



STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE  
1111 Washington Street SE  
PO Box 40917  
Olympia, WA 98504-0917

January 23, 2007

**TOPIC #10: CONVERSION POLICIES – PROPOSED CHANGES**

Approved by the Director: 

Prepared and Presented By: Jim Eychaner

---

**Proposed Action:** Briefing

**Summary:**

Staff has developed a draft that attempts to better explain policy concerning compliance with grant agreements. The draft also introduces some new concepts intended to increase accountability.

**Staff Recommendation:**

Incorporate the text in the draft into Manual 7 (Section 3) and revise other parts of Manual 7 for consistency.

**Background:**

Beginning this past spring, staff worked with an advisory committee of affected sponsors and interested stakeholders, including a citizen member of the IAC and a citizen member of the SRFB.<sup>1</sup>

The advisory committee was tasked with helping us to come to consensus on policy statements, definitions, proposals for new concepts, and appropriate procedure where needed. The advisory committee conducted a systematic, section by section, review of new text proposed for Manual 7, Section 3.

Highlights of the text reviewed are:

- Improved definitions: that is, what is meant by compliance versus degrees of non-compliance from minor element change to conversion.
- Recognition of the need for reasonable public involvement.

---

<sup>1</sup> The members of the advisory committee are: Sharon Claussen, King County Parks; Jeroen Kok, Vancouver-Clark Parks; Arvilla Ohlde, citizen; Jeff Parsons, IAC Board; Peggy Panisko, citizen; Joe Ryan, Salmon Recovery Funding Board; and Pene Speaks, Department of Natural Resources.



- Recognition of the logic that “perpetuity” may be more relevant to an interest in real property than in a structure or facility.
- Clarity concerning procedures about deciding when non-compliance or conversion issues may be resolved at the staff level, at the Director level, or at the Board level.
- Introduction of the concept of consequences for unresolved compliance issues.

In August, we posted a first draft of the committee-reviewed text on the agency web site, and notified nearly 3,000 individuals and organizations that we were seeking review and comment.

We received 18 comments. A summary of major comments and *staff reply (in italics)* includes:

- Requests to exempt “taking” of road-side pieces of grant-funded property to allow development of sidewalks and bicycle lanes. *Considerable staff debate resulted in a consensus that we not recommend an exemption; small exemptions over time could lead to significant cumulative effects.*
- Questions concerning the intent to apply compliance rules to the “footprint” of a development. *Staff believes the compliance rules should apply to the “footprint.”*
- Questions concerning rules applied to species and habitat. *We agreed to clarify the language.*
- Several comments in overall support of the proposal, *which we appreciate.*

Subsequently, staff developed a second draft, incorporating many of the comments we received. That draft was posted on our web site in December 2006, and we again notified several thousand individuals and organizations that we were seeking additional review and comment. In all, we received four on-time comments on the second draft. The major comments were from the Washington Department of Fish and Wildlife, including:

- A request to rewrite “2b” concerning circumstances beyond or in the control of a sponsor. *We have rewritten the section for clarity.*
- A suggestion to drop items deemed “procedures.” *We propose to keep the items in question, noting that IAC/SRFB policy manuals almost always need some discussion of procedures.*
- A request to drop two of the three criteria proposed to identify a “high risk” sponsor. *We have kept all three criteria, noting that the criteria found support from our advisory committee and other reviewers.*

All comments on both drafts have been documented, verbatim, in tables that include staff’s detailed reply. These tables are available for review. Based on the

two sets of comments we received, staff has revised the text. The text is attached.

**Analysis:**

The draft does not change basic policy on grant compliance. However, it introduces some new concepts including element change, the need for public involvement when addressing compliance issues, and consequences for those sponsors not appearing to be interested in making good faith efforts to resolve non-compliance issues.

**Next Steps:**

We now propose to merge the text with Manual 7. In addition, we propose to review all of Manual 7 for consistency with the proposed revisions to Section 3. We anticipate that we will need to add technical material such as checklists to better explain new requirements to grant recipients.

Staff will bring the revised Manual to the Board for action as early as its June 2007 meeting.

**Attachments:**

- Proposed text
- Public comments received

## Proposed Final Text: Manual 7, Section 3. Compliance

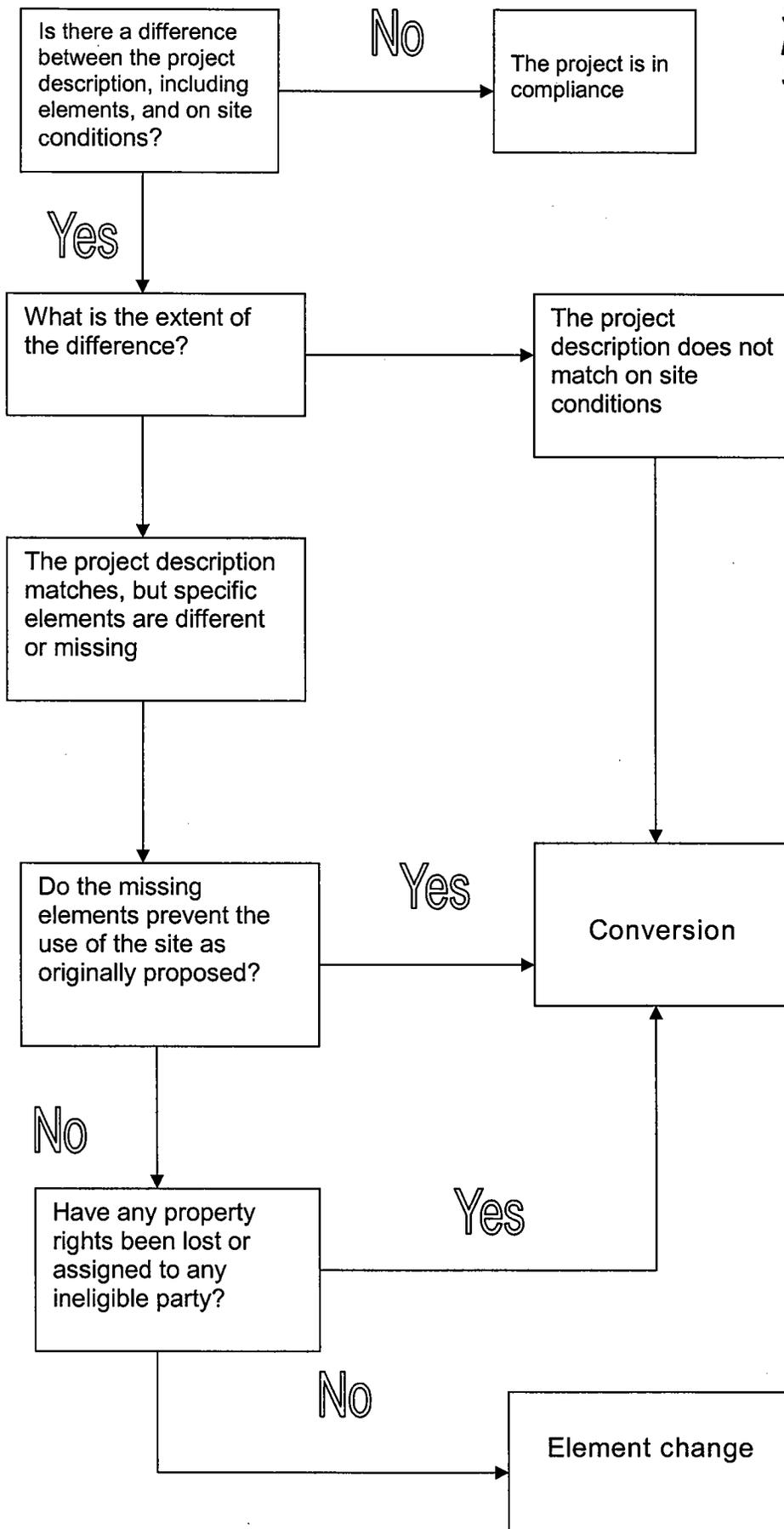
<b>1. Introduction</b>	<p>It is your responsibility as the project sponsor to comply with the terms and conditions of IAC/SRFB grant-in-aid funding assistance. After your project is complete (that is, after final reimbursement is made), IAC/SRFB documents you have signed continue to govern the site, structures, or facilities for which funds have been granted. Unless otherwise allowed by policy, program, or agreement, IAC/SRFB 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 IAC/SRFB.</p>
<b>2. Policy</b>	<p><b>Use of IAC/SRFB grant-in-aid funds</b> creates a condition under which property and structures funded become part of the public domain in perpetuity.</p> <p>The original fund source will help determine compliance. Funds from recreation programs are intended to result in opportunities for public recreation in perpetuity; that is, forever. Funds from habitat programs are intended to result in habitat values or functions in perpetuity.</p> <p><b>It is the policy of IAC/SRFB</b>, consistent with state law,<sup>1</sup> that interests in real property, structures, and facilities acquired, developed, enhanced, or restored with IAC/SRFB funds are not to be changed, either in part or in whole, nor converted to uses other than those for which the funds were originally approved. If an IAC/SRFB 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.</p> <p>There are a number of ways a project can be out of compliance with a project agreement, the most serious of which is a conversion. If a compliance issue arises, IAC/SRFB works with sponsors to avoid, correct, or mitigate compliance issues.</p>

