

Manual 3

Acquisition Projects

August 2018

Table of Contents

Section 1: Introduction.....	1
About this Manual.....	1
About the Recreation and Conservation Office.....	2
Where to Get Information.....	2
Funding Boards.....	2
Acquisition Quick Step Guide.....	6
Section 2: Eligible Projects and Costs.....	8
Eligible Projects.....	8
Acquisition of Property for Mitigation.....	15
Acquisition for Future Use.....	15
Other Considerations.....	16
Firearm and Archery Range and Course Safety Policy.....	19
Eligible Project Costs.....	20
Escrow Payments.....	26
Waiver of Retroactivity Buying Land Without a Signed RCO Project Agreement.....	27
Acquisition of Existing Public Property.....	30
Contract or Installment Sales.....	31
Ineligible Sponsors, Activities, and Costs.....	31
Other Eligibility Requirements.....	33
Invasive Species.....	40
Section 3: Application Requirements.....	41
Project Scoping.....	41
Landowner Acknowledgement of Application.....	41
Reviewing Your Project with the Local Jurisdiction (Washington Wildlife and Recreation Program Only).....	42
Section 4: Acquisition Procedures.....	45
Acquisition Procedures.....	45
Relocation Procedures.....	47
Section 5: Appraisal Requirements.....	49
Just Compensation.....	49
Appraisal and Review Appraisal Standards.....	49

Appraiser and Review Appraiser Qualifications.....	55
Appraisal Costs	56
Section 6: Other Requirements for Each Transaction	57
Encumbrances and Title Insurance	57
Preliminary Title Review	58
Complementary Covenants or Deed Restrictions from Other Funders	59
Hazardous Substances Certification.....	59
Map Requirements.....	62
Section 7: Post-Award Issues.....	64
Project Agreements	64
Changing Your Project or Grant Agreement	65
Conservation Easement Monitoring.....	70
Utility Permits	70
Tree Removal.....	71
Allowable Uses Framework.....	71
Income and Income Use	72
Long-term Obligations.....	75
Other Things to Know.....	76
Appendix A: Deed of Right (Recreation)	79
Appendix B: Deed of Right (Conservation).....	84
Appendix C: Deed of Right: (Salmon Recovery)	89
Appendix D: Conservation Easement Requirements for Habitat and Salmon Recovery	94
Appendix E: Farm and Forest Easement Template.....	106
Appendix F: Baseline Inventory	107
Appendix G: Assignment of Rights Template.....	109
Appendix H: Landowner Acknowledgement Form.....	119
Appendix I: Voluntary Acquisition Notice to Owner	120
Appendix J: Just Compensation and Relocation Notice to Owner.....	122
Appendix K: Preliminary Title Report and Commitment Checklist.....	124
Appendix L: Hazardous Substances Certification.....	126
Appendix M: Property Assessment Checklist	127
Appendix N: Waiver of Retroactivity Request Checklist.....	128

Section 1: Introduction

In this section, you'll learn about the following:

- ✓ This manual
- ✓ The Recreation and Conservation Office
- ✓ Where to get information
- ✓ The funding boards
- ✓ Quick Step Guide

About this Manual

This manual¹ provides basic information about policies for acquiring land with grants from the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. Use this manual, along with the policy manuals for individual grant programs below, for all acquisition projects in these grant programs:

- [*Manual 9, Boating Facilities Program*](#)
- [*Manuals 10a, 10b, 10c, and 10f, Washington Wildlife and Recreation Program*](#)
- [*Manual 11, Firearms and Archery Range Recreation*](#)
- [*Manual 14, Nonhighway and Off-Road Vehicle Activities*](#)
- [*Manual 15, Land and Water Conservation Fund*](#)
- [*Manual 17, Youth Athletic Facilities*](#)
- [*Manual 18, Salmon Recovery Grants*](#)

¹Authority for the information in this manual is found in several statutes and rules: Revised Codes of Washington 46.09.240, 77.85.120 (1)(d), 79A.15.060(1), 79A.15.070(5), 79A.15.120(5), 79A.15.130(5), 79A.25.080(2), and 79A.25.210, and Titles 286 and 420 Washington Administrative Codes.

- [Manual 21, Aquatic Lands Enhancement Account](#)

Appendixes Online

Many of the appendixes are available online as part of the [Acquisition Project Toolkit for Grant Sponsors](#) so they may be downloaded and easily filled out.

Definitions

For definitions of terms used in this manual, see the project agreement. A [sample project agreement](#) is on the RCO Web site.

About the Recreation and Conservation Office

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

Where to Get Information

RCO

Natural Resources Building
1111 Washington Street
Olympia, WA 98501

[E-mail](#)

Telephone: (360) 902-3000

FAX: (360) 902-3026

TTY: (800) 833-6388

[Web site](#)

Mailing Address

PO Box 40917

Olympia, WA 98504-0917

RCO outdoor grants managers are available to assist by answering questions concerning the information contained in this manual. Please feel free to e-mail or call. [Contact information](#) can be found online.

Funding Boards

Recreation and Conservation Funding Board

The Recreation and Conservation Funding Board was created in 1964 by a vote of the citizens of Washington. It is a governor-appointed board composed of five citizens and the directors (or designees) of three state agencies—Department of Fish and Wildlife,

Department of Natural Resources, and Washington State Parks and Recreation Commission.

The Recreation and Conservation Funding Board provides leadership and funding to help its partners protect and enhance Washington's wildlife habitat, working lands, and outdoor recreational resources.

Salmon Recovery Funding Board

The Washington State Legislature established the Salmon Recovery Funding Board in 1991 to administer state and federal funding and to assist with a broad range of salmon-related activities. Its primary goal is to aid the recovery of salmonids (salmon, trout, and steelhead) by providing grants.

The Salmon Recovery Funding Board is composed of five voting members, appointed by the governor, and five non-voting, state agency directors.

Not a Hearings Board

The roles of the two boards are to award grants, not to act as hearings boards that rule on land use issues. The boards' intent is that all proposals, to the extent possible, meet the following criteria:

- Are the outcomes of a public process in which all interests have had an opportunity to be heard.
- Have resulted from a community-supported decision to submit the application.
- Are ready for implementation.
- Will ensure that maximum benefit is gained from the grant.

The boards' grant funding meetings must not be the first public meeting in which interested parties have a chance to express views on a project.

Final decisions are made by the boards that govern RCO. Some decisions; however, have been delegated to RCO's director.

Who Makes Decisions

Board Decisions

The following list summarizes many acquisition project decisions that the Recreation and Conservation Funding Board or Salmon Recovery Funding Board make in public meetings or by subcommittees of the boards. Each is in accord with statutes, rules, and board policies.

- Initial grant approval.
- A project cost increase of more than 10 percent of the project total in the project agreement for Recreation and Conservation Funding Board projects. Cost increases are only allowed in certain grant programs.
- A project cost increase of more than 20 percent of the project total in the project agreement for Salmon Recovery Funding Board projects. Consult *Manual 18, Salmon Recovery Grants* for more criteria related to cost increases for board-funded projects.
- Approval to pay more than 10 percent in administrative costs of the total land and incidental costs combined.
- A major scope change in the property to be acquired. See Scope Changes in Section 7.
- A conversion that changes the project site or how the site is used from that described in the project agreement and Deed of Right or Assignment of Rights. See *Manual 7, Long-Term Obligations* for more information about conversions.
- Changes in policy; for example, establishing new grant limits or eligible expenditures.
- Time extensions beyond 4 years of the Recreation and Conservation Funding Board or director approval date.

Director Decisions

The RCO director, or designee, makes many acquisition project decisions. The decisions range from authorizing payments, to approving cost increases, to approving payment of charges in excess of lower bids, to terminating projects. The following list summarizes some of these decisions that relate to acquisition projects, each in accord with statutes, rules, and RCO policies:

- Authorize project reimbursements.
- Approve a project cost increase up to 10 percent of the project total in the project agreement for Recreation and Conservation Funding Board projects. A cost increase is limited to a specific parcel's fair market value.² Cost increases are not allowed in all board grant programs.
- Approve a project cost increase up to 20 percent of the project total in the project agreement for Salmon Recovery Funding Board projects. Consult *Manual*

²Washington Administrative Code 286-13-085

18, Salmon Recovery Grants for more criteria related to cost increases for board projects.

- Approve paying up to 10 percent in administrative costs of the total land and incidental project costs.
- Approve payment of delinquent taxes due at the time of closing.
- Approve payment up to 10 percent above the review appraised value of a property.
- Approve disregarding of new encumbrances on the property when determining appraised value.
- Approve acquisition of property with informal or no legal access.
- Approve reimbursement of more than one appraisal and/or appraisal review per property.
- Waive appraisal requirements for property that does not exceed \$10,000.
- Approve environmental assessment costs above 10 percent of the reviewed appraised value of a property.
- Approve the qualifications of a relocation agent.
- Approve a minor scope change in the property to be acquired.
- Approve all draft legal documents for less-than-fee acquisitions.
- Issue a Waiver of Retroactivity to purchase property before execution of an RCO project agreement.
- Waive sign recognition and public access requirements.
- Approve time extensions up to 4 years for Recreation and Conservation Funding Board grants and more than 5 years for Salmon Recovery Funding Board grants.
- Terminate the project agreement.
- Approve interim and compatible uses of an RCO-assisted site.
- Approve delayed restoration or development for future uses.
- Require that grant funds be repaid to RCO if spent in a manner that conflicts with the project agreement or applicable statutes, rules, or program policies.

A project sponsor may request that a decision made by the director be reconsidered. This is done by writing to the chair of the funding board at least 60 calendar days before the next board meeting. Requests will be placed on the meeting agenda with an opportunity for the petitioner to address the board. Any subsequent board decision is final.

Acquisition Quick Step Guide

There are a number of key steps to completing an acquisition project successfully with RCO. Below is an Acquisition Quick Step Guide to help project sponsors through the important phases of an acquisition, with references to specific sections of this manual for more detailed instructions.

More resources are available online at [Acquisition Project Toolkit for Sponsors](#) on RCO's Web site.

Acquisition Quick Step Guide	Section	
Buying property without a signed contract with RCO?	2	
Application Requirements		
<input type="checkbox"/> Landowner Acknowledgement	3	
<input type="checkbox"/> Washington Wildlife and Recreation Program Jurisdiction Review and Conferral	3	
Due Diligence		
<input type="checkbox"/> Review the preliminary title report	6	Preliminary Title Review
<input type="checkbox"/> Clear any title actions and quell outstanding interests	6	Preliminary Title Review
<input type="checkbox"/> Initiate cultural resources review	2	Cultural Resources Review
<input type="checkbox"/> Ensure compliance with acquisition procedures	4	Acquisition Procedures
<input type="checkbox"/> Get appraisal and appraisal review	5	Appraisal Requirements
<input type="checkbox"/> Survey of property boundaries, if needed	6	Map Requirements
<input type="checkbox"/> Conduct environmental audit	6	Hazardous Substances Certification
<input type="checkbox"/> Determine any relocation needed	4	Relocation Procedures
<input type="checkbox"/> Prepare baseline documentation (conservation easements only)	2	Easements
<input type="checkbox"/> Provide RCO with draft legal documents for review	2	Eligible Projects
<input type="checkbox"/> Obtain approval for any interim land uses on the property	2	Interim Land Uses
Closing		
<input type="checkbox"/> Request escrow payment, if needed	2	Escrow Payments
<input type="checkbox"/> Record legal documents	2	Eligible Projects
<input type="checkbox"/> Obtain title insurance policy	6	Encumbrances and Title Insurance
After Closing		
<input type="checkbox"/> Provide RCO with copy of recorded legal documents	2	Eligible Projects
<input type="checkbox"/> Provide RCO a copy of the final title insurance policy	6	Encumbrances and Title Insurance
<input type="checkbox"/> Complete any relocation	4	Relocation Procedures
<input type="checkbox"/> Finalize cultural resources review	2	Cultural Resources Review
<input type="checkbox"/> Demolish ineligible structures	2	Existing Structures
<input type="checkbox"/> Install fencing, if needed	2	Eligible Costs
<input type="checkbox"/> Remove noxious weeds, if needed	2	Eligible Costs
<input type="checkbox"/> Install signs	7	Funding and Acknowledgement Signs
<input type="checkbox"/> Submit stewardship plan, if required or needed	2	Stewardship Plans
<input type="checkbox"/> Complete final report in PRISM	7	Inspections and Reporting
Stewardship		
<input type="checkbox"/> Ensure any approved interim land uses are discontinued within 3 years	2	Interim Land Uses
<input type="checkbox"/> Submit conservation easement monitoring report once every 5 years	7	Conservation Easement Monitoring
<input type="checkbox"/> Consult RCO on proposed allowable uses	7	Allowable Uses
<input type="checkbox"/> Comply with income generation requirements	7	Income and Use of Income
<input type="checkbox"/> Contact RCO if your future development or restoration plans are behind schedule	2	Acquisition for Future Use

Section 2: Eligible Projects and Costs

In this section, you'll learn about the following:

- ✓ Eligible projects
- ✓ Acquisition of property for mitigation
- ✓ Acquisition for future use
- ✓ Firearm and archery range and course safety policy
- ✓ Eligible project costs
- ✓ Escrow payments
- ✓ Waiver of retroactivity
- ✓ Ineligible projects
- ✓ Acquisition of existing public property
- ✓ Contract or installment sales
- ✓ Ineligible sponsors, activities, and costs
- ✓ Other eligibility requirements
- ✓ Invasive species

Eligible Projects

An acquisition project is one that purchases or receives a donation of fee or less-than-fee interests in real property. These interests include, but are not limited to, conservation easements, access and trail easements, covenants, water rights, leases, and mineral rights.

