



STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

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Item #15: Role of Recreation and Conservation Funding Board in Conversions

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Approved by the Director:

Proposed Action: Briefing

Summary

At the March 2008 Recreation and Conservation Funding Board (Board) meeting, members of the Board asked staff to research and answer a number of questions about the Board's role in project conversions. Recreation and Conservation Office (RCO) staff has prepared this memo to provide background information about conversions and respond to the Board's request.

Background

Since 1964, the Board has awarded over 4,000 grants. Over the course of these years, public needs, values, and priorities have changed. These factors have contributed to a growing list of projects that are out of compliance with their original grant agreement.

Although there are a number of ways that a sponsor can be out of compliance, only the most serious are considered conversions. A conversion occurs when a sponsor uses grant funds to acquire property or develop or restore a facility, and later converts that property or facility to a use or uses other than those described in the original grant. The following circumstances may result in conversions:



- Property interests are conveyed for non-public outdoor recreation or habitat conservation purposes;
- Property interests are conveyed to an ineligible third party;
- Public or private uses are made in a manner that impairs the originally intended purposes;
- Non-eligible indoor facilities are developed;
- Public use is terminated for all or a portion of the property; and/or
- Habitat functions are no longer provided.

Analysis

At the March 2008 Board meeting, members posed the following questions for staff.

What is the Board's role in approving or denying a conversion?

The Revised Code of Washington (RCW) includes policies that govern the Board's role in approving conversions for the Boating Facilities Program¹ and Washington Wildlife and Recreation Program (WWRP)². In addition, the Board established conversion policies for four programs in the Washington Administrative Code (WAC). These policies, which are based on the legislative intent that the Board provides oversight and accountability for its investments in habitat land and recreation land and facilities, apply to the following programs:

- Firearms and Archery Range Recreation Program (FARR)³
- Nonhighway and Off-Road Vehicles Activities Program (NOVA)⁴
- Land and Water Conservation Fund (LWCF)⁵, which is also governed by federal conversion regulations, and
- Washington Wildlife and Recreation Program (WWRP)⁶

The Board adopted detailed conversion policies and procedures in June 2007 for all grant programs by amending Section 3 of Manual 7, *Funded Projects: Policies*. The manual lists factors that the Board will consider when evaluating requests for a conversion and criteria that must be met for approval:

1. A description of the original project proposal;
2. A description of the proposed conversion;
3. A list and discussion of alternatives for replacement;

¹ RCW 79A.25.100

² RCW 79A.15.030(8)

³ WAC 286-30-030 and 040

⁴ WAC 286-26-090 and 100

⁵ WAC 286-40-050 and 060

⁶ WAC 286-27-055, 061, 065, and 066

4. Evidence that the public has been given reasonable opportunity to participate;
5. Justification of the reasonable equivalency of the replacement site in terms of utility and location; and
6. Documentation that the replacement site is at least equal in fair market value.

The Board's authority to approve conversions is delegated to the Director if the conversion affects less than twenty percent of the original project scope or cost, and the total value of the conversion is less than \$75,000 in current dollars. The language in Manual 7 may not apply to some older grants because the Board's conversion policies were not referenced in the grant agreement. In those older agreements, the agreement language itself will indicate the governing authority for conversion decision-making.

Do legislative intent, Board mission, or policy allow latitude in the decision making process?

The answer depends on the grant program. In general, statutory language is broad enough to give the Board considerable latitude in defining "conversion," setting criteria for Board approval, and establishing a process by which conversions are approved or denied. The level of specificity in Board-adopted rules (i.e., the WAC) differs among the four grant programs.

The most detailed policies on conversion are in the policy that the Board adopted in June 2007, which applies to all grant programs and provides the least latitude in decision-making. These policies, as noted above, are clear about the circumstances under which the Board will approve a conversion, and provide a fair, consistent, and defensible process.

The Board has latitude or discretion in evaluating three of the five factors described above:

- #3: discussion of reasonable alternatives for replacement;
- #4: opportunities for public participation; and
- #5: the reasonable equivalency of the replacement site in terms of utility and location.