<sup>1</sup> See especially RCW 79A.25.100 and RCW 79A.15.030(8).

<p><b>2a. Policy on Recreation Structures and Facilities</b></p>	<p>IAC/SRFB recognizes a difference between projects that acquire interest in real property (land) and projects that fund structures or facilities.<sup>2</sup> 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.</p> <p><i>Example:</i> IAC 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.</p>
<p><b>2b. Policy on Habitat</b></p>	<p>IAC/SRFB habitat grants seek to support properly functioning habitat conditions.</p> <p>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.</p> <p>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.</p> <p>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.</p>

<sup>2</sup> Post-completion compliance is generally not an issue for projects in which IAC/SRFB has provided funds for planning, maintenance, operation, education, and enforcement activities.

**Summary Guidance for Identifying Compliance Status**



**3. Definitions.**

*Non-compliance.* A project status that results when one or more elements of a completed project is found to be 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 IAC/SRFB changes to uses or functions other than those for which assistance was originally approved.

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

- an IAC/SRFB 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 five (5) years;
- a structure reaches the end of its anticipated or agreed upon service life;
- or, in the instance of a structure placed or built for habitat purposes, to habitat changes beyond the control of the sponsor.

*Perpetuity.* Perpetual, seemingly ceaseless<sup>3</sup>, or the condition of an estate that is limited so as to be inalienable either perpetually or longer than the period determined by law<sup>4</sup>.

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

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

<sup>3</sup> Princeton University WordNet Internet site <http://wordnet.princeton.edu>

<sup>4</sup> Webster's II New Riverside University Dictionary

<p><b>4. Policy Implementation: Compliance Inspections</b></p>	<p>IAC/SRFB staff is responsible for implementation of the compliance policy. IAC/SRFB 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 the signed grant documents. Inspection will result in a determination of compliance, non-compliance, or conversion.</p> <p>Sponsors are encouraged to regularly inspect their projects and to advise IAC/SRFB if potential compliance issues exist.</p>
<p><b>5. Non-compliance: Element Change</b></p>	<p>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.</p> <ul style="list-style-type: none"> <li>• <b>Minor element changes</b> are those that do not conform to the project agreement but with no negative effect on the recreational opportunity or habitat function for which the project was originally funded.</li> </ul> <p>A project amendment will be required to account for the change, and <u>may</u> be subject to review by IAC/SRFB's Director or governing Board.</p> <ul style="list-style-type: none"> <li>• <b>Major element changes</b> 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 originally funded.</li> </ul> <p>IAC/SRFB 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 <u>will</u> be subject to review by IAC/SRFB's Director or governing Board.</p>
<p><b>5a. Examples of Element Changes</b></p>	<p><i>Recreation minor element change:</i> IAC helps fund a trailhead. The original agreement calls for 15 vehicle parking stalls. Actual construction results in 12 stalls. The results do not conform to the project agreement but do not have a negative affect on the recreational experience.</p>

	<p><i>Recreation major element change:</i> 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.</p> <p><i>Habitat minor element change:</i> SRFB funds the removal of 5500 feet of levee in order to expose 50 acres of floodplain to natural channel migration. 5200 feet of levee are removed, but the target of 50 acres is achieved.</p> <p><i>Habitat major element change:</i> SRFB 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.</p>
<p><b>5b. Element Change: Exceptions</b></p>	<p>Under certain circumstances, an element change beyond the control of the sponsor may be deleted from a project agreement without a need for remediation. The conditions are:</p> <ol style="list-style-type: none"> <li>1. Obsolescence, defined above.</li> <li>2. Extraordinary vandalism that renders the element useless or dangerous.</li> <li>3. Acts of nature including but not limited to floods, earthquake, volcanic eruption, forest fire, and adverse weather.</li> <li>4. Fire, whether criminal arson or accidental.</li> <li>5. Permit requirements that disallow specified elements.</li> <li>6. 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)).</li> </ol>

<p><b>5c. Review for Approval or Remediation of an Element Change</b></p>	<p>As soon as the sponsor or IAC/SRFB 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.</p> <p>The sponsor must:</p> <ol style="list-style-type: none"> <li>1. Arrange for a site visit with IAC/SRFB staff.</li> <li>2. After initial contact and the site visit, prepare documentation to accompany a written request for IAC/SRFB 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 grant agreement.</li> </ol> <p><b>Documentation</b></p> <p>The sponsor may be required to provide the following, in writing:</p> <ol style="list-style-type: none"> <li>1. A description of the element change.</li> <li>2. Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis.</li> <li>3. A list and discussion of alternatives for replacement or remediation of the element change.</li> <li>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.</li> <li>5. Additional documents that help explain the element change such as maps, plans, graphics, and/or photographs.</li> </ol>
<p><b>6. Non-compliance: Conversion</b></p>	<p>A conversion would be determined when one or more of the following has taken place, whether affecting an entire site or any portion of a site funded by IAC/SRFB:</p> <ul style="list-style-type: none"> <li>• Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery</li> </ul>

	<p>uses.</p> <ul style="list-style-type: none"> <li>• Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.<sup>5</sup></li> <li>• 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.</li> <li>• Non-eligible indoor facilities are developed within the project area.</li> <li>• Public use of the property or a portion of the property acquired or developed/restored with IAC/SRFB assistance is terminated, unless public use was not allowed under the original grant.</li> <li>• If a habitat project, the property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which IAC/SRFB funds were originally approved.</li> </ul> <p>Note: 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.</p>
<p><b>6a. Review for Approval or Remediation of a Conversion</b></p>	<p>As soon as the sponsor and/or the Office determine that a project change may constitute a conversion, the sponsor must begin resolution of the conversion. The steps to take are listed below.</p> <ol style="list-style-type: none"> <li>1. Arrange for a site visit with the grant manager.</li> <li>2. After initial contact and the site visit, prepare documentation to accompany a written request for IAC/SRFB 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.</li> <li>3. If the conversion is referred to IAC/SRFB, the sponsor must be prepared to attend the IAC/SRFB meeting at which the proposed conversion will be presented and decided.</li> </ol>

<sup>5</sup> An exception is allowed under SRFB rules: property acquired for salmon recovery purposes may be transferred to federal agencies, provided the property retains adequate habitat protections, and with written approval.

## Documentation

The sponsor must provide the following in writing:

1. A description of the original project proposal funded by IAC/SRFB.
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.

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 Manual #3.

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:  
*Acquisition:* copies of any appraisal or appraisal review of the proposed conversion.  
*Development or restoration of structures of facilities:* a site plan that clearly indicates the development/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 as requested by the Office.

