

Oregon's USDA Certified Agricultural Mediation Program (OCAMP) Handbook



A Guide for Farmers, Neighbors, and Municipalities

SIX RIVERS



Oregon's USDA Certified Agricultural Mediation Program
<http://www.6rivers.org/oregon-agricultural-mediation-program.html>

Six Rivers Dispute Resolution Center

Home to: OCAMP

Phone: (888) 628-4101

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Table of Contents

Introduction	2
How mediation works.....	2
Mediation benefits	3
Using mediation to help resolve your dispute.....	3
USDA Agency issues	4
Right to Farm issues	6
How to request mediation.....	7
Mediation success stories.....	8
Additional information and resources	14

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Phone: (888) 628-4101

Fax: (541) 386-1283

Email: office@6rivers.org

Introduction to mediation

The goal of the Oregon Certified Agricultural Mediation Program (OCAMP) is to help farmers, ranchers, and others resolve agriculture-related disputes quickly, amicably, and in a cost-effective manner.

Across the nation, the USDA has designated agricultural mediation programs in 40 states. In Oregon, the designated United States Department of Agriculture (USDA) Certified Agricultural Mediation Program is coordinated by a non-profit organization: Six Rivers Dispute Resolution Center (DRC).

Six Rivers DRC has coordinated OCAMP since 2011, serving as the designated state mediation service provider for farmers and USDA agencies regarding USDA issues; for farmers, neighbors, and municipalities regarding Right to Farm issues; and for farmers and private lenders regarding agricultural credit issues.

How mediation works

USDA Covered Mediation is provided as a free service to all participants, with OCAMP paying the cost for the independent mediator. Mediation is a voluntary process in which a trained, impartial, and certified mediator helps disputing parties examine their issues, identify and consider options, and determine if they can agree on a solution. In this way, the mediator serves as a facilitator and helps the parties narrow their issues and look for solutions. Because the mediator has no final decision-making authority, successful mediation is based on the voluntary cooperation of all the parties. Each mediation session is confidential, and the process generally takes only a meeting or two to complete. Once an agreement is reached in mediation, the contract is binding.

OCAMP maintains a roster of certified mediators. Once each party in a dispute agrees to try mediation, OCAMP assigns a mediator to the case and schedules a mediation session at a time and place convenient for all the parties. In some cases, teleconferencing is used. When the mediation session concludes, the mediator describes, in writing, any agreements that the parties have reached, and then the parties sign the agreement.



Mediation benefits

One of the foremost benefits of mediation is that it can save farmers and others significant time and legal fees. Mediation exists as an alternative to the longer federal appeals process for USDA program disputes and the sometimes lengthy public hearing process for Right to Farm disputes.

Mediation also allows the parties in a dispute to retain control over the shaping of a matter's outcome, rather than letting a third-party, e.g., the County, Oregon Department of Agriculture, etc., decide the issue. Mediation enables the parties to also express their different or mutual points of view, correct misinformation and misunderstandings, narrow the issues at hand, and maintain relationships.

Using mediation to help resolve your dispute

OCAMP's roster of certified mediators is available to help resolve three main types of disputes – those involving USDA, Right to Farm, and agricultural credit issues:

USDA Program Disputes	Issues between USDA clients and USDA agencies in Oregon: <ul style="list-style-type: none">• United States Forest Service, Rural Development, Risk Management• Farm conservation program issues with Natural Resources Conservation Service (NRCS)• Agricultural credit and other farm program issues with the Farm Service Agency (FSA)
Right to Farm Disputes	Issues between farmers and neighbors: <ul style="list-style-type: none">• Complaints or concerns a neighbor has about a farmer's agricultural management practices Issues between farmers and municipalities: <ul style="list-style-type: none">• Complaints or concerns a municipality has about a farmer's agricultural management practices
Agricultural Credit Disputes	Issues between farmers and private lenders or creditors

In addition, OCAMP has been used to help resolve general agriculture-related disputes that may be outside the scope of the Right to Farm Act but still involve farm operations or impact agricultural practices. For mediator fees to be covered, the dispute must fit within the scope of OCAMP's regulations. However, Six Rivers DRC provides low-cost, affordable mediation services for disputes that do not fit within the scope of OCAMP's regulations.

More information is available at <http://www.6rivers.org/services.html>.

The mediation process regarding USDA program issues

There are many types of USDA services and programs for which farmers may apply. Farmers might apply to the Farm Service Agency (FSA) for a direct operating loan for a farm business, for instance, or to the Natural Resources Conservation Service (NRCS) for a cost-share contract to implement a farm conservation practice. If a farmer's application is denied, or if USDA issues an adverse determination regarding any matter, a farmer has the option of requesting mediation and/or pursuing additional USDA appeal procedures.

When an adverse determination is made, the USDA agency will inform the farmer of its decision and send a formal letter describing the decision. This letter will also include a description of the farmer's appeal options for seeking to have the decision modified. Each USDA agency has its own regulations, so these options may be slightly different depending on whether the decision was made by FSA, NRCS, or another USDA agency, and based on the program involved. A farmer may utilize all of the options, but only one at a time and in the order listed.

With FSA loan programs, the following three appeal options are typically provided: 1) Requesting reconsideration with the FSA decision-maker, 2) Requesting mediation with the FSA decision-maker, and 3) Appealing the determination to USDA's National Appeals Division.

With NRCS, when a Final Technical Determination or Program Decision is made, similar appeal options including a local appeal option are typically provided: 1) Requesting reconsideration with the NRCS State Conservationist, 2) Appealing to the FSA County Committee (for certain programs), 3) Requesting mediation with the NRCS decision-maker, and 4) Appealing the determination to USDA's National Appeals Division.

Reconsideration and mediation are somewhat similar, as both involve the farmer and a USDA decision-maker coming together to meet and discuss the matter further. The primary difference is that with mediation, the parties have agreed to use an independent, third-party mediator to help guide the discussion. Also important to

remember is that mediation is not arbitration. The mediator is not a judge and does not have decision-making authority, but is rather a skilled facilitator whose job is to help the parties review new information, consider the relevant facts (such as any limitations USDA may have under its regulations), and discuss potential solutions.

Remember that each case is unique and it is the farmer's responsibility to read and understand the adverse determination letter sent by USDA. A farmer's appeal rights may be different depending on the USDA agency and program involved. Some FSA matters, for instance, may also be appealed to the FSA State Technical Director. Review the letter, including the appeals and mediation information, to ensure you are following the appropriate process for your specific case.

Whether a farmer pursues reconsideration or mediation (or sometimes both, one after the other), both options are designed to give farmers the opportunity to present additional information that they or their representatives believe could lead to the USDA agency modifying its initial determination. Whether or not the determination is modified, additional ideas and solutions are often discussed during a reconsideration meeting or a mediation session. There is no cost for either reconsideration or mediation.

It is important to note the order in which a farmer may request and use his or her reconsideration, mediation, and appeal options. A farmer may utilize all of the options, but only one at a time and in the order listed on the opposite page. In an FSA loan case, for instance, a direct appeal to the USDA National Appeals Division means you can no longer use reconsideration or mediation. Likewise, starting with mediation means you have bypassed the reconsideration option.

When considering mediation after having received an adverse determination letter from USDA, keep in mind how the appeals timeframe works. A farmer typically has 30 calendar days from receiving the letter to submit a formal appeal to USDA's National Appeals Division. However, the 30-day clock stops when mediation is requested. When the mediation process ends, the clock starts again from where it had stopped. For instance, if a farmer requested mediation 20 days after receiving an adverse determination letter, the appeal clock would stop at that point, and it would remain stopped while the mediation session was arranged and held. If the mediation session did not resolve all of the issues, and the farmer then wanted to appeal to USDA's National Appeals Division, the farmer would still have 10 days left to submit the appeal.

