OAHP or being on the commission
 - ▶ is most exciting to you
 - ▶ gives you most fear or concern
- ▶ Share the biggest, can't-miss opportunity about OAHP

Meeting 1 Agenda

- ▶ 8:00 a.m. - Welcome & Housekeeping
- ▶ 8:15 a.m. - OAHP 101
- ▶ 8:25 a.m. - Commission Exercise
- ▶ 8:45 a.m. - Logistics
- ▶ 9:00 a.m. - Rulemaking and Consensus Decision Making
- ▶ 9:45 a.m. - **Vote** for Chair and Vice Chair
- 10:15 a.m. - BREAK
- ▶ 10:30 a.m. - Overview of OAHP Rulemaking
- ▶ 10:45 a.m. - Technical Committees, **Vote**
- ▶ 11:30 a.m. - Public Comment
- Noon - LUNCH
- ▶ 12:30 p.m. - OAHP Work Group presentation
- ▶ 1:15 p.m. - Farm Succession Planning Panel
- ▶ 1:40 p.m. - Farm Succession Planning Rulemaking
- ▶ 3:15 p.m. - Next Steps and Wrap Up

Consensus Decision Process

Reflecting on past experience(s) with consensus....what word comes to mind?

Consensus Decision-Making

IS:	IS NOT:
Creative & dynamic approach to problem solving	The preference of a majority
Inclusive & participatory to general agreement	Unanimous agreement/Complete agreement
Focus on process to decision, not just results	Necessarily first choice

Consensus Decision Voting



Thumb up: full agreement with the alternative - it is your preferred choice



Thumb side: can support and live with the alternative, but is not your preferred choice



Thumb down: can neither live with nor support the alternative

Process Pattern

Introduce

- Succession Planning
- Conservation Management Plan
- Working Lands Easements & Covenants
- Technical Assistance

Learning & Discussion

- Presentations
- Issue Briefs
- Guest Presenters or Technical Committees
- Commission information sharing

Synthesis & Decision

- Small Group Work
- Consensus Process
- Vote at Following Meeting

Consensus Practice



Authority to Create Technical Committees

Section 9(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.

Staff Recommendation: Technical Committees

1. OAHP Context
2. Conservation Management Plans
3. Working Land Easements and Covenants
4. Technical Assistance

OAHP Context

- ▶ Kelley Beamer - Coalition of Oregon Land Trusts
- ▶ Mary Anne Cooper - Oregon Farm Bureau
- ▶ Mike Gerel - Sustainable Northwest
- ▶ Dylan Kruse - Sustainable Northwest
- ▶ Laura Masterson - OWEB Board, Board of Agriculture, East Multnomah SWCD
- ▶ Jerome Rosa - Oregon Cattlemen's Association
- ▶ Jay Udelhoven - East Multnomah Soil and Water Conservation District

Conservation Management Plans

- ▶ **Amy Charette** - Confederated Tribes of the Warm Springs Reservation
- ▶ **Mike Gerel** - Sustainable Northwest
- ▶ **Laura Masterson** - OWEB Board, Board of Agriculture, East Multnomah SWCD
- ▶ **Tom Salzer** - Clackamas Soil and Water Conservation District
- ▶ **Staff TBD** - Natural Resources Conservation Service

Working Land Easements & Covenants

- ▶ Kelley Beamer - Coalition of Oregon Land Trusts
- ▶ Katherine Daniels - Retired Department of Land Conservation & Development
- ▶ Laura Masterson - OWEB Board, Board of Agriculture, East Multnomah SWCD
- ▶ Dan Roix - Columbia Land Trust
- ▶ Loren Unruh - Natural Resources Conservation Service
- ▶ Bari Williams - Natural Resources Conservation Service
- ▶ Tom Salzer - Clackamas Soil and Water Conservation District

Technical Assistance

- ▶ **Amy Charette** - Confederated Tribes of the Warm Springs Reservation
- ▶ **Jay Gibbs** - Natural Resources Conservation Service
- ▶ **Laura Masterson** - OWEB Board, Board of Agriculture, East Multnomah SWCD
- ▶ **Brad Paymar** - Land Trust Alliance
- ▶ **Dan Roix** - Columbia Land Trust
- ▶ **Tom Salzer** - Clackamas Soil and Water Conservation District

OAHP Work Group

- ▶ Kelley Beamer - Coalition of Oregon Land Trusts
- ▶ Mary Anne Cooper - Oregon Farm Bureau
- ▶ Mike Gerel - Sustainable Northwest
- ▶ Derek Johnson - The Nature Conservancy
- ▶ Doug Krahmer - Farming Representative
- ▶ Dylan Kruse - Sustainable Northwest
- ▶ John O'Keeffe - Ranching Representative
- ▶ Jerome Rosa - Oregon Cattlemen's Association
- ▶ Jay Udelhoven - East Multnomah Soil and Water Conservation District

Farm/Ranch Succession Planning Statutory Authority

Section 10(1)(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.

Section 10(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.

Farm/Ranch Succession Planning Rules Discussion Topics

- ▶ Purpose
- ▶ Eligibility Criteria for Projects
- ▶ Application Process
- ▶ Reporting Requirements

“Working Lands”
Encompasses More Than

25%

of Oregon’s
63 Million Acres



■ Agricultural Lands

Over the Next 20 Years,

64%

of Oregon's
Agricultural Lands
Will Change Hands

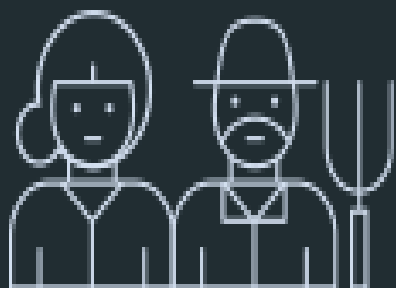


The average age of farmers has never been higher. The number of beginning farmers and ranchers is shrinking.

Current Average is

60

Years of Age



Beginning Farmers
Encompass

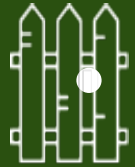
24%

of All Farmers &
Ranchers (2012)

Farm Succession Planning Challenges

- **Having interested successors**
- **Where to start**
- **Emotional and financial overwhelm**

As a Result, Parcelization, and Non-Farmer Ownership Occur



• More Fragmented Into Parcels



Converted to Non-Farm Uses



Harder for Beginning Farmers



Oregon State University Ties to the Land Program

Oregon State University College of Forestry's
Department of Forest Engineering, Resources,
and Management

- ▶ **Jim Johnson** - Interim Department Head,
Senior Associate Dean, and Program Leader
- ▶ **Tammy Cushing** - Associate Professor

Farm/Ranch Succession Planning Rules Discussion Topics

- ▶ Purpose
- ▶ Eligibility Criteria for Projects
- ▶ Application Process
- ▶ Reporting Requirements



Oregon Agricultural Heritage Commission Meeting Agenda

Thursday, February 22, 2018

Room 1868

152 NW 4th St.

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:30 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to three to five minutes. Written comments will also be accepted on any item before the commission. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Vice-Chair Bruce Taylor and OWEB Executive Director Meta Loftsgaarden will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the February 1, 2018 meeting will be presented for approval. *Action item.*

Summary of Farm and Ranch Succession Planning (approximately 8:15 a.m.)

OAHP Coordinator Nellie McAdams will present key points from the commission's discussion at its February 1, 2018 meeting and present key questions for the commission to consider in refining the draft rules, including: the list of eligible organizations, the general methods for delivering the programs, the evaluation criteria, the reporting requirements, whether the rules should permit the commission to conduct evaluations of program effectiveness as measured by changes in succession and farmland ownership and use, whether match should be required, and how the program should solicit grant applications.

Conservation Management Plan (CMP) Rulemaking (approximately 9:40 a.m. – 3:00 p.m.)

The commission will discuss the contents of CMPs, the methodology for calculating payment for implementing CMP practices, the process for mutual modification of CMPs, and the monitoring requirements for the program. Staff will present an issue brief, and a technical committee will share their experiences implementing, researching, and creating rules for similar programs and receive questions from the commission. Committee members in attendance:

- **Amy Charette:** Watershed Restoration Coordinator at the Confederated Tribes of the Warm Springs Reservation of Oregon, John Day Basin Office

- **Tom Salzer:** General Manager of the Clackamas Soil & Water Conservation District
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm

For the remainder of the morning and afternoon, commission members will discuss:

- Key components of conservation management plans
- Match requirements
- Payment calculations
- Management plan terms (20-50 years)
- Conservation management plan modification
- Conservation management plan monitoring

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

Presentation and Questions for Dean Moberg (1:40 p.m.)

Dean Moberg, North Coast and Lower Willamette Basin Resource Conservationist at Natural Resources Conservation Service (NRCS), will speak about his experience with CMPs at NRCS and answer questions from the commission. *Information item*

Summary of Commission's Discussions and Vision for Rules (3:00 p.m.)

OAHC Facilitator Liz Redon will help the commission summarize the day's discussion and identify additional broad subjects that were not discussed today and are not on the agenda for the following meeting.

Final Summary and Next Meeting (3:15 p.m.)

The commission's next meeting on Thursday, March 8, 2018. *Information item.*



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, February 1, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES FOR APPROVAL BY THE OREGON AGRICULTURAL HERITAGE COMMISSION

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Bennett, Mark
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Neuhauser, Will
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Hungate, Cammi
Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Beamer, Kelley
Biddle, Alexis
Cushing, Tammy
Davee, Rachael
Flegel, Wade
Flegel, Zach
Gerel, Mike
Johnson, Jim
Kenagy, Peter
Kruse, Dylan
Martino, Amanda
Masterson, Laura
Rhoden, Russ

The meeting was called to order at 8:05AM.

A. Welcome, Housekeeping, and Introductions

OWEB Executive Director Meta Loftsgaarden invited the commission and members of the public, briefly explaining the origin, need for, and importance of the Oregon Agricultural Heritage Program (OAHP), HB 3249, which authorized the creation of the Oregon Agricultural Heritage Commission (OAHC). She thanked the commission for their time and dedication and the public for their engagement.

Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, including time and procedure for public comment, and she facilitated OWEB staff, members of the commission, guest presenters, and the public in making brief introductions.

B. Oregon Agricultural Heritage Program (OAHP) 101

Meta Loftsgaarden and OAHP Coordinator Nellie McAdams described the agricultural and natural resource values that are at stake, the goals, of the program, and how the components of the statute are designed to support those values and address programmatic goals.

C. Community Visioning Exercise

Liz Redon led the commission in writing down what excites them most about being on the OAH Commission, and what about OAH or the commission gives them the most fear or concern. Commissioners then shared verbally what they believed to be the biggest “can’t-miss opportunities” for OAH. Doug Kraemer hoped to make OAH available to as many agricultural landowners as possible, which could be enhanced by generating landowner interest in the program. Lois Loop felt that the commission could also educate the general public on the economic and conservation values of agricultural land. Chad Allen hoped that the program could protect farmland, which is extremely important and being lost at too great a pace, and also help create positive relationships between agricultural and environmental communities. Ken Bailey wanted the commission to keep farm viability as an underlying goal, and Mary Wahl wanted the program to create mutual benefits for conservation and agriculture. Mark Bennett wanted the program to help landowners better utilize not only OAH’s programs, but also other existing programs that benefit farm/ranch viability and conservation. Similarly, Bruce Taylor wanted the program to help leverage additional federal funding.

D. Logistics

Meta Loftsgaarden and Nellie McAdams walked the commission through their materials, letting them know that they would receive new materials for each meeting to add under the appropriate meeting tab in their binders, and that general information is in the back of their binders. Meeting materials are also posted on the OAH website. They noted that, the “Roles and Responsibilities” document establishes consensus decision making as a goal of the commission, which they would discuss next.

E. Rulemaking and Consensus Decision Making

OWEB Grant Program Manager Eric Williams explained the rule making process and distinguished rules from guidance. Generally, rules include program requirements, while guidance might provide options or recommendations about how to comply with the requirements or improve the competitiveness of an application. Rules contain items about which there is relative certainty, since any changes would have to go through the rulemaking process.

For OAH, the OAH Commission will draft and recommend rules to OWEB’s Board, which will be the final decision maker. The OWEB Board will oversee the process and be updated throughout, especially by the *Ex Officio* OWEB Board member on the commission, Will Neuhauser, and Laura Masterson, who was a guest presenter. Once grant programs are being implemented, Technical Committees will review and rank grant projects using the OAH statute and rules as guidelines. It was recommended that after rulemaking meetings, OAH Commission meetings should be scheduled around the same time and at the same location as OWEB Board meetings in order for members to communicate and share a meal.

The commission asked Liz Redon to describe the rulemaking timeline and graphic that was scheduled for Agenda Item H. She explained how OWEB plans to structure the OAH Commission decision-making process. There will be four topics for rule making: succession

planning, conservation management plans, easements and covenants, and technical assistance. The commission would then discuss how all of these programs work together at their final meeting. Before each meeting's topic, the commission will hear a summary of an issue brief on the topic, they may hear from technical committees if they decide to create them, and then they will deliberate in small groups and together. They will not wordsmith drafts of rules, but will rather discuss high level policy issues that will inform draft rules, which the commission will review over email between meetings and discuss at the following meeting.

The commission decided not to vote on any of the rules until the very end. Instead, Liz will test their comfort with rules at the end of each discussion to see if commission members support or could live with the rules as drafted. The commission felt that this approach would make it less difficult to revisit earlier discussions of OAH rules as necessary.

Liz Redon also explained the consensus decision-making process. The commission generally felt that consensus decision-making would make their final decision(s) easier, especially if all prior decisions are open for discussion. Commissioners decided to include *Ex Officio* member Will Neuhauser in consensus processes, even though he will not have a vote on the final rules.

F. Commission Vote for Chair and Vice-Chair

Meta Loftsgaarden explained that the Chair and Vice-Chair would be a sounding board for OWEB between meetings, and would administer meetings with Liz Redon as timekeeper.

Ken Bailey moved to nominate Doug Krahmer as Chair. The motion was seconded by Dr. Sam Angima. There were no other nominations. The motion passed unanimously.

Derek Johnson moved to nominate Bruce Taylor as Vice-Chair. The motion was seconded by Nathan Jackson. There were no other nominations. The motion passed unanimously.

G. Overview of Rulemaking

Meta Loftsgaarden and Nellie McAdams explained that the "Sample Rule Headers" document is only a tool to assist the commission in thinking about what big picture questions they will need to address in rulemaking. It will be edited throughout the rulemaking process, and the commission is welcome to send Nellie feedback at any time.

H. Technical Committee

Meta Loftsgaarden and Nellie McAdams explained the commission's statutory authority to appoint advisory or technical committees on a permanent or temporary basis. Committees may be described as permanent or temporary, although any committee can be created or dissolved at the commission's discretion. The commission may also add or remove membership at their discretion. Meta and Nellie then presented the staff recommendation of four committees: OAH context, conservation management plan, easements and covenants, and technical assistance. Proposed technical committees and their membership are listed in the meeting materials.

The commission modified the staff proposal to:

- Add a Succession Planning Committee. The commission may add members going forward. This committee would assist not only with rulemaking but eventually with recommendations to the legislature.
- Add to the Conservation Management Plan Technical Committee someone representing an organization that has significant experience acquiring and holding agricultural working land easements.
- Add to, or confirm that the Easements and Covenants Technical Committee has someone who can ensure that agriculture and conservation work together.
- Keep the option open to add expertise to any of the proposed technical committees over time.

Mark Bennett moved to approve the staff recommendation as amended. The motion was seconded by Mary Wahl. Dr. Sam Angima opened the motion or discussion and asked what the downside would be to not appointing technical committees if their members could still present to the commission. OWEB staff explained that appointment of technical committees gives members greater clarity about their role and time commitment, and makes it easier for OWEB to support and reimburse the individuals. The motion passed unanimously.

I. Public Comment

Public comment was given by Wade Flagel and Zach Flagel about the importance of the program and succession planning. Their written comment is in OWEB's records.

J. OAHP Work Group and Statute Development

Kelley Beamer (Executive Director of the Coalition of Oregon Land Trusts), Mike Gerel (Director of Programs of Sustainable Northwest), and Dylan Kruse (Policy Director of Sustainable Northwest) presented on their role on the OAHP Work Group that developed the legislation that became OAHP. They described the collaborative efforts of agricultural and conservation groups, the work of these groups to pass the bill, and their ongoing commitment to the program. Laura Masterson (farmer and Director on the Board of Agriculture, OWEB's Board, and the East Multnomah Soil and Water Conservation District (EMSWCD)) presented on her work related to OAHP as the Chair of the Board of Agriculture's Land Use Committee and as a Director of EMSWCD, which has a land legacy program. All members extended their support to the commission in explaining nuances of the statute and offering insight into the structure of the program, as members of the newly created OAHP Context Technical Committee.

K. Succession Planning Rulemaking Overview

Meta Loftsgaarden and Liz Redon explained the critical role of succession planning within OAHP's suite of programs. They explained that, although the commission shall make funding recommendations to the legislature and in addition to recommendations of grant funding to OWEB's Board, they will be asked to limit today's discussion to rules for succession planning grants. Meta and Liz also explained that, although the statute allows grants to fund one-on-one

delivery of succession services, the commission would be asked to think about how to optimize programmatic resources.

Meta Loftsgaarden explained that the reason Section 10(2) names Oregon State University (OSU) Extension as a specific agent for delivering programs is that OSU Extension has an existing curriculum, network, and trust in the agricultural community that could be tested through OAHP. This mention in the statute does not preclude proposals from other entities, and the commission may change their focus over time.

L. Succession Planning Panel

OWEB Staff Nellie McAdams explained the issue brief in the commission's meeting materials. Although 64% (10.45 million acres) of Oregon's agricultural land is expected to change hands in the next twenty years, the vast majority of Oregon farmers and ranchers might not have a succession plan. Families that inherit land without a succession plan are more likely to incur higher attorney fees and Oregon estate tax and experience greater strife. This commonly leads to the sale of agricultural land and assets to pay bills on a short timeline without much liquidity. The fragmentation of Oregon's agricultural land makes it more vulnerable to development and being taken out of production, also putting its habitat values at risk.

Jim Johnson (Interim Department Head, Senior Associate Dean, and Program Leader of Oregon State University College of Forestry's Department of Forest Engineering, Resources, and Management) presented on their Ties to the Land Program. The curriculum was developed in Oregon, but is now being used around the United States. The program is committed to rolling out a third edition of the curriculum by the end of 2018, which will broaden the program to an agricultural audience and may include information about conservation easements. For participants in the program, 75% reported it was very useful, 97% said that they gained knowledge, and a year later 71% had taken the next step.

Tamara Cushing (Associate Professor at Oregon State University College of Forestry's Department of Forest Engineering, Resources, and Management) presented next. She has a specialty in estate planning and taxation, but also works with families on family dynamics. Her workshops can last from 1 or 2 hours to a full day. The goal is to help landowners take the next step forward.

The commission asked how Extension links to advisors, and whether the trainings for estate planners on charitable giving that are funded by the Oregon Community Foundation could be a model for similar trainings about farm and ranch succession, especially regarding how easements can be part of a plan.

M. Commission Discussion of Farm and Ranch Succession Planning Rule

Liz Redon facilitated the commission in sharing what they would most like someone to know who does not have familiarity with farm and ranch succession challenges. Commissioners stated that to be successful, succession planning must be a dynamic and ongoing process, yet it can be difficult for farmers and ranchers to begin the conversation. They might have difficulty

navigating their options and their attorneys and CPAs might not be well informed on the process. It also takes time and money that many families struggle to find.

Commissioners stated that even if farmers and ranchers begin the process, it can be difficult to divide the assets. They stated that “fair is not equal and equal is not fair” in dividing up an estate that includes a business, and that there should be fair compensation for the children who work on the farm or ranch, building the assets that will be part of the estate. Another consideration is that the sentimental value of some assets might outweigh their monetary value for some people, and that spouses can create complexity in dividing an estate.

In essence, commissioners recognized that three interests were at stake: the elder generation, the younger generation, and the business viability. There must be cash flow for each to have what they need, and this might include separating equity from decision-making authority. The younger generation must also be proactively asked if they want to take over the farm.

The commission recognized positive outcomes from succession planning, including the opportunity to bond as a family, allowing the next generation to innovate the business model, and potential increases in business viability by bringing in outside experts. It was noted that, although succession planning might be a primary driver for some landowners to convey conservation easements, it is not the only driver and the benefits of succession planning extend beyond long term natural resource conservation.

The commission then divided into three small groups to discuss four key policy questions for rules for an OAHP Succession Planning Grant Program:

1. What information does the commission want farmers, ranchers, and service providers who participate in OAHP Succession Planning grant projects to come away with?
2. What organizations should deliver this programming?
3. How should this programming be delivered?
4. How can the commission measure the success of these grant projects?

The small groups were relatively in agreement for their answers to these questions. Their recommendations are summarized below.

1. What information does the commission want farmers, ranchers, and service providers who participate in OAHP Succession Planning grant projects to come away with?

The following notes are from the small group facilitated by Meta Loftsgaarden:

- WHY they need to do succession planning – benefits analysis, risks/costs of no SP and how to address that
- What the toolbox is: counselor/facilitator, attorney, CPA, real estate
- Resources list - Recommendations of service providers
- Land use requirements and implications

- Business understanding and planning
- NOTE: engage CPAs for outreach, participation, and encouragement. CPA certification program?
- Train providers about tools, like easements
- Check back process
- Understanding state/federal applicable mandates
- Other local assets you can access – NRCS, FSA, land trust, SWCD – and train them at a high level too
- Landowner certification (century farm in progress)

The following are notes are from the small group facilitated by Eric Williams:

- List and understanding of options, including business structures (e.g. LLC), size of operation
- Better understanding of resources available, e.g. legal, accountant, family counseling
- List of vehicles for transferring assets and management responsibility
- Good understanding of realistic timelines
- Understanding of consequences of NOT doing it
- Understanding of the emotional ramifications
- Understanding of the needs of landowners – holistic plan for land
- Having a business plan regardless of what option they choose
- What are the components of a business plan, including conservation management plan
- Understanding of estate taxes and tax planning
- Understanding of how land use laws affect succession planning

The following notes are from the small group facilitated by Nellie McAdams:

- Landowner –
 - Clarify goals, outcomes and who participates in deciding
 - Elements of a succession plan
 - Steps to make the decisions
 - Flexibility
 - Referral list of service providers – how to narrow down, vet, and review? (website). Knowledge and confidence to end and seek new service providers if need be
 - Urgency – knowledge of consequences and benefits (also including lifestyle, conservation, business viability)
 - Family know the legal framework in simple and understandable way

- Family achieve consensus on goals
- with each generation, Discover new profit centers and cost savings, Innovation out of necessity
- Service provider training: CPA, attorney
 - Encourage them to serve these clients
 - How to reach people who are scared to start
 - Emotional counseling – for providers and connect them with others who can provide this resource

2. What organizations should deliver this programming?

The following are notes from the small group facilitated by Meta Loftsgaarden:

- Extension
- Professional organizations – CPA, lawyer
- Ag organizations, OFB, OCA, ODFA
- Nonprofits – Rogue Farm Corps
- Land trust (more conv. Here)
- SWCDs

The following are notes from the small group facilitated by Eric Williams:

- OSU Extension and universities
- Tax accountants and attorneys
- SWCDs and RC&Ds
- NRCS (?) and FSA
- Land Trusts
- Family counselors
- Tribal counselors and extension
- Commodity associations and farm bureau
- Financial advisors

The following are notes from the small group facilitated by Nellie McAdams:

- Not one group forever. Select 1-3 entities regularly and several ways for delivering services
- Keep list broad in rules and prioritize in guidance
- Regular (open) proposals, or invitation
- Perception of competence and anonymity, state agency info isn't anonymous/protected. Local trust and access

It was unclear whether watershed councils and agricultural commissions should be considered as eligible entities. This question will be asked at the subsequent meeting.

3. How should this programming be delivered?

The following are notes from the small group facilitated by Meta Loftsgaarden:

- Day-long events are tough
- Evenings
- Tied to existing events
- Workshops
- Mailings
- One-on-one consultation – needs strong measurement
- Multi- or web-based
- Multi-session (geography issues)
- Young farmer social media

The following are notes from the small group facilitated by Eric Williams:

- Workshops
- Grower meetings (e.g. extension presentations)
- Online training
- Educate tax attorneys, accountants, and family counselors
- Continuing education programs
- NGO supported kitchen table meetings

The following are notes from the small group facilitated by Nellie McAdams:

- Ask people how they want to learn and from whom
- Participation as a factor in ranking criteria for other OAHP programs (incentive)
- Partner with local groups for any project
- No one-on-one advising – not cost effective
- Set priorities annually or biennially

4. How can the commission measure the success of these grant projects?

The following are notes from the small group facilitated by Meta Loftsgaarden:

- Landowners engaged in and going through the process (during program and after)
- Landowners in program
- Number of outreach to landowners
- Number who have a plan (use ag stats)

- Number of landowners aware of options
- Succession plan used successfully (set baseline data NOW)
- (Farmgate receipts)
- CPAs and attorneys certified through program
- Change in landowners with appropriate business model for succession
- Multi-gen participation
- Farm age

The following are notes from the small group facilitated by Eric Williams:

- Surveys immediately and 1 year down the road
- How many accessed info – proxy measure
- Link to USDA/ODA farm surveys
- Survey those who don't have plans
- Assess viability of management plans as well as estate plans
- Baseline data needed to measure long-term success
- Consideration of form of ownership
- Number of trained attorneys/accountant/financial advisors
- Average age of farmers/ranchers (operators) – proxy
- Survey of succession plans five years later to see if updated/considered
- Number of farmland acres over time
- Number of farms
- Average acres of farms

The following are notes from the small group facilitated by Nellie McAdams:

- Participation – meetings, people, people saying they'll take specific steps,
- Changed behavior,
 - people who took action later,
 - Written succession plan (ACEP-ALE ranking criteria. For OAHP too?)
- Survey a year later
- Economic
- USDA census
- Change in sole proprietorship
- Where meetings were held - Widespread around Oregon
- Inquiries to eligible entities

- Ag land kept in ag and less Fragmentation – how to measure and is this too much to ask of succession planning or the grantees?
- Farm viability – too far downstream and hard to measure?
- Research - if you have a plan is land more likely to be in ag and viable for the next generation
- Next generation coming back to farm – demonstrate commitment in writing. Other non-family coming to farm

Commissioners discussed measuring the impact of this program on the state’s agricultural community as a whole. These questions might not be a fit for grant applicants to include in their grant report, but the commission expressed interest in setting a baseline for succession preparedness in Oregon and tracking it over time.

These metrics could be established through existing USDA or ODA data for Oregon and each of Oregon’s counties:

- The average age of Oregon farmers and ranchers
- The percentage of beginning farmers and ranchers
- Data on multi-generational participation in a farm operation
- The way in which Oregon farm and ranch business entities are organized, e.g. sole proprietorships
- The number of acres in agriculture
- The number of farms and ranches
- The average size of Oregon farms and ranches
- The average parcel size in Exclusive Farm Use zoning as a measurement of fragmentation
- Farm gate receipts or another measure of business viability, although some small groups felt that this proxy might be misleading or too far downstream from the projects that would be funded by the program.

The following information would require an additional study:

- Survey of Oregon farmers and ranchers on the status of their succession plans
- How do trends in farmland ownership and use vary depending on the status and implementation of a succession plan?
- Later on, address barriers to entry for beginning farmers and ranchers

N. Final Summary and Next Meeting

Liz Redon informed the commission that their discussion would be organized into draft rules for their review over email. They should send comments directly to Nellie McAdams, who will compile them. The next meeting on February 22 will include a final discussion of the succession

planning grant program rules in the morning, followed by the first discussion of conservation management plan rules.

The meeting adjourned at 3:30pm.

O. Parking Lot

OAHC Process:

- After rulemaking meetings, some OAHC meetings should be scheduled around the same time and at the same location as OWEB Board meetings in order for members to communicate and share a meal.
- Propose Technical Committee members as described above.

Current Actions:

- Inform soil and water conservation districts about OAHP's conservation management plan, easement, and covenant programs so that they can determine if they would like to apply for technical assistance grants in the future.

Future Research:

- Consider the research questions posed by the commission to establish the long-term impacts of the succession planning grant program.



Issue Paper: Conservation Management Plan contents, payment, modification, monitoring, and enforcement

Problem Statement

Section 4 of the Oregon Agricultural Heritage Program (HB 3249) establishes a grant program for conservation management plans (CMPs) “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 **provisions** in these CMPs may address “soil, water, plants, animals, energy and human need considerations” or other priorities related to natural resource values.

The program is available to **agricultural owners or operators** (statutorily defined as “a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a farm or ranch”) who enter into a CMP with any **organization** that is: defined in ORS 271.715 except state agencies, a watershed council, or a 501(c)(3) nonprofit.

Agricultural owners or operators who enter CMPs with an organization under this program will be **paid annually** to carry out the CMP for 20 to 50 years. Unlike the statute’s requirement for working land covenants, CMP rules are not *required* to specify three or more permissible terms of years between 20 and 50 years. However, CMP rules *may* include permissible terms of years.

The statute requires that CMPs receive regular reviews, provide flexibility, and “allow for **mutual modification** as necessary to reflect changes in practices or circumstances.” CMPs funded under OAHP must “[p]rovide for regular **monitoring** by the organization to ensure that the agricultural owner or operator is adhering to the plan.” Annual payments are contingent upon this adherence.

Decision Statement

Today, the Oregon Agricultural Heritage Commission will engage in a policy discussion on:

1. The **contents** of a conservation management plan under OAHP;
2. How OAHP should calculate **payment** for implementation of CMPs;
3. When and how to engage in **mutual modification** of CMPs;
4. The **monitoring** requirements and consequences for non-compliance;
5. The **match** requirements for CMPs; and
6. The permissible **terms of years** for CMPs.

The commission will be presented with draft language between today and the next meeting on Thursday, March 8. At the March 8th meeting, the Oregon Agricultural Heritage Commission will discuss the ranking criteria for CMPs with and without an associated working land covenant or easement, and how best to integrate the CMP with other OAHP, OWEB, and other programs.

Appendix A: Summary of the Conservation Reserve Enhancement Program (CREP) in Oregon

Program Overview

The Oregon Conservation Reserve Enhancement Program (CREP) is a cooperative venture between the State of Oregon and the U.S. Department of Agriculture Farm Services Agency (FSA), with support from the Natural Resources Conservation Service (NRCS), soil and water conservation districts, watershed councils, and other regional partnership organizations. The purpose of the program is to restore, enhance, and maintain streamside areas along agricultural lands to benefit fish, wildlife, and water quality.

Landowners can elect to enroll eligible acreage for a contract period between 10 and 15 years. During the contract term, these eligible acres are taken out of agricultural production and reserved for conservation. In return, landowners receive financial incentives for implementing approved conservation plans, including conservation measures, such as planting trees and shrubs in riparian areas, installing fencing, and developing livestock watering facilities.

What Financial Incentives Does CREP Offer?

There are a variety of annual rental payments, one time incentive payments, and cost-share reimbursements for landowners enrolled in CREP. The maximum annual non-cost-share payment limitation is \$50,000 per eligible person.

- 1. Annual Rental Payments:** The maximum payment rate per acre for Oregon CREP is calculated for eligible cropland and marginal pastureland is primarily based on the current posted dryland soil rental rates. If a landowner with a water right elects to lease or transfer their water right to instream uses for the duration of their CREP contract, they are eligible to receive an irrigated rental rate (4X the base rental rate).
- 2. Incentive Payments:** CREP participants are eligible for one-time payments on specific conservation practices. Signing incentives are paid at the time of contract approval. Practice incentives are paid after practice completion. Cumulative Impact payments are made to active CREP participants when a minimum of 50% of the streambank within a 5-mile stream segment are enrolled into CREP. Incentive payments are considered non-cost-share and are subject to the \$50,000 maximum annual payment.
- 3. Cost-Share on Eligible Conservation Practices:** Upon proof that the conservation practices have been implemented per the conservation plan, landowners receive reimbursement for 75% of the cost of the practices up to the maximum rate (this is different for each practice), with 50% federal cost-share from FSA and 25% cost-share from the state.

OAHC Considerations: CREP is based on the relatively simple concept of paying landowners to take cropland out of production and to implement conservation practices, but getting to a fully executed contract is quite complex. At the state level, a 1000+ page document provides a series of conditions, exceptions, calculations, and examples as guidance, which is then interpreted at

the county level by each CREP program. This can lead to inconsistencies and inequalities in how the program is managed across the state. Some questions that the OAH Commission might consider are:

- how to calculate payments in a manner that is easy to understand, representative of the value of the conservation benefits being gained, and transparent to landowners, program partners, and the public?
- whether incentive payments are necessary and, if so, what conservation benefits might warrant incentives?
- how payments will be tracked and who will be responsible for tracking them?
- how to ensure that landowners have equal opportunity for participation across the state?
- whether landowners should contribute through match or cost-share?

How Are CREP Contracts Monitored?

Once a conservation practice has been implemented, a site visit is done to verify that it was completed to the plan specifications, and the practice is certified as complete. Once complete, annual rental payments can begin and cost-share can be processed and issued. CREP technicians in the counties informally monitor conservation practices, and formal “spot checks” and “status reviews” are required.

Status Reviews: NRCS completes annual status reviews on up to 10 percent of all contracts until all practices in the plan are applied and the approved cover is established. The review documents progress of the practice establishment including, implementation of the approved conservation plan, condition of installed practices, need for revisions, and need for additional assistance.

Spot Checks: FSA conducts annual on-the-ground spot checks on up to 10 percent of the contracts in place that have been certified as complete during their final status review. Spot checks verify that the practices are in place and being maintained in a satisfactory manner. This includes, for example, verifying that cover is maintain, weeds are controlled, and no unauthorized haying or grazing has taken place.

OAH Considerations: Monitoring is critical to understanding whether conservation practices have been implemented and are being maintained. Unfortunately, with so few CREP contracts having annual spot checks, it is common to get to the end of a contract term and find that maintenance has been inadequate. This can result in the contract no longer meeting practice specifications and therefore no longer being eligible for re-enrollment. What could have been a simple compliance issue to be corrected during the life of the contract becomes an eligibility issue with the landowner potentially owing funds back to USDA. Monitoring is also important to determine whether a particular practice is providing the anticipated conservation benefit. On-the-ground monitoring is time and labor intensive. The OAH Commission might consider:

- the staff time and expertise needed to complete monitoring.
- what information would be useful and feasible to gather and at what frequency?
- whether it is appropriate for some monitoring to be self-reported by landowners?
- what are potential consequences if plans are not being implemented or practices not appropriately maintained?

CREP Conservation Plan Modifications

CREP Conservation Plans contain the required elements listed in Attachment A. Approved CREP Conservation Plans can be modified in the following ways:

- adding, modifying, or changing a conservation practice so long as there is an equal or greater lifespan and equal environmental benefit index value;
- scheduling reapplication of a practice;
- reflecting change in ownership; or
- implementing other non-cost share measures on land already seeded to an acceptable cover (such as practices that enhance erosion control, water quality, wildlife, other types of cover).

OAH Considerations: CREP contract terms are considerably shorter (10-15 years) than the 20 to 50-year OAH term duration. The OAH Commission might consider:

- what events might trigger the need for modification?
- beyond trigger events (e.g., change of ownership, adding a conservation practice), should conservation management plans be reviewed at regular intervals throughout the 20- to 50-year term? If so, at what frequency should plans be reviewed and who should review them?
- should review criteria be developed for ease of review and consistency?
- if modifications are made, should payment adjustments be made?

Attachment A: Approved CREP Conservation Plan Required Elements

From FSA Handbook, Agricultural Resources Conservation Program for State and County Offices
2-CRP Handbook (Rev. 5) Amend. 31

B Plan Requirements

An approved conservation plan:

- includes all of the eligible acres offered for CRP
- prohibits harvesting or grazing of CRP acreage for the life of CRP-1

Exception: Managed or emergency haying or grazing.

- has suitable planned cover for the soil types enrolled
- includes practices required for the establishment of permanent cover
- contains the practices necessary for the successful establishment and maintenance of the approved cover on all acres enrolled
- contains practices necessary to control weeds, insects, and pests
- encourages the best method for maintenance of the approved cover, such as prescribed burning or other options
- contains required management activities
- is technically adequate for achieving CRP objectives
- meets the specific environmental objectives of CPA if applicable
- *--ensures that the CRP cover will not be disturbed during the primary nesting season for birds in the local area that are economically significant, in significant decline, or conserved according to Federal or State law, as determined by FSA STC in--* consultation with the State Technical Committee

Note: See paragraph 427.

- *--ensures NEPA and other requirements have been met, see subparagraph 367 F.--*
- includes engineering plans.

C Conservation Plan Map

The conservation plan map shall show the number, field boundaries, easements, and acres, as identified by FSA. The land use shall be identified as “Cropland-CRP-Cover type.”

D Additional Material to Include in the Conservation Plan

In addition to the material outlined in the National Planning Procedures Handbook, the conservation plan shall include information or job sheets on the following:

- vegetative or cover establishment
- herbicides, insecticide, or mechanical weed control.

Division XXX

Farm and Ranch Succession Planning Grants

XXX-XXX-XXXX

Purpose

The Oregon Agricultural Heritage Commission (Commission) shall provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (Board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands.

XXX-XXX-XXXX

Definitions

- (1) Succession Planning
- (2) *Additional definitions to be determined.*

XXX-XXX-XXXX

Succession Planning Priorities

The Commission may establish priorities for the Farm and Ranch Succession Planning Program in guidance, which may be used to solicit and rank program grant proposals and make recommendations to the legislature. The commission may modify these priorities from time to time at its discretion.

XXX-XXX-XXXX

Eligibility

Eligible applicants for Farm and Ranch Succession Planning Program Grants may be the Oregon State University Extension Service, universities, colleges, community colleges, non-profits including land trusts and agricultural organizations and professional organizations that represent succession planning or business service providers, or soil and water conservation districts.

XXX-XXX-XXXX

Application Requirements

Farm and Ranch Succession Planning grant applications shall:

- (1) Be consistent with general program guidance {similar to ORS XXX Division 005}.
- (2) Not require match contributions.
- (3) Be submitted on the most current form and process prescribed by the commission.
- (4) Other application requirement in general administrative section.

XXX-XXX-XXXX

Evaluation Criteria

Farm and Ranch Succession Planning grant applications will be evaluated on:

- (1) The extent to which the application demonstrate a clear succession planning benefit for Oregon farmers and ranchers;
- (2) The extent to which the application utilizes methods identified by the Commission including, but not limited to, outreach about the importance of succession planning and available resources; trainings for farmers, ranchers, and succession service providers; development and distribution of training materials and curriculum; and advising of farm and ranch families on succession planning options ;
- (3) The extent to which the application reaches diverse audiences, commodities and geographies.
- (4) The commission may also consider if a suite of given projects combine to reflect (3).

XXX-XXX-XXXX

Farm and Ranch Succession Planning Grant Application Technical Review and Funding Process

- (1) Technical review of Farm and Ranch Succession Planning grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XXX.
- (3) The Commission may use technical committees to evaluate Farm and Ranch Succession Planning grant applications.
- (4) If a technical committee is used, the technical committee shall provide funding recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the Commission.
- (5) The Commission may rank projects and shall provide funding recommendations to the Board.
- (6) The Board may fund a grant application in whole or in part.

XXX-XXX-XXXX

Grant Agreement Conditions

- (1) The Grantee must submit a report at completion of the project describing the work completed.
- (2) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (3) The Director will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project.

XXX-XXX-XXXX

Grant Reporting Requirements

- (1) Upon project completion, the Grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the Grantee's funded project(s) demonstrated clear succession planning benefits to Oregon farmers and ranchers and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program
 - (ii) The geographic and other demographic diversity of participants in the program
 - (iii) Documented improved understanding of farm and ranch succession
 - (iv) Documented changes in behavior of participants, including the percentage or number of farmer and rancher participants who take the next step toward succession planning, complete a plan, and implement the plan.
- (3) The OWEB Director may authorize an independent performance audit of any Farm and Ranch Succession Planning Program Grantee, and if the Director determines the Grantee is not complying with the rules of the Farm and Ranch Succession Planning Program, may restrict future grant funds.
- (4) In addition to project evaluations, the commission may conduct program evaluations that may include changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of farmers and ranchers on the status of succession plans, and other trends in farmland ownership and use.

XXX-XXX-XXXX

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Farm and Ranch Succession Planning Grant Program. Any waiver must be in writing and included in the grant file to which the waiver applies. The administrative rules for Farm and Ranch Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.



Oregon Agricultural Heritage Commission

Thursday, February 22, 2018



Succession Planning Rules

Notes from February 1, 2018 meeting

Succession Planning Questions

- ▶ What should farmers, ranchers, and service providers come away with?
- ▶ Who should deliver programs?
- ▶ How should programs be delivered?
- ▶ How can success be measured?

1. What should farmers, ranchers and service providers come away with?

The draft rules describe the purpose as the statutory purpose:

The Oregon Agricultural Heritage Commission (Commission) shall provide **funding recommendations to the Legislative Assembly**, or recommendations for **grant funding to the Oregon Watershed Enhancement Board (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. Who should deliver programs?

- ▶ Oregon State University Extension Service,
- ▶ Universities,
- ▶ Colleges,
- ▶ Community colleges,
- ▶ Non-profits including **land trusts and** agricultural organizations and professional organizations that represent succession planning or business service providers,
- ▶ Soil and water conservation districts

3. How should programs be delivered?

methods identified by the Commission including, but not limited to:

- ▶ **Outreach** about the importance of succession planning and available resources;
- ▶ **Trainings** for farmers, ranchers, and succession service providers;
- ▶ Development and distribution of **training materials and curriculum**; and
- ▶ **Advising** of farm and ranch families on succession planning options

4. How can success be measured?

how the Grantee's funded project(s) demonstrated **clear succession planning benefits** to Oregon farmers and ranchers and their service providers. Evidence of this may include, but is not limited to:

- ▶ The **number** of people who participated in the program
- ▶ The geographic and other demographic **diversity** of participants in the program
- ▶ Documented **improved understanding** of farm and ranch succession
- ▶ Documented **changes in behavior** of participants, including the percentage or number of farmer and rancher participants who take the next step toward succession planning, complete a plan, and implement the plan.

Additional: Program Success

In addition to project evaluations, the commission may conduct **program evaluations** that may include:

- ▶ changes in **USDA Census of Agriculture** or similar data that would indicate a change in adoption of succession planning,
- ▶ **surveys** of farmers and ranchers on the status of succession plans, and
- ▶ **other trends** in farmland ownership and use.

Additional: Administrative Rules

Administrative division of OAHP rules, similar to OWEB's Division 5 for grant programs.

Expect a chart of rule sections for each program at next meeting.

Succession Planning - Who? Eligible entities

- ▶ Oregon State University Extension Service,
- ▶ Universities,
- ▶ Colleges,
- ▶ Community colleges,
- ▶ Non-profits including **land trusts and** agricultural organizations and professional organizations that represent succession planning or business service providers,
- ▶ Soil and water conservation districts

Add **watershed councils and agricultural commodity commissions?**

Succession Planning - How? Permissible projects

methods identified by the Commission including, but not limited to:

- ▶ **outreach** about the importance of succession planning and available resources;
- ▶ **trainings** for farmers, ranchers, and succession service providers;
- ▶ development and distribution of **training materials and curriculum**; and
- ▶ **advising** of farm and ranch families on succession planning options

Are these the only general categories to include? Should any not be included?

Succession Planning - Evaluation

- ▶ The extent to which the application demonstrate a **clear succession planning benefit** for Oregon farmers and ranchers;
- ▶ The extent to which the application utilizes **methods** identified by the Commission including, but not limited to, outreach about the importance of succession planning and available resources; trainings for farmers, ranchers, and succession service providers; development and distribution of training materials and curriculum; and advising of farm and ranch families on succession planning options;
- ▶ The extent to which the application reaches **diverse audiences, commodities and geographies**.
- ▶ The commission may also consider if a **suite of given projects** combine to reflect (3).

Are these the only general categories to include? Should any not be included?

Succession Planning – Success Evaluation Criteria

how the Grantee's funded project(s) demonstrated **clear succession planning benefits** to Oregon farmers and ranchers and their service providers. Evidence of this may include, but is not limited to:

- ▶ The **number** of people who participated in the program
- ▶ The geographic and other demographic **diversity** of participants in the program
- ▶ Documented **improved understanding** of farm and ranch succession
- ▶ Documented **changes in behavior** of participants, including the percentage or number of farmer and rancher participants who take the next step toward succession planning, complete a plan, and implement the plan.

Are these the only general categories to include? Should any not be included?

Succession Planning – Tracking Research and Data for Program Success

In addition to project evaluations, the commission may conduct **program evaluations** that may include:

- ▶ changes in **UDSA Census** of Agriculture or similar data that would indicate a change in adoption of succession planning,
- ▶ **surveys** of farmers and ranchers on the status of succession plans, and
- ▶ **other trends** in farmland ownership and use.

Does the commission want to include this provision? Modify it?

Succession Planning - Match

Should there be a match requirement?

If so, what percent and how much can be in-kind?

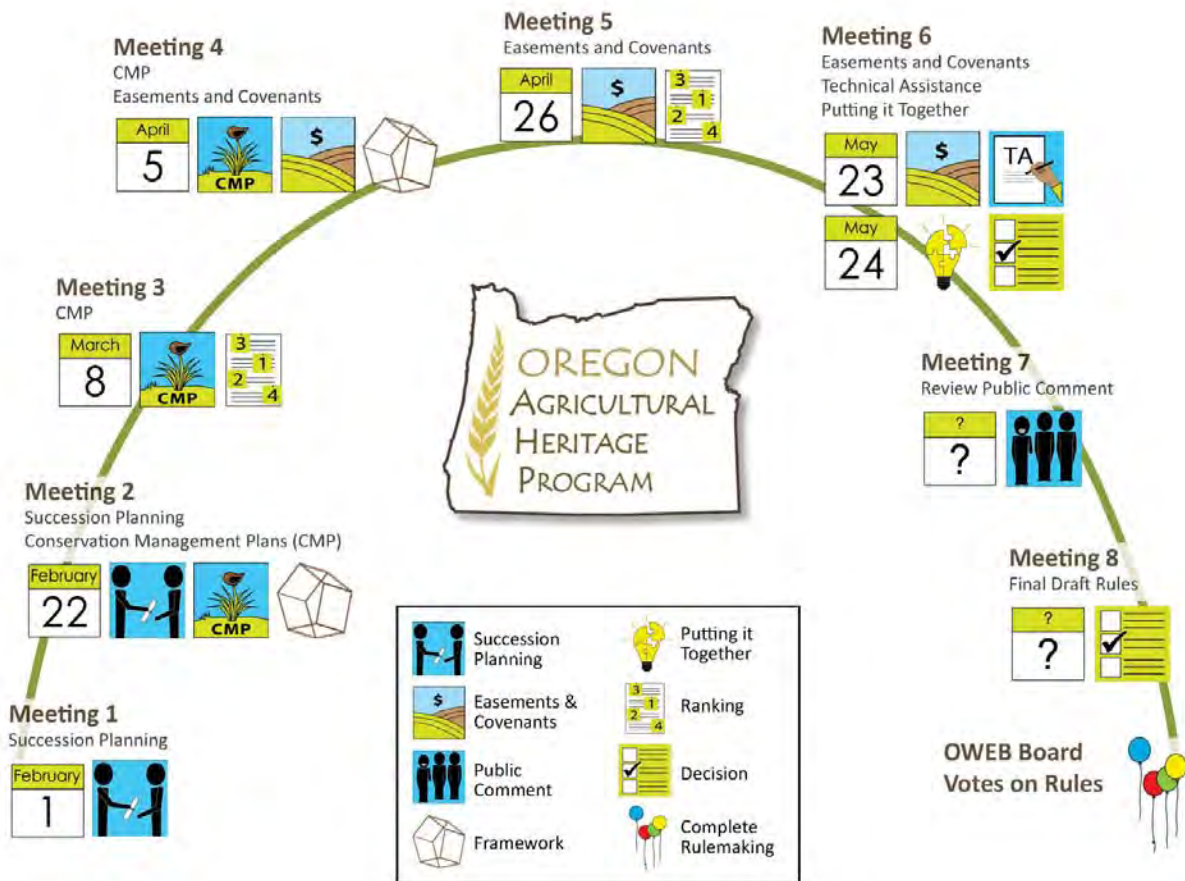
Succession Planning - **Project Solicitation** Open, Invitation Only, or Combination?

How should the commission solicit applications?

Open solicitation?

By invitation only?

A combination thereof?