<p><b>6b. Conversions: exceptions</b></p>	<p>Generally, exceptions to conversions are the same as exceptions to element changes. See 5b, above.</p>
<p><b>6c. Conversions of Land and Water Conservation Fund (LWCF) Projects</b></p>	<p>In addition to compliance with the rules found above, sponsors of facilities acquired, developed, or restored with federal LWCF assistance must provide:</p> <ol style="list-style-type: none"> <li>1. A National Park Service Project Description / Environmental Screening Form (PD/ESF), an environmental assessment (EA), environmental impact statement (EIS), or other documentation.</li> <li>2. Evidence of an appropriate intergovernmental review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains: <ul style="list-style-type: none"> <li>• A detailed description of the proposal</li> <li>• An address where comments may be forwarded, and</li> <li>• The deadline for comment.</li> </ul> <p>At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer (SHPO) and all affected state, area, regional agencies, and Tribal Historic Preservation Offices (THPOs).</p> </li> <li>3. Copies of all comments, even if "no comment" is indicated.</li> </ol> <p>Director or IAC/SRFB approval of conversions under LWCF is interim, pending final approval from the National Park Service.</p>
<p><b>7. Review by the Director</b></p>	<p>Once all documents are received, staff will determine whether the proposal requires approval by the Director or by the IAC/SRFB using the following guidelines.</p> <ol style="list-style-type: none"> <li>1. The Director may review the following conversion replacement requests: <p>Those in which conversion of use impacts less than <b>20 (twenty) percent</b> of the original project scope  <b>AND</b> the dollar value of the conversion is <b>\$75,000 or less</b> in today's dollars.</p> <p>The Director may choose one of three courses of</p> </li> </ol>

	<p>action: approval of the request, denial of the request, or deferral of the decision to the IAC/SRFB.</p> <p>The Director's decision may be appealed to the IAC/SRFB.</p> <p>2. All other requests are sent directly to IAC/SRFB as appropriate.</p>
<b>7a. Appeals of a Director's Decision</b>	<p>An appeal must be in writing, at minimum a letter addressed to the Chair of the funding Board in question. The appeal must include the reason for the appeal, the preferred outcome, and facts supporting the appeal.</p>
<b>8. Review by IAC/SRFB</b>	<p>Both IAC/SRFB meet in open public forums according to pre-published schedules. Review of a replacement/remediation proposal will be subject to a timetable based on the meeting schedule.</p> <p>A sponsor's request for IAC/SRFB review must be received at least six weeks prior to a scheduled meeting. Sponsors will be notified at least six weeks in advance of the open public IAC/SRFB meeting at which the proposal will be reviewed.</p> <p>IAC/SRFB staff will prepare a memorandum explaining the conversion and the proposed replacement/remediation. IAC/SRFB will review the request in an open public meeting. Upon examination of the available documentation, IAC/SRFB may approve or deny the request.</p> <p>If a project has been funded in part or whole through federal funds, the IAC/SRFB decision may be forwarded to the appropriate federal agency for further review. Federal law and regulations will apply.</p>
<b>9. Implementing IAC/SRFB approval</b>	<p>If approval is granted by the Director, or by the IAC/SRFB, staff will amend the appropriate project agreement(s) to reflect the change.</p>
<b>10. Unresolved Non-Compliance or Conversion Issues</b>	<p>The Director may recommend to IAC/SRFB that a sponsor with unresolved non-compliance or conversion projects be identified as a "high-risk" sponsor.</p> <p>A "high-risk" sponsor is one that meets either of these</p>

tests:

has one or more unresolved conversions of which the combined IAC/SRFB dollar total exceeds \$1 million or 25% of all IAC/SRFB funds received by that sponsor, whichever dollar amount is less (NOT including local match or contribution) and has no record of good faith effort to resolve the conversion

OR

has a conversion of *any size or amount* that has been unresolved for two (2) or more years and has no record of good faith effort to resolve the conversion.

The IAC/SRFB will consider the recommendation in an open public meeting. If the IAC/SRFB agrees to identify a sponsor as "high-risk," the following policies will apply:

1. The Director will notify a sponsor in writing that it has been identified as "high risk." Notification will include specific project references and suggestions for remediation.
2. The "high risk" sponsor may still apply and compete for additional grants for one grant round or calendar year (whichever is longer).
3. If the sponsor's new application is successful, the sponsor will be given a 90-day time period following the IAC/SRFB funding meeting to demonstrate substantial, if not complete, progress toward resolving any outstanding conversions. *Substantial progress* is indicated when a sponsor has taken steps such as identified potential replacement property, has convened a task force or other assigned staff, can demonstrate some kind of public involvement process, has ordered an appraisal or appraisal review, and other relevant actions.
4. If the sponsor has not demonstrated substantial progress or has not resolved outstanding conversions in that 90-day period, the new grant will be withdrawn and assigned to the next eligible project in the same grant program and category.
5. After the 90-day period, the "high risk" sponsor may not submit further applications until all outstanding conversions are resolved.

## First Draft Comments

Compliance Policy Proposed Changes: Comments Received on Time	
<b>Person/Affiliation</b>	
Comment (verbatim: copied from e-mail or transcribed from letter)	IAC/SRFB staff reply
<b>Patti Miller-Crowley Planning &amp; Development Manager Port of Shelton</b>	
<p>I would not consider most underground utility installation to be a conversion even if an easement is granted for the utility easement to another entity. Examples include sewer, water, and public electrical or fiber optics. This is for several reasons: 1. Generally this type of easement is required so that another public entity can maintain the underground utility. 2. Construction is not allowed over these utilities with the exception of parking and sidewalks. The easement does not interfere with public use, with the exception that a new public building could not be constructed over the easement. Utility easements may provide opportunities to incorporate paved trails or bike paths that actually improve public access. 3. In many instances, these utilities actually improve a site's ability to support public use and/or lessen environmental impacts on the existing habitat. 4. If there were above ground features that would interfere with public use or that would not blend into a recreational setting (i.e. concrete covered vaults or lift stations) these areas should be considered conversion with property replacement or cost reimbursement required. 5. If the grant recipient is paid for the easement or if it is provided to a private utility, the IAC should be reimbursed for the amount the applicant received or fair market value of property granted to the private utility.</p> <p>As far of life expectancy of the facility that</p>	<p>IAC/SRFB staff does not agree. The granting of an easement or other property interest would move control over the property from the project sponsor to an outside interest and would result in a conversion. This applies whether the intrusion is above or below ground level. Remediation will be required.</p> <p>Regarding life expectancy, we agree that several factors need to be taken into consideration. At present, we are aware of the Government Accounting Standards Board (GASB) Statement number 34.</p> <p>We agree that all requirements need to be made clear when parties enter into a grant-in-aid contract.</p>

<p>should be based on what the facility is, the materials used for construction, and the amount of use it receives. I would look to Parks, WSDOT, GA and others who construct and maintain capital facilities for guidance on life expectancy for specific facilities.</p> <p>All requirements need to be made very clear in the original agreement and even then there will likely be problems due to staff turnover and ignorance of original funding source or conditions.</p>	
---	--

**Bartley N. Madison  
Citizen, Tacoma**

<p>Section 10, concerning Conversions under Review By the Director says:</p> <p>"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 IAC/SRFB. A sponsor may appeal a denial to the IAC/SRFB."</p> <p>This presumes the <b>sponsor</b> would wish to appeal an unfavorable decision.</p> <p>In some cases, a significant segment of the <b>public</b> might object to a sponsor proposal and disagree with the Director's approval. This has happened in the past and will undoubtedly happen in the future. In my own experience, when this has happened, it required a special meeting of the IAC to resolve the issue at unreasonable cost to the public.</p> <p>I suggest you add a provision for those who object to a Director decision to appeal to the IAC/SRFB as well. This avenue seems to be closed to them.</p>	<p>Staff agrees that citizen appeal is an important part of state processes. We changed the text to state that the Director's decisions may be appealed (7. Review by the Director).</p>
---	--

**David A. Tucker,  
Kitsap County Public Works**

<p>One item that may need clarification is what portion of real property are under the policy.</p>	<p>We added text (2a. Policy on Recreation Structures and Facilities) to help clarify.</p>
--	--