Regarding appeals to the USDA National Appeals Division (NAD), the process begins when a farmer sends a signed, written appeal letter to NAD. A hearing officer from NAD's regional office is then assigned to the case, and the hearing officer holds a pre-hearing conference call to set up a date, time, and local place for the hearing. NAD typically schedules the hearing within 45 days of receiving the appeal and usually issues a final decision within 30 days of the hearing.



The mediation process regarding Right to Farm issues

Many farmers have good relationships with their neighbors and towns, but issues still arise at times and need to be resolved. In Oregon, the two main avenues for resolving Right to Farm issues, i.e., complaints or concerns that neighbors or towns have about a farm's operation, are 1) the formal complaint process outlined in the Right to Farm Act, and 2) the informal mediation process available through OCAMP.

Signed in 1993, Oregon's Right to Farm Act is a statute that provides immunity to farmers who have been brought to court on a private claim of nuisance or trespass. As urbanization and residential population expanded into rural areas, the Oregon Legislature sought to protect farmers and their farming practices. Even though Right to Farm offers certain protections, it is in farmers' and ranchers' best interests to prevent and resolve conflicts where possible and maintain good relationships with neighbors. With mediation, the interests of both parties are utilized to find a result that is satisfactory to both. With litigation, a judge with, sometimes, a jury, is making the decision for the parties. Alternatively, lawyers often aim to settle through discussion, which is what mediation can do more affordably and through a more collaborative process.

Furthermore, Oregon Right to Farm immunity has limitations. It is not meant to be used between farmers. Only farmers who are in court with a private claim of nuisance or trespass can bring a defense of Right to Farm.

Therefore, mediation is available to help farmers, neighbors, and towns resolve their issues more quickly, amicably and cost-effectively. In this way, the parties are able to discuss ideas and create their own solutions. The collaborative setting made possible by mediation also enables participants to more freely express their concerns, address any misunderstandings, and maintain or foster better relationships.

After one party has requested mediation by sending in a mediation request form, OCAMP staff will reach out to the other party to see if he or she is also interested in trying mediation. Once staff has received each party's consent to mediate, a mediation session is scheduled at a time and place convenient for everyone. Most Right to Farm-related mediations have involved a single mediation session, but additional or follow-up sessions also may be scheduled depending on the nature of the issues and the parties' interests.

Many types of Right to Farm issues have been mediated through OCAMP, e.g., issues related to farm markets, signs, farm buildings, equipment storage, equine activities, water runoff, manure management, flies, odors, fencing, and dust.

How to request mediation

The process for requesting mediation is easy. Whether you are interested in using mediation for a USDA, Right to Farm, agricultural credit, or other issue, the process involves contacting OCAMP by phone, email or mail. Each request for mediation receives a phone call or email response and includes more information about the mediation process and up to one hour of consultation. The Program has several versions of the request form for the different types of issues that may be mediated. The forms are available online at <http://www.6rivers.org/oregon-agricultural-mediation-program.html>. Each form has the same basic sections where you: list the person(s) with whom you have a dispute and are requesting mediation; briefly describe the situation; and list any other individuals you would like to include in the mediation, e.g., any agricultural experts, a spouse, an employee, an attorney, or someone else. If you are requesting mediation regarding a USDA issue, also make sure to include a copy of the USDA adverse determination letter (including any attachments) when sending in your mediation request form. OCAMP will provide a copy of your completed request form to the mediator, as a part of the mediator's packet of background information on the case.

Mediation success stories

In Oregon, OCAMP has been used by farmers, neighbors, municipalities, and USDA agencies to help resolve a variety of issues. Provided here are several mediation success stories to show how the mediation program has been used over time and how mediation may be of assistance. In honoring the confidential nature of mediation, OCAMP maintains privacy of its clients, therefore this handbook includes select cases from around the country.



GROWER & FSA LOAN

Grower and FSA Reach Settlement to Consider Updated Financial Information

A grower of innovative crops in a Western state applied for FSA loans to improve his farming infrastructure. The grower and FSA representatives agreed that these improvements would significantly enhance his ability to deliver product and, thus, his cash flow. His application was approved on the condition that the real estate appraisal and title reports were consistent with the paperwork.

Excited, he began to line up the materials and assistance to start the improvements. In the meantime, a notice of default showed up on the title report. Surprised, FSA took another look at the loan arrangements and, with the involvement of the grower, examined options to move forward. The grower was also surprised by the notice of default and moved to cure the default. The default was not cured in adequate time and FSA ultimately denied the loan.

The grower requested mediation. The grower, a family member of the grower, and two FSA representatives participated along with the mediator from the Certified Agricultural Mediation Program. The parties spoke of their initial shared optimism for the farm improvements and the impact of the surprise notice of default on their relationships with each other. They clarified information that had been mis-communicated when timelines tightened and problems arose. At the end of the 3-hour session, the grower and FSA representatives reached a written mediation agreement that included a process by which the grower would submit updated financial information and FSA would reconsider the loan. Moreover, the parties reflected on the benefits to their working relationship of clearing the air. As the agreement was written by the mediator, the parties spontaneously discussed other opportunities to work together.

FAMILY SUCCESSION PLANNING & FSA LOAN

Farm Stays in Family After Successful Mediation Restructuring Debt, Working Together

A farmer leased 200 acres to give his parents some income and security. He subleased the land to a neighbor. In applying for a new FSA loan, he realized the full extent of the family debt crisis. After an initial adverse decision, he met with the loan officer, local bank manager, financial advisors, family members (who had serious disagreements) and a mediator.

After a couple of meetings, the family realized they would have to work together to keep the farm, and were able to work out a plan to restructure the debts. Today the farm is profitable again and, thanks to the FSA loan, they were even able to expand production.

PRODUCER AND COUNTY COMMITTEE

Producer and County Committee Reach Agreement After Mediation Provides Insight to Parties

A producer in a Western state was enrolled in an FSA program. The producer was receiving funds each quarter based on his production. After being involved in that program for several years, the producer was found to be in violation of the program requirements, his payments were cancelled, and the FSA sought a refund. The amount was approximately \$20,000.

The producer first met with the County Committee for review of his case. After many hours of discussion with the County Committee, the parties were unable to resolve the matter. The producer then asked for mediation. The mediation session included the FSA County Executive Director (CED), County Committee members and a co-mediation team.

During the mediation session it became clear that the producer and the County Committee members were not making any headway, as they were all approaching the discussion from the same perspective they had presented when they spoke during the original meeting. The team of mediators met with the producer in caucus. After lengthy discussions (in caucus) that included written diagrams detailing quarters for which he was paid and quarters in which he received payments, the producer said, "Well, it's clear from that that I owe for one quarter".

At the end of the 4.5 hour session, the producer, CED, and County Committee reached a written mediated agreement that included a process by which the producer would repay the overpayment received for the quarter that he was out of compliance.

The County Committee and CED members were very intrigued that after so much discussion prior to mediation, the mediation process allowed for a clear understanding on the part of the producer. Additionally, the producer indicated that he was a little bit embarrassed that it had to go so far to get him to a point that he understood, but he was very appreciative that mediation worked so well.



PRODUCER AND NRCS

Farm Saved After Producer and NRCS Reach Mediated Settlement Over EQIP Contract

A producer had applied for and was awarded an EQIP contract to install and implement conservation practices on a cost share basis. However, over a short period of time, the cost of materials needed more than doubled and this elderly farmer did not have the financial resources to complete the practices at the higher prices. Therefore, the producer requested termination of his EQIP contract at which time NRCS requested a refund of cost-share payments and recovery of administrative and technical services costs.