Conservation Management Plan (CMP) Questions for Today

1. Match requirements;
2. The permissible terms of years for CMPs;
3. Contents of a conservation management plan (CMP);
4. How OAHP should calculate payment for implementation of CMPs;
5. When and how to engage in mutual modification of CMPs; and
6. Monitoring requirements

Conservation Management Plan Statute

- ▶ **Purpose:** 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
- ▶ **Annual payments** for 20-50 years to implement a CMP, contingent upon adherence to the plan
- ▶ **Mutual modification** as necessary to reflect changes in practices or circumstances
- ▶ **Monitoring** to ensure that the agricultural owner or operator is adhering to the plan

Conservation Reserve Enhancement Program (CREP)

Basics

- ▶ Administered by FSA with support from NRCS and SWCDs
- ▶ Cost-share
- ▶ 10-15 years
- ▶ Land taken out of agricultural production and reserved for conservation
- ▶ Financial incentives for implementing approved conservation plans

CREP: CMP Contents

- ▶ Describes acres
- ▶ Prohibits harvesting or grazing
- ▶ Provides for soil cover, especially for birds of economic or other significance
- ▶ Practices to control weeds, insects, and pests
- ▶ Required management activities
- ▶ Meets NEPA requirements
- ▶ Map with boundaries, acres, easements, etc.
- ▶ Job sheets on:
 - ▶ Vegetative or cover establishment
 - ▶ Herbicides, insecticides, or mechanical weed control

CREP: Payment

- ▶ Maximum of \$50,000 per person per year
- ▶ Three types of payment:
 - ▶ Annual rental per acre
 - ▶ Incentive Payments
 - ▶ Cost-share on eligible conservation practices:
 - ▶ Upon proof of completion
 - ▶ 75% reimbursement, with 50% NRCS and 25% state

CREP: Monitoring

- ▶ Spot checks by FSA: 10% of projects annually
- ▶ Status reviews by NRCS: 10% of projects annually

CREP: Modifications

May be modified to:

- ▶ Add, modify, or change a practice, if \geq lifespan and environmental benefit
- ▶ Reapply a practice
- ▶ Reflect change in ownership
- ▶ Add other non-cost-share measures

CMP Technical Committee

- ▶ **Amy Charette:** Watershed Restoration Coordinator at the Confederated Tribes of the Warm Springs Reservation of Oregon, John Day Basin Office
- ▶ **Tom Salzer:** General Manager of the Clackamas Soil & Water Conservation District
- ▶ **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm

CMP: Facilitated Discussion

How would the following groups answer the question:

What is a CMP and what does it entail/include?

- ▶ An agricultural owner or operator
- ▶ An advocate for conservation and habitat interests
- ▶ An organization holding a CMP
- ▶ According to the statute

Conservation Management Plan (CMP) Questions for Today

1. **Match** requirements
2. The permissible **terms of years** for CMPs.
3. **Contents** of a conservation management plan (CMP)
4. How OAHP should calculate **payment** for implementation of CMPs
5. When and how to engage in **mutual modification** of CMPs
6. **Monitoring** requirements



United States Department of Agriculture



Natural Resources Conservation Service

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United States Department of Agriculture

OAHC

 **Conservation Management Plans**

Dean P Moberg, State Resource Conservationist




Natural Resources Conservation Service

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Conservation plans: successes and failures through the years



- **Modifications**
- **Monitoring**
- **Components**
- **Payments**
- **Leadership**



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Modifications (essential)



- **Technology**
- **Concerns**
- **Costs**



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Modifications (what fits CMP)



- **Useful fit: Wetland Reserve, Highly Erodible Land**
 - Easy modifications for adaptation (HEL)
 - But consistent long term plan to avoid mercurial changes in scope
- **Less useful fit: early Conservation Stewardship**
 - All or nothing
 - Few choices
 - Some financial penalty better than termination
 - Make it easy on staff who make decisions



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Monitoring (compromises)

- **Outputs versus outcomes**
 - Mile of riparian forest vs water temperature
 - Both important
- **Qualitative versus quantitative**
 - Phosphorus index vs P concentration in stream
 - Both useful
- **Modeled versus measured**
 - Soil conditioning index vs wet aggregate stability test
 - Both informative



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Monitoring (what fits CMP)



- **Useful fit: Conservation Stewardship Program**
 - Clients take pride in some data collection
 - Informative to client and agencies
- **Useful fit: Enhanced CREP**
 - Third party quantitative compared to standardized objectives
 - But expensive and desired conditions are different across state
- **Less useful: HEL**
 - Random spot checks okay, but workload is difficult
 - Farmers disinterested?



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Payments (what fits CMP)



- **Useful fit: modern EQIP**
 - 50% of average costs
 - But cost calculations subjective for some components (mobilization, labor)
- **Useful fit: Enhanced CREP**
 - Turn key approach good for riparian forest buffers
 - But expensive and doesn't fit crop management practices
 - Somewhat based on supply and demand
- **Less useful: old ACP**
 - Big workload, not necessarily more accurate



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Leadership (what fits CMP)



- **Useful: Locally led**
 - E.g. EQIP and local work groups
 - Tie in with ag industry
- **Tie in with other programs to share costs, methods**
 - E.g. Enhanced CREP
 - NRCS standards and analysis tools
- **Plan ahead re NEPA, cultural resources**



And justice for all



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Oregon Agricultural Heritage Commission Meeting Agenda June 25, 2018

Port of Cascade Locks
Marine Park Pavilion
395 SW Portage Rd.
Cascade Locks, OR 97014
Directions: <https://goo.gl/maps/XH76P94vc4M2>

The time listed for each agenda item is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:40 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted at any time before the commission meeting. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (11:00 a.m.)

Chair Doug Kraemer will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 11:05 a.m.)

The minutes of the May 23 and 24, 2018 meeting will be presented for approval. *Action item.*

Public Comment (approximately 11:10 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Review and Approval of Draft Rules for Official Public Comment (approximately 11:30 a.m.)

The commission will be presented with a draft of the OAHP rules for approval to be sent to the public for the public comment period, beginning in July, 2018. *Action item.*

Review and Approval of OAHP Budget (approximately 12:00 p.m.)

The commission will be presented with a staff report and OAHP's draft proposed Policy Option Packages and asked to approve these proposals for OWEB's 2019-2021 Agency Request Budget. *Action item.*

Lunch (approximately 12:20 p.m.)

For OAHC Commissioners and OWEB staff only.

Review and Approval of OAHP Proposed Statutory Revisions (approximately 12:50 p.m.)

The commission will be presented with a staff report and redline document describing proposed changes to the OAHP statute, [ORS 541.977 – 541.989](#). The commission will be asked to approve the proposed changes for consideration by the Legislature during their 2019 session. *Action item.*

Review and Approve OAHP Technical Committees (approximately 1:20 p.m.)

The commission will be presented with a staff report describing the technical committees that the commission proposed during the rule making process, and other potential technical committees that could assist the commission in performing its duties. The commission will decide which technical committees to create, if any, and their membership. *Action item.*

Review and Approve Letter of Interest for Covenants and Easements (approximately 2:20 p.m.)

The commission will be presented with a staff report on a proposed Letter of Inquiry solicitation for Working Land Conservation Covenant and Easement Grants. The commission will discuss the contents of a letter of inquiry, and be asked to authorize OWEB staff to initiate a request for letters of inquiry for this grant program. *Action item.*

Summary of Discussion, Location in the Process, and Next Meeting (approximately 3:10 p.m.)

OWEB staff will help the commission summarize the day's discussion and identify next steps in the commission's process.

Break (3:15 p.m.)

Welcome and Introductions (3:30 p.m.)

OAHC Co-Chair Doug Kraemer will welcome the OWEB Board, followed by brief statements from OWEB Board Co-Chairs Randy Labbe and Will Neuhauser. There will be brief introductions around the room. *Information item.*

Description of OAHC Rulemaking Process (approximately 3:35 p.m.)

OAHC Chair Doug Kraemer will describe the commission's accomplishments since being formed in February and their rule making process in particular. *Informational Item.*

Description of the OAHP Work Group (approximately 3:40 p.m.)

OAHP Work Group member and OAHC Commissioner Derek Johnson will describe the Work Group's process in developing the statute, and the "grand bargain" they struck between conservation and agricultural interests. *Informational Item.*

Description of Commission's Work to Integrate Agricultural and Conservation Interests (approximately 3:45 p.m.)

OAHC Commissioners Mary Wahl, representing fish and wildlife habitat and Ken Bailey representing farming and ranching will describe how the commission worked to integrate agricultural and conservation interests in the program rules. *Informational Item.*

Statements from the Commission to the Board (approximately 3:55 p.m.)

Each OAHC Commissioner will share his or her perspective on the program and the rules with the OWEB Board. *Information Item.*

Question and Answer with OWEB Board (approximately 4:10 p.m.)

OWEB Board Co-Chair Will Neuhauser will transition the conversation into a question and answer period between the OWEB Board and the OAHC, which he will facilitate with OWEB Co-Chair Randy Labbe and OAHP Chair Doug Krahmer. *Information item.*

Summary (approximately 4:55 p.m.)

OWEB Board and staff and the OAHC will summarize the conversation.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Wednesday, May 23, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Fox, Jim
Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Masterson, Laura
Williams, Bari
Unruh, Loren

The meeting was called to order at 8:05AM.

Welcome, Housekeeping, and Introductions

Chair Doug Krahmer welcomed commission members and the public. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined again for commission members the process the commission will follow throughout the spring for rule-making.

Minutes

Commission members reviewed the minutes from the March 8th meeting. Mary Wahl moved to adopt the minutes, with a second from Nathan Jackson. Minutes were approved unanimously.

Conservation Management Plan

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the draft conservation management plan (CMP) rules, available in the [materials for this meeting](#). Their recommendations are captured in the revised rules in the meeting materials for the [June 25th meeting](#), and in the notes below.

General

The commission asked OWEB staff to ensure that the rules clarify that the grant program can fund the development, implementation, **and/or** monitoring of CMPs. OWEB staff confirmed that, if the grant program funds CMP implementation, annual payments will still be made for

plan implementation even if the species that the plan was designed to protect is no longer present on that property. The CMP Grant Program will continue to pay for the conservation of that habitat for multiple values, but there might be a mutual modification to update the plan based on the new condition.

The commission added to rule that it may accept (and even solicit) outside funding, as long as the projects it funds meet program requirements. This might include restricting the use of the funds to the geography, habitat, or other goals required by that funding source, so long as it complies with OAHP statute and rules.

The commission confirmed with OWEB staff that they would have the chance to review and approve guidance documents prior to their publication.

Evaluation Criteria

The commission considered the use of the language “extent to which” and “significance” in the criteria and determined that this language was needed. The commission asked if numeric or yes/no criteria would be more objective, and concluded that a numeric approach can also be inherently subjective, because it is based on reviewers’ opinions. OWEB staff explained the evaluation process for other OWEB grants, which includes a thorough review and ranking process that does not use numeric valuations. The commission acknowledged that there was no definition for “significant,” especially since there is not enough data to make this determination for particular properties or regions at this point, and one commissioner stated that all agricultural land is significant. OWEB staff suggested that regional review teams could help determine areas and criteria of “significance” in their regions before the statewide review.

One commissioner asked for water retention to be removed from guidance and placed in rule along with seasonally appropriate flows.

The commission discussed whether the language regarding having farmers and ranchers on the board of the organization holding a CMP should be moved from guidance to rule. It was stated that if it is required for farmers and ranchers to be on these boards, then there should also be requirements for fish and wildlife experts to serve on boards. One commissioner said that farmers and ranchers will tend to choose organizations that have farmers and ranchers on their boards and that this need not be an evaluation criterion as well. The commission asked for covenant and easement rules and guidance to mirror the CMP rules and guidance on this point.

The commission added to guidance the dual priorities of encouraging connectivity as well as encouraging isolated early adopters in areas where connectivity is not yet possible.

The commission added to guidance that, although applications that do not identify specific landowners would be considered, projects with identified landowners should rank higher.

The commission agreed to mirror OWEB’s other grant programs and give the grantee 18 months to meet the grant conditions, after which the funds would be released to OWEB. They will reevaluate this decision after three years.

Working Land Conservation Covenants and Easements

Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the draft rules for the Working Land Conservation Covenant and Easement Grant Program, available in the [materials for this meeting](#). Their recommendations are captured in the revised rules in the meeting materials for the [June 25th meeting](#), and in the notes below.

Evaluation Criteria

The commission discussed whether there should be an initial screening of properties for regionally appropriate agricultural values. The commission decided to add a threshold criterion that requires properties to be “working lands” as defined by statute in order to qualify for the grant program. Other aspects of the property (including threat of development or fragmentation, and the agricultural and natural resource values on the property) are ranking criteria instead of threshold criteria, since they are more subject to interpretation.

The commission asked whether and how to ensure that grantees are committed to the preservation and conservation of working lands in particular, and added “working land” to the evaluation criterion concerning the organization’s capacity and competence.

Regarding eligible covenant and easement holders, the commission did not want to eliminate new easement holders from applying by including expertise and track record in the evaluation criteria. Organizations without prior working lands projects would rank lower in this sub-criterion, but would not be excluded from applying to the program. Guidance for this sub-criterion will also direct less-experienced applicants to the Technical Assistance Grant program.

The commission considered whether ability to mitigate climate change impacts should be a criterion for farm or ranch viability or natural resource concerns. The OAH Fund could potentially receive funding from carbon cap and trade investments, or any other source, so long as the projects comply with OAHP. The commission decided to include climate change in guidance for management plan criteria for covenants and easements, and for CMPs.

Woody Wolfe

Commissioner Wolfe described his experience conveying two conservation easements. The first easement was initiated in 2003/4 with Wallowa Land Trust and was completed in 2011. Commissioner Wolfe had four appraisals before being approved for funding, which the land trust paid for from donated funds. Commissioner Wolfe had to split tax lots to match the value of funding available through the Doris Duke Foundation. He also had to do a bargain sale, taking a charitable donation tax credit for some of the easement value. The easement language was restrictive for that easement, but less restrictive for his easement through NRCS’s ACEP-ALE program.

Commissioner Wolfe stated that the management plan for his easement funded by ACEP-ALE does not require *him* to perform certain actions, but instead recommends that he perform certain actions or requires actions of the land trust or NRCS. He gave up more property rights in the riparian area; grazing is allowed there, but only to achieve an ecological benefit. In the non-riparian area, Commissioner Wolfe gave up development rights and limited impervious surfaces to a maximum of 2% of the total surface area. He had a lien against the property that the leinholder would not subordinate, so he had to refinance. However, the new lender put a

UCC filing on all irrigation equipment. Commissioner Wolfe felt that the land trust and NRCS achieved their objectives as well.

Commissioner Wolfe said that, from his experience, it would be hard to place a value on a covenant. He asked how a landowner would have an incentive to sell an easement after conveying a covenant.

Public Comment

Public comment was submitted by the Oregon Historic Barn Society, asking the commission to consider making OAHP funds available for the maintenance, rehabilitation and/or adaptive reuse of historic agricultural barns and other outbuildings. The commission discussed the comment and decided that historic barn restoration might be a feature of social values. They decided that this purpose could potentially be included in guidance, but did not belong in rule.

The commission discussed Katherine Daniels' letter to the commission, which expressed concern about the lack of numeric ranking, lack of agricultural expertise on OWEB's current staff, and the lack of extensive reference to the land use system. Regarding measurable criteria, OWEB staff explained that OWEB's scoring system does not use numeric criteria and instead uses a comparative, process-oriented ranking system. Regarding agency expertise, OWEB staff explained that the technical committees that will review each grant application and offer recommendations for funding and ranking will include individuals with agricultural expertise in relevant regions and crop production. Also, OWEB intends to add positions with agricultural expertise to staff the Oregon Agricultural Heritage Program.

Regarding land use, the commission noted that compatibility with land use is a rule criterion. They stated that the expense of purchasing property rights in Urban Growth Boundaries (UGBs), or urban or rural reserves and such projects would likely cause those projects to not rank as high. Commission members said that there are some exceptional properties inside UGBs and urban or rural reserves and that they do not want to prohibit funding from being used in these areas in special situations. They also did not want to limit themselves before they have a chance to see what projects are presented and how they rank. Some commissioners said that if lands within a UGB are important that the local community should pay to protect them, and local match could even be a funding requirement for such properties.

The commission decided to send a letter to Katherine Daniels thanking her for her comments and explaining their conclusions.

Technical Assistance

The commission discussed whether to have a program ranking criterion for "underserved populations." The proposed definition was unclear, and several commissioners felt that there should be no such ranking criteria. NRCS shared their definitions of historically underserved, socially disadvantaged, and beginning farmer or rancher. The commission decided to allow a ranking priority for beginning farmers and ranchers, using the NRCS definition of someone who has owned or managed an agricultural operation for 10 years or fewer, and to add to that definition young farmers (under 35 years old). The commission will wait to decide on other underserved populations until staff has provided them with a definition.

Conclusion and Gallery Walk

The meeting was adjourned at 3:00PM. The commission then read the program rules posted on the room walls and added their comments, corrections, and questions on sticky notes.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, May 24, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Fox, Jim
Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Kruse, Dylan
Masterson, Laura
Rosa, Jerome
Williams, Bari
Unruh, Loren
Udelhoven, Jay

The meeting was called to order at 8:04AM.

Welcome, Housekeeping, and Introductions

OAHP Chair Doug Krahmer welcomed commission members and the public. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined again for commission members the process the commission will follow throughout the spring for rule-making.

Review of All Rules

OWEB Executive Director Meta Loftsgaarden and Liz Redon led the commission in a point-by-point discussion of their discussion the previous day, available in the [materials for this meeting](#). A summary of the discussion follows.

Succession Planning

The commission decided to keep “cost-effectiveness” as a criterion of the Succession Planning Grant Program, since it refers to the number of people reached and the impact of the service.

Conservation Management Plans

The commission added to the purpose: “protect, maintain, or enhance farming or ranching on a working land” in order to integrate farming and natural resource values. It was asked how this purpose statement would be measured.

OWEB confirmed that “eligible activities,” could include just the monitoring of an existing CMP. The commission added to the “eligible activities” section language from Section 2(2) of HB 3249 to rules, stating: “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.”

In response to a question about the confidentiality of Candidate Conservation Agreements with Assurances (CCAAs), OWEB stated that their technical reviewers can review the plans, but cannot keep the information on file.

It was noted that the statute requires some match funding for conservation management plans. The commission decided to add a match section, but not to require a specific percentage.

Working Land Covenants and Easements

The commission added “regionally significant” to criterion 2 regarding agricultural land.

NRCS stated that their ACEP-ALE program does not pay for stewardship funds, but that landowners can voluntarily provide up to 20% of the easement value for a stewardship endowment. As part of this process, NRCS interviews landowners to ensure that they understand that they are not required to provide funds to the easement holder.

Commissioners stated that stewardship endowments are a stumbling block for many easement holders. They recommended that stewardship endowment be allowed as part of the project costs at a 25% match, but that the stewardship endowment be limited to no more than a certain percentage of appraised value, and require that it be matched. The Nature Conservancy uses 20% of easement value as an endowment goal, but NRCS limits landowner donations to stewardship endowments to 2% of the appraised value. The commission decided on allowing a 1:1 match for stewardship endowments capped at 10% of the appraised value of the property.

The commission decided to keep the term “social values” in the evaluation criteria, although it is only mentioned in the “Whereas” statements of the statute. The modified “social values” with the word “relevant” and will define this term in guidance. They also substituted “ecological” values with “natural resource” values, to be more consistent with the statute.

Working Land Conservation Covenant and Easement Technical Committee member, Laura Masterson, asked the commission to consider, again, excluding land in Urban Growth Boundaries. The commission reaffirmed their decision to let the ranking determine whether a project is either exceptional, or too expensive or impractical to fund, and not to determine this in rule or guidance.

The commission added a ranking sub-criterion to criterion 3 on the extent to which the covenant or easement will sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition. They also added this to CMP criteria.

The commission also decided to remove fragmentation and conversion to non-farm uses and make it its own criterion: “The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the covenant or easement would reduce those threats.”

Commissioners decided to combine the water quality and quantity criteria for CMPs and covenants/easements and move definitions of seasonally appropriate flows and appropriate water retention to guidance.

Administrative Rules

The commission deleted “into smaller parcels” from the definition of fragmentation.

Public Comment

There was no public comment.

Integration of OAHP and OWEB’s Other Programs

The commission asked if members of technical committees that review grant applications are over-burdened with the time that it requires. OWEB staff noted that many participants in review teams for other OWEB grants consider this role to be an important and worthwhile activity and report enjoying serving on the review teams.

It was asked how covenant and easement proposals would be directed to OWEB’s existing acquisition program that uses Measure 76 funding or to OAHP for a covenant or easement. OWEB staff responded that OAHP will have its own program staff, and there will be a program manager for both OAHP and the Measure 76 acquisition program who can direct projects to one program or the other.

OWEB staff described the current process for mitigating conflict of interest and bias among technical committee members. Governmental agency representatives often have less conflict of interest for particular projects than landowners, but landowners might be the best experts on agriculture and conservation in a region. OWEB has a process for disclosing, preventing, and identifying conflict of interest and bias throughout the process.

Next Steps Regarding OAHP Budget and Procedure

OWEB stated that it will propose an agency budget and a Policy Option Package (POP) requesting funding for OAHP, which the commission will review at their June meeting. The program budget will be for a certain amount, which the legislature will decide whether to appropriate, and the commission will create a spending plan for how to distribute those funds. If the legislature awards funding, funds would become available by July 1, 2019.

The commission was informed that the program could not fund covenants or easements with state bonds because OWEB would not retain an ownership right in OAHP projects. OWEB can only hold funds for 6 years, but funding could be “continuously appropriated” for annual payments for CMP implementation and distributed from an account. OWEB is researching this.

The commission was reminded of their CMP payment sub-committee, which will be developing recommendations over the next few years.

The OWEB Board approves rules and final grant decisions. A commissioner hoped that it was clear to OWEB’s Board that OAHP is different from their other grant programs. OWEB staff explained that the Board has been informed from the beginning that the OWEB Board’s role is to ensure that the commission is being fiscally responsible, and not to second guess the purpose of the program or the ranking of grant projects. If the OWEB Board disagreed with the

commission, a vote would be postponed and OWEB would call a subcommittee of Board and commission to discuss a resolution.

One commissioner proposed holding a discussion about other revenue streams that could come to OAHP.

Context Technical Committee

The OAHP Context Committee shared their perspectives on the program, responding to these three questions:

- Why did your organization begin to engage in creating OAHP?
- What do your members or constituents care about regarding this program?
- What are the deal breakers for your organization and members/constituents?

Context Technical Committee members who were present were:

Dylan Kruse: Policy Director at Sustainable Northwest and OAHP work group member

Laura Masterson: Oregon Board of Agriculture member, OWEB Board member, East Multnomah Soil & Water Conservation District Director, and farmer at 47th Avenue Farm

Jerome Rosa: Executive Director of the Oregon Cattlemen's Association and OAHP work group member

Jay Udelhoven: Executive Director of East Multnomah Soil and Water Conservation District, representing the Oregon Association of Conservation Districts (OACD), and OAHP work group member

Doug Kraemer and Derek Johnson, who served on the OAHP work group, also shared their perspectives.

Jay said that OACD is interested in agriculture and the sustainability of agriculture throughout the state. Many SWCDs already offer similar or complementary programs and OAHP could help provide funding for implementation. A deal breaker for OACD's membership was that the program must support agricultural land, because agriculture can be good for the environment if done right. Several concerns that remain are that the rules are somewhat complicated and long and simpler rules might be easier for implementation. In particular, for CMP requirements, consider how to monitor and enforce requirements in the rule and consider changing them to recommendations. For easements and covenants, the situation where a covenant and then an easement is conveyed on the same property can be clarified by stating that the rules reflect OAHP payments, not all of the funds that are invested in the project.

OWEB staff explained that the cost recovery protocol for CMP enforcement would be the termination of annual payments. Since the landowner receives annual payments from the commission, OWEB holds the funds until their disbursed, and that disbursement would be conditioned upon compliance.

Dylan expressed gratitude for the commission's work in drafting the program rules. Sustainable Northwest's interest was to preserve working landscapes and develop new voluntary tools to

preserve them. They wanted the program to support working lands, but also to reward and promote strong conservation values. They are interested in supporting funding for OAHP.

Jerome stated that the proposal had come forward years previously and had not been successful until OWEB and the Governor's Office stewarded the work group process. Many of the groups on the work group had not worked together frequently in the past. They came to the table because they saw a need and examples from other states. They also see the program as an opportunity for generational transfer. Properties have a higher value for recreation and trophy homes than rangeland, and without assistance it will be difficult for the next generation to afford agricultural land. Oregon Cattlemen's Association's members care about keeping working lands working. Many farmers and ranchers are asset-rich and cash-poor, so if landowners must sell land generation-after-generation, they are selling their future. The deal breaker for Oregon Cattlemen's Association is if the program doesn't allow the land to remain in production. While OAHP might not be appropriate for all producers, it is important for some.

Laura appreciated the commission and referred to conversations about working lands easements that began in 2008. What would be important to say 10 years from now is that the program has protected regionally significant agriculture and natural resource values.

Derek stated that there are opportunities to partner, a great need in the community, and not enough resources to meet that need.

Doug stated that this program began when he was leaving the Board of Agriculture and OWEB's Board. He has a long history of working in agriculture and conservation, and stated that farmers who maintain conservation values should be rewarded. Doug wanted to make sure that the program represents conservation and has a strong agricultural practitioner presence, and he feels that this balance has been created with OAHP. His initial deal breaker was that OAHP needs to be an agricultural program, and he feels that it has been successful.

One commissioner expressed satisfaction with how the various commission members have come to agreement, but wondered if that meant that they had missed an important issue. It was suggested that the work group's difficult discussions two years before the bill was passed might have made it easier for the commission to come to agreement now.

Final Discussion

The commission was asked these questions:

1. Can you say yes to the rules? Did you meet the grand bargain?
2. Do the rules create a sound/definitive pathway for tools that warrant public funding and will it:
 - a. Keep Oregon farms and ranches as farms and ranches without discriminating among any type of agriculture or geography;
 - b. Integrate protecting agriculture and natural resource values; and
 - c. Prevent fragmentation or conversion from agricultural use?
3. Is there anything you personally gave up that is giving you heartburn that you want to discuss?

Commissioners generally felt that they had struck the necessary balance with conservation and agriculture and other requirements of the statute. They felt that there were likely elements that could be improved, but that it was difficult to anticipate before the program is established. One commissioner thought that the rules lacked some specificity, but that the commission will review guidance and include more specificity as necessary. Another commissioner hoped the rules would become less complex over time. One commissioner hoped the program could better tap the power of integration of agriculture and conservation for mutual benefits. Another commissioner appreciated the diversity of views in the room and felt that the program should also reflect the diversity of Oregon agriculture.

OWEB staff shared their appreciation for the commission's dedication and their excitement to help the commission develop a new program.

Conclusion and Next Steps

Agenda items for the next meeting are:

- Approval of the rules
- Establishing technical committees (e.g. CMP payment)
- Budget approval
- Discussing and authorizing OWEB staff to proceed with a Letter of Interest application

Agenda items for following meetings:

- Review teams
- Measurements of program success

The meeting was adjourned at 3:02 p.m.



Staff Report: Proposed OAHP Draft Rules for Public Comment

Introduction

The Oregon Agricultural Heritage Program (OAHP) statute authorizes the Oregon Agricultural Heritage Commission (commission) to “assist the Oregon Watershed Enhancement Board with the development of rules for the administration of the programs under ORS 541.977 ... to 541.989...” ([ORS 541.989\(1\)\(a\)](#)).

Background

Between February, 2018 and June, 2018, the commission held 5 meetings for the purpose of rulemaking. During these meetings, the commission developed draft rules for OAHP administration, conservation management plan grants, working land conservation covenant and easement grants, technical assistance grants, and succession planning grants.

Next Steps for Rulemaking

Once the commission approves a draft set of rules for public comment, staff will initiate a formal public comment period with the Secretary of State. If the draft rules are approved at the commission’s June 25, 2018 meeting, public comment is estimated to begin on July 1 and last until July 31.

Staff will compile public comment and convene the commission in August to discuss the comments and potential changes to the draft rules. Once the commission has voted to approve a final version of the draft rules, OWEB’s Board will vote at their October 16-17 Board meeting on whether to approve the rules. The rules do not take effect until and unless they receive a vote of approval by OWEB’s Board.

Recommendation

Staff recommends that the commission approve the OAHP rules in attachments A – E of this staff report to be submitted for public comment.

Attachments

- A. OAHP Administrative Draft Rules
- B. Conservation Management Plan Draft Rules
- C. Covenant and Easement Draft Rules
- D. OAHP Technical Assistance Draft Rules
- E. succession Planning Draft Rules

Division 005

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 fragmentation of Oregon’s working land and conversion of Oregon’s working land from agricultural production; and
- 3) Enhanced fish and wildlife habitat, water quality, and other natural resources on Oregon’s working land.

698-005-0020

Definitions

- 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) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.
- 3) “Commission” means the Oregon Agricultural Heritage Commission created under ORS 541.986.
- 4) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director’s designee.
- 5) “Fragmentation” means the division of a working farm or ranch ~~into smaller parcels~~, 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.
- 6) "Grant agreement" means the legally binding contract between the Board and the grant recipient. 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.
- 6)7) "Grantee" means an organization or individual that is awarded a grant under one or more of OAHP’s grant programs.
- 7)8) "OWEB" means the Oregon Watershed Enhancement Board state agency.
- 8)9) "Technical committee" means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

~~9)~~10) “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.

~~10)~~11) _____ “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.

~~11)~~12) _____ “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.

698-005-0030

Application Requirements

- 1) Applications must be submitted on the most current form prescribed by the Commission. Current applications are available on the OWEB website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application and the required attachments, an applicant may submit additional information that will aid the Commission in evaluating the project.
- 2) All applicants for Oregon Agricultural Heritage Program grants shall supply the following information:
 - a. Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s);
 - b. Name and address of participating agricultural owners or operators;
 - c. Name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, or stream mile, as appropriate;
 - d. Estimated line item budget for the project using the most current budget form prescribed by the Commission. Current budget forms are available on the OWEB website;
 - e. Identification of specific project elements for which OAHP funds will be used;
 - f. A description of any non-OAHP funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;
 - g. If the project is part of a multi-year project, and a new funding request continues a previously Commission-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;

- h. Identification of volunteers and partners (if any) and the contribution they will make to the project;
 - i. A project schedule, including times of project beginning and completion; and
 - j. Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.
- 3) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all participating landowners of the existence of the application and has also advised all landowners that all monitoring information obtained on their property is public record. If contact with all landowners was not possible at the time of application, the applicant must explain why.
- 4) 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.

698-005-0040

Application Processing

- 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) The Commission may require additional information to aid in evaluating and considering a proposed grant project.

698-005-0050

Grant Agreement Conditions

- 1) The Board will enter into new grant agreements with prior grantees only if all reporting obligations under earlier agreements have been met.
- 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.
- 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.
- 6) The grantee will account for funds distributed by the Board, using project expense forms provided by OWEB.

- 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 Board.
- 8) The Board may place additional conditions in the grant agreement as necessary to carry out the purpose of the program, including:
 - a. A commitment by the agricultural owner or operator for continued access for monitoring the project after completion;
 - b. A commitment by the grantee to maintain the project for a period of time as deemed appropriate by the Board;
 - c. A commitment to supply future reports on the project as required; and
 - d. Such other conditions as the Board deems appropriate to the particular circumstances of the project.
- 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 both parties.

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 purposes of the fund.

698-005-0070

Distribution of Funds

- 1) The Director may withhold payments to a grantee in a situation where there are significant and persistent difficulties with satisfying Board requirements.
- 2) Funds will be released upon presentation of a completed fund release request form 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.
- 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 the Commission. 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.

698-005-0080

Funding Decision Reconsideration by Board

In the event that the Director determines an applicant has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The applicant 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.

Division 698-005-0090

Technical Committees

In addition to technical committees established by the Board and Commission to rank and evaluate conservation management plan and working land conservation covenant and easement 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) and (3).

698-005-0100

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 in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 010
Conservation Management Plans

698-010-0010

Purpose

The Conservation Management Plan Grant Program funds the development, implementation and/or monitoring of conservation management plans (plans) entered into by agricultural owners or operators and organization to manage working land in a manner that supports one or more natural resource values. Conservation management plans funded under this program:

- 1) Must contribute to the public benefits in OAR 698-005-0010;
- 2) Must be for the purpose of developing and/or 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;
- 3) Must protect, maintain, or enhance the agricultural values of the working land and/or operation; and
- 4) 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.

Comment [NM1]: Are these covered in the general purpose statement OAR 698-005-0010? If so, remove here.

698-010-0020

Definition

- (1) "Mutual Modification" means a change to a conservation management plan that is:
 - a. Material to the plan as defined in Section 0120(5); and
 - b. Agreed to by both the agricultural owner or operator implementing the plan and the conservation management plan holder.

698-010-0030

Eligibility

- 1) Eligible applicants for Conservation Management Plan Grants are:
 - a. Entities eligible to hold a conservation easement as defined in ORS 271.715, other than a state agency;
 - b. Watershed councils; and
 - c. Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code.
- 2) Individual agricultural owners or operators are not eligible to apply for a Conservation Management Plan Grant.

Comment [NM2]: The commission had wanted to open this to nonprofits that are not 501(c)(3)s, but the (c)(3) requirement is in statute. There would need to be a statutory fix to change this.

698-010-0040

Application

Conservation Management Plan Grant applications shall:

- (1) Be consistent with OAR 698-005; and
- (2) Include the duration and any terminating events for the plan.

Comment [NM3]: Guidance: An application may be for:
•one CMP or multiple CMPs, and
•specifically identified properties or a target region

698-010-0050

Match Contributions

- 1) All applicants shall demonstrate that some portion of the proposal is being sought as match.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-010-0060;
 - b. Funding commitments made by others as a result of grant applicant efforts; and
 - c. Funds deposited in a Stewardship Endowment before the time that OWEB funds are released for acquisition of the property.
- 3) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

Comment [NM4]: Question: should covenant/easement stewardship funds count as CMP match? If so, can they be double counted if they're applying for both programs?

698-010-0060

Eligible Activities

Funding may be utilized to develop, implement, and/or monitor conservation management plans. *(Additional information to be developed as part of payment conversations.)*

698-010-0070

Term of Payment for Conservation Management Plan Implementation

- 1) If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of at least 20 years and no more than 50 years.
- 2) If a plan is associated with a working land conservation covenant that would also be funded by OAHP, the term of the plan must be the same as the term of the covenant.

698-010-0080

Conservation Management Plan Components

At a minimum, conservation management plans must include:

- (1) A summary describing how the conservation management plan meets OAHP's purpose;
- (2) The contact and location information for the agricultural owner or operator and plan holder;
- (3) Relevant background and context of the working land and operation;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and **conservation goals** of the agricultural owner or operator;

Comment [NM5]: In Guidance: Conservation goals should be as measurable and specific as possible.

DRAFT OAHF Conservation Management Plan Rules

- (6) Resource analysis and identification of resource and management concerns;
- (7) Identification of potential plan activities and a justification for the activities that were selected for implementation;
- (8) The implementation plan, including a budget;
- (9) If applicable, a maintenance plan for infrastructure associated with the plan that may affect neighboring lands if not maintained over time;
- (10) The expected conservation, social, and economic agricultural, natural resource, and related social outcomes of the plan once implemented;
- (11) How the conservation management plan will be evaluated and managed;
- (12) A conflict resolution protocol for the agricultural owner or operator and the grantee if the grant program would fund the implementation of the plan; and
- (13) The term of the plan.

698-010-0090
Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the conservation management plan(s).
- 2) The extent to which implementation of the plan(s) would protect, maintain, or enhance farming or ranching on working land, including how implementation of the plan(s) would:
 - a) Maintain or improve the economic viability of the operation; and
 - b) Reduce the potential for fragmentation and conversion from agricultural uses on the working land subject to the plan(s).
- 3) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values by:
 - a) Protecting, maintaining, or improving priority natural resource values applicable to the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of local, regional, state, federal, or tribal priorities or plans;
 - c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land subject to the plan;
 - d) Protecting, maintaining, or improving water quality and/or quantity; and
 - e) Sustaining ecological values, as evidenced by the conservation management plan, or inherent site condition.
- 4) The extent to which implementation of the plan(s) would protect significant agricultural outcomes, benefits, or other investment gains, including the regional significance of the agricultural operation and its associated land base.

Comment [NM6]: In guidance: the plan should use affordable, feasible, and effective methods.

Comment [NM7]: Guidance would include:

- Integration of agriculture and conservation that increase protection of both
- Define "social values"

Comment [NM8]: Guidance would include

- Increased productivity, carrying capacity, and/or water retention of the land (retention defined in guidance)
- Reduced use of inputs like fertilizer, pesticides/herbicides, energy use
- Increased management efficiency
- Ensuring long term availability of water rights sufficient to support farming on the land (some transference and temporary leasing might be acceptable)

Comment [ML9]: Guidance would include:

- Increased soil health
- Mitigation of climate change, including increased carbon sequestration
- Amelioration of the impacts of climate change on the property
- Increased ecosystem function and resilience
- Strategies to protect vulnerable species, species of concern, and/or ESA listed species, but does not necessarily create a single-species management plan
- This does not exclude forestry

Comment [ML10]: Guidance would include:

- Plans for or presence of vulnerable or listed species or associated habitat
- Addresses priorities in local area plans for the state's agriculture water quality program

Comment [NM11]: Guidance would include:

- Establishment of habitat corridors or blocks

Comment [NM12]: Guidance would include:

- TMDL improvement
- Temperature reduction

Comment [NM13]: Guidance: Including seasonally appropriate flows, and appropriate water retention, to be defined in guidance

Comment [NM14]: Define social benefits associated with continued ag use, and "investment gains" (might refer to surrounding agricultural infrastructure)

DRAFT OAHF Conservation Management Plan Rules

- 5) The capacity and competence of the organization that filed the application to enter into and (if implementation funding is awarded) oversee implementation of a conservation management plan, including:
 - a) The financial capability of the organization to manage the plan(s) over time;
 - b) The demonstrated relevant commitment, expertise, and track record to successfully develop, implement, and/or monitor plan(s); and
 - c) The strength of the organization as measured by effective governance.
- 6) The extent to which the benefit to the state may be maximized, based on:
 - a) The ability to leverage grant moneys from other funding sources;
 - b) The duration and extent of the conservation management plan, with a preference for longer term agreements if implementation funding is awarded; and
 - c) The potential for setting an example that will encourage additional working lands projects in the region.
- 7) The impacts of plan implementation on owners or operators of neighboring lands, including:
 - a) A plan for communicating with neighboring landowners once the conservation management plan(s) is/are ready to be implemented about how to mitigate any impacts, if necessary;
 - b) A maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.
- 8) The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the conservation management plan would reduce those threats.

Comment [NM15]: Guidance includes:

- Dedicated staff capacity (e.g. in their job description and work plan), staff training, and years of experience
- If implementation funding is awarded, ability to manage staff transitions and a plan to assign project administration to another entity if needed
- Working relationships with funders, project partners, and the community.

Comment [NM16]: Guidance would include: May be demonstrated by mission, vision, or other organizational statement.

Comment [NM17]: Guidance would include:

- Agricultural owners or operators on the Board;
- Likelihood of long-term viability

Comment [NM18]: Guidance will include the cumulative benefits of similar conservation and/or agricultural investments in the community, including OAHF

Comment [NM19]: Guidance to include:

- Connectivity to both wildlife habitat and protected agricultural lands;
- The impact on shared drainage systems.

Comment [NM20]: Guidance: Maintenance plans should use affordable, feasible, and effective methods.

698-010-0100

Technical Review and Funding Process

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR 698-010-0080.
- (3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement to be separate from the ranking of working land conservation covenants and working land conservation easements.
- (4) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans.
- (5) The technical committee(s) shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.

Comment [NM21]: Dependent upon statutory fix

DRAFT OAHP Conservation Management Plan Rules

- (6) The Commission shall review and consider the recommendations of the technical committee(s) appointed under 698-005-0040(4) and consult with the Board concerning grant applications.
- (7) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (8) The Board approves Conservation Management Plan Grants. The Board may fund a grant application in whole or in part.

698-010-0110

Grant Agreement Conditions

- (1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural owner(s) or operator(s) to the roles and responsibilities under the conservation management plan.
- (2) All Conservation Management Plan Grant agreements authorized by the Board shall have a clause that requires the retention of up to 10 percent of project funds until the final report, as required in the grant agreement, has been approved. Any unexpended OAHP funds must be returned to the Commission with the final report.
- (3) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed amendments are submitted and approved by the Director prior to the beginning of any work proposed in the amendment.
- (4) The Director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.
- (5) All changes to the conservation management plan must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.

698-010-0120

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Any changes to conservation management plans must achieve the same or greater level of benefits as the original plan, as evaluated by the criteria in 698-010-0090.
- (2) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (3) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.
- (4) To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.

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- (5) The agricultural owner or operator must contact the grantee immediately if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:
 - (a) Changes in management or ownership of the property;
 - (b) Changes in the grazing/cropping system(s) not identified in the plan. For changes in grazing/cropping systems, the landowner must notify the grantee in advance.
 - (c) A natural disaster occurs that will impact implementation of the conservation management plan; or
 - (d) Other changes that are outside the agricultural owner's or operator's control.
- (6) The grantee must contact the agricultural owner or operator if changes in science significantly affect the expected outcomes of conservation management plan implementation.
- (7) Modifications to the plan may include:
 - (a) The addition of new conservation practices, measures or benefits; or
 - (b) Changes to practices, measures, or benefits in response to:
 - a. Changes in science;
 - b. Changes in management or ownership of the property;
 - c. Changes in the grazing/cropping system(s);
 - d. A natural disaster; or
 - e. Other changes outside the agricultural owner's or operator's control.

698-010-0130

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- ~~(1) Each year, the agricultural owner or operator must meet with the grantee and provide the grantee with a written report on the conservation management plan activities completed that year on a form approved by the Commission. Reports may also include photo points or other methods that appropriately track plan implementation.~~
- ~~(2)(1) Annual reporting must identify any mutual modifications to the conservation management plan.~~
- ~~(3)(1)~~ Notwithstanding ~~(24)~~, the grantee must conduct at least one site visit to the property every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the implementation of the conservation management plan.
- ~~(4)(2)~~ The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols and site visit intervals more frequent than once every three years to identify trends in habitat, water quality or other natural resource values, and must establish protocols if a modification of the conservation management plan

DRAFT OAHP Conservation Management Plan Rules

results in specific monitoring or site visit needs. Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee. The Commission may provide guidance for consistent monitoring protocols.

~~(5)~~(3) The Commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. The agricultural owner or operator shall allow site access upon reasonable notification by the Commission.

~~(6)~~(4) The Commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

698-010-0140

Grant Reporting Requirements

1) For grants that fund conservation management plan implementation

a. ~~Each year~~At least once per year, the agricultural owner or operator must meet with the grantee and provide the grantee with a written report on the conservation management plan activities completed that year on a form approved by the Commission. Reports may also include photo points or other methods that appropriately track plan implementation.

b. Annual reporting must identify any mutual modifications to the conservation management plan.

c. Reports must be submitted to the Commission on a date set by the Commission.

~~1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the Commission at least annual reports from the agricultural owner or operator regarding plan implementation.~~

2) Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved, the final payment shall be promptly processed.

698-010-0150

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 010 unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative

DRAFT OAHP Conservation Management Plan Rules

rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

DIVISION 015
Working Land Conservation Covenants and Easements

698-015-0010

Purpose

An agricultural owner or operator may enter into a working land conservation covenant (covenant) with or grant a working land conservation easement (easement) to an organization that is a holder, as defined in ORS 271.715, other than a state agency. Covenants and easements funded under this program:

- 1) 1) Must contribute to the public benefits in OAR 698-005-0010;
- 2) Must be for the purpose of ~~ensuring the~~ **providing the opportunity for** continued use of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land; and
- 3) May provide for carrying out any purposes of a conservation easement, as defined in ORS 271.715.

Comment [NM1]: Proposed statutory fix

698-015-0020

Definitions

- 1) “Management plan” means a description of the planned future management of a property proposed for easement or covenant acquisition that addresses agriculture, habitat and natural resource management practices; stewardship; monitoring; and uses of the property. If applicable, it also addresses any proposed agricultural projects, habitat restoration projects, public access, or educational or research projects on the property.
- 2) “Profit” means the positive difference between the original purchase price of the covenant or easement interest acquired with OAHP grant funds and a subsequent purchase price for the same property interest, minus the landowner’s property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.
- 3) “Stewardship endowment” means the fund that is used to cover the holder’s costs for the monitoring, stewardship, resolution of violations, and any enforcement of the covenant or easement.

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0030

Eligible Applicants

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

698-015-0040

Eligible Properties

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

698-015-0050

Application

- 1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications to acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations for the purposes that support the use of land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality, or support of other natural resource values.
- 2) Working Land Conservation Covenant and Easement Grant applications shall:
 - a. Be consistent with OAR 698 Division 001;
 - b. Be submitted on the most current form and process prescribed by the Commission;
 - c. State the amount and type of match contribution;
 - d. If the application is for a covenant, include the duration of the covenant;
- 3) If the covenant is identical in duration to a conservation management plan for the working land that is funded by the OAHF Conservation Management Plan Grant Program, the covenant must refer to the conservation management plan in the text of the covenant; and
- 4) If a pre-existing or new management plan is proposed as part of an application for a covenant or easement under this program, the proposed management plan must be agreed to by the landowner, applicant, and commission before closing.
- 4)5) The Commission may consider proposals that are received for covenants or easements that were acquired by the applicant after the previous application deadline.

698-015-0060

Matching Contributions

- 1) All applicants shall demonstrate at least 25% of the covenant or easement project costs is being sought as match as demonstrated by a formal application or agreement.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-015-0070;
 - b. Funding commitments made by others as a result of grant applicant efforts;
 - c. The donated portion of a sale; and

DRAFT Working Land Conservation Covenant and Easement Rule

- d. Funds deposited in a Stewardship Endowment before the time that OWEB funds are released for acquisition of the covenant or easement.
- 3) The Working Land Conservation Covenant and Easement Grant Program will provide up to a 50% match for the value of a stewardship endowment, but program funds contributed to a stewardship endowment may not exceed 5% of the total appraised value of the covenant or easement.
- 4) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

698-015-0070

Use of Grant Funds

Working Land Conservation Covenant and Easement Grant funds may be applied towards costs related to the purchasing, implementing, carrying out, holding or monitoring of the covenant or easement, including:

Comment [NM2]: From statute

- 1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
 - a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.
 - b. The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-015-0070 (1)(a);
- 2) The interest on loans;
- 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 cost of preparation of the initial Management Plan, including consideration of any restoration needs;~~
- ~~7)6) The legal fees incurred;~~
- ~~8)7) The closing fees, including recording and title insurance costs;~~
- ~~9)8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a Management Plan approved by the Director; and~~
- ~~10)9) _____ Funding for a stewardship endowment.~~

Comment [NM3]: Redundant with Management Plan section below.

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0080

Conservation Covenant Term

- 1) A working land conservation covenant shall be for a term of no less than twenty and no more than fifty years.
- 2) The covenant term shall be set at 12-month increments only and not partial years.
- 3) The first day of the term of a covenant shall be the date that both of these event have occurred:
 - a. The covenant holder and the agricultural owner or operator conveying the covenant sign the agreement; and .
 - b. The agricultural owner or operator has received Working Land Conservation Covenant and Easement Grant funding for the covenant.

698-015-0090

Evaluation Criteria

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

Comment [NM4]: In Guidance:
 •Integration of agriculture and conservation that increase protection of both.
 •Define “social values”

Comment [NM5]: In Guidance: includes threat of conversion and urgency

Comment [NM6]: In Guidance: the entire property need not be available for agriculture, especially portions that are not productive for agriculture.

Comment [NM7]: In Guidance, includes:
 •Soils
 •Where appropriate, water retention in soils (defined in guidance)
 •Maintenance of sufficient water rights to support a viable operation long term (leasing water rights is fine)

Comment [NM8]: In Guidance: may be demonstrated by the presence of a succession plan.

Comment [ML9]: Guidance would include:
 • Increased soil health
 • Increased carbon sequestration
 • Increased water quality
 • Increased ecosystem function and resilience
 • Support for vulnerable species, species of concern, and/or ESA listed species.
 • Includes climate change impacts from Management Plan activities.
 • Does not exclude properties that contain some forestry

Comment [ML10]: Guidance would include:
 • Plans for or presence of vulnerable or listed species or associated habitat
 • Addresses priorities in local area plans for the state’s agriculture water quality program

Comment [NM11]: Guidance would include: Establishment of habitat corridors or blocks

Comment [NM12]: Guidance would include:
 •TMDL improvement
 •Temperature reduction

Comment [NM13]: Guidance: Including seasonally appropriate flows, and appropriate water retention, to be defined in guidance

Comment [EW14]: Guidance on specific factors that describe significant agricultural outcomes, including social outcomes, and ...