<p>For example, if a public agency receives funds to create or enhance a structure on an established park and then later a portion of the park not associated with the structure is converted to a widened road is that a conversion? I would think that it is not, but I do not think the policy is crystal clear on that issue.</p> <p>Perhaps a clarification could be made in the made in section #2.</p>	<p>Concerning recreation or habitat property taken for road purposes, see staff reply to Probart, Dannenburg, Flemm, and Clauson, below.</p>
<p><b>George J. Boggs, Manager Whatcom Conservation District</b></p>	
<p>Comments re: Policy:</p> <ol style="list-style-type: none"> <li>1. You are being too nice. This should be at the option of SRFB to consider. Proposals are ranked with funding received based on priority. Replacing with equivalent circumvents the prioritization/review process. Also, SRFB should be reimbursed for the cost of considering.</li> <li>2. Isn't this a take issue. In which case, SRFB would bring this to the attention of the services?</li> </ol> <p>Comments re: Non-Compliance</p> <ol style="list-style-type: none"> <li>1. To what extent are the sponsors required to insure against loss?</li> <li>2. Query, can a sponsor deliver this unless they are a public entity. Public entities are the only entities against whom an interest cannot be obtained by adverse possession. To avoid this, the non-public entity should demonstrate on an annual basis the steps they have taken to avoid loss of the property/or interest therein by adverse possession. If adequate proof is not provided, the property reverts to a public entity.</li> </ol> <p>Comment re: Resolution of Element Change</p> <ol style="list-style-type: none"> <li>1. Shouldn't the "non-compliance" determination be first set forth in a writing detailing the nature and extent?</li> </ol>	<p>Remediation should be a collaborative process that includes IAC/SRFB staff, sponsors, and other affected parties.</p> <p>We considered establishing processing fees, but we decided that fees would discourage some parties from addressing compliance issues.</p> <p>"Take" can be a legal term when used in the context of the federal Endangered Species Act. IAC/SRFB do not have the authority to declare a "take."</p> <p>At present, there is a liability insurance requirement in the Firearms Archery Range (FARR) program, and we allow liability insurance as an eligible expense for some Nonhighway and Off-Road Vehicle Activity (NOVA) grants. We also require title insurance for property acquisition in all programs. We agree that a non-public entity needs to protect against adverse possession. Thank you for your suggestions.</p> <p>Grant staff uses a variety of techniques, including written reports, to communicate issues to sponsors.</p>

<p>This would frame the discussion.</p> <p>Comment re: Unresolved Non-Compliance or Conversion Issues</p> <p>1. Too nice. Eligibility should be suspended pending resolution. This would foster quick action by applicant and protect future expenditures.</p>	<p>We agree that we need to "foster quick action." However, we also recognize the need for a deliberate process that gives grant recipients the opportunity to demonstrate good faith efforts to resolve a compliance issue.</p>
<p><b>Steve Horobiowski, Parks Planner, Spokane County</b></p>	
<p>I have read thru the IAC recommended Policy changes and have only two general comments:</p> <ul style="list-style-type: none"> <li>• When replacing IAC funded lands that were converted; does the replacement values reflect the grant ratios of the original grant? In other words, if the grant is a 50% match, then the replacement lands need to be equal to or greater than the value of IACs' contribution?</li> <li>• The same concept above as applied to IAC matching grants for i.e. a dozer? OR is this value 50% of the trade-in value.</li> <li>• I suppose if there is no trade-in value; the dozer would have exhausted its' life expectancy?</li> </ul> <p>The rest of the proposed document looks very workable.</p>	<p>We are interested in present value/function of the entirety of the land or structure in question, and not in "grant ratios." A compliance issue will not always involve 100% of a project; for example, it is common to see small "slices" of a park taken for road projects. When the "slice" is taken and is determined to be a conversion, we expect the "slice" to be replaced 100% by the sponsor.</p> <p>We recognize that structures have a service life and that equipment will depreciate over time. We have a separate policy concerning capital equipment purchased with grant funds; that policy is not under review here.</p>

<b>Jon K. Culp, Program Manager, Washington State Conservation Commission</b>	
I have reviewed the draft proposal and the changes seem reasonable and prudent. I have no additions or subtractions to recommend.	Thank you.
<b>Don Clark, citizen (former IAC grant manager)</b>	
I didn't observe anything in the proposed changes that I found particularly objectionable.	Thank you.
I really hope that with all the changes, the IAC continues to maintain a bit of control over funded projects that local and other state agencies operate and/or manage. Responsibility by these agencies, to continue in spite of changes to their political climate is an on going challenge.	We agree.
Over the years, I have personally talked to a number of newly elected councilmen and commissioners who are of the belief that they have no responsibility to comply with existing IAC Agreements (because they were approved by previous administrations; that they have no obligation to continue compliance). A lot of potential conversions of land and/or utility use has been averted because of these regulations.	We appreciate this unique perspective.
<b>Glenn Kost, City of Bellevue</b>	
1. It would be easier to review this if only the actual policy changes were highlighted.	
2. <u>Policy 2, 3rd bullet</u> : If I understand this policy, if a funded development project becomes obsolete in accordance with an agreed-upon service life, the underlying property, even if not grant funded, would be subject to conversion policies in perpetuity. If this is correct, I would object to this proposal. I don't see a nexus between an	Policy 2, 3 <sup>rd</sup> bullet: The nexus between a development project and the underlying real property is found in Manual 7, Section 4 page 35 (General Provisions of the Project Agreement Section 25, last sentence of the first paragraph) "It is the intent of Funding Board's conversion policy that all lands acquired and all lands <i>developed</i> with funding assistance from

<p>obsolete IAC-funded development project and the non-IAC funded property it is sitting on. Lets say a city receives IAC funding to construct a playground. The playground becomes obsolete per IAC policies and is removed. Later, the city needs park-owned right-of-way to widen an adjacent road. According to these policies, this r-o-w is subject to conversion. What's the relationship between the removed playground and the subject r-o-w? Or the relationship even if the playground still existed, unless the road widening required alterations to the playground, or somehow changed the circumstances under which funding was granted.</p> <p>3. <u>Policy 7, 4th bullet</u>: Again, if I understand the policy correctly, the construction of a non-eligible indoor facility such as a recreation center or swimming pool on grant-funded land is considered a conversion. If so, does that mean the entire site is subject to a conversion or only the area of the indoor facility?</p>	<p>the Funding Board remain in the public domain in perpetuity unless otherwise identified in the Agreement." <b>Emphasis added.</b> We interpret "public domain" to be defined in large part by the source of the funds used for a grant; that is, a grant from a recreation account means that property is to be in the public recreation domain, and that a grant from a habitat account means that property is to be in the public habitat domain. It is not IAC/SRFB's intent to see the property it funds, in whole or part, re-developed for other public purposes without remediation.</p> <p>There are programmatic exceptions. The Youth Athletic Facilities (YAF) program, for example, sets a 20-year agreement limit.</p> <p>Policy 7, 4<sup>th</sup> bullet: If a non-eligible indoor facility is built on grant-funded real property, the remediation would require a replacement property of equivalent value and function. Value and function will guide the decision on the appropriate area of conversion and replacement, not the ineligible facility's "footprint." For example, the parking needed to support the indoor facility would also be considered to be an ineligible use. Also, if the conversion renders the remainder of the site unsuitable for recreation it could require the replacement for the entire site.</p>
<p><b>Scott Thomas, Burien Parks</b></p>	
<p>I reviewed the conversion and compliance policies. They seem reasonable to me.</p>	<p>Thank you.</p>
<p><b>Margaret Schwertner, Environmental Project Manager Port of Anacortes</b></p>	
<p>The Port of Anacortes has reviewed the draft Compliance/Conversion Policy Changes and have no significant comments. They look good to us.</p> <p>We liked that if you create habitat for a specific species, then lose that species of interest (for reasons beyond your control), you are not out of compliance if general</p>	<p>Thank you.</p> <p>The proposed test is "beyond the control" of the sponsor.</p>

