

Manual 7

Long-Term Obligations

February 1, 2016



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Section 1: Introduction

In this section, you'll learn about:

- ✓ The manual
- ✓ The Recreation and Conservation Office
- ✓ Information you'll need
- ✓ Where to get help

About this Manual

This manual provides basic information and policies for projects funded by the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board. The policies apply to grant recipients of all grant programs, current and past, including the following:

- Aquatic Lands Enhancement Account (ALEA)
- Boating Activities Program (BAP)
- Boating Facilities Program (BFP)
- Boating Infrastructure Grant (BIG)
- Estuary and Salmon Restoration Program (ESRP)
- Family Forest Fish Passage Program (FFFPP)
- Firearms and Archery Range Recreation (FARR)
- Land and Water Conservation Fund (LWCF)
- Puget Sound Acquisition and Restoration (PSAR)
- Recreational Trails Program (RTP)

- Nonhighway and Off-Road Vehicle Activities (NOVA)
- Salmon Recovery
- Washington Wildlife and Recreation Program (WWRP)
- Youth Athletic Facilities (YAF)

Manual Authority

Authority for the information in this manual is found in the following statutes and rules: Revised Codes of Washington chapters 420.04, 420.12, 46.09, 77.85, 79.105, 79A.15, 79A.25, and Title 286 of the Washington Administrative Code. The Recreation and Conservation Funding Board adopted the policies in this manual in a public meeting. The Salmon Recovery Funding Board also has accepted these policies.

Definitions

For definitions of terms used in this manual, see the project agreement. See a sample agreement on the RCO Web site at www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf.

About the Recreation and Conservation Office

The Recreation and Conservation Office (RCO) is a small state agency that supports boards and councils including the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board. RCO manages multiple grant programs to create outdoor recreation opportunities, protect the best of the state's wildlife habitat and farmland, and help return salmon from near extinction.

RCO does not manage lands or operate facilities, but it does provide grants for many types of facilities and habitat enhancement work, including the following:

Where to Information

Recreation and Conservation Office
Natural Resources Building
1111 Washington Street
Olympia, WA 98501
E-mail: RCOStewardship@rco.wa.gov

Telephone: (360) 902-3000
FAX: (360) 902-3026
TTY: (360) 902-1996
Web site: www.rco.wa.gov

Mailing Address

PO Box 40917
Olympia, WA 98504-0917

RCO outdoor grants managers are available to assist by answering questions concerning the information contained in this manual. Please feel free to call.

Other Information You May Need

RCO's Web site (www.rco.wa.gov) provides more information on these and related programs, including:

- Summary brochures and fact sheets that describe each program's goals, funding, and schedules
- Program policy manuals
- Technical assistance guides
- Statutes and rules
- State plans that give broad policy background.

Contact RCO for more information about these and other free publications or online resource tools. Each can be made available in an alternate format for people with disabilities.

Section 2: Compliance

In this section, you'll learn about:

- ✓ Definitions
- ✓ Policies for change of use
- ✓ Non-compliance: element change
- ✓ Non-compliance: conversion
- ✓ High risk sponsors

Introduction

It is your responsibility as the grant recipient, also called project sponsor, to comply with the terms and conditions of the RCO project agreement. After your project is complete (that is, after final reimbursement is made), RCO documents you have signed continue to govern the site, structures, or facilities for which funds have been granted. Unless otherwise allowed by policy, program, or agreement, RCO expects that your project will continue to function as originally funded in perpetuity – that is, forever. Changes may be made only with the approval of RCO

Definitions

Non-compliance: A project status that results when one or more elements of a completed project is inconsistent with one or more elements of a project agreement. Non-compliance does not necessarily result in conversion.

Conversion: A project status that results when use or function of recreation or habitat land or facilities paid for by RCO changes to uses or functions other than those for which assistance originally was approved.

Obsolescence: RCO limits the application of "obsolescence" to built structures and facilities. "Obsolescence" is when one or more of the following applies:

- An RCO funded structure or facility has become outmoded due to change in generally accepted professional design and construction practices that now renders the structure or facility out-of-date.
- Significant and documented changes in prevailing outdoor recreation participation in the sponsor's jurisdiction over a period of not less than 5 years.
- A structure reaches the end of its anticipated or agreed upon service life.
- In the instance of a structure placed or built for habitat purposes, habitat changes beyond the control of the project sponsor.

Perpetuity: Perpetual, seemingly ceaseless, or the condition of an estate that is limited so as to be inalienable either perpetually or longer than the period determined by law.