During mediation, the parties discussed the practices that had been completed and discovered that 5 conservation practices had been completed as per the EQIP contract and that it was not economically feasible for the producer to complete the other projects at this time given the dramatic increase in the cost of materials. As a result of this discussion, the parties agreed that the previously incurred cost share had been used appropriately. Also, it was agreed that most of the administrative and technical costs were incurred for the practices already completed. Therefore, the producer was allowed to terminate his contract and satisfy the appropriate recovery costs without having to liquidate his farm.

FORECLOSURE

Homeowner and Lender Reach Settlement to Avoid Foreclosure

Homeowner was in over his head with a mortgage that he could not afford. He lost his last job over a year ago. They stopped paying the mortgage 6 months ago, when it seemed there was no other choice. Since then he has reached a stage of disability and his wife has entered retirement. They have a completely different income now and are able to qualify for new options on their mortgage. However, every time they call the Bank they get a different person and they are never told the same thing. Their house went into foreclosure last month and they requested mediation to help them through this messy time.

Mediation stopped the clock on their foreclosure. They were able to gather all the documents to prove their income and to establish a new starting point for a refinance. The lender collected the documents and requested several more to prove social security and all of their debts. By the time the mediation was held at the table, the lender was prepared to offer a new loan, at \$300 less per month in payments. The difference was just what this family needed to keep their home.



GRAZING PERMITS AND LAND USE AGENCY

Grazing Settlement Reached Through Mediation Concerning Reduction in Grazing Privileges and Maintenance of Fences

A group of grazing allotment permittees were given notice that their grazing privileges were being reduced by 25% for two years. The situation had been pending for a few years and involved a number of issues such as fence maintenance, trespass of permitted AUM's (Animal Unit Month's), season of use, etc. The area is highly utilized by recreation users which resulted in gates being left open, fences cut or let down, and contributed to the problems for the permittees and the land management agency.

Mediation resulted in agreements being reached that called for a 10% reduction in either length of use or AUM #'s for one year. The parties also agreed to timelines for installation of new stretches of fence and maintenance of existing fences and agreed to keep communication lines open between all of the parties. The mediation agreement also called for a 25% reduction in either length of use or AUM #'s if the agreement was not complied with. This would be effective for the following grazing season. Both entities agreed to work closer together to try and address the abuses from recreation users.



DAIRY FARMER & ORGANIC CERTIFICATION

Producer and Certifier Reach Settlement Over Compliance Issues

Dairy farmer has Organic certification for multiple products. He has been producing Organic Milk and selling cattle as Organic Beef. Over the past 3 years he has been growing the operation and expanding the herd of cattle. Expansion of the ranch has resulted in a need for more efficient bookkeeping. He had changed his systems for keeping track of his cattle with computer upgrades and transferring data from a paper based system to a digital one. Communication breakdowns have led to a perception of broken promises twice with the certification agency. Were there cows counted twice? Had the non-certified cows mixed into the certified ones? No one could say for certain and certainty was necessary. There was no room for error and trust in the new system would have to be demonstrated in evidence.

The agency agreed in mediation to allow him to maintain his certification for milk while revoking the beef certification. He will be able to stay in business and sell off the cows that do not qualify for the Organic program, maintain a good credit with the agency and reapply when he can stand by his system of verification. The integrity of the relationship is still intact, while they all agreed to give the computerized system time to become reliable.



Additional information and resources

Being familiar with the agricultural resource landscape in Oregon – OCAMP, USDA agencies, and other in-state agricultural organizations – may be helpful in the event of an agriculture-related conflict or issue. See below for brief information on these resources.