Given the current policy limitations, it does not appear that the Board has the latitude to consider general public interest if the conversion meets the requirements set forth in RCW, WAC, and policy. If the Board wants greater latitude in decision-making, such latitude should be set forth in a revised WAC and/or revised policy and should be weighed against statutory constraints and the importance of a clear, consistent and fair process. WAC revisions may be necessary, depending on the nature of any future changes and the programs affected.

How do sponsors and staff establish assessed values to determine the equivalent value of the properties?

Land value is measured based on the market value of the highest and best economic use in current dollars.

Sponsors are required to follow the RCO appraisal requirements found in Manual 3, *Acquiring Land: Policies*. Requirements include obtaining independent market appraisals on both the converted land and the proposed replacement. Sponsors also must have the appraisals reviewed to ensure that the original reports are done to RCO standards. Staff and sponsors rely on the expertise of state-certified appraisers, for both the appraisals and review. The RCO appraisal guidelines closely follow the Uniform Standard of Professional Appraisal Procedures (USPAP), with minor exceptions. USPAP requires appraisers to consider not only current, but also potential zoning if it would be legally feasible to rezone a property and consequently reach a “higher and better” use in terms of the market.

When federal funds are part of the project, appraisers must apply the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) or “Yellow Book” standards. Overall, the UASFLA standards mirror USPAP, but there are some differences. For example, UASFLA requires the appraiser to disregard recent rezoning (or the probability of rezoning) of the property under appraisal if such action was the result of the federal government’s project.

To determine the market value of a property being converted, the sponsor must instruct the appraiser to assume the Deed of Right⁷ is not encumbering the property. Since the Deed of Right is transferred to the replacement property once the conversion is approved, the appraised value of the converted property should reflect it free and clear of this encumbrance. This is consistent with the federal appraisal guidelines.

What guidance does the Board have in determining the equivalent grant-related utility of the properties?

Replacement land not only must be of equal or greater market value, but also must be of “nearly as feasible equivalent usefulness and location.” This means the replacement property provides a similar recreation or habitat experience in reasonably close proximity to the converted site. For example:

⁷ RCO requires that this document be recorded on a grant-assisted property acquisition before RCO reimburses the sponsor. The Deed of Right becomes an encumbrance that limits the sponsor’s land use to those recreation or habitat purposes for which it was acquired.

- A neighborhood park could be replaced by a park that is within walking distance for the same neighborhood. The replacement park may be larger and provide an expanded number of amenities that attract community users from a greater distance.
- A waterfront park could be replaced by another waterfront site rather than an upland park with no waterfront access.
- An active recreation site (e.g., a sports complex) could be replaced by another active site, rather than a wetland-dominated site that provides only passive recreation uses.

Grants were written over many years with varying degrees of specificity and foresight, so the Board has considerable discretion about which standards of “usefulness” a sponsor should be bound to in perpetuity. The RCO and Board recognize that priorities within a community vary over time. Priorities are typically expressed in comprehensive planning documents that include a public outreach effort. Staff and the Board may consider these changing priorities with regard to replacement land as long as the intent of the fund source is met in the replacement property.

Does the Board act as a quasi-judicial body?

At the last Board meeting, a citizen comment contended that the Board's action on a conversion was quasi-judicial in nature, implying that notice, witnesses, presentation of evidence, and the right to appeal were required. The Attorney General's Office has advised the RCO that the Board is not a quasi-judicial body. Therefore, the Board complies with the Open Public Meetings Act, including provisions that allow for public comment, but is not subject to the appearance of fairness doctrine or rules of hearings.

What effect do federal funding sources have on the Board decision?

When federal funds are granted to a project (e.g., LWCF), the Board is not the final decision-maker on conversions. The Board is authorized to make a recommendation to the federal authorities, who then make the final decision whether to approve a conversion.

Next Steps

RCO staff will continue to address existing noncompliance and conversion issues and prevent future problems. Staff will report to the Board on progress and, if needed, recommendations for additional changes to policy or practice.