Remediation: Actions taken by a project sponsor to restore or replace changed elements, or to correct conversions. Return of grant funds is allowed only in the Firearms and Archery Range Recreation program.

Replacement: Structure or property interest of equivalent size, function, and value to any structure or property lost to conversion.

Policies

Use of RCO grants creates a condition under which funded property and structures become part of the public domain in perpetuity.

The original fund source will help determine compliance. Funds from recreation programs are intended to result in opportunities for public recreation in perpetuity. Funds from habitat programs are intended to result in habitat values or functions in perpetuity.

RCO policy, consistent with state law,¹ is that interests in real property, structures, and facilities acquired, developed, enhanced, or restored with RCO funds must not be changed, either in part or in whole, nor converted to uses other than those for which the funds originally were approved. If an RCO funded project is found to be changed or converted (out of compliance with the project agreement or agreement amendments), the project sponsor is responsible for replacing the changed or converted interests in real property, structures, or facilities with interests, structures, or facilities of equivalent size, value, and utility.

¹See especially Revised Code of Washington 79A.25.100 and Revised Code of Washington 79A.15.030(8).

There are a number of ways a project can be out of compliance with the project agreement, the most serious of which is a conversion. If a compliance issue arises, RCO works with sponsors to resolve the compliance issue.

Allowable Uses Framework

RCO grants are intended to support Washington State's habitat, outdoor recreation, and salmon habitat resources. Uses of project sites must have no overall impairment to the habitat conservation, outdoor recreation, or salmon habitat resource funded by RCO.

To be in compliance with the grant, uses of grant-assisted project sites must be either:

- A. Identified in the project agreement; OR
- B. Allowed by RCO policy; OR
- C. Approved by RCO or the funding board.

For the use to be approved by RCO or the funding board (Option C, above) it must meet all of the following criteria:

- The use must be consistent with the essential purposes of the grant (i.e., consistent with the grant agreement and grant program)
- All practical alternatives to the use, including the option of no action, must have been considered and rejected on a sound basis
- The use must achieve its intended purpose with the least possible impact to the habitat, outdoor recreation, or salmon habitat resource
 - If the use impacts the type of resource the grant is designed to protect (habitat, outdoor recreation, or salmon habitat), it also must provide at least equivalent benefits to that type of resource so there is no overall impairment.

An approved use of a project site must continue in the way it was approved to remain in compliance with the grant. This policy does not modify other RCO policies, such as cultural resource policies.

Income generated on the project site must be managed in accordance with RCO policies on income and income use.

Income

The source of any income generated in a funded project or project work site must be compatible with the funding source and the agreement. User and other fees may be

charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:

- Value of any services furnished;
- Value of any opportunities furnished; and
- Prevailing range of public fees in the state for the activity involved.

Excepted are **Firearms and Archery Range Recreation** program safety classes (firearm or hunter) for which a facility/range fee must not be charged².

Fees Based on Residence³

If different fees are charged for residents and nonresidents, the non-resident fee must not exceed twice that imposed on residents. If no resident fee is charged, then a non-resident fee must not be charged.

Use of Income

Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the agreement, unless precluded by state or federal law, the revenue may only be used to offset:

- The sponsor's matching funds.
- The project's total cost.
- The expense of operation, maintenance, stewardship, monitoring, or repair of the facility or program assisted by the funding board grant.
- The expense of operation, maintenance, stewardship, monitoring, or repair of other similar units in the sponsor's system.
- Capital expenses for similar acquisition, development, or restoration.

If the income exceeds the system's operation, maintenance, or monitoring costs, it must be deposited in a capital reserve fund.

²Chapter 79A.25.210 Revised Code of Washington

³Washington Administrative Code 286-13-115

This fund must:

- Be identified in the sponsor's official annual budget for acquisition and/or development of lands or facilities.
- Only be used to further the capital goals and objectives identified in the sponsor's park and recreation, habitat conservation, or salmon recovery plan.
- Only be applied to other of the sponsor's Recreation and Conservation Funding Board projects in the same category (for example, revenue raised from an RCO Boating Facilities Program grant only may be used to assist other motorized boating projects).

Recreation Structures and Facilities

RCO recognizes a difference between projects that acquire interest in land and projects that fund structures or facilities.⁴ Compliance with project agreements involving structures or facilities for outdoor recreation will be tied to a reasonable, agreed-upon service life for the structure or facility, with the further provision that the development of the structure or facility constitutes the sponsor's agreement to provide outdoor recreation opportunity on the development site in perpetuity.