An acquisition grant from RCO may be used to buy real property for a variety of outdoor recreation, habitat conservation, and salmon recovery purposes. Real property is defined as land, crops, timber, mineral and water rights, land improvements, and structures and appurtenances to them.

In general, RCO grants may be used to buy real property in several ways. Grants can be used to buy the land itself, called fee title acquisitions, or to buy an interest in the land, such as an easement, called less-than-fee title acquisitions.

The organization that will hold title to the real property interest must be a party in the RCO project agreement, which is the contract between RCO and the grant recipient, as either a project sponsor or secondary sponsor. All project sponsors and secondary sponsors must be eligible to receive grants in the specific RCO grant program funding the project.

Fee Title Acquisitions

Fee title acquisition includes the purchase of land and improvements. Fee acquisitions may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will support the protection of the property for public purposes.

Deeds

A deed is the legal document that transfers or conveys title to a property and is recorded with the county auditor's office. Eligible types of deeds are statutory warranty, special warranty, quit claim, or bargain and sale deed. Other types of deeds may be eligible on a case-by-case basis. Consult RCO if the type of deed proposed for acquisition differs from the types listed here.

A statutory warranty deed (or general warranty deed) is the most protective type of deed and RCO's preferred type of conveyance for property. The statutory warranty deed binds the seller to the chain of title back to the origin of the property including all covenants and encumbrances on the title.

A special warranty deed is a less protective form of property conveyance for the project sponsor and RCO. The seller conveys the property with only the warranty that he/she owns the property and warrants the encumbrances placed on the property during his/her period of ownership. It does not warrant the chain of title before the seller's ownership period. Executors and trustees frequently use special warranty deeds.

A bargain and sale deed warrants only that the seller holds title to the property, but not the condition of the title and any covenants or encumbrances on the property. This type of deed is used frequently for land donations and foreclosures.

A quit claim deed is the least protective type of deed. It conveys the property without any warranty as to the seller's interest in the property or any of the covenants or encumbrances. Quit claim deeds may be used to transfer property between family members or cure defects in the title or for other transactions.

Quit claims deeds also often are used for rail banking projects. Certain rail corridors acquired with reversionary clauses are eligible with the understanding that should the property be rescinded, it would not be considered a conversion of use (see *Manual 7, Long-Term Obligations*).

Deed of Right

To protect the State of Washington's investment in the land acquired, RCO requires the project sponsor to record a Deed of Right on the title of the property. The Deed of Right conveys to the people of the State of Washington the rights to preserve, protect, and/or use the property for public purposes consistent with the grant program and the project agreement in perpetuity, except in the Firearms and Archery Range Recreation program.³

Templates for the Deed of Right are in Appendices A-C and vary by the type of project. The project sponsor will draft the Deed of Right and submit to RCO for approval. RCO will edit, if needed, then sign and send the Deed of Right to the project sponsor for its signature. The project sponsor records the deed with the county auditor. The county auditor sends the original recorded document to RCO. RCO will provide a copy of the recorded Deed of Right to the project sponsor once it is received back from the county auditor. RCO will not reimburse a sponsor for property costs until the Deed of Right is recorded.

A map is a required exhibit in each Deed of Right. The map must identify the property as described in the legal description and clearly outline the property boundary. The map also must identify the RCO project number and name, sponsor name and signature, date the map was prepared, adjoining streets and roads, north arrow, and scale. See Section 6 for more information on *Property Boundary Map Requirements*.

The Deed of Right must be recorded before requesting reimbursement for the land costs, unless RCO will be depositing funds directly into the escrow account. If the deed is recorded after closing, RCO may request an updated final title report or endorsement to the title insurance policy to ensure no new encumbrances have been placed on the property before the filing of the Deed of Right.

Less-than-Fee Title Acquisitions

Less-than-fee title acquisition includes the purchase of a lease, easement (road, right-of-way, trail, conservation, agricultural, etc.), other property rights (development, mineral, timber, water, etc.), or a reserve interest deed. A reserve interest deed conveys all rights to a property except those rights specifically reserved by the seller.

The holder of the easement or lease has control of specific property rights, but does not own the land. Acquiring title property rights can be an appropriate strategy for some acquisition projects.

³See Manual 11 for details on long-term obligations in the Firearms and Archery Range Recreation grant program.

RCO must pre-approve draft legal documents (e.g. leases, easements, and Assignment of Rights). RCO may need to consult with the Attorney General’s Office. Consult your grants manager to ensure adequate time for review.

The minimum interest length for a project acquiring a less-than-fee title acquisition differs depending upon the grant program as follows:

Minimum Interest Length for Less-than-fee Acquisitions	
Grant Program	Interest Length
Aquatic Lands Enhancement Account	At least 50 years
Boating Facilities Program	At least 50 years
Firearms and Archery Range Recreation	At least 10 years
Land and Water Conservation Fund (Easements only, leases are not eligible in this program)	Perpetuity
Nonhighway and Off-road Vehicle Activities	At least 25 years
Salmon Recovery Grants (Easements only, leases are not eligible in this program)	Perpetuity
Washington Wildlife and Recreation Program (Except Farm and Forest Account easements and Conservation Reserve and Enhancement Program leases)	At least 50 years
Washington Wildlife and Recreation Program’s Farmland Preservation Category	At least 25 years
Washington Wildlife and Recreation Program’s Forestland Preservation Category	Perpetuity
Washington Wildlife and Recreation Program’s Riparian Protection’s Conservation Reserve and Enhancement Program lease extensions	At least 25 years
Youth Athletic Facilities	At least 20 years

All policies included in this manual apply to the acquisition of less-than-fee rights including appraisal and appraisal review requirements, hazardous substances certifications, filing an Assignment of Rights, and title insurance. The project sponsor is responsible to ensure that the appraisal accurately reflects the subject property and rights to be acquired. The hazardous substances certification requirement does not apply to agricultural conservation easements acquired under the Washington Wildlife and Recreation Program’s Farm and Forest Account.

Habitat and Salmon Recovery Conservation Easements

For the purchase of habitat and salmon recovery conservation easements, RCO has developed a model conservation easement outline intended to provide an overview of the required and optional provisions to be included. (See information below for details on agricultural conservation easements.) If a project sponsor chooses not to use the model easement, or to use only portions thereof, the sponsor must demonstrate that the

easement language used addresses each applicable provision of the model easement and is consistent with the intent of each provision, with the appropriate grant program manual, and with the laws of the State of Washington. The complete conservation easement requirements are listed in Appendix D.

Farm and Forest Conservation Easements

For the purchase of agricultural conservation easements in the **Washington Wildlife and Recreation Program's Farm and Forest Account**, the RCO has developed a model agricultural conservation easement with specific provisions required. If a sponsor chooses not to use the model easement, or to use only portions thereof, the sponsor must demonstrate that the easement language used addresses each applicable provision of the model easement and is consistent with the intent of each provision, with the farmland or forestland preservation manuals, and with the laws of the State of Washington. The complete model agricultural conservation easement template is in Appendix E. See *Manual 10c, Washington Wildlife and Recreation Program, Forestland Preservation Category* and *Manual 10f, Washington Wildlife and Recreation Program, Farmland Preservation Category* for details on the model agricultural conservation easement.

Easement Requirements

Baseline Inventory

A baseline inventory is required for all habitat, salmon recovery, and agricultural conservation easements acquired with RCO funds. A baseline inventory records and characterizes the environmental aspects of the property at the time of the easement acquisition. The inventory provides the basis for future easement monitoring and, if necessary, enforcement. See Appendix F for baseline inventory requirements.

The baseline inventory must be prepared before closing and signed by the landowner and easement holder at closing. In the event of poor seasonal conditions for documenting all conservation values, an interim baseline with a completion schedule must be signed at closing. If the baseline has been completed and a significant amount of time has elapsed before the easement is transferred, it should be reviewed and possibly updated before closing. (Sponsors should consult Internal Revenue Service regulations on the timing of a property's conditions at the time of any gift.)

Baseline inventory is not an eligible incidental category for fee simple acquisition projects.

Easement Compliance

The model conservation and agricultural conservation easement templates require that each easement include a provision to provide access to the grantee (RCO's project sponsor) to conduct a general inspection of the easement area and to monitor

compliance with the easement terms. RCO recommends a project sponsor conduct easement monitoring at least annually. Project sponsors must submit an easement monitoring report to RCO at least once every 5 years.⁴

Trail and Access Easements

Trail easements may be appropriate for trail-related projects such as trail corridors. Access easements may be necessary to secure legal or public access to a property or for construction purposes. (Temporary construction easements are not covered under this policy.) Trail and access easements must include all of the following:

- A surveyed legal description and map
- Statutory language necessary to convey real property interests in Washington State
- Statement of duration
- Statement of purpose
- Clear description of the rights that are being conveyed
- Provide right to prevent any activity or use of the property that is inconsistent with the purpose of the trail/access easement
- Maintenance clause
- An Assignment of Rights to the State of Washington through RCO or include the Assignment of Rights language directly in the easement.

Lease Requirements

The following terms are required for any lease acquisition:

- The lease may not be revoked by either party signatory to the agreement (or "revocable at will" by the signatories). If the lease is revoked, the project sponsor will need to mitigate for the lost lease per RCO's conversion policy in *Manual 7, Long-term Obligations*.
- The lease value must be determined by an appraisal and appraisal review that meets RCO guidelines as described in this manual.

⁴Recreation and Conservation Funding Board Resolution 2010-34

- Payment of the lease must be in a lump sum at the start of the lease, not over a period of years, and paid within the active period of the RCO project agreement unless payments have been made under an approved Waiver of Retroactivity.
- The purchase of a lease is not eligible in the **Salmon Recovery Grant or Land and Water Conservation Fund** programs.

Assignment of Rights

Project sponsors file an Assignment of Rights for all easements or leases being acquired unless otherwise noted in this manual. An Assignment of Rights ensures RCO has certain rights for access and stewardship of the property. Easements acquired under the **Washington Wildlife and Recreation Program's Farm and Forest Account** do not require an Assignment of Right as the easement template incorporates the necessary provisions.

The Assignment of Rights is intended to secure the public's interest in the easement or lease. To accomplish this, the Assignment of Rights does the following four things:

- It commits the sponsor holding the easement or lease to monitor and enforce the terms of the easement or lease.
- It gives RCO certain rights, which are co-held with the sponsor, for access to the property covered by the easement or lease.
- It indemnifies the state with respect to the acts or omissions of the landowner and sponsor on the property.
- It requires the sponsor to consult with RCO for any amendment of the easement or lease, or conversion of the land to another use.