Comment [NM15]: Guidance: This refers to surrounding agricultural infrastructure

DRAFT Working Land Conservation Covenant and Easement Rule

- a) The parcel's contribution to conserving the region's agricultural land base; and
 - b) The regional significance of the agricultural operation and its associated infrastructure.
- 5) The capacity and competence of the organization that filed the application applicant and/or the proposed easement or covenant holder to purchase, implement, carry out, hold, monitor, steward, and enforce a working land conservation covenant or easement, including:
- a) Accreditation from the Land Trust Accreditation Commission, or implementation of standards and practices that are similar to an organization that is eligible for accreditation;
 - b) Inclusion of working land preservation in the organization's mission, vision or other organizational documents;
 - c) The financial capability of the organization to steward conservation covenants and easements over time;
 - d) Demonstrated relevant commitment, ability, expertise, and track record to create, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and
 - e) The strength of the organization as measured by effective governance.
- 6) The extent to which the benefit to the state from the investment may be maximized, based on:
- a) The ability to leverage grant moneys with other funding sources;
 - b) The duration and extent of the agreement, with a preference for longer term agreements;
 - c) The cumulative effect of similar conservation and/or agricultural investments in the community, including OAHF;
 - d) The effects of land use planning on the long-term investment;
 - e) The potential for setting an example that will encourage additional working lands projects in the region; and
 - f) The existence and implementation of a management plan, including how the plan mitigates or addresses the effects of climate change.
- 7) The impacts of the covenant or easement and/or the associated 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.
- 7)8) The level of threat of fragmentation or conversion from agricultural uses of the working land, and the extent to which the covenant or easement would reduce those threats.

Comment [NM16]: In Guidance:
•Includes connectivity and adjacency to other agricultural parcels

Comment [NM17]: Guidance would include:
•Employer in community
•Hiring underserved populations
•Purchasing or selling locally
•Supplier for local processing
•How this parcel helps avoid a "tipping point" where regional agricultural businesses and working lands are lost
•How this parcel supports regional economies of scale

Comment [NM18]: Guidance: may include:
•processing, storage, and distribution facilities,
•historic barns.

Comment [NM19]: Guidance includes:
•Stewardship endowment
•Dedicated staff with knowledge of agriculture who have sufficient capacity (e.g. in their job description and work plan), staff training, and years of experience
•Ability to manage staff transitions and a plan to assign project administration to another entity if needed
•Working relationships with funders, project partners, and the community

Comment [NM20]: Guidance will refer organizations with less experience to the Technical Assistance grant program.

Comment [NM21]: Guidance would include Agricultural owners or operators on the Board;

Comment [NM22]: Guidance to include:
•Connectivity to both wildlife habitat and protected agricultural lands;
•The impact on shared drainage systems.

698-015-0100

Technical Review and Funding Process

- (1) Technical review of Working Land Conservation Covenant and Easement Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR 698-015-0090.

DRAFT Working Land Conservation Covenant and Easement Rule

- (3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement to be separate from the ranking of working land conservation covenants or easements.
- (4) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements.
- (5) The technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.
- (6) The Commission shall review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.
- (7) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.
- (8) The Board approves Working Land Conservation Covenant and Easement Grants. The Board may fund a grant application in whole or in part.

Comment [NM23]: Clarify in statute.

698-015-0110

Board Approval and Delegation of Authority

- 1) The Commission shall recommend and the Board shall approve grants in accordance with guidance adopted by the Board and made available to the public.
- 2) The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grant applicant.
- 3) Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval.

Comment [NM24]: Guidance: this is after closing.

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, will be provided with written notice of the Board's or Commission's intent to consider:

- 1) Written comments received at least 14 days before 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.

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0130

Director Funding Approval and Distribution of Funds

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

- a. A grant agreement is executed by the Director and the grant applicant that includes a signed statement of understanding and agreement to the roles and responsibilities under the working land conservation covenant or easement by the participating agricultural owner or operator.
- 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 title restrictions required under OAR 698- 015-0110 are approved by the Director.
- e. The Director has reconciled conditionally approved funding with actual project costs.
- f. The grant applicant has satisfied the match requirements under OAR 698-015-0060.
- g. The Board is notified in writing of the Director’s intent to distribute the grant funds or hold the grant funds pending Board consideration under OAR 698-015-0140.

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

698-015-0140

Compliance and Enforcement

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

Comment [NM25]: Guidance: Easement from OAHP takes precedents over other easement documents

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0160

Grant Reporting Requirements for Covenants

Upon completion of the term of a working land conservation covenant, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

698-015-0170

Payment Relationship Between Covenants and Easements

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

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

698-015-0180

Subsequent Conveyances

Subsequent conveyances of working land conservation covenants or easements acquired with OAHP grant funds by the easement or covenant holder shall:

- 1) Be made subject to prior approval by the Commission;
- 2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and 698-015; and
- 3) Not result in profit to the holder.

698-015-0190

Waiver and Periodic Review of Rules

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

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Division 020
Working Land Technical Assistance Grants

698-020-0010

Purpose

The Oregon Agricultural Heritage Commission (Commission) may provide grant funding for technical assistance to organizations that enter into or ~~propose~~ are eligible 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. Grant funding must support the public benefits in OAR 698-005-0010.

698-020-0020

Definitions

(1) "Technical assistance" means supporting the development of working land projects or programs as described in ORS 541-981 and OAR 698-010 (conservation management plans) and ORS 541-982 and OAR 698-015 (working land conservation covenants and easements).

(2) "Young or beginning farmer or rancher" means someone who has owned or operated an agricultural operation for 10 years or fewer or who is 35 years old or younger.

698-020-0030

Eligibility

- 1) Eligible applicants for Technical Assistance Grants are eligible to enter into agreements resulting in a conservation management plan under OAR 698-010-0080 or accept a working land conservation covenant or easement under OAR 698-015-0080.
- 2) Individual agricultural owners or operators are not eligible to apply for a Technical Assistance Grant.

698-020-0040

Application Requirements

Technical Assistance Grant applications shall be consistent with OAR 698-005.

698-020-0050

Technical Assistance Activities

- 1) Technical Assistance Grant funding cannot be used to fund specific conservation management plans, working land conservation covenants, or working land conservation easements.
- 2) The Commission will only consider technical assistance projects that will lead to or are likely to lead to the development of conservation management plans, working land conservation covenants, or working land conservation easements.

Comment [NM1]: In Guidance: projects include
●outreach, education,
●staff and board training,
●engagement in community activities, and
●other investments in infrastructure and staff time to support the development of the program

698-020-0070

Evaluation Criteria

Technical Assistance Grants will be evaluated on:

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- 1) The extent to which the proposal will improve upon the ability of the entity or its partners to enter into conservation management plans, or enter into working land conservation covenants or easements.
- 2) The extent to which the outcomes of the technical assistance project would lead to activities that:
 - a. Protect, maintain, or enhance farming or ranching on working land;
 - b. Protect, maintain, or enhance significant fish or wildlife habitat, water quality, appropriate seasonal water flows, and appropriate water retention or other natural resource values;
 - c. Protect significant agricultural outcomes, benefits, or other investment gains;
 - d. Maximize the benefit to the state based on the ability to leverage grant; and
 - e. Limit negative and maximize positive impacts on owners or operators of neighboring lands.
- 3) The extent to which the applicant demonstrates a plan to engage one or more underserved populations.

Comment [NM2]: Guidance: May include ag infrastructure.

Comment [NM3]: Remove or change to beginning or young farmer or rancher.

698-020-0080

Technical Review and Funding Process

- 1) Technical review of Technical Assistance Grant applications shall occur based on information provided in the grant application.
- 2) Applications shall be evaluated according to criteria described in OAR 698-020-0070.
- 3) The Commission may use technical committees to evaluate technical assistance grant applications.
- 4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff, who will review technical committee recommendations and provide funding recommendations to the Commission. If a technical committee is not used, OWEB staff will provide funding recommendations to the Commission.
- 5) The Commission may rank projects and shall provide funding recommendations to the Board.
- 6) The Board approves Technical Assistance Grants. The Board may fund a grant application in whole or in part.

698-020-0090

Grant Agreement Conditions

- 1) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- 2) The Director may consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of

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the amendment remains the same as the original project and the proposed activity is within the same geographic area.

- 3) The Director may authorize minor changes within the scope of the original project plan.
- 4) The Grantee must submit a report at completion of the project in accordance with reporting requirements described in the grant agreement.
- 5) Rules and conditions in place at the time funding for the Technical Assistance Grant is formally approved shall govern throughout the term of the project unless changes are mutually agreeable to both parties.

698-020-0100

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 020 unless required by statute, when doing so will result in more efficient or effective implementation of the Technical Assistance Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Technical Assistance Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 025 Succession Planning Grants

698-025-0010

Purpose

The Oregon Agricultural Heritage Commission may provide funding recommendations to the Oregon Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board, to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. Recommendations and grant funding must support the program purpose in OAR 698-005-0010.

Comment [NM1]: Statutory fix from "shall" to "may"

698-025-0020

Definitions

- (1) "Agricultural cooperative" means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.
- (2) "Succession planning" means an ongoing process for ensuring the continuation and economic viability of a business over generations of owners or operators. It may include strategies to identify, develop, and empower the next generation of owners or operators, a plan to transfer business and family assets, and arrangements for each generation's retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

Comment [NM2]: Statutory fix to make this program apply to ag owners or operators

698-025-0030

Succession Planning Priorities

The Commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant applications and make recommendations to the Oregon Legislative Assembly. The Commission may modify these priorities from time to time at its discretion.

698-025-0040

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Nonprofit entities,
 - (iii) Units of local government,
 - (iv) Tribes, and
 - (v) Agricultural cooperatives.
- (2) Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Succession Planning Grant.

698-025-0050

Application Requirements

Succession Planning Grant applications shall:

- (1) Not require match contributions; and
- (2) Comply with Oregon Agricultural Heritage Program general grant application requirements in OAR 698-005.

698-025-0060

Eligible Activities

The following activities benefitting agricultural owners or operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources;
- (2) Trainings on topics related to succession planning;
- (3) Development and distribution of educational materials and curriculum related to succession planning; and
- (4) Advising agricultural owners or operators on succession planning.

698-025-0070

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR 698-005-0010;
- (2) The capacity and competence of the applicant to deliver the proposed program;
- (3) The applicant's relevant background and experience in delivering successful succession planning programs, including prior programs funded through this grant program and projects funded outside this grant program.
- (4) The cost-effectiveness of the proposed project;
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural owners or operators in diverse geographic locations in Oregon, and participants in diverse stages of succession planning. The Commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity. And,
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

698-025-0080

Succession Planning Grant Application Technical Review and Funding Process

- (1) The Commission may fund projects submitted through an open solicitation for applications, or by requesting applications from one or more specific eligible entities.
- (2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.
- (3) Applications shall be evaluated according to criteria in OAR 698-025-0070.
- (4) The Commission may use technical committees to evaluate Succession Planning Grant applications.
- (5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the Commission.
- (6) The Commission may rank projects and shall provide funding recommendations to the Board.
- (7) The Board may fund a grant application in whole or in part.

Comment [NM3]: Guidance: describe how the expectations for delivery of the program will be modified if it is funded in part.

698-025-0090

Grant Agreement Conditions

- (1) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (2) The Director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

698-025-0100

Grant Funding Conditions

- 1) All Succession Planning Grant agreements authorized by the Board shall have a clause that requires the retention of up to ten percent of project funds until the final report, as required in the grant agreement, has been approved.
- 2) Final reports are due within 60 days of project completion. Any unexpended OAHP funds must be returned to the Commission with the final report.
- 3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval.
- 4) Once the final report has been approved the final payment shall be promptly processed.

Comment [NM4]: META: remove as redundant with 0110(1) below?

Comment [NM5]: Add to other programs or 001?

698-025-0110

Grant Reporting Requirements

- (1) Upon project completion, the Grantee will provide the Commission and OWEB’s Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee’s funded project(s) demonstrated clear succession planning benefits to Oregon agricultural owners or operators and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program;
 - (ii) The geographic, commodity, and other demographic indicators of participation in the program;
 - (iii) Documented improved understanding of succession planning by program participants;
 - (iv) Documented measurable changes in behavior of participants, including the percentage or number of owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
 - (v) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land from agricultural production, and promote economic viability and ecological sustainability of agricultural operations; and
 - (vi) Other documentation of the project’s success in contributing to achieve the purpose of this grant program.
- (3) The Director or the Commission may authorize an independent performance audit of any Succession Planning Grantee. The Director may restrict future grant funds if the Director determines the Grantee is not complying with the rules of the Succession Planning Grant Program.
- (4) In addition to project reports, the Commission may conduct program evaluations that may include:
 - a. Changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning by Oregon agricultural owners or operators;
 - b. Surveys of agricultural owners or operators on the status of succession plans; and
 - c. Other trends in working land ownership and use.

Comment [NM6]: META: what future funds? Just the 10% that is withheld? This isn’t a reimbursement program. Does this refer to future grants? Can the director demand repayment?

DRAFT succession Planning Grant Rules

698-025-0120

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 025 unless required by statute, when doing so will result in more efficient or effective implementation of the Succession Planning Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.



Staff Report: Proposed OAHP Agency Request Budget

Introduction

This report requests the Oregon Agricultural Heritage Commission's approval of budget proposals relating to the Oregon Agricultural Heritage Program (OAHP), which will be included in OWEB's Agency Request Budget for the 2019-2021 biennium.

Background

The Oregon Legislature approves budgets for state agencies on a biennial basis. In preparing for the next biennium, budgets are structured so that each agency's current (or "base") budget is recalibrated and submitted without need for specific policy description or justification. Any resources requested to be added to the base budget by agencies must be identified separately with policy narratives and justification. The requested additions to an agency's base budget are called "Policy Packages."

OWEB must submit its ARB narrative to the Governor and the Department of Administrative Services by August 31, 2018. The Governor's Office will then develop state budget recommendations in partnership with agencies, known as the Governor's Recommended Budget. This budget proposal may also include additional Policy Packages that reflect the Governor's priorities and initiatives. The Governor's Budget is the starting point for agency budget discussions at legislative hearings. During the legislative session, agencies may advocate for their individual Policy Packages only to the extent that they are included in the Governor's Budget.

Because OAHP is housed within OWEB, the agency is responsible for submitting the policy option packages related to the program as a part of its Agency Request Budget.

Budget Outlook

Recent economic forecasts project that revenues will continue to grow at a modest, but slower pace than in recent years. The latest revenue forecast is more positive than previous forecasts, indicating that revenues will be more in line with increasing state costs. This will result in a much lower deficit than indicated in previous forecasts.

Each biennium, agencies are required to submit a report that lists 10 percent reduction options from current service level by priority for all fund sources. Full reductions have not been taken in the past few budget cycles. Future reductions will depend on the revenue outlook and the level of remaining ending balances from the 2017-19 biennium.

OAHP Budget Proposal for the 2019-21 Biennium

OWEB's budget proposals for OAHP for the next biennium are based on an analysis of staffing needs relative to agency functions anticipated to be needed during the 2019-2021 biennium. OWEB proposes that the positions and grant funding identified in Attachment A to the staff report are necessary to carry out OAHP statutes.

Next Steps for Budget Development

Staff will use the budget proposals approved by the commission and the OWEB board at their June 2018 meetings as a foundation for developing policy packages for inclusion in the ARB. At future meetings, staff will keep the commission apprised about the status of the 2019-21 biennium budget process.

Recommendation

Staff recommend that the commission approve the OAHP-related budget proposals included in Attachment A of this staff report, for inclusion in OWEB's 2019-2021 Agency Request Budget.

Attachments

- A. OAHP Draft Proposed Policy Option Packages for OWEB's 2019-2021 ARB

OAHP 2019-2021 Agency Request Budget
Policy Option Package Proposal

1. Oregon Agricultural Heritage Program (OAHP)	Estimated Amount	FTE	Proposed Fund Source	OWEB Strategic Plan Priority*
<p>OAHP Grants – This request is for funding to support grants associated with the Oregon Agricultural Heritage Program. This program offers voluntary tools that help farmers and ranchers maintain land as active farms and ranches while providing incentives and support for conservation on those lands. The request includes \$9.25 million in grants for succession planning, conservation management plans, and working land conservation covenants and easements.</p>	\$9.25 million	N/A	General Funds	5
<p>OAHP Staffing – This request is for funding to support staffing needs associated with the Oregon Agricultural Heritage Program. This program offers voluntary tools that help farmers and ranchers maintain land as active farms and ranches while providing incentives and support for conservation on those lands. The request includes \$750,000 for staffing costs to implement the program. Positions needed to implement this program include: OPA4 to provide overall program coordination; NRS4 or similar position to coordinate the working land covenants and easements; and OS2 (0.5 FTE) to provide program support.</p>	\$750,000	2.5	Primarily General Funds; very modest amount of Lottery Funds for a portion of OPA4	5

*Agencies are typically asked to relate any policy option package to the agency’s strategic plan. On the next page is text from OWEB’s draft strategic plan, which is expected to be approved in June, 2018.

Priority 5 - The value of working lands is fully integrated into watershed health

Oregon's natural resource industries - agriculture, forestry, fishing, recreation – are dependent on healthy watersheds for their sustainability, including on private lands. OWEB will develop strategies to help local partners engage broader participation among those who own and manage working lands. This includes working broadly with partners who own or manage working lands and conservation communities to develop intentional approaches that fully embrace the value of well-managed working lands to habitat, water quality, and local economies.

NOTE: "Working land" means land that is actively used by an agricultural or forest land owner or operator for an agricultural or forestland operation that includes, but need not be limited to, active engagement in farming, ranching or timber management.

Strategies

1. Implement the Oregon Agricultural Heritage Program

Working with partners and the Oregon Agricultural Heritage Commission, finalize rules, solicit for applications, and determine appropriate funding sources for working lands easements, management plans, and succession planning for agricultural landowners. Full implementation is funding-dependent.

2. Strengthen engagement with a broad base of landowners

In partnership with others who have direct experience and knowledge working with a broad range of landowners in Oregon, OWEB will gain an understanding of how to improve conservation on working lands, particularly with landowners who may not have previously received OWEB or other conservation funding.

3. Enhance the work of partners to increase working lands projects on farm, ranch and forestlands

There are many areas in the state where working lands strategies and habitat/water quality priorities intersect. A number of statewide agencies and organizations have strong connections with farmers, ranchers and forest land owners. OWEB will partner with those organizations (formally and informally) to increase landowner involvement in conservation – whether through a program or on their own. OWEB can continue to work with partners at the state and local level to identify strategic areas where the agency can focus its investments on that intersection, highlighting the compatibility of working lands conservation strategies.

4. Support technical assistance to work with owners/managers of working lands

While local organizations are very effective at working with farm, ranch and forest landowners, there are some landowners/managers who have not yet been engaged in conservation for a variety of reasons. OWEB can coordinate with other partners to help local organizations effectively engage new landowners in their community.

5. Develop engagement strategies for owners/managers of working lands who may not currently work with local organizations

Landowner engagement will be an important component of the working lands movement to build understanding and support for the work as well as identify opportunities to work with interested land owners.



Staff Report: Proposed OAHP Statutory Revisions

Background

HB 3249 was passed in the 2017 legislative session. Following the session and throughout the process of establishing rules for the program, a set of needed statutory changes were identified. Attachment A provides a redline version of the statute with comments for each section describing proposed changes.

Statutory Changes

Statutory changes proposed include:

- 1) Shifting language in 541.982 to remove requirement that continued agricultural use be an affirmative obligation of a conservation easement.
- 2) Providing a more accurate description of the individuals who would be eligible to participate in succession planning programs in 541.984.
- 3) Changing wording regarding conservation management plans from 'purchasing' plans to 'developing' plans in 541.981 and 541.984.
- 4) Revising technical assistance grant use in 541.984 to more accurately reflect the purpose of the grant funds, and to expand the eligible applicants to all organizations that are eligible to enter into conservation easements or covenants.
- 5) Changing language to be consistent throughout the statute regarding the relationship between the commission and the Oregon Watershed Enhancement Board in 541.988.
- 6) Revising language to match OWEB's process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly in 541.988.

Recommendation

Staff recommend the commission approve changes as proposed for consideration by the Legislature during their 2019 session.

Attachment

Attachment A: OAHP Proposed Statutory Revisions

OAHP Proposed Statutory Revisions

Working Lands Conservation

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.

Note: Section 13, chapter 716, Oregon Laws 2017, provides:

Sec. 13. Notwithstanding section 3 of this 2017 Act [541.979], the amounts paid from the Oregon Agricultural Heritage Fund for the administrative expenses of the Oregon Watershed Enhancement Board and the reimbursements and staff support expenses of activities associated with the Oregon Agricultural Heritage Commission incurred on or before June 30, 2019, may exceed 12 percent of the moneys credited to the fund during the biennium ending June 30, 2019. [2017 c.716 §13]

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~~ developing, 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

Comment [ML1]: Conservation management plans are not purchased. Instead, they are developed or implemented.

~~ensuring the continued use~~ ~~providing opportunity for 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.

Comment [ML2]: This change ensures that continued agricultural use is not a required 'affirmative obligation' in a conservation easement, though it can still be part of an easement agreed to by the landowner and the easement holder.

(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 ~~the development, implementation, carrying out or monitoring of~~ a conservation management plan associated with the working land conservation covenant or working land conservation easement. [2017 c.716 §5]

Comment [NM3]: To clarify that the application can be for writing and/or implementing the plan.

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~~ ~~agricultural owners or operators~~ with succession planning for those lands;

Comment [ML4]: This more accurately reflects the individuals who would use a succession planning program

(b) Funding the ~~purchasing, implementing, carrying out or monitoring working land conservation covenants or working land conservation easements; or developing, implementing, carrying out or monitoring of conservation management plans~~ ~~purchasing, implementing,~~

Comment [ML5]: Conservation management plans are not purchased. Instead, they are developed or implemented.

~~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 are eligible 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, 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

Comment [ML6]: Adjusted to more accurately reflect how technical assistance funding will be used.

Comment [ML7]: Per conversations with the commission, funds might be used before a specific proposal is being considered to build a working lands easement program or to work with a group of landowners to help develop specific projects.

(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~~ developing, 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]

Note: See note under 541.977.

Comment [ML8]: Conservation management plans are not purchased. Instead, they are developed or implemented.

Comment [NM9]: Question: Does this include tax benefits, i.e. of a bargain sale? CMPs specify tax benefits. Are duplicate payments allowed? Since they're mentioned above but not here, that may be implied.

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.

Note: Section 12, chapter 716, Oregon Laws 2017, provides:

Sec. 12. Notwithstanding the term of office specified by section 7 of this 2017 Act [541.986], of the members first appointed to the Oregon Agricultural Heritage Commission:

(1) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2019.

(2) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2020.

(3) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2021.

(4) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2022.

(5) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2019.

(6) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2021.

(7) The member recommended by the Director of the Oregon State University Extension Service shall serve a term ending January 1, 2020.

(8) The member selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests shall serve for a term ending January 1, 2020.

(9) The member recommended by the State Board of Agriculture who has expertise in agricultural water quality shall serve for a term ending January 1, 2021.

(10) The member recommended by the Land Conservation and Development Commission shall serve for a term ending January 1, 2022.

(11) The member selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests shall serve for a term ending January 1, 2022. [2017 c.716 §12]

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 assist the Oregon Watershed Enhancement Board with the development of rules~~ may adopt rules necessary for the administration of the laws that the commission is charged with administering.

Comment [ML10]: Changes made to accurately reflect the relationship between the commission and the OWEB board to be consistent with other areas of statute.

(2) The commission may establish any advisory or technical committee the commission considers necessary to aid and advise ~~staff~~ and/or 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.

Comment [ML11]: Revises to match OWEB process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly.

(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) ~~Assist the Oregon Watershed Enhancement Board with the development of rules~~ 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;

Comment [ML12]: Changes made to accurately reflect the relationship between the commission and the OWEB board to be consistent with other areas of statute.

(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 staff, based on the advice of technical committees appointed under ORS 541.984~~ Use one or more technical committees appointed under ORS 541.984 to review grant applications and make funding recommendations to staff or the commission;

Comment [ML13]: Revises to match OWEB process where technical committees can either advise staff who make recommendations to the board/commission or can advise the board/commission directly.

(e) Consult with the board concerning grant applications;

(2) The Oregon Agricultural Heritage Commission may:

Comment [ML14]: Revised to separate those items the commission 'shall' do compared with those things the commission 'may' do.

(af) 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

(bg) 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 agricultural owners or operators, or persons advising owners of working land agricultural owners or operators, regarding succession planning for the lands.

Comment [NM15]: To make consistent with changes to succession planning grant rules.

(32) The commission's recommendations for funding under subsection (21)(bg) 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.

Note: Section 14, chapter 716, Oregon Laws 2017, provides:

Sec. 14. Sections 1 to 10 of this 2017 Act [541.977 to 541.989] apply to agreements and interests in land that:

(1) Are created on or after January 1, 2018; or

(2) Are the subject of an application for funding from the Oregon Agricultural Heritage Fund.
[2017 c.716 §14]



Staff Report: Proposed OAHC Technical Committees

Introduction

The Oregon Agricultural Heritage Program statute allows the Oregon Agricultural Heritage Commission to “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.” ([ORS 541.988\(2\)](#)).

Background

During its 2018 rulemaking meetings, the Oregon Agricultural Heritage Commission (commission) discussed creating several technical committees, and requested that OWEB staff convene the technical committees once the majority of the rulemaking process was complete.

The commission proposed technical committees to make recommendations on the following topics:

1. Integration of conservation management plan funding with other grant programs; and
2. Calculating payment for conservation management plans.

Commissioners Key Bailey and Mary Wahl volunteered to serve on the first technical committee, and Commissioners Chad Allen, Lois Loop, and Chair Doug Krahmer volunteered to serve on the second. OWEB Staff Jim Fox and Nellie McAdams would provide research and administrative support to these committees. Staff has since discussed whether the first technical committee is necessary, since finding match funding is normally the responsibility of the grant applicant.

The commission might consider also creating technical committees on the following topics:

- Calculating payment for working land conservation covenants;
- Reviewing 2018 Letters of Inquiry to the working land conservation covenant and easement grant program, (see the staff report for this meeting); and
- Each of the 4 OAHP grant programs: conservation management plans, covenants and easements, technical assistance, and succession planning.

Recommendation

Staff recommends that the commission approve the creation of technical committees on:

- Calculating payment for conservation management plans,
- Calculating payment for working land conservation covenants;
- Reviewing 2018 Letters of Inquiry to the working land conservation covenant and easement program; and
- Any other technical committees that the commission sees fit.

Staff also recommends that the commission recommend the membership or a process of determining membership of any technical committees it creates. According to statute, the commission Chair serves as a nonvoting member on each technical committee.

Attachments

There are no attachments.



Staff Report: Letter of Interest for Covenants and Easements

Introduction

In addition to establishing the commission and authorizing programs and associated rulemaking, HB 3249 included general funds for startup activities during the current biennium. OWEB's Agency Request Budget for the next biennium, 2019-2021, includes a request for \$10 million to fund OAHG programs. In order to inform the legislative process, it will be helpful to document an estimate of needs, particularly for covenants and easements.

Background

Anecdotally, interest in working lands conservation easements has increased in recent years, particularly in eastern Oregon. Without a systematic way of gathering information to quantify the need, it is difficult to more accurately quantify the demand for conservation easements. The purpose of a solicitation of interest is to provide a robust assessment of need to support a budget request without placing excessive burden on prospective applicants in the absence of available program funding.

Proposed Methodology

The solicitation of interest will be distributed widely to land trusts, soil and water conservation districts, and other interested parties to determine current funding needs for conservation easements. In the interest of simplicity, prospective applicants would be asked to submit two pages of information describing the acreage, value, urgency, conservation value, and agricultural value of a prospective easement.

To provide an appropriate level of seriousness of the prospective project, respondents will be asked to certify that the landowner has expressed interest in, and intent to pursue, a working lands conservation easement. To protect landowner confidentiality, the letter of interest would have limited geographic data, including county, nearest city, and number of acres, but no information identifying the landowner will be provided.

The solicitation would be released in July with responses due in October so that needs can be documented in advance of the 2019 legislative session.

A draft solicitation of interest is provided in Attachment A.

Recommendation

Staff recommends that the commission approve the Letter of Interest in Attachment A and direct staff to solicit interest in accordance with schedule described in this staff report.

Attachments

A. Draft Letter of Interest



Solicitation of Interest Working Lands Conservation Easement Projects

Applicant Organization (include organization name and address, and contact person, telephone, and email address):

[Click here to enter text.](#)

Description of Working Land (describe the current land use and natural features of the property):

[Click here to enter text.](#)

Acres: [Click here to enter text.](#)

County/Closest Town: [Click here to enter text.](#)

Agricultural Values (see OAR 698-015-0090(2), (4), and (8)) (describe the agricultural values that support consideration for public investment):

[Click here to enter text.](#)

Conservation Values (see OAR 698-015-0090(3)) (describe the conservation values that support consideration for public investment):

Basis for Determining Easement Value (describe the method used to estimate the value of the easement. If no appraisal or other methodology is available, start with the appraisal for the basis of property tax assessment or the [average sales price of EFU land in the county](#) and reduce by the estimated value of the conservation easement restrictions):

Estimated Easement Value: [Click here to enter text.](#)

Estimated OAHP Request: [Click here to enter text.](#)

Likely 25% Match Source(s): [Click here to enter text.](#)

Landowner Interest:

- I certify that the landowner has expressed in writing interest in pursuing a working lands conservation easement on the property.
- I certify that the landowner has verbally expressed interest in pursuing a working lands conservation easement on the property.
- The landowner is willing to share information about their project with the commission.

Timeliness (Provide a timeline to closing and explain why this property should be protected and why now): [Click here to enter text.](#)



Oregon Agricultural Heritage Commission Meeting Agenda

Thursday, March 8, 2018

Room 1868

152 NW 4th St.

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

For each agenda item, the time listed is approximate. The commission may also elect to take an item out of order in certain circumstances. Anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHP) during the public comment period from 11:30am until noon is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted on any item before the commission. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Krahmer and OWEB Executive Director Meta Loftsgaarden will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the February 22, 2018 meeting will be presented for approval. *Action item.*

Succession Planning Grant Draft Rules (approximately 8:15 a.m.)

OAHP Coordinator Nellie McAdams will present revisions to draft Succession Planning Grant rules resulting from the commission's discussion at its February 22, 2018 meeting.

Conservation Management Plan (CMP) Rulemaking (approximately 9:30 a.m. – 3:00 p.m.)

The commission will discuss and refine draft rules from the commission's discussion at its February 22, 2018 on CMPs, including sections on: components of a CMP, process for mutual modifications to a CMP, term of years, and monitoring for plan adherence. The commission will also discuss next steps for rules related payments for CMPs.

OWEB staff will introduce the topic of ranking CMPs. The OAHP Context Technical Committee will then present the OAHP work group's recommendation letter on ranking CMPs and receive questions from the commission.

OAHP Context Technical Committee members who may be in attendance:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Mary Anne Cooper:** Public Policy Council at [Oregon Farm Bureau](#) and OAHP work group member
- **Mike Gerel:** Director of Programs/Water Program Director at [Sustainable Northwest](#) and OAHP work group member
- **Dylan Kruse:** Policy Director at [Sustainable Northwest](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Jerome Rosa:** Executive Director of the [Oregon Cattlemen's Association](#) and OAHP work group member
- **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)

For the remainder of the morning and afternoon, commission members will discuss CMP ranking criteria, with the minimum ranking criteria described under Section 6(3) of HB 3249.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

This is for the commission, OWEB staff, and invited presenters only.

Summary of Commission's Discussions, Location in the Process, and Next Meeting (3:00 p.m.)

OAHC Facilitator Liz Redon will help the commission summarize the day's discussion, list items for follow up, and remind the commission that their next two meetings will focus on working land covenants and easements. *Information item.*

The commission's next meeting is on Thursday, April 5, 2018.



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, February 22, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Allen, Chad
Angima, Sam
Bailey, Ken
Bennett, Mark
Jackson, Nathan
Loop, Lois
Neuhauser, Will
Taylor, Bruce
Wahl, Mary
Wolfe, Woody

OWEB Staff Present

Loftsgaarden, Meta
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Charette, Amy
Klock, Claire
Martino, Amanda
Masterson, Laura
May, Andrew
Moberg, Dean
Salzer, Tom

The meeting was called to order at 8:05AM.

Welcome, Housekeeping, and Introductions

OWEB Executive Director Meta Loftsgaarden welcomed commission members. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures, and outlined again for commission members the process the commission will follow throughout the spring for rule-making. In addition, staff noted that there will be some components of the rules that are consistent across all programs. These will be summarized into one general rule and provided to the commission for their consideration as well.

Minutes

Commission members reviewed the minutes from the February 1 meeting. Mark Bennett moved to adopt the minutes, with a second from Ken Bailey. Minutes were approved unanimously.

Succession Planning

OAHP Coordinator Nellie McAdams and Liz Redon reviewed previous discussion by the Commission relating to succession planning rules. Staff reminded commissioners they will not vote on the rules until after all rules have been discussed, allowing additional opportunities for changes. The Succession Planning Rules 'redline' document, available in the [materials for the commission's third meeting](#) on March 8, outlines specific changes that were proposed for consideration. Rules discussion included:

General

Commission members recommended consistency in language regarding farmers/ranchers and suggested the use of owners/operators throughout. Definitions should include one for 'succession planning service providers'. Finally, commission members recommended that the rules refer back to the statutory purpose of the program to make sure both agriculture and conservation components of the program are addressed in succession planning proposals.

Eligible Entities

Commission members recommended adding tribes to the list of eligible entities, as well as making this section of the rules more general to capture all intended eligible entities.

Eligible Activities

Commission members recommended adding a section that outlines eligible activities, removing that language from the current 'criteria' section of the rules.

Reporting

Commission members had a number of technical changes to the reporting section. These are reflected in the redline document.

How to Solicit for Grants

Commission members recommended that both options (solicitation and invitation) be available for grantees.

Match

Commission members recommended that match be encouraged and used in evaluation.

Evaluation

Commission members recommended technical changes to this section as noted in the redline document.

Guidance

Commission members also recommended additional guidance related to the succession planning program that may not necessarily be captured in rule, but needs to be addressed. Items include:

- Applications should consider additional partners – Farm Credit Services, commodity commissions, NRCS, banks and others when developing their applications
- While the rule will be general in terms of who can apply, guidance should call out more specifically the types of organizations who are likely to apply
- Guidance should note that organizations should build on and learn from successful existing programs (like Ties to the Land)
- Applicants should receive guidance on the questions to put into surveys for consistency

Conservation Management Plans

Staff outlined the plan for rule-making on conservation management plans, noting that rule-making around ranking projects will not be addressed until the March 8 meeting. Staff also noted that the rules discussion may result in as many questions as answers. Staff will gather those questions and work on responses for future meetings.

Nellie McAdams presented a staff report and issue paper to initiate the conversation about conservation management plans. The report is available under [meeting materials for this meeting](#), and includes information about the Conservation Reserve Enhancement Program as an example of a long-term agreement for conservation.

The commission then received presentations from a technical committee who provided a summary of their perspectives on conservation management plans. Technical committee members included:

- Amy Charette, Confederated Tribes of the Warm Springs Indian Reservation (CTUIR)
- Tom Salzer, Clackamas Soil and Water Conservation District
- Dean Moberg, Natural Resources Conservation Service
- Laura Masterson, East Multnomah Soil and Water Conservation District, Board of Agriculture, Oregon Watershed Enhancement Board

Each presenter outlined their conservation planning programs and other funding available for conservation practices. Presenters discussed a range of conservation plan experience, including the development of plans for their own properties (CTUIR), payment to landowners for practice implementation (NRCS and SWCDs) and the components of a conservation plan.

Commission members then initiated a discussion around the first set of components to be included in rule around conservation management plans. Flipchart notes for each section are provided below under separate headings.

Landowner and Conservation Perspectives Regarding Conservation Management Plans

Landowner Perspective

- Continue as working land
- Landowners should receive compensation for public benefit
- Different approaches for small farms (acreage or income)
- Recognition of value (ecological) of ag lands
- What is impacted/benefitted
- Scale assistance for smaller operations
- Impact of connectivity
- Plan changes over time – ensure flexibility
- Is this a way to show agriculture contribution to reducing climate change?
- People are part of landscape

Habitat Perspective

- Mechanism to fund gains in conservation
- Need Gap Analysis to understand the gaps we are trying to address
- Easier to understand conservation management plans when connected to easement
- How do we describe public benefit
- How is this not a “hall pass”
- How do we divide between easements/management plans
- CMP is good because NRCS/SWCD don’t always have staff for this
- Quality of habitat is important

Organizational Perspective

- Add to existing partner programs/compatibility
- Work together with succession planning
- Include groups that are already doing this and have landowner acceptance
- We (OAHP) are the ‘tool’ providers
- CMPs could be a way to help “triage” work with landowners
- Ensure consistency between plans

Components of a Conservation Management Plan

The commission identified a suite of components that should be in any conservation management plan based on NRCS, SWCD and tribal programs. These include:

- Description of OAHP and statutory purpose – this will help remind applicants that plans are tied to the statutory purpose of the program
- Contact information and property location
- Background/Larger Context
- Landowner Goals
- Management Concerns
- Inventory/Site characteristics including current management
- Resource Analysis, identification of resource concerns, analysis and quality criteria
- Alternative development
- Alternative selection
- Implementation (including a way to track actions)
- Evaluation and adaptive management
- Supporting documentation

In addition, commissioners discussed ensuring that the plan addresses the appropriate farm unit size (e.g. consisting of consistent management and equipment), including leases as appropriate as long as the operator would have control of the land for the life of the agreement. This may include using the definition of 'farm unit' from FSA. Other considerations include an understanding of what other funders (i.e. NRCS and common SWCD and tribal plans) would consider as a 'management unit'. It will be important to have the farm unit size be adaptable to USDA requirements if they change.

Public Comment

Public comment was given by Clair Klock about the prioritization of permanent easements over 20-50 year covenants. The written comment is in OWEB's records.

Payment for Conservation Management Plan

Commission members met in small groups to discuss ways to pay for conservation management plans. The commission did not reach specific conclusions on the best way to pay landowners for a plan, and discussed continuing to work on this component of the program over the summer and fall, given that the earliest funding would be available for the program is July of 2019. Flip chart notes from each group included:

Green Group, Facilitator Nellie McAdams

- Types
 - Base payment/ plan/ term
 - Per acre – depends on natural resource
 - Ecosystem service
 - Net: cost of practice implementation; lost productive value
- Annual makes sense for both parties
 - Income ongoing
 - Opportunity to monitor/enforce
- Net cost
 - Long-term cost
 - Depends on practice- equipment or initial investment then no cost but incentive
- Ongoing cost e.g. cover crop
- One option is that an organization implements a practice (not farming practice) and leases land from the landowner for the right. Incentive and implementation
- Consider supply and demand but geographic diversity affects cost
- Pay for: (might be different)
 - Land for practice
 - Implementation cost
- Consider if the payment is 1099- taxable income

- Taxpayer expectations
 - If plan is out of compliance, don't pay
 - Demonstrated public benefit
 - Large payment to few not perceived as benefit
- Cap?
 - Yes, cap
 - Annual or lifetime
 - Important for public perception
- Net cost is hard to measure and disincentives projects with mutual benefits for agricultural productivity and conservation
- Consider modified ecosystem services
- Landowners may receive points for practices - add them to calculate per/acre payment
- If incentive is not a specific practice, but rather a result, e.g. percent of erosion prevented, this incentivizes landowner ingenuity. But how can you monitor this?
- Combine payment for outcomes and practices- periodically reexamine conservation benefit
- If landowner can demonstrate increasing production and ecosystem benefits, give them additional points – they are testing systems and setting examples
- Research
 - Examples of ecological and production synergies
 - Valuation of ecosystem services (not much has been done)
 - Final range/ranking system, if used to calculate payment
 - Tie back to practices – NRCS model calculated impacts on phosphorous leaching per practice, not per farm
- There is a value to self-reporting/monitoring

Orange Group, Facilitator Meta Loftsgaarden

- Consider both “idled” and working lands
- Option
 - Consider conservation actions and compensate landowners for those
 - Cover costs of “stewarding” conservation gains (Prop analysis record)
 - Pay for the ecosystem value – public benefit
- Difference between conservation actions on working lands and set-aside
- Is there a rating/score? Higher score = higher payment = higher likelihood of money

Yellow Group, Facilitator Eric Williams

- Identify the main goal of CMP
- Payment should be based on ecosystem services, regardless of other landowner benefits
- How do you measure opportunity cost to landowner?
- How do you develop \$ value of conservation?
- Passive vs active ecosystem services (additionality of landowner contribution to conservation value)
- Less inclined to pay by acre, unless scaled and capped to provide equity for smaller property
- Should have both minimum and maximum payments
- There should be a minimum threshold of ecosystem services provided
- Payment should be based on a combination of lost landowner revenue and ecosystem service value
- Ecosystem service values change from region to region and by habitat type

Mutual Modification

The commission continued to work in small groups to address how conservation management plans would be modified. Flipchart notes include:

Green Group, Facilitator Nellie McAdams

- Annual review and opportunity to modify. Maybe specifically discuss major review every 5 or 10 years
- Should be easy - database driven and mediated
 - App with conservation data for monitoring
 - Landowner allowed to enter data on their own
 - Landowner or organization should be allowed to proposed change in database (or by phone for those who do not feel comfortable with computers)
- When to modify: When circumstances change and are contrary to plan
 - Change of ownership/management
 - Change of science
 - Natural disaster
 - New practice or benefit
 - Falling out of ag production
- How should undepreciated investment in infrastructure be treated in modification? Include re payment in contract
- If paid based on a combination of practices, you should be able to modify specifics as long as you meet the same outcomes, different by region

- Require succession plan?
 - ACEP- ALE does
 - Require a way to evaluate OAHP long-term. Is there a correlation over time between succession planning and agricultural and conservation benefits?
- Penalties of modification:
 - Enforcement can be tied to the purpose of the agreement.
 - People know if you don't enforce term of years and practices

Orange Group, Facilitator Meta Loftsgaarden

- Change in cropping rotation not identified in plan
- Annually
- Change in markets/economics
- If core conservation purposes change - may need new plan
- Annual reporting of plan implementation – easy and flexible
- Purchasing/ selling – if adding to plan, if it reduces plan acres
- Natural disaster (act of God)
- Impacts outside landowner control (grazing)
- Change of management

Yellow Group: Eric

- Document OAHC modifications with local organization and landowner
- Have a clear approval process for OAHC
- Organizations need long-term capacity to administer landowner agreements
- Need due process for modifications if there are changes to the organization that may impact the landowner.
- Consider whether landowners have an appeal process
- Need clear direction in rules
- Annual communication between the landowner and the organization should be required, while implementation changes may occur on a different timeline
- The timing of the annual conversation should sync with landowner financial planning
- A “significant event” (e.g. fire, etc.) or transfer of ownership or management should trigger communication between the landowner and the organization
- There should be a mandatory meeting in the event of default of terms
- Allowable types of modification:
 - Change in term
 - Practice changes
 - Change in natural conditions
 - Change in ag practices
 - Recalculation due to the time value of \$

Monitoring

Next, in small groups, the commission discussed how to monitor conservation management plans if payments are associated with the plan. Flipchart notes include:

Green Group, Facilitator Nellie McAdams

- Doesn't have to be on site – can be by drone or mapping. Remote-sensing can be useful but be clear and have landowner consent
- One element of monitoring can be landowner self-reporting with organizational spot checks based on those self-reports. Self-reporting should be simple with checklist and % of spot checking for basic compliance AND outcomes
- Monitoring is costly,
 - Extension uses trained retired volunteers to assist with spot checks.
 - Maybe bring in local conservation groups in technical team
- Outcome vs compliance monitoring: both are required. Outcome monitoring in particular can lead to innovation
- Whole system vs each contract or practice
- Perception of compliance professionals as enforcers. Talk about contract differently from regulatory enforcement
- Use reporting information to help with public relations about conservation and as an educational opportunity about conservation and other programs
- Checklist and requirements in contract

Orange Group, Facilitator Meta Loftsgaarden

- Could there be a reporting 'app' to help reporting – leverage technology
- Annual modification visit includes annual report of what was done
- Important that this is an even playing field - it is a conversation between landowner and organization
- Consider 'scale' if there are lots of participants
- At minimum (if no modifications) 3-5 years go to property
- More frequent for adaptive management (learning) – this is a conv for new practices
- Clear expectation communications

Yellow Group, Facilitator Eric Williams

- Monitoring should be integrate with required annual communication and should use a checklist form
- Coordinate/ integrate inspection/monitoring with other programs
- Monitor critical habitat elements
- Need metrics in the CMP to drive what is monitored
- Landowner and organization should be clear about what will be monitored and when
- More complex plans can have elements reviewed each year
- Determine how well self-reporting in CSP is working for NRCS and apply any lessons learned
- Comprehensive monitoring review should occur every 5-7 years
- Spot checks on organizations by OAHP
- Checklist varies by habitat type, includes
 - Photo points
 - Species diversity (trend line)
 - Changes to ag practices

Match

The commission initiated discussion regarding match for the program. Members discussed the importance of considering match from a public perception perspective, and the challenges of determining what match would be given that no other program currently pays for conservation management plan implementation. Some SWCD or NRCS programs could be considered as match. Commission members decided to hold this conversation to be discussed with the funding conversation as it develops.

The meeting was adjourned at 3:00 p.m.

Division XXX

~~Farm and Ranch~~ Succession Planning Grants

XXX-XXX-XXXX

Purpose

The Oregon Agricultural Heritage Commission (commission) shall provide funding recommendations to the Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (OWEB board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations and economic sector,
- (2) Reduced fragmentation of Oregon’s working land,
- (3) Reduced conversion of Oregon’s working land to nonfarm uses, and
- ~~(1)~~(4) Enhanced fish and wildlife habitat and other natural resources on Oregon’s working land.

Comment [NM1]: Since “farm and ranch” are not defined, this could be renamed to something that is defined, or remain undefined as the program name.

Comment [ML2]: Changed throughout to match statute. I understand this is more general, but am not really worried that someone will come in and apply to do succession planning for grocery stores given the purpose. Even if they did apply, it would never rank

Comment [NM3]: From HB 3249 Section 10(f)

Comment [NM4]: Drawn from the “Whereas” statements at the beginning of HB 3249, stating the purpose of the bill

XXX-XXX-XXXX

Definitions

(1) “Owner of working land” means an “agricultural owner or operator” as defined in statute.

~~(1)~~(2) “Person advising owners of working land” means a person or an organization that provides training and resources to persons who provide succession planning services to owners of working land.

(3) “Succession planning” means an ongoing process for ensuring the continuation and economic viability of a business. It may include strategies to identify, develop, and empower the next generation of owners and operators, a plan to divide business and family assets, and arrangements for each generation’s retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

~~(2)~~(4) *Additional definitions to be determined.*

Comment [NM5]: In relation to succession, the statute names “owners of working land” which is not defined. The closest defined term in statute is “Agricultural owner or operator,” but this requires responsibility for exercising control over the day-to-day operation and some intended beneficiaries of the program may not have this control.

Comment [NM6]: a landowner, operator, manager or other person having responsibility for exercising control over the day-to-day operation of a farm or ranch.

Comment [NM7]: Individuals are not eligible to apply, but can be beneficiaries of funded projects.

XXX-XXX-XXXX

Succession Planning Priorities

The commission may establish priorities for ~~the Farm and Ranch~~ Succession Planning Program Grants in guidance, which may be used to solicit and rank program grant proposals and make recommendations to the legislature. The commission may modify these priorities from time to time at its discretion.