Example

RCO funding for a baseball field results in the underlying property remaining in the public domain as outdoor recreation property. The specific recreation use may change from a baseball field to an outdoor soccer field without resulting in a conversion. Changing use of the land to any non-outdoor, non-recreation purpose will result in a conversion.

Granting of Utility Permits

After determining that a pipe or power line will have no adverse effect on present and future public recreation or habitat use of a project site, any permit issued must:

- Not be an easement giving property rights to a third party.
- State that the pipe or power line will be underground.
- Require that the third party give prior notice to and receive approval from the sponsor to enter the site for construction or maintenance. Regularly scheduled periodic maintenance checks and the method(s) of performance (which must not

⁴ Post-completion compliance generally is not an issue for projects in which RCO has provided funds for planning, maintenance, operations, education, and enforcement activities.

involve disruption of any recreation or habitat conservation function), must have prior approval on the basis of a schedule. Emergency maintenance would not normally require prior notification and approval. Adequate assurance of surface restoration is also necessary.

- State a duration for construction and include language that allows setting a duration for reconstruction.

Policy on Habitat

RCO habitat grants seek to support properly functioning habitat conditions.

If a plant or animal is specified in a grant agreement and that plant or animal is lost as the result of events beyond the control of the sponsor, it does not constitute a non-compliance issue. Examples of events beyond the control of the sponsor include but are not limited to: Acts of nature (floods, drought), actions of upstream or adjacent landowners, and ocean conditions.

If a plant or animal is specified in the agreement and that plant or animal is lost as the result of events in the control of the sponsor, including sponsor inaction, it may result in a non-compliance issue even if a habitat function remains. The sponsor is expected to act with due diligence as steward of the property in question.

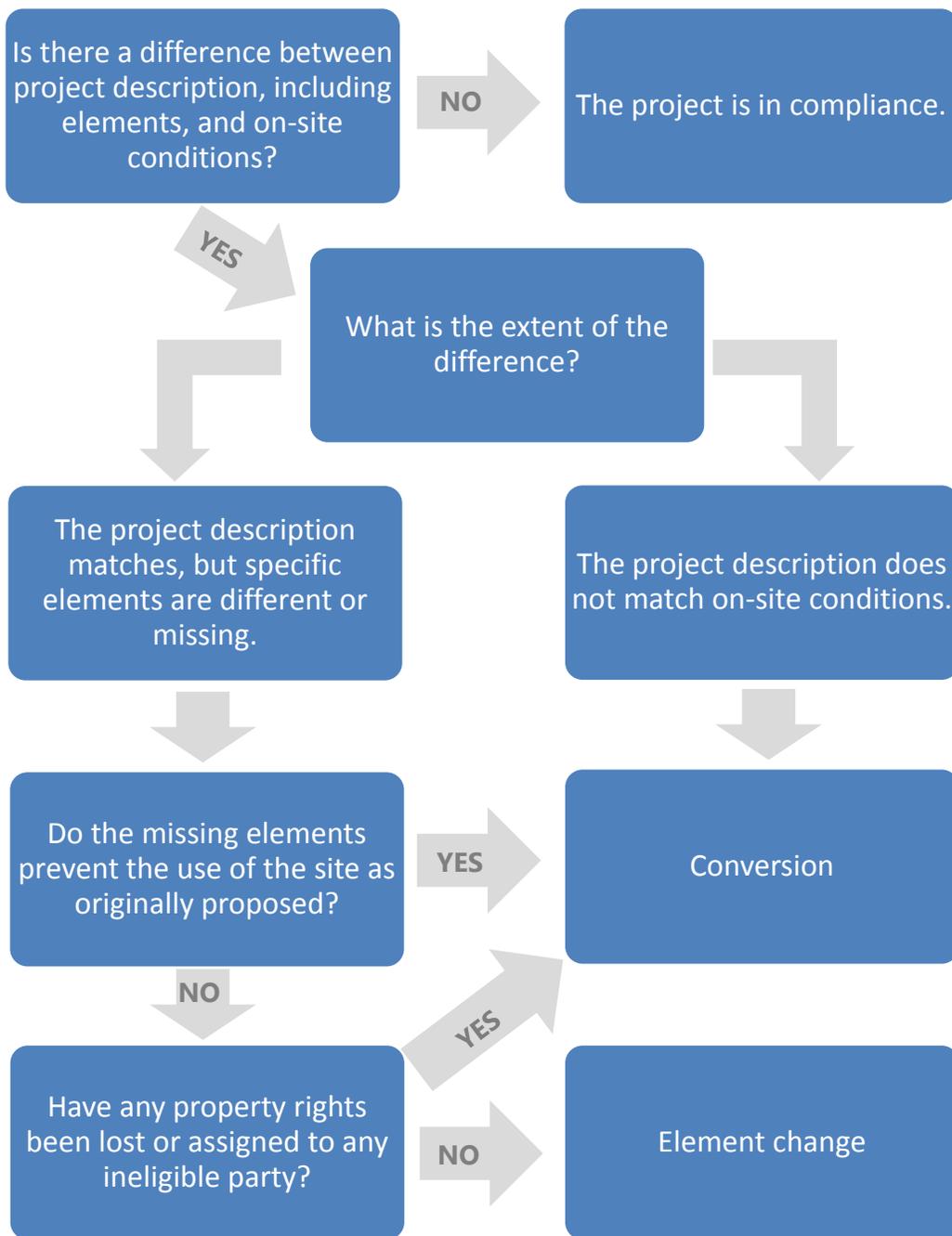
If no plant or animal is specified in the grant agreement, loss of a specific species does not constitute a non-compliance issue as long as the site continues to support properly functioning habitat conditions.

Inspections

RCO staff is responsible for implementing the compliance policy. RCO has a policy to inspect completed projects to compare actual conditions to the terms and conditions of the project agreement. An inspection may be done at any time during the life of an RCO funded project. Inspection will result in a determination of compliance, non-compliance, or conversion.

RCO encourages sponsors to regularly inspect their projects and to advise RCO if potential compliance issues exist.

Summary Guidance for Identifying Compliance Status



Non-Compliance: Element Change

Non-compliance is when at least one element of a completed project does not meet the terms and conditions of the agreement. Element changes may be minor or major. In most cases, remediation will be required.

Minor Element Changes

Minor element changes are those that do not conform to the project agreement but have no negative effect on the recreational opportunity or habitat function for which the project was funded originally.

A project amendment will be required to account for the change, and may be subject to review by RCO's director or funding board.

Examples

- **Recreation:** The Recreation and Conservation Funding Board helps fund a trailhead. The original agreement calls for 15 vehicle parking stalls, but only 12 stalls are built. The results do not conform to the project agreement, but do not have a negative effect on the recreational experience.
- **Habitat:** The Salmon Recovery Funding Board funds the removal of 5,500 feet of levee to expose 50 acres of floodplain to natural channel migration. Instead, only 5,000 feet of levee are removed, but the target of 50 acres is achieved.

Major Element Changes

Major element changes are those that do not conform to the project agreement and negatively affect, but do not eliminate, the recreational opportunity or habitat function for which the project was funded originally.

RCO staff will work with the sponsor to find remedies for major element changes. A project amendment will be required to account for the change, and will be subject to review by RCO's director or funding board.

Examples

- **Recreation:** A sponsor intends to pave a 5-mile trail. Inspection reveals that 3 miles have been paved, and 2 miles have been surfaced with crushed rock.
- **Habitat:** RCO funds a project to improve riparian conditions by fencing out cattle and planting trees and shrubs. The final project results in fencing and shrub planting, but no trees. Lack of "trees" as a project element results in poor shading and therefore water temperature goals are compromised, but fish are not lost.

Exceptions

Under certain circumstances, an element change beyond the control of the sponsor may be removed from a project agreement without a need for remediation. The conditions are:

- Obsolescence, defined above.
- Extraordinary vandalism that renders the element useless or dangerous.
- Acts of nature including but not limited to floods, earthquake, volcanic eruption, forest fire, and adverse weather.
- Fire, whether criminal arson or accidental.
- Permit requirements that disallow specified elements.
- Interstate Commerce Commission National Trails System Act reversion order (National Trails System Act 8(d), 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

Review for Approval or Remediation of an Element Change

As soon as the sponsor or RCO staff identifies a non-compliance issue or element, steps shall be taken to begin approval for remediation of the issue or element. Usually, remediation will be documented in a revised grant agreement.

The sponsor must:

1. Arrange for a site visit with RCO staff.
2. After initial contact and the site visit, prepare documentation to accompany a written request for RCO approval of the project replacement or project change. Staff will work with the sponsor to determine the kind and amount of documentation necessary to support a revised project agreement.

Documentation

The sponsor may be required to provide the following, in writing:

1. A description of the element change.
2. Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis.
3. A list and discussion of alternatives for replacement or remediation of the element change.