<p>habitat function remains. We also liked that if recreational changes occur beyond your control, you won't be out of compliance.</p>	
<p><b>Heather Ramsay, National Park Service</b></p>	
<ul style="list-style-type: none"> <li>* Inspections - you may wish consider allowing a self certification process for communities whose projects have a history of being in compliance. This would help reduce the inspection load on your staff. Additionally, you might consider implementing an alternating schedule where every other scheduled inspection was completed using aerial photography for those projects where good resolution is available instead of a site visit.</li> <li>* Obsolescence - you may wish to make a distinction when acts of extreme vandalism were the result of a sponsoring agency's consistent negligence in security, management or maintenance.</li> <li>* Property rights lost - I am not sure why this would be an exclusion from the conversion policy, except potentially for legislatively mandated property changes</li> <li>* For LWCF conversions, an environmental assessment is not always needed. If you want something specific, you can refer to our Project Description/Environmental Screening Form (PD/ESF) or simply say appropriate NEPA documentation, or something to that effect.</li> <li>* For LWCF conversions, in addition to SHPO comments, there should be evidence of THPO comments when appropriate.</li> <li>* High Risk Sponsors - \$1 million seems quite high. Is that \$1 million in the dollar value from the year the grant was funded, or \$1 million in the dollar value of the year the conversion is processed? What about considering those sponsors who exceed a time frame too? Perhaps, those sponsors</li> </ul>	<p>Inspections: We are considering inspection policy in a separate effort.</p> <p>Obsolescence: We agree that negligence is not grounds for exception.</p> <p>Property rights lost: we will remove this reference.</p> <p>We added that reference (6c. Land and Water Conservation Fund Projects).</p> <p>We added that reference (6c).</p> <p>We have done an initial review of the possible impact of the proposed dollar amount and find it reasonable.</p>

<p>with unresolved conversions older than 5 years? I'm very glad to see that you're moving toward exclusion of "high risk" candidates from applying for more grants. Have you thought of adding an IAC scored question to project reviews that deals with compliance? Since the grants are so competitive, the loss of a point or two could also move those out of compliance to the bottom of the pile. How will you define "substantial progress"?</p>	<p>A temporal measure has merit and we propose a 2-year period in our new draft.</p> <p>We do not intend to rewrite evaluation questions at this time.</p> <p>We define "substantial progress" (10. Unresolved Non-Compliance or Conversion Issues).</p>
<p><b>Ann Caley City of Snohomish</b></p>	
<p>One text comment: in Manual 7, Section 3 - Compliance, under Part 8 - Resolution of Conversion, in the section on Documentation: Does the "Office" referred to in Item 5 mean the OAHP? It might be helpful to the reader to use the full name of the office this refers to.</p> <p>Would it possibly be useful to indicate what the IAC/SRFB might consider a generally-acceptable type of structure service life, say, twenty years for docks and forty years for a building, as a default range when no other expectancy has been proposed?</p>	<p>We meant to refer to the Office of the Interagency Committee. We will replace the word "Office" with IAC/SRFB for clarity.</p> <p>Yes, it would be useful. At present, we are aware of the Government Accounting Standards Board (GASB) Statement number 34. We will research other service life standards.</p>
<p><b>Ashley Probart, AICP Association of Washington Cities</b></p>	
<p>I would like to thank you for the opportunity to comment on the proposed changes to the Interagency Committee for Outdoor Recreation and Salmon Recovery Board grant compliance policies.</p> <p>My comments are directed to grant programs that receive state funds. More specifically, I am responding to subsection 7, "Non-Compliance: Conversion" on page 6 of the draft manual.</p> <p>When reviewing the draft manual, the proposed changes appear relatively straight forward. However, when combined with the examples provided on your website, it</p>	<p>We have added examples and a "decision tree" in our second draft.</p>

appears further clarification in the form of examples is required in the draft manual.

"The draft policies include proposed rules for projects that no longer meet the terms of their original grant agreement, usually referred to as a "conversion." *For example, if IAC provides a grant for a local park and later an edge or corner of the park is taken to widen a road, the area affected has been converted and must be replaced.* Likewise, if SRFB provides grant money for preserving a stand of trees to shade a stream and later the trees are cut down without pre-approval, the project no longer meets the terms of the original grant agreement and the sponsor must remedy the situation." (emphasis added)

We would have strong concern if IAC pursued conversion mitigation under the scenario proposed in italics noted above.

Cities are continuously upgrading our city streets. As part of street construction, we typically now include widened streets to accommodate bicycles, and add sidewalks as part of a pedestrian network. In our newer cities, or ones that have increased in size due to annexation, we find strong citizen support for "complete streets", *especially if they provide better access to parks.* Therefore, we would appreciate a clear policy from IAC that recognizes street improvements of this nature are an enhancement and not an adverse conversion of state funds.

We would also like you to consider the practical effects of when cities are required to dedicate additional right of way for utilities or street frontage purposes. If the additional land requirements do not adversely affect the parks utility, then the conversion policy should not apply.

General Comment:

As I stated in our telephone discussion two weeks ago, we certainly endorse and

We need to emphasize that the policy illustrated in italics is not a new policy. Conveying property rights acquired with grant funds, regardless of use or benefit, constitutes a conversion.

The State of Washington makes significant investment in local infrastructure of different kinds. Grant-in-aid and other programs are available to fund park, transportation, and other infrastructure needs. It is reasonable for the State to ask local agencies to integrate infrastructure needs through coordinated planning. Competent planning should reveal those properties that will be needed for future transportation improvements, and as a result an agency can adjust its application for grant-in-aid assistance, avoiding or minimizing compliance issues, whether compliance with IAC/SRFB rules or other State rules.

We make it clear in the second draft that if there is a need to convey property interests paid for in whole or part by the IAC/SRFB, remediation is necessary.

Your suggestion to completely avoid conversion by planning for infrastructure improvements ahead of time is astute and clearly in the best interests of the local agency, IAC/SRFB, and the public. We agree with this approach; staff has in some instances followed this practice.

<p>support IAC's conversion policy when jurisdictions do convert state funded property for new purposes. One possible option would be to request cities to <u>clearly</u> identify in their capital facilities plans where any potential conversion conflicts may occur as part of their grant request. (I believe this is a step beyond simply submitting their comprehensive plan as part of the application.) This would enable the applicant to demonstrate how a conversion could be avoided from the onset.</p>	<p>Avoiding a conversion is our preference.</p>
<p><b>Ralph Dannenberg</b>  <b>Director of Parks and Recreation, City of Puyallup</b></p>	
<p>Puyallup has been able to develop lands acquired with assistance of IAC funds into neighborhood and community parks as well as renovate existing parks. Street frontage improvements are a condition of development as well as connecting to utility systems. In most cases, if not all of them, these improvements are an asset to the park, improving pedestrian and bicycle access to the park, and do not detract but enhance the recreational utility of the park.</p> <p>If an existing park is required to dedicate additional right-of-way for street frontage improvements or utility service, and the additional land does not negatively impact the recreational utility of the park, the IAC should not require conversion for the square feet of land since the conversion is an asset to the park and park users. If a conversion for the square feet was required, this would result in extremely small pieces of land that may serve no public purpose (there is no assurance land adjacent to or near the park could be acquired), maintenance may be a nuisance and the site could detract from the area where it is located.</p> <p>I recommend that the IAC does not revise the conversion policy for existing parks. If the IAC feels a revision to the policy is necessary, I recommend that it is for lands acquired in the future. The deeds for land acquisition can include an exception in the legal description with language that still</p>	<p>See reply to Mr. Probart, above.</p> <p>We do not anticipate a "grandfather" clause at this time.</p>

needs to be determined.	
<b>Lori Flemm City of Kent</b>	
<p>The IAC has two primary sources of funds – state monies and federal monies. Since federal LWCF funds have their own conversion policies, these comments will address all grant programs funded with state monies. There are two different circumstances when the conversion policy would be a concern:</p> <p>1. As the City of Kent develops land acquired with an IAC grant into neighborhood or community parks, street frontage improvements are required as a condition of development, as well as connecting or upgrading utility systems (domestic water, street lights, electrical under-grounding, or relocation of poles, and storm and sanitary sewer) along the same street frontage. In most cases, these improvements are an asset to the park, improving pedestrian and bicycle access to the park, and do not detract from, but enhance recreational utility of the park, so in our opinion, the conversion policy should not apply.</p> <p>2. When the City needs to widen a road, underground an overhead utility, or replace or enlarge an underground utility line (water, sanitary, storm, etc.) an existing park (acquired or developed with IAC grant monies) may be impacted when required to dedicate additional ROW for street frontage improvements or utility service. If the additional land does not negatively impact the recreational utility of the park, then the IAC should not require a conversion for the square feet of land. In addition, if the purpose of the dedication is an asset to the park, and the park users, such as when a street is widened to include a bicycle lane, in our opinion, the conversion policy should not apply.</p> <p>In both these circumstances, we believe that the IAC should view this as an exemption from the conversion policy, for the reasons stated below:</p>	<p>See reply to Ms. Miller-Crowley, above.</p> <p>While these improvements often do improve access to the park, they also increase values of adjacent properties for development purposes. We view improvements that solely benefit a park/habitat property differently from improvements that also benefit adjacent or other properties.</p> <p>See reply to Mr. Probart, above. New projects should be scoped to eliminate portions of park land that are would be likely to be converted in the future.</p>

1. Dedication of land for ROW and utilities is consistent with the state growth management act, and is a common community goal that should be coordinated at the local government level. RCW 36.70A.010 reads, "The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning." Note that in RCW 36.70A.030 Definitions (12) Public facilities include streets, sidewalks, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities.