XXX-XXX-XXXX

Applicant Eligibility

- (1) Eligible applicants for ~~Farm and Ranch~~ Succession Planning Program Grants ~~are:~~ may be the Oregon State University Extension Service, universities, colleges, community colleges, non-profits including land trusts and agricultural organizations and professional

~~organizations that represent succession planning or business service providers, or soil and water conservation districts.~~

- ~~(i) Public institutions of higher learning,~~
- ~~(ii) Not-for-profit organizations,~~
- ~~(iii) Units of local government, and~~
- ~~(iv) Tribes~~

~~(1)(2) Individual owners of working lands and individual persons advising owners of working land are **not eligible** to apply for a **Farm and Ranch** Succession Planning Grant.~~

XXX-XXX-XXXX

Application Requirements

~~Farm and Ranch~~ Succession Planning Grant applications shall:

- (1) Be consistent with general program guidance {similar to ORS XXX Division 005}.
- (2) Not require match contributions.
- (3) Be submitted on the most current form and process prescribed by the commission.
- (4) *Other application requirement in general administrative section.*

XXX-XXX-XXXX

Eligible Activities

~~The following activities benefitting owners of working land in Oregon and the persons who advise them are eligible for **Farm and Ranch** Succession Planning Grants:~~

- ~~(1) Education and outreach about the importance of **farm and ranch** succession planning and available resources,~~
- ~~(2) Trainings on topics related to **farm and ranch** succession planning,~~
- ~~(3) Development and distribution of educational materials and curriculum related to **farm and ranch** succession planning, and~~
- ~~(4) Advising owners of working land on **farm and ranch** succession planning.~~

Comment [ML8]: Deleted to match statute

XXX-XXX-XXXX

Evaluation Criteria

~~Farm and Ranch~~ Succession Planning Grant applications will be evaluated on:

- ~~(1) The extent to which the application demonstrates a clear succession planning benefit for Oregon farmers and ranchers proposed project would help achieve the purpose of this grant program. The extent to which the application utilizes methods identified by the Commission including, but not limited to, outreach about the importance of succession planning and available resources; trainings for farmers, ranchers, and succession service providers; development and distribution of training materials and curriculum; and advising of farm and ranch families on succession planning options;~~
- ~~(2) The success of the applicant's prior projects funded through this grant program,~~
- ~~(3) The cost-effectiveness of the proposed project,~~

Comment [NM9]: Moved to Eligible Activities section

(4) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, owners of working lands in diverse and geographic locations in Oregon, and participants in diverse stages of succession planning. The commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity.

Comment [NM10]: An attempt to include success over the long-term through different stages of succession

(5) The extent to which the project introduces participants to conservation tools as resources for succession planning.

~~(1) The commission may also consider if a suite of given projects combine to reflect (3).~~

Comment [ML11]: I think we wanted this to stay – but let me know if I'm wrong

XXX-XXX-XXXX

Farm and Ranch Succession Planning Grant Application Technical Review and Funding Process

(1) The commission may fund projects submitted through an open solicitation for proposals, or by requesting proposals from a specific eligible entity or entities.

Comment [NM12]: Allowing open solicitation or project selection.

~~(1)~~(2) Technical review of Farm and Ranch Succession Planning Grant applications shall occur based on information provided in the grant application.

~~(2)~~(3) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XXXX.

~~(3)~~(4) The commission may use technical committees to evaluate Farm and Ranch Succession Planning Grant applications.

~~(4)~~(5) If a technical committee is used, the technical committee shall provide funding ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the commission.

~~(5)~~(6) The commission may rank projects and shall provide funding recommendations to the board.

~~(6)~~(7) The board may fund a grant application in whole or in part.

XXX-XXX-XXXX

Grant Agreement Conditions

(1) The grantee must submit a report at completion of the project describing the work completed as described in OAR XXX-XXX-XXXX.

(2) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the director prior to the beginning of any work proposed in the modification.

(3) The director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

XXX-XXX-XXXX

Grant Reporting Requirements

- (1) Upon project completion, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon ~~farmers and ranchers~~owners of working land and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program;
 - (ii) The geographic, commodity, and other demographic diversity of participants in the program;
 - ~~(iii)~~ Documented improved understanding of ~~farm and ranch~~ succession planning by program participants; Documented measurable changes in behavior of participants, including the percentage or number of ~~farmer and rancher~~owners of working lands participants who take the next step toward succession planning, complete a plan, and implement the plan;
 - ~~(iv)~~ Documented improved understanding by participants of tools to prevent fragmentation of working land and promote economic viability and ecological sustainability of agricultural operations; and
 - ~~(iii)~~(v) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The OWEB Director or the commission may authorize an independent performance audit of any ~~Farm and Ranch~~ Succession Planning ~~Program~~ Grantee, and if the director determines the grantee is not complying with the rules of the Farm and Ranch Succession Planning Grant program, may restrict future grant funds.
- (4) In addition to project evaluations, the commission may conduct program evaluations that may include changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of ~~farmers and ranchers~~owners of working land on the status of succession plans, and other trends in farmland ownership and use.

XXX-XXX-XXXX

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Farm and Ranch Succession Planning Grant program. Any waiver must be in writing ~~and~~, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Farm and Ranch Succession Planning Grants shall be periodically reviewed by the commission and revised as necessary and appropriate.

Division XXX
Conservation Management Plans

XXX-XXX-XX01

Purpose

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. Conservation management plans 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.

Comment [ML1]: From statute

XXX-XXX-XX02

Definitions

- (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) *Definitions to be determined.*

XXX-XXX-XX03

Eligibility

Eligible applicants for Conservation Management Plan Grants include:

- (a) A conservation easement or covenant holder, as defined in ORS 271.715, other than a state agency;
- (b) A watershed council; or
- (c) An entity who is tax exempt under section 501(c)(3) of the Internal Revenue Code

Comment [ML2]: From statute

XXX-XXX-XX04

Application Requirements

Conservation Management Plan Grant applications shall:

- (1) Be consistent with general program guidance {similar to OAR XXX Division 005};
- (2) Be submitted on the most current form and process prescribed by the commission;
- (3) Include the duration or terminating event for the plan; and
- (4) *Other application requirements included in general administrative section.*

Comment [ML3]: Sstandard language

XXX-XXX-XX05

Eligible Activities

Funding can be utilized to purchase, implement and monitor conservation management plans.
(Additional information to be developed as a part of payment conversation.)

Comment [ML4]: This language may change in a technical statutory fix

XXX-XXX-XX06

Term of Payment for Conservation Management Plan Implementation

To be finalized by commission – must be between 20-50 years; and must be consistent with conservation covenant if they are associated with each other. May be unspecified and of any duration between 20 and 50 years.

XXX-XXX-XX07

Conservation Management Plan Components

At minimum, conservation management plans will include:

- (1) A summary describing how the conservation management plan meets OAHHP purpose;
- (2) Contact and location information for the operation;
- (3) Relevant background and context;
- (4) Inventory, including site characteristics and current management;
- (5) Goals of the agricultural owner(s) or operator(s);
- (6) Resource analysis and identification of resource and management concerns;
- (7) Alternative identification and selection;
- (8) The implementation plan; and
- (9) How the conservation management plan will be evaluated and adaptively managed.

XXX-XXX-XX08

Evaluation Criteria

To be determined by commission

XXX-XXX-XX09

Conservation Management Plan Technical Review and Funding Process

- (1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.
- (2) Applications shall be evaluated according to criteria described in OAR XXX-XXX-XX08.
- (3) The commission may use technical committees to evaluate conservation management plan grant applications.
- (4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the commission.

Comment [ML5]: Standard language

- (5) The commission may rank projects and shall provide funding recommendations to OWEB's board.
- (6) The board may fund a grant application in whole or in part.

XXX-XXX-XX10

Grant Agreement Conditions

- (1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the commission at least annual reports from the agricultural owner or operator regarding plan implementation.
- (2) The grantee must submit a report at completion of the project describing the work completed. Monitoring must be completed as described in OAR XXX-XXX-XXXX
- (3) The grantee must agree to complete the project as approved by the board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (4) The director will consider project amendments including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project.

Comment [ML6]: Addition from flipchart notes

XXX-XXX-XX11

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (2) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.
- (3) All changes must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.
- (4) To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and mutually modify the conservation management plan if necessary.
- (5) The agricultural owner or operator must contact the grantee at any time if any of the following changes occur:
 - (a) A natural disaster occurs that will impact implementation of the conservation management plan;
 - (b) Changes occur in the grazing/cropping system(s) not identified in the plan;
 - (c) Changes occur in management or ownership of the property; or
 - (d) Other changes occur that are outside the agricultural owner or operator's control.

Comment [ML7]: This section taken from flipchart notes

Comment [ML8]: COMMISSION: not discussed is this ok?

- (6) The grantee must contact the agricultural owner or operator if changes in science significantly affect the effectiveness of conservation management plan implementation.
- (7) Modifications may include:
 - (a) Addition of new conservation practices, measures or conservation benefits;
 - (b) Changes in practices, measures or benefits based on changes in science;
 - (c) Changes in practices, measures or benefits based on changes to farm; management or grazing/cropping systems; or
 - (d) Changes in practices, measures or benefits based on natural disasters.
- (8) Conservation management plan modifications are not required if both the agricultural owner or operator and the grantee determine the new conservation measures proposed will achieve the same conservation outcomes as identified in the conservation management plan.

XXX-XXX-XX12

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) The agricultural owner or operator must provide a written report of conservation management plan activities completed each year to the grantee on a form approved by the commission. Reports may also include photo points or other methods that appropriately track plan implementation.
- (2) Annual reporting must identify any mutual modifications to the conservation management plan.
- (3) Site visits by the grantee to the property must occur at least every (3? 5? 10?) years.
- (4) The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols to identify trends in habitat, water quality or other natural resource values. Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee. The commission may provide guidance for consistent monitoring protocols.
- (5) If funding is provided for conservation management plan implementation, the commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting.
- (6) The commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation.

Comment [ML9]: This section taken from flipchart notes

Comment [ML10]: COMMISSION: guidance is suggested to keep this reporting simple. Suggestions included checklist, other simple reporting approaches

Comment [ML11]: COMMISSION: preference?

XXX-XXX-XX13

Grant Reporting Requirements

Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

Comment [ML12]: Possibly move to the OAHP administrative rules that apply to all of the various programs and leave it out of this specific division.

XXX-XXX-XX14

Waiver and Periodic Review of Rules

The director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Farm and Ranch Succession Planning Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Farm and Ranch Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Comment [NM13]: Might also belong in OAHF Administrative Rules section

Recommendations of the Oregon Agricultural Heritage Program (OAHP) Work Group to the Oregon Agricultural Heritage Committee Regarding Conservation Management Plans

Background

During its 2017 session, the Oregon Legislature passed HB 3249: legislation that creates the Oregon Agricultural Heritage Program (OAHP). This legislation was developed with the input of a work group of agricultural and conservation organizations and representatives. The work group's conversations about the ranking of working land covenants ("covenants"), working land easements ("easements"), and conservation management plans resulted in the 6 statutory criteria listed in Section 6(3) of HB 3249.

The work group re-convened after HB 3249 was passed to write this document, which gives context to those criteria and offers recommendations for how those criteria could be defined in rules. The following recommendations are provided with the intent of aiding the Oregon Agricultural Heritage Commission ("the Commission") in their decision making on **conservation management plans**. A subsequent letter will share the work group's recommendations on working land easements and covenants.

It is fully understood by the work group that the Commission and ultimately the OWEB Board have complete decision-making authority over OAHP's rules and administration, and that the final decisions may vary from what is recommended here.

1. Match Recommendation

The work group recommends not requiring a cash match contribution for conservation management plans, since there is currently no known cash match program. If match were required, it would likely come from the landowner's work on the property.

2. Recommendations for Ranking Criteria

Regarding the OAHP conservation management plan ranking criteria listed in Section 6(3) of HB 3249, the work group offers these recommendations for the Commission's consideration:

- Section 6(3) of the statute states that "ranking of conservation management plans to be separate from the ranking of working land conservation covenants and working land conservation easements." However, the statute does not distinguish the ranking of applications for conservation management plans on their own compared to applications for working land easements or covenants that also include conservation management plans. Therefore, the work group recommends creating separate ranking pools for projects that include only a conservation management plan, and projects that include easements and/or covenants and which may or may not also include a conservation management plan. The ranking criteria might be different for these two pools.

- Limiting the ranking criteria to the 6 outlined in statute, and potentially clarifying these criteria in rules and guidance.

For most of the 6 statutory ranking criteria, the work group recommends refining them with qualitative sub-criteria that applicants may describe using factors that are applicable to the project. If this approach is used, these factors would be optional and customizable to each project, giving applicants flexibility in their narrative response. The work group felt that this flexible approach would best reflect the diversity of Oregon agriculture, landscapes, and landowners. The work group recommends locating these factors in rule, rather than only in guidance or the application, because rules receive public comment and are less likely to change over time.

Below are specific recommendations. Some are for conservation management plans only, some are for easements/covenants only and some are for both. Applicability is listed at the beginning of the recommendation.

3. Recommendations for Each Ranking Criterion

Statutory Criterion 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

For both easements/covenants and conservation management plans: The work group suggests that the Commission consider:

- Whether the project is in alignment with federal, state, tribal and/or county natural resource/conservation plans or strategies.
- Whether the applicant is compliant with, or will be implementing actions to meet or exceed, applicable point source and non-point source laws and regulations including applicable requirements such as USDA's highly erodible/wetland determinations, Oregon Agricultural Water Quality Act, Confined Animal Feeding Operation permits, etc.
- The extent to which the project protects, maintains, or enhances fish and wildlife habitat, water quality, and other natural resource values, which could be demonstrated through factors including but not limited to the applicant's plans to maintain or restore habitat; the size of habitat and its connectivity to adjacent habitat corridors; conservation practices to improve water quality or reduce water use; or other benefits to fish, wildlife or water quality.

Recommendations of the Oregon Agricultural Heritage Program (OAHP) Work Group to the Oregon Agricultural Heritage Committee Regarding Conservation Management Plans

Statutory Criterion c

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

For both easements/covenants and conservation management plans: The work group suggests that the Commission consider:

- How the project aligns with federal, state, tribal and/or county natural resource/conservation plans or strategies that protect agricultural lands, where applicable.
- The community benefits that would result from the project, including but not limited to those related to jobs and agricultural land use, such as how the farm contributes to the local economy, the farm's long-term viability, sufficient water rights, or other relevant information.

Statutory Criterion d

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

The work group suggests that the Commission consider:

- **Currently for easements/covenants only; could be modified for conservation management plans:** Whether the organization holding a conservation management plan has language in its mission statement, vision statement, strategic plan, and/or organizational goals indicating its dedication to protecting agricultural land and related conservation values by limiting conversion of agricultural land to nonagricultural uses.
- **For both easements/covenants and conservation management plans:** Whether the organization applying for the conservation management plan has the capacity to acquire, manage, monitor, enforce, and steward the project. This could include information about the number of conservation management plans the organization has; their staff or other capacity; how they fund long-term monitoring and enforcement; or other organizational capacity.

Statutory Criterion 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

As referenced above, the work group recommends separate ranking pools – one for conservation management plan-only projects, and another for easement/covenant projects with or without an associated plan.

For both easements/covenants and conservation management plans: The work group suggests that the Commission consider whether the project leverages or builds off of prior public, private, or voluntary investments in the property, which may be demonstrated through factors including but not limited to participation in soil, water, habitat, or other natural resource conservation programs.

Statutory Criterion f

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

For both easements/covenants and conservation management plans, the work group suggests that the Commission ask applicants:

1. What impacts (positive and negative) the proposed conservation project is likely to have on project neighbors. Examples of impacts could include changes to hydrology, e.g. too much (flooding), or too little (diversion or reduced flows), and whether these changes may also lead to changing wildlife impacts; or increased weed or other pest pressures.
2. The Commission should also ask applicants to share the extent of their interaction with neighbors regarding these impacts, and what will be done to mitigate any negative impacts.



Oregon Agricultural Heritage Commission

Thursday, March 8, 2018

Materials for Today's Meeting

- ▶ Agenda
- ▶ Minutes
- ▶ Succession Planning Draft Rules
- ▶ Conservation Management Plan Draft Rules
- ▶ Work Group Recommendation Letter
- ▶ Written public comment

Succession Planning Rules

The background of the slide is white with abstract green geometric shapes on the right side. These shapes include overlapping triangles and polygons in various shades of green, from light lime to dark forest green. A thin, light gray line runs diagonally across the white space, starting from the bottom left and extending towards the top right.

Added to purpose:

- ▶ Increased **economic viability** of Oregon agricultural operations and economic sector,
- ▶ Reduced fragmentation of Oregon's working land,
- ▶ Reduced conversion of Oregon's working land to **nonfarm uses**, and
- ▶ Enhanced **fish and wildlife habitat** and other natural resources on Oregon's working land.

Drawn from the "Whereas" statements at the beginning of HB 3249, stating the purpose of the bill

Applicant Eligibility

- ▶ Public institutions of higher learning,
- ▶ Not-for-profit organizations,
- ▶ Units of local government, and
- ▶ Tribes

Individual owners of working lands and individual persons advising owners of working land are not eligible to apply for a Succession Planning Grant.

Eligible Activities

- ▶ **Education and outreach** about the importance of succession planning and available resources,
- ▶ **Trainings** on topics related to succession planning,
- ▶ Development and distribution of **educational materials and curriculum** related to succession planning, and
- ▶ **Advising** owners of working land on succession planning.

Evaluation Criteria

- ▶ The extent to which the proposed project would help achieve the **purpose** of this grant program ,
- ▶ The success of the applicant's **prior projects** funded through this grant program,
- ▶ The **cost-effectiveness** of the proposed project,
- ▶ The extent to which the application reaches **diverse audiences**, including: producers of diverse **commodities**, owners of working lands in diverse **geographic locations** in Oregon and participants in **diverse stages of succession planning** . The commission may also consider the extent to which a suite of approved grant projects will **combine to reflect this diversity**.
- ▶ The extent to which the project introduces participants to **conservation tools** as resources for succession planning.

Other

- ▶ Open solicitation *or* application allowed
- ▶ Reporting
 - ▶ “Improved understanding by participants of tools to prevent fragmentation of working land and promote economic viability and ecological sustainability of agricultural operations”
 - ▶ Achieving purpose of the grant program
- ▶ Director *or commission* may authorize audit
- ▶ Director must report to the commission after waiving requirements

Conservation Management Plan Rules

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the slide, creating a modern, layered effect. The text is positioned on the left side of the slide, set against a plain white background.

Minimum Components (XX07)

- ▶ Summary describing how the conservation management plan meets OAHP's purpose;
- ▶ Contact and location information for the operation;
- ▶ Relevant background and context;
- ▶ Inventory, including site characteristics and current management;
- ▶ Goals of the agricultural owner(s) or operator(s);
- ▶ Resource analysis and identification of resource and management concerns;
- ▶ Alternative identification and selection;
- ▶ The implementation plan; and
- ▶ How the conservation management plan will be evaluated and adaptively managed.

Mutual Modification (XX11)

- ▶ Must be mutual
- ▶ Must be in writing and approved by commission - **OK?**
- ▶ Owner/operator must contact grantee if:
 - ▶ Natural disaster
 - ▶ Changes in grazing/cropping not identified in plan
 - ▶ Changes in management/ownership
 - ▶ Other changes outside the ag owner/operator's control
- ▶ Grantee must contact owner/operator if changes in science affect plan

Mutual Modification (XX11) Continued

Modifications may include:

- ▶ Addition of new practices, measures or conservation benefits
- ▶ Changes based on
 - ▶ science
 - ▶ changes to farm or ranch
 - ▶ natural disasters

Modification not required if the new measures will achieve the same conservation outcomes as identified in the conservation management plan

Monitoring & Reporting (XX12)

- ▶ Landowner report to grantee - form and photo points
- ▶ Include mutual modifications
- ▶ Site visits every **3, 5, 10 years?**
- ▶ May create monitoring protocols
- ▶ Commission may spot check and/or develop monitoring protocols.

Term of Payment

- ▶ Must be between 20-50 years
- ▶ Must be referred to in conservation covenant if they have the same duration
- ▶ May be unspecified and of any duration between 20 and 50 years

Payment Structure



Conservation Management Plan Ranking

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the slide, creating a modern, layered effect. The text is positioned on the left side of the slide, set against a plain white background.

CMP Alone versus CMP with easement or covenant

“ranking of conservation management plans to be separate from the ranking of working land conservation covenants and working land conservation easements.”

Recommendations

Recommend only the 6 statutory criteria - Section 6(3)

1. protect, maintain or enhance *farming or ranching* on working land
2. protect, maintain or enhance fish or wildlife *habitat*, improve *water quality* or support other *natural resource values*
3. protect *agricultural outcomes*, benefits or other investment gains
4. the *capacity* of the organization that filed the application
5. Maximize public benefit with *leveraged funds* and *duration/extent*
6. impacts on owners or operators of *neighboring lands*.

Potentially refine in rules

Recommend narrative with list of possible sub-criteria to demonstrate

Statutory Criterion 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*

- ▶ alignment with federal, state, tribal and/or county natural resource/conservation plans or strategies.
- ▶ compliant with, or will be implementing actions to meet or exceed, applicable point source and non-point source laws and regulations
- ▶ Demonstration of statutory criterion by means including:
 - ▶ plans to maintain or restore habitat;
 - ▶ the size of habitat and its connectivity to adjacent habitat corridors;
 - ▶ conservation practices to improve water quality or reduce water use; or
 - ▶ other benefits to fish, wildlife or water quality.

Statutory Criterion c

The extent to which the plan, covenant or easement would *protect agricultural outcomes, benefits or other investment gains*

- ▶ alignment with federal, state, tribal and/or county natural resource/conservation plans or strategies *that protect agricultural lands*
- ▶ The **community benefits** that would result from the project, including but not limited to those related to jobs and agricultural land use, such as:
 - ▶ how the farm contributes to the local economy,
 - ▶ the farm's long-term viability,
 - ▶ sufficient water rights, or
 - ▶ other relevant information.

Statutory Criterion d

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

- ▶ **Easement/covenant:** language in its mission statement, vision statement, strategic plan, and/or organizational goals indicating its dedication to protecting agricultural land and related conservation values by limiting conversion of agricultural land to nonagricultural uses.
- ▶ **Capacity to acquire, manage, monitor, enforce, and steward the project, including information about:**
 - ▶ The number of conservation management plans the organization has; their staff or other capacity;
 - ▶ How they fund long-term monitoring and enforcement; or
 - ▶ Other organizational capacity.

Statutory Criterion 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

leverages or builds off of prior public, private, or voluntary investments in the property, which may be demonstrated through factors including but not limited to participation in soil, water, habitat, or other natural resource conservation programs.

Statutory Criterion f

The extent and nature of plan, covenant or easement impacts on owners or operators of *neighboring lands*

- ▶ Examples of impacts could include
 - ▶ changes to hydrology, e.g. too much (flooding), or too little (diversion or reduced flows),
 - ▶ whether these changes may also lead to changing wildlife impacts; or
 - ▶ increased weed or other pest pressures.
- ▶ Share the extent of their interaction with neighbors regarding these impacts, and what will be done to mitigate any negative impacts.



Oregon Agricultural Heritage Commission Meeting Agenda May 23 and 24, 2018

Wednesday, May 23, 2018

Room 1868

152 NW 4th Street

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

The time listed for each agenda item is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:30 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAHF) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted at any time before the commission meeting. Written comments from persons not attending the meeting should be sent to Nellie McAdams, nellie.mcadams@oregon.gov.

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Krahmer will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:10 a.m.)

The minutes of the April 5, 2018 meeting will be presented for approval. *Action item.*

Conservation Management Plan (CMP) Ranking Criteria (approximately 8:15 a.m.)

OAHF Coordinator Nellie McAdams will present revisions to draft rules resulting from the commission's discussion at its April 26, 2018 meeting.

Covenants and Easements Ranking Criteria (approximately 9:15 a.m.)

The commission will discuss and refine ranking criteria from the commission's discussion at its April 26, 2018 meeting.

Covenants and Easements Draft Rules (approximately 10:15 a.m.)

The commission will discuss and refine Easement and Covenant draft rules from the commission's discussion at its April 26, 2018 meeting.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHF.

Lunch (12:00 p.m.)

Technical Assistance Draft Rules (approximately 1:45 p.m.)

OWEB staff will introduce Technical Assistance Grant draft rules, and the commission will discuss and refine rules.

Summary of Discussion, Location in the Process, and Next Meeting (3:15 p.m. to 3:30 p.m.)

OAHC Facilitator Liz Redon will help the commission summarize the day's discussion and identify next steps in the commission's process.

Thursday, May 24, 2018

Room 1868

152 NW 4th Street

Prineville, OR 97754

Directions: <https://goo.gl/maps/VTzC9K84hWK2>

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Krahmer will welcome the commission and public. *Information item.*

Covenants and Easements Draft Rules (approximately 8:10 a.m.)

The commission will discuss and refine the Covenant and Easement draft rules from the commission's discussion at its May 23, 2018 meeting.

Technical Assistance Draft Rules (approximately 9:15 a.m.)

The commission will discuss and refine Technical Assistance draft rules from the commission's discussion at its May 23, 2018 meeting.

Procedural Draft Rules (approximately 10:15 a.m.)

OWEB staff will introduce draft procedural rules, which the commission will discuss and refine.

Public Comment (11:30 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAHP.

Lunch (12:00 p.m.)

"Putting It Together" (approximately 12:30 p.m.)

Commission, with assistance from Context Technical Committee members, will look at all the Oregon Agriculture Heritage Program (OAHP) components together to discuss their connections with each other, other OWEB programs, and other related programs to assess whether rules developed meet the vision described in OAHP's statute.

Tentative list of Context Technical Committee members in attendance:

- **Mary Anne Cooper:** Public Policy Council at [Oregon Farm Bureau](#) and OAHP work group member
- **Dylan Kruse:** Policy Director at [Sustainable Northwest](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm
- **Jerome Rosa:** Executive Director of the [Oregon Cattlemen's Association](#) and OAHP work group member
- **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Thursday, April 26, 2018
Room 1868
152 NW 4th Street
Prineville, OR 97754

MINUTES

OAHC Members Present

Bailey, Ken
Bennett, Mark
Jackson, Nathan
Johnson, Derek
Krahmer, Doug
Loop, Lois
Neuhauser, Will
Taylor, Bruce
Wahl, Mary

OWEB Staff Present

Fox, Jim
McAdams, Nellie
Redon, Liz
Williams, Eric

Others Present

Beamer, Kelley
Masterson, Laura
Udelhoven, Jay

The meeting was called to order at 8:03AM.

Welcome, Housekeeping, and Introductions

Commission Chair Doug Krahmer welcomed commission members. Meeting facilitator and OWEB Staff, Liz Redon, explained housekeeping measures.

Minutes

Commission members reviewed the minutes from the April 5th meeting. Bruce Taylor moved to adopt the minutes, with a second from Ken Bailey. Minutes were approved unanimously.

Succession Planning Draft Rules

OWEB Staff Liz Redon confirmed with the commission that they have no edits to the [draft succession planning rules](#) and will discuss them with all other draft rules at the next meeting.

Conservation Management Plan Draft Rules

OAHP Coordinator Nellie McAdams and Liz Redon led the commission in a point-by-point discussion of the second draft of the [conservation management plan rules](#) for everything except evaluation criteria.

Changes included adding a definition for “mutual modifications” and requiring a conflict resolution protocol as a conservation management plan component if plan implementation is funded. The commission changed “subject to the plan” to “implementing the plan” and added

“material” change to the definition of mutual modification. “Material changes” are changes listed under XX11 (6) of the draft statute and may be further defined in guidance.

The commission also decided to clarify that at least one site visit must occur every 3 years, instead of an undefined number of site visits every 3 years.

The commission also asked if using the term “plan implementor” would be more accurate and less confusing than the statutory term “agricultural owner or operator,” and asked OWEB staff to offer potential revisions to that effect. The commission also asked staff to ensure that where “agricultural owner or operator” is used, that the rules use the correct statutory language (“or” instead of “and”) unless the statute is modified to change “or” to “and”.

The commission agreed that the purpose statement for conservation management plans should duplicate the statutory language (which does not name water quantity), so long as water quantity is one of the ranking criteria for plans and is considered to be an element of “natural resource values.”

Conservation Management Plan Evaluation Criteria

OWB Staff Eric Williams, Nellie McAdams, and Liz Redon let the commission through the first draft [conservation management plan evaluation criteria rules](#). Notes for each evaluation criterion are below. Throughout, commissioners recommended limiting the use of the term “the extent to which” to the main criterion and eliminating it from the subcriteria.

First evaluation criterion

“The extent to which the proposal meets the purpose of the program as defined in OAH XXX-XXX-XX01.”

The commission stated that any grant application must be consistent with the statutory purpose, and that this provision should refer to these items (noted in the flipchart):

- Significance of working lands
- The importance of the place
- How well project addresses the concern

Alternate language was suggested, reading: ““The significance of the agricultural, ecological, and social values of the working land subject to the conservation management plan”

The commission also agreed that the purpose of OAH is to *integrate* agricultural and ecological outcomes, and not just balance them, because balance implies that these two goals are always oppositional.

Second evaluation criterion

“The extent to which the application would result in plans for multiple agricultural owners or operators in an identified area”

Notes from the flip chart stated:

- Change “would” to “might”

- Does not allow just 1 conservation management plan, which might be limiting at beginning when a region may have only 1 early adopter
 - How to use this as a ranking criterion?
 - How to measure?
- The issue is less about the number of plans, and more about the impact and landscape scale (e.g. 5 acres vs. 10,000 acres). Convert language to more about impact.
- Clarify in guidance how to use criteria

Third evaluation criterion

“The extent to which the plan(s) would protect, maintain or enhance farming or ranching on working land”

Notes from the flipchart stated:

- How does “The cost benefit...” relate to “The extent to which the plan(s) would protect”?
- What is the definition of “non-farm uses”?
- Capture in guidance: water rights / value in rev.
- “The cost-benefit” refers to whom?
- Does it make sense to farm / ranch the property?

The commission decided to remove the requirement for a business plan and instead to include this in guidance as one way to demonstrate how the implementation of the plan would improve or maintain economic viability.

The commission also removed the cost-benefit requirement (referred to as risk/reward elsewhere in the draft) as this is already an intrinsic part of grant review.

Fourth evaluation criterion

“The extent to which the plan would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values”

For the first sub-criterion, the commission substituted “integrates” for “holistically addresses.” The commission clarified in guidance that plans could be used to support vulnerable species and species of concern - not only species listed under the Endangered Species Act. Guidance for this criterion also includes support for ecosystem function and resilience, and acknowledges that forestry is not excluded from conservation management plans.

Fifth evaluation criterion

“The extent to which the plan(s) would protect significant agricultural outcomes, benefits or other investment gains, including the extent to which the working lands on which the plan(s) is/are developed are an integral part of the local community or economy”

The commission understood the term “other investment gains” to mean agricultural infrastructure in the area and suggested a potential clarification in statute or simply to include this in guidance.

Sixth evaluation criterion

“The capacity of the organization that filed the application to enter into a conservation management plan, and the competence of the organization”

Notes from the flipchart stated:

- For the sub-criterion “Demonstrated relevant expertise and track record...” add “commitment” of the organization.
- An indicator of this can be a staff person.

The commission stated that commitment could be demonstrated by mission, vision, or other organizational statements. They also added or moved the following items to guidance for “The strength of the organization:”

- Governance of the organization, including agricultural owners or operators on the board;
- Dedicated staff capacity (e.g. job description)
- A plan to assign project administration to another entity if needed
- Working relationships with funders, project partners, and the community.

Seventh evaluation criterion

“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.”

Notes from the flipchart stated:

- Duration only affects ranking if application includes funding for implementation of the plan (guidance)
- Ecosystem services: Put somewhere else (in natural resources criterion)
- Cumulative benefits of *related* investments... - could be located in #5 or guidance

Eighth evaluation criterion

“The extent and nature of the plan(s)’s impacts on owners or operators of neighboring lands.”

Notes from the flipchart regarding communications with neighbors were:

- What kind of documentation are we looking for? Get guidance
- Plan to talk with neighbors once the plan is funded and near implementation

Public Comment

No members of the public offered public comment.

Covenant and Easement Evaluation Criteria

OWEB Staff Eric Williams, Nellie McAdams, and Liz Redon let the commission through the first draft of the [covenant and easement evaluation criteria rules](#). Notes for each evaluation criterion are below. The commission noted that rules for compliance and eligibility will be included in the easement and covenant rules, but not including ranking criteria.

First evaluation criterion

“The extent to which the proposal meets the purpose of the program as defined in OAH XXX-XXX-XX01.”

The commission chose to carry over their changes from the CMP rules, modifying this to read: “The significance of the agricultural, ecological, and social values of the working land subject to the working land conservation covenant or easement.”

Second evaluation criterion

“The extent to which the working land conservation easement or covenant would protect, maintain or enhance farming or ranching on working land.”

Notes from the flipchart stated:

- Define and send options: Fragmentation, Development, Non-farm uses
 - **Fragmentation definition:** Think of whole operation and what types of ground it needs to be viable (for example: Eastern Oregon ranches)
- Agriculture allowed on property (not necessarily all) and not removed from the entire property for conservation use only. Some land just isn't productive.
- Guidance: Size, connectivity, adjacency, soil types and water
- Level of risk to the property = Threat and urgency

The commission decided that it was not necessary to require succession plans, since this is covered in the long-term viability of the operation. They also decided that it was not necessary to include “cost-benefit” as its own sub-criterion, since the review process addresses this.

Third evaluation criterion

“The extent to which the easement or covenant would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values.”

Notes from the flipchart stated:

- Re-write so not repeating “the extent to which”
- Guidance: protection of vulnerable species (not only ESA listed)
- Use language “maintains and improves” consistently
- Guidance: What is “seasonally appropriate flows”?
- Guidance: What is “water retention”?

Fourth evaluation criterion

“The extent to which the covenant or easement would protect significant agricultural outcomes, benefits or other investment gains.”

Notes from the flipchart stated:

- How to ensure public benefit?
- Ensure not to discriminate against types of agriculture and scale
- This criterion should describe context: landscape, agriculture, etc.
- Conservation of the agricultural land base and water for agricultural use is KEY! This is the primary sub-criterion

- The following sub-criterion (regional importance) supports the first sub-criterion and includes
 - Economies of scale
 - Avoid tipping points
 - Guidance here (from materials)
 - “Agricultural outcomes” means the agricultural operation has regional importance

The commission deleted the first sub-criterion as duplicative with the other two. They also discussed whether conservation of the agricultural land base should be demonstrated by a specific size of parcel, e.g. median size of farm or farm parcel in the county. However, the commission felt that this might be too difficult to define for the state and that the issue might not depend upon size, but rather upon whether the loss of the parcel leads to a “tipping point” that makes it more difficult to farm in the region. They preferred that the application require a description of the context for this parcel and its significance in the region.

Fifth evaluation criterion

“The capacity of the organization that filed the application to accept a working land conservation covenant or working land conservation easement, and the competence of the organization.”

Notes from the flipchart stated:

- Not a yes / no question
- Guidance about standard practices
- Guidance should have key indicators

The commission requested that these sub-criteria be cross-referenced with ACEP-ALE’s criteria and the Land Trust Alliance’s accreditation requirements. They felt that the organization’s mission should be for “land preservation” rather than for easements and covenants, because few organizations hold covenants (or termed easements) at this time, and some organizations are just beginning to engage in working land protection.

Sixth evaluation criterion

“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 working land conservation covenant or working land conservation easement.”

Notes from the flipchart stated:

- Guidance about conservation and / or agriculture in the community
- Location implementation
- Needs time to transfer to permanent easement, if desired
- Compatibility with local land use plans

Seventh evaluation criterion

“The extent and nature of covenant or easement impacts on owners or operators of neighboring lands.”

Notes from the flipchart stated:

- Land use and community priorities
- Communications plan
- Effective communication with neighbors is a process, not a criterion
- Corridors of habitat (covered in #3?)

Discussion of Easement and Covenant Rules Aside from Evaluation Criteria

OWEB Staff Eric Williams, Nellie McAdams, and Liz Redon let the commission through a discussion of other topics related to easement and covenant rules. Available to assist the commission were:

Context and Easement/Covenant Technical Committee members:

- **Kelley Beamer:** Executive Director of the [Coalition of Oregon Land Trusts \(COLT\)](#) and OAHP work group member
- **Laura Masterson:** Oregon Board of Agriculture member, OWEB Board member, [East Multnomah Soil & Water Conservation District](#) Director, and farmer at 47th Avenue Farm

Context Technical Committee member **Jay Udelhoven:** Executive Director of [East Multnomah Soil and Water Conservation District](#)

Notes from each of the discussions are below.

Match

Notes from the flipchart stated:

- Stewardship Endowment Conservation
- Match purpose is to demonstrate partnership
- Different match rate for different components (transaction, stewardship, etc.)?
- Question: Is match minimum required or used as ranking?

The commission decided that the match requirement should be 25% of total project cost (rather than 25% of the acquisition cost, and 25% of the costs of acquisition), and that match could consist entirely of landowner donation of covenant or easement value. They felt that these rules could remain simple, and that the ranking criterion that refers to leverage could be a way to rank applicants based on the amount of match.

The commission asked what was included in total project cost, especially whether a stewardship endowment can be included. If stewardship endowments can be included, would they have the same percentage match or a different (higher) match requirement than other project costs?

Buy-Protect-Sell

Notes from the flipchart stated:

- Question: Would you want OAHP to pay Buy-Project-Sell?
- Apply advance waiver?
- Organizations should be able to protect and sell in 1 transaction, with coordinated funding

- Who can do this?
- Example holding company vs. land trust, etc.
- Question: Can rules be silent and still be available as a tool?
- Maybe not highest priority
- Staff work on details and come back

The commission wanted to allow applicants who have bought land to be eligible to sell the property with a covenant or easement to be eligible OAHP funding for the price difference of the easement that they retain. They did not think that the rules needed to specify that this was permissible, and that the rules should not preclude this type of transaction.

Covenant Valuation

Notes from the flipchart stated:

- Question: Does CMP implementation provide the same outcomes as a covenant?
- Sliding scale percentage of a permanent appraisal (e.g. 20% of appraisal value for 20 years, 30% for 30 years, etc.) may make sense with timelines in statute
- Question: What is legal for OWEB as a public entity? Hear from Department of Justice.
- Preference for “trial” approach of a 5-year covenant before deciding whether to convey an easement (not paying 90% of permanent easement appraisal value for the covenant)
- Duration is already an evaluation criterion
- Graph 5-50 years – is it hitting full valuation of an easement?
- Receive data on existing working land easements in Oregon or Pacific Northwest

The commission wanted to consider the public benefit received for the price paid.

Duration of Covenants

The commission is tasked with assigning three or more terms between 20 and 50 years for covenants. If the covenant is the same duration as a conservation management plan, the covenant must refer to that plan.

Notes from the flipchart stated:

- The commission prefers allowing any length of years between 20 and 50 – sliding scale
- Fair market value - Non-profits must account for market value for purchases (including cash plus any donation) in order to keep their nonprofit status.
- For what price do all parties feel they got their 30-years’ worth? From what perspective: at the beginning or end of 30 years?

Double Payment

The commission was asked for their opinion on whether the combined payment from OAHP for covenants and permanent easements on a property could equal more than the present day value of the property.

Notes from the flipchart stated:

- This is not “double dipping” because the covenant payment is for that time period only, not permanence
- This is more of a question of use of public funds

- What about when the covenant time is not yet up and the landowner wants to convert it to an easement? Consider it as a lease with option to purchase?
- Depends on how the program calculates covenant value
- Reverse auction can set value, but requires a larger market to be successful
- Not an issue if the covenant is not very financially lucrative
- Follow up: Ask an appraiser

Section 6(5)

The commission considered how to demonstrate Section 6(5) of the statute: “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.”

Notes from the flipchart stated:

- Understand and agree to rules and responsibilities
- Use the statutory language in the agreement/consent form

“Refrigerator” for future work

Notes from the flipchart stated:

- Process flow clarity
 - Tech. com → commission → Board
 - Check that language is clear in statute
- Putting it together
 - Look at all criteria together
 - For eligibility, must you consider agriculture first before you can qualify for OAHP grants, because otherwise you can use OWEB’s other grant programs?
 - Did we keep our bargain to champions of the statute?
 - Hear from commissioners who have conveyed or are in the process of conveying easements about their process.

Next Steps

The commission agreed to extend their May 23 to 24 meeting to two full days, but to limit it to 8:00 AM – 3:30 PM each day. They agreed to allow OWEB staff to bring to them at the next meeting the following draft rules to discuss and edit together:

- Covenants and easements, except evaluation criteria
- Technical Assistance
- General program administration

The meeting was adjourned at 3:15 PM.

Division XXX
Conservation Management Plans

698-XXX-0010

Purpose

An agricultural owner or operator may enter into a conservation management plan with an organization ~~for to manage~~ working land ~~to be managed~~ in a manner that supports one or more natural resource values. Conservation management plans:

- 1) 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.
- 2) Must contribute to the public benefits in OAR 698-XXX-0010 *{Administration rules}*.
- 3) 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.

Comment [NM1]: Dean Moberg wrote: it feels like it's lacking verbiage that ties the program to a big picture vision of Oregon agriculture. Can you add a brief paragraph in the very beginning that describes why Oregon ag is so important and how there is a need for a new process to ensure ag remains vibrant, productive, profitable, and conservative of resources? That new paragraph could then flow smoothly into the 4 bulleted purposes.

Comment [NM2]: Tom Salzer

698-XXX-0020

Definitions

- (1) "Mutual Modification" means a change to a conservation management plan that is
 - a. Material to the plan as defined in section XX11(6); and
 - b. Agreed to by both the agricultural owner and or operator subject to implementing the plan and the conservation management plan holder.

Comment [NM3]: Other definitions in Admin Rules

698-XXX-0030

Eligibility

- 1) Eligible applicants (henceforth "Grantees") for Conservation Management Plan Grants are:
 - a. Entities eligible to hold a conservation easement, as defined in ORS 271.715, other than a state agency;
 - b. Watershed councils; and
 - c. Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code.
- 2) Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Conservation Management Plan Grant.

Comment [NM4]: Dean Moberg

698-XXX-0040

Application

Conservation Management Plan Grant applications shall:

- (1) Be consistent with OAR 698-XXX 0030 { *Admin Rules for application requirements*}; and
- (2) Include the duration ~~or~~ and any other terminating event(s) for the plan.

Comment [NM5]: Should rules state that no match is required? Leverage will be covered in ranking criteria.

698-XXX-0050

Eligible Activities

Funding can be utilized to purchase, implement, and monitor conservation management plans. (Additional information to be developed as a part of payment conversation.)

Comment [ML6]: This language may change in a technical statutory fix

698-XXX-0060

Term of Payment for Conservation Management Plan Implementation

- 1) If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of ~~between at least~~ 20 and ~~no more than~~ 50 years.
- ~~1)2)~~ If a plan is associated with a working land conservation covenant, the term of the plan must be the same as the term of the covenant.

698-XXX-0070

Conservation Management Plan Components

At minimum, conservation management plans will include:

- (1) A summary describing how the conservation management plan meets OAHF's purpose;
- (2) Contact and location information for the agricultural owner or operator;
- (3) Relevant background and context;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural owner(s) or operator(s);
- (6) Resource analysis and identification of resource and management concerns;
- (7) Identification of potential plan activities and selection of activities to be implemented;
- (8) The implementation plan, including a budget;
- ~~(8)9)~~ If applicable, a maintenance plan for infrastructure that may affect neighboring lands if not maintained over time;
- ~~(9)10)~~ The conservation, social, and economic outcomes of the plan once implemented;
- ~~(10)11)~~ How the conservation management plan will be evaluated and managed;
- ~~(11)12)~~ A conflict resolution protocol for the agricultural owner or operator and the grantee if plan implementation is being funded; and
- ~~(12)13)~~ The term of the plan.

Comment [NM7]: "Alternative identification and selection" was not seen as clear. Does this define it?

698-XXX-0080

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The significance of the agricultural, ecological, and social values of the working land subject to the conservation management plan.
- 2) The extent to which the implementation of the plan(s) will contribute to the agricultural, ecological, and social values of the surrounding area.
- 3) The extent to which implementation of the plan(s) would protect, maintain, or enhance farming or ranching on working land, including how implementation of the plan would:
 - a) Improve or maintain the economic viability of the operation; and
 - b) Reduce the potential for fragmentation, development, and non-farm conversion from agricultural uses on, the working land subject to the plan.
- 4) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values by:
 - a) Protecting, maintaining, or improving priority natural resource values applicable to the land, including soil, water, plants, animals, energy, and human needs considerations;
 - b) Supporting implementation of local, regional, state, federal, or tribal priorities or plans;
 - c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land subject to the plan;
 - d) Measurably protecting, maintaining, or improving water quality; and
 - e) Protecting, maintaining, or improving seasonally appropriate water flows.
- 5) The extent to which implementation of the plan(s) would protect significant agricultural outcomes, benefits, or other investment gains, including the role that the working land subject to the plan plays in the local community or economy.
- 6) The capacity and competence of the organization that filed the application to enter into and (if implementation funding is awarded) oversee implementation of a conservation management plan, including:
 - a) The financial capability of the organization to manage the plan(s) over time;
 - b) The demonstrated relevant commitment, expertise, and track record to successfully develop and implement plan(s); and
 - c) The strength of the organization as measured by effective governance.
- 7) The extent to which the benefit to the state may be maximized, based on:
 - a) The ability to leverage grant moneys with other funding sources;
 - b) The duration and extent of the conservation management plan, with a preference for longer term agreements if implementation funding is provided;
 - c) The cumulative benefits of similar conservation and/or agricultural investments in the community, including OAHF; and

Comment [NM8]: Dean Moberg wrote: Things that are not clear:
1. Does a grantee apply for funds for one plan at a time, or do they apply to do some number of plans?
2. Most of the criteria require a plan to already be mostly completed. May be too late to change things drastically, but it seems like these criteria would work to prioritize which plans are funded for implementation. Maybe the criteria for funding staff to complete plans should be something like the NRCS CIS approach, in which a SWCD would develop an area-wide plan at their own cost and then apply to OWEB for funds to write individual conservation plans. Finally, the grantee could apply for funds to implement those plans.

Comment [NM9]: Guidance would include: Integration of agriculture and conservation that increase protection of both

Comment [NM10]: This was reworded to allow clustering of projects, early adopters in areas with few plans, recruitment of other working lands

Comment [NM11]: Guidance would include

Comment [NM12]: Define

Comment [ML13]: Guidance would include:
• Increased soil health
• Increased carbon sequestration

Comment [ML14]: Guidance would include: Plans for or presence of vulnerable or listed species or associated habitat

Comment [NM15]: Guidance would include: Establishment of habitat corridors or blocks

Comment [NM16]: Guidance would include:
• TMDL improvement
• Temperature reduction

Comment [NM17]: Define in guidance

Comment [NM18]: Define social benefits associated with continued ag use, and "investme

Comment [NM19]: Or change to "The regional importance of the agricultural operation and land base" to be consistent with easement/covenant

Comment [NM20]: Guidance would include: May be demonstrated by mission, vision, or other organizational statement.

Comment [NM21]: Guidance would include:
• Agricultural owners or operators on the Boar

Comment [NM22]: Dean Moberg wrote: What does "extent" mean? Does this mean that larger properties are higher priority?

Comment [NM23]: Dean Moberg wrote: 7c does not seem to flow from 7. I'm not sure we need it

Comment [ML24]: This will be very hard to quantify and harder to track – consider moving to guidance

d) The potential for setting an example that will encourage additional working lands projects in the region.

8) The extent and nature of the impacts of plan implementation on owners or operators of neighboring lands, including:

a) A description of potential positive and negative impacts of implementation of the conservation management plan on neighboring lands;

b) A plan for communicating with neighboring landowners once the conservation management plan(s) is/are ready to be implemented about how to mitigate any negative impacts;

c) A maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.

Comment [NM25]: Dean Moberg

Comment [NM26]: Guidance to include:
•Connectivity to both wildlife habitat and protected agricultural lands;
•The impact on shared drainage systems.

Comment [NM27]: Dean Moberg: Maintenance plans should use affordable, feasible, and effective methods.

698-XXX-0090

Technical Review and Funding Process

(1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.

(2) Applications shall be evaluated according to criteria described in OAR 698-XXX-0080.

(3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement to be separate from the ranking of working land conservation covenants and working land conservation easements.

(4) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans.

~~(3) The Commission shall use one or more technical committees to evaluate Conservation Management Plan grant applications.~~

~~(4)~~(5) The technical committee(s) shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.

(6) The Commission shall review and consider the recommendations of the technical committee(s) appointed under 698-XXX-0040(4) and consult with the Board concerning grant applications.

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

~~(5) The Commission may rank projects and shall provide funding recommendations to OWEB's Board.~~

~~(6)~~(8) The Board approves Conservation Management Plan Grants. The Board may fund a grant application in whole or in part.

698-XXX-0100

Grant Agreement Conditions

- (1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural owner(s) or operator(s) to the roles and responsibilities under the conservation management plan.
- ~~(1)~~(2) All Conservation Management Plan Grant agreements authorized by the Board shall have a clause that requires the retention of up to 10 percent of project funds until the final report, as required in the grant agreement, has been approved. Any unexpended OAHF funds must be returned to the Commission with the final report.
- ~~(2)~~(3) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed amendments are submitted and approved by the Director prior to the beginning of any work proposed in the amendment.
- ~~(3)~~(4) The Director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.
- ~~(4)~~(5) Rules and conditions in place at the time the conservation management plan is formally adopted shall govern throughout the term of the plan unless changes are mutually agreeable to both parties.
- ~~(5)~~ All changes to the conservation management plan must be reflected in writing and provided to the Oregon Agricultural Heritage Commission.