4. If a major element change has taken place, evidence that the public has been given a reasonable opportunity to participate in development of the request.
5. Additional documents that help explain the element change such as maps, plans, graphics, or photographs.

Non-Compliance: Conversion

A conversion would be determined when one or more of the following takes place, whether affecting an entire site or any portion of a site funded by RCO:

- Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery uses.
- Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.⁵
- Non-outdoor recreation, habitat conservation, or salmon recovery uses (public or private) are made in a manner that impairs the originally intended purposes of the project area.
- Non-eligible indoor facilities are developed within the project area.
- Public use of the property or a portion of the property acquired or developed/restored with RCO assistance is terminated, unless public use was not allowed under the original grant.
- If a habitat project, the property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which RCO funds were approved originally.

Note: Prior approval of temporary closure of public access sites will not result in a conversion if the sponsor demonstrates that the closure will last 180 days or less.

Review for Approval or Remediation of a Conversion

As soon as the sponsor and/or RCO determine that a project change may constitute a conversion, the sponsor must begin resolution of the conversion. The steps to take are:

1. Arrange for a site visit with an RCO grants manager.

⁵An exception is allowed under Salmon Recovery Funding Board rules: Property acquired for salmon recovery purposes may be transferred to federal agencies, provided the property retains adequate habitat protections, and with written approval.

2. After initial contact and the site visit, prepare documentation to accompany a written request for RCO approval of the project replacement or project change. The request, including a cover letter to the director, must contain a description of the original project, a description of the proposed change or conversion, and the proposed remediation.
3. If the conversion is referred to RCO, the sponsor must be prepared to attend the Recreation and Conservation Funding Board-Salmon Recovery Funding Board meeting at which the proposed conversion will be presented and decided.

Documentation

The sponsor must provide the following in writing:

1. A description of the original project proposal funded by RCO.
2. A description of the proposed conversion.
3. A list and discussion of all alternatives for replacement or remediation of the conversion, including avoidance. All practical alternatives to the conversion must be evaluated on a sound basis.
4. Evidence that the public has been given a reasonable opportunity to participate in the identification, development, and evaluation of alternatives. The minimum requirement is publication of notice and a 30-day public comment period.
5. Justification that supports the replacement site as reasonably equivalent recreation or habitat utility and location.
 - A. The fair market value of any interest in converted real property must be established and the interest proposed for substitution must be of at least equal current fair market value. The fair market value must be established by appraisal as provided in RCO's *Manual 3, Acquisition Projects*.
 - B. Property improvements will be excluded from all fair market value consideration for interest in real property to be substituted. Exceptions may be considered only in those cases where interest in real property proposed for substitution contains improvements that directly enhance its outdoor recreation or habitat conservation utility.
6. Additional documents for specific types of projects:
 - o **Acquisition:** Copies of any appraisal or appraisal review of the proposed conversion.

- **Development or restoration of structures or facilities:** A site plan that clearly indicates the development and restoration proposed for conversion.
- **For all projects:** Submit maps, plans, graphics, a completed State Environmental Protection Act (SEPA) check list, archeological or cultural resource reviews, and other documents required by RCO staff.

Exceptions

Generally, exceptions to conversions are the same as exceptions to major element changes (See Page 12).

Conversions of Land and Water Conservation Fund Projects

In addition to compliance with the rules found above, sponsors of facilities acquired, developed, or restored with federal Land and Water Conservation Fund assistance must provide:

1. A National Park Service Project Description/Environmental Screening Form, an environmental assessment, environmental impact statement, or other documentation.
2. Evidence of an appropriate intergovernmental review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains:
3. A detailed description of the proposal.
 - An address where comments may be forwarded.
 - The deadline for comment. At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer and all affected state, area, regional agencies, and tribal historic preservation offices.
4. Copies of all comments, including "no comment."

Director or board approval of conversions under the Land and Water Conservation Fund is interim, pending final approval from the National Park Service.

Review by the Director

Once all documents are received, staff will determine whether the proposal requires approval by the RCO director or by the Recreation and Conservation Funding Board-Salmon Recovery Funding Board using the following guidelines.

The director may review the following conversion replacement requests: Those in which conversion of use impacts less than 20 percent of the original project scope AND the dollar value of the conversion is \$75,000 or less in today's dollars.

The director may choose one of three courses of action:

- Approval of the request,
- Denial of the request, or
- Deferral of the decision to the appropriate board.

The director's decision may be appealed to the appropriate board.

