

Item 9

Meeting Date: March 2010
Title: Nonprofit Eligibility
Prepared By: Jim Eychaner, Policy Specialist

Approved by the Director:

Proposed Action: Decision

Summary

In 2008-09, the Legislature amended RCW 79A.15.030 to open the Washington Wildlife and Recreation Program Riparian and Farmlands categories to the State Conservation Commission and nonprofit nature conservancy organizations. Staff is proposing eligibility criteria for nonprofit nature conservancy organizations.

Staff Recommendation

Recreation and Conservation Office (RCO) RCO staff recommends that the Recreation and Conservation Funding Board (board) adopt the revised policies via resolution #2010-08.

Specifically, these policies would:

- For the Farmland and Riparian Categories:
 - Require nonprofit nature conservancy organizations or associations to be registered with the Secretary of State, identify a successor organization as required by state law, and demonstrate 3 years experience in managing activities related to the WWRP category for which they intend to apply;
 - Require first-time applicants to meet the board's long-standing requirement to submit a legal opinion that affirms the applicant's eligibility, and
- For the Riparian Category Only:
 - Require applicants to submit a plan that meets the elements found in WAC 286-27-040.

Strategic Plan Link

Consideration of these policy changes supports the board's strategies to (1) develop strategic investment policies and plans so that projects selected for funding meet the state's conservation

needs and (2) expand the reach of grant programs by broadening applicant pool for grant programs.

Background

Staff reviewed the eligibility requirements of other board-managed grant programs that allow nonprofit organizations to complete: for example, Youth Athletic Facilities (YAF) and Firearms and Archery Range Recreation (FARR). In that review, staff found the following:

- State law requires registration with the Secretary of State and identification of a successor organization.
- Three years' experience in activities relevant to the grant in question has worked well in other programs.
- Since 1965, board policy has required that the sponsor provide a legal opinion that affirms the sponsor's eligibility because it eliminates staff error and helps prevent unnecessary disagreements over eligibility with potential applicants.
- The planning requirement is based on state law and Washington Administrative Code, and demonstrates that an applicant has the resources necessary to complete a project, if funded, and that the public has had an opportunity to become informed of the proposed actions.

Public Involvement

Staff formed a stakeholder group and provided them with a preview of an initial proposal for nonprofit eligibility in July 2009. Based on stakeholder feedback, staff revised the proposal and sent it to a broader list of interested parties in August 2009. Comments received fell into two major groups: (1) nonprofits that objected to the planning requirement details, especially public involvement, and (2) public agencies that insisted on a high standard for nonprofit planning, including public involvement.

To understand these objections and find a way forward, staff held an informal workshop on the issues on October 28, 2009. Staff used workshop results to revise the proposed eligibility requirements.

The board heard additional nonprofit comments at its November 2009 meeting and provided direction to staff, concerning approaches to public involvement in the planning requirements. Staff revised the proposed requirements and sent them to the stakeholders who had commented on previous versions. We received no substantive comments on the revised proposal.

Analysis

The proposed eligibility requirements are based on models that the RCO has used successfully in other grant programs. Only two comments were received on the final proposal. The Greater Peninsula Conservancy appreciated the new flexibility in the proposed planning requirements. Clark-Vancouver Parks asked about "successor organizations," a question answered by reference to the RCW. Although the proposed planning requirement is an attempt to meet nonprofit needs, there is continuing tension between the views of nonprofits and some local agencies regarding meaningful public involvement in the planning process. Note that the new law regarding the planning requirement applies to the riparian category only.

Next Steps

If approved, the eligibility requirements will be published in Manual 10b *Washington Wildlife and Recreation Program Habitat Conservation Account and Riparian Protection Account* and in Manual 10f, *Washington Wildlife and Recreation Program Farmland Preservation Program*.

Attachments

Resolution #2010-08

- A. Revised Policy Language
- B. Summarized Public Comments

Recreation and Conservation Funding Board
Resolution #2010-08
Nonprofit Eligibility in Certain Board Grant Programs

WHEREAS, the Legislature amended RCW 79A.15.120 to allow nonprofit nature conservancy organizations or associations and the state Conservation Commission to compete for grants in the Washington Wildlife and Recreation Program's Riparian Protection Account (RPA), and

WHEREAS, the Legislature amended RCW 79A.15.130 to allow nonprofit nature conservancy organizations or associations and the state Conservation Commission to compete for grants in the Washington Wildlife and Recreation Program Farmland Preservation Program (FPP); and

WHEREAS, the Recreation and Conservation Funding Board (board) has adopted policies regarding nonprofit eligibility for grants in other programs and used these policies as the basis for language to fulfill the statutory mandate; and

WHEREAS, Recreation and Conservation Office (RCO) staff developed and circulated a policy proposal for public review and comment, thereby promoting the board's goal to ensure the work of the board and staff is conducted with integrity and in a fair and open manner.; and

WHEREAS, RCO staff worked directly with concerned stakeholders to meet legal requirements and direction received from the board in November 2009; and

WHEREAS, adopting this revision would further the boards' strategies to (1) develop strategic investment policies and plans so that projects selected for funding meet the state's conservation needs and (2) expand the reach of grant programs by broadening applicant pool for grant programs;

NOW, THEREFORE BE IT RESOLVED, that the board does hereby adopt policies in the WWRP FPP and RPA to require nonprofit organizations or associations to be registered with the Secretary of State, identify a successor organization, and demonstrate at least 3 years experience in managing activities related to the category for which they applied; and

BE IT FURTHER RESOLVED, that the board does hereby adopt policies in the WWRP FPP and RPA to require first-time applicants to submit a legal opinion that affirms the applicant's eligibility; and

BE IT FURTHER RESOLVED, that the board does hereby adopt policies in the WWRP RPA to require applicants to submit a plan that meets the elements found in WAC 286-27-040; and

BE IT FURTHER RESOLVED, that the board directs RCO staff to implement these policies beginning with the 2010 grant cycles.