Collectively, the Assignment of Rights ensures that RCO has the legal ability to act if the sponsor fails to manage or defend the easement or lease.

The template for the Assignment of Rights is in Appendix G. The project sponsor will draft the Assignment of Rights and submit it to RCO. RCO will edit as needed, then sign and send the Assignment of Rights to the project sponsor for its signature. The project sponsor records the Assignment of Rights with the county auditor. The county auditor sends the original recorded document to RCO. RCO will provide a copy of the recorded Assignment of Rights to the project sponsor once it is received back from the county auditor. RCO will not reimburse a sponsor for property costs until the Assignment of Rights is recorded.

An alternative to recording an Assignment of Rights is to incorporate the required language from the Assignment of Rights directly into the easement or lease document, thereby eliminating the need to record a separate document with the county auditor's

office. When the easement or lease directly incorporates the Assignment of Rights, RCO becomes a third party beneficiary to the easement and must sign the easement or lease document. The easement or lease language will depend upon the situation. Project sponsors must submit the draft language to RCO for approval before executing the easement or lease.

Acquisition of Property for Mitigation

RCO funds may be used to buy land required by a mitigation plan when the mitigation is a requirement of a funded RCO project. For example, a new wetland may be required as mitigation for development of an athletic field on an existing wetland area, which may involve acquiring the wetland property.

When mitigation is required for development of an RCO-funded project, a portion of the RCO grant may be used to buy and develop the mitigation land. The maximum amount of grant funding allowed for the mitigation (including purchase of the land and the construction costs) is 25 percent of the total construction costs of the RCO-funded project and associated administrative and engineering costs in the project agreement.

RCO encourages the purchase and development of mitigation land that serves multiple functions such as providing habitat and recreation at the site. Any mitigation property acquired must be included in the project agreement and included within the legal description of the recorded Deed of Right or Assignment of Rights, whichever is appropriate. Acquisitions specifically for mitigation purposes related to impacts from other projects are not eligible for funding.

Acquisition for Future Use

When a project sponsor acquires real property for restoration or recreation development in the future, the property must be restored or developed as described in the project agreement within 5 years of acquiring the property (or 3 years for projects funded in the Land and Water Conservation Fund).⁵ If the property was acquired under a Waiver of Retroactivity, it must be developed within 5 years of the grant agreement end date. This ensures that the primary purpose for the acquisition is realized within a reasonable time and the public receives the intended benefit from its investment.

At the time of the grant application, the project sponsor may propose a timeline longer than 5 years for large scale, multi-phased projects. If the application is awarded a grant, RCO may incorporate the longer timeline in the project agreement. (This provision is not applicable to grants in the Land and Water Conservation Fund program.)

⁵Recreation and Conservation Funding Board Resolution 2010-34

If the planned future use of the property will be delayed for more than 5 years (or more than 3 years for Land and Water Conservation Fund projects), the project sponsor must request in writing an extension before the time period expires. RCO may approve an extension based on the project sponsor's plans and construction schedule. Projects receiving an extension will remain in compliance with the project agreement.

Projects that are not constructed as proposed in the acquisition project or not granted an extension will be reviewed per RCO's compliance policy in *Manual 7, Long-term Obligations*. If circumstances change that the scope will not be completed as originally proposed, then a project sponsor may request an element change to the project agreement.

Where appropriate, RCO may approve a request to restrict the public's use of a property for safety concerns until the property is developed or restored as planned.

Other Considerations

Phased Projects

Large acquisition projects can be complex, multi-year, multi-partner, and require extensive analysis, coordination, and implementation. A project sponsor should consider the potential complexity that large-scale or multi-million dollar projects may create, and should discuss phasing with RCO staff. Phased acquisition projects are subject to the following criteria:

- Approval of any single phase is limited to that phase. No endorsement or approval is given or implied toward future phases.
- Each phase must stand on its own merits as a viable project.
- Each phase must be submitted as a separate application.

The funding boards may consider progress and sponsor performance on previously funded phases when making decisions on current proposals.

Combination Projects

Combination projects involve real property acquisition in combination with other work such as a feasibility study, site planning, development, or restoration. Eligible combination projects vary by program. See applicable policy manuals for details.

Recreation and Conservation Funding Board Projects

To help ensure timely completion of combination projects, the Recreation and Conservation Funding Board has set progress policies related to combination projects. At

least 1 month before the board considers approving funding for a combination project, the project applicant must secure the property by one of the following methods:

- Acquisition under the Waiver of Retroactivity policies and procedures in this manual.
- Have property in escrow pending grant approval. Closing must occur within 90 days after the funding meeting.
- Obtain an option or Purchase and Sale Agreement on the property that extends past the board funding meeting. Execution of the option or agreement must occur within 90 days after this meeting.

If the acquisition is for a non-perpetual interest, applicants also must provide draft copies of all leases or easements to RCO for review. Execution of the leases or easements must occur within 90 days after the board funding meeting.

Salmon Recovery Funding Board Projects

To help ensure timely completion of combination projects, Salmon Recovery Funding Board projects must acquire properties within 18 months of the funding meeting.

Joint and Cooperative Projects

Some projects may have two or more sponsors. For example, a joint project could be where two or more agencies team up to provide financial support for a project or to each own specific parcels acquired as part of the project. The Recreation and Conservation Funding Board and Salmon Recovery Funding Board encourage such cooperation. In such cases, RCO may ask applicants to complete the following:

- Sign the RCO application and project agreement. All parties must meet eligibility requirements to be co-sponsors on the application and project agreement.

And

- Comply with the [Interlocal Cooperative Act](#)⁶ or execute an agreement, policy statement, or resolution. All must certify the following:
 - Which of the parties is the primary sponsor. If the grant program requires planning eligibility, all parties must have RCO planning eligibility.
 - The roles and responsibilities of each party.

⁶Revised Code of Washington 39.34

- Local community officials were involved in planning the joint use of all facilities.
- The project will provide for community-wide, public, outdoor recreation or habitat conservation on at least an equal basis with other needs.
- The project will be available at times when normally it would be most in demand by the public for recreation.
- Signs will clearly identify the site's availability for general public recreational use.
- Facility scheduling is through either the community's established recreation entity or a joint committee composed of representatives of the recreation entity and other appropriate parties to the agreement. This is intended to assure adequate availability to the public during appropriate times of the year.
- Maintenance and operation or monitoring responsibilities of each agency or organization

A draft of any agreement, policy statement, or resolution prepared must be submitted to RCO by the technical completion deadline. A signed agreement is required before RCO will execute a project agreement.

Partnerships⁷

Two or more eligible sponsors may apply for a grant together when they are working in partnership to buy property.

Sponsors that plan to buy property before receiving a project agreement must request a Waiver of Retroactivity in advance of the purchase.

The minimum matching share required in the application is determined by who will own the property when the project is complete.

Regardless of how partnerships are formed, only property acquired from an owner who is not eligible to receive funds in the grant program may be included in the grant application. The board's acquisition policies and procedures, including appraisal requirements, offers of just compensation, and relocation benefits, apply to the property owner who is not eligible to receive funds.

⁷Recreation and Conservation Funding Board Resolutions 2016-13 and 2017-31

When multiple eligible sponsors partner, all sponsors that will acquire property in the project, including property donated or used as match, must be included as applicants in the grant application.

Projects at Public Schools

Public outdoor recreation areas and facilities for coordinated use by the public and by public schools are eligible provided they are not part of the normal and usual program responsibilities of the school administration. This does not preclude exclusive school use of certain facilities such as athletic fields, tennis courts, and playgrounds at certain times for instruction or competition provided the public outdoor recreation use remains primary, and there is adequate public access at other times.

Applicants must include in the grant application a schedule that shows when the facility will be available to the public. Additionally, grant recipients must install adequate signs at the site indicating when the outdoor recreation facilities are available to the public, before requesting final payment on the project.

Firearm and Archery Range and Course Safety Policy⁸

RCO does not certify ranges or courses as being safe. However, RCO does require range and course facilities funded by the Recreation and Conservation Funding Board to be acquired, planned, designed, operated, and maintained to contain bullets, shot, arrows, and other projectiles on the property and to minimize noise impacts to nearby properties. All funded projects that directly benefit shooting activities or noise and safety abatement must be constructed to contain all projectiles. Depending upon the type of facility, the design must meet guidance published by the National Rifle Association, National Field Archery Association, or the Archery Trade Association.

Projects using guidance from the Archery Trade Association, must meet the following standards:

- Projects must be acquired, planned, designed, operated, and maintained to ensure projectiles do not leave the range property the sponsor has demonstrated its control and tenure over.
- All safety buffer zones must be on property the sponsor has demonstrated its control and tenure over.

To determine whether a project meets this policy, projects that directly benefit shooting activities and noise and safety abatement must be evaluated by a certified advisor from one of the associations identified above or a professional engineer or other qualified

⁸Recreation and Conservation Funding Board Resolution 2016-21

professional consultant with experience and expertise in the evaluation and design of ranges and courses. Project sponsors must provide documentation of the project's evaluation by one of the above reviewers before receiving reimbursement from RCO. Costs associated with meeting this requirement are eligible administration expenses in the grant.

For range and course safety policy certifications, evaluations, and reports, RCO limits the number eligible for reimbursement to two—one at design and one at project completion. The RCO director may approve reimbursements for additional certifications, evaluations, and reports on a case-by-case basis.

Eligible Project Costs

Only eligible acquisition costs can be reimbursed by RCO and used by the project sponsor as a match for a grant.⁹ Eligible acquisition project costs include administrative, incidental, and property costs. See *Manual 8, Reimbursements* for more details on the reimbursement process.

Administrative Costs

Eligible project administrative costs include direct costs related to acquiring the property. These include the following:

- Advertising
- Attorney fees—document review and drafting, clearing title, and other project related work.
- Billing preparation
- Communication
- Consultation
- Contract award
- Correspondence
- GIS mapping
- Meetings
- Negotiations
- Progress report preparation
- Project administration
- Public hearings
- Room rental
- Salaries and benefits
- Site visits
- Taxes (administrative goods and services)
- Travel costs to site and meetings

⁹Recreation and Conservation Funding Board Resolution 2010-34

Administrative costs are limited to no more than 5 percent of the total costs of the property and incidental costs combined. RCO may approve a request to pay up to 10 percent administrative costs on a case-by-case basis. Increases above 10 percent require Recreation and Conservation Funding Board or Salmon Recovery Funding Board approval. To request an increase above 5 percent, the sponsor must provide a letter to RCO addressing the following:

- What amount of administrative cost is requested?
- Why is the additional administration costs needed?
- What has been accomplished to date? Provide specific information about the status of property negotiations.
- How will the additional administrative expenses impact the project scope? Will the original scope of work still be completed?
- What is the updated project completion timeline?

Administrative costs are not eligible in the **Land and Water Conservation Fund** Program.

Property Costs

Direct costs for the purchase of real property or property rights are eligible. These include fee ownership and less-than-fee ownership costs.

Fee ownership costs include land, shore land, tideland, improvements, and structures. Fee acquisitions also may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will further support the protection of the property for public purposes.

Less-than-fee ownership costs may include easements, leases, and separate property rights such as development, minerals, timber, or water rights, depending upon the specific program.

Property costs are established by conducting an appraisal to determine just compensation (i.e. market value) to the landowner. The appraised value must be confirmed by an independent appraisal review. See the section on Appraisal and Appraisal Review for more details on appraisal requirements.

Acquisition for More than the Appraised Value

RCO reimburses for property costs based upon the property's appraised value confirmed by an appraisal review. The appraised value is the just compensation for purchase of the property and the amount eligible for RCO funding and sponsor matching share. If

negotiations with the property owner establish a higher price, the project sponsor may agree to pay a higher price and only seek reimbursement from RCO based upon the appraised market value.

In limited circumstances, RCO may approve paying up to 10 percent more than the appraised market value of the property. Approval to pay more than the appraised market value is not approval for additional grant funds or a grant cost increase. It allows RCO to reimburse at the higher approved purchase price. Approvals are made on individual properties, not for the entire scope of a project. The Recreation and Conservation Funding Board or Salmon Recovery Funding Board must approve requests for reimbursement above 10 percent of the appraised market value.