All other requests are sent directly to Recreation and Conservation Funding Board-Salmon Recovery Funding Board as appropriate.

Appeal of Director's Decision

An appeal must be in writing, at minimum a letter addressed to the chair of the appropriate funding board. The appeal must include the reason for the appeal, the preferred outcome, and facts supporting the appeal.

Review by RCO Boards

Both Recreation and Conservation Funding Board-Salmon Recovery Funding Board meet in open public forums according to pre-published schedules. Review of a replacement or remediation proposal will be subject to a timetable based on the meeting schedule.

A sponsor's request for the funding board's review must be received by RCO staff at least 6 weeks before a scheduled meeting. RCO staff then will notify sponsors at least 2 weeks in advance of the Recreation and Conservation Funding Board-Salmon Recovery Funding Board public meeting in which the proposal will be reviewed.

RCO staff also will prepare a memorandum for the funding board's review explaining the conversion and the proposed replacement or remediation. On examination of the available documentation, the funding board may approve or deny the request.

If a project has been funded in part or whole through federal funds, the funding board's decision may be forwarded to the appropriate federal agency for further review. Federal law and regulations will apply.

Implementing RCO Approval

If approval is granted by the director or by the funding board, staff will amend the appropriate project agreement to reflect the change.

High Risk Sponsors

The director may recommend to the funding board that a sponsor with unresolved conversion projects be designated as a "high risk sponsor." A sponsor may be designated as high risk if it meets the following tests:

- Has one or more unresolved conversions of which the combined Recreation and Conservation Funding Board and Salmon Recovery Funding Board dollar total exceeds \$1 million or 25 percent of all Recreation and Conservation Funding Board and Salmon Recovery Funding Board funds received by that sponsor, whichever dollar amount is less (NOT including local match or contribution) OR
- Has a conversion of any size or amount that has been unresolved for 2 or more years after notification by the RCO, AND
- Has no record of substantial progress towards resolving outstanding conversion(s).

Substantial Progress

After recommendation by the director, the funding board will make the decision of whether a sponsor has a record of substantial progress.

Substantial progress is indicated when a sponsor has (1) expressed, in writing, a willingness to replace the converted property or remedy the conversion and (2) has taken specific and timely actions as stipulated by RCO. These actions may include, but are not limited to, identifying potential replacement property, convening a task force or assigning staff, demonstrating an adequate public involvement process, ordering appraisals or appraisal reviews, or other relevant actions.

Notice to Sponsors

Before making a recommendation to the funding board, the director will notify a sponsor in writing that it is responsible for one or more unresolved conversions and that the director is recommending that it be designated as high risk.

- The funding board, as appropriate, shall consider the director's recommendation in an open public meeting.
- Sponsor notification will occur at least 30 days before the board meeting and will include the date and time of the meeting, specific project references, and actions that will constitute substantial progress.
- If the board chooses to designate a sponsor as "high risk," the director will notify the sponsor in writing.

Applying for New Grants

A "high risk" sponsor still may apply and compete for additional grants for one grant cycle or calendar year from the date of designation (whichever is longer). After that time, the RCO will not accept grant applications from the sponsor until the high-risk designation is removed.

If a high-risk sponsor's new application is successful, the sponsor will be given a 90-day time period following the funding board's funding meeting to have the high risk sponsor designation removed pursuant to "Removal of Designation" Section below.

If, after the 90-day period, the sponsor has not been successful at having the high-risk sponsor designation removed pursuant to the "Removal of Designation" Section below, the RCO will not issue the project agreement and the funds will be redistributed pursuant to board policy.

Removal of Designation

If a sponsor believes that it should no longer be designated as high risk, it may petition the director to remove the designation.

The director shall have authority to remove the designation if he or she determines that the conversion has been fully resolved.

In cases where the conversion has not been fully resolved, the director shall refer the decision to the Recreation and Conservation Funding Board or the Salmon Recovery Funding Board if the director concludes that the sponsor has made substantial progress toward resolving the conversion or has other legitimate reasons why the high-risk designation might be removed.

Section 3: Project Agreement

In this section, you'll learn about:

- ✓ The project agreement

Project Agreement

To see a sample project agreement used for RCO grant programs, visit the RCO Web site at: www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf. The first few pages of the sample agreement include information unique to each funded project. That is followed by the standard terms and conditions, which are the same for all projects. The remainder is other documents considered part of the project agreement, such as the eligible scope activities, the legal description for projects including property acquisition, and a milestone report.