Comment [NM28]: Tom Salzer

698-XXX-0110

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

(1) Any changes to conservation management plans must achieve the same or greater level of benefits as the original plan, as evaluated by the criteria in 698-XXX-0080.

Comment [NM29]: Dean Moberg

(2) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.

(3) Any change must be mutually agreed to by both the agricultural owner or operator and the grantee.

(4) To ensure consistent review of all conservation management plans, the grantee and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.

(5) The agricultural owner or operator must contact the grantee at any time immediately if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:

Comment [NM30]: Tom Salzer

- (a) Changes in management or ownership of the property;
- (b) Changes in the grazing/cropping system(s) not identified in the plan. For changes in grazing/cropping systems, the landowner must notify the grantee in advance.
- (c) A natural disaster occurs that will impact implementation of the conservation management plan; or
- (d) Other changes that are outside the agricultural owner's or operator's control.

(6) The grantee must contact the agricultural owner or operator if changes in science significantly affect the effectiveness of conservation management plan implementation.

(7) Modifications may include:

- (a) Addition of new conservation practices, measures or conservation benefits;
- (b) Changes in practices, measures or benefits based on:
 - a. changes in science;
 - b. changes to property management or ownership;
 - c. changes in grazing/cropping systems;
 - d. natural disasters; or
 - e. Other changes outside the agricultural owner's or operator's control.

698-XXX-0120

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) The agricultural owner or operator must meet annually with the grantee and provide a written report of conservation management plan activities completed each year to the grantee on a form approved by the Commission. Reports may also include photo points or other methods that appropriately track plan implementation.
- (2) Annual reporting must identify any mutual modifications to the conservation management plan.
- (3) Notwithstanding (4), ~~site visits by~~ the grantee must conduct at least one site visit to the property ~~must occur~~ every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the implementation of the conservation management plan.
- (4) The agricultural owner or operator and the grantee may agree to establish specific monitoring protocols and site visit intervals to identify trends in habitat, water quality or other natural resource values, and must establish protocols if a modification of the conservation management plan results in specific monitoring or site visit needs. Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee. The Commission may provide guidance for consistent monitoring protocols.
- (5) The Commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. The agricultural owner or operator shall allow site access upon reasonable notification by the Commission.
- (6) The Commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

Comment [NM31]: Tom Salzer

698-XXX-0130

Grant Reporting Requirements

- 1) For grants that fund conservation management plan implementation, the grantee must receive and provide to the Commission at least annual reports from the agricultural owner or operator regarding plan implementation.
- 2) Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- 2)3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed.

Comment [ML32]: Possibly move to the OAHP administrative rules that apply to all of the various programs and leave it out of this specific division.

698-XXX-0140

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

DIVISION XXX

Working Land Conservation Covenants and Easements

Comment [NM1]: Based on flipchart notes, rules do not address 'buy-protect-sell'; can be added later as a rule amendment

698-XXX-0010

Purpose

The purpose of this program is to contribute to the public benefits of:

- (1) Increased economic viability of Oregon agricultural operations,
- (2) Reduced fragmentation of Oregon's working land,
- (3) Reduced conversion of Oregon's working land to nonfarm uses, and
- (4) Enhanced fish and wildlife habitat and other natural resources on Oregon's working land.

An agricultural owner or operator 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. In addition, 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.

698-XXX-0020

Definitions

- 1) "Bargain sale" is the sale of a covenant or an easement to a holder for less than the fair market value of the covenant or easement. The value of the discount might qualify as a charitable donation.
- 2) "Management plan" is a description of the planned future management of a property proposed for acquisition that addresses agriculture, habitat and natural resource management practices; stewardship or monitoring; and land uses on the property. If applicable, it also addresses any proposed agriculture or habitat restoration projects, public access, and educational or research opportunities on the property.
- 3) "Profit" means the positive difference between the original purchase price for the covenant or easement interest acquired with OWEB grant funds and a subsequent purchase price for the same property interest, minus the owner's property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.
- 4) "Stewardship endowment" is the fund that is used to cover the holder's costs for the monitoring, stewardship, resolution of violations, and any enforcement of the covenant or easement.

Comment [ML2]: Adapted from the OWEB acquisition definition.

698-XXX-0030

Eligibility

Eligible applicants for Working Land Conservation Covenant and Easement Grants are holders as defined in ORS 271.715 other than state agencies. Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Working Land Conservation Covenant and Easement Grant.

Comment [NM3]: Bari Williams: May want to consider adding a criteria that the entity has the authority to purchase and hold agricultural easements with an established program to manage ag easements. Thereby limiting the eligible applicants to those with the purpose of protecting agricultural in their foundational bylaws.

Comment [NM4]: <https://www.oregonlaws.org/ors/271.715>

698-XXX-0040

Application

- 1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications that acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations for the purposes that support the use of land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality or support of other natural resource values.
- 2) Working Land Conservation Covenant and Easement Grant applications shall:
 - a. Be consistent with administrative Oregon Agricultural Heritage Program rules {similar to OAR XXX Division 005};
 - b. Be submitted on the most current form and process prescribed by the Commission;
 - c. State the amount and type of match contribution;
 - d. If the application is for a covenant, include the duration of the covenant; and
 - e. 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.
- 3) The Commission may consider proposals that are received for properties that were acquired by the applicant after the previous application deadline.

Comment [ML5]: Taken from statute

Comment [ML6]: Commission – ok with this?

698-XXX-0050

Matching Contributions

- 1) All applicants shall demonstrate at least 25% of the covenant or easement project costs is being sought as match as demonstrated by a formal application or agreement.
- 1)2) The following costs-funds and activities will qualify as match:
 - a. ~~All costs listed under OAR 698-XXX-0060, including in-kind contributions of those costs~~to activities listed under OAR 698-XXX-0060;
 - b. Funding commitments made by others as a result of grant applicant efforts;
 - c. The donated portion of a bargain sale; and
 - d. Funds deposited in a stewardship endowment before the time that OWEB funds are released for acquisition of the property.
- 2)3) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

Comment [NM7]: Bari Williams

Comment [NM8]: Bari Williams

Comment [ML9]: Commission: 25% of all costs considered match – for discussion purposes.

Comment [NM10]: Define

698-XXX-0060

Use of Grant Funds

Land acquisition grant funds may be applied towards costs related to the purchase of the covenant or easement, including:

- 1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
 - a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.
 - b. The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-XXX-0060 (1)(a)
- 2) The interest on loans;
- 3) The staff costs incurred as part of the 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 cost of preparation of the initial management plan, including consideration of any restoration needs;
- 7) The legal fees incurred;
- 8) The closing fees, including recording and title insurance costs;
- 9) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a Management Plan approved by the Director; and
- 10) Funding for a **stewardship endowment**.

Comment [NM11]: 1) Statute states "purchasing, implementing, carrying out or monitoring of the covenant or easement."

Comment [NM12]: Commission: Consider whether to allow or set higher match requirement

698-XXX-0070

Conservation Covenant Term

- 1) **A working land conservation covenant shall be for a term of no less than twenty and no more than fifty years.**
- 2) The covenant term shall be set at 12-month increments only and not partial years.
- 3) **The first day of the term of a covenant shall be the date that both of these event have occurred:**
 - a. The covenant holder and the agricultural owner or operator conveying the covenant sign the agreement; and .
 - b. Consideration has been paid for the covenant.

Comment [ML13]: Commission: from flipchart notes

Comment [NM14]: For Commission consideration

698-XXX-0080

Evaluation Criteria

- 1) The significance of the agricultural, ecological, and social values of the working land subject to the working land conservation .
- 2) The extent to which the proposal meets the purpose of the program as defined in OAR XXX-XXX-XX01.
- 3)2) The extent to which the working land conservation covenant or easement would protect, maintain or enhance farming or ranching on working land, including:
 - a) Reducing the level of risk of farmland conversion;
 - b) Reducing the potential to reduce future fragmentation, development, and non-farm uses on the property;
 - c) Maintaining or enhancing the ability of the land to remain in productive agriculture after the covenant or easement is in place;
 - d) The potential viability of the property for agriculture;
 - e) Improving of maintaining the economic viability of the operation, including future transfer of ownership;
- 4)3) The extent to which the covenant or easement would protect, maintain or enhance significant fish or wildlife habitat, improve water quality or support other natural resource values by:
 - a) Protecting, maintaining, or improving priority natural resource values applicable to the land, including soil, water, plants, animals, energy and human needs considerations;
 - b) Supporting implementation of local, regional, state, federal or tribal priorities or plans;
 - c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land;
 - d) Measurably protecting, maintaining, or improving water quality; and
 - e) Protecting, maintaining, or improving seasonally appropriate flows.
- 5)4) The extent to which the covenant or easement would protect significant agricultural outcomes, benefits or other investment gains to the region, including:
 - a) The parcel's contribution to conserving the region's agricultural land base.
 - b) The regional importance of the agricultural operation and associated infrastructure necessary to support agricultural operations;
- 6)5) The capacity and competence of the organization that filed the application to create, hold, monitor, steward, and enforce a working land conservation covenant or working land conservation easement, including:
 - a) Accreditation from the Land Trust Accreditation Commission, or implementation of similar standards and practices to an organization eligible for accreditation ;
 - b) Inclusion of 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;

- Comment [NM15]:** Bari Williams: It would be beneficial to have an overview of the ranking process, is it going to be based on a point system, on a statewide ranking worksheet, reviewed and developed by whom, timeline for ranking in the application process, will there be a cut-off for ranking in which all applicants will be evaluated for funding, an outlay of the process and procedures. Also, what documentation will be required and is this documentation supplied ...
- Comment [NM16]:** Bari Williams: Significance is not well defined here, this is ...
- Comment [NM17]:** In Guidance: Integration of agriculture and conservation that increas ...
- Comment [NM18]:** In Guidance: Integration of agriculture and conservation that increas ...
- Comment [NM19]:** In Guidance: includes threat of conversion and urgency
- Comment [NM20]:** Define
- Comment [NM21]:** In Guidance: the entire property need not be available for agricultu ...
- Comment [NM22]:** In Guidance:
 - including soils
- Comment [NM23]:** In Guidance: may be demonstrated by the presence of a successi ...
- Comment [ML24]:** Guidance would include:
 - Increased soil health
- Comment [ML25]:** Guidance would includ ...
- Comment [NM26]:** Guidance would include: Establishment of habitat corridors d ...
- Comment [NM27]:** Guidance would include:
- Comment [NM28]:** Define in guidance
- Comment [EW29]:** Need guidance on specific factors that describe significant ...
- Comment [NM30]:** Guidance: This refers to surrounding agricultural infrastructure
- Comment [NM31]:** In Guidance: ...
- Comment [NM32]:** Guidance would include: ...
- Comment [NM33]:** Or substitute this for "the extent to which the working lands on ...
- Comment [NM34]:** Consider organizations like TPL that buy easements and transfer the ...
- Comment [NM35]:** Tom Salzer: I do not like tying a rule to outside standards that may ...
- Comment [NM36]:** Edited because some entities do not yet own easements or worki ...

d) Demonstrated relevant **commitment**, expertise, and track record to create, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and

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

Comment [NM37]: Consider: for CMPs, mission/vision was one way to prove commitment. Do you want it as a separate criteria for covenants and easements?

7)6) The extent to which the benefit to the state from the investment may be maximized, based on:

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

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

c) The cumulative effect of similar conservation and/or agricultural investments in the **community, including OAHF;**

d) **The effects of land use planning on the long-term investment; and**

e) The potential for setting an example that will encourage additional working lands projects in the region.

Comment [NM38]: Guidance would include:
•Agricultural owners or operators on the Board;
•Dedicated staff capacity (e.g. in their job description and work plan), staff training, and years of experience
•Ability to manage staff transitions and a plan to assign project administration to another entity if needed
Working relationships with funders, project partners, and the community

Comment [NM39]: Commission: Include a preference for CMP as well?

Comment [NM40]: Commission: does this overlap with 4?

8)7) The extent and nature of the impacts of the covenant or easement on owners or operators of neighboring lands, including:

a) **A description of potential positive and negative impacts of the on neighboring lands;** and

b) A plan for communicating with neighboring landowners about how to mitigate any negative impacts resulting from the covenant or easement.

Comment [NM41]: Guidance may include:
•Program funds may not be used in rural reserve areas or within Urban Growth Boundaries

Comment [NM42]: Guidance to include:
•Connectivity to both wildlife habitat and protected agricultural lands;
•The impact on shared drainage systems.

698-XXX-0090

Technical Review and Funding Process

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

(2) Applications shall be evaluated according to criteria described in OAR 698-XXX-0080.

(3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement to be separate from the ranking of working land conservation covenants and working land conservation easements.

(4) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for working land conservation covenants and easements.

~~(3) The Commission may use technical committees to evaluate Working Land Conservation Covenant and Easement Grant applications.~~

~~(4)~~(5) The technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.

(6) The Commission shall review and consider the recommendations of the technical committee(s) appointed under 698-XXX-0040(4) and consult with the Board concerning grant applications.

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

~~(5) The Commission may rank projects and shall provide funding recommendations to OWEB's Board.~~

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

698-XXX-0100

Board Approval and Delegation of Authority

The Commission shall recommend and the Board shall approve grants in accordance with guidance adopted by the Board and made available to the public. The Director is delegated the responsibility of ensuring that funding conditions required by the Board are fully satisfied by the grant applicant. Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval.

Comment [ML43]: Commission: This is current OWEB language – may want more flexibility for OAHF

698-XXX-0110

Public Involvement

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

Comment [ML44]: Commission: this is a requirement under other state statutes as referenced. This is the process OWEB uses.

- 1) Written comments received at least 14 days before the Board meeting at which the Board 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 meeting at which the grant application is considered.

698-XXX-0120

Director Funding Approval and Distribution of Funds

(1) The Director may approve the distribution of grant funds when:

- a. A grant agreement is executed by the Director and the grant applicant that includes a signed statement of understanding and agreement by the participating agricultural owner(s) or operator(s) to the roles and responsibilities under the working land conservation covenant or easement,
- 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 title restrictions required under OAR 698XXX-0100 are approved by the Director.

Comment [ML45]: Commission: if you approve more flexibility under XXX-XXX-0080, you may want to change wording here to say:

The Director may approve distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and the property closing as the following conditions are met:

- e. The Director has reconciled conditionally approved funding with actual project costs.
- f. The grant applicant has satisfied the match requirements under OAR 698-XXX-0050.
- g. The Board is notified in writing of the Director’s intent to distribute the grant funds or hold the grant funds pending Board consideration under OAR 698-XXX-0130.

(2) For grants established under these rules, the Director is authorized to reimburse the grant applicant for allowable costs identified in OAR 698-XXX-0060 and to recognize matching contributions under OAR 698-XXX-0050 that were incurred no earlier than 18 months before the applicable grant application deadline.

698-XXX-0130

Funding Decision Reconsideration by Board

In the event that the Director determines an applicant has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The applicant 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.

698-XXX-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 recipient of the grant, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OWEB grant funds that were used to purchase the property, and reasonable interest and penalties at the option of the Director.

2) OWEB, its contractors and cooperating agencies will be provided sufficient legal access to property acquired with OWEB funds, for the purpose of completing easement and covenant inspections and evaluations.

3) Rules and conditions in place at the time funding for the working land conservation covenant or easement is formally approved shall govern throughout the term of the easement or covenant unless changes are mutually agreeable to both parties.

698-XXX-0150

Grant Reporting Requirements for Covenants

Upon completion of the term of a working land conservation covenant, the grantee will provide the Commission and OWEB’s Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

Comment [ML46]: Commission: allows for reimbursement of costs for projects that closed before a grant cycle.

Comment [NM47]: Commission: Consider as an admin rule for the entire program

Comment [NM48]: Commission: Also for CMP rules, or modified?

Comment [NM49]: Bari Williams: I recommend adding a monitoring and enforcement process overview at the beginning of this section.

I’m assuming there will be requirements to follow the easement and covenant terms here.

It would be good to have general timelines to give applicants expectations, that can be extended due to approved circumstances. For example, most violations should be addressed within 30 days. If the applicant has not commenced corrective action within 180 days then the Director may initiate action.

The commission may want to consider defining “significant” and “full satisfaction”. Is this based on the Grantors interpretation or Easement holder?

Is it the easement holders responsibility to notify OAHB of violations and follow up with corrective action plans if the violations are not “significant”?

Does OAHB require the easement holder to provide them with an annual monitoring report? Or will the easement holder only notify OAHB for enforcement?

Comment [NM50]: Or narrow down

Comment [NM51]: Tom Salzer

Comment [ML52]: Borrowed from CMP rules. Possibly move to the OAHB administrative rules that apply to all of the various programs and leave it out of this specific division.

698-XXX-0160

Payment Relationship Between Covenants and Easements

Comment [ML53]: Commission: options for consideration

OPTION 1:

If a covenant is funded through the Oregon Agricultural Heritage Program and a later application is submitted for the same property for a 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 conservation easement.
- 2) If the term of the covenant has expired, no reduction of fair market value will be taken for the conservation easement.

OPTION 2:

If a covenant is funded through the Oregon Agricultural Heritage Program, and a later application is submitted for the same property for a conservation easement, once the fair market value is calculated, the payment for the easement will be reduced by an amount equivalent to the value paid for the covenant.

698-XXX-0170

Subsequent Conveyances

Subsequent conveyances of working land conservation covenants or easements acquired with OWEB grant funds by the easement or covenant holder must strictly comply with the requirements of (ORS XXX XXX) and these rules, including the requirement that subsequent conveyances be made subject to prior approval by the Commission and that subsequent conveyances shall not result in profit to the holder.

Comment [NM54]: And/or OWEB Board?

698-XXX-0180

Waiver and Periodic Review of Rules

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

Division XXX
Working Land Technical Assistance Grants

698-XXX-0010

Purpose

The Oregon Agricultural Heritage Commission (Commission) shall ~~may~~ provide grant funding for development 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. Grant funding must support the public benefits in OAR 698-XXX-0010 {Administration rules}.

Comment [NM1]: Change to "may"?

Comment [NM2]: In statute, remove?

698-XXX-0020

Definitions

(1) "Technical assistance" means supporting the development of working land projects or programs as described in ORS XX and XX and OAR 698 division xx and xx.

Comment [EH3]: CMP and covenants/easement divisions.

(2) "Underserved population" is a group whose members have been subject to discrimination based on their identity as a member of a group, without regard to their individual qualities.

Comment [NM4]: Added at Commission's earlier request. See also USDA's definition of socially disadvantaged farmer/rancher – only applies to race and ethnicity

698-XXX-0030

Eligibility

Eligible applicants for Technical Assistance Grants are:

- 1) Entities eligible to hold a conservation easement, as defined in ORS 271.715, other than a state agency;
- 2) Watershed councils; or
- 3) Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code.

Comment [NM5]: Tom Salzer: I think this is too fuzzy. What definition will be used? It means different things to different people. I would either define exactly what is intended, or use a different word or phrase such as "...have been subject to inequity, prejudice, or unfair treatment based on ..."

Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Technical Assistance Grant.

Comment [NM6]: Brad Paymar: Do you want to add something here about their primary purpose being the protection and/or stewardship of land? Though that is covered under 1b in Evaluation Criteria

698-XXX-0040

Application Requirements

Technical Assistance Grant applications shall be consistent with OAR 698-XXX {OAH Admin Rules}.

698-XXX-0050

Technical Assistance Activities

- 1) Technical Assistance Grant cannot be used to fund specific conservation management plans, working land conservation covenants, or working land conservation easements.
- 2) The Commission will only consider technical assistance projects that will lead to or are likely to lead to the development of conservation management plans, working land conservation covenants, or working land conservation easements.

Comment [NM7]: In Guidance: projects include
●outreach, education,
●staff and board training,
●engagement in community activities, and
●other investments in infrastructure and staff time to support the development of the program

698-XXX-0070

Evaluation Criteria

Technical Assistance Grants will be evaluated on:

- 1) The extent to which the proposal will improve the entity and/or its partner's ability to enter into conservation management plans, or enter into working lands covenants or easements.
- 2) The extent to which the outcomes of the technical assistance project would lead to projects or programs that:
 - a. Protect, maintain, or enhance farming or ranching on working land;
 - b. Protect, maintain, or enhance significant fish or wildlife habitat;
 - c. Protect significant agricultural outcomes, benefits, or other investment gains;
 - d. Maximize the benefit to the state based on the ability to leverage grant moneys with other funding sources; and
 - e. Limit negative and maximize positive impacts on owners or operators of neighboring lands.
- 3) The extent to which the applicant demonstrates a plan to engage one or more underserved populations;

Comment [NM8]: Define social benefits associated with continued ag use, and "investment gains" (might refer to surrounding agricultural infrastructure)

698-XXX-0080

Technical Review and Funding Process

- 1) Technical review of Technical Assistance Grant applications shall occur based on information provided in the grant application.
- 2) Applications shall be evaluated according to criteria described in OAR 698-XXX-0070.
- 3) The Commission may use technical committees to evaluate technical assistance grant applications.
- 4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff, who will review technical committee recommendations and provide funding recommendations to the Commission. If a technical committee is not used, OWEB staff will provide funding recommendations to the Commission.
- 5) The Commission may rank projects and shall provide funding recommendations to the Board.
- 6) The Board approves Technical Assistance Grants. The Board may fund a grant application in whole or in part.

698-XXX-0090

Grant Agreement Conditions

- 1) The Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.

Comment [NM9]: Brad Paymar: I would incorporate this into the second point, which should focus on modifications.

- 2) The Director will consider project modifications including expansion of funded projects with moneys remaining from the original project allocation if the purpose and intent of the amendment remains the same as the original project, the proposed activity is within the same geographic area, and the modification would be compatible with acknowledged comprehensive plans.
- 3) The Director may authorize minor changes within the scope of the original project plan.
- 4) The Grantee must submit a report at completion of the project in accordance with reporting requirements described in the grant agreement.
- 5) Rules and conditions in place at the time funding for the technical assistance grant is formally approved shall govern throughout the term of the project unless changes are mutually agreeable to both parties.

698-XXX-0100

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Technical Assistance Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the commission within a reasonable time. The administrative rules for Technical Assistance Grants shall be periodically reviewed by the commission and revised as necessary and appropriate.

Division XXX Succession Planning Grants

698-XXX-0010

Purpose

The Oregon Agricultural Heritage Commission (Commission) shall provide funding recommendations to the Oregon Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board (Board), to provide training and support to owners of working land, or persons advising owners of working land, regarding succession planning for the lands. Recommendations and grant funding must support the program purpose in OAR 698-XXX-0010 {Administrative rules}.

Comment [NM1]: Change in statute to "may"?

Comment [NM2]: Purpose statement moved to general admin rules

698-XXX-0020

Definitions

- (1) "Agricultural cooperative" means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.
- (2) "Succession planning" means an ongoing process for ensuring the continuation and economic viability of a business over generations of owners or operators. It may include strategies to identify, develop, and empower the next generation of owners or operators, a plan to transfer business and family assets, and arrangements for each generation's retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

Comment [NM3]: Definitions in Administrative Rules also apply here.

Comment [NM4]: Statutory fix to make this program apply to ag owners or operators

698-XXX-0030

Succession Planning Priorities

The Commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant applications and make recommendations to the Oregon Legislative Assembly. The Commission may modify these priorities from time to time at its discretion.

698-XXX-0040

Applicant Eligibility

- (1) Eligible applicants for Succession Planning Grants are:
 - (i) Public institutions of higher learning,
 - (ii) Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code,
 - (iii) Units of local government,
 - (iv) Tribes, and
 - (v) Agricultural cooperatives

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- (2) Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Succession Planning Grant.

698-XXX-0050

Application Requirements

Succession Planning Grant applications shall:

- (1) Be consistent with OAR 698-XXX-0010 *{Administrative Rules}*;
- (2) Not require match contributions; and
- (3) Comply with Oregon Agricultural Heritage Program general grant application requirements in OAR 698-XXX-0030, *{Administrative Rules}*

698-XXX-0060

Eligible Activities

The following activities benefitting agricultural owners or operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources,
- (2) Trainings on topics related to succession planning,
- (3) Development and distribution of educational materials and curriculum related to succession planning, and
- (4) Advising agricultural owners or operators on succession planning.

698-XXX-0070

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR 698-XXX-0010 *{Administrative Rules}*,
- (2) The capacity and competence of the applicant to deliver the proposed program.
- (3) The applicant's relevant background and experience in delivering successful succession planning programs, including prior programs funded through this grant program and projects funded outside this grant program.

Comment [NM5]: From CMP and Easement/Covenant rules

- (4) The cost-effectiveness of the proposed project,
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural owners or operators in diverse geographic locations in Oregon, and participants in diverse stages of succession planning. The Commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity.
- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

Comment [NM6]: Remove as with CMP and easement/covenant?

698-XXX-0080

Succession Planning Grant Application Technical Review and Funding Process

- (1) The Commission may fund projects submitted through an open solicitation for applications, or by requesting applications from one or more specific eligible entities.
- (2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.
- (3) Applications shall be evaluated according to criteria described in OAR 698-XXX-0070.
- (4) The Commission may use technical committees to evaluate Succession Planning Grant applications.
- (5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the Commission.
- (6) The Commission may rank projects and shall provide funding recommendations to the Board.
- (7) The Board may fund a grant application in whole or in part.

698-XXX-0090

Grant Agreement Conditions

- (1) The grantee must submit a report at completion of the project describing the work completed as described in OAR 698-XXX-0100.
- (2) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (3) The Director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

698-XXX-0100

Grant Funding Conditions

All succession Planning Grant agreements authorized by the Board shall have a clause that requires the retention of up to ten percent of project funds until the final report, as required in the grant agreement, has been approved. Final reports are due within 60 days of project completion. Any unexpended OAHP funds must be returned to the Commission with the final report. Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed.

698-XXX-0100

Grant Reporting Requirements

- (1) Upon project completion, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon agricultural owners or operators and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program;
 - (ii) The geographic, commodity, and other demographic diversity of participants in the program;
 - (iii) Documented improved understanding of succession planning by program participants;
 - (iv) Documented measurable changes in behavior of participants, including the percentage or number of owners of working lands who take the next step toward succession planning, complete a plan, and implement the plan;
 - (v) Documented improved understanding by participants of tools to prevent fragmentation of working land, reduce conversion of working land from agricultural production and promote economic viability and ecological sustainability of agricultural operations; and
 - (vi) Other documentation of the project's success in contributing to achieve the purpose of this grant program.

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- (3) The OWEB Director or the Commission may authorize an independent performance audit of any Succession Planning Grantee, and if the Director determines the grantee is not complying with the rules of the Succession Planning Grant program, may restrict future grant funds.
- (4) In addition to project evaluations, the Commission may conduct program evaluations that may include changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning, surveys of agricultural owners or operators on the status of succession plans, and other trends in working land ownership and use.

698-XXX-0110

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division XXX unless required by statute, when doing so will result in more efficient or effective implementation of the Succession Planning Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division XXX
Oregon Agricultural Heritage Program Administration

698-XXX-0010

Purpose

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

The purpose of OAHP is to contribute to the public benefits of:

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

Comment [NM1]: Taken from whereas statement of HB 3249

698-XXX-0020

Definitions

- 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) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.
- 3) "Commission" means the Oregon Agricultural Heritage Commission created under ORS 541.986.
- 4) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.
- 5) "Fragmentation" is the division of a working farm or ranch into smaller parcels, 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.
- 6) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. 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.
- 7) "OWEB" means the Oregon Watershed Enhancement Board state agency.
- 8) A "Technical committee" is a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

- 9) “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.
- 10) “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.
- 11) “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.

698-XXX-0030

Application Requirements

- 1) Applications must be submitted on the most current form prescribed by the Commission. Current applications are available on the OWEB website. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application and the required attachments, an applicant may submit additional information that will aid the Commission in evaluating the project.
- 2) All applicants for Oregon Agricultural Heritage Program grants shall supply the following information:
 - a. Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s);
 - b. Name and address of participating agricultural owners or operators;
 - c. Name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, or stream mile, as appropriate;
 - d. Estimated line item budget for the project using the most current budget form prescribed by the Commission. Current budget forms are available on the OWEB website;
 - e. Identification of specific project elements for which OAHP funds will be used;
 - f. A list of any non-OAHP funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;
 - g. If the project is part of a multi-year project, and a new funding request continues a previously Commission-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;

- h. Identification of volunteers and partners (if any) and the contribution they will make to the project;
 - i. A project schedule including times of project beginning and completion; and
 - j. Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.
- 3) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all participating landowners of the existence of the application and has also advised all landowners that all monitoring information obtained on their property is public record. If contact with all landowner was not possible at the time of application, explain why.
 - 4) 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.

698-xxx-0040

Application Processing

- 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) The Commission may require additional information to aid in evaluating and considering a proposed watershed project.

698-xxx-0050

Grant Agreement Conditions

- 1) The Board will enter into new agreements with prior Grantees only if all reporting obligations under earlier agreements have been met.
- 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.
- 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.
- 6) The Grantee will account for funds distributed by the Board, using project expense forms provided.

- 7) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board.
- 8) The Board may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the program, including:
 - a. A commitment by the agricultural owner or operator for continued access for monitoring the project after completion;
 - b. A commitment by the Grantee to maintain the project for a period of time as deemed appropriate by the Board;
 - c. A commitment to supply future reports on the project as required; and
 - d. Such other conditions as the Board deems appropriate to the particular circumstances of the project.

698-xxx-0060

Distribution of Funds

- 1) The Director may withhold payments to a Grantee in a situation where there are significant and persistent difficulties with satisfying Board requirements.
- 2) Funds will be released upon presentation of a completed fund release request form 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.
- 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 the Commission. 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.

Division 698-XXX-0070

Technical Committees

In addition to technical committees established by the Board and Commission to rank and evaluate conservation management plan and working land conservation covenant and easement 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) and (3).

698-xxx-0080

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division XXX 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 in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the commission and revised as necessary and appropriate.



Issue Paper: Eligibility to Apply for Oregon Agricultural Heritage Program Conservation Covenant and Easement Grants

Statutory Requirements

HB 3249 authorizes OWEB to grant funds for acquisition of a working land conservation covenant or easement “to an organization that is a holder, as defined in ORS 271.715, other than a state agency.” These organizations may be a: county, metropolitan service district; soil and water conservation district; city or park recreation district, certain types of county service district, charitable corporation, association, or trust; watershed council; or Indian tribe. For a charitable organization to qualify, its purpose must include “retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.”

OAHP Draft Rules

One of the mandatory evaluation criteria for working land conservation covenants and easements (as well as conservation management plans) is: “The capacity of the organization that filed the application to enter into a conservation management plan, accept a working land conservation covenant or working land conservation easement, and the competence of the organization.” The draft rule that the Oregon Agricultural Heritage Commission will consider at their May meeting to define this statutory criterion is:

“The capacity and competence of the organization that filed the application to create, hold, monitor, steward, and enforce a working land conservation covenant or working land conservation easement, including:

- a) Accreditation from the Land Trust Accreditation Commission, or implementation of similar standards and practices to an organization eligible for accreditation;
- b) Inclusion of 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, expertise, and track record to own, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and
- e) The strength of the organization as measured by effective governance.”

The Land Trust Accreditation Commission, referred to in (a), requires that the land trust to have been in existence for at least two years. The certification process is rigorous and includes evaluation of board recruitment and training procedures; board size, skills, and experience; the board oversight role, frequency of meetings, presence of briefing materials and minutes; conflict of interest policies; dispute resolution processes; and results of an annual audit. The trust has to have in hand at least \$3,500 in restricted funds for stewardship for each easement and must carry directors' insurance, liability insurance and property insurance. In addition, many details of the organization's budget, easement transactions, and monitoring are evaluated.

Land Trust Alliance standards and practices address:

1. Ethics (including a written code of ethics and a written whistleblower policy), mission (including strategic goals reviewed annually), and community engagement;
2. Compliance with laws, including those governing nonprofit organizations and federal tax exemption;
3. Board accountability, including oversight and personnel practices, board composition and structure, recruitment and training, and details of governance;
4. Conflicts of interest, including a written policy on how conflicts of interest are avoided and managed;
5. Fundraising, including ethical practices and accountability to donors.
6. Financial oversight, including financial records, oversight, internal controls and insurance;
7. Human resources, including capacity, volunteer management, and staffing policies.
8. Evaluating and selecting conservation projects, including planning, evaluation and public benefit;
9. Ensuring sound transactions, including legal, financial and technical support; easement drafting; and due diligence;
10. Tax benefits and appraisals;
11. Conservation easement stewardship, including baseline documentation, monitoring, landowner relationships, enforcement, and amendments; and
12. Fee land stewardship.

ACEP/ALE Requirements

The Agricultural Conservation Easement Program-Agricultural Land Easements (ACEP-ALE) administered by the Natural Resources Conservation Service, is a likely source of matching funds for OAHP grants. Entities eligible for these grants are state and local government agencies, nonprofit 501(c)(3) organizations, and federally recognized Indian tribes. Nonprofit organizations must have been in existence for at least one year and:

- Be organized and operated principally for conservation
- Have the authority to acquire, hold, manage, and enforce conservation easements
- Have an established farmland conservation program that purchases conservation easements
- Have demonstrated a commitment to the long-term conservation of agricultural lands
- Not be delinquent in responsibilities for previous agreements

The organization must have its share of the funding on hand, have an agricultural land easement plan prior to closing, and must have funding and capacity dedicated to monitoring, stewardship and enforcement.

Eligibility Requirements for ACEP-ALE Participation and LTAC Certification

Criterion: HB 3249

Conservation Purposes

For a charitable corporation, association, or trust, purposes/powers include: 1) retaining or protecting natural, scenic, or open space values of real property, 2) assuring availability of real property for agriculture, forest, recreation, or open space, 3) protecting nat. resources, 4) maintaining or enhancing air/ water quality, or 5) preserving historical, architectural, archaeological, or cultural aspects

Structure

- County
- Metropolitan service district
- SWCD
- City or park recreation district
- A charitable corporation, association, or trust
- Watershed council
- No fed/state agency

Criterion: Draft Rule

Conservation Purposes

- The organization's mission must include land preservation
- Demonstrated relevant commitment (might be demonstrated by mission/vision), expertise, and track record to own and steward conservation covenants and easements or other relevant projects

Structure

- Allowed to hold a conservation easement by statute, and
- Accredited by Land Trust Accreditation Commission or eligible for accreditation and implementing similar standards and practices

Governance

Effective governance

Finance

Financial capability to steward conservation covenants and easements over time

Stewardship and Monitoring

Financial capability to steward conservation covenants and easements over time

Criterion: Land Trust Accreditation Commission Certification

Years in Existence

2 years or more

Governance

Board Structure and Operations

- Recruitment procedures
- Board training
- Size, skills, experience
- Oversight

Board Meetings

- 3 or more times/yr
- Briefing materials
- Minutes

Strategic Goals

Established by board

Conflict of Interest

- Policy established
- Process for resolution

Finance

Annual audit

Stewardship and Monitoring

- Has at least \$3,500 in restricted funds per easement
- Management plan for each property
- Easements monitored at least annually
- Has enforcement policies and procedures

Insurance

Directors, liability, property

Criterion: ACEP-ALE

Years in Existence

1 Year or More

Conservation Purposes

- Is organized and operated principally for conservation (NGO)
- Has the authority to acquire, hold, manage and enforce conservation easements
- Has an established farmland conservation program that purchases conservation easements
- Has a demonstrated commitment to the long-term conservation of agricultural lands
- Not delinquent in responsibilities for previous agreements

Structure

- State or local government
- 501(c)(3)
- Tribes federally recognized or having a 501(c)(3)

Governance

Finance

Has available funds for the entity's contribution

Stewardship and Monitoring

- Has an agricultural land easement plan prior to closing
- Has capacity and funding dedicated to monitoring, stewardship and enforcement

Eligibility Requirements for ACEP-ALE Participation and LTAC Certification

Criterion	HB 3249	Draft Rule	Land Trust Accreditation Commission Certification	ACEP-ALE
Years in existence			<ul style="list-style-type: none"> • 2 years or more 	<ul style="list-style-type: none"> • 1 year or more
Conservation purposes	<ul style="list-style-type: none"> • For a charitable corporation, association, or trust, purposes/powers include: 1) retaining or protecting natural, scenic, or open space values of real property, 2) assuring availability of real property for agriculture, forest, recreation, or open space, 3) protecting nat. resources, 4) maintaining or enhancing air/ water quality, or 5) preserving historical, architectural, archaeological, or cultural aspects 	<ul style="list-style-type: none"> • The organization’s mission must include land preservation • Demonstrated relevant commitment (might be demonstrated by mission/vision), expertise, and track record to own and steward conservation covenants and easements or other relevant projects 		<ul style="list-style-type: none"> • Is organized and operated principally for conservation (NGO) • Has the authority to acquire, hold, manage and enforce conservation easements • Has an established farmland conservation program that purchases conservation easements • Has a demonstrated commitment to the long-term conservation of agricultural lands • Not delinquent in responsibilities for previous agreements
Structure	<ul style="list-style-type: none"> • County • Metropolitan service dist. • SWCD • City or park recreation dist. • A charitable corporation, association, or trust • Watershed council • No fed/state agency 	<ul style="list-style-type: none"> • Allowed to hold a conservation easement by statute, and • Accredited by Land Trust Accreditation Commission or eligible for accreditation and implementing similar standards and practices 		<ul style="list-style-type: none"> • State or local government • 501(c)(3) • Tribes federally recognized or having a 501(c)(3)

Governance		<ul style="list-style-type: none"> • Effective governance 		
Board structure and operations			<ul style="list-style-type: none"> • Recruitment procedures • Board training • Size, skills, experience • Oversight 	
Board meetings			<ul style="list-style-type: none"> • 3 or more times/yr • Briefing materials • Minutes 	
Strategic goals			<ul style="list-style-type: none"> • Established by board 	
Conflict of interest			<ul style="list-style-type: none"> • Policy established • Process for resolution 	
Finance		<ul style="list-style-type: none"> • Financial capability to steward conservation covenants and easements over time 	<ul style="list-style-type: none"> • Annual audit 	<ul style="list-style-type: none"> • Has available funds for the entity's contribution
Stewardship & monitoring		<ul style="list-style-type: none"> • Financial capability to steward conservation covenants and easements over time 	<ul style="list-style-type: none"> • Has at least \$3,500 in restricted funds per easement • Management plan for each property • Easements monitored at least annually • Has enforcement policies and procedures 	<ul style="list-style-type: none"> • Has an agricultural land easement plan prior to closing • Has capacity and funding dedicated to monitoring, stewardship and enforcement
Insurance			<ul style="list-style-type: none"> • Directors, liability, property 	

Eligibility Requirements for ACEP-ALE Participation and LTAC Certification

Criterion	HB 3249	Draft Rule	Land Trust Accreditation Commission Certification	ACEP-ALE
Years in existence			<ul style="list-style-type: none"> • 2 years or more 	<ul style="list-style-type: none"> • 1 year or more
Conservation purposes	<ul style="list-style-type: none"> • For a charitable corporation, association, or trust, purposes/powers include: 1) retaining or protecting natural, scenic, or open space values of real property, 2) assuring availability of real property for agriculture, forest, recreation, or open space, 3) protecting nat. resources, 4) maintaining or enhancing air/ water quality, or 5) preserving historical, architectural, archaeological, or cultural aspects 	<ul style="list-style-type: none"> • The organization’s mission must include land preservation • Demonstrated relevant commitment (might be demonstrated by mission/vision), expertise, and track record to own and steward conservation covenants and easements or other relevant projects 		<ul style="list-style-type: none"> • Is organized and operated principally for conservation (NGO) • Has the authority to acquire, hold, manage and enforce conservation easements • Has an established farmland conservation program that purchases conservation easements • Has a demonstrated commitment to the long-term conservation of agricultural lands • Not delinquent in responsibilities for previous agreements
Structure	<ul style="list-style-type: none"> • County • Metropolitan service dist. • SWCD • City or park recreation dist. • A charitable corporation, association, or trust • Watershed council • No fed/state agency 	<ul style="list-style-type: none"> • Allowed to hold a conservation easement by statute, and • Accredited by Land Trust Accreditation Commission or eligible for accreditation and implementing similar standards and practices 		<ul style="list-style-type: none"> • State or local government • 501(c)(3) • Tribes federally recognized or having a 501(c)(3)

Governance		<ul style="list-style-type: none"> • Effective governance 		
Board structure and operations			<ul style="list-style-type: none"> • Recruitment procedures • Board training • Size, skills, experience • Oversight 	
Board meetings			<ul style="list-style-type: none"> • 3 or more times/yr • Briefing materials • Minutes 	
Strategic goals			<ul style="list-style-type: none"> • Established by board 	
Conflict of interest			<ul style="list-style-type: none"> • Policy established • Process for resolution 	
Finance		<ul style="list-style-type: none"> • Financial capability to steward conservation covenants and easements over time 	<ul style="list-style-type: none"> • Annual audit 	<ul style="list-style-type: none"> • Has available funds for the entity's contribution
Stewardship & monitoring		<ul style="list-style-type: none"> • Financial capability to steward conservation covenants and easements over time 	<ul style="list-style-type: none"> • Has at least \$3,500 in restricted funds per easement • Management plan for each property • Easements monitored at least annually • Has enforcement policies and procedures 	<ul style="list-style-type: none"> • Has an agricultural land easement plan prior to closing • Has capacity and funding dedicated to monitoring, stewardship and enforcement
Insurance			<ul style="list-style-type: none"> • Directors, liability, property 	



Oregon Agricultural Heritage Commission

Wednesday, May 23, 2018

Materials for Today's Meeting

- ▶ Agenda
- ▶ Minutes
- ▶ Draft Rules for Conservation Management Plan
- ▶ Draft Rules for Easement and Covenant
- ▶ Draft Rules for Succession Planning
- ▶ Draft Rules for Technical Assistance
- ▶ Draft Admin Rules
- ▶ Summary of ACEP-ALE and Land Trust Accreditation Committee standards
- ▶ Katherine Daniels Comment
- ▶ Public comment

Conservation Management Plan Rules

Purposes 0010

- ▶ Statute purpose for CMP
- ▶ Rule purpose for OAHP
- ▶ Statute permissive provisions: soil, water, plants, animals, energy and human need considerations.

Definition 0020

“Mutual Modification” means a change to a conservation management plan that is:

- (1) Material to the plan as defined in section XX11(6); and
- (2) Agreed to by both the agricultural owner or operator implementing the plan and the conservation management plan holder.

Conservation Management Plan Rules

Eligibility 0030

Edit:

~~“Individual agricultural owners or operators and individual persons advising them are not eligible to apply for a Conservation Management Plan Grant”~~

Components 0070

Added: (9) If applicable, a maintenance plan for infrastructure that may affect neighboring lands if not maintained over time;

Edited: (12) A conflict resolution protocol **for the agricultural owner or operator and the grantee** if plan implementation is being funded

Conservation Management Plan Rules

Criteria 0080

Dean Moberg: Most of the criteria require a plan to already be mostly completed. May be too late to change things drastically, but it seems like these criteria would work to prioritize which plans are funded for implementation. Maybe the criteria for funding staff to complete plans should be something like the NRCS CIS approach, in which a SWCD would develop an area-wide plan at their own cost and then apply to OWEB for funds to write individual conservation plans. Finally, the grantee could apply for funds to implement those plans.

1) The significance of the agricultural, ecological, and social values of the working land subject to the conservation management plan.

Guidance would include: Integration of agriculture and conservation that increase protection of both

Does this address the commission's concern?

2) The extent to which the implementation of the plan(s) will contribute to the agricultural, ecological, and social values of the surrounding area.

Reworded to allow clustering of projects, early adopters in areas with few plans, recruitment of other working lands projects, and account for parcel size vs. number of projects.

This might be covered in 4b&c, 5, 7c&d, and 8a

Conservation Management Plan Rules

Criteria 0080

3) The extent to which implementation of the plan(s) would protect, maintain, or enhance farming or ranching on working land, including how implementation of the plan would

3) b) Changed “non-farm use” to “conversion from agricultural uses on, the working land subject to the plan”

4) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values

Guidance for 4) a) is

- ▶ Increased soil health
- ▶ Increased carbon sequestration
- ▶ Increased water quality
- ▶ Increased ecosystem function and resilience
- ▶ Strategies to protect vulnerable species, species of concern, and/or ESA listed species, but does not necessarily create a single-species management plan
- ▶ This does not exclude forestry

Conservation Management Plan Rules

Criteria 0080

5) The extent to which implementation of the plan(s) would protect significant agricultural outcomes, benefits, or other investment gains, including **the role that the working land subject to the plan plays in the local community or economy**

Or change “the role...” to “The regional importance of the agricultural operation and land base” to be consistent with easement/covenant

Define benefits, investment gains (ag infrastructure)

6) The capacity and competence of the organization that filed the application to enter into and (if implementation funding is awarded) oversee implementation of a conservation management plan

- ▶ Financial Capacity
- ▶ Commitment, expertise and track record
 - ▶ Mission, vision, other statement
- ▶ Strength/Effective governance

Conservation Management Plan Rules

Criteria 0080

6) c) The strength of the organization as measured by effective governance

- ▶ Agricultural owners or operators on the Board;
- ▶ Dedicated staff capacity (e.g. in their job description and work plan), staff training, and years of experience
- ▶ If implementation funding is awarded, ability to manage staff transitions and a plan to assign project administration to another entity if needed
- ▶ Working relationships with funders, project partners, and the community.

7) The extent to which the benefit to the state may be maximized

- ▶ Leverage
- ▶ Duration
- ▶ Cumulative benefits of other investments in the community/**region/area (define) – Dean M. unnecessary? Hard to quantify? Move to guidance?**
- ▶ Setting an example to encourage more projects

8) ~~The extent and nature of the impacts of plan implementation on owners or operators of neighboring lands~~

- ▶ Positive and negative
- ▶ A plan for communicating with neighboring landowners once the conservation management plan(s) is/are ready to be implemented about how to mitigate any negative impacts
- ▶ A maintenance plan or plans for infrastructure that may impact neighboring lands if not maintained over time.
 - ▶ **Dean M.** Maintenance plans should use affordable, feasible, and effective methods.

Conservation Management Plan Rules

0090 Technical Review and Funding Process

(5) The technical committee(s) shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.

(6) The Commission shall review and consider the recommendations of the technical committee(s) appointed under 698-XXX-0040(4) and consult with the Board concerning grant applications.

0100 Grant Agreement Conditions

(1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural owner(s) or operator(s) to the roles and responsibilities under the conservation management plan.

(5) Rules and conditions in place at the time the conservation management plan is formally adopted shall govern throughout the term of the plan unless changes are mutually agreeable to both parties. **Tom Salzer**

0110 Mutual Modifications

(1) Any changes to conservation management plans must achieve the same or greater level of benefits as the original plan, as evaluated by the criteria in 698-XXX-0080. **Dean Moberg**

(5) The agricultural owner or operator must contact the grantee **immediately** if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes. **Tom Salzer**

0120 CMP Monitoring

(5) The Commission may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. **The agricultural owner or operator shall allow site access upon reasonable notification** by the Commission. **Tom Salzer**

Covenant/Easement Rules

0010 Purpose

Move purpose to admin statute

0020 Definitions

- ▶ Bargain Sale
- ▶ Management Plan (from OWEB acquisition definition)
- ▶ Profit
- ▶ Stewardship Endowment

0030 Eligible Entities

- ▶ Statutory definition
- ▶ No individuals
- ▶ **Bari Williams:** Consider adding a criterion that the entity has the authority to purchase and hold agricultural easements with an established program to manage ag easements. Thereby limiting the eligible applicants to those with the purpose of protecting agricultural in their foundational bylaws.

Covenant/Easement Rules

0040 Application

3) The Commission may consider proposals that are received for properties that were acquired by the applicant after the previous application deadline. **Is this OK?**

0050 Match

25% of all costs?

Eligible match funds and activities:

- ▶ In-kind contributions to activities listed under OAR 698-XXX-0060;
- ▶ Funding commitments made by others as a result of grant applicant efforts;
- ▶ The donated portion of a bargain sale; and
- ▶ Funds deposited in a stewardship endowment before the time that OWEB funds are released for acquisition of the property.

Covenant/Easement Rules

0060 Use of Grant Funds

Statute states “purchasing, implementing, carrying out or monitoring of the covenant or easement.”

- 10) Funding for a stewardship endowment. (Consider higher match requirement)

0070 Covenant Term

- 2) 12-month increments only and not partial years
- 3) The first day of the term of a covenant shall be the date that both of these event have occurred:
 - ▶ The covenant holder and the agricultural owner or operator conveying the covenant sign the agreement; and
 - ▶ Consideration has been paid for the covenant.

Covenant/Easement Rules

0080 Evaluation Criteria

Bari Williams: It would be beneficial to have an overview of the ranking process, is it going to be based on a point system, on a statewide ranking worksheet, reviewed and developed by whom, timeline for ranking in the application process, will there be a cut-off for ranking in which all applicants will be evaluated for funding, an outlay of the process and procedures. Also, what documentation will be required and is this documentation supplied with the application or gathered later? Would potential easement holders be able to weigh in on the ranking or excluded from providing priorities?