A project sponsor must request approval to pay more than the appraised market value before closing on the property. RCO will not approve a request to pay above the appraised market value if the request is submitted to RCO after the project sponsor has closed on the property. The written request must address the questions below and include a copy of the appraisal, appraisal review, and draft Purchase and Sale Agreement or option agreement.

- What was the appraised value of the property?
- What is the proposed purchase price?
- Explain how the appraised value may not reflect the property's market value. Include adequate market data to substantiate the purchase price.
- How far back in time or how far afield did the appraiser need to go to find comparable values? Were there adequate comparables readily available?
- Did any of the comparables include other RCO or public or private conservation or park acquisitions?
- Are there any proposed interim land uses on the property?
- How will the additional property expense impact the project scope? Will the original scope of work still be completed even if a higher purchase price is approved?
- Are there alternative properties in the project agreement that could be pursued or is this project unique in some way (e.g. specific park location, wildlife species nesting area on site, sensitive plant species on site, etc.)?

When considering whether to pay above the appraised market value, RCO considers both the negotiated price and appraised market value in establishing its reimbursement and grant amount.

If RCO denies approval to pay above the appraised market value, the project sponsor may pay the higher price at its own expense and the amount is not eligible for RCO funding or as sponsor match.

Incidental Costs

Incidental costs are those costs incurred when purchasing land or property rights such as conducting due diligence investigations and closing on the transaction. Once an incidental item has been completed, the final document (e.g. appraisal, environmental assessment, relocation plan, etc.) must be submitted along with the invoice requesting reimbursement of the incidental cost item. Electronic documents are preferable.

The following are eligible incidental costs in an acquisition project:

- Appraisal and appraisal review—one per property
- Baseline documentation—conservation easements only
- Boundary line adjustments, lot line adjustments, and subdivision exemptions
- Closing fees
- Cultural resources¹⁰ (survey, excavation, on-site monitoring, data recovery, and other costs)
- Demolition of ineligible structures
- Fencing
- Environmental audits, chain of title reports, and site investigation such as test pits, test wells, and sample analysis (limited to 10 percent of the appraised market value of the property)
- Environmental audit recommendations that do not trigger formal cleanup action but will improve the condition and safety of the property such as debris removal, well decommissioning, non-hazardous (below Model Toxics Control Act cleanup levels) contaminated soil removal, and other recommended action items
- Land survey (i.e. property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with an RCO grant.

¹⁰Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

- Noxious weed control (initial control, up to \$175 per acre or \$3,500 per property for properties less than 20 acres).¹¹
- Recording fees
- Relocation for eligible displaced tenants only when the property is acquired from a willing seller (including administration). See the section on acquisition procedures and information on relocation for specific requirements and eligible costs.
- Relocation for eligible displaced residents and tenants when the property is acquired through condemnation (including administration). See the section on relocation for specific requirements and eligible costs.
- Signs—boundary, entrance, notices, rules, etc.
- Stewardship Plans—salmon recovery grants and Washington Wildlife and Recreation Program Habitat Conservation Account (except State Lands Restoration) and Farm and Forest Account projects only.
- Taxes due at closing (compensating, excise, and pro rata taxes). Delinquent taxes owed on a property before the date acquired are eligible costs on a case-by-case basis with pre-approval from RCO.
- Title reports and insurance—extended title insurance may be approved on a case-by-case basis
- Wetland delineations

Incidental costs are limited in the **Land and Water Conservation Fund** program and only include:

- Relocation and relocation administration allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies, P.L. 94-646.
- Cultural resources (survey, excavation, on-site monitoring, data recovery, and other costs)
- National Environmental Policy Act compliance (e.g. environmental audits, wetland delineations, biological surveys, etc.)

¹¹Recreation and Conservation Funding Board Resolution 2018-06

Pre-Agreement Costs

Pre-agreement costs are project costs incurred before fully executing a project agreement. Some administrative and incidental costs are eligible pre-agreement costs if incurred up to 3 years before the start date of the project agreement. Note: This time limit may be adjusted for properties acquired under a Waiver of Retroactivity.

Pre-agreement costs are limited to the following:

- Administration costs
- Incidental costs limited to:
 - Appraisal and appraisal review (must meet the appraisal shelf life requirements in Section 5)
 - Baseline documentation—conservation easements only
 - Boundary line adjustments, lot line adjustments, and subdivision exemptions
 - Cultural resources¹² (survey, excavation, on-site monitoring, data recovery, and other costs)
 - Environmental audits as described in this manual
 - Land survey (i.e. property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with an RCO grant.
 - Preliminary title reports
 - Relocation administration
 - Stewardship plans—salmon recovery grants and Washington Wildlife and Recreation Program Habitat Conservation Account (except State Lands Restoration) and Farm and Forest Account projects only
 - Wetland delineations

All pre-agreement costs incurred must adhere to the requirements in this manual for the costs to be eligible for RCO funding or used as sponsor match. For example, project

¹²Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

sponsors must ensure that incidental items such as appraisals, cultural resources review, and relocation costs meet the policies in this manual.

Escrow Payments

Although RCO grants operate on a reimbursement basis, RCO can deposit money in an escrow account for a pending acquisition as long as certain conditions are met. RCO requires a minimum of 30 days to process an escrow payment. Contact RCO early to begin the escrow payment process. Once an escrow payment is approved, it can take 3 to 7 business days for the funds to be received in escrow.

A project sponsor must request an escrow deposit by starting a new billing in PRISM Online and completing all screens required for an escrow payment. The following documents must be attached to the project and associated with the property for which you are billing:

- The Voluntary Acquisition Notice and the Just Compensation and Relocation Notice.
- Landowner donation statement, if applicable.
- A legally binding agreement between the project sponsor and the landowner, typically a Purchase and Sale Agreement or an Option Agreement.
- A copy of the Buyer's Estimated Settlement Statement with evidence showing that the project sponsor's matching share has been deposited into the escrow account.
- Escrow payment instructions that include reference to recording RCO's Deed of Right or Assignments of Rights, as applicable.
- The draft transfer deed, easement, or lease.
- The draft Deed of Right (for fee title acquisitions) or Assignment of Rights (for easements and leases).
- Baseline inventory (for conservation easements only).
- An updated preliminary title insurance report, if not previously provided.
- Appraisal and appraisal review.
- Hazardous Substances Certification and supporting checklist or environmental audit. (Not required for projects funded in the **Washington Wildlife and Recreation Program's Farm and Forest Account.**)

Once RCO deposits grant funding into the escrow account, closing must occur within 30 days or RCO may request the funds be returned. After the transaction is complete, a copy of the executed and recorded conveyance document, recorded Deed of Right or Assignment of Rights, and final title insurance policy, naming the sponsor as legal owner, must be provided within 60 days of closing.

Waiver of Retroactivity Buying Land Without a Signed RCO Project Agreement

In most situations, RCO will reimburse only for expenses incurred after the project agreement is executed fully (except for eligible pre-agreement costs). However, a project sponsor may get advance approval in writing from RCO to purchase a property and preserve eligibility of land acquisition and other incidental costs incurred before the project agreement is executed. The approval is called a Waiver of Retroactivity, which waives the prohibition to reimburse costs incurred before the project agreement.¹³ All acquisition costs that would be eligible during the project agreement period become eligible for reimbursement when a Waiver of Retroactivity is issued (not just pre-agreement costs).

A project sponsor must request a Waiver of Retroactivity before acquiring property that will be the subject of a new grant application, including property that will be used to satisfy the sponsor's matching share. One Waiver of Retroactivity is issued per property and may be used by any eligible project sponsor in the grant program. The waiver may be requested only when immediate action is necessary and the grant won't be awarded in time. When a waiver is approved, it authorizes the project sponsor to acquire the property in advance of a signed project agreement without forfeiting eligibility to receive grant funding for the project. Approval of a waiver does not guarantee funding. When approved, a waiver is good for two consecutive grant cycles from the date of acquisition depending upon the grant program.

To request a Waiver of Retroactivity, a project sponsor must submit the following:

- A written request with a justification regarding the critical need to purchase property
- Location map
- Parcel map
- Landowner Acknowledgement Form
- Voluntary acquisition notice

¹³Washington Administrative Code 286-13-085

- Preliminary title report
- Preliminary Title Report and Commitment checklist
- Landowner donation statement, if applicable
- Documentation that shows compliance with the “local jurisdiction review and conferral” policy (see Section 3). This applies to Washington Wildlife and Recreation Program applicants only.

RCO may request additional documentation for review of the request. The project sponsor also may submit the appraisal, review appraisal, and other incidental documents for RCO review, if available. The request must be submitted before closing on the property, preferably at least 30 days in advance.

In the **Land and Water Conservation Fund** program, RCO must obtain approval from the National Park Service before issuing a Waiver of Retroactivity so sufficient time is needed for federal and state approval. See more details in *Manual 15, Land and Water Conservation Fund*.

Project sponsors compelled to acquire property before securing a project agreement, do so at their own risk. Be aware, if a grant is not awarded, RCO will not reimburse any expenses. Should a grant subsequently be awarded to acquire the property, all applicable policies in this manual must be met to receive reimbursement or to use the acquisition costs as match toward a grant award. For example, the title must be free of encumbrances that limit the value or uses on the property disproportionately to the public benefit, relocation, and cultural resource review must be completed, if appropriate, and the appraisal must be conducted to the appropriate standards.

In addition, costs associated with less-than-fee title property rights must meet the terms as outlined in this manual. For example, a conservation easement or lease must be assignable to RCO. Project sponsors considering a less-than-fee title acquisition and planning to seek RCO grants should consult RCO about less-than-fee title requirements.

Because RCO is a signature party to the **agricultural conservation easement**, RCO must sign the easement before closing. Remember to build in adequate time for RCO document review, and to consult with RCO on easement wording while still in draft form. In cases where an easement is being acquired while RCO funding still is pending, a clause can be inserted into the easement agreeing to amend RCO out of the easement if funding is not received.

Ineligible Projects

The funding boards’ program manuals contain specific information about ineligible land acquisition elements. Ineligible land acquisitions are not eligible for funding and as such

cannot be used to fulfill a sponsor's match to a funded project. The following is meant to provide broad guidance in this area. Grants may not be used to acquire the following:

- Property in a project submitted to more than one grant program, except Recreation and Conservation Funding Board grants used as match (Recreation and Conservation Funding Board policy only).
- Property or property rights already owned by an eligible sponsor, unless the property meets the eligibility requirements described in the [Acquisition of Existing Public Property](#) section or the [Buying Land Without a Signed RCO Project Agreement](#) section in this manual.¹⁴
- Land to be used in support of indoor activities. This applies equally to existing buildings and undeveloped land where major indoor facilities will be built. Exceptions vary by grant program. See program manuals for a list of indoor facilities that may be allowed in the program.
- Land with museums, or sites to be used for museums.
- Land to be used primarily for semi-professional and professional activities, such as arts and athletics.
- Land with sufficient revenue producing potential to finance the project's cost.
- Land where exclusive use privileges will be leased, such as boat moorage or storage or a membership golf course.
- Land to be used solely for hatchery style fish production.
- Established outdoor recreation areas developed under ownership or management of a public agency.
- Land to mitigate the impact of a non-RCO assisted project, project element, or action of the project sponsor.
- Development rights for transfer to a receiving property.¹⁵
- Land that is contaminated per Model Toxics Control Act unless it meets one of the exceptions in the Hazardous Substances Certification section in this manual.¹⁶

¹⁴Recreation and Conservation Funding Board Resolution 2016-13 and 2017-31

¹⁵Recreation and Conservation Funding Board Resolution 2010-34

¹⁶Washington Administrative Code 420-12-090

- Land donated by a third party in lieu of mitigation fees, permit fees, and impact fees required for a development.¹⁷ See the Land Donations section in this manual for more details.
- Property through condemnation per Chapter 8.26 Revised Code of Washington or the threat of condemnation is prohibited in the salmon recovery grant program¹⁸ and the Washington Wildlife and Recreation Program.¹⁹
- Property to satisfy a conversion.
- Transfer of development rights. Development rights acquired under the Farm and Forest Account of the Washington Wildlife and Recreation Program may not be transferred to other property.