Resolution moved by: _____

Resolution seconded by: _____

Adopted/Defeated/Deferred (underline one)

Date: _____

Policy Language

Proposed Language

The following is proposed for inclusion in Manuals 10b Washington Wildlife and Recreation Program Habitat Conservation Account and Riparian Protection Account (Section 1); and 10f Washington Wildlife and Recreation Program Farmland Preservation Program (Section 1).

Nonprofit nature conservancy corporations or associations must meet the following eligibility requirements:

1. Be registered in the State of Washington as a nonprofit as defined by RCW 84.34.250
2. Consistent with RCW 24.03.220, RCW 24.03.225, and RCW 24.03.230, identify a successor organization fully qualified to ensure management continuity of any WWRP grants received by the corporation or association, and
3. Demonstrate at least three years' activity in managing projects relevant to the types of projects eligible for funding in the applicable Washington Wildlife and Recreation Program category. "Activity in managing projects" means the tasks necessary to manage an on-the-ground riparian or farmland project, such as negotiating for acquisition of property rights, closing on an acquisition, developing and implementing management plans, designing and implementing projects, securing and managing the necessary funds regardless of fund source, and other tasks.

Note: "Farmland" category applicants must also demonstrate:

- a. The preservation of agricultural lands as a priority of the organization; and
- b. An ability to manage, monitor, and enforce agricultural conservation easements.

The RCFB requires all organizations wishing to apply for an RCFB grant for the first time to submit a legal opinion that the applicant is eligible to:

- Receive and expend public funds including funds from the Recreation and Conservation Funding Board;
- Contract with the State of Washington and/or the United States of America; Meet any statutory definitions required for BOARD grant programs;
- Acquire and manage interests in real property for conservation or outdoor recreation purposes;
- Develop and/or provide stewardship for structures or facilities eligible under board rules or policies;

- Undertake planning activities incidental thereto; and
- Commit the applicant to statements made in any grant proposal.

Note that the legal opinion is required only once to establish eligibility.

The following is proposed for inclusion in Manual 10b Washington Wildlife and Recreation Program Habitat Conservation Account and Riparian Protection Account (Section 1)

Nonprofit nature conservancy corporations or associations must meet the planning requirements of WAC 286-27-040 for the riparian category. To meet the planning requirement, corporations or associations must do **one** of the following:

1. Submit a corporate or association developed plan that meets WAC 286-27-040; OR
2. Submit a shared jurisdiction plan that meets WAC 286-27-040; OR
3. Submit a cooperative plan that meets WAC 286-27-040; OR
4. Certify that the corporation or association has published a plan or document that has been accepted or incorporated into a plan or program managed by a public agency for public purposes. For example, an "ecoregional assessment" accepted or incorporated by the Washington Department of Fish and Wildlife or the Biodiversity Council or other public agency would meet this requirements; OR
5. For the state's 2011-2013 biennium only, submit a plan that in its current form may lack one or more elements required by WAC 286-27-040, accompanied by a statement of how the elements will be addressed prior to the beginning of the biennium's riparian grant evaluation process. For example, if a plan has been published, but public involvement has not been completed, submit the plan with a statement of what kind of public review will be undertaken and when the public review will be completed.

Summarized Public Comments

Commenter	Summary of Comments	Staff Response
Peter M. Mayer, Director Vancouver-Clark Parks and Recreation	<p>Are there qualifications for a successor organization to ensure that there is a high probability that the organization will be operational and capable of assuming responsibilities should the primary organization be unable to do so?</p> <p>We suggest adding the following to the definition of "Activity in managing projects":</p> <ul style="list-style-type: none"> • coordinating with partner agencies and jurisdictions, • providing for an appropriate amount of public participation, • securing necessary permits and approvals • successfully managing and maintaining projects 	<p>The qualifications are found in RCW 24.03.220, RCW 24.03.225, and RCW 24.03.230</p> <p>The tasks listed are found elsewhere in the current manual or the proposal.</p>
Sandra Staples- Bortner, Executive Director Great Peninsula Conservancy	<p>We appreciate that the revised 'legal opinion' section has been streamlined a bit to focus on matters of law. However, we still feel that a 'legal opinion' is not the correct vehicle to address some of the items on that list (for example, 'undertake planning activities incidental thereto'). I would like to stress that we are not opposed to the RCO requirement that nonprofit nature conservancy organizations conduct planning activities relative to our grant applications, we simply do not believe that a legal opinion is the way to answer this question.</p> <p>As for the revised planning requirements, we appreciate the new flexibility that has been added to this section to allow nonprofit nature conservancy organizations adequate time to meet the planning requirement, specifically the public comment requirement.</p>	<p>The legal opinion is simply a one-time submission stating that in an attorney's opinion, the organization is eligible under state law, meets additional criteria established by board, and has the capacity to undertake tasks necessary to receive and manage grants. A legal opinion is not needed to declare that a plan has been done.</p>