1) The significance of the agricultural, ecological, and social values of the working land subject to the working land conservation

Bari "significance" is not defined.

In Guidance: Integration of agriculture and conservation that increase protection of both

Covenant/Easement Rules

0080 Evaluation Criteria

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

- ▶ Level of risk of conversion
- ▶ Fragmentation (~~nonfarm use~~)
- ▶ Ability for land to remain in production (**all or enough?**)
- ▶ Viability of the land for ag
- ▶ Viability of the operation (including succession)

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

Same as CMP

Covenant/Easement Rules

0080 Evaluation Criteria

4) The extent to which the covenant or easement would protect significant agricultural outcomes, benefits or other investment gains to the region

- ▶ Ag land base
- ▶ Regional importance of the operation

Make consistent with CMP???

5) The capacity and competence of the organization that filed the application to create, hold, monitor, steward, and enforce a working land conservation covenant or working land conservation easement

- ▶ Accreditation: Tom Salzer I do not like tying a rule to outside standards or an organization that may change over time
- ▶ land preservation in the organization's mission, vision or other organizational documents (or in commitment section like CMP?)
- ▶ Strength/governance. Guidance: ag owner/operators on Board

Covenant/Easement Rules

0080 Evaluation Criteria

6) The extent to which the benefit to the state from the investment may be maximized

- ▶ Preference for covenant/easement with CMP?
- ▶ Cumulative impacts of investments in community = **critterion 4?**
- ▶ Effects of land use planning **what in rule/guidance?**

7) The extent and nature of the impacts of the covenant or easement on owners or operators of neighboring lands

- ▶ Positive/negative
- ▶ Plan for communication

Covenant/Easement Rules

0100 Board Approval and Delegation of Authority

Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval.

Commission: This is current OWEB language - may want more flexibility for OAHP

0110 Public Involvement

Requirement under another statute.

Rules contain OWEB's process

0120 Director Funding Approval and Disbursement

Commission: if you approve more flexibility under XXX-XXX-0080, you may want to change wording here to say:

The Director may approve distribution of grant funds. Funds may be distributed throughout the time between approval by the Board and the property closing as the following conditions are met:

Covenant/Easement Rules

0140 Compliance and Enforcement

Also for CMP?

Bari Williams:

Monitoring and enforcement process overview at the beginning of this section.

Include requirements to follow the easement and covenant terms

General timelines to give applicants expectations, that can be extended due to approved circumstances. For example, most violations should be addressed within 30 days. If the applicant has not commenced corrective action within 180 days then the Director may initiate action.

Define “significant” and “full satisfaction”

Notify OAHC of violations and do corrective action plans if the violations are not “significant”?

Tom Salzer:

Annual monitoring report or only notify OAHC for enforcement? Rules and conditions in place at the time funding for the working land conservation covenant or easement is formally approved shall govern throughout the term of the easement or covenant unless changes are mutually agreeable to both parties.

Covenant/Easement Rules

0160 Payment - Cov/Ease

OPTION 1:

- ▶ If a covenant is funded through the Oregon Agricultural Heritage Program and a later application is submitted for the same property for a conservation easement:
- ▶ 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 conservation easement.
- ▶ If the term of the covenant has expired, no reduction of fair market value will be taken for the conservation easement.

OPTION 2:

- ▶ If a covenant is funded through the Oregon Agricultural Heritage Program, and a later application is submitted for the same property for a conservation easement, once the fair market value is calculated, the payment for the easement will be reduced by an amount equivalent to the value paid for the covenant.

Administrative Rules

- ▶ **Dean Moberg:** "Can you add a brief paragraph that describes why Oregon ag is so important and ho there is a need for a new process to ensure ag remains vibrant, productive, profitable and conservative of resources?"

SUCCESSION

- Technical changes completed
- Cost effectiveness in criteria

Conservation Management Plans

Technical fixes were made and comments captured for guidance

Purpose (698-xxx-0010)

- **Add number 4:** Must maintain or enhance agricultural values of the farm or ranch.
- Protect, maintain or enhance farming and ranching...

Eligible Activities (698-xxx-0050)

- Discuss existing wording (per Derek)
- **Add:** The commission may receive funds as described in ORS XXXXXX and recommend grants for funding. The commission may receive funds that are restricted for a specific purpose, as long as the purpose of the funding is compatible with the purposes of the program as described in 698xxx0010.

Covenants & Easements

Do we add section: Transaction Requirements

- Easement from OAHP takes precedent over other easement documents
 - In the event of conflict, the easement is the governing document.
- If a separate management plan is part of a proposal for a covenant or easement, the proposed management plan must be agreed to by landowner, applicant, and commission before closing.

Use of Grant Funds (698-xxx-0060)

- Are we ok? There is a question mark.

Overall question

- Agricultural, **ecological** and related social values

UGB Follow Up

Covenants & Easements

Evaluation Criteria (698-xxx-0080)

- (2) “regionally significant”
- (3) **New:** Extent to which future management, as evidenced by a management plan, easement or covenant terms, or inherent site condition is likely to sustain existing ecological values.
- **New:** The degree to which applicant has demonstrated significant potential risk of conversion or fragmentation.

Evaluation Criteria

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

- The extent to which the covenant or easement improves water quality;
- The extent to which the covenant or easement improves seasonally appropriate flows **or water retention when appropriate**;

CHANGE TO:

- The extent to which the covenant or easement protect, maintain, or improves water quality and/or quantity.
- Move retention language to guidance

Procedural

“Fragmentation” is the division of a working farm or ranch ~~into smaller parcels~~ (~~unrelated~~ ~~ownerships~~), 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.

Putting it Together

- What brought you to the table and kept you at the table?
- What do your members want from a successful program?
- What were your deal-breakers?

Putting It Together

Can we say YES? Did we meet the grand bargain?

The rules create a sound/definitive pathway for tools that warrant public funding and will....

- ...keep Oregon farms and ranches as farms and ranches without discriminating among any type of agriculture or geography.
- ...integrate protecting agriculture and natural resource values.
- ...prevent fragmentation or conversion from agriculture use.

Is there anything you personally gave up that is giving you heartburn that you want to discuss?

SUCCESSION

- Technical changes completed
- Cost effectiveness in criteria

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Oregon Agricultural Heritage Commission Meeting Agenda October 31 - November 1, 2018

Best Western Premier Boulder Falls Inn
505 Mullins Drive
Lebanon, Oregon 97355
United States
Directions: <https://goo.gl/maps/g5xzN27qAUx>

The time listed for each agenda item is approximate. The commission may also elect to take an item out of order in certain circumstances. During the public comment period at 11:40 a.m., anyone wishing to speak to the commission about the Oregon Agricultural Heritage Program (OAFP) is asked to fill out a comment request sheet (available at the information table). This helps the commission know how many individuals would like to speak and to schedule accordingly. Persons are requested to limit their comments to 3 to 5 minutes. Written comments will also be accepted at any time before the commission meeting. Written comments from persons not attending the meeting should be sent to Eric Williams, eric.williams@oregon.gov.

October 31

Welcome, Housekeeping, and Introductions (3:00 p.m.)

Chair Doug Kraemer will welcome the commission and public. *Information item.*

Letters of Interest (approximately 3:15 p.m.)

The Commission received 28 letters of interest from prospective eligible applicants describing viable working lands easement and covenant projects totaling over \$38 million in potential requests to the program. The Commission will review a staff report describing the letters of interest. *Information item.*

Adjourn (approximately 5:00 p.m.)

November 1

Welcome, Housekeeping, and Introductions (8:00 a.m.)

Chair Doug Kraemer will welcome the commission and public. *Information item.*

Review and Approval of Minutes (approximately 8:15 a.m.)

The minutes of the June 25, 2018 meeting will be presented for approval. *Action item.*

Public Comment (approximately 8:20 a.m.)

Members of the public who have signed up to give public comment will speak to the commission about OAFP.

Review Responses to Public Comments on Draft Rules (approximately 8:40 a.m.)

The commission will review public comments on draft rules and approve responses to public comments. *Action item.*

Lunch (approximately 12:00 p.m.)

For OAHC Commissioners and OWEB staff only.

Review and Approval of Proposed Rules (approximately 1:00 p.m.)

The commission will review proposed staff and Department of Justice edits to proposed rules and approve Rules to submit to the OWEB board for final approval. *Action item.*

Break (3:00 p.m.)

Review and Approval of Proposed Rules (cont'd, approximately 3:15 p.m.)

Proposed Statutory Changes (approximately 4:30 p.m.)

The commission will be presented with a staff report and redline document describing proposed changes to the OAHHP statute, [ORS 541.977 – 541.989](#). The commission approved proposed changes at its June 2018 meeting; this is an informational item on the status of proposed legislation for the 2019 session. *Information item.*

Summary of Discussion, Location in the Process, and Next Meeting (approximately 4:45 p.m.)

OWEB staff will help the commission summarize the day's discussion and identify next steps in the commission's process.

Adjourn (approximately 5:00 p.m.)



Staff Report: Letter of Interest for Covenants and Easements

October 31 – November 1, Commission Meeting

Introduction

OWEB's Agency Request Budget for the next biennium, 2019-2021, includes a request for \$10 million to fund OAHC programs. In order to inform the legislative process, the commission directed staff to solicit letters of interest from willing sellers to document the current need for working lands conservation easements and covenants.

Background

The Oregon Agricultural Heritage Program (OAHP) is a program administered by the Oregon Watershed Enhancement Board that provides voluntary incentives to farmers and ranchers to support practices that maintain or enhance both agriculture and natural resources such as fish and wildlife on agricultural lands. One of those grant programs provides match funding for working land conservation covenants and easements, which preserve and protect the continued use of a working land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, water quality, or other natural resource values on the land.

Since OAHP's grant programs are currently unfunded, the purpose of this endeavor was to understand the existing demand for the grant program, the quality of the projects that are ready to be implemented within the next 5 years, and the potential funding requests associated with those projects.

Methodology

The solicitation of interest was distributed widely to land trusts, soil and water conservation districts, and other interested parties to determine current funding needs for conservation easements. In the interest of simplicity, prospective applicants were asked to submit two pages of information describing the acreage, value, urgency, conservation value, and agricultural value of a prospective easement.

To provide an appropriate level of seriousness of the prospective project, respondents were asked to certify that the landowner has expressed interest in, and the intent to pursue, a working lands conservation easement. To protect landowner confidentiality, the letter of interest contains limited geographic data including county, nearest city, and number of acres, but no information identifying the landowner.

Summary of Responses

OWEB received 28 letters of interest from 11 eligible program applicants from around the state, which are summarized in Attachment A.

Applicants

Eight respondents were land trusts - 501(c)(3) non-profits with a mission to conserve land - and 3 were soil and water conservation districts (SWCDs) - local bodies of government that help constituents of their districts voluntarily conserve natural resources. Twenty applications were submitted by land trusts and 8 applications were submitted by SWCDs.

Project Size

The total acres for all 28 projects is 78,038, ranging from a 15-acre nursery in East Multnomah County and 16-acre Jackson County farm, to an 18,850-acre ranch in Mitchell (Wheeler County). The average acres per parcel is 2,787 and the median is 438, suggesting that several relatively large parcels are outliers among the suite of projects. Total acreage for farm operations is 838, with an average of 70 acres and a median of 35 acres. Total acreage for ranch operations is 77,374, with an average of 4,825 acres and a median of 1,337 acres.

Operation Types

Submitted projects include 12 farms and 16 ranches. Farm operations included ornamental nursery production, berries, hazelnuts, and seed and grain. At least 7 properties also contained significant forest (all ranches).

Location

Projects were located throughout the state, with 11 located east of the Cascade Mountain Range and 17 to the west of the Cascades. Seven were located in the North Willamette Valley, 5 were located in Wallowa County, 4 were located in the John Day Basin, 4 were located on the South Coast, 3 were located in Southwest Oregon, 3 were located in the South Willamette Valley, 1 was located in Central Oregon, and 1 was located in Union County.

Project Costs

The total value of estimated covenant and easement acquisition costs is \$53,162,405. The least expensive acquisition cost \$59,000 for a 35-year covenant (the only covenant project submitted) on the 25-acre property in Forest Grove mentioned above. Estimated easement values ranged from \$52,945 for a 99.6-acre farm in Union (Union County) to \$18,300,000 for the 7,400-acre Jackson County ranch mentioned above. The average estimated covenant or easement acquisition cost is \$1,898,657 and the median is \$646,500, again suggesting that several relatively expensive easements are outliers among the suite of projects. Applicants generally estimated easement costs by applying the fee/easement ratio from similar transactions in the region to the property at hand.

The total value of estimated OAHP requests is \$38,421,890, taking into account that the program may match project costs up to 75%. Estimated requests range from \$38,958 for the 99.6-acre ranch in Union County to \$13,700,000 for the 7,400-acre ranch in Jackson County. Notably, Tualatin SWCD submitted the only request for due diligence and staff time alone, with the landowner donating the value of the easement (estimated at \$345,000). The average estimated OAHP request is \$1,372,210 and the median is \$427,500, again suggesting that several large estimated requests are outliers among the projects.

Staff Contact

If you have questions or need additional information, contact Eric Williams, Grant Program Manager, at eric.williams@oregon.gov, or 503-986-0047.

Attachments

A. Summary Table, Letters of Interest

Attachment A - Letters of Interest Received by OAHP - September 2018

Organization	Type	Acres	County	Nearest Town	Est. Cov/Ease	Est OAHP Request	Ag Type
Blue Mountain Land Trust	Easement	3,696	Grant	Mt. Vernon	\$1,201,200	\$900,900	Ranch, crop, and forest
Blue Mountain Land Trust	Easement	8,000	Gilliam	Condon	\$2,600,000	\$1,950,000	Ranch and forest
Blue Mountain Land Trust	Easement	12,736	Grant	Seneca	\$4,139,200	\$3,104,400	Ranch and forest
Blue Mountain Land Trust	Easement	18,850	Wheeler	Mitchell	\$6,126,250	\$4,595,000	Ranch and forest
Deschutes Land Trust	Easement	12,894	Crook	Post	\$2,160,000	\$1,665,000	Ranch
East Multnomah SWCD	Easement	15	Multnomah	Gresham	\$393,000	\$294,000	Nursery with infrastructure
East Multnomah SWCD	Easement	18.5	Multnomah	Corbett	\$350,000	\$262,500	Berries
East Multnomah SWCD	Easement	20.05	Multnomah	Corbett	\$540,000	\$405,000	Berries with infrastructure
East Multnomah SWCD	Easement	20.22	Multnomah	Corbett	\$327,000	\$245,250	Berries with infrastructure
East Multnomah SWCD	Easement	45	Multnomah	Gresham	\$480,110	\$360,082	Nursery with infrastructure
McKenzie River Trust	Easement	50	Lane	Pleasant Hill	\$388,000	\$291,000	Hazelnut and fruit
McKenzie River Trust	Easement	230	Lane	Cheshire	\$90,000	\$60,000	Hay, berries, forest
McKenzie River Trust	Easement	498	Lane	Lowell	\$3,325,000	\$1,662,500	Goat ranch
Southern Oregon Land	Easement	16	Jackson	Medford	\$499,100	\$374,250	Farm
Southern Oregon Land	Easement	1,900	Jackson	Ashland	\$2,400,000	\$1,800,000	Ranch and forest
Southern Oregon Land	Easement	7,400	Jackson		\$18,300,000	\$13,700,000	Ranch
The Nature Conservancy	Easement	3,500	Wallowa	Wallowa	\$1,000,000	\$750,000	Ranching, hay & forage
The Nature Conservancy	Easement	5,000	Wallowa	Joseph	\$930,000	\$697,500	Ranching
Trust for Public Lands	Easement	150	Wallowa	Joseph	\$450,000	\$340,000	Farm
Tualatin SWCD	Covenant 35-Year	25	Washington	Forest Grove	\$59,000	\$75,000	Seed and grains
Tualatin SWCD	Easement	149	Washington	Cornelius	\$390,000	\$45,000	Seed crops and hazelnuts
Union SWCD	Easement	99.6	Union	Union	\$52,945	\$38,958	Farming
Wallowa Land Trust	Easement	495	Wallowa	Enterprise	\$693,000	\$400,000	Ranch
Wallowa Land Trust	Easement	774	Wallowa	Enterprise	\$1,083,600	\$541,800	Ranch and Hay
Wild Rivers Land Trust	Easement	82	Coos	North Bend	\$85,000	\$63,750	Ranch and forest
Wild Rivers Land Trust	Easement	395	Curry	Gold Beach	\$1,000,000	\$750,000	Ranch and forest
Wild Rivers Land Trust	Easement	480	Curry	Port Orford	3,500,000	\$2,600,000	Ranch
Wild Rivers Land Trust	Easement	500	Coos	Coquille	\$600,000	\$450,000	Ranch
Totals:		78,038			\$53,162,405	\$38,421,890	



Oregon Agricultural Heritage Commission Meeting Minutes

Oregon Agricultural Heritage Commission (OAHC) Meeting
Monday, June 25, 2018
Marine Park Pavilion
395 SW Portage Rd.
Cascade Locks, OR 97014

MINUTES

OAHC Members Present

Angima, Sam
Bailey, Ken
Bennett, Mark
Johnson, Derek
Krahmer, Doug
Loop, Lois
Neuhauser, Will
Taylor, Bruce

OWEB Staff Present

Fox, Jim
Loftsgaarden, Meta
Redon, Liz
Williams, Eric

Others Present

Alvarado, Ron
Buckmaster, Bruce
Furfey, Rosemary
Hollen, Debbie
Labbe, Randy
Lee, Jan
McAlister, Liza Jane
Reeves, Meg
Robison, Jason

The meeting was called to order at 11:11 AM.

Welcome, Housekeeping, and Introductions

Commission Chair Doug Krahmer welcomed commission members. Executive Director, Meta Loftsgaarden, explained that the Commission's role is shifting from a Rules Advisory Committee to implementing programs prescribed by rule and described the agenda for the day.

Minutes

Commission members reviewed the minutes from the May 23rd and 24th meeting. Lois Loop moved to adopt the minutes, with a second from Ken Bailey. Will Neuhauser abstained because he was not present at the May meeting. Minutes were approved unanimously.

Public Comment

No members of the public offered public comment.

Review and Approval of Draft Rules for Official Public Comment

Executive Director, Meta Loftsgaarden, presented a draft of the OAHP rules for approval to be sent to the public for the public comment period, beginning in July, 2018. Commission members identified the following revisions:

- Making language consistent regarding fragmentation in each of the four places it is used; and
- Incorporating the Oregon Conservation Strategy into the evaluation criteria.

Mark Bennett moved to adopt the proposed rule language with the modifications discussed, with a second by Ken Bailey. Motion was approved unanimously.

Review and Approval of OAHP Budget

Executive Director, Meta Loftsgaarden, presented a staff report and OAHP draft proposed Policy Option packages.

Lois Loop moved to approve the budget and recommend the OWEB Board approve the budget for \$10 million, with a second by Sam Angima. Motion was approved unanimously.

Review and Approval of OAHP Proposed Statutory Revisions

Executive Director, Meta Loftsgaarden, presented a staff report and redline document describing proposed changes to the OAHP statute, [ORS 541.977 – 541.989](#). The commission was asked to approve the proposed changes for consideration by the Legislature during their 2019 session.

Bruce Taylor moved to approve the proposed statutory changes, with a second by Derek Johnson. Motion was approved unanimously.

Review and Approve OAHP Technical Committees

Executive Director, Meta Loftsgaarden, presented a staff report describing the technical committees that the commission proposed during the rule making process, and other potential technical committees that could assist the commission in performing its duties.

Ken Bailey moved to create OAHC committees for Conservation Management Plans, Covenants and Easements, and Succession Planning with up to four members each, with a second by Lois Loop. Motion was approved unanimously.

Review and Approve Letter of Interest for Covenants and Easements

Grant Program Manager, Eric Williams, presented a staff report on a proposed Letter of Inquiry solicitation for Working Land Conservation Covenant and Easement Grants. Eric discussed the contents of a letter of inquiry, and asked the Commission to authorize OWEB staff to initiate a request for letters of inquiry for this grant program.

Mark Bennett moved to authorize OWEB staff to initiate a request for letters of inquiry, with a second by Derek Johnson. Motion was approved unanimously.

Summary of Discussion, Location in the Process, and Next Meeting

Executive Director, Meta Loftsgaarden, discussed the next steps in the process as follows:

- For Succession Planning, Technical Assistance, and Conservation Management Plans OAHP elements, OWEB will solicit letters of support rather than letters of interest.

- The next OAHC meeting will be August 23, and potentially August 22 if the volume of public comments requires it. The only agenda item planned will be developing a final set of rules.
- After the August meeting, the next OAHC meeting will be in December, after the Governor's budget is finalized. The Commission could review the letters of interest and a report from the committee working on payment options.

Welcome and Introductions (3:30 p.m.)

OAHC Co-Chair Doug Kraemer welcomed the OWEB Board, which was followed by brief statements from OWEB Board Co-Chairs Randy Labbe and Will Neuhauser. There were brief introductions around the room. *Information item.*

Description of OAHC Rulemaking Process (approximately 3:35 p.m.)

OAHC Chair Doug Kraemer described the commission's accomplishments since being formed in February and their rule making process in particular. *Informational Item.*

Description of the OAHP Work Group (approximately 3:40 p.m.)

OAHP Work Group member and OAHC Commissioner, Derek Johnson, described the Work Group's process in developing the statute, and the "grand bargain" they struck between conservation and agricultural interests. *Informational Item.*

Description of Commission's Work to Integrate Agricultural and Conservation Interests (approximately 3:45 p.m.)

OAHC Commissioners Bruce Taylor and Ken Bailey described how the commission worked to integrate agricultural and conservation interests in the program rules. *Informational Item.*

Statements from the Commission to the Board (approximately 3:55 p.m.)

Each OAHC Commissioner shared his or her perspective on the program and the rules with the OWEB Board. *Information Item.*

Question and Answer with OWEB Board (approximately 4:10 p.m.)

OWEB Board Co-Chair Will Neuhauser transitioned the conversation into a question and answer period between the OWEB Board and the OAHC, which was facilitated with OWEB Co-Chair Randy Labbe and OAHP Chair Doug Kraemer. *Information item.*

The meeting was adjourned at 5:00 PM.



Staff Report: Response to Public Comment on OAHP Draft Rules for October 31 – November 1, 2018 Commission Meeting

Introduction

The Oregon Agricultural Heritage Program (OAHP) statute authorizes the Oregon Agricultural Heritage Commission (commission) to “assist the Oregon Watershed Enhancement Board with the development of rules for the administration of the programs under ORS 541.977... to 541.989...” ([ORS 541.989\(1\)\(a\)](#)).

Background

At its June 25, 2018 meeting, the commission approved draft administrative rules for public comment. The public comment period closed on October 5. The commission held public hearings in Burns and Salem and received comments from 16 entities. Additional comments were received from the Department of Justice.

Response to Comments

Staff drafted proposed responses to each public comment, included in Attachment A. Where the proposed response indicates a rule change, the change is included in the redline version of the rules in Attachments B through F, annotated with the name of the commenter. DOJ and staff-recommended changes are also included in the redline documents.

Once the commission has voted to approve a final version of the draft rules, OWEB’s Board will vote at its January 15-16, 2019 Board meeting on whether to approve the rules. The rules do not take effect until and unless they receive a vote of approval by OWEB’s Board.

Recommendation

Staff recommends that the commission approve the response to public comment on the proposed OAHP rules in Attachment A, and the final version of the draft rules in Attachments B – F of this staff report.

Attachments

- A. Response to Public Comment
- B. OAHP Administrative Draft Rules
- C. Conservation Management Plan Draft Rules
- D. Covenant and Easement Draft Rules
- E. OAHP Technical Assistance Draft Rules
- F. Succession Planning Draft Rules

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Rules: General Comments			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Pete Schreder ¹ , Lake County Rancher <i>Oral Comment, at Burns Hearing 7/17/18</i>	Mr. Schreder is excited about the support features for ranch succession planning, including helping the next generation update their operations and make them more productive. OAHF seems to be a good, comprehensive package of programs with menus that landowners can explore. It can help preserve conservation efforts and tie conservation back into the rural communities that are vital to supporting this work. It will be important to have regional review teams who know local agriculture to diversify projects. And it is important to have a regional contact who can explain the program to landowners and organizations so it actually gets used and is not too daunting.	Thank you for your comment. Consistent with OWEB's grantmaking process, review team membership will represent diverse geographies and areas of expertise.	N/A N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #1</i>	COLT is excited to see a new program in Oregon that is designed to protect agricultural lands from fragmentation and conversion, and leverage the federal Agricultural Land Easement program. COLT applauds Oregon Agricultural Heritage Commission for shaping this program and for leading a conversation about the need to integrate conservation and working lands.	Thank you for your comment.	N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #2</i>	COLT strongly encourages OWEB staff or a Commission-appointed body to walk through the proposed OAHF rules with staff from NRCS Oregon or their national office to ensure the intended complementary nature of the two programs are borne out in the OAHF rules.	NRCS has been engaged in the rulemaking and will be asked to review the final draft rules.	N/A
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #3</i>	COLT recommends that rules provide consistency in various purposes and definitions.	OWEB will work to create consistency in purposes and definitions.	Yes
Coalition of Oregon Land Trusts (COLT), <i>Gen. Comm. #4</i>	COLT supports changing the statute to "maintaining or enhancing fish or wildlife habitat, water quality, or other natural resource values on the land."	OWEB has proposed this statutory change, and it will be reflected in rule.	Yes
Department of Land Conservation and Development (DLCD), <i>Gen. Comm. #1</i>	DLCD expresses general support for OAHF, which can help access federal funding for the preservation of working agricultural lands and natural resources, including voluntary conservation easements and covenants that can be used to compliment land use regulations (especially Goals 3 and 5). Support for farm succession planning.	Thank you for your comment.	N/A
Department of Land Conservation and	DLCD recommends that the grant evaluation criteria not be eligible for waivers under OAR 698-005-0100, 698-010-0150, 698-015-0180, 698-020-0090, and	Limitations on the Director's right of waiver address this issue. Rules state that: "The	No

¹ All comments were submitted in writing, except for Pete Schreder's oral comment, recorded at the public hearing in Burns on 7/17/18

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Development (DLCD), <i>Gen. Comm. #2</i>	698-025-0120, to prevent the use of a waiver to approve grant applications in locations that are inconsistent with statewide planning goals or local comprehensive plans, and/or locations that would not prevent fragmentation or conversion of working lands.	Director may waive the requirements ... <u>unless required by statute...</u> ” Since ORS 197.180 requires state agencies to take actions that comply with land use goals and rules, and are compatible with comprehensive plans and rules, this cannot be waived.	
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #1</i>	EMSWCD offers general support for OAHP and the rulemaking process.	Thank you for your comment.	N/A
East Multnomah Soil & Water Cons. District (EMSWCD) <i>Gen. Comm. #2</i>	EMSWCD recommends that the evaluation criteria’s references to water quality be changed to read “maintaining existing acceptable water quality or improving unacceptable water quality.”	OWEB has proposed a similar statutory change: “the maintenance or enhancement of fish and wildlife habitat, water quality or other natural resource values.” It will also be reflected in rule.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #3</i>	EMSWCD recommends that OWEB review OAHP rules for consistency with ACEP-ALE to ensure the two programs operate in harmony. E.g., achieving the maximum enhancement of habitat value on a property might be achieved through the conversion of all/most farmland to another habitat type. And maximizing outcomes associated with some of OAHP’s purposes could create challenges in securing ACEP-ALE funding.	NRCS has been engaged in the rulemaking and will be asked to review the final draft rules.	N/A
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Gen. Comm. #4</i>	EMSWCD asks the commission to consider designating some purposes as primary and some as secondary, stipulating that pursuit of the secondary purpose(s) may not conflict with or significantly diminish the primary purpose(s).	Prioritization of some values over others would conflict with the statute’s and commission’s intention to integrate agricultural and conservation objectives. Limited funding and ranking criteria will result in the funding of only projects with high agricultural and conservation values.	No
Friends of Family Farmers (FoFF)	FoFF is generally supportive of efforts to encourage family farm ownership and farmland conservation, as well as efforts to help farmland owners plan for succession as a means to support young, new, beginning, low-income, and socially disadvantaged farmers and ranchers gaining access to farmland.	Thank you for your comment.	N/A
McKenzie River Trust (MRT)	MRT appreciates the potential that OAHP has to transform the funding landscape and lead to meaningful conservation of Oregon’s valuable agricultural heritage.	Thank you for your comment.	N/A

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

National Young Farmers Coalition (NYFC)	NYFC applauds Oregon for creating a comprehensive package of programs that includes grants for conservation management plans and technical assistance and covenants and easements.	Thank you for your comment.	N/A
Oregon Department of Fish and Wildlife (ODFW) <i>Gen. Comm. #1</i>	ODFW supports the development of new tools or programs to address the challenges in a changing landscape, e.g. the critical need for succession planning, and recognizes the natural resource value that working lands provide, including fish and wildlife habitat.	Thank you for your comment.	N/A
Oregon Department of Fish and Wildlife (ODFW) <i>Gen. Comm. #2</i>	ODFW encourages OWEB and the OAH Commission to discuss how the Department's Wildlife Habitat Conservation and Management Program (WHCMP) or the Riparian Lands Tax Incentive Program (RLTIP) (ORS 308A and OAR 635-430) can be integrated or improved upon with the implementation of the OAH to support and strengthen the tools available, and needed, for working land conservation.	OWEB will work with ODFW to schedule a presentation and discussion for the OAH commission on these programs at a future meeting of the commission.	N/A
Oregon Department of Fish and Wildlife (ODFW) <i>Gen. Comm. #3</i>	ODFW requests at least one Department representative to participate on the technical committee(s) for evaluating and ranking conservation management plans and working land conservation covenants and easements.	Consistent with OWEB's grantmaking process, review team membership will represent diverse areas of expertise, including ODFW as appropriate.	N/A
Southern Oregon Land Conservancy	This is a great program and we support it fully. We hope that it receives funding and results in projects with long-lasting benefits.	Thank you for your comment.	N/A
WaterWatch	WaterWatch states that, if public funds are to be distributed to conservation projects, OWEB should ensure that the projects result in demonstrable public environmental benefits. WaterWatch states that the rules as currently written do not ensure this.	The evaluation criteria were designed by the commission to ensure that the grant programs provide public and environmental benefits.	No
Yamhill Soil and Water Conservation District	Give the highest priority and consideration to applications that: 1) ensure lands remain in agricultural production, and 2) provide protections for the longest timeframe possible, with the highest priority given to projects that provide permanent protection with conservation easements.	The evaluation criteria are designed to maintain the viability of agricultural operations. 698-015-0090(6)(b) prioritizes the duration and extent of the agreement, with a preference for longer term agreements.	No
Oregon Board of Agriculture <i>Gen. Comment #1</i>	The Board strongly believes the OAH's main focus should be on working lands. While we believe implementing conservation management plans and improvements to soil health, water quality and fish and wildlife habitat are important objectives, the integration of conservation values with the protection of agricultural lands as working lands is critical to the OAH success.	The commission agrees.	N/A
Oregon Board of Agriculture <i>Gen. Comment #2</i>	Because most Oregon farmers and ranchers have little experience in the use of easements today, ensuring that information about the program is disseminated in a form that is accessible and understandable will be critical in developing the trust needed in an easement program involving working lands.	OWEB agrees and will take this into account when developing guidance, forms, and other materials supporting the program.	N/A

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

	The Board recognizes that rules inherently can be lengthy documents however simplifying the rules, where possible, and ensuring the materials and forms available to producers are simple and easily filled-out is vital to building that trust.		
Oregon Board of Agriculture <i>Gen. Comment #3</i>	Additionally, the Board was extremely interested in how the Commission and the Oregon Watershed Enhancement Board (OWEB) would use regional review teams to analyze and evaluate issues related to “regional significance” and other agricultural criteria. The Oregon Department of Agriculture (ODA) has expertise and connections to the agriculture community in all regions of the State. We strongly encourage and recommend that OWEB and the Commission utilize that expertise in the development of any regional review teams.	OWEB agrees that regional expertise is required among technical review teams and will seek input from ODA regarding membership.	N/A
Oregon Board of Agriculture <i>Gen. Comment #4</i>	Likewise, the Board requests OWEB work with ODA staff on several outstanding definitional questions we have.	OWEB will work with ODA staff on definitional questions.	Follow-up required
Oregon Association of Conservation Districts <i>Gen. Comment #1</i>	First, the variety of conservation strategies OAHP will support through its four grant foci (Conservation Management, Covenants and Easements, Technical Assistance, and Succession Planning) is critical to achieving conservation goals in Oregon. We commend OWEB and the Commission for supporting multiple approaches and stages of conservation. While OAHP's emphasis on easements and covenants is important for encouraging the longevity of conservation practices, the value of other technical assistance and conservation planning on working lands should not be underestimated.	Thank you for your comment.	N/A
Oregon Association of Conservation Districts <i>Gen. Comment #2</i>	Second, we strongly support the emphasis, throughout the OAHP rules, on monitoring the on-site conditions of funded projects. Site-specific monitoring is critical to ensuring conservation practices are achieving desired goals, and to continuing to improve the work of the many state and local partners in the Oregon Action Plan, the U.S. Fish and Wildlife Candidate Conservation Agreement and Assurances program, mitigation credits, and other conservation programs in Oregon. Monitoring is essential to making informed decisions about how to most effectively and efficiently dedicate resources in these efforts. We applaud OWEB and the Oregon Agricultural Heritage Commission's inclusion of monitoring in the eligible activities for grant funding throughout OAHP.	Thank you for your comment.	N/A

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #1</i></p>	<p>We are among the original supporters of this program and write to express our general support for the rules developed by the Commission.</p>	<p>Thank you for your comment.</p>	<p>N/A</p>
<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #2</i></p>	<p>Decision-Making Authority (throughout): For all three programs, the role of the Commission in reviewing and ranking applications for funding appears to be much more limited than our statutory intent. When we helped design the OAHP, it was intended that the Commission would be charged with reviewing and ranking the applications, taking into the account the recommendations of any technical advisory committees and staff. The make-up of the Commission was created with this purpose in mind, to ensure that we had an appropriately crafted body making the final call about which projects should move forward. The draft rules are not clear that the Commission has the final authority to review, rank, and fund applications regardless of the recommendations made by the supporting committees and staff. For our organizations, it is critical that the Commission must have full authority decisions around ranking and funding. We recommend modifying the rules for CMPs, covenants and easements to clarify that the Commission has an independent obligation to review and make recommendations on grant applications under this program.</p>	<p>The rule was changed to make it clear that the commission has the final authority to recommend funding of projects.</p>	<p>Yes</p>
<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #3</i></p>	<p>For CMPs, covenants and easements, we think it is critical that the grantee organizations have an agricultural mission, farmers and ranchers on their board, and experience working with farmers and ranchers in Oregon. Whether this appears in rule or guidance, we think that the background, interest, and experience of the grantee organizations must demonstrate a commitment to maintaining agriculture in Oregon and previous work with farmers and ranchers in the state.</p>	<p>OWEB agrees with the information outlined by OFB and will elaborate on the importance of farming and ranching expertise on staff and boards in program guidance.</p> <p>The CMP evaluation criteria include “the demonstrated relevant commitment, expertise, and track record to successfully develop, implement, and/or monitor plans” [698-010-0090 (5) (b)], which rewards applicant organizations who have experience working with farmers and ranchers.</p> <p>The covenant and easement criteria include both having a working land preservation mission and demonstrated expertise in holding, monitoring, stewarding, and enforcing working lands easements and covenants [698-015-0090 (5) (b) and (d)].</p>	<p>N/A</p>

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Gen. Comment #4</i>	Throughout the rules, there are references to the “proposed project.” This term is confusing, as it not entirely clear whether the project is something broader than a conservation management plan, covenant or easement or whether the broader project may be seeking a combination of OWEB funds under difference programs. OCA and OFB would prefer that instead of referencing a “proposed project,” the rules simply reference the proposed conservation management plan, covenant or easement as appropriate.	The intent of the word “project” is to include all eligible grant activities. For CMPs, eligible activities include developing, implementing, and monitoring plans; therefore, referring to just the plan is too narrow a reference. Similarly, for covenants and easements, eligible activities include a lengthy list of due diligence activities in addition to simply referencing the easement or covenant. To clarify, OWEB will include a definition of “project” in the rules.	Yes
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Rules: Administrative Rules (OAR 698-005)			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Department of Land Conservation and Development (DLCD)	DLCD recommends amending the definition of “fragmentation” include “conversion of working lands to uses not associated with commercial agriculture” or alternatively referencing “fragmentation or conversion” in all instances, similar to OAR 609-015-0090(2)(b) and (8).	<p>OWEB will include “conversion” where “fragmentation” is named, with “conversion” listed before “fragmentation.” OWEB worked with DLCD to develop this definition of “conversion:”</p> <ul style="list-style-type: none"> (1) (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 (e.g. irrigation improvements, tile drainage) 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. <p>(2) As used in this definition, “accepted farming practices” shall have the meaning set forth in ORS 215.203(2)(c);</p> <p><u>ORS 215.203(2)(c)</u></p> <p>(2)(c) As used in this subsection, “accepted farming practice” means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.</p>	Yes

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

<p>Friends of Family Farmers (FoFF) <i>Admin. Comm. #1</i></p>	<p>FoFF recommends amending 698-005-0010 to read “Increased economic viability of Oregon’s <u>family owned</u> agricultural operations and economic sectors.”</p>	<p>Family owned operations are a valuable component of agriculture, but the term “family owned” is too limiting for the various types of family business ownership that exist. The evaluation criteria will speak to the operation’s connection with the local community and economy, including ownership model.</p>	<p>No</p>
<p>Friends of Family Farmers (FoFF) <i>Admin. Comm. #2</i></p>	<p>698-005-0010: FoFF recommends adding the additional public benefit of “(4) Increased economic viability and farm ownership opportunities for: (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and (d) veteran farmers or ranchers.”</p>	<p>The commission discussed this point extensively, and decided that the program should focus more on the land than the type of owners and operators. However, an application might point to such factors to demonstrate evaluation criterion #4 (agricultural outcomes) for the CMP and covenant/easement program. In addition, the Technical Assistance Grant Program could be an appropriate section of rule to explicitly prioritize outreach to these constituencies.</p>	<p>No</p>
<p>Friends of Family Farmers (FoFF) <i>Admin. Comm. #3</i></p>	<p>698-005-0020: FoFF recommends the following definitions pertaining to the comment immediately above (from USDA programs):</p> <ul style="list-style-type: none"> • “Family farms,” are defined as farms in which the members of the family are primarily responsible for daily physical labor and strategic management. • “Small farms” are family farms that on average generate less than \$500,000 in gross annual sales. • “Medium-sized farms” are family farms that on average generate up to \$1 million in gross annual sales. • “Beginning farmers or ranchers” have owned or operated a farm or ranch for not more than 10 years, are under 35 years of age, and are actively engaged in farming. • “Socially disadvantaged farmers and ranchers” are those who are members of a group that that have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. • “Veteran farmers or ranchers” are those who have served in the Armed Forces and who have (a) not operated a farm or ranch or (b) operated a farm or ranch for no more than 10 years. 	<p>As above, the commission has decided that OAHP will focus on agricultural lands rather than types of owners and operators. However, if the commission decides that the Technical Assistance grants should prioritize outreach to and services of these constituencies, these definitions could be located in a definitions section of that program.</p>	<p>No</p>

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Friends of Family Farmers (FoFF) <i>Admin. Comm. #4</i>	FoFF recommends limiting the definition of “agricultural owner or operator” (698-005-0020(1)) to those “actively engaged” in farming activities, i.e. they make significant contributions to the farming operation and participate in the daily physical labor and management of the farm.	See above. OAHP focuses on the land rather than type of owner. Such a provision could limit the extent of the program in unintended ways. For example, this provision would limit participation in grant programs by elderly and retired landowners or family trusts.	No
Friends of Family Farmers (FoFF) <i>Admin. Comm. #5</i>	FoFF recommends limiting the definition of “agricultural owner or operator” (698-005-0020(1)) to “individuals who are Oregon residents,” and exclude corporate entities or “persons,” e.g. out-of-state owned corporations and real estate investment trusts.	See above. OAHP focuses on the land rather than type of owner. Such a provision could limit the extent of the program in unintended ways. For example, this provision could disqualify a property from CMP funding if it is owned by an out-of-state owner but managed by an Oregonian operator.	No
Oregon Department of Fish and Wildlife (ODFW) <i>Admin. Comm. #1</i>	698-005-0020: ODFW recommends defining the terms “conservation management plan” and “conservation management plan holder.” It is unclear if the definition of “management plan” in working land conservation covenant and easement section (698-015-0020(1)) is intended to apply to the CMP section as well.	OAHP will use the definition of “management plan” for easements and covenants and move it to this Admin section of definitions applying to the entire statute. We added a definition of conservation management plan to distinguish between a CMP and an easement/covenant management plan. Eligible “holders” of conservation management plans are determined by the criteria in Section 0030.	Yes
Oregon Department of Fish and Wildlife (ODFW) <i>Admin. Comm. #2</i>	698-005-0050(8)a-c: ODFW recommends clarifying if “commitment” is a formal written agreement. E.g. would it include a commitment to include some sort of legal access easement to allow spot checking by the grantor’s representatives to evaluate project efficacy over time?	The rules will clarify that this is an “enforceable agreement.” The specific conditions that the parties commit to would be described in the grant agreement.	Yes
Southern Oregon Land Conservancy (SOLC) <i>Admin. Comm. #1</i>	SOLC recommends that the commission consider fee title ownership of qualifying lands, for example for the option of a land trust to implement ground leases to farmers.	The OAHP statute does not authorize OWEB to fund fee title acquisitions.	No
Southern Oregon Land Conservancy (SOLC) <i>Admin. Comm. #2</i>	698-005-0010(3): SOLC supports enhancing fish and wildlife, but recommends a clearer definition in rules, e.g. purpose statement, definitions, and criteria which all have differing language. What happens in the event of an unforeseen conflict, e.g., between irrigation and water for fish?	Purpose statements will be revised for consistency.	Yes

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

<p>WaterWatch <i>Admin. Comm. #1</i></p>	<p>WaterWatch recommends adding definitions for:</p> <ul style="list-style-type: none"> • Natural Resource Value, as “other aspects of the natural environment,” clarifying intent to fund projects that benefit the environment, not e.g. extractive natural resource values • Conservation and/or Conservation Measure: tied to statutory purpose of “maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values” as opposed to e.g. an irrigation piping/lining project that does not go through the Oregon Conserved Water Act to dedicate legally protected instream water. Rules should require evidence of demonstrable benefits rather than assumptions e.g. that it will enhance stream flow. • Conservation Management Plan: WaterWatch finds no definition in legislative record and none in statute except CMP components (698-010-0080). Explain how CMPs interplay with other statutory plans (e.g. Water Management and Conservation Plans) • Fish and wildlife: understand the purpose is to protect/enhance habitat for native fish and wild animals 	<p>There is no need to define natural resource values. As the comment explains, in context, this term refers to conservation because of the list it is in.</p> <p>Conservation is clearly tied to the statutory definition of “maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values.” The Conserved Water Act is not applicable because the CMP grant program funds the plan implementation, not projects.</p> <p>A definition will be added to the statute (see above under Oregon Department of Fish & Wildlife #1). Evaluation criteria 698-010-0090(3)(b) asks applicants to describe interplay with other plans.</p> <p>The definition of “fish and wildlife” is clear from context, but may be included in guidance.</p>	<p>No</p> <p>No</p> <p>Yes</p> <p>No</p>
<p>WaterWatch <i>Admin. Comm. #2</i></p>	<p>698-005-0030(2)(c): WaterWatch recommends that the location of the project also include information on the county and any stream (in addition to stream mile)</p>	<p>County is already included in the list, but rules will be revised to include stream.</p>	<p>Yes</p>
<p>WaterWatch <i>Admin. Comm. #3</i></p>	<p>698-005-0050(3): WaterWatch recommends that Grant Agreement Conditions include remedies for if the project does not achieve the stated natural resource gains, e.g. return monies to the state.</p>	<p>Remedies exist within the conservation management plan itself, including annual monitoring and mutual modification, to ensure that the land is managed according to the plan.</p>	<p>No</p>
<p>Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Admin. Comm. #1</i></p>	<p>Notice to Landowners (OAR 698-005-0030(3)): The rules state that where applications involve physical changes or monitoring on private land, the application must state that landowners have been informed that the monitoring results will be public. For this program, this requirement does not seem necessary or appropriate. All necessary monitoring should be conducted on the property of the landowner who has enrolled in the program, and we are unclear why monitoring would need to occur on land belonging to others. To ensure that agricultural landowners in Oregon generally feel positively about the program, we recommend deleting this section and limiting monitoring requirements to land owned by the landowner who is the subject of the application.</p>	<p>This rule was drawn from general OWEB program rules is less applicable to the types of projects that will be funded by OAHP. The rule was deleted.</p>	<p>Yes</p>

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Oregon Farm Bureau and Oregon Cattlemen's Association <i>Admin. Comm. #2</i>	Maintenance of the Project (OAR 698-005-0050(8)(b)): The rules contain a provision that authorizes the Board (not Commission) to place additional conditions on a grant agreement, including an agreement to maintain the project for a period of time deemed appropriate by the Board. This is a confusing requirement for this program. The program rules already state both minimum and maximum time periods for program participation based up whether the landowner seeks an easement, covenant or conservation management plan. It is unclear why the Board would need to designate an alternate timeframe, and it almost suggests they could designate a timeframe otherwise inconsistent with the rules. We recommend clarifying the intent of this section.	The Board rather than the commission is indicated in this section because it is the board that is legally responsible to execute the grant agreements to carry out the program. Regarding maintenance commitment, the intent is to run with whichever length of time is authorized by the particular grant project; we will clarify this rule.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Admin. Comm. #3</i>	Restricted Funding (OAR 698-005-0060): We are happy the fund can accept outside dollars from other programs or donors. However, we recommend adding "and ORS 541.977- ORS 541.989" to ensure that any funds accepted also must be consistent with the purposes of the statute.	The rules will be clarified to include reference to the statute.	Yes

Rules: Conservation Management Plan Grant Program Rules (OAR 698-010)			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Friends of Family Farmers (FoFF)	698-010-0090: FoFF recommends evaluation criterion prioritizing projects that address the unique challenges of affordable access to land for (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and (d) veteran farmers or ranchers.	The Conservation Management Plan Grant program is not designed to address the affordability of agricultural land.	No
Myron, Jim	Mr. Myron recommends that establishing riparian buffers where no agricultural activities would occur be a requirement of every conservation management plan funded through the OAHP.	If there is a stream on the property, the planning process must present the landowner with alternatives that help achieve the local Ag Water Quality Management Area Plan goals. If the program pays for plan implementation, the selected alternative must support implementation of the local Ag Water Quality Management Area Plan goals.	Yes

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Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #1</i>	698-010-0010(2)/0090(3): ODFW recommends additional clarification on how enhancement of fish or wildlife habitat would be evaluated. Potentially acknowledge existing programs to maintain working landscapes and support natural resource values, such as the Wildlife Habitat Conservation and Management Program.	Technical review teams will apply evaluation criteria for fish and wildlife habitat using OWEB's current grant review process. Guidance will elaborate on how to apply these criteria.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #2</i>	698-010-0010: ODFW recommends clarifying the terms "energy" and "human need considerations", how they will be evaluated in relation to "addressing particular priorities related to natural resource values," and consider how to prioritize when energy and human need consideration conflict with natural resource values.	Recommended for guidance. The program is designed to integrate agricultural and conservation values, and successful projects will minimize conflict between the two.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #3</i>	698-010-0080: ODFW recommends providing more detail on the preparation and content of a conservation management plan, e.g. what details of the site, such as habitat structure, should be included in the CMP inventory.	Recommend for guidance.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #4</i>	698-010-0090: ODFW states that the capability and capacity evaluation criteria are robust and well thought out. The Department appreciates the consideration of supporting implementation of the Oregon Conservation Strategy, including a specific reference to connectivity of wildlife habitat, in the evaluation criteria.	Thank you for your comment.	N/A
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #5</i>	698-010-0120(7): ODFW requests clarification of the term "changes in science." Does it include habitat restoration techniques?	OWEB will change rules to read "changes in best management approaches based on new scientific understanding of expected outcomes" and clarify in guidance.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #6</i>	698-010-0120: ODFW recommends additional clarification on the modification process for the plan holder.	Recommended for guidance.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #7</i>	698-010-0130: ODFW recommends clarification as to which instrument will guarantee access to site spot checks.	This will be included in the grant agreement.	No
Oregon Department of Fish & Wildlife (ODFW) <i>CMP Comment #8</i>	698-010-0130: ODFW supports development of monitoring protocols on a programmatic (e.g., regional approach) level, which would allow for a more thorough evaluation of the program. Site by site monitoring protocols may create some challenges with data collection to show efficacy of the program over time.	The commission will provide guidance for consistent monitoring protocols under sub-3, and may establish monitoring protocols to evaluate the outcomes of CMP implementation on a programmatic level under sub-4.	No

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Southern Oregon Land Conservancy (SOLC) <i>CMP Comment #1</i>	SOLC offers strong support for funding management plans. Be sure to protect fish and wildlife habitats in CMP implementation.	Thank you for your comment. Maintenance and enhancement of fish and wildlife habitat is one of OAHP's goals, and part of evaluation criteria 3.	N/A
Southern Oregon Land Conservancy (SOLC) <i>CMP Comment #2</i>	698-010-0050: SOLC states that the flexibility in match amount is helpful.	Thank you for your comment.	N/A
WaterWatch <i>CMP Comment #1</i>	WaterWatch recommends splitting CMP rules into three subsections: (1) funding the development of a plan, (2) funding implementation of the plan and (3) funding monitoring. Each of these should have distinct requirements, with funding for the implementation of CMP projects needing the most specificity.	It is not the intent of statute or commission to establish separate criteria or requirements for each activity.	No
WaterWatch <i>CMP Comment #2</i>	698-010-0050: WaterWatch recommends, at least for implementation projects, requiring a specific minimum match. They state that the term "some portion" does not provide enough guidance.	The statute requires some cash match, but few match programs exist for CMPs. The commission wants to test implementation of the program prior to requiring a specific match percentage.	No
WaterWatch <i>CMP Comment #3</i>	698-010-0040/0090: WaterWatch recommends that applicants should have to provide evidence that the proposed project will enhance or protect fish or wildlife habitat, improve water quality or support other natural resources values.	Grant application evaluation criteria require consideration of "the extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, improve water quality, or support other natural resource values."	No
WaterWatch <i>CMP Comment #4</i>	689-010-0080: WaterWatch recommends looking at OAR 635-430-0040, Preparation and Content of a Wildlife Habitat Conservation and Management Plan as an example of what components as an example of additional requirements (e.g. maps identifying rivers/ponds/lakes, T/E species, vegetation types, description of objectives to be achieved, management practices to be used, etc.)	Staff will review OAR 635-430-0040 as an example of plan components.	No
WaterWatch <i>CMP Comment #5</i>	698-010-0090(3)(a): WaterWatch states that the rules weaken the statutory protections for fish and wildlife habitat, improving water quality, or supporting other natural resource values by merging different directives of the statute into one single directive which, among other things, would allow human needs considerations to qualify as a natural resource value.	OAHP and the CMP grant program are designed to integrate agricultural and conservation values. The term "human needs" mirrors language in a federal program that could be a match.	No
WaterWatch <i>CMP Comment #6</i>	698-010-0090(3)(a): WaterWatch recommends that the rules include more parameters connected to protecting, maintaining or improving fish and wildlife habitat, improving water quality and supporting other	Any information included in the grant application will be considered by the review team, but the grant evaluation process does not use numeric scoring.	No

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	natural resource values, e.g., if the landowner commits to put a project through the Conserved Water Act which will result in legally protected water instream, or commits to transferring water instream, this should garner high scores. See other funding sources for examples, e.g. SB 839.		
WaterWatch CMP Comment #7	698-010-0090(3)(a): WaterWatch notes that the list includes some state programs/regulations but not all, e.g. it includes the Oregon Conservation Strategy, but not the Conserved Water Act. The “catch all” phrase in (b) is not narrowed to habitat improvement plans/tools but would rank projects higher for conformance with any type of local, regional, state, federal or tribal priorities or plans. And it is not qualified by “including but not limited to”.	OWEB will change this section to read “(a) Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, or human needs considerations; (b) Supporting implementation of the Oregon Conservation Strategy, Oregon’s Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal conservation priorities or plans <u>that support fish or wildlife habitat, water quality, or other natural resource values;</u> ”	Yes
WaterWatch CMP Comment #8	698-010-0090(3)(a): WaterWatch notes that the list is tied together by “and”, meaning that to score competitively, it would need to meet all the provisions on this list	OWEB will change the connector to “or.”	Yes
WaterWatch CMP Comment #9	698-010-0090(3)(e): WaterWatch states that it makes no sense that the CMP qualifies as evidence of sustaining ecological values. Same for “inherent site conditions”.	The grant review team will evaluate the plan and its stated outcomes. Monitoring will evaluate compliance with the plan, and mutual modifications allow for changes to the plan that support ecological outcomes.	No
WaterWatch CMP Comment #10	698-010-0090(1): WaterWatch recommends striking this section, since limiting the program to “significant” agricultural operations appears to conflict directly with the statute’s directive that the type of agricultural operation conducted on the working land cannot be considered in the ranking of a project, and “significance” is subjective.	The type of agricultural operation in ORS 541.984(4) refers to the type of agricultural products grown on the property. Ranking targets “significant” properties for grant funding, as demonstrated by each applicant, and elaborated on in guidance.	No
WaterWatch CMP Comment #11	698-010-0090(3): WaterWatech recommends that the rules provide for the evaluation of any negative, as well as positive, effects of a proposed conservation measure on fish/wildlife habitat, water quality, etc.	This is implied by the words “extent to which” at the beginning of the sentence.	No
WaterWatch CMP Comment #12	698-010-0100: WaterWatch recommends guidance as to the make-up of the technical review team, e.g. include ODFW, WRD, DEQ, and affected Indian Tribes and exclude project consultants.	This will be provided in guidance.	N/A
WaterWatch CMP Comment #13	698-010-0100(1): WaterWatch recommends striking the requirement that the review be limited to information provided in the grant application, as it does not take into account technical review team expertise about the area and project.	The section was deleted.	Yes

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<p>Yamhill Soil and Water Conservation District <i>CMP Comment #1</i></p>	<p>The criteria identified in section 698-010-009 include several categories and elements that should be considered. However, the rule provides no guidance of how individual criterion will be ranked. It would be useful to list the most important criterion or standards (e.g. Tier 1 Criteria) that must be met for an application to be considered. This might include item #2, #3, #4 and #8. Reviews could consider other criteria if the application addresses the Tier 1 Criteria. Ranking or weighing the criteria in this section will help applicants understand and focus on the most important factors for ranking.</p>	<p>The commission discussed whether to give preference to specific evaluation criteria and decided that the goal is to fund projects that have the highest likelihood of success in achieving the purposes of the program. In that context, the commission decided that it would not be possible to pre-determine which evaluation criteria are more important than others in reaching this determination.</p>	<p>No</p>
<p>Yamhill Soil and Water Conservation District <i>CMP Comment #2</i></p>	<p>In section 698-010-009 item #4, the definition of "regional significance" should be defined. Item #5(c), includes in part, " ... as measured by effective governance." It is unclear how OWEB would evaluate effective governance. If this cannot be better defined or clarified in rule, then clarification should be provided in guidance documents.</p>	<p>The commission discussed regional significance at length and decided that due to the variation of working lands from region to region it would be difficult to adequately define the term for statewide application. The commission will rely on regional expertise on technical committees to help determine regional significance. The commission will develop guidance on evaluating effective governance.</p>	<p>No</p>
<p>Yamhill Soil and Water Conservation District <i>CMP Comment #3</i></p>	<p>Section 698-010-0100. The OAHP has its primary focus on agricultural lands. The district suggests the rules specifically include the requirement to include representation from the Oregon Department of Agriculture and Oregon State University Extension Service on all technical committees.</p>	<p>While the commission intends to engage experts from ODA and OSU Extension on technical committees, it decided not to specify committee membership in rule. Generally, technical committee representation will be reflective of the commission membership, which includes both representatives selected by the Board of Agriculture and Extension, along with Land Conservation and Development Commission, Fish and Wildlife and OWEB.</p>	<p>No</p>
<p>Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #1</i></p>	<p>Purpose of CMP (OAR 698-010-0010(2,3)): We would prefer that you leave subsections 2 and 3 in this section, as they add clarity and consistency to the purposes of CMPs.</p>	<p>The text retains the language of subsections (2) and (3)</p>	<p>N/A</p>
<p>Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #2</i></p>	<p>Match Contributions (OAR 698-010-0050(2)(c)): This section seems to indicate that conservation management plans are an "acquisition of the property." They are simply a contract between the grantee and a landowner, so this section should be changed to reflect that CMPs are not acquisitions.</p>	<p>There is no section (2) (c) in the CMP rule; the provision cited is in Section 015 Covenants and Easements.</p>	<p>N/A</p>

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Oregon Farm Bureau and Oregon Cattlemen's Association <i>CMP Comment #3</i>	Reporting Requirements (OAR 698-010-0140(2)): This section requires accounting and reporting within 60 days of the project completion date. For CMPs, we are not clear which date would be the project completion date, or if that date would vary depending on the application. This may warrant clarification.	The rules will clarify that the project completion report is due 60 days after the project completion date listed in the grant agreement to ensure that the completion date varies and would align with the individual project.	Yes
Rules: Covenant and Easement Rules (OAR 698-015)			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #1</i>	COLT recommends that 698-015-0010 Purpose be changed to read “An <u>willing</u> agricultural owner or operator may enter into a working land conservation covenant (covenant) with or grant a working land conservation easement.” Owner of working land: A conservation easement or conservation covenant must be entered into by the person or entity listed on the title of a property; an agricultural operator, generally, does not have the legal authority to sign a conservation easement or covenant. This would also bring the rule into line with the corresponding ORS (541.982), which reads, “An owner of working land may enter into a working land conservation covenant with or grant a working land conservation easement ...” Adding “willing” here (or elsewhere in the rules) will help clarify that the OAH Willing: Program emphasizes that it is voluntary and accomplished through willing landowners. Land acquisition grants include this: “OWEB may consider grant applications that propose the acquisition of interests in lands from willing sellers for the purpose of...”	The purpose statement was completely revised so that it now reads as a purpose statement. The language in the comment was dropped from rule.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #2</i>	698-015-0020(3), 698-015-0060 and 698-015-0070: COLT recommends changing the term “stewardship endowment” to “stewardship fund” here and throughout. The word “endowment” refers to a very specific type of financial account, and we do not recommend the rules implicitly or explicitly require an “endowment” for land trusts or other entities to manage their stewardship funds.	OWEB will change “stewardship endowment” to “stewardship fund.”	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #3</i>	698-015-0020(3): COLT recommends that this be changed to read “...resolution of violations, and <u>or</u> any enforcement of the covenant or easement.” <ul style="list-style-type: none">Stewardship funds are meant to monitor and steward the conservation easement,	This language was incorporated in section 0070 to clarify that use of grant funds can be for any one of the components of stewardship.	Yes

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	<ul style="list-style-type: none"> Legal defense funds are meant to enforce or defend any potential violation matter involving a conservation easement. <p>For some organizations, these are managed as the same fund, while for others they are different. Encourage commission and OWEB to discuss with COLT</p>	OWEB will encourage the commission to discuss this distinction with COLT.	N/A
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #4</i>	698-015-0050(1): COLT recommends making (1) consistent with the purpose sections contained in 698-015-0010 and refer to the overall purpose in 698-005-0010	OWEB will work to create consistency in purposes and definitions.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #5</i>	698-15-0050(4): COLT recommends reconsidering the requirement that a pre-existing or new management plan must be agreed to by the landowner, applicant, and commission before closing. Challenging to fulfill within 18 months.	While it is challenging to fulfill this requirement within 18 months, if it is not complete, a waiver may be granted.	No
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #6</i>	698-015-0060: COLT recommends using the current language in OWEB's land acquisition program rules (695-045-0175): "All applicants shall demonstrate at least 25% of the actual land acquisition project cost is being sought as match".	To be consistent with OWEB programs, this language was amended to require that at least 25% of the OAHP grant request for the covenant or easement project is being sought as match, which is a lower match threshold than 25% of the actual project cost.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #7</i>	698-015-0060(3): COLT recommends that the match for stewardship section is better suited in the next section, 698-015-0070, Use of Grant funds.	OWEB will move this section.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #8</i>	698-015-0060(3): COLT recommends leaving it up to OWEB staff, the review team, and the Commission to determine reasonable grant funds for stewardship on a per project basis. 5% is arbitrary, stewardship doesn't depend on appraisal value, but on other factors.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #9</i>	698-015-0070 (1)(b): COLT strongly recommends the Commission establish a methodology for appraising covenants, or establish a process to develop a methodology to do so.	The commission is in the process of doing so.	For future consideration.
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm.# 10</i>	698-015-0090(4): COLT recommends that the language be changed to "...benefits or other agricultural or conservation values important to the region..."	OWEB will make this change.	Yes
Coalition of Oregon Land Trusts (COLT)	698-015-0090: COLT recommends adding wording in this section similar to existing OWEB acquisition rules under 695-045-0180, where "the	OWEB will add "the soundness of the legal and financial terms of the proposed real estate	Yes

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<i>Cov/Ease Comm. 11</i>	soundness of the legal and financial terms of the proposed real estate transaction” is considered in the application process.	transaction” to the covenant and easement ranking criteria.	
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #12</i>	698-015-0110(3): COLT recommends “Conditionally approved grant funds shall be encumbered for disbursement only after all conditions are fulfilled. The encumbered funds may be made available for other uses by OWEB if all conditions required by the Board are not satisfied within 18 months of the conditional Board approval, <u>unless approved by the OWEB director.</u> ” For flexibility	OWEB will add “unless approved by the OWEB Board” to this section.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #13</i>	698-015-0130(1)(d): COLT notes that the section refers to title restrictions under OAR 698-015-0110, but it doesn’t. The land acquisition program (695-045-0195) refers to title restrictions in ORS 541.960	OWEB will change this section to read “the required title restrictions are approved by the director.”	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #14</i>	698-015-0130(1)(g): COLT notes that the section refers to the Director’s right to hold the grant funds pending Board consideration under OAR 698-015-0140, which refers to the director’s ability to issue penalties, “including recovery of the OAHP grant funds.” But it doesn’t refer to withholding.	OWEB will make these provisions consistent: <ul style="list-style-type: none"> • Add “recover” funds to 0130(1)(g) 	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #15</i>	698-015-0170 (1): COLT recommends changing this section to read: “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 <u>easement covenant.</u> ”	OWEB will make this change.	Yes
Coalition of Oregon Land Trusts (COLT) <i>Cov/Ease Comm. #16</i>	698-015-0170: COLT asks: What is the underlying concern and corresponding definition of “profit” in OAR 698-015-0020? Acknowledges that similar language appears in 695-045-0210. There is potential opportunity for a future landowner to steward the project.	Since this is a rare occurrence, the rules will preface this clause with “If a covenant or easement acquired with OAHP funds is subsequently transferred in exchange for cash.” OWEB will also change the definition of profit to exclude “any funds invested or to be invested in the stewardship fund.”	Yes
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #1</i>	DLCD recommends that the proposed rule OAR 698-015-0090(6)(d) be amended to require grant awards for conservation easements and covenants to be consistent with local comprehensive plans and statewide planning goals.	OWEB will amend 0090(6)(d) to read “Consistency with local comprehensive plans and statewide planning goals”	Yes
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #2</i>	DLCD recommends that the proposed rules be amended to prioritize acquisition of conservation easements rather than covenants on rural lands whenever possible	698-015-0090(6)(b) already prioritizes the duration and extent of the agreement, with a preference for longer term agreements.	N/A

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Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #3</i>	If an easement is not possible, DLCD recommends that covenants be pursued on rural lands before conservation management plans, which provide relatively limited opportunities to prevent fragmentation and conversion of working lands.	The covenant and easement program, and the CMP program perform distinct functions. Also, the statute requires CMPs alone to be ranked separately from covenants/easements. ORS 541.984(3)	No
Department of Land Conservation and Development (DLCD) <i>Cov/Ease Comm. #4</i>	DLCD strongly encourages OAHC and OWEB to adopt language prohibiting easements and covenants within Urban Growth Boundaries (UGBs) and urban reserves as this might otherwise reduce supplies of urban land planned for development and result in attempts to expand UGB boundaries into adjacent agricultural and forest lands, among other reasons.	See the response to comment #1 above. OAHP will be implemented consistent with local comprehensive plans and statewide planning goals. Any projects inside a UGB or Urban Reserve would need to demonstrate consistency with land use laws.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #1</i>	EMSWCD recommends that 698-015-0060(1) be modified to simply state that “a match must be sought,” since timeframes might make it impossible to have matching cash or agreement in hand at the time of OAHP application.	OWEB will delete “as demonstrated by a formal application or agreement.”	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #2</i>	EMSWCD recommends that 698-015-0090(2) include evaluation criteria around the easement’s prospects for improving future farmland affordability (e.g. through limiting residential size or incorporating an Option to Purchase at Agricultural Value). And, going forward it would be instructive for OAHP to track the sales of eased properties to identify impact of the easement (or covenant) on land values.	Applicants may describe the agricultural benefits for affordability and access in their narrative description for evaluation criteria 2 or 4. OWEB supports the evaluation of future sales of properties with covenants or easements to identify the impact of easements/covenants on land values.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #3</i>	698-015-0090, 2, 3 & 4: EMSWCD recommends that the commission consider establishing qualifying criteria tied to the agricultural capability of a property, and qualifying criteria of a non-agricultural nature, e.g. enhancement of natural resource values, capacity or competence of the easement holder and benefit to the state.	The only qualifying criterion in rule is that the property must be working land to participate. Agricultural capabilities in different regions of the state are very different. Therefore, the ranking process will establish the agricultural (and natural resource) values.	No
East Multnomah Soil and Water Conservation District (EMSWCD) <i>Cov/Ease Comm. #4</i>	698-015-0090, 5(a): EMSWCD agrees that a considered and rigorous approach to land transactions and stewardship is vital, and yet that accreditation under the Land Trust Alliance is not the best fit for all organizations.	Thank you for your comment. OWEB agrees with this statement.	N/A
East Multnomah Soil and Water Conservation District (EMSWCD)	698-015-0100, 4 – 8: EMSWCD asks the commission to consider ways to reduce the number of entities responsible for reviewing and making recommendations on program applications, while still maintaining appropriate and effective oversight. Similarly, for 698-015-0130(1)(c),	A streamlined system is established for the use of technical committees in the review of OWEB grant proposals. OWEB will heed this advice.	N/A

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Cov/Ease Comm. #5	ensure that Director review and comment on specific transactions (e.g. proposed Purchase and Sale Agreements) does not have substantial timing implications for transactions.		
East Multnomah Soil and Water Conservation District (EMSWCD) Cov/Ease Comm. #6	698-015-0140(1): EMSWCD asks the commission to consider removing the allowance for OWEB to recapture grant funds and the ability to require punitive damages and instead work toward the satisfactory resolution of compliance issues.	Recovery only happens if “significant compliance issues cannot be resolved to the full satisfaction of the Director” and the Director first informs the commission, Board, and grantee. Even then, recovery remedies are at the Director’s discretion.	No
East Multnomah Soil and Water Conservation District (EMSWCD) Cov/Ease Comm. #7	698-015-0140(2): EMSWCD recommends that this language be modified to state that legal access by OWEB, its contractors, and cooperating agencies to a property encumbered by an easement or covenant acquired with OAHF funds be consistent with those access rights granted by the easement to the easement holder.	The purpose of OWEB’s monitoring obligation differs from a grantee’s, in that OWEB monitors to confirm that the grantee is accurately monitoring the investment. Therefore, the type of access and the designees that OWEB might assign might differ from those specified in the grantee’s and landowners’ agreement.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) Cov/Ease Comm. #8	698-015-0140(2): EMSWCD recommends removing right of access to “cooperating agencies” as a broad allowance, and one that may be unacceptable to prospective easement Grantors.	OWEB will remove “cooperating agencies” from this section.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) Cov/Ease Comm. #9	698-015-0140(2): EMSWCD recommends deleting “and evaluations” and limiting the ability to enter to the sole purpose of determining compliance.	OWEB will remove “and evaluations” from this section.	Yes
East Multnomah Soil and Water Conservation District (EMSWCD) Cov/Ease Comm. #10	698-015-0160(1): Since a covenant might not have only a negative effect on easement value, EMSWD recommends modifying the text to state that the appraised fair market value of a proposed easement shall account for the impact – if any – of an extant working land conservation covenant.	This provision does not refer to the covenant’s impact on fair market value, but rather to the use of public funds to purchase nearly identical sets of property rights that overlap in time. Therefore, the easement will be reduced by the remaining value of the covenant, regardless of its impact on fair market value.	No
Friends of Family Farmers (FoFF)	698-015-0090: FoFF recommends including in evaluation criteria prioritization for projects that address the unique challenges of affordable access to land for (a) small- and medium-sized family farms and ranches, (b) beginning farmers or ranchers, (c) socially disadvantaged farmers or ranchers, and (d) veteran farmers or ranchers.	As with CMPs, the Commission discussed this point extensively, and decided that the program should focus more on the land than the type of owners and operators. However, an application might point to such factors to demonstrate	No

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

		evaluation criterion #4 (agricultural outcomes). In addition, the Technical Assistance Grant Program could be an appropriate section of rule to explicitly prioritize outreach to these constituencies.	
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #1</i>	MRT recommends that the rule give guidance for OWEB staff on how to address conflicts between agricultural values (e.g. 698-015-0090(2)) and habitat values (e.g. 698-015-0090(3)) by prioritizing working land values over habitat values. Without such a priority, easement holders could be forced to require landowners to discontinue an agricultural practice that was permissible in an easement funded by OAHP, but which is later found to not maintain the baseline habitat or water quality values. Specifying a priority could allow flexibility for producers due to climate change, changing agricultural markets, and changes to the land, and make it less difficult to find agricultural landowners willing to participate in the program. There are other programs that protect conservation values.	OAHP and the CMP grant program are designed to integrate agricultural and conservation values. To rank high with the review team, a project must demonstrate the maintenance or enhancement of both agriculture and natural resource values.	No
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #2</i>	698-015-0060 and 0070: MRT appreciates the inclusion of a stewardship endowment in regards to its allowance as match and an allowed cost, but recommends the term “long term stewardship funds,” instead of “endowment,” as endowment has specific accounting definitions.	OWEB will change “stewardship endowment” to “stewardship funds”	Yes
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #3</i>	698-015-0060(3): MRT recommends removing the cap on funds contributed to a stewardship endowment to 5% of the total appraised value of the easement, and recommends negotiating the contribution to stewardship endowment as part of each grant award process. Estimates that agricultural easement values will likely be low (due to land use) and the stewardship costs high compared to a habitat easement, depending on the management plan.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #4</i>	698-015-0060(1): MRT recommends deleting “as demonstrated by a formal application or agreement,” since NRCS ACEP conservation easements which call for secured match before they can be applied for.	OWEB will delete “as demonstrated by a formal application or agreement.”	Yes
McKenzie River Trust (MRT) <i>Cov/Ease Comm. #5</i>	698-015-0090: MRT states that the evaluation criteria is vague and it is difficult to have meaningful comments without understanding how the words “significant,” “important,” and “viability” will be assessed.	Given the diversity of Oregon agriculture, it is preferable to allow the applicant to make the case that a particular project is “significant,” which will be assessed by the review team, OWEB staff, commission, and OWEB Board.	No
Myron, Jim	Mr. Myron recommends that establishing riparian buffers where no agricultural activities would occur be a requirement of every easement	If there is a stream on the property, the easement application should describe how the	Yes

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

	and covenant funded through the OAHP.	management of the land will achieve the local Ag Water Quality Management Area Plan goals and the easement must describe associated riparian monitoring to ensure the goals are achieved.	
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #1</i>	NYFC recommends prioritizing funding for projects that encourage protected farmland to remain affordable and in the hands of farmers.	Applicants may describe the agricultural benefits for affordability and access in their narrative description for evaluation criteria 2 or 4.	No
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #2</i>	NYFC supports 75% program match for project costs with in-kind matching funds allowed for 100% of the landowner contribution	Thank you for your comment.	N/A
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #3</i>	NYFC supports 698-015-0010(2) “providing for the opportunity for continued use of the land for agricultural purposes,” in the program purpose and 698-015-0090(2)(d) “Improving or maintaining the economic viability of the operation, including future transfer of ownership,” in the evaluation criteria	Thank you for your comment.	N/A
National Young Farmers Coalition (NYFC) <i>Cov/Ease Comm. #4</i>	<p>698-015-0090: NYFC recommends that OAHP encourage applicants to utilize innovative strategies to promote farmer ownership and affordability of farmland. Specifically, NYFC recommends that:</p> <ul style="list-style-type: none"> the ranking criteria prioritize farmer ownership and affordability tools in easements/covenants funded by the program, including the Option to Purchase at Agricultural Value (OPAV) easement provision. OAHP allows covenant/easement applicants to apply for funds to place a covenant or easement on property that they own while they are in the process of identifying, and transferring ownership to, a farmer (a.k.a. buy-protect-sell). Easement holders be given the flexibility – and encouraged – to write easements that do not consider ground leases to be an impermissible subdivision of land. Ground leases are land affordability tools that split ownership of the property, so that the organization owns the land and provides a long-term—such as 99-year—lease to the farmer, while the farmer owns the infrastructure. The program give weight to projects that utilize easement funds to facilitate the transition of the farm from one generation to the next and provide access to a young or beginning farmer. 	<p>As stated above, applicants may refer to affordability in criterion 2 or 4.</p> <p>It will be made clear in guidance that the rules do not prohibit “buy-protect-sell” arrangements.</p> <p>Permission to use ground leases will be included in guidance and grant agreement.</p> <p>As with affordability, applicants may refer to the project’s effect on intergenerational transition in criterion 2 or 4.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.# 1</i>	698-015-0090: ODFW believes that the capability and capacity evaluation criteria are robust and well thought out. The Department appreciates the consideration of supporting implementation of the Oregon Conservation Strategy, including a specific reference to connectivity of wildlife habitat, in the evaluation criteria.	Thank you for your comment.	N/A
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#2</i>	698-015-0020(1): ODFW recommends that the rules clarify the entities that may develop a “management plan.”	The definition for conservation management plan was moved to the Administrative rules. All eligible CMP holders are listed in 698-010-0030.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#3</i>	698-015-0020(3): ODFW recommends that the rules clarify “stewardship endowment” and/or clarify in a separate section of the rule the applicable standards for an endowment. This may include details on calculating the initial funding, maximums per acre and other limitations for the landowner, such as using the funds for payment of taxes. Does this include the opportunity for these funds are set up as an endowment that provides interest funds yearly for operations and maintenance costs? How will the stewardship endowments be tracked or monitored by the program? Will there be an annual stewardship report to the program on spending and investment performance?	OWEB will change the term “stewardship endowment” to “stewardship fund.” Calculation, etc. of a stewardship fund can be included in guidance, the grant agreement, or a link to best practices/ accreditation.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm. 4</i>	698-015-0080: ODFW recommends that the rules include terms and expectations for easements (as well as covenants), i.e. permanent per the definition.	OWEB will change the title of 0080 to “Terms of Covenants and Easements” and specify that easements are permanent.	Yes
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm. #5</i>	698-015-0140(2): ODFW recommends that the rules clarify if third party right of enforcement can be assigned.	After consulting with DoJ, OWEB can assign third party rights of enforcement if such language is included in the easement document, which is currently standard practice for OWEB’s land acquisition program.	No
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#6</i>	ODFW prefers easements over covenants because of their permanence. This could be accomplished during the application reviews, such as the establishment of a point system where covenants would be ranked significantly lower than projects with permanent easements.	698-015-0090(6)(b) provides ranking criterion that “The duration and extent of the agreement, with a preference for longer term agreements”	No
Oregon Department of Fish & Wildlife (ODFW) <i>Cov/Ease Comm.#7</i>	ODFW recommends clarification in how a covenant would be appraised for payment.	The commission is currently considering methods for appraisal of a covenant, which would be included in rule when finalized.	For future consideration
Restore Oregon’s Heritage Barns Task Force	698-015-0090: Restore Oregon recommends that the rules include language that specifically calls for the preservation of historic buildings, structures, or objects associated within the agricultural fabric of the	OWEB will include this in program guidance.	No

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

<i>Cov/Ease Comm.#1</i>	lands under review. Specifically, Restore Oregon recommends that the rules encouraging the maintenance and use of historic barns as agricultural buildings and/or their adaptive reuse when their historic use is no longer viable.		
Restore Oregon's Heritage Barns Task Force <i>Cov/Ease Comm.#2</i>	Restore Oregon recommends that the rules encourage the application for conservation easements on lands with historic agricultural buildings or structures as a tool in holistic succession planning.	OWEB will include this in program guidance.	No
Restore Oregon's Heritage Barns Task Force <i>Cov/Ease Comm.#3</i>	698-015-0090(4)(b): Restore Oregon recommends that the presence of a historic barn on the property represent one way of demonstrating the regional significance of the agricultural operation's associated infrastructure.	OWEB will include this in program guidance.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#1</i>	698-010-0010: SOLC recommends that the purpose language be consistent with other rules re: fish and wildlife, and agriculture practices.	OWEB will work to create consistency in purposes and definitions.	Yes
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#2</i>	698-015-0060: SOLC recommends removing the requirement to have match already approved because this makes it difficult to rely on another grant program – NRCS – as a match because of timing of grants and each requiring secured funds; they have to work together	OWEB will delete "as demonstrated by a formal application or agreement."	Yes
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#3</i>	698-015-0060: SOLC recommends that the commission remove the 5% of appraisal cap for stewardship funds. This is arbitrary and may not reflect real stewardship needs.	OWEB agrees that the amount of the fund is absolutely different based on each property. However, the Board needs to set some limit on what the contribution from the fund is. The commission believes that 5% of OAHP funding is reasonable for a stewardship fund.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#4</i>	698-015-0070: SOLC expresses strong support for funds for interest on loans and for stewardship.	Thank you for your comment.	N/A
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#5</i>	698-015-0090: SOLC recommends that the rules clarify "regionally significant" language. Concern that it appears to favor large-scale operations over smaller farms, without good rationale.	Given the diversity of Oregon agriculture, it is preferable to allow the applicant to make the case that a particular project is "significant," which will be assessed by the review team, OWEB staff, commission, and OWEB Board. These words will be clarified in guidance.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.# 6</i>	698-015-0090: SOLC notes that there is no criterion to evaluate the type of agriculture, which have differing impacts and economies: e.g., grazing, versus food crops for local markets.	Given the diversity of Oregon agriculture, ORS 541.984(4) prohibits considering the type of agricultural production on the working land.	No

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#7</i>	698-015-0090(5)(b): SOLC states that while Land Trust Accreditation is probably a good thing overall, there is a concern for requiring costly participation in a private organization so the option to demonstrate sufficient practices is a good and necessary option.	Thank you for your comment.	N/A
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#8</i>	698-015-0090(5)(b): SOLC states that it cannot understand why "working land preservation" has to be in a mission statement (I imagine land trusts might be tempted to change their missions statements as a result). The language here seems to be flexible enough though.	This ranking criterion (and all others under 0090) are not required, but are rather the set of factors considered by the review team, OWEB staff, commission and board in conducting ranking. An applicant with "working land preservation" in its mission statement may rank higher, but the ranking process is holistic in considering all criteria.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#9</i>	698-015-0090 (8): SOLC states that, in some cases, it is difficult to demonstrate threat of fragmentation with certainty especially with larger properties (e.g., ranches).	Given the diversity of Oregon agriculture, each applicant can make a case for the threat of fragmentation and conversion for the parcel at hand. Guidance will advise how to demonstrate this.	No
Southern Oregon Land Conservancy (SOLC) <i>Cov/Ease Comm.#10</i>	698-015-0160: SOLC recommends limiting the time period between when a covenant and subsequent easement are conveyed to avoid intentional working of the funding system to one's advantage.	An easement may be conveyed after a covenant for many reasons, including new ownership.	No
WaterWatch	698-015-0120: WaterWatch recommends adding more specificity to the public involvement section of the rules, including: <ul style="list-style-type: none"> • opportunity to comment on applications (1) before the technical team review, and (2) to the Commission based on the technical team recommendations to the Commission. • Each review period should be a minimum of thirty days. • Applications and review team recommendations should be posted on OWEB's website and notice should be send to OWEB's mail serve list, as well on the OWEB website. 	The public involvement process is described in ORS 271.735. Additional procedures may be added in guidance.	No
Yamhill Soil and Water Conservation District	The district suggests terms of covenants be no less than 30 years, nor longer the 100 years, instead of 20 years and 50 years, respectively. As stated previously, permanent easements should be prioritized over covenants.	The statute prescribes that covenants shall have terms between 20 and 50 years [ORS 541.989 (1)(b)].	No
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #1</i>	Purpose of Covenants and Easements (OAR 698-015-0010(2)): We prefer the original language of this section, which provides for "ensuring" the continued use of the land for agricultural purposes. We think that the mandate of this program – particularly at the application stage – is greater than to simply ensure land is available for agriculture.	The purpose has been changed to "preserve and protect the continued use of a working land for agricultural purposes..." consistent with proposed changes to the enabling statute.	Yes

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

	Land should be actively used in farming or ranching when enrolled in the program or have a definite plan to return the land to farm or ranch use. While we agree that no one can mandate that the land remain in production, without interruption, in perpetuity, we think that a purpose of the covenant or easement should be ensuring the continued use of the land for agriculture production.		
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #2</i>	Definitions (OAR 698-015-0020(1)): The final sentence is a little difficult to read. We recommend rewording it to "If applicable, it may also address any proposed agricultural projects..." We recommend leaving out the reference to public access, as that is not a purpose of this program.	This subsection was moved to Division 005 Program Administration since it may apply to both CMP and easement/covenant projects. Insert "may" after "applicable." The reference to public access is included so that if such access is envisioned by the landowner, the management plan will address whether it impacts the purpose of the working lands easement.	Yes/No
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm. #3</i>	CMPs vs. Management Plans (OAR 685-015-0050): While we understand that they are separate plans, we think it would be useful if the rules clarified the difference between a Conservation Management Plan and a management plan for easements and covenants. We recommend that the rules either come up with a different term for "management plan" or always capitalize "Conservation Management Plan" to reduce the potential for confusion between the two.	Created a separate definition for "management plan" and moved both definitions to the administrative rules (division 005).	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm.#4</i>	Stewardship Endowment (OAR 698-015-0060(3)): We are not clear what a stewardship endowment fund is as outlined in the rules, and believe the term could use additional clarification.	A definition of "stewardship" was added and the definition of "stewardship fund" was revised.	Yes
Oregon Farm Bureau and Oregon Cattlemen's Association <i>Cov/Ease Comm.#5</i>	Evaluation Criteria (OAR 698-015-0090): We appreciate the thought that went into the evaluation criteria for the statutory factors. a. For both the agricultural and conservation factors, we note that an "or" is more appropriate in the list than an "and" because all factors may not present for all applications, and all factors should not be required to fund a project. b. On comment NM7, we recommend adding infrastructure to the comments. c. On comment NM12, water quality goals should be driven by the local area plans, which is the plan for achieving any applicable TMDL. d. On comment NM17, we recommend adding "economic	a. The evaluation criteria are based on the "extent to which" the project addresses the agricultural and conservation factors, and does not require a project to address all of them. b. We will add infrastructure to the list of topics addressing agricultural viability. c. Agreed. Guidance on water quality will reference local area plans as the plan for achieving any applicable TMDL. d. Guidance on regional significance will include economic value/contribution to the local	No/Yes

Summary of Public Comments: Oregon Agricultural Heritage Program (Chapter 698)

	value/contribution to the local economy.” e. For 6(c), we recommend changing “including OAHP” to “including other OAHP funded plans, covenants or easements”	economy. e. Agreed.	
Oregon Farm Bureau and Oregon Cattlemen’s Association <i>Cov/Ease Comm. #6</i>	Payment Relationship (OAR 698-015-0170(1)): The last word in this sentence should be “covenant” and not “easement”.	Agreed	Yes

Rules: Technical Assistance Rules (OAR 698-020)			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
Friends of Family Farmers	698-020-0060: FoFF recommends the commission define the term “underserved populations” to include (a) small- and medium-sized family farms and ranches, (b) socially disadvantaged farmers or ranchers, and (c) veteran farmers or ranchers using the definitions recommended above, in addition to ‘beginning or young farmers and ranchers’	OWEB recommends including as criteria and matching the USDA the definitions of “underserved populations” to include “socially disadvantaged farmers or ranchers,” “veteran farmers or ranchers,” and “limited resource farmer or rancher” and using the USDA definitions for these terms.	Yes
Oregon Farm Bureau and Oregon Cattlemen’s Association	Evaluation Criteria (OAR 698-020-0070): We agree with the recommendation to change the criteria around unserved populations to reference beginning farmers and ranchers.	Agreed.	Yes

Rules: Succession Planning Rules (OAR 698-025)			
Commenter(s)	Comments	Staff Recommendation	
		Response	Rule Change
None.			

Division 005
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 fragmentation, conversion and fragmentation of Oregon’s working land and conversion of Oregon’s working land from agricultural production; and
- 3) Enhanced fish and or wildlife habitat, water quality, and other natural resources on Oregon’s working land.

Comment [LR1]: DLCD Comment (and is applied throughout rules)

698-005-0020

Definitions

- 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) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.
- 3) “Commission” means the Oregon Agricultural Heritage Commission created under ORS 541.986.
- 4) “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.
- 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.
- 6) “Conversion”:
 - a. “Conversion” means:
 - i. Cessation of accepted farming practices;
 - ii. Construction of dwellings not occupied by farm operators or workers or other structures not related to agriculture;
 - iii. Removal of infrastructure required for accepted farming practices (e.g. irrigation improvements, tile drainage) unless necessary to accommodate a change in accepted farming practices; or
 - iv. Cancelling or transferring rights to use water for irrigation in a manner that reduces the long-term viability of agriculture on the working land.

Comment [LR2]: ODFW Admin. Comm. #1; WaterWatch Admin. Comm. #1; ODFW Cov/Ease Comm. #1; OR Farm Bureau and OR Cattlemen’s Assoc. Cov/Ease Comm. #2

Comment [NM3]: Created definition separate from “management plan.”

Comment [LR4]: ODFW Admin. Comm. #1; WaterWatch Admin. Comm. #1; ODFW Cov/Ease Comm. #1; OR Farm Bureau and OR Cattlemen’s Assoc. Cov/Ease Comm. #2

Comment [LR5]: DLCD Comment.

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a-b. As used in this definition, "accepted farming practices" shall have the meaning set forth in ORS 215.203(2)(c)

Comment [NM6]: ORS 215.203(2)(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

~~3~~7) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

~~4~~8) "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.

~~5~~9) "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.

Comment [EW7]: From DOJ: clarifies the board's role in a funded project.

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

~~6~~11) "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. The management plan may address agriculture, habitat and natural resource management practices, public access, and educational or research projects if applicable.

Comment [LR8]: ODFW Admin. Comm. #1; WaterWatch Admin. Comm. #1; ODFW Cov/Ease Comm. #1; OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #2

~~7~~12) "OWEB" means the Oregon Watershed Enhancement Board state agency.

~~8~~13) "Technical committee" means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

Comment [NM9]: Moved from covenant/easement section, clarified that this definition relates to management plans associated with easements, and added a separate definition for CMPs.

~~9~~14) "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.

~~10~~15) "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-or wildlife habitat, improvement of water quality or support of other natural resource values.

~~11~~16) "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-or wildlife habitat, improvement of water quality or support of other natural resource values.

698-005-0030

Application Requirements

1) Applications must be submitted on the most current form -prescribed by the Commission. Current applications are will be made available on the OWEB website. An explanation must accompany the application if any of the information required on the

Comment [EW10]: From DOJ

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application cannot be provided. In addition to the information required in the application and the required attachments, an applicant may submit additional information that will aid the Commission in evaluating the project.

- 2) All applicants for Oregon Agricultural Heritage Program grants shall supply the following information:
 - a. Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s);
 - b. Name and address of participating agricultural owners or operators;
 - 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 American Datum 1983, county, watershed, [stream](#), or stream mile, as appropriate;
 - d. Estimated line item budget for the project using the most current budget form prescribed by the Commission. Current budget forms are available on the OWEB website;
 - e. Identification of specific project elements for which OAHP funds will be used;
 - f. A description of any non-OAHP funds, services or materials available or secured for the project and any conditions which may affect the completion of the project;
 - g. If the project is part of a multi-year project, and a new funding request continues a previously Commission-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project;
 - h. Identification of volunteers and partners (if any) and the contribution they will make to the project;
 - i. A project schedule, including times of project beginning and completion; and
 - j. Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type.

Comment [LR11]: WaterWatch Admin. Comm. #2

~~3) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all participating landowners of the existence of the application and has also advised all landowners that all monitoring information obtained on their property is public record. If contact with all landowners was not possible at the time of application, the applicant must explain why.~~

Comment [EW12]: Oregon Farm Bureau and Oregon Cattlemen's Association, Admin Comm. #1

4) 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.

698-005-0040

Application Processing

- 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.

DRAFT OAHP Administrative Rules

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

698-005-0050

Grant Agreement Conditions

- 1) The Board will enter into new grant agreements with prior grantees only if all reporting obligations under earlier agreements have been met.
- 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.
- 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.
- 6) The grantee will account for funds distributed by the Board, using project expense forms provided by OWEB.
- 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 Board.
- 8) The Board may place additional conditions in the grant agreement as necessary to carry out the purpose of the program, including:
 - a. An enforceable agreement ~~written commitment~~ by the agricultural owner or operator for continued access by OWEB and its designees for monitoring the project after completion;
 - b. An enforceable agreement ~~written commitment~~ by the grantee to maintain the project for a period of time ~~as deemed appropriate~~ commensurate with the project approved by the Board;
 - c. An enforceable agreement ~~written commitment~~ to supply future reports on the project as required; and
 - d. Such other conditions as the Board deems appropriate to the particular circumstances of the project.
- 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 both all parties.

Comment [EW13]: From DOJ: Written commitment sounds a bit aspirational and it seems the conditions would be required.

Comment [LR14]: ODFW Admin. Comm. #2

Comment [LR15]: OR Farm Bureau and OR Cattlemen's Assoc. Admin. Comm. #2

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 purposes of the fund as specified in ORS 541.977 – ORS 541.989.

Comment [LR16]: OR Farm Bureau and OR Cattlemen's Assoc. Admin. Comm. # 3

698-005-0070

Distribution of Funds

- 1) The Director may withhold payments to a grantee ~~if in a situation where~~ there are significant and persistent difficulties with satisfying Board requirements.
- 2) Funds will be released upon presentation of a completed fund release request form 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.
- 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 the Commission. 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.

698-005-0080

Funding Decision Reconsideration by Board

In the event that the Director determines ~~an applicant 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 ~~applicant-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.

Division 698-005-0090

Technical Committees

In addition to technical committees established by the ~~Board and~~ Commission to rank and evaluate conservation management plan and working land conservation covenant and easement 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) ~~and (3)~~.

Comment [EW17]: From DOJ; deals with expense reimbursement, so not needed here.

698-005-0100

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 in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 010
Conservation Management Plans

698-010-0010

Purpose

~~The purpose of a conservation management plan as defined in OAR 698-005-0020(4) is to develop and implement conservation measures or other protections for maintaining or enhancing fish or wildlife habitat, water quality or 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.~~

Comment [LR1]: COLT Gen Comm. #3 and #4; and SOLC Admin Comm. #2; Oregon Farm Bureau and Oregon Cattlemen CMP Comment #1

The Conservation Management Plan Grant Program funds the development, implementation, ~~and monitoring of~~ conservation management plans (plans) entered into by agricultural owners or operators and ~~organization~~ conservation management plan holders to manage working land in a manner that ~~supports one or more natural resource values. Conservation management plans funded under this program contributes to the purpose of OAHF in OAR 698-005-0010.:~~

- ~~1) Must contribute to the public benefits in OAR 698-005-0010;~~
- ~~2) Must be for the purpose of developing and/or 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;~~
- ~~3) Must protect, maintain, or enhance the agricultural values of the working land and/or operation; and~~
- ~~4) 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.~~

698-010-0020

Definition

- (1) "Mutual Modification" means a change to a conservation management plan that is:
 - a. Material to the plan as defined in Section 0120(5); and
 - b. Agreed to by ~~both~~ the agricultural owner or operator implementing the plan and the conservation management plan holder.
- (2) "Project" means the aggregate of eligible activities included in Section 0060 that comprise an application.

Comment [LR2]: OR Farm Bureau and OR Cattlemen's Assoc. Gen Comm. #4

698-010-0030

Eligibility

- 1) Eligible applicants for Conservation Management Plan Grants are:

DRAFT OAHP Conservation Management Plan Rules

- a. Entities eligible to hold a conservation easement as defined in ORS 271.715, other than a state agency;
 - b. Watershed councils; and
 - c. ~~Not-for-profit organizations other than a state agency~~~~ies~~~~Nonprofit entities that are tax exempt under section 501(c)(3) of the Internal Revenue Code.~~
- 2) Individual agricultural owners or operators are not eligible to apply for a Conservation Management Plan Grant.

698-010-0040

Application

Conservation Management Plan Grant applications shall:

- (1) Be consistent with OAR 698-005; and
- (2) Include the duration and any terminating events for the plan.

698-010-0050

Match Contributions

- 1) All applicants shall demonstrate that some portion of the proposal is being sought as match.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-010-0060;
 - b. Funding commitments made by others as a result of grant applicant efforts; and
- 3) The OWEB Director retains the discretion to determine whether specific proposed matching costs not specifically identified above can be recognized as qualifying matching costs.

698-010-0060

Conservation Management Plan Eligible Activities

1) Funding may be utilized to develop, implement, and/or carry out or monitor conservation management plans.

2) If there is a stream on the property:

- a) The planning process must present the agricultural owner or operator with alternatives that support implementation of the local Agricultural Water Quality Management Area Plan goals.
- a) b) If the program pays for plan implementation, the selected alternative must support implementation of the local Agricultural Water Quality Management Area Plan goals.

Comment [LR3]: Myron Comment

698-010-0070

Term of Payment for Conservation Management Plan Implementation

- 1) If an agricultural owner or operator is reimbursed for the implementation of a conservation management plan, the plan must be for a term of at least 20 years and no more than 50 years.
- 2) If a plan is associated with a working land conservation covenant that would also be funded by OAHP, the term of the plan must be the same as the term of the covenant.

698-010-0080

Conservation Management Plan Components

At a minimum, conservation management plans must include:

- (1) A summary describing how the conservation management plan meets OAHP's purpose;
- (2) The contact and location information for the agricultural owner or operator and conservation management plan holder;
- (3) Relevant background and context of the working land and operation;
- (4) Inventory, including site characteristics and current management;
- (5) Short- and long-term social, economic, and conservation goals of the agricultural owner or operator;
- (6) Resource analysis and identification of resource and management concerns;
- (7) Identification of potential plan activities and a justification for the activities that were selected for implementation;
- (8) The implementation plan, including a budget;
- (9) If applicable, a maintenance plan for infrastructure associated with the plan that may affect neighboring lands if not maintained over time;
- (10) The expected agricultural, fish or wildlife, water quality, or other natural resource outcomes, and related social outcomes of the plan once implemented;
- (11) How the conservation management plan will be evaluated and managed;
- (12) A conflict resolution protocol for the agricultural owner or operator and the grantee conservation management plan holder if the grant program would fund the implementation of the plan; and
- (13) The term of the plan.

698-010-0090

Evaluation Criteria

Conservation Management Plan Grant applications will be evaluated on:

- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the conservation management plan(s).
- 2) The extent to which implementation of the plan(s) would protect, maintain, or enhance farming or ranching on working land, including how implementation of the plan(s) would:

DRAFT OAHF Conservation Management Plan Rules

- a) Maintain or improve the economic viability of the operation; and
 - b) Reduce the potential for future ~~fragmentation~~conversion or fragmentation of the property and surrounding agricultural lands~~working land~~ or conversion of the property that would preclude future agricultural uses on the working land subject to the plan(s).
- 3) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, ~~improve~~ water quality, or ~~support~~ other natural resource values by:
- a) ~~Protecting, maintaining, or improving habitats and species identified as Oregon Conservation Strategy priorities, Oregon's Agricultural Water Quality Management Program priorities, and/or other natural resource values applicable to the land, including soil, water, plants, animals, or energy, and/or human needs~~ considerations;
 - b) Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, ~~and/or~~ other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality or other natural resource values;
 - c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land subject to the plan;
 - d) Protecting, maintaining, or improving water quality ~~and/or~~ quantity; and
 - e) Sustaining ecological values, as evidenced by the conservation management plan, or inherent site condition.
- 4) The extent to which implementation of the plan(s) would protect, maintain or enhance significant agricultural outcomes, benefits, or other investment gains, including the regional significance of the agricultural operation and its associated land base.
- 5) The capacity and competence of the ~~organization that filed the application~~ prospective conservation management plan holder to enter into and (if implementation funding is awarded) ~~oversee~~ monitor and carry out implementation of a conservation management plan, including:
- a) The financial capability to manage the plan(s) over time;
 - b) The demonstrated relevant commitment, expertise, and track record to successfully develop, implement, carry out, and/or ~~and~~ monitor plan(s); and
 - c) The strength of the ~~organization~~ conservation management plan holder as measured by effective governance.
- 6) The extent to which the benefit to the state may be maximized, based on:
- a) The ability to leverage grant moneys from other funding sources;
 - b) The duration and extent of the conservation management plan, with a preference for longer term agreements if implementation funding is awarded; and
 - c) The potential for setting an example that will encourage additional working land projects.