Acquisition of Existing Public Property

In general, property that already is under public ownership or management is not eligible for RCO grant funding. (See the Ineligible Projects section.) Land held by a tribal government is not considered public land. There is one exception to this policy that allows existing public property to be eligible for RCO grant funding, if all the following conditions are satisfied:

- State law requires that the agency selling the land must receive compensation.
- The land was not originally acquired by the selling agency for habitat conservation (for habitat conservation proposals), salmon habitat recovery (for salmon habitat recovery proposals), or recreation use (for outdoor recreation proposals).
- The land has never been publicly managed for habitat conservation (for habitat conservation proposals), salmon habitat recovery (for salmon habitat recovery proposals), or recreation (for outdoor recreation proposals).

State law²⁰ provides for the transfer of land from one public body to another without the requirement of full value compensation. Therefore, a project sponsor must provide other statutory evidence that the selling agency must receive compensation for the property. For example, state law²¹ requires full value compensation of land when a local government transfers property from one department to another, and another state law²² requires irrigation districts to receive reasonable market value in certain transactions.

¹⁷Washington Administrative Code 420-12-090

¹⁸Washington Administrative Code 420-12-090

¹⁹Revised Code of Washington 79A.15.090

²⁰Revised Code of Washington 39.33

²¹Revised Code of Washington 43.09.210

²²Revised Code of Washington 87.03.136

For projects in the **Land and Water Conservation Fund**, the property must be acquired under a Waiver of Retroactivity and meet only the first two criteria above.

Contract or Installment Sales

RCO will not financially assist property bought on a contract or installment basis if the contract period exceeds the project agreement period. Full payment must be made to the seller within the project agreement period. This ensures that the sponsor meets both the following two conditions:

- Has clear ownership of the property.
- Can meet the Deed of Right requirements, that is, convey use of the property to the state forever, for outdoor recreation, salmon recovery, or habitat conservation purposes.

RCO recognizes that this may be an obstacle when buying from an owner who, for tax reasons, wants to sell on a multi-year installment or contract basis only. Private non-profit land trusts may offer a solution to this problem for state or local agencies by acting as an intermediary to the transaction. For example, the land trust may contract to purchase the property on a seller-financed basis with note payments scheduled according to the seller's tax needs. The land trust then sells the property to the sponsoring agency on a lump sum basis, while retaining liability for the note payments.

If the seller so requests, the land trust may provide collateral in several ways other than using the property itself. For example, the trust could arrange for a letter of credit in favor of the seller to secure the note. An alternative is for the trust to purchase a certificate of deposit, which can be assigned to the seller for security purposes. Normally, either of these cash collateral methods of security is acceptable to sellers. Both would result in the acquisition of the land free of purchase money encumbrances.

These procedures are suggested only to broaden the options of project sponsors as they seek to acquire property with RCO funds.

Ineligible Sponsors, Activities, and Costs

Ineligible Project Sponsors

Eligible project sponsors vary by grant program except federal agencies are not eligible for land acquisition grants. Federal agencies may receive title to lands acquired with Salmon Recovery Funding Board grants in certain circumstances.²³ (Consult *Manual 18*,

²³Revised Code of Washington 77.85.130(7)

Salmon Recovery Grants on specific criteria related to transferring land to a federal entity in that program.

Ineligible Activities and Costs

RCO funds and sponsor matching money may not be used for costs peripheral to buying land or property rights. Ineligible costs include, but are not limited to the following:

- Annual property taxes beyond the pro rata taxes due at closing
- Bonus payments
- Ceremonial or entertainment expenses
- Costs associated with fundraising activities
- Costs associated with meeting a mitigation requirement for another project or action (e.g. permit requirement, Federal Energy Regulatory Commission relicensing, Habitat Conservation Plan, legal settlement, etc.)
- Costs of preparing any grant application
- Court costs
- Damage judgments arising out of acquisition, construction, or equipping of a facility, whether determined by judicial decision, arbitration, or otherwise
- Deficit and overdraft charges, fines, penalties, interest expenses
- Donations or contributions made by the sponsor, such as to a charitable organization or for organizational memberships and professional affiliations
- Earnest money
- Fees for feasibility studies
- Indirect costs²⁴ and costs not directly related to implementing the project such as overhead charges
- Landowner liens and lien fees
- Lobbying or legislative activities
- Monitoring costs related to long-term compliance (i.e. conservation easements)

²⁴Indirect costs are allowable in some programs funded with federal dollars. Check individual grant policy manuals.

- Option payments
- Publicity expenses (except legal requirements for public notices related to bids, etc.)
- Purchase of personal property including movable machinery and equipment
- Retroactive costs incurred before execution of the project agreement. See pre-agreement cost information for exceptions.
- Taxes for which the organization involved would not have been liable to pay
- Value of discounts not taken
- Value of personal property, unless specifically approved in advance by Recreation and Conservation Funding Board or the Salmon Recovery Funding Board

Other Eligibility Requirements

Public Access

In most cases, regardless of whether the property is developed, all property acquired in fee title with RCO grants must be available for public use. Public use means that the general public has regular access and use of property acquired with RCO grants. Where appropriate, public use may be limited to non-motorized access only or as allowed by the grant program from which funding was derived or as defined in the project agreement.

Providing public use to the site does not mean that developed facilities must be provided. Project sponsors must immediately dedicate lands acquired with RCO grants to public use even in the period between acquisition and any planned development or restoration. Use of undeveloped or partially developed properties may be restricted; however, total exclusion of the general public must be avoided. RCO may approve a request to restrict the public's use of a property to protect sensitive natural areas, salmon habitat recovery areas, critical habitats, or cultural resources.

Legal Access

In most cases, all property acquired in fee title with RCO grants must have direct legal access to the property. Legal access is important for property management, public access, and RCO compliance and inspection purposes.

For all RCO acquisition projects, the legal access requirements are as follows:²⁵

²⁵Recreation and Conservation Funding Board Resolution 2010-34

1. **Legal Access.** Public access requirements in this manual include legal access to the land. If RCO waives the requirement to provide public access on a fee title acquisition, the property must have direct legal access for the property to be managed by the project sponsor and RCO to conduct its compliance inspections.

Legal access to a property means the project sponsor has the legal, insurable right and means to reach the property year-round. For properties surrounded by water (i.e. islands), legal access must be obtained across shore lands, tidelands, or bed lands as appropriate.

Legal access must provide sufficient access rights for RCO to monitor compliance for which the grant funding was provided and for the project sponsor to maintain the property.

2. **Informal Access.** If the project sponsor cannot obtain legal access rights to the property as above, informal access may be pre-approved by RCO if all three of the following conditions are met:
 - A. An informal access route exists:
 - i. The project sponsor owns the adjacent property and can access the RCO-funded property from the project sponsor's existing property holding; or
 - ii. Access to the property can be accomplished through existing public land
 - B. RCO will be able to conduct compliance inspections with minimal burden to get to the property
 - C. The appraised value reflects a lack of legal access to the property.
3. **No Access.** If the project sponsor cannot obtain legal access or demonstrate informal access by one of the above means, RCO, under limited circumstances, may approve acquisition of property without any means of access on a case-by-case basis if all three following conditions are met:
 - A. All reasonable alternatives have been exhausted.
 - B. The property to be acquired is critical to implementation of the project agreement.
 - C. The appraised value reflects a lack of legal access to the property.

Existing Structures

All structures on property acquired with RCO grants must be removed or demolished unless RCO determines the structure is allowed by program policy and will support the intended uses at the site. Allowable structures vary by program. Consult the appropriate program policy manual for guidance on allowable structures. New proposed uses of structures must be reviewed by RCO per the requirements in *Manual 7, Long-term Obligations*.

Before demolition or removal of any structure or any ground-disturbing activity, a project sponsor must comply with cultural resources review requirements in this manual under the Cultural Resources Review section.

If a project sponsor wishes to retain a structure that exists on the property, the intended use of the structure must be clearly identified in the grant application. RCO then will determine whether the structure is eligible to be retained per the specific grant program policies. If allowed, discussion of the structure's purpose and use must be included in the evaluation process.

If a project sponsor wishes to retain a structure that is not eligible for RCO grant funding, then the structure and associated land and support facilities must be excluded from the grant proposal. See the Project Scoping section for more details on how to exclude areas from the scope of an RCO project.

Land Donations

Property acquired at less than its appraised market value is eligible for RCO grants as a land donation from the seller. The land donated must meet program eligibility requirements. The land donation transaction must follow the Acquisition Procedures section in this manual and provide all the required documentation including appraisal, appraisal review, hazardous substances certification, title insurance, etc. Transaction costs associated with acquiring donations of land are eligible grant expenses.

If the property is acquired at less than the appraised market value, the project sponsor must provide a Purchase and Sale Agreement or obtain a statement signed by the landowner acknowledging that before the sale, the owner met all of the following conditions:

- Was provided a statement of just compensation that identifies the appraised value of the property including land, improvements, and relocation.
- Is donating all or a portion of the value of the property voluntarily, as an act of free will.

The landowner donation statement must be provided at the time the project sponsor requests reimbursement from RCO.

In general, donations of land in lieu of mitigation fees, permit fees, and impact fees, or dedication of land as a requirement of a permit approval for third party related development impacts are not eligible donations of land for RCO grant purposes and may not be used as sponsor match. Land value in excess of the land donation required by the mitigation, permit, or impact fee requirement is eligible as sponsor match.

Interim Land Uses

Sometimes a landowner or lessee may wish to retain certain uses on a property as part of a negotiation with a project sponsor to acquire a property. Certain uses may be allowable with prior RCO approval. A project sponsor must request approval for an interim land use before closing on the property and taking ownership.

RCO may approve certain land uses on an interim basis to allow the landowner or lessee an opportunity to continue use of the land as described below.

Pre-Existing Second Party Use

A secondary party use is a use that was occurring on the land before the property was acquired by the project sponsor and the landowner or lessee wishes to continue that use after the property is acquired with RCO grants. The secondary party may be the landowner who sold the property to the project sponsor or another party with existing rights.

RCO may approve a second party use when all of the following conditions are met:

- The use is a *continuing* second party use. The use already is occurring on the land at the time the property is acquired.
- The use does not unreasonably limit public use or the achievement of the purpose of the RCO project agreement or RCO funding program.
- The second party's use will be phased out within 3 years of the date of acquisition. If the use will proceed longer than 3 years, it must be reviewed under the compatible use policy in this manual.
- Use of any income derived from the second party use is consistent with the RCO income policy in *Manual 7: Long-Term Obligations*.²⁶

²⁶Recreation and Conservation Funding Board Resolution 2010-34

For **Land and Water Conservation Fund** projects only, RCO may withhold a percentage of the grant until the secondary party use ceases based upon an amount determined by the National Park Service.

Life Estates

A life estate is a real property interest in the form of a reservation on the deed that is held for the duration of a person's life. RCO may approve a life estate when all of the following conditions are met:

- The life estate does not unreasonably limit public use or achievement of the purpose of the RCO project agreement or RCO funding program.
- The life estate is for the owner(s) of the property only, not for successive generations.
- The impact of the reservation of the life estate is addressed in the valuation of the property. Appraisers must treat a life estate as an encumbrance.
- The terms or covenants of the life estate have been reviewed and accepted by RCO.²⁷

Cultural Resources

Governor's [Executive Order 21-02](#), Archaeological and Cultural Resources, directs state agencies to review certain acquisition and construction projects for potential impacts to cultural resources²⁸ to ensure that reasonable action is taken to avoid adverse impacts to these resources. The federal government, through Section 106 of the National Historic Preservation Act, requires the same compliance for federally funded projects and projects with other federal involvement, for example, projects on federal lands or those that require a federal Army Corps of Engineers permit.

RCO facilitates review under the Governor's executive order. The appropriate lead federal agency facilitates review under Section 106 of the National Historic Preservation Act. If the federal review covers the entire RCO project area, there is no additional review required to meet state requirements. Both processes require review, analysis, and consultation with the Washington Department of Archaeology and Historic Preservation and affected Native American tribes for archaeological and cultural resources.