2. In the legal descriptions for some of our park property acquired with IAC funds, the language, "EXCEPT those portions for roads and utilities" would exclude the conversion policy from effect. (see Attachment A)

Jim, I recommend that the IAC develop a policy that addresses land acquired prior to the date this new policy is adopted and lands acquired in the future. The deeds of lands acquired in the future can include an exception in the legal description with language such as "EXCEPT those portions for roads and utilities" as shown in Attachment A, and the map that accompanies the legal description could identify a width for "Future ROW dedication for roads and utilities" so that conversion would not be an IAC issue, and it would be a local government issue,

Lands acquired prior to the date this new policy is adopted could be covered by a new policy that reads that the IAC Director has the authority to waive the conversion policy of the existing park and recreational utility of that park is not impacted by the road widening or utility upgrade. I believe that most local agencies are required to conduct a SEPA review and will need to mitigate for

We would hope that planning under the GMA would reveal those instances where better coordination is needed to avoid impacts on State funded park/habitat lands.

We agree that this approach is a good option for avoiding compliance issues.

We do not anticipate a "grandfather" clause.

<p>any negative impact. If the SEPA official of the local agency, determines there is no significant impact and issues a Determination of Non-significance, then the IAC should abide by that decision, and the IAC Director would be required to waive the conversion policy.</p> <p>Lands acquired with federal Land and Water Conservation Funds must abide by the federal conversion policy, and I understand that. I urge IAC staff to suggest to the National Park Service that they consider these points, and amend their policy where necessary.</p>	<p>A SEPA official's determination of non-significance is not the same as an IAC/SRFB finding of non-compliance; each is looking at different characteristics and outcomes. The IAC/SRFB Director does not have the authority to waive a conversion nor the requirement for replacement.</p> <p>We agree that IAC/SRFB needs to seek consistency with the National Park Service.</p>
<p><b>Lauri Vigue, Lead Entity/Watershed Steward Coordinator State of Washington Department of Fish and Wildlife</b></p>	
<p>The Washington Department of Fish and Wildlife (WDFW) Habitat Program generally agrees with the concept of the Draft Manual 7 Compliance Policy as written. However, language should be provided that guarantees replacement habitat is scientifically sound. The goal of our mitigation policy is to maintain the functions and values of fish and wildlife habitat in the state. Further, it states mitigation credits and debits shall be based on scientifically valid measure of habitat function, value, and area. Listed below are considerations that should be included as part of this draft Compliance Policy:</p> <ul style="list-style-type: none"> <li>○ How will impacted habitat be quantified and qualified in order for replacement habitat to be determined? Who will make the determination that habitat is appropriately replaced?</li> <li>○ If restoration is involved for an impacted area, what measures will be taken to ensure that the habitat achieves its goals over time?</li> <li>○ If the converted habitat is a Salmon Recovery Funding Board (SRFB) project, will the lead entities, salmon recovery regions, local governments, tribes and or project sponsors be involved in the selection of replacement habitat?</li> </ul>	<p>Should IAC/SRFB funded land be found to be in conversion, IAC/SRFB would seek replacement of comparable value <i>and function</i>, including habitat function.</p> <p>Ultimately, all questions will have to be addressed through the cooperative effort of IAC/SRFB and the signatory to the grant agreement. We anticipate that both IAC/SRFB and the signatory would confer with other affected parties to develop a proposed course of action that would be satisfactory to the governing Board through which the original grant-in-aid funding was approved.</p>

<ul style="list-style-type: none"> <li>○ Additionally, if it is a SRFB project, there may be a need for WDFW Watershed Steward involvement in this process.</li> </ul>	
<p><b>Sharon Claussen, Program Manager, Parks and Recreation Division</b>  <b>Connie Blumen, Program Manager, Water and Land Resources Division</b></p>	
<p>The following comments include comments and recommendations from both the Parks and Recreation (Parks) and Water and Land Resources (WLR) Divisions of King County's Department of Natural Resources and Parks.</p> <p>The proposed changes to the compliance policies should help clarify the policies and process. The increase in the threshold for Director's approval of conversions or project changes will be especially beneficial procedurally to King County due to our extensive trail system that is often subject to minor and often temporary impacts from road crossings, roadwork and utility installation. We offer the following specific comments that may further clarify certain sections of the policies.</p> <p><b>Section 2. Policy (last bullet on page 1):</b>  In regards to "Loss of a species of interest as the result of events in the control of the sponsor, including sponsor inaction, may result in a non-compliance issue even if a habitat function remains." WLR feels it would be useful to have the "events in control of a sponsor" defined or to have some examples provided to help illustrate. Examples of changes that are <i>beyond the control of the sponsor</i> are provided in section 5, page 4 and 5 and there is a definition section - #3 that could be amended to better address this issue.</p> <p><b>Section 3. Definitions:</b>  <b>Conversion.</b> This definition should specify that the granting of property rights or interests is one of the changes requiring a conversion. This concept is found elsewhere in the policies, but it would clarify to include here as well. (Parks)  <b>Obsolescence.</b> Ten years seems a long</p>	<p>We appreciate that two County Divisions have cooperated to provide us with these comments.</p> <p>It was our intent to clarify and find ways to help all parties to address the issues more efficiently.</p> <p>We have revised definitions and added examples in our second draft.</p> <p>We made this change.</p> <p>Our experience with statewide data is that</p>

<p>time to wait to replace an outdated facility or element. Perhaps the time could be 5 years with documentation along with other factors to include whether the element will be replaced with a different outdoor recreational element that is identified by public as needed or desired. (Parks)</p> <p><b>Section 7. Non-compliance: Conversion 1<sup>st</sup> bullet</b>-Should add clarification that it refers to property interests conveyed for uses not consistent with specific project agreement and/or funding source. (Parks)  <b>Note:</b> Reference to closure due to budget reductions is not clear how to define a "season". One site could have different activities and seasons (soccer, baseball, etc.) and budgets are generally yearly documents so perhaps the duration might be one year. (Parks)</p> <p><b>6th bullet on page 6</b> - This discusses non-compliance—conversion when the ... "property acquired, restored, or enhanced no longer provides the environmental functions for which IAC/SRFB funds were originally approved." It would help to have clear examples provided. The issue is whether this would be within the control of the sponsor, there could be an event or activity from off-site or on a watershed scale that affects environmental functions. (WLR)</p> <p><b>Section 9. Conversion of Land and Water Conservation Fund (LWCF) Projects</b> should include sites <i>acquired</i> with federal LWCF assistance to be consistent with federal LWCF requirements. (Parks)</p> <p><b>Section 10: Review by the director.</b> I am having a bit of trouble determining the implications of the thresholds on this one. It might be helpful to do a quick look at some implementation scenarios based on historical funding levels of individual jurisdictions to demonstrate if these are the right criteria. (Parks)</p> <p><b>Section 13: Unresolved Non-Compliance or Conversion Issues.</b> The second sentence should clarify if the intent is to</p>	<p>trends can be detected as soon as 5 years and have changed the time period to 5 years in our second draft (3. Definitions, Obsolescence).</p> <p>We added text (2. Policy) concerning "original fund source."</p> <p>We changed "one season" to "180 days." (6. Non-compliance: Conversion)</p> <p>We provide examples and added a summary "decision tree" in the second draft.</p> <p>We added the reference to acquisitions in 6c.</p> <p>We are currently reviewing grants that are marked "out of compliance" in our system.</p> <p>The intent was IAC/SRFB funding only and make that clear in the second draft (10.</p>
--	--

consider only IAC funding of the project or total project funding including both IAC and sponsor matches. (Parks)