Oregon's USDA Certified Agricultural Mediation Program - OCAMP

OCAMP is designed to help farmers and others resolve agriculture-related disputes quickly, amicably, and in a cost-effective manner. Coordinated by Six Rivers Dispute Resolution Center, the program serves as the State's mediation service provider regarding USDA, Right to Farm, and agricultural credit issues. Additional information, including fact sheets and the program's regulations, are available online. The program uses the following basic forms:

- ❖ Mediation Request form (completed by the farmer and the other party to initially request mediation)
- ❖ Agreement to Mediate form (completed by the participants prior to the mediation session; it describes the basic guidelines that the participants in the mediation session agree to follow)
- ❖ Post-Mediation Agreement form (completed by the mediator, who writes up any agreements the parties make, and then signed by the parties)

Mediation of USDA Covered issues is provided free of charge. OCAMP receives a cost-share grant from USDA to help cover the program's administrative costs for mediation work related to USDA and agricultural credit issues. Mediation of other (non-USDA, but still agricultural) issues are offered at affordable and sliding fee based rates. Contact us for more information on your case.

www.6rivers.org/oregon-agricultural-mediation-program.html

USDA Agencies in Oregon

When USDA issues an adverse determination to a farmer and the determination is appealable, USDA is required to offer mediation as one of the farmer's "appeal rights" options. The USDA agencies in Oregon most often involved in mediation sessions include the US Forest Service (USFS), Farm Service Agency (FSA), the Natural Resource Conservation Service (NRCS), and Rural Development (RD). Risk Management Agency (RMA) policy also allows for mediation between farmers and private, approved insurance providers. See below for a link to USDA's Agricultural Mediation Program Fact Sheet and the next page for more information on FSA, NRCS, RD, and RMA. USDA is an equal opportunity provider and employer.

www.fsa.usda.gov/Internet/FSA_File/ag_mediation_program.pdf – USDA Mediation Fact Sheet

Farm Service Agency

The Farm Service Agency (FSA) coordinates a number of loan, conservation, and other programs to help new and established farmers. Some of FSA's farm loan programs provide farm-ownership, direct-operating, guaranteed, and emergency loans. A portion of the loan funds for these FSA programs is available specifically for minority, women, and/or beginning farmer applicants. The FSA Oregon State Office is located in Tualatin, and FSA has a network of regional service centers around the state.

<https://offices.sc.egov.usda.gov/locator/app?state=or&agency=fsa> – FSA home page, with State and County office contact information

www.fsa.usda.gov/Internet/FSA_File/fsa_br_01_web_booklet.pdf – FSA Loan Programs

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) provides assistance to farmers and landowners regarding the conservation and management of their soil, water, and other natural resources. This technical assistance is tailored to each customer's specific needs, is science-based, and typically includes the development of a farm conservation plan for the farmer or landowner. Financial assistance may also be available for the implementation of conservation practices. The NRCS Oregon State Office is located in Portland, and NRCS has a network of regional service centers.

<https://www.nrcs.usda.gov/wps/portal/nrcs/site/or/home/> – NRCS home page

http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/alphabetical/camr/?cid=nrcs143_008442? – NRCS Mediation Fact Sheet

Rural Development

Rural Development (RD) provides assistance to farmers, businesses, communities, and other individuals to help improve the economy and quality of life in rural areas. This includes technical assistance to help farmers and cooperatives get started and improve their operations; assistance and grants to communities for development projects; loans to businesses and others for projects that create jobs and focus on specific topics, like energy; and rural housing loans to help individuals afford homes. The RD State Office is located in Portland, and there are RD area offices statewide.

<https://www.rd.usda.gov/or> – RD home page

www.rurdev.usda.gov/rd/adr/auth.html – RD Mediation Fact Sheet

Risk Management Agency

The Risk Management Agency (RMA) operates the Federal Crop Insurance Corporation to help make crop insurance available. Private insurance companies, following RMA rules, sell policies directly to farmers. In the event of a dispute, farmers may request mediation with the private companies. www.rma.usda.gov/ – RMA home page

www.rma.usda.gov/regs/mediation.html – RMA Mediation Fact Sheet

Six Rivers Dispute Resolution Center

Six Rivers Dispute Resolution Center (DRC) is the non-profit agency that provides conflict resolution services and training in multiple jurisdictions throughout the Northwest and works to help maintain a viable agricultural industry in Oregon. Six Rivers DRC coordinates OCAMP, serving as the state's mediation service provider for farmers, USDA agencies, and lenders. Six Rivers DRC also works with the Oregon Department of Agriculture's farm employment mediation program as well as the Oregon Association of Community Dispute Resolution Centers.