Cultural resources review is not required for acquisition-only projects funded in the **Washington Wildlife and Recreation Program's Farm and Forest Account**. Cultural

²⁷Recreation and Conservation Funding Board Resolution 2010-34

²⁸Cultural resources means archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to affected tribes.

resources review is required for projects that include ground-disturbing activities such as demolition, fencing, or restoration elements.

21-02 Review Process

Using materials from the grant application, RCO submits project information to the Department of Archaeology and Historic Preservation and affected Native American tribes to determine if the project has the potential to damage cultural resources and whether consultation will be required. The materials provided include the Area of Potential Effect Map, which shows the geographic areas where a project may change directly or indirectly the character or use of historic properties or archaeological resources.



Important Note: Grant recipients may not disturb the ground within the project area until after receiving a notice to proceed from RCO, which sometimes might be in the project agreement with RCO.

Except for state agency applicants (see below), all consultation through Executive Order 21-02 will be initiated and led by RCO and will involve the applicant, Department of Archaeology and Historic Preservation, and affected tribes. The outcome of the consultation may require an applicant to complete a cultural resources survey and a continuation of the consultation to determine next steps. The consultation must be completed before any ground-disturbing activities may occur.

The costs for cultural resources review and survey are eligible for reimbursement and may be included in the grant agreement.

Federal Section 106 Review

If a federal nexus exists (federal funding, federal land, or issuance of a federal permit) then the project may be subject to review under Section 106 of the National Historic Preservation Act, and would be deemed exempt from Governor's Executive Order 21-02. The grant sponsor must submit to RCO evidence of completion of the Section 106 consultation.

If Cultural Resources are Discovered during Construction

If archaeological or historic materials are discovered after ground-disturbing activities have started, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following groups:

- Concerned Native American tribes' cultural resources staff and cultural committees
- RCO

- Department of Archaeology and Historic Preservation

If human remains are discovered during ground-disturbing activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the groups listed below in the most expeditious manner possible, in compliance with state law.²⁹

- Concerned Native American tribes' cultural resources staff and cultural committees
- RCO
- Department of Archaeology and Historic Preservation
- County coroner
- Local law enforcement

State Agencies

State agency sponsors have the authority to act as lead for ensuring compliance with archaeological, historic, and cultural resource requirements. RCO will not initiate review or consultation for projects sponsored by another state agency. Before initiating any ground-disturbing activities, the state agency sponsor must submit to RCO evidence of completion of the appropriate cultural resource review process and receive from RCO a notice to proceed. RCO will withhold reimbursement of grant funds for any development or restoration (including demolition, fencing, and noxious weed control) expenditures until this requirement is met.

Stewardship Plans

All **salmon recovery grant** acquisition projects funded by the Salmon Recovery Funding Board require a stewardship plan. The plan ensures the project will meet its objectives in perpetuity through continued maintenance and monitoring of the site. Consult *Manual 18, Salmon Recovery Grants*, for specifics on what the stewardship plan must include.

Stewardship plans also are encouraged, but not required, for property acquired with grants from the **Washington Wildlife and Recreation Program's Habitat Conservation Account and Farm and Forest Account**. Consult *Manual 10b, Washington Wildlife and Recreation Program Habitat Conservation Account*, *Manual 10c, Forestland Preservation*, or *Manual 10f, Farmland Preservation* for specifics on what the stewardship plan must include.

²⁹Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (Revised Codes of Washington 68.50.645, 27.44.055, and 68.60.055)

Invasive Species

Invasive Species

The Washington Invasive Species Council developed protocols for preventing the spread of invasive species while working in the field. The [protocols](#) are on the council's Web site. RCO encourages grant recipients to consider how their projects may spread invasive species, and work to reduce that possibility. Invasive species can be spread unintentionally during construction, maintenance, and restoration activities. Here is how it could happen:

- Driving a car or truck to a field site and moving soil embedded with seeds or fragments of invasive plants in the vehicle's tires to another site. New infestations can begin miles away as the seeds and fragments drop off the tires and the undercarriage of the vehicle.
- Working in streams and moving water or sediment infested with invasive plants, animals, or pathogens from one stream to another via your boots, nets, sampling equipment, or boats.
- Moving weed-infested hay, gravel or dirt to a new site, carrying the weed seeds along with it, during restoration and construction activities. Before long, the seeds germinate and infest the new site.

The key to preventing the spread of invasive species is twofold: Use materials that are known to be free of invasive plants or animals in the project and ensure equipment is cleaned both before and after construction and restoration. Equipment to clean should include, but not be limited to, footwear, gloves, angling equipment, sampling equipment, boats and their trailers, and vehicles and tires.

Section 3:

Application Requirements

In this section you'll learn about the following:

- ✓ Project scoping
- ✓ Landowner acknowledgement of application
- ✓ Local jurisdiction review and conferral

Project Scoping

When applying for a grant, the project sponsor should identify clearly the intended uses of the property to ensure those uses are eligible or compatible with the RCO funding. If the project sponsor wishes to use portions of the property for ineligible grant activities, such as keeping ineligible structures or unallowed uses as described in Sections 2 and 7 of this manual, the project sponsor must consult with RCO when applying for grants or before acquisition.

RCO can work with the project sponsor to exclude areas intended for ineligible grant activities from its Deed of Right or Assignment of Right and the project agreement. Delineate the area clearly by a survey or legal description and value in the appraisal process. The Deed of Right must include a legal description of the area that will remain in the RCO-funded portion of the project.

Establish the appraised value of the area excluded either through a separate appraisal or appraisal update, or by calculating the property value with the existing appraisal information. Consult RCO about negotiating the area to be excluded and the appropriate method for valuing the property.

Landowner Acknowledgement of Application

As part of any grant application for acquisition of real property, the project sponsor must demonstrate that the landowner is aware of the project sponsor's interest in purchasing his/her property. To accomplish that, the project sponsor must complete one of the four

options below for each landowner. The acknowledgement must identify which parcels are being considered.

For stream reach or landscape-scale acquisition projects with multiple properties, include at a minimum, the landowner acknowledgement for the top three priority parcels.³⁰

- Option 1—Submit a Landowner Acknowledgement Form in Appendix H of this manual.
- Option 2—Submit evidence of some other previous communication instead of the form. Evidence (e.g. letter, option agreement, or Purchase and Sale Agreement) must demonstrate that the current landowner was contacted and has been made aware the project sponsor is interested in purchasing the property.
- Option 3—Submit a copy of a letter to the current landowner that notifies him/her that the project sponsor is interested in acquiring the property and is submitting a grant application to the funding board.
- Option 4—Submit an affidavit from the project sponsor's chief executive to RCO that states the landowner has been contacted but wishes to remain anonymous. An affidavit is a written statement of facts made by the chief executive officer under an oath or affirmation administered by a notary of the public, court clerk, recording officer, or other authorized public officer.

Landowner acknowledgement documentation may be stored in RCO's grant application online database (PRISM) and restricted from public view or within the project file at RCO. However, such information would be subject to disclosure should a public disclosure request be filed. See "Public Disclosure Rules" in Section 7 for more information.

Reviewing Your Project with the Local Jurisdiction³¹ (Washington Wildlife and Recreation Program Only)

Before applying for a grant to acquire property in the Washington Wildlife and Recreation Program, applicants must review the proposed project application and confer with the county or city with jurisdiction over the project area. The applicant must then provide documentation that it has conferred with the local county or city officials. The jurisdiction's legislative authority may submit a letter to the Recreation and Conservation Funding Board stating its support or opposition of the project. The board shall make the letter available to the Governor and the Legislature when submitting its prioritized project list as part of RCO's biennial capital budget request.

³⁰Recreation and Conservation Funding Board Resolution 2010-34

³¹Revised Code of Washington 79A.15.110

To meet this requirement, the applicant must demonstrate that the conferral³² process has begun by providing each member of the county commission or city council with a packet including all of the following information:

- A cover letter referencing Revised Code of Washington 79A.15.110 along with a request to confer with city or county officials about the project. The letter must state the option for the county or city to send a letter to the Recreation and Conservation Funding Board stating its position on the project.
- The project description as it will be submitted in the grant application.
- A location map and parcel map of the proposed acquisition properties.
- The geographic envelope of the proposed project if the applicant is pursuing a multi-site acquisition strategy.

A copy of the packet must be attached to the project application in PRISM before the application deadline.

The applicant also must document that the conferral process took place. The documentation must include all of the following:

- Conferral dates.
- Name and title of each person participating in the conferral process and their relevant organization.
- A list or map of acquisition properties under consideration.
- A list of the county or city official's key questions or concerns.
- A description of any project revisions resulting from the conferral process.
- A summary of any relevant follow-up actions.

A copy of the documentation must be attached to the project application in PRISM before the technical completion deadline.

A local government proposing to acquire property within its own political boundaries meets this requirement by submitting the adopted resolution that is required with the RCO grant application before the application deadline. A local government proposing to

³²Confer is defined as a dialogue between project sponsors and local county or city officials with the purpose of early review of potential projects. The dialogue may include any matter relevant to a particular project, which may include but need not be limited to: Project purpose and scope; project elements; estimated project cost; costs and benefits to the community; plans for project management and maintenance; and public access.

purchase property outside its jurisdiction (e.g. a city acquiring land outside its city limits or a county acquiring land within a city's limits) must comply with the conferral requirement.

Section 4: Acquisition Procedures

In this section, you'll learn about the following:

- ✓ Acquisition procedures
- ✓ Relocation procedures

Acquisition Procedures

All project sponsors of all RCO acquisition projects must follow the acquisition procedures in Revised Code of Washington 8.26.180 and Chapter 468-100 Washington Administrative Code. These procedures apply to all RCO grant-funded acquisition projects, both state and federal funding sources, regardless of whether there is relocation involved in the transaction and regardless of the type of project sponsor. Below is a step-by-step process that is intended to guide project sponsors in meeting the required procedures. If a project sponsor has a different process, contact RCO to ensure compliance with the requirements.

Project sponsors must follow these procedures:

1. Contact the landowner to learn if the property is for sale or if he/she is willing to entertain an offer.
2. In writing, inform the landowner that he/she is not compelled to sell the property to the agency, rather this is a voluntary transaction and relocation assistance will be provided for eligible displaced tenants in accordance with the Uniform Relocation Act.³³ The value of the property or the purchase price is not discussed at this time. The parties may discuss how the property will be valued and how they will determine a purchase price. A sample notice is available in Appendix I. Provide a copy of the notice to RCO.

³³Chapter 8.26 Revised Code of Washington, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

3. If applicable, consult with an approved relocation agent and determine the eligibility of any relocation assistance for any tenants. See the section below on relocation procedures.
4. If applicable, provide the landowner a written notice describing the relocation program.
5. Obtain an appraisal of the property and provide the landowner an opportunity to be present during the appraiser's inspection.
6. Obtain a review of the appraisal to confirm the value of record.
7. Present the landowner with a notice of just compensation and relocation, which informs the landowner of the appraised market value of the property and offers eligible tenant relocation assistance, if applicable. A sample notice is available in Appendix J. Provide a copy of the notice to RCO.
8. Negotiate an option agreement or Purchase and Sale Agreement with the landowner. If an option agreement or Purchase and Sale Agreement is secured before execution of an RCO project agreement, the agreement should meet all of the following criteria:
 - A. Be based upon the notice of just compensation value established by an appraisal and confirmed by an appraisal review.
 - B. Not commit the project sponsor to acquire the property unless RCO funding is secured.
 - C. Stipulate that any cost of securing an option is to be applied to the purchase price (This ensures that the cost of the option is an eligible RCO grant expense later.)
 - D. Be valid at least 40 days beyond the date an RCO project agreement is issued.
9. Conduct any due diligence proceedings (e.g. title review, hazardous substances review, etc.), ensure compliance with RCO policies, and obtain RCO approval for any draft legal documents.
10. Acquire the property and record conveyance documents (e.g. deed, easement, lease) and an RCO Deed of Right or Assignment of Right, as applicable, with the county auditor's office.

Relocation Procedures

Federal and state laws require RCO to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly referred to as the Uniform Relocation Act, or URA on all federal- and state-funded projects.³⁴

Local agencies (e.g. cities, counties, and special purpose districts) with powers of eminent domain may opt out³⁵ of the relocation requirements if the project does not involve federal funds. A local agency requesting to opt out of the relocation requirements should inform RCO of its exemption status before closing on the acquisition. All other RCO project sponsors must comply with the relocation requirements.