**General Comments**

**Sidewalks and Utilities** - In terms of the issue of dedicating portions of IAC funded sites for sidewalks and utilities, parks suggests there be flexibility in conversion requirements to clearly distinguish the sidewalk or utility needs specifically serving the IAC funded site and its development as opposed to trunk or main lines that are primarily to serve adjacent or nearby developments. Parks and natural areas are often perceived as the least costly route or path of least resistance for infrastructure and these policies provide protection for these public investments in recreation and conservation while they should concurrently allow for the benefit of the infrastructure to the park. (Parks)

**Habitat Restoration Projects:** WLR requests that the IAC SRFB policies provide project scope flexibility to allow for modifications to salmon habitat restoration projects funded by SRFB restoration funds. Salmon habitat restoration work is still in a developmental stage and thus we are still learning from monitoring and evolving best available science what actions are effective for salmon habitat restoration. Ensuring that such flexibility would be allowed would accommodate the ongoing learning and advancement we are making in understanding effective restoration. (WLR)

**Mitigation Reserve Program** - WLR request that County lands purchased with IAC SRFB funds for the purpose of preserving or restoring habitat functions (such as salmon recovery efforts) be allowed to accommodate restoration projects paid through the King County Mitigation Reserve Program without the restoration activities "triggering" a conversion. Attached is a paper which provides more detailed information about this program. (WLR)

Unresolved Non-Compliance or Conversion Issues).

See our reply to Mr. Probart, above.

Scope modifications are not unusual. Grant documents can be written that provide for scope flexibility.

The request is outside the scope of compliance policy development.

<p><b>Recreation and Restoration</b> – WLR has concerns that IAC is still narrowly defining “public recreation” acquisitions to be exclusive of any habitat restoration/salmon recovery element. IAC policies should take into account that a “public recreation” site could incorporate habitat restoration on a portion of the site (along with associated passive recreational/interpretive elements). It is important to address the fact that we are now required to comply with endangered species regulations, which may not have been in place during the original funding of an acquisition. Habitat restoration with associated passive recreation/interpretive opportunities should not necessarily be viewed as being in conflict with “public recreation” if the restoration fits into the overall goals of the purpose for acquisition. (WLR)</p>	<p>Public recreation and access can be provided in habitat projects. See the Aquatic Lands Enhancement Account (ALEA) grant program as an example. Grant contracts in many IAC/SRFB programs can be written to reflect the intent to integrate recreation with habitat values. In addition, IAC/SRFB grants helping to fund sensitive natural areas, salmon habitat, or other critical habitat may be written to exclude public access if necessary to protect habitat values.</p>
<p><b>Ken Graham, Lands Program Coordinator Washington State Parks and Recreation Commission</b></p>	
<p>#6 Resolution of Element Change  #4 Clarify Public Participation. To what level of participation. This element may add additional costs and staff time by adding public notice requirements, meetings, and publications. The agency’s mission is to make these kinds of decisions in the best interests of the recreational public. Mission goals are to manage a large land base and better position the assets to make a quality recreational experience. If only a few motivated people participate, their personal agendas may be expressed and many not reflect the “Public” view as a whole.  Recommendation: Delete or modify with clarity.</p> <p>#7 Non-compliance: Conversion  Clarify if granting an easement for utilities, crossing, etc. would constitute a conversion.</p> <p>#8 Resolution of Conversion  Documentation #3 Define, clarify public participation.</p>	<p>We clarify a minimum level of public involvement in the second draft (6a. Review for Approval or Remediation of Conversion).</p> <p>See reply to Ms. Miller-Crowley, above.</p> <p>See 6a Review for Approval or Remediation of Conversion in the second draft.</p>

<p>#4 Appraisal-Suggest that wording be added to clarify the <u>need</u> for appraisal if a conversion is small in nature and has a low fair market value i.e.: under \$10,000. Additionally, clarify if a review would be required.</p> <p>#5 SEPA, Archeology, cultural studies- Increased staff time and cost. Much can be determined within the agency via a commission agenda item.</p> <p>#10 Review by the Director 1. Define the appeal process.</p> <p>#13 Unresolved Non-compliance or Conversion Issues Parks has many requests for fee simple ownerships, easements, permits etc. that involve small acreage, low value properties that include utilities, crossings, state road widening projects, and county and city public works projects that require a taking of small portions of Park land acquired with IAC funds.</p> <p>Please provide a system that would allow these small conversions to either be waived or "banked" until the amount of value (or acres) is significant enough to acquire a "usable" property to complete a conversion. Conversions for \$500 to \$10,000 (or small acres) are almost impossible to find as replacement property that has equal value. Lands values are too high.</p>	<p>We do not intend to change the appraisal requirement.</p> <p>We are not sure what you are asking us to consider.</p> <p>We rewrote 7. Review by the Director to better define the process.</p> <p>We will not consider waiving small conversions. "Small" conversions can result in significant cumulative effects over time.</p> <p>We will take the concept of "banking" under consideration; however, the issue of "banking" is beyond the scope of the current policy discussion.</p>
---	--

**Compliance Policy Proposed Changes:  
Comments Received on Time**

**Person/Affiliation**

Comment (verbatim: copied from e-mail or transcribed from letter)

IAC/SRFB staff reply

**Sue Jetter, consultant, Sunnyside, WA**

I have read through the second draft document and offer the following comments to improve the readability of the contract:

pg. 4 Obsolescence, 2nd bullet, minor grammatical / clarification issue

I think it could read "significant **and** documented changes in prevailing outdoor recreation participation in the sponsor's jurisdiction over a period of at least five (5) years." (or 5+ years).

pg. 4 Obsocescense, 4th bullet: delete the word "to"

pg. 8 Section 6a This section is kind of unclear to me. Are there two different possibilities, one being Remediation and the other

being Conversion? If so, this could be communicated more clearly. This clarification should also be reflected in the title of the section

"Review for Approval OR or OF Remediation OF or OR Conversion"

Also the voice used changed to an informal 'your' rather than 'the sponsor's' or 'the designated grants manager'. This one isn't a big

deal, but was different in form than the rest of the document.

Section 6c #1 minor spacing issue for

Rules for compound adjectives allow for the use of a comma; however, we agree that use of the conjunction "and" would be a better grammatical choice.

We agree. We missed that error during proofreading.

The intent was "Remediation of conversions." We will change the text to make that clear.

We will use the active voice.

We will correct the spacing.

<p>readability: "A National Park Service Project" on line one now appears to be a heading.</p> <p>Suggestion: enter a space after the slash to allow the word "Description/" to remain on the first line.</p> <p>Other than section 6a, the document seemed quite straight-forward and understandable.</p>	
<p><b>Sharon Clausen, King County Parks, for Ingrid Lundin, Natural Lands Planner, Natural Resource Lands Program</b></p>	
<p>Thanks for the opportunity to provide additional comments on the draft policy. This draft responded well to a number of the issues in previous drafts. I have solicited comments from other county divisions and offer the following:</p> <p><b>Section 2, Policy 2b.</b> The phrase "the loss of a species of interest" seems to imply that there would be a single-species focus for acquisitions – and the policy as proposed would make sense in such a case where the loss of that only species of interest undermines the entire purpose for funding the acquisition. However, often properties are not acquired due to a single-species focus but instead for multi-species habitat opportunities and for its overall conservation value – as supported in the SRFB Deed of Right which is filed for dual objectives: <u>salmon recovery</u> and <u>conservation</u> purposes. Is the intent of Policy 2b that the absence of just one of a site's suite of many species (while the remainder of the species continue to flourish) would be grounds for non-compliance?</p> <p><b>Comment Table, page 17.</b> Our first draft comment intended to ask about possible habitat restoration opportunity on lands that were historically acquired in the 1970s using outdoor public recreation funds. The</p>	<p>What we mean by "species of interest" is a species clearly and specifically identified as the focus or purpose of a grant. We did not intend to mean that loss of a single plant or animal would automatically result in a conversion unless that single plant or animal was the specified or identified purpose of providing the grant. However, if a grant specifies one or more species by name, then those are "species of interest" to the enforcement of the grant. Note: we have dropped the phrase "species of interest" to avoid further confusion.</p> <p>Grounds for non-compliance will be determined by comparing the purpose of the grant with actual conditions.</p> <p>Again, this depends on the original intent of the recreation grant. If a property previously acquired for recreation purposes can integrate habitat values without diminishing the original intent of the</p>

<p>IAC/SRFB comment response provided helpful information about how habitat restoration and public access opportunities may be integrated, and we agree with the response that recreation can indeed be integrated well with habitat values. However the IAC/SRFB response was written to only address future acquisitions for which grant contracts explicitly include both recreation &amp; habitat elements. The IAC/SRFB response did not address whether and how habitat value and restoration can be integrated on historic outdoor recreation-funded properties where grant applications and contracts did not include such a habitat element. Could IAC please address our original question as it pertains to habitat restoration on the 1970s-era outdoor recreation funded properties?</p>	<p>recreation grant, there should be no compliance issue. If the proposal to integrate habitat in a manner that reduces or eliminates the originally-intended recreational use or uses, the result will be inconsistent with the original recreation grant and therefore will result in non-compliance. We wish to avoid situations where one type of grant is superseded by another type of grant.</p>
---	---

**John Mohr, Executive Director, Port of Everett**

<p>We have reviewed the draft policy, including the suggested changes between the first and second drafts, and support the policy as modified in the second draft.</p>	<p>Thank you.</p>
--	-------------------

**Mark Quinn, Washington Department of Fish and Wildlife**

<p>General comments: The draft policy appears to be a major rewrite and expansion of what is already in Section 3 of Policy Manual #7. It is unclear to us why a major rewrite and expansion was needed. In addition, most of what is included in the policy draft is actually procedures and should not be included as part of policy. The existing language in Section 3 of Policy Manual #7 is more appropriate as a policy as it clearly defines the principle that will be enforced by IAC when determining conversions.</p> <p>This new/revised policy now constitutes almost 14 pages and seems unnecessarily long for a policy and appears inconsistent with the Governor's initiative on plain talk.</p>	<p>IAC/SRFB staff made a presentation to the IAC Board on February 3, 2006, to explain the need for review of the policies in question.</p> <p>We note that "procedures" are integral to IAC/SRFB policy manuals.</p> <p>We disagree. Staff experience is that the existing manual is inadequate in many respects, especially in defining what is meant by compliance and conversion.</p> <p>We note that the proposed text has added a number of new concepts requiring explanation. Length alone does not mean a document does not use plain talk.</p>
---	--

The following comments are specific to the second draft.

**Section 1 and 2:** It is not necessary to say “in perpetuity: that is forever.” It should say one or the other. They mean the same thing.

**Section 2b:** Habitats are dynamic natural systems that are constantly undergoing changes. These changes are influenced by adjacent lands and habitats, climate, evolution, fire, floods, drought, and the presence of both plants and animals, including invasive species. The existing language suggests that the loss of a plant or animal constitutes a conversion. “Loss of a species of interest as the result of events in the control of the sponsor, including sponsor inaction, may result in a non-compliance issue even if a habitat function remains.” We are concerned about who and how this determination of sponsor action or inaction would be made. What analysis will be done and by whom to determine that the loss was the result of the sponsor and not other factors.

We suggest Section 2b be rewritten as follows: Sponsors of habitat projects are expected to do everything within their powers to maintain the viability and sustainability of habitat lands so that habitats and species can be maintained. This includes preparing stewardship and management plans to ensure the habitats are maintained in perpetuity,

The flow chart on page 3 is a procedure and should be removed from the policy manual.

**Section 4:** We recommend that IAC inspections should be performed via regularly scheduled reviews in partnership with the sponsors. This is the way federal auditors examine our federal projects and it reduces the chance for miscommunication and misunderstanding.

**Section 5:** This section is not necessary

We find people always ask what we mean by “perpetuity.” Also, citizen members of our advisory committee stressed the need for “strong language.”

We agree that the language implies loss of a single plant or animal constitutes conversion if it is due to grant recipient negligence; however, as we reply to King County, we did not mean to point to a single plant or animal unless one is specified in a grant agreement. We will rewrite 2b to make this clear.

We anticipate that IAC/SRFB staff would work closely with agencies or organizations potentially affected.

The flow chart is intended to help define terms, and we do not agree it needs to be removed.

We agree that inspections should be done in partnership with the sponsors.

We disagree. An “element change” is a

<p>as the policy is already clearly stated in Section 1 and 2.</p> <p>Section 5a: This is an example and should not be included in the policy.</p> <p>Sections 6, 7, 8, and 9 are all procedures and should be removed from the policy.</p> <p><b>Section 10:</b> Much of this is procedure and should be removed from the policy. The portion that represents policy is the designation of high-risk sponsor based on a record of non-compliance. We suggest the following language as an alternative: The first paragraph is ok. The second paragraph should read:</p> <p>“A high risk sponsor is one that has unresolved conversion issues the value of which exceeds 25% of all IAC/SRFB funds received by that sponsor and has no record of good faith effort to resolve the conversion.”</p> <p>We recommend high risk sponsors be given 1 year to resolve conversion issues since resolution usually involves finding, appraising and negotiating replacement properties that, under the best of circumstances would take 180 days. Sponsors also have to address new requirements for cultural resources review and environmental assessment. In addition, some conversion issues are further complicated by legal issues, which are not easily resolved.</p>	<p>new topic for Manual 7, Section 3, and needs explanation in this section.</p> <p>We added examples because a number of earlier reviewers asked for them.</p> <p>We believe the procedures are appropriate in these sections.</p> <p>Again, procedures are integral to policy manuals.</p> <p>Your proposal is to delete reference to a threshold dollar amount of \$1 million and to a measure by time (a project out of compliance for 2 or more years). We believe that a dollar amount is a good indicator; however, we are willing to review the threshold dollar amount. The measure by time is based on a comment by the National Park Service and on staff experience with members of the public frustrated with long-standing compliance issues. We prefer to keep the time measure.</p> <p>We anticipate that staff would consider the recommendation for “at risk” designation as a last resort after lengthy attempts as resolution. The examples you cite could be evidence of a good faith effort to resolve a compliance issue.</p>
<p><b>Maxine Keesling, Rural land owner</b></p>	
<p>Re: Complying with Grant Agreements</p> <p>I'm using your request for comments on the above to vent feelings on salmon recovery, in general, and on King County</p>	<p>Thank you for sharing your feelings. We do not find a comment here on the draft document under review.</p>

efforts in particular.

In general, there is far too much fish-over-people bias. Fish are not an ICON to the majority of people who are finding fish habitat trumping waterside recreation, waterway navigability (large woody debris (LWD) installations), and even livelihoods.

Specifically, in King County, using the Sammamish River as an example, the county so manifestly favors fish over people that it breaks federal law by planting trees and brush on the banks and installing LW into the stream channel:

Army Corps of Engineers 1965  
Sammamish River Operation and  
Maintenance Manual, Flood Control  
Improvements, Appendix IV, Section  
208.10(10)(g)(2) requires –  
“Appropriate measures shall be taken to  
prevent the formation of jams of ice or  
debris. Large objects which become  
lodged against the banks shall be  
removed. The improved channel or  
floodway shall be thoroughly inspected  
immediately following each major high  
water period. As soon as practicable  
thereafter, all snags and other debris shall  
be removed and all damage to banks,  
riprap, deflection dikes and walls, drainage  
outlets, or other flood control structures  
repaired.”

There are 29 pages of such requirements  
in the above document which King County  
ignores.

Fish are not the be-all and end-all of life in  
the Pacific Northwest up to and until the  
time elected high-ranking government  
officials officially and publically declare that  
fish come before people. Certainly any  
state committee titled OUTDOOR  
RECREATION should merely assure its  
recreation projects do not harm fish,  
especially in these days of active  
recreation facilities increasingly needed for  
increasing numbers of people.