Oregon State Agricultural Extension Service

The Oregon State Agricultural Extension Service (OSU Extension) is the agricultural research and outreach arm of Oregon State University. OSU Extension operates county offices and Experiment Stations at the local level, with offices staffed by agricultural agents and agricultural specialists who can provide information and consultation on a variety of agricultural and natural resource topics. Farmers, neighbors, municipalities, and others often contact their local OSU Extension branch to speak with their county agricultural agent regarding agriculture-related questions. In the event of a dispute, county agricultural agents will in some cases try to help the parties resolve their issues informally, prior to mediation. In other cases, when mediation is requested, one or more of the parties might invite their county agricultural agent to participate in the mediation session to serve as an agricultural resource expert and help make recommendations.

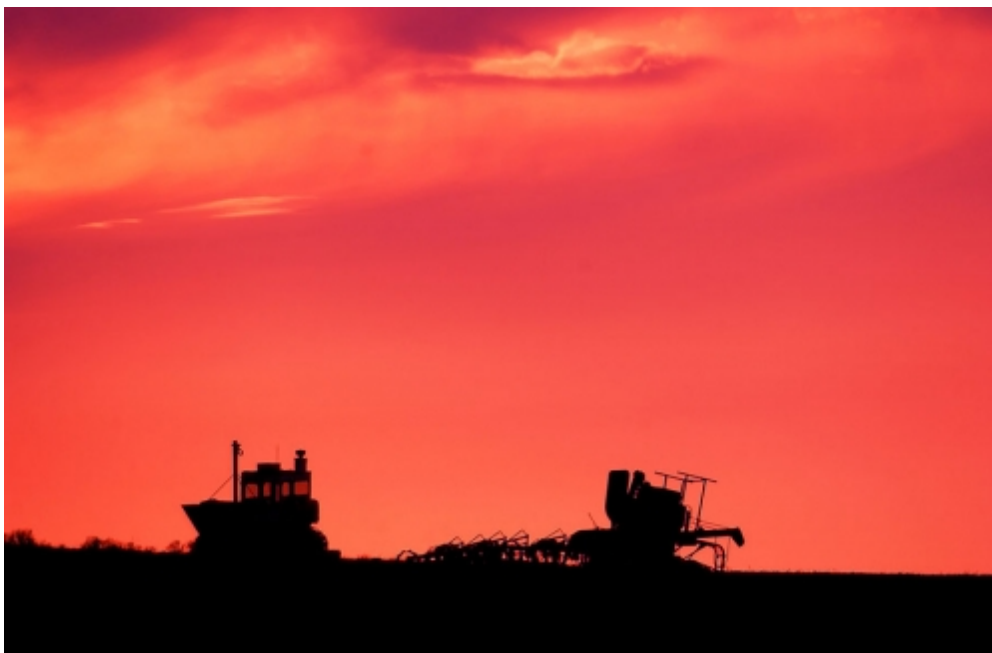
<http://extension.oregonstate.edu/> – OSU Extension home page

<http://extension.oregonstate.edu/find-us> – Contact information for local OSU Extension branch

Oregon Department of Agriculture

The Oregon Department of Agriculture (ODA) promotes and protects the state's agricultural industry. It is responsible for a variety of agricultural product, farm regulatory, plant and animal health, and food assistance programs. ODA's website has a general reference page, "Topics A to Z," that farmers and others may find helpful when looking for more information on agriculture in Oregon.

www.oregon.gov/oda



Oregon's USDA Certified Agricultural Mediation Program

<http://www.6rivers.org/oregon-agricultural-mediation-program.html>

Kate Brown
Governor

Peggy Browne
USDA FSA State Executive Director

Alexis Taylor
Oregon Department of Agriculture Director

Notes

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