An RCO-funded acquisition that involves the purchase of property from a willing seller is considered a voluntary transaction.³⁶ The project sponsor must provide the property owner written assurance that the property will not be acquired through condemnation at the beginning of any negotiation. As the acquisition is a voluntary transaction, the seller is not eligible for relocation but any tenant that qualifies as a displaced person is eligible for relocation per an approved relocation plan. A tenant is a person who has the temporary use and occupancy of real property owned by another.³⁷ A tenant may have a residential or business use on the property.

When a project sponsor must acquire property through condemnation and it is eligible in the RCO grant program, RCO will reimburse for residential and tenant relocation expenses for eligible displaced people per an approved relocation plan. Acquisition of property through condemnation is prohibited in the **salmon recovery grants program** and the **Washington Wildlife and Recreation Program**.

The project sponsor must conduct administrative services needed to comply with the Uniform Relocation Act,³⁸ if there are eligible displaced people associated with the property. These services may include preparation of a relocation plan, relocation cost estimate, and relocation services. The relocation agent must be approved by the Washington Department of Transportation, and RCO must agree in advance on the qualifications of the relocation agent. When contracting for relocation services, be sure to instruct the relocation agent as to whether the acquisition is a voluntary transaction (common for RCO-funded projects) or being conducted through eminent domain authority (not common for RCO-funded projects). Administrative costs and contracts to conduct relocation are eligible relocation expenses in an RCO grant.

³⁴Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, P. Law. 100-17-1987; and chapter 8.26 Revised Code of Washington

³⁵Revised Code of Washington 8.26.010(2)

³⁶Washington Administrative Code 468-100-101(2)(a).

³⁷Washington Administrative Code 468-100-002

³⁸Chapter 8.26 Revised Code of Washington

For more information about relocation assistance or acceptable forms to be used in providing relocation assistance, contact the Department of Transportation's [Real Estate Services Relocation Program](#).

Section 5: Appraisal Requirements

In this section, you'll learn about the following:

- ✓ Just compensation
- ✓ Appraisal and review appraisal standards
- ✓ Appraiser qualifications
- ✓ Appraisal costs

Just Compensation

RCO determines just compensation to landowners based on appraisals and reviews of those appraisals. The project sponsor first contracts for an appraisal of the property to determine the market value of the property. Then the project sponsor contracts for an independent review of the appraisal to confirm the market value identified in the appraisal.

Appraisal and Review Appraisal Standards

There are two forms of acceptable appraisal and review appraisal standards depending upon the source of funding for the acquisition project. For projects funded with state money, the project sponsor must instruct the appraiser and review appraiser to use the standards set forth in the *Uniform Standards of Professional Appraisal Practice* (USPAP) publication. The appraised market value of the property must be a point value, rather than a value range. (Example: \$257,000 rather than \$240,000 to \$270,000).

Projects with Federal Money

For projects funded with the **Land and Water Conservation Fund**, the project sponsor must instruct the appraiser and review appraiser to use the standards set forth in the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA). In addition, projects in the Land and Water Conservation Fund must follow special appraisal instructions (see *Manual 15: Land and Water Conservation Fund*). When an acquisition project will receive funding from both state and federal sources, the project sponsor may apply the federal standards to the entire project.

For all other federal programs managed by RCO, use either the *Uniform Appraisal Standards for Federal Land Acquisitions* or *Uniform Standards of Professional Appraisal Practice*. If you have a matching federal grant, check with the federal funding agency to see which standards to use.

Extraordinary Assumptions and Hypothetical Conditions

All appraisal reports include a statement of assumptions and limiting conditions. In addition, an appraisal may include extraordinary assumptions or hypothetical conditions upon which the appraiser based the market value of the property. Project sponsors should avoid the use of extraordinary assumptions or hypothetical conditions unless consistent with the uniform appraisal standards. If the appraiser uses extraordinary (special) assumptions or hypothetical conditions, the appraiser must clearly state these within the report and must provide a reasonable justification for using them. Additionally, the review appraiser must list all extraordinary assumptions and hypothetical conditions and comment on their reasonableness. If the findings are that the assumptions or conditions are not reasonable, the value of the land may not be supported. RCO may not accept the appraisal and require a new appraisal without unsupported assumptions and conditions.

RCO recommends that any extraordinary assumptions or hypothetical conditions (e.g. those related to legal access, zoning, encumbrances, etc.) provided to the appraiser first be reviewed by RCO for compliance with RCO policies and the project agreement. RCO reserves the right to require a project sponsor to update an appraisal or get a new appraisal, at the project sponsor's expense, if the appraised value of the property is subject to any extraordinary assumption or hypothetical conditions not previously reviewed and approved by RCO.

Encumbrances

When determining the property's market value, the appraiser and review appraiser must consider encumbrances and reservations that will be on the property as it is finally to be conveyed, which may be different than characterized on the preliminary title report. The project sponsor must provide the appraiser and review appraiser with the preliminary title report and the encumbrance documents. In addition, the project sponsor must inform the appraiser of any changes on title to be made up to closing, including encumbrances that will be cleared and any new encumbrances or reservations that are to be created (except for RCO's Deed of Right). RCO may require supplemental information or an appraisal update before reimbursement or the release of escrow funds if the original report does not reflect accurately the encumbrances in place at the time of conveyance.

Appraisal Report Formats

State Funded Projects

The *Uniform Standards of Professional Appraisal Practice* requires an appraisal report for all appraisal assignments. RCO requires additional documentation beyond the standard *Uniform Standards of Professional Appraisal Practice* appraisal report for certain appraisal problems as described below. In all appraisals using the sales comparison approach, the appraiser shall include a comparable sales adjustment table. RCO has included these requirements to ensure the accountability and transparency of the public's investment.

The following two report formats are acceptable for RCO-funded projects. Project sponsors should consult with the appraiser and RCO to determine whether standard appraisal reports or expanded appraisal reports will be required for their projects. RCO may reject an appraisal report if it does not meet the intent of the policy described herein.

- **Appraisal Report:** Used if the appraisal problem involves only “whole takes” of the subject property. In other words, use this report when non-complex acquisition of an entire parcel(s) occurs with no partial takings or resulting damages to remaining properties.
- **Expanded Appraisal Report:** Used if the appraisal problem involves partial land takes, acquisitions involving damages, conservation or other easements, complex appraisal issues, etc.

The expanded appraisal report is RCO's requirement and is not defined in the *Uniform Standards of Professional Appraisal Practice*. It is similar in scope to a self-contained appraisal report, which was described in previous editions of the *Uniform Standards of Professional Appraisal Practice*, but is not in the current set of standards. Therefore, project sponsors must clearly instruct their appraisers if they need expanded appraisal reports when they contract for appraisers' services and be clear about the appraisal reports expectations.

The reason for the additional documentation in the expanded appraisal report is to fully illustrate the market value of the property to be acquired and the methodology used to make that determination.

RCO recommends project sponsors use the following language when soliciting for appraisal services and issuing contracts for an expanded appraisal report:

The appraisal must be reported in a fully self-contained appraisal report format to exceed the requirements outlined in the most current “Uniform Standards of Professional Appraisal Practices.” The report must describe in detail the information analyzed and the reasoning and methodology that supports any analyses, opinions,

and conclusions. The report will be subject to review and the appraiser will be required to clarify any issues in writing. Failure to do so may result in the report being considered unacceptable.

[Sample appraisal instructions](#) are also available on the RCO Web site.

Federally-Funded Projects

Unless stated otherwise by the federal grant source, the *Uniform Appraisal Standards of Federal Land Acquisitions*, commonly called the "Yellow Book," must be used to prepare appraisals and appraisal reviews for federally-funded Land and Water Conservation Fund acquisition projects. The [Yellow Book](#) is revised annually and can be found on the Appraisal Foundation's Web site. This requirement applies to new projects and to land transactions that occur as a result of a conversion.

Additional Appraisal Requirements for Land Transactions Resulting From Conversions

A conversion occurs when a property acquired with an RCO grant is used for purposes other than originally stated in the project agreement. See *RCO Manual 7, Long-term Obligations* for a complete discussion of conversions and the process required for replacement of the public investment as required by the RCO Deed of Right or RCO Assignment of Rights.

When determining the market value of the property being converted, the project sponsor must instruct the appraiser to make a special assumption that the RCO Deed of Right or Assignment of Right is not encumbering the property and to assume zoning has kept up with surrounding properties. Because the RCO Deed of Right or Assignment of Right will be extinguished once the conversion is approved, the appraised value must reflect the property free and clear of this encumbrance.

For projects funded in the **Land and Water Conservation Fund** program, there are specific instructions on how to appraise conversions. See [Manual 15, Land and Water Conservation Fund](#) for more details on how to conduct appraisals for these projects.

Appraisal Shelf Life

State-Funded Projects

Appraisals for state-funded grant projects are considered valid for 1 year from the effective or valuation date of the appraisal. Sponsors must either purchase the property or have a signed Purchase and Sale Agreement within 1 year of the effective date of the appraisal.

If the property is not acquired or a Purchase and Sale Agreement is not secured within 1 year of the effective date of the appraisal, the project sponsor must obtain a new appraisal statement from the appraiser stating that land values have not changed and the appraised value is the same since the effective date of the appraisal. If the appraiser cannot or will not provide such a statement, the project sponsor must obtain an appraisal update (see below). Costs associated with the appraisal statement may be reimbursed by RCO. The shelf life of an appraisal for any state-funded grant project may not exceed 18 months under any circumstances.

Federally Funded Projects

Appraisals for federally funded Land and Water Conservation Fund projects are valid for 12 months. Sponsors must either purchase the property or have a signed Purchase and Sale Agreement within 1 year of the effective date of the appraisal.

Appraisal Updates

An appraisal update is a new appraisal assignment to the original appraiser that incorporates information and analysis from the original report to get a more current market value. A review appraisal is required for all appraisal updates. Appraisal and review appraisal updates may be reimbursed by RCO. An appraisal update obtained within 24 months of the original appraisal effective date is not considered a new appraisal. For RCO reimbursement purposes, appraisal updates after 24 months are acceptable to determine the market value, but will not be an eligible cost for reimbursement.

Appraisal Waivers

When the estimated value of the property does not exceed \$10,000, and the acquisition is not complex, project sponsors may be exempt from having to meet appraisal and appraisal review standards. Such exemptions must be requested in writing before closing on the property. In lieu of the appraisal standards, a project sponsor may submit a written "Finding of Value" that includes:

- The preparer's name, experience, and qualifications. The preparer must have sufficient understanding of the real estate market and shall not have any interest, direct or indirect, in the real property to be valued for compensation. Project sponsor staff may not prepare the "Finding of Value."³⁹
- A description of the methods and factors used to reach the value for compensation. This description must have enough detail to allow RCO to understand how the preparer used market information to decide a market value.

³⁹Recreation and Conservation Funding Board Resolution 2010-34

Examples of “Findings of Value” may include an “Administrative Offer” prepared by a certified right-of-way agent, a “Broker Price Opinion” prepared by a qualified real estate broker or other individual, or other narrative summary of recent market information and the analysis used to decide the market value of the property.

Appraisal Reviews

Independent appraisal reviews are required for all appraisals to confirm just compensation for the property. If the original appraisal relies on a timber cruise, other special reports, or research to establish property value, those also must be reviewed. Appraisal reviews must include the following:

- Field inspections of the property and comparable sales when the appraisal sets the property value of the acquisition project at \$250,000 or higher. Desk reviews are acceptable for properties having a value less than \$250,000.
- The review appraiser must comment on whether the following conditions are met:
 - The appraisal is complete within the scope of work applicable and the appraisal assignment.
 - The appraisal met applicable appraisal standards.
 - The appraiser’s extraordinary assumptions are reasonable and justified.
 - The appraiser’s hypothetical conditions are reasonable and justified.
 - The appraiser’s consideration of encumbrances was satisfactory.
 - The appraiser’s data and adjustments are adequate and relevant.
 - The appraiser’s methods and techniques are appropriate.
 - The appraiser’s analysis, opinions, and conclusions are reasonable.
- The review appraiser must approve or reject the value conclusion in the original appraisal.
 - If the review appraiser approves the market value established in the original appraisal, he/she either can acknowledge that the appraisal meets the appraisal guidelines in this manual or do the necessary work to bring the original appraisal into compliance. The confirmed market value is the final just compensation for the property.
 - If the review appraiser rejects the value established in the original appraisal, the project sponsor must either instruct the review appraiser to

establish a new property value or obtain a new appraisal. The new property value then becomes the just compensation for the property. If the review appraiser previously had conducted a desk review of the property and now is working to establish a new property value, the review appraisal must take the form of a field review.

Third Party Appraisals

The appraisal and review appraisal must be procured on behalf of the project sponsor. The appraisal and review appraisal may not be procured on behalf of the landowner or other third party with an interest in the sale unless approved by RCO in advance. If the project sponsor is partnering with a third party (e.g. another organization that is assisting with negotiating the transaction, co-holding rights, or holding third party rights), then the appraisal and appraisal review may be procured on behalf of and authorized by the project sponsor and the third party. The project sponsor must be listed as an intended user of the appraisal.⁴⁰

Appraiser and Review Appraiser Qualifications

Chapter 18.140 Revised Code of Washington, Certified Real Estate Appraiser Act, establishes four certification or license categories.

- **State-certified general real estate appraiser** (license number begins with 270-11): Eligible to develop and communicate real estate appraisals of all types of properties.
- **State-certified residential real estate appraiser** (license number begins with 270-17): Eligible to develop and communicate real estate appraisals of all types of *residential* property of one to four units without regard to transaction value or complexity and *nonresidential* property having a transaction value less than \$250,000.
- **State licensed real estate appraiser** (license number begins with 270-16): Eligible to develop and communicate real estate appraisals of noncomplex, one to four residential units having a transaction value less than \$1 million; complex, one to four residential units having a transaction value less than \$250,000; and nonresidential property having a transaction value less than \$250,000.
- **State registered appraiser trainee** (license number begins with 100): Eligible to assist certified real estate appraisers while gaining experience. The appraisal or review appraisal also must be signed by a certified real estate appraiser.

⁴⁰Recreation and Conservation Funding Board Resolution 2010-34

Project sponsors must select an appraiser and review appraiser with appropriate certifications or licenses from Washington State to perform appraisal work, unless the appraisal review is conducted by the Natural Resources Conservation Service for a Farmland Preservation Category project. Review appraisers must have an equal or greater license certification than the original appraiser and cannot be selected from the same firm, organization, or agency/sponsor who conducted the original appraisal.

Project sponsor staff may perform appraisals or review appraisals if they meet the state licensing requirements. Project sponsor staff may not conduct both the appraisal and appraisal review on the same property. If a staff person is conducting appraisal work on behalf of the project sponsor, he/she may communicate with the independent appraiser in the role as an appraiser, not as the client or the intended user of the appraisal. A staff person functioning as a negotiator with a property owner may not supervise or formally evaluate the performance of any appraiser or review appraiser.

Appraisal Costs

The cost to procure an appraisal and review appraisal are eligible project costs and are reimbursable per the project agreement, except for projects funded through the **Land and Water Conservation Fund** (see below). A copy of the appraisal and review appraisal must be submitted to RCO at the time of the reimbursement request for the appraisal and review costs. RCO recommends the project sponsor submit the appraisal and review appraisal in advance of closing on the property for RCO review to ensure that the scope of the appraisal meets the terms of the project agreement and this manual.

If a project is funded through the **Land and Water Conservation Fund**, the project sponsor must pay for the appraisal and review appraisal and the cost is not eligible as match. See *Manual 15, Land and Water Conservation Fund* for more details on eligible acquisition costs in this program.

Only one appraisal and one review appraisal for each property is eligible. RCO may approve the cost for a new appraisal and review appraisal on a case-by-case basis in advance. The project sponsor must submit a written request to approve reimbursement for a new appraisal and review that includes adequate justification as to why the new work is required.

Section 6: Other Requirements for Each Transaction

In this section, you'll learn about the following:

- ✓ Encumbrances and title insurance
- ✓ Preliminary title review
- ✓ Complementary covenants or deed restrictions from other funders
- ✓ Hazardous substances certification
- ✓ Map requirements

Encumbrances and Title Insurance

Property rights acquired with RCO funding must be free of encumbrances that disproportionately limit the value or uses for the public (i.e. habitat conservation or salmon habitat recovery values or the recreation use of a site). RCO will make the final determination on which encumbrances on the property do not conflict with the purpose of the RCO-funded project.

For example, an encumbrance on the property that allows for maintenance of a river dike may conflict with the salmon recovery purpose of the RCO-funded project or an encumbrance for air rights over a proposed park acquisition may limit the type of future development allowed on site. Other examples of encumbrances that may be of concern are liens, lack of legal access, designated forestland or open space classifications, leases, septic drain fields, and other items that may limit the implementation of the RCO project.

Appraisal reports must consider the impact of all encumbrances to the market value of the property at the time of closing for the acquisition to qualify for reimbursement. If the appraisal contains assumptions that may impact value, RCO may require those assumptions to be completed at closing (e.g. assumptions regarding legal access would need to be acquired). The final title insurance policy must show that the property rights are free of unacceptable encumbrances as determined by RCO.

Title Insurance

A title insurance policy must be purchased on all real property acquisitions for the appraised value of the property to safeguard the rights acquired with a grant. Extended or enhanced title insurance may be appropriate for certain acquisitions to mitigate for risks associated with the condition of the title. Extended title insurance may require a boundary survey and other additional costs. Contact RCO if you are required or are considering purchasing extended title insurance and seeking RCO reimbursement for the cost.

In some cases, a project sponsor may not be able to purchase title insurance because the property is uninsurable. An exception to the title insurance requirement may be the purchase of land from a railroad company or other unusual transactions. Consult with RCO if you are unable to obtain title insurance.

Preliminary Title Review

The preliminary title commitment for insurance must be reviewed to ensure the property is free of unacceptable encumbrances that may conflict with the purpose of the project. (See the section above.)

Preliminary title review occurs early in the active phase of a project.

RCO also may request a preliminary title report before issuing an agreement or as part of a grant application if the conditions of the property are unclear or may potentially be ineligible for grant funding. RCO recommends project sponsors request an updated preliminary title report 1 month before closing on the property to ensure no new encumbrances have been placed on the property since the last title review.

RCO requires preliminary title review of all proposed acquisitions to ensure the above policies are met before closing on the property. Sponsors may choose one of the following two options for conducting preliminary title review.

- Submit the Preliminary Title Report Checklist in Appendix K along with the preliminary title report. On the checklist, the project sponsor certifies that he/she has reviewed the title and identified which encumbrances will be cleared before closing. RCO will review the checklist and contact the project sponsor with any outstanding concerns,
- Request approval from RCO to conduct preliminary title review independently (without RCO review) for all RCO-funded projects. A sponsor may request independent review approval as an organization if it conducts multiple acquisitions with RCO funding. Your request must demonstrate your best practices for clearing title and ensuring that properties will meet RCO requirements in this manual. If approval is granted, a project sponsor proceeds

with acquiring land at the sponsor's own risk. RCO will withhold payment at reimbursement time if a property title does not meet RCO requirements.

On the rare occasion that a project sponsor cannot provide the preliminary title report in time, the sponsor may request a special condition be added to the project agreement that will require submittal of the preliminary title report before RCO reimburses for any costs.

Complementary Covenants or Deed Restrictions from Other Funders

If an acquisition project includes funding from other sources that also require some form of encumbrance on the property such as a Notice of Grant, deed restriction, or other encumbrance, the project sponsor must provide a draft of the encumbrance to RCO for review. RCO will review the encumbrance for consistency with RCO's Deed of Right or Assignment of Rights and the project agreement before closing on the property. As long as the encumbrance from the other funding source is consistent and compatible with RCO's funding, no conversion will occur per the policies in *Manual 7, Long-term Obligations*. RCO's Deed of Right includes reference to other encumbrances from the other funding source and requires any future conversion be valued without the other funding source's encumbrance on the title.

Hazardous Substances Certification

Project sponsors that receive funding to buy real property, except for property acquired in the Washington Wildlife and Recreation Program's Farm and Forest Account, must certify that each parcel meets standards established under the Model Toxics Control Act.⁴¹ Purchase of property contaminated with any hazardous substance not meeting the Model Toxics Control Act's standards is ineligible for RCO grant funding. A hazardous substance is defined as the following:

- Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) Revised Code of Washington, or any dangerous or extremely hazardous waste designated by rule pursuant to Chapter 70.105 Revised Code of Washington.
- Any hazardous substance as defined in Chapter 70.105.010(14) Revised Code of Washington or any hazardous substance as defined by rule pursuant to Chapter 70.105 Revised Code of Washington.
- Any substance that, on March 1, 1989, is a hazardous substance under Section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14).

⁴¹Chapter 70.105D Revised Code of Washington

- Petroleum or petroleum products.
- Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee] of the Department of Ecology by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.

Project sponsors must complete a Hazardous Substances Certification for each parcel and provide documentation to support the certification. The certification form is provided in Appendix L. The certification ensures that the project sponsor has inspected, investigated, and conducted an environmental audit (see below) of the parcel for the presence of hazardous substances.

The project sponsor must certify the following:

1. No hazardous substances were found on the site, or
2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
3. The sponsor will defend, protect, and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

Project sponsors should complete the hazardous substances certification before acquiring the property. The certification must be submitted to RCO before reimbursement of the property costs.

Environmental Audits⁴²

An environmental audit is required supporting documentation for each Hazardous Substances Certification. Acceptable environmental audits are the following:

- Environmental site assessments per American Society for Testing and Materials (ASTM) standards.

⁴²Recreation and Conservation Funding Board Resolution 2010-34

- All Appropriate Inquiries per U.S. Environmental Protection Agency standards.⁴³
- Property Assessment Checklist provided in Appendix M.

If there are significant findings or recommendations in the environmental audit, RCO may request the audit report be provided to the appraiser for consideration to determine whether the findings would affect the appraised value of the property. If an environmental audit identifies action items that are not related to cleanup of a hazardous substance (e.g. debris cleanup, empty tank removal, structure removal, well decommissioning, materials below Model Toxics Control Act cleanup levels, etc.), the project sponsor must implement the recommendations and such costs are eligible demolition expenses. If the findings or recommendations will not be addressed during the active project agreement, the project sponsor must provide RCO with a plan to address the findings or recommendations in the future.

Buying Contaminated Property⁴⁴

Purchase of property contaminated with any hazardous substances not meeting standards as determined by the Department of Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act is ineligible for RCO grant funding except under any one of the following circumstances:

- The intended future use of the property as proposed in the grant application can proceed and the Department of Ecology or U. S. Environmental Protection Agency has determined that cleanup is complete or no further cleanup action is needed.
- The intended future use of the property as proposed in the grant application can proceed while cleanup monitoring is ongoing.
- The property contains contaminated pilings, which the project sponsor plans to remove in a future action or in combination with a funded RCO grant.

If a property is listed as contaminated with the Department of Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act, the project sponsor must provide RCO with a letter from the appropriate state or federal agency that states cleanup is complete or no further action is needed and the proposed grant application can move forward in order for the property to be eligible for grant funding.

⁴³Recreation and Conservation Funding Board Resolution 2010-34

⁴⁴Recreation and Conservation Funding Board Resolution 2010-34

RCO strongly advises project sponsors to buy land that has never been contaminated or is certified as meeting hazardous substances requirements. Clean-up costs are very hard to predict. Attempts to clean up a site can result in substantial expenses that are not eligible for RCO reimbursement or as sponsor match. If a project sponsor wishes to purchase a contaminated property that does not meet one of the above exceptions, the project sponsor may request a Waiver of Retroactivity (see Section 2). The property will be eligible for RCO funding after it has been cleaned up as long as the property is cleaned up before the expiration of the Waiver of Retroactivity.

Map Requirements

Map for Legal Documents

RCO requires a property boundary map for each parcel acquired to be filed with the Deed of Right, Assignment of Rights, or easement. The map background may be shaