

## Oregon Agricultural Heritage Program - Chapter 698

Division 5

Oregon Agricultural Heritage Program Administration

698-005-0010

### Purpose

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

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

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

(3) ~~Maintain or En~~enhanced fish or wildlife habitat, water quality, and other natural resources on Oregon's working land.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

OAHP 1-2019, adopt filed 01/28/2019, effective 02/01/2019

698-005-0020

### Definitions

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

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

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

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

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

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

(7) ~~"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.~~

Commented [LO1]: Possible area for adjustment

Commented [LO2]: Add Climate Criteria Definitions

Commented [LO3]: Consider moving to Div 10

~~(76)~~ "Conversion":

(a) "Conversion" means:

(A) Cessation of accepted farming practices;

(B) Construction of dwellings not occupied by farm operators or workers or other structures not related to agriculture;

(C) Removal of infrastructure required for accepted farming practices unless necessary to accommodate a change in accepted farming practices; or

(D) Cancelling or transferring rights to use water for irrigation in a manner that reduces the long-term viability of agriculture on the working land.

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

**Commented [LO4]:** Consider removing reference to land use statute

~~(87)~~ "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.

~~(9)~~ "Durable adaptation and resilience for ecosystems" means the extent to which a project is expected to help an ecosystem, including human communities, adjust to, respond to, or recover from the effects of a changing climate.

~~(108)~~ "Farming and ranching" means "farm use" as defined in ~~ORS 215.203(2)~~.

**Commented [LO5]:** Consider removing reference to land use statute

~~(119)~~ "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.

~~(129)~~ "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.

~~(134)~~ "Grantee" means an organization or individual that is awarded a grant under one or more of OAHP's grant programs.

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

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

**Commented [LO6]:** Consider moving to Div 15 and potentially change the term to something other than management plan.

~~(153)~~ "OWEB" means the Oregon Watershed Enhancement Board state agency.

~~(164)~~ "Technical committee" means a team of individuals who have expertise relevant to the ranking of OAHP grants, or other issues before the Commission.

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

Commented [LO7]: Consider removing reference to land use statute

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

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

Statutory/Other Authority: ORS 541.979, ORS 541.988, ORS 541.984

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

#### 698-005-0030

##### Application Requirements

(1) Applications must be submitted on the most current form ~~at required by OWEB. Current applications will be made 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, 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 landowners 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.~~

Commented [LO8]: Consider removing

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

**Commented [LO9]:** Consider moving to Application Processing 698-005-0040

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

**698-005-0040**

**Application Processing**

**Commented [RD10]:** Correct typo

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

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

**Commented [LO11]:** Consider removing

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

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**698-005-0045**

**Climate-Related Evaluation Criteria**

**Commented [LT\*O12]:** Suggested Insertion (OWEB Climate Criteria)

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

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

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

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

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**Statutory/Other Authority:**

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**Statutes/Other Implemented:**

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**History:**

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**698-005-0050**

**Grant Agreement Conditions**

(1) ~~The Board~~OWEB 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 for purposes of the Oregon Agricultural Heritage Program.

Commented [D013]: @LARSON Taylor \* OWEB, revise to be specific to OAHP program? (See also (5) on next page.)

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

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

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

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

Commented [L014]: Consider removing

(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~~OWEB.

(8) ~~The Board~~OWEB may place additional conditions in the grant agreement as necessary to carry out the purpose of the program, including:  
(a) An enforceable agreement by the agricultural landowner or operator for continued access by OWEB and its designees for monitoring the project after completion;  
(b) An enforceable agreement by the grantee to maintain the project for a period of time commensurate with the project approved by the Board;  
(c) An enforceable agreement to supply future reports on the project as required; and  
(d) Such other conditions as ~~OWEB~~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 all parties.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

[698-005-0060](#)

**Use of Restricted Funding**

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

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

[698-005-0070](#)

**Distribution of Funds**

(1) The Director may withhold payments to a grantee if there are significant and persistent difficulties with satisfying ~~Board~~ **OWEB** requirements.

(2) Funds will be released upon ~~receipt of a completed request, as prescribed by OWEB, 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~~ **OWEB**. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

~~[698-005-0080](#)~~

~~**Funding Decision Reconsideration by Board**~~

~~In the event that the Director determines a grantee has not met conditions imposed by the Board, the Director shall forward the determination in writing to the Board for its consideration. The grantee will be provided a copy of the written determination. The conditionally encumbered grant funds will remain encumbered until the Board either affirms the Director's determination or authorizes the continued encumbrance of all or part of the funds in accordance with a modified decision of the Board.~~

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

~~**Statutes/Other Implemented:** ORS 541.977-541.989~~

~~**History:**~~

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

[698-005-0090](#)

**Technical Committees**

**Commented [LO15]:** Consider Removing

In addition to technical committees established by the 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).

Commented [LO16]: Consider removing

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

History:

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

#### 698-005-0100

##### 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 at the next meeting. The administrative rules for the Oregon Agricultural Heritage Program shall be periodically reviewed by the Commission, ~~Board, and OWEB~~ and revised as necessary and appropriate.

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

History:

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

## Oregon Agricultural Heritage Program - Chapter 698

### Division 10

#### 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 landowner 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.

The Conservation Management Plan Grant Program funds the development, implementation, and monitoring of conservation management plans (plans) entered into by agricultural landowners or operators and conservation management plan holders to manage working land in a manner that contributes to the purpose of ~~OAHP~~ the Oregon Agricultural Heritage Program as defined in OAR 698-005-0010.

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

History:

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

##### 698-010-0020

###### Definitions

(1) "Mutual Modification" means a change to a conservation management plan that is:

- (a) Material to the plan as defined in ~~698-010-0120(5)~~ Section 0120(5); and
- (b) Agreed to by the agricultural landowner or operator implementing the plan and the conservation management

Commented [LO17]: Consider inserting definition of CMP holder from Div 5

plan holder.

(2) "Project" means the aggregate of ~~eligible~~ activities included in ~~Section 0060-698-010-0060~~ that comprise an application.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

#### 698-010-0030

##### ~~Eligible Applicants~~**Applicants**

(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) ~~Not-for-profit organizations other than a state agency.~~

**Commented [LO18]:** Consider replacing w/ ORS language "Tax exempt under section 501(c)(3) of the Internal Revenue Code."

(2) Individual agricultural landowners or operators are not eligible to apply for a Conservation Management Plan Grant.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

#### 698-010-0040

##### ~~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;~~

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

~~**Statutes/Other Implemented:** ORS 541.977-541.989~~

~~**History:**~~

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

**Commented [LO19]:** Consider removing

#### 698-010-0050

##### **Match Contributions**

(1) All applicants shall demonstrate that some portion of the ~~proposal-application~~ 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.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

#### **698-010-0060**

##### **Conservation Management Plan Activities**

(1) Funding may be utilized to develop, implement, carry out or monitor conservation management plans.

(2) If there is a stream on the project:

(a) The planning process must present the agricultural landowner or operator with alternatives that address the local Agricultural Water Quality Management Area Plan goals in place at the time of plan preparation.

(b) If the program pays for plan implementation, the selected alternative must address the local Agricultural Water Quality Management Area Plan goals at the time of plan implementation.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

**Commented [LO20]:** Possible area for adjustment (if keeping section)

**Commented [LO21]:** Consider removal

#### **698-010-0070**

##### **Term of Payment for Conservation Management Plan Implementation**

(1) If an agricultural landowner 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.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

**Commented [LO22]:** Consider moving below 698-010-0080

#### **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 [the purpose of the Oregon Agricultural Heritage Program as defined in OAR 698-005-0010](#) ~~OAHP's purpose~~;

(2) The contact and location information for the agricultural landowner 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 landowner 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, monitored and managed;

(12) Provisions that provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances.

(13) A conflict resolution protocol for the agricultural landowner or operator and the conservation management plan holder if the grant program would fund the implementation of the plan; and

(14) The term of the plan, duration or terminating event for the plan.

**Commented [LO23]:** Consider word swap to align w/ ORS 541.981(3)(d)

**Commented [LO24]:** Consider moving here from 698-010-0120(2)

**Commented [LO25]:** Consider revision to better align w/ statute

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

**698-010-0090**

**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).

**Commented [LO26]:** Consider reducing number of criteria.

1. What's in statute (highlighted)
2. What was added in rule
3. Total criteria = 23
4. Balancing need for criteria w/ complexity of evaluation process

(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 future conversion or fragmentation of the property and surrounding working land

(3) The extent to which implementation of the plan would protect, maintain, or enhance significant fish or wildlife habitat, water quality, or other natural resource values by:

- (a) Protecting, maintaining, or improving the land, including soil, water, plants, animals, energy, and human needs considerations;
- (b) Supporting implementation of the Oregon Conservation Strategy, Oregon's Agricultural Water Quality Management Program, or other local, regional, state, federal or tribal priorities or plans that support fish or wildlife habitat, water quality, or other natural resource values;
- (c) Protecting, maintaining or improving the quality and connectivity of wildlife habitat on and around the working land subject to the plan;
- (d) Protecting, maintaining, or improving water quality 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, or its suitability based on soils, slope, location or other relevant factors.

(5) The capacity and competence of the prospective conservation management plan holder to enter into and (if implementation funding is awarded) 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 monitor plan(s); and
- (c) The strength of the 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.

(7) The impacts of plan implementation on owners or operators of neighboring lands, including:

- (a) A plan for communicating with neighboring owners and operators once a conservation management plan is ready to be implemented about how to mitigate potential impacts; and
- (b) A maintenance plan for infrastructure that may impact neighboring lands if not maintained over time.

**Commented [LO27]:** Consider revising to better align w/ statute "The extent and nature of the plan impacts on owners or operators of neighboring lands"

(8) The level of threat of conversion or fragmentation of the working land.

**Commented [LO28]:** If keeping, provide clarity on whether more or less threat is a good thing

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

## 698-010-0100

### Technical Review and Funding Process

(1) Technical review of Conservation Management Plan Grant applications shall occur based on information provided in the grant application and technical review team expertise about the area and the project. The Commission shall 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.

(2) Applications shall be evaluated according to criteria described in OAR 698-010-0090.

(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) 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.

(5) The Commission shall review and consider the recommendations of the technical committee(s) and consult with the Board concerning grant applications.

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

(7) ~~The Board approves Conservation Management Plan Grants.~~ The Board may fund a grant application in whole or in part.

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

**Statutes/Other Implemented:** ORS 541.977-541.989

**History:**

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

## 698-010-0110

### Grant Agreement Conditions

(1) Grant funding is subject to the signed statement of understanding and agreement by the participating agricultural landowner(s) or operator(s) to the roles and responsibilities under the conservation management plan.

(2) All conservation management plan 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 program funds must be returned to the Commission.

(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.

**Commented [DO29]:** @LARSON Taylor \* OWEB, I had some comments on this section that are more global in nature about alot being mashed into these subs. Take a peek and see if there is anything we want to flag for the RAC.

**Commented [LO30]:** Consider removal

**Commented [LO31]:** Possible area for adjustment. It's hard to know roles and responsibilities under a plan before it's written. ORS 541.984 (5)

**Commented [LO32]:** Consider removal. Precludes offering development + implementation grants

(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 Commission.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

#### **698-010-0120**

##### **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.

**Commented [LO33]:** Consider moving to CMP Components 698-010-0070

(3) Any change in the conservation management plan must be mutually agreed to by both the agricultural landowner or operator and the conservation management plan holder.

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

(5) The agricultural landowner or operator must contact the 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:

**Commented [LO34]:** Consider if 5-7 are necessary.

(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 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 landowner's or operator's control.

(6) The conservation management plan holder must contact the agricultural landowner 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:

(A) Changes in management approaches based on new scientific understanding of expected outcomes;

(B) Changes in management or ownership of the working land;

- (C) Changes in the grazing or cropping system;
- (D) A natural disaster; or
- (E) Other changes outside the agricultural landowner's or operator's control.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

#### **698-010-0130**

##### **Conservation Management Plan Monitoring**

If funding is provided for conservation management plan implementation:

(1) Notwithstanding (2), the 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.

**Commented [LO35]:** Does this still feel like the right level?

**Commented [LO36]:** consider removing

(2) The agricultural landowner or operator and the 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 landowner or operator and the 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 landowner 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.

**Commented [LO37]:** Consider shifting from "Commission" to "OWEB"

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

#### **698-010-0140**

##### **Grant Reporting Requirements**

(1) For grants that include funding for conservation management plan implementation:

(a) At least once per year, the agricultural landowner or operator must meet with the conservation management plan holder and provide this holder with a written report of the conservation management plan activities completed that year on a form approved by the Commission. Reports ~~may shall~~ 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~~ OWEB on a date set by ~~the Commission~~ OWEB.

**Commented [LO38]:** consider rewording to put reporting requirements onto holder

(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 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.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

#### [698-010-0150](#)

##### **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 at the next meeting. The administrative rules for Conservation Management Planning Grants shall be periodically reviewed by the Commission, ~~Board, and OWEB~~ and revised as necessary and appropriate.

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

Statutes/Other Implemented: ORS 541.977-541.989

History:

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

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

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

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

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

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

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

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

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

**Note:** See note under 541.977.



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

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

**Note:** See note under 541.977.

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

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

(3) A conservation management plan must:

- (a) Meet the standards established by Oregon Watershed Enhancement Board rules;
- (b) State the duration or terminating event for the plan;
- (c) Be specific to the land, and account for the needs of, the agricultural owner or operator;
- (d) Provide for the parties to review the plan on a regular basis;

(e) Provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances;

(f) Provide for regular monitoring by the organization to ensure that the agricultural owner or operator is adhering to the plan;

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

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

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

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

(b) A watershed council; or

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

**Note:** See note under 541.977.

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

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

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

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

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

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

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

**Note:** See note under 541.977.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Except as provided in this subsection, an organization that receives a grant from the board for a conservation management plan, or an agricultural owner or operator receiving payments of moneys from an organization grant regarding a conservation management plan, may receive cash contributions, other financial assistance, in-kind services or investments, rental or easement payments, tax benefits or other benefits from a federal, state or private entity in return for practices related to the purchasing, implementing, carrying out or monitoring of the conservation

management plan. The board or an organization grant may not, however, provide payments that duplicate any federal, state or private payments for the same measures directed to maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values within the plan.

(8) An organization that receives a grant from the board for a working land conservation covenant or working land conservation easement, or an owner of working land that enters into a working land conservation covenant or grants a working land conservation easement, may receive cash contributions, other financial assistance, in-kind services or other forms of investment from any public or private sources for purposes of purchasing, implementing, carrying out or monitoring of the covenant or easement. [2017 c.716 §6; 2019 c.13 §53]

**Note:** See note under 541.977.

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

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

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

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

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

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

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

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

(3) The term of office of each voting member of the Oregon Agricultural Heritage Commission is four years, but the Oregon Watershed Enhancement Board may remove a member if requested by the authority that recommended the member. Before the term of a

member expires, the authority that recommended the member shall make recommendations to the board regarding the appointment of a successor. An authority may recommend the reappointment of a member, but a member may not serve more than two consecutive terms. If there is a vacancy for any cause, the authority that recommended the vacating member shall make recommendations to the board regarding the appointment of a successor to serve for the unexpired term. [2017 c.716 §7]

**Note:** See note under 541.977.

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

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

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

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

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

**Note:** See note under 541.977.

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

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

members of the committees. The commission chairperson shall be a nonvoting member of each committee.

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

**Note:** See note under 541.977.

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

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

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

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

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

(e) Consult with the board concerning grant applications;

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

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

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

**Note:** See note under 541.977.