Comment [LR4]: DLCD Comment (and is applied throughout rules)

Comment [LR5]: EMSWCD Gen Comm. #2; SOLC Admin Comm. #2

Comment [LR6]: WaterWatch CMP Comm. #8

Comment [EW7]: DOJ; also, addressed in the ag values criteria.

Comment [LR8]: WaterWatch CMP Comm. # 7

DRAFT OAH Conservation Management Plan Rules

- 7) The impacts of plan implementation on owners or operators of neighboring lands, including:
 - a) A plan for communicating with neighboring ~~landowners-owners and operators~~ once the a conservation management plan ~~(s) is/are is~~ ready to be implemented about how to mitigate any impacts, if necessary; and
 - b) A maintenance plan ~~or plans~~ for infrastructure that may impact neighboring lands if not maintained over time.
- 8) The level of threat of ~~fragmentation or conversion or fragmentation~~ from agricultural uses of the working land.

Comment [LR9]: DLCD Comment (and is applied throughout rules)

698-010-0100

Technical Review and Funding Process

~~(1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application.~~

Comment [EW10]: WaterWatch CMP Comm. #13

(1) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.

Comment [ML11]: Oregon Farm Bureau and Oregon Cattlemen, Gen. Comm. #2

- (2) Applications shall be evaluated according to criteria described in OAR 698-010-00980.
- (3) The ranking system shall provide for the ranking of conservation management plans alone and not as part of an application that includes a working land conservation covenant or easement.

~~(4)(1) The Board and Commission shall jointly appoint one or more technical committees to evaluate and rank applications for grants for conservation management plans.~~

~~(5)(4)~~ (4) The technical committee(s) shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.

~~(6)(5)~~ (5) The Commission shall review and consider the recommendations of the technical committee(s) ~~appointed under 698-005-0040(4)~~ and consult with the Board concerning grant applications.

~~(7)(6)~~ (6) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.

~~(8)(7)~~ (7) The Board approves Conservation Management Plan Grants. The Board may fund a grant application in whole or in part.

698-010-0110

Grant Agreement Conditions

- (1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural owner(s) or operator(s) to the roles and responsibilities under the conservation management plan.

- (2) All ~~c~~Conservation ~~m~~Management ~~p~~Plan ~~g~~Grant agreements for conservation management plan development authorized by the Board shall have a clause that requires the retention of up to 10 percent of project funds until the final report, as required in the grant agreement, has been approved. Any unexpended ~~OAHP program~~ funds must be returned to the Commission ~~with the final report~~.
- (3) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed amendments are submitted and approved by the Director prior to the beginning of any work proposed in the amendment.
- (4) The Director will consider project amendments, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.
- (5) All changes to the conservation management plan must be reflected in writing and provided to the ~~Oregon Agricultural Heritage~~ Commission.

698-010-0120

Conservation Management Plan Mutual Modification

If funding is provided for conservation management plan implementation:

- (1) Any changes to conservation management plans must achieve the same or greater level of benefits as the original plan, as evaluated by the criteria in OAR 698-010-0090.
- (2) Conservation management plans must include provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.
- (3) Any change in the conservation management plan must be mutually agreed to by both the agricultural owner or operator and the grantee conservation management plan holder.
- (4) To ensure consistent review of all conservation management plans, the grantee conservation management plan holder and the agricultural owner or operator must review the conservation management plan at least annually and may mutually modify the conservation management plan if necessary.
- (5) The agricultural owner or operator must contact the grantee conservation management plan holder immediately if any of the following changes occur that will impact either implementation of the conservation management plan or its expected outcomes:
 - (a) Changes in management or ownership of the property;
 - (b) Changes in the grazing ~~or~~ cropping system(s) not identified in the plan. For changes in grazing ~~or~~ cropping systems, the landowner must notify the grantee conservation management plan holder in advance;
 - (c) A natural disaster occurs that will impact implementation of the conservation management plan; or
 - (d) Other changes that are outside the agricultural owner's or operator's control.

DRAFT OAHP Conservation Management Plan Rules

- (6) The grantee conservation management plan holder must contact the agricultural owner or operator if changes in site conditions significantly affect the expected outcomes of conservation management plan implementation.
- (7) Modifications to the plan may include:
 - (a) The addition of new conservation practices, measures or benefits; or
 - (b) Changes to practices, measures, or benefits in response to:
 - i. Changes in best management approaches based on new scientific understanding of expected outcomesChanges in science;
 - ii. Changes in management or ownership of the propertyworking land;
 - iii. Changes in the grazing or /cropping system(s);
 - iv. A natural disaster; or
 - v. Other changes outside the agricultural owner's or operator's control.

Comment [LR12]: ODFW CMP Comm. #5

698-010-0130

Conservation Management Plan Monitoring

If funding is provided for conservation management plan implementation:

- (1) Notwithstanding (2), the grantee conservation management plan holder must conduct at least one site visit to the property every three years, or as prescribed by a match funder if their interval for site visits is shorter than three years, to document the implementation of the conservation management plan.
- (2) The agricultural owner or operator and the grantee conservation management plan holder may agree to establish specific monitoring protocols and site visit intervals more frequent than once every three years to identify trends in fish or wildlife habitat, water quality or other natural resource values, and must establish protocols if a modification of the conservation management plan results in specific monitoring or site visit needs. Protocols must be in writing and agreed to by both the agricultural owner or operator and the grantee conservation management plan holder. The Commission may provide guidance for consistent monitoring protocols.
- (3) The Commission or its designees may conduct spot checks to ensure management plan implementation as identified in the plan and associated reporting. The agricultural owner or operator shall allow site access to the Commission, OWEB, or their contractors or representatives upon reasonable notification by the Commission.
- (4) The Commission may also develop monitoring protocols to evaluate the outcomes of conservation management plan implementation on a programmatic level.

698-010-0140

Grant Reporting Requirements

- 1) For grants that fund include funding for conservation management plan implementation:

DRAFT OAHP Conservation Management Plan Rules

- a. At least once per year, the agricultural owner or operator must meet with the ~~grantee conservation management plan holder~~ and provide ~~this~~ grantee holder with a written report of ~~the~~ conservation management plan activities completed that year on a form approved by the Commission. Reports may also include photo points or other methods that appropriately track plan implementation.
 - b. Annual reporting must identify any mutual modifications to the conservation management plan.
 - c. Reports must be submitted to the Commission on a date set by the Commission.
- 2) Upon development of a conservation management plan or completion of conservation management plan implementation, the grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date specified in the grant agreement.
- 3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the ~~g~~Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved, the final payment shall be promptly processed.

Comment [LR13]: OR Farm Bureau and OR Cattlemen's Assoc. CMP Comm. #3

698-010-0150

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 010 unless required by statute, when doing so will result in more efficient or effective implementation of the Conservation Management Plan Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

DRAFT Working Land Conservation Covenant and Easement Rule

DIVISION 015

Working Land Conservation Covenants and Easements

698-015-0010

Purpose

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

Comment [LR1]: OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #1

An agricultural owner or operator, willing owner of working land, may enter into a working land conservation covenant (covenant) with or grant a working land conservation easement (easement) to an organization that is a holder, as defined in ORS 271.715, other than a state agency. Covenants and easements funded under this program:

Comment [LR2]: COLT Gen Comm. #3 and #4; SOLC Admin Comm. #2 and Cov/Ease Comm. #1

Comment [LR3]: COLT Cov/Ease Comm. #1

Comment [EW4]: DOJ – Sentence not relevant to purpose.

- 1) Must contribute to the public benefits in OAR 698-005-0010; and
- 2) Must be for the purpose of providing the opportunity for continued use of the land for agricultural purposes while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land; and
- 3)2) May/ Must provide for carrying out any purposes of a conservation easement, as defined in ORS 271.715.

Comment [EW5]: DOJ – A CE must meet the statutory definition.

698-015-0020

Definitions

1) "Management plan" means a description of the planned future management of a property proposed for easement or covenant acquisition that addresses agriculture, habitat and natural resource management practices; stewardship; monitoring; and uses of the property. If applicable, it also addresses any proposed agricultural projects, habitat restoration projects, public access, or educational or research projects on the property.

Comment [NM6]: Moved to Admin section, and applied to CMPs as well.

1) "Profit" means:

a) The positive difference between the original purchase price of the covenant or easement interest acquired with OAHP grant funds and a subsequent purchase price for the same property interest,

Comment [LR7]: ODFW Cov/Ease Comm. #1; OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #2

b) Minus:

i) Any funds invested or to be invested in the stewardship fund; or

Comment [LR8]: COLT Cov/Ease Comm. #16

ii) The landowner's property improvement costs that, from an accounting or tax perspective, are capitalized and not expensed.

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

Comment [LR9]: OR Farm Bureau and OR Cattlemen's Assoc. Gen Comm. #4

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.

Comment [LR10]: OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #4

DRAFT Working Land Conservation Covenant and Easement Rule

3) ~~“Stewardship endowment fund” means the a restricted fund that is used to cover the holder’s long-term costs for ~~the monitoring, stewardship, resolution of violations, and any enforcement of the covenant or easement~~ 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.~~

Comment [LR11]: COLT Cov/Ease Comm. #2 (word change was made throughout); MRT Cov/Ease Comm. #2; ODFW Cov/Ease Comm. #3

698-015-0030

Eligible Applicants

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

698-015-0040

Eligible Properties

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

698-015-0050

Application

- 1) In accordance with ORS 541.977(3) and (4), OWEB may consider Working Land Conservation Covenant and Easement Grant applications to acquire a nonpossessory interest in working land for a permanent or fixed term that imposes limitations or affirmative obligations ~~for the purposes that support the use of~~ preserves and protects the land for agricultural production and for the maintenance or enhancement of fish and or wildlife habitat, improvement of water quality, or support of other natural resource values.
- 2) Working Land Conservation Covenant and Easement Grant applications shall:
 - a. Be consistent with OAR 698-~~Division_ 001005~~;
 - b. Be submitted on the most current form and process prescribed by the Commission;
 - c. State the amount and type of match contribution; and
 - d. If the application is for a covenant, include the duration of the covenant.
- 3) If the covenant is identical in duration to a conservation management plan for the working land that is funded by the OAHF Conservation Management Plan Grant Program, the covenant must refer to the conservation management plan in the text of the covenant; ~~and.~~
- 4) If there is a stream on the property, the covenant or easement application shall describe how the management of the land will support implementation and monitoring of the local Agricultural Water Quality Management Area Plan goals.
- 4)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 ~~management~~ plan must be agreed to by the landowner, applicant, and commission before closing.
- 5)6) The Commission may consider proposals that are received for covenants or easements that were acquired by the applicant after the previous application deadline.

Comment [LR12]: Myron Cov/Ease Comm.

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-0060

Matching Contributions

- 1) All applicants shall demonstrate that at least 25% of the OAH grant request for the covenant or easement project costs is being sought as match as demonstrated by a formal application or agreement.
- 2) The following funds and activities qualify as match:
 - a. In-kind contributions to activities listed under OAR 698-015-0070;
 - b. Funding commitments made by others as a result of grant applicant efforts;
 - c. The A donated portion of a sale; and
 - d. Funds deposited in a sStewardship Endowment fund before the time that OWEB funds are released for acquisition of the covenant or easement.
- ~~3) The Working Land Conservation Covenant and Easement Grant Program will provide up to a 50% match for the value of a stewardship endowment, but program funds contributed to a stewardship endowment may not exceed 5% of the total appraised value of the covenant or easement.~~
- 4)3) The OWEB Director retains the discretion to determine whether specific proposed matching costs contributions not specifically identified above can be recognized as qualifying matching costs match.

Comment [LR13]: COLT Cov/Ease Comm. #6

Comment [LR14]: EMSWCD Cov/Ease Comm. #1; MRT Cov/Ease Comm. #4; SOLC Cov/Ease Comm.#2

Comment [NM15]: Moved to 0070(9)

Comment [LR16]: COLT Cov/Ease Comm. #7

698-015-0070

Use of Grant Funds

Working Land Conservation Covenant and Easement Grant funds may be applied towards costs related to the purchasing, implementing, carrying out, holding of, monitoring, stewarding, or enforcing of the covenant or easement, including:

Comment [LR17]: COLT Cov/Ease Comm. #3

- 1) The purchase price and the purchase option fees associated with the working land conservation covenant or easement:
 - a. The purchase price for easements shall be based on an appraisal and review appraisal completed in accordance with applicable appraisal standards, including the Uniform Standards of Professional Appraisal Practice, and if required by other funding sources or the Internal Revenue Service, the Uniform Appraisal Standards for Federal Land Acquisitions.
 - b. The purchase price for covenants shall be based on an assessment of fair market value using methodologies similar to those described in OAR 698-015-0070 (1)(a);
- 2) The interest on bridge loans needed to secure closure on the property prior to when funding will be available for distribution through the program;
- 3) The staff costs incurred as part of the covenant or easement acquisition process related to the property;
- 4) The cost of due diligence activities, including appraisal, environmental site assessment, survey, title review, and other customary due diligence activities;
- 5) The cost of baseline inventory preparation;

DRAFT Working Land Conservation Covenant and Easement Rule

- 6) The legal fees incurred;
- 7) The closing fees, including recording and title insurance costs;
- 8) The cost of securing and maintaining the agriculture and conservation values associated with the property in accordance with the application or a conservation management plan approved by the Director; and
- 9) Funding for a stewardship endowment 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.

Comment [LR18]: COLT Cov/Ease Comm. #7

698-015-0080

~~Conservation Covenant Term~~ Terms of Covenants and Easements

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

Comment [LR19]: ODFW Cov/Ease Comm. #4

2)

~~3)~~ A working land conservation covenant shall ~~be last~~ for a term of no less than twenty and no more than fifty years.

~~2)~~4) The covenant term shall be set at 12-month increments only and not partial years.

~~3)~~5) The first day of the term of a covenant shall be the date that both of these event have occurred:

- a. The covenant holder and the ~~agricultural owner or operator~~ owner of working land conveying the covenant sign the agreement; and
- b. The ~~agricultural owner or operator~~ owner of working land has received Working Land Conservation Covenant and Easement Grant funding from this program for the covenant.

698-015-0090

Evaluation Criteria

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

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- 1) The significance of the agricultural, natural resource, and related social values of the working land subject to the working land conservation covenant or easement.
- 2) The extent to which the working land conservation covenant or easement would protect, maintain, or enhance farming or ranching on regionally significant working land, including:
 - a) Reducing the potential for future fragmentation conversion or fragmentation of the property and surrounding ~~agricultural lands or conversion of the property that would preclude future agricultural uses~~ working land;
 - b) Maintaining or enhancing the ability of the land to be in productive agricultural use after the covenant or easement is in place;
 - c) The potential viability of the property for agriculture; and
 - d) Improving or maintaining the economic viability of the operation, including future transfer of ownership.

Comment [LR20]: DLCD Comment (and is applied throughout rules)

DRAFT Working Land Conservation Covenant and Easement Rule

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

Comment [LR21]: EMSWCD Gen Comm. #2; SOLC Admin Comm. #2,

- a) Protecting, maintaining, or improving ~~habitats and species identified as Oregon Conservation Strategy priorities, Oregon's Agricultural Water Quality Management Program priorities, and/or other natural resource values applicable to~~ the land, including soil, water, plants, animals, energy, and human needs considerations;
- b) Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, ~~and/or~~ other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality or other natural resource values;
- c) Protecting, maintaining, or improving the quality and connectivity of wildlife habitat on and around the working land;
- d) Protecting, maintaining, or improving water quality and/or quantity; and
- e) Implementing a management plan that is likely to sustain ecological values, as evidenced by a management plan, easement or covenant terms, or inherent site condition.

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

Comment [NM22]: Missing word

- 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 and its associated infrastructure.

Comment [LR23]: COLT Cov/Ease Comm. #10

5) The capacity and competence of the applicant ~~and/or~~ the proposed easement or covenant holder to purchase, accept, implement, ~~carry out~~, hold, monitor, steward, and enforce a working land conservation covenant or easement, including:

Comment [LR24]: OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #5

- 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 ~~create~~ purchase, accept, implement, ~~carry out~~, hold, monitor, steward, and enforce conservation covenants and easements or other relevant projects; and
- e) The strength of the organization as measured by effective governance.

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

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

DRAFT Working Land Conservation Covenant and Easement Rule

- b) The duration and extent of the agreement, with a preference for longer term agreements;
 - c) The cumulative effect of similar conservation ~~and/or~~ agricultural investments in the community, including other OAHF funded plans, covenants, or easements;
 - d) ~~The effects of land use planning on the long-term investment~~ Consistency with local comprehensive plans and statewide planning goals;
 - e) The potential for setting an example that will encourage additional working lands projects in the region; and
 - f) The existence and implementation of a conservation management plan.
- 7) The impacts of the covenant or easement ~~and/or~~ the associated conservation management plan on owners or operators of neighboring lands, and the extent to which there is a plan of engagement with neighboring landowners about how to mitigate any impacts resulting from the covenant or easement, if necessary.
- 8) ~~The level of threat of fragmentation or conversion or fragmentation from agricultural uses of~~ the working land.
- ~~9) The soundness of the legal and financial terms of the proposed real estate transaction.~~

Comment [LR25]: OR Farm Bureau and OR Cattlemen's Assoc. Cov/Ease Comm. #5

Comment [LR26]: DLCD Cov/Ease Comm. #3

Comment [LR27]: DLCD Comment (and is applied throughout rules)

Comment [LR28]: COLT Cov/Ease Comm. #11

698-015-0100

Technical Review and Funding Process

- ~~(1) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.~~
- ~~(1) Technical review of Working Land Conservation Covenant and Easement Grant applications shall occur based on information provided in the grant application.~~
- (2) Applications shall be evaluated according to criteria described in OAR 698-015-0090.
- ~~(3) The ranking system shall provide for the ranking of a working land conservation covenant or easement alone and not as part of an application that includes conservation management plans(s).~~
- ~~(4)(1) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements.~~
- ~~(5)(3) The technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide funding recommendations to the Commission.~~
- ~~(6)(4) The Commission shall review and consider the recommendations of OWEB staff and consult with the Board concerning grant applications.~~
- ~~(7)(5) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.~~

Comment [ML29]: Oregon Farm Bureau and Oregon Cattlemen, Gen. Comm. #2

Comment [EW30]: WaterWatch CMP Comm. #13

Comment [NM31]: Only CMPs alone must be reviewed separately. Not applicable here.

DRAFT Working Land Conservation Covenant and Easement Rule

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

698-015-0110

Board Approval and Delegation of Authority

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

Comment [LR32]: COLT Cov/Ease Comm. #12

698-015-0120

Public Involvement

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

- 1) Written comments received ~~at least 14 days before~~prior to the Board or Commission meeting at which the Board or Commission will consider the application;
- 2) Comments made at public hearings held and publicized in accordance with ORS 271.735; and
- 3) Comments made at the Board or Commission meeting at which the grant application is considered.

698-015-0130

Director Funding Approval and Distribution of Funds

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

- a. A grant agreement is executed by the Director and the ~~grant applicant~~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 ~~agricultural owner or operator~~owner of working land;
- b. The funding conditions, if any, imposed by the Board are satisfied to the full satisfaction of the Director;
- c. The legal and financial terms of the proposed real estate transaction are approved by the Director;
- d. The ~~required~~title restrictions ~~required under OAR 698-015-0110~~ are approved by the Director;

Comment [LR33]: COLT Cov/Ease Comm. #13

DRAFT Working Land Conservation Covenant and Easement Rule

- e. The Director has reconciled conditionally approved funding with actual project costs;
- f. The ~~grant applicant~~grantee has satisfied the match requirements under OAR 698-015-0060;
- g. The Board is notified in writing of the Director’s intent to ~~distribute the grant funds,~~ ~~or~~ hold or recover the grant funds pending Board consideration under OAR 698-015-0140(1).

Comment [LR34]: COLT Cov/Ease Comm. #14

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

698-015-0140
Compliance and Enforcement

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

2) OWEB and its designees, its contractors, and cooperating agencies will be provided sufficient legal access to property encumbered by a covenant or easement acquired with OAHP funds, given reasonable notice, for the purpose of completing easement and covenant and easement inspections and evaluations.

Comment [NM35]: EMSWCD recommends “legal access by OWEB, its contractors, and cooperating agencies to a property encumbered by an easement or covenant acquired with OAHP funds be consistent with those access rights granted by the easement to the easement holder.”

698-015-01560
Grant Reporting Requirements for Covenants

Upon completion of the term of a working land conservation covenant, the grantee will provide the Commission and OWEB’s Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.

Comment [LR36]: EMSWCD Cov/Ease Comm. #7 and #8

Comment [LR37]: EMSWCD Cov/Ease Comm. #9

698-015-01670
Payment Relationship Between Covenants and Easements

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

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

Comment [LR38]: COLT Cov/Ease Comm. #15; OR Farm Bureau and OR Cattlemen’s Assoc. Cov/Ease Comm. #5

DRAFT Working Land Conservation Covenant and Easement Rule

698-015-01780

Subsequent Conveyances

~~If a covenant or easement acquired with OAHF funds is subsequently transferred in exchange for cash, it must~~
~~Subsequent conveyances of working land conservation covenants or easements acquired with OAHF grant funds by the easement or covenant holder shall:~~

- 1) Be made subject to prior approval by the Commission;
- 2) Strictly comply with the requirements of ORS 541.977 – ORS 541.989 and OAR 698-010 and OAR 698-015; and
- 3) Not result in profit to the holder.

698-015-01890

Waiver and Periodic Review of Rules

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

Comment [LR39]: COLT Cov/Ease Comm. #16

Division 020
Working Land Technical Assistance Grants

698-020-0010

Purpose

~~The purpose of technical assistance grants is to provide The Oregon Agricultural Heritage Commission (Commission) may provide grant funding for technical~~ assistance to organizations that ~~enter into or~~ are eligible to enter into agreements resulting in conservation management plans, or that ~~accept-acquire~~ or propose to ~~accept-acquire~~ working land conservation covenants or working land conservation easements. Grant funding must support the public benefits in OAR 698-005-0010.

698-020-0020

Definitions

(1) "Technical assistance" means supporting the development of working land projects or programs as described in ORS 541-981 and ~~OAR 698-division~~ 010 (conservation management plans) and ORS 541-982 and ~~OAR 698-division~~ 015 (working land conservation covenants and easements).

Comment [EW1]: DOJ recommended protocol.

(2) "Young or beginning farmer or rancher" means someone who has ~~owned or operated an agricultural operation~~ been an agricultural owner or operator for 10 ~~consecutive~~ years or fewer, or ~~who an agricultural owner or operator who~~ is 35 years old or younger.

Comment [NM2]: From USDA definition

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

Comment [NM3]: From USDA definition.

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

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Comment [NM4]: From USDA definition.

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

Comment [LR5]: From USDA definition.

698-020-0030

Eligibility

- 1) Eligible applicants for Technical Assistance Grants are eligible to enter into agreements resulting in a conservation management plan under ~~OAR 698-division~~ 010-0080 or

~~accept~~ acquire a working land conservation covenant or easement under ~~OAR 698-division 015-0080~~.

- 2) Individual agricultural owners or operators are not eligible to apply for a Technical Assistance Grant.

698-020-0040

Application Requirements

Technical Assistance Grant applications shall be consistent with OAR 698-005.

698-020-0050

Technical Assistance Activities

- 1) Technical Assistance Grant funding cannot be used to fund specific conservation management plans, working land conservation covenants, or working land conservation easements.
- 2) The Commission will only consider technical assistance projects that will lead to or are likely to lead to the development of conservation management plans, working land conservation covenants, or working land conservation easements.

698-020-~~00700060~~

Evaluation Criteria

Technical Assistance Grants will be evaluated on:

- 1) The extent to which the proposal will improve upon the ability of the entity or its partners to enter into conservation management plans, or ~~enter into~~ acquire working land conservation covenants or easements.
- 2) The extent to which the outcomes of the technical assistance project would lead to activities that:
 - a. Protect, maintain, or enhance farming or ranching on working land;
 - b. Protect, maintain, or enhance significant fish or wildlife habitat, water quality, appropriate seasonal water flows, and appropriate water retention, or other natural resource values;
 - c. Protect, maintain, or enhance significant agricultural outcomes, benefits, or other investment gains;
 - d. Maximize the benefit to the state based on the ability to leverage grant moneys; and
 - e. Limit negative and maximize positive impacts on owners or operators of neighboring lands.
- 3) The extent to which the applicant demonstrates a plan to engage one or more underserved populations, including ~~beginning or young young or beginning farmers and or ranchers, socially disadvantaged farmers or ranchers, or veteran farmers or ranchers, or limited resource farmers or ranchers.~~

Comment [EH6]: Numbers off beginning here. I added this as 0060 as the placeholder in OAR database indicated. Same moving forward in division.

Comment [EW7]: From Jim Fox.

Comment [LR8]: EMSWCD Gen Comm. #2

Comment [LR9]: OR Farm Bureau and OR Cattlemen's Assoc. TA Comm.

Comment [LR10]: Friends of Family Farmers comment

698-020-~~0080070~~

Technical Review and Funding Process

- ~~1) Technical review of Technical Assistance Grant applications shall occur based on information provided in the grant application.~~
- ~~2) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements. . Those rankings will be provided to the commission to inform the commission’s final ranking and funding recommendations to the OWEB board.~~
- ~~3) The Commission may use appoint one or more technical committees to evaluate technical assistance grant applications.~~
- 1) Applications shall be evaluated according to criteria described in OAR 698-020-0070.
- 4) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff, who will review technical committee recommendations and provide funding recommendations to the Commission. If a technical committee is not used, OWEB staff will provide funding recommendations to the Commission.
- ~~4) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.~~
- ~~5) The Commission may rank projects and shall provide funding recommendations to the Board.~~
- ~~5) The Board approves Technical Assistance Grants. The Board may fund a grant application in whole or in part.~~

Comment [EW11]: For consistency with other rule sections.

698-020-~~0090080~~

Grant Agreement Conditions

- 1) The ~~g~~Grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- 2) The Director may consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project and the proposed activity is within the same geographic area.
- 3) The Director may authorize minor changes within the scope of the original project plan.
- 4) The ~~g~~Grantee must submit a report at completion of the project in accordance with reporting requirements described in the grant agreement.
- 5) Rules and conditions in place at the time funding for the Technical Assistance Grant is formally approved shall govern throughout the term of the project unless changes are mutually agreeable to both parties.

DRAFT Document

[698-020-01000090](#)

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 020 unless required by statute, when doing so will result in more efficient or effective implementation of the Technical Assistance Grant program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Technical Assistance Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.

Division 025
Succession Planning Grants

698-025-0010

Purpose

The purpose of succession planning is to help ensure the continued use of working lands for agricultural purposes when the land changes ownership. The Oregon Agricultural Heritage Commission may provide funding recommendations to the Oregon Legislative Assembly, or recommendations for grant funding to the Oregon Watershed Enhancement Board, to provide training and support to ~~owners of working land~~ agricultural owners or operators, or persons advising ~~owners of working land~~ them, regarding succession planning for the lands. Recommendations and grant funding must support the program purpose in OAR 698-005-0010.

698-025-0020

Definitions

- (1) "Agricultural cooperative" means a cooperative corporation formed in accordance with the Oregon Cooperative Corporation Act for the benefit of agricultural owners or operators.
- (2) "Succession planning" means an ongoing process for ensuring the continuation and economic viability of a business over generations of owners or operators. It may include strategies to identify, develop, and empower the next generation of owners or operators, a plan to transfer business and family assets, and arrangements for each generation's retirement and long-term care. Succession plans are fluid and may be reviewed and updated throughout the existence of the business.

698-025-0030

Succession Planning Priorities

~~The Commission may establish priorities for Succession Planning Grants in guidance, which may be used to solicit and rank program grant applications and make recommendations to the Oregon Legislative Assembly. The Commission may modify these priorities from time to time at its discretion.~~

Comment [EW1]: DOJ – would need to specify priorities in rule.

698-025-0040

Applicant Eligibility

(1) Eligible applicants for Succession Planning Grants are:

- (i) Public institutions of higher learning,
- (ii) Nonprofit entities,
- (iii) ~~Units of local government~~ Political subdivisions of the state that are not state agencies,
- (iv) Tribes, and
- (v) Agricultural cooperatives.

Comment [EW2]: DOJ recommended.

DRAFT succession Planning Grant Rules

- (2) Individual agricultural owners or operators and individual persons or business entities not listed above that are advising them are not eligible to apply for a Succession Planning Grant.

698-025-0050

Application Requirements

Succession Planning Grant applications shall:

- (1) Not require match contributions; and
- (2) Comply with Oregon Agricultural Heritage Program general grant application requirements in OAR 698-005.

698-025-0060

Eligible Activities

The following activities benefitting agricultural owners or operators in Oregon and the persons who advise them are eligible for Succession Planning Grants:

- (1) Education and outreach about the importance of succession planning and available resources;
- (2) Trainings on topics related to succession planning;
- (3) Development and distribution of educational materials and curriculum related to succession planning; and
- (4) Advising agricultural owners or operators on succession planning.

698-025-0070

Evaluation Criteria

Succession Planning Grant applications will be evaluated on:

- (1) The extent to which the proposed project would help achieve the purpose of this grant program as identified in OAR 698-005-0010;
- (2) The capacity and competence of the applicant to deliver the proposed program;
- (3) The applicant's relevant background and experience in delivering successful succession planning programs, including prior projects funded through this or other grant programs.
- (4) The cost-effectiveness of the proposed project;
- (5) The extent to which the application reaches diverse audiences, including: producers of diverse commodities, agricultural owners or operators in diverse geographic locations in Oregon, young or beginning farmers or ranchers, socially disadvantaged farmers or ranchers, veteran farmer or ranchers, limited resource farmers or ranchers, and participants in diverse stages of succession planning. The Commission may also consider the extent to which a suite of approved grant projects will combine to reflect this diversity; and

- (6) The extent to which the project introduces participants to conservation tools as resources for succession planning.

698-025-0080

Succession Planning Grant Application Technical Review and Funding Process

- (1) The Commission may fund projects submitted through an open solicitation for applications, or by requesting applications from one or more specific eligible entities.
- ~~(2) Technical review of Succession Planning Grant applications shall occur based on information provided in the grant application.~~
- ~~(3)(2) Applications shall be evaluated according to criteria in OAR 698-025-0070.~~
- ~~(3) The Board and Commission shall jointly appoint one or more technical committees as described in 698-001-0040(4) to evaluate and rank applications for grants for working land conservation covenants and easements. Those rankings will be provided to the commission to inform the commission's final ranking and funding recommendations to the OWEB board.~~
- ~~(4) The Commission may use appoint one or more technical committees to evaluate Succession Planning Grant applications.~~
- ~~(5) If a technical committee is used, the technical committee shall provide ranking recommendations to OWEB staff. OWEB staff will review technical committee recommendations and provide recommendations to the Commission.~~
- ~~(4) The Commission shall make funding recommendations to the Board based on the availability of funding from the Oregon Agricultural Heritage Fund.~~
- ~~(6) The Commission may rank projects and shall provide funding recommendations to the Board.~~
- ~~(7)(5) The Board may fund a grant application in whole or in part.~~

Comment [EW3]: Jim Fox recommendation.

698-025-0090

Grant Agreement Conditions

- (1) The grantee must agree to complete the project as approved by the Board and within the timeframe specified in the grant agreement unless proposed modifications are submitted and approved by the Director prior to the beginning of any work proposed in the modification.
- (2) The Director will consider project modifications, including expansion of funded projects with moneys remaining from the original project allocation, if the purpose and intent of the amendment remains the same as the original project.

698-025-0100

Grant Funding Conditions

- 1) All Succession Planning Grant agreements authorized by the Board shall have a clause that requires the retention of up to ten percent of project funds until the final report, as required in the grant agreement, has been approved.

DRAFT succession Planning Grant Rules

- 2) Final reports are due within 60 days of project completion. Any unexpended OAHP funds must be returned to the Commission with the final report.
- 3) Upon receipt of the final report, the Commission shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval.
- 4) Once the final report has been approved the final payment shall be promptly processed.

698-025-0110

Grant Reporting Requirements

- (1) Upon project completion, the ~~g~~Grantee will provide the Commission and OWEB's Board with a copy of the project completion report. Final project accounting and reporting are due no later than 60 days following the project completion date.
- (2) The project completion report and annual reports shall demonstrate how the grantee's funded project(s) demonstrated clear succession planning benefits to Oregon agricultural owners or operators and their service providers. Evidence of this may include, but is not limited to:
 - (i) The number of people who participated in the program;
 - (ii) The geographic, commodity, and other demographic indicators of participation in the program;
 - (iii) Documented improved understanding of succession planning by program participants;
 - (iv) Documented measurable changes in behavior of participants, including the percentage or number of ~~owners of working lands~~ agricultural owners or operators who take the next step toward succession planning, complete a plan, and implement the plan;
 - (v) Documented improved understanding by participants of tools to ~~prevent fragmentation~~ reduce conversion or prevent fragmentation of working land, ~~reduce conversion of working land from agricultural production~~, and promote economic viability and ecological sustainability of agricultural operations; and
 - (vi) Other documentation of the project's success in contributing to achieve the purpose of this grant program.
- (3) The Director or the Commission may authorize an independent performance audit of any Succession Planning Grant ~~grantee~~. The Director may restrict future grant funds if the Director determines the ~~g~~Grantee is not complying with the rules of the Succession Planning Grant Program.
- (4) In addition to project reports, the Commission may conduct program evaluations that may include:

DRAFT succession Planning Grant Rules

- a. Changes in USDA Census of Agriculture or similar data that would indicate a change in adoption of succession planning by Oregon agricultural owners or operators;
- b. Surveys of agricultural owners or operators on the status of succession plans; ~~and-or~~
- c. Other trends in working land ownership and use.

698-025-0120

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 025 unless required by statute, when doing so will result in more efficient or effective implementation of the Succession Planning Grant Program. Any waiver must be in writing, included in the grant file to which the waiver applies, and reported to the Commission within a reasonable time. The administrative rules for Succession Planning Grants shall be periodically reviewed by the Commission and revised as necessary and appropriate.



Staff Report: OAHP Statute Revisions October 31 – November 1, Commission Meeting

Background

In the course of rulemaking for ORS 541.977 – 541.989, the Oregon Agricultural Heritage Commission and OWEB identified several modifications to the statute that would help articulate the intended purpose, administration, and eligibility criteria of the Oregon Agricultural Heritage Program (OAHP). Proposed revisions have been approved by legislative counsel and submitted to the Governor's office.

Proposed Statutory Revisions

The following revisions to OAHP statutes are proposed:

- Clarify that the purpose of the program is to “preserve and protect” working land, rather than to simply “support” it. “Support” is a more ambiguous word which does not indicate that properties benefited by OAHP funds are intended to continue primarily in agricultural use.
- Throughout the statute, change the language to indicate that the program is intended to assist landowners in “maintaining or enhancing” any or all of these three values: fish or wildlife habitat, water quality, or other natural resource values.
- Clarify that conservation management plans are “developed,” whereas working land covenants and easements are “purchased.”
- Expand eligible holders of conservation management plans from 501(c)(3) not-for-profit corporations, to “any not-for-profit other than a state agency.” Also expand the eligibility for the technical assistance program to entities that are eligible to enter into conservation management plans, working land conservation covenants, or working land conservation easements, rather than only entities that enter or propose to enter into these agreements.
- Clarify that the succession planning program is intended to benefit “agricultural owners or operators” with succession planning for “working lands,” using terms defined by statute.
- Repeal language allowing the technical assistance grant program to be used for “development funding” – a term that is not clear or defined.
- Make consistent the permissible types of additional contributions to organizations that receive an OAHP grant, or agricultural owners or operators receiving payments from OAHP.
- Clarify that the Oregon Agricultural Heritage Commission appoints technical committees alone and not jointly with OWEB's Board, and that technical committees may report to OWEB staff or the commission. Also clarify what the commission “shall” versus “may” do.
- Clarify that OWEB's Board approves program rules with assistance from the commission.
- Minor technical corrections that provide statutory “clean-up”.

A mark-up of the statute is included in Attachment A.

Staff Contact

If you have questions or need additional information, contact Meta Loftsgaarden, Executive Director, at meta.loftsgaarden@oregon.gov, or 503-986-0180.

Attachments

A. Statute Mark-up

D R A F T

SUMMARY

Revises definitions and harmonizes language for purposes of program supporting working land conservation. Revises Oregon Agricultural Heritage Commission duties.

A BILL FOR AN ACT

Relating to working land conservation; creating new provisions; and amending ORS 541.977, 541.981, 541.982, 541.984, 541.988 and 541.989.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 541.977 is amended to read:

541.977. 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]* **or** 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 affirma-

1 tive obligations for purposes that [*support the use of*] **preserve and protect**
2 the land for agricultural production and for the maintenance or enhancement
3 of fish [*and*] **or** wildlife habitat, [*improvement of*] water quality or [*support*
4 *of*] other natural resource values.

5 **SECTION 2.** ORS 541.981 is amended to read:

6 541.981. (1) An agricultural owner or operator may enter into a conser-
7 vation management plan with an organization for working land to be man-
8 aged in a manner that [*supports*] **maintains or enhances** one or more
9 natural resource values. The conservation management plan may be com-
10 posed of multiple components addressing different natural resource values
11 as identified in subsection (2) of this section.

12 (2) A conservation management plan must be for the purpose of develop-
13 ing and implementing conservation measures or other protections for main-
14 taining or enhancing fish or wildlife habitat, [*improving*] water quality or
15 [*supporting*] other natural resource values in a manner consistent with the
16 social and economic interests and abilities of the agricultural owner or op-
17 erator. The plan may include provisions for addressing particular priorities
18 related to natural resource values, including but not limited to soil, water,
19 plants, animals, energy and human need considerations.

20 (3) A conservation management plan must:

21 (a) Meet the standards established by Oregon Watershed Enhancement
22 Board rules;

23 (b) State the duration or terminating event for the plan;

24 (c) Be specific to the land, and account for the needs of, the agricultural
25 owner or operator;

26 (d) Provide for the parties to review the plan on a regular basis;

27 (e) Provide for flexibility and allow for mutual modification as necessary
28 to reflect changes in practices or circumstances;

29 (f) Provide for regular monitoring by the organization to ensure that the
30 agricultural owner or operator is adhering to the plan;

31 (g) Make any receipt by the agricultural owner or operator of annual

1 payments for carrying out the plan contingent on adherence to the plan; and
2 (h) Limit any annual payments for carrying out the plan to a term of not
3 less than 20 years or more than 50 years.

4 (4) An organization that enters into, or proposes to enter into, a conser-
5 vation management plan may apply to the board for a grant to fund the
6 [*purchasing, implementing*] **development, implementation**, carrying out or
7 monitoring of the plan if the organization is:

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

9 (b) A watershed council; or

10 [*(c) Tax exempt under section 501(c)(3) of the Internal Revenue Code.*]

11 **(c) A not-for-profit organization other than a state agency.**

12 **SECTION 3.** ORS 541.982 is amended to read:

13 541.982. (1) An owner of working land may enter into a working land
14 conservation covenant with or grant a working land conservation easement
15 to an organization that is a holder, as defined in ORS 271.715, other than a
16 state agency. The covenant or easement must be for the [*purpose of ensuring*
17 *the continued use of*] **purposes of preserving and protecting** the land for
18 agricultural purposes while maintaining or enhancing fish or wildlife
19 habitat, [*improving*] water quality or [*supporting*] other natural resource
20 values on the land. A working land conservation covenant must be for a term
21 of years that is established as permissible in [*Oregon Agricultural Heritage*
22 *Commission*] rules **described under subsection (6) of this section.**

23 (2) In addition to the purposes required under subsection (1) of this sec-
24 tion, a working land conservation covenant or working land conservation
25 easement may provide for carrying out any purposes of a conservation ease-
26 ment, as defined in ORS 271.715. The covenant or easement must provide for
27 carrying out those additional purposes in a manner consistent with ORS
28 271.715 to 271.795.

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

31 (a) Provide for regular monitoring by the organization [*accepting*] **enter-**

1 **ing into** the covenant or **accepting the** easement to ensure that the owner
2 of the working land is adhering to the covenant or easement provisions; and

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

6 (4) An organization that enters into[,] or proposes to enter into[,] a
7 working land conservation covenant, or [*accept*] **that accepts** a working
8 land conservation easement, may apply to the Oregon Watershed Enhance-
9 ment Board for a grant to fund the purchasing, implementing, carrying out
10 or monitoring of the covenant or easement.

11 (5) An application under subsection (4) of this section may be combined
12 with an application under ORS 541.981 for a grant to fund **the development,**
13 **implementation, carrying out or monitoring of** a conservation manage-
14 ment plan associated with the working land conservation covenant or work-
15 ing land conservation easement.

16 (6) **The board shall adopt rules establishing three or more permis-**
17 **sible terms of years, which are not less than 20 or more than 50 years,**
18 **for working land conservation covenants formed under this section.**

19 **SECTION 4.** ORS 541.984 is amended to read:

20 541.984. (1) The Oregon Watershed Enhancement Board shall establish
21 programs to provide grants from the Oregon Agricultural Heritage Fund for
22 the purposes of:

23 (a) Assisting [*owners of working land*] **agricultural owners or operators**
24 with succession planning for [*those*] **working** lands;

25 [*(b) Funding the purchasing, implementing, carrying out or monitoring of*
26 *conservation management plans, working land conservation covenants or*
27 *working land conservation easements described in ORS 541.981 and 541.982;*
28 *and*]

29 (b)(A) **Funding the development, implementation, carrying out or**
30 **monitoring of conservation management plans under ORS 541.981; or**

31 (B) **Funding the purchase, implementation, carrying out or moni-**

1 **toring of working land conservation covenants or working land con-**
2 **servation easements under ORS 541.982; and**

3 (c) Providing [*development funding or*] technical assistance to organiza-
4 tions that:

5 (A) Enter into or [*propose*] **are eligible** to enter into agreements resulting
6 in conservation management plans[, *or that accept or propose to accept*] **or**
7 working land conservation covenants; or

8 (B) **Are eligible to accept** working land conservation easements.

9 (2) The board, after consultation with the Oregon Agricultural Heritage
10 Commission established in ORS 541.986, shall adopt rules that establish a
11 process for submitting and processing applications for grants under ORS
12 541.981 and 541.982. To the extent practicable, the board shall design the
13 process to:

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

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

17 (3) The [*board and the commission, shall jointly*] **commission shall** ap-
18 point one or more technical committees to evaluate and rank conservation
19 management plans, working land conservation covenants and working land
20 conservation easements described in applications filed under ORS 541.981 and
21 541.982. The system used by the technical committee or committees shall
22 provide for the ranking of conservation management plans to be separate
23 from the ranking of working land conservation covenants and working land
24 conservation easements. The ranking for a plan, covenant or easement shall
25 be based on criteria that include, but need not be limited to:

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

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

31 (c) The extent to which the plan, covenant or easement would protect,

1 **maintain or enhance** agricultural outcomes, benefits or other investment
2 gains;

3 (d) The capacity of the organization that filed the application to enter
4 into a conservation management plan[, *accept*] **or** a working land conserva-
5 tion covenant or **to accept** working land conservation easement, and the
6 competence of the organization;

7 (e) The extent to which the benefit to the state from the investment may
8 be maximized, based on the ability to leverage grant moneys with other
9 funding sources and on the duration and extent of the conservation man-
10 agement plan, working land conservation covenant or working land conser-
11 vation easement; and

12 (f) The extent and nature of plan, covenant or easement impacts on own-
13 ers or operators of neighboring lands.

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

18 (5) An applicant must demonstrate to the satisfaction of the board that
19 the participants in a conservation management plan, working land conser-
20 vation covenant or working land conservation easement to be benefitted by
21 a grant under this section understand and agree to their roles and responsi-
22 bilities under the plan, covenant or easement.

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

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

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

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

3 (7)(a) Except as provided in **paragraph (b) of** this subsection, an organ-
4 ization that receives a grant from the board for a conservation management
5 plan, or an agricultural owner or operator receiving payments of moneys
6 from an organization grant regarding a conservation management plan, may
7 receive cash contributions, other financial assistance, in-kind services or in-
8 vestments, rental or easement payments, tax benefits or other benefits from
9 a federal, state or private entity in return for practices related to the [*pur-*
10 *chasing, implementing*] **development, implementation**, carrying out or
11 monitoring of the conservation management plan.

12 (b) The board or an organization grant may not[, *however,*] provide pay-
13 ments that duplicate any federal, state or private payments for the same
14 measures directed to maintaining or enhancing fish or wildlife habitat, [*im-*
15 *proving*] water quality or [*supporting*] other natural resource values within
16 the **conservation management** plan.

17 (8) An organization that receives a grant from the board for a working
18 land conservation covenant or a working land conservation easement, or an
19 owner of working land that enters into a working land conservation
20 covenant or grants a working land conservation easement, may receive cash
21 contributions, other financial assistance, in-kind services or [*other forms of*
22 *investment from any public or private sources for purposes of purchasing, im-*
23 *plementing,*] **investments, rental or easement payments, tax benefits or**
24 **other benefits from a federal, state or private entity in return for**
25 **practices related to the purchase, implementation**, carrying out or
26 monitoring of the covenant or easement.

27 **SECTION 5.** ORS 541.988 is amended to read:

28 541.988. (1) In accordance with applicable provisions of ORS chapter 183,
29 the Oregon Agricultural Heritage Commission [*may adopt rules necessary for*
30 *the administration of the laws that the commission is charged with adminis-*
31 *tering*] **shall assist the Oregon Watershed Enhancement Board in the**

1 **adoption and administration of board rules for carrying out programs**
2 **under ORS 541.977 to 541.989.**

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

10 (3) Members of advisory or technical committees established by the com-
11 mission are not entitled to compensation but, at the discretion of the com-
12 mission and with the consent of the Oregon Watershed Enhancement Board,
13 may be reimbursed from funds available to the board for actual and neces-
14 sary travel and other expenses incurred by the members in the performance
15 of official duties in the manner and amount provided in ORS 292.495.

16 **SECTION 6.** ORS 541.989 is amended to read:

17 541.989. (1) The Oregon Agricultural Heritage Commission shall:

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

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

23 [(c)] **(a)** Recommend policies and priorities for use by the **Oregon**
24 **Watershed Enhancement** Board in evaluating the farm or ranch values,
25 and the fish or wildlife habitat, water quality or other natural resource
26 values, on working land described in a grant application filed under ORS
27 541.981 or 541.982; **and**

28 [(d) Review and consider the recommendations of technical committees ap-
29 pointed under ORS 541.984;]

30 [(e)] **(b)** Consult with the board concerning grant applications[;].

31 **(2) The commission shall:**

1 [(f)] (a) Provide conservation management plan, working land conserva-
2 tion covenant and working land conservation easement funding recommen-
3 dations to the board based on the availability of funding from the Oregon
4 Agricultural Heritage Fund; and

5 [(g)] (b) Provide funding recommendations to the Legislative Assembly,
6 or recommendations for grant funding to the board, to provide training and
7 support to [*owners of working land*] **agricultural owners or operators**, or
8 persons advising [*owners of working land*] **agricultural owners or opera-**
9 **tors**, regarding succession planning for [*the*] **working** lands.

10 [(2)] (3) The commission's recommendations for funding under subsection
11 [(1)(g)] (2)(b) of this section may include recommendations for funding suc-
12 cession planning programs through the Oregon State University Extension
13 Service only if the university has presented the commission with a program
14 proposal for review. If a commission recommendation for funding succession
15 planning programs through the university extension service is adopted, the
16 university shall provide the commission with an annual report regarding
17 each program.

18 **SECTION 7. The amendments to ORS 541.977, 541.981, 541.982,**
19 **541.984, 541.988 and 541.989 by sections 1 to 6 of this 2019 Act apply to**
20 **working land conservation covenants, working land conservation**
21 **easements, conservation management plans and interests in working**
22 **lands:**

23 (1) **Created on or after effective date of this 2019 Act; or**

24 (2) **That are the subject of an application for funding from the**
25 **Oregon Agricultural Heritage Fund on which the Oregon Watershed**
26 **Enhancement Board makes a final decision on or after the effective**
27 **date of this 2019 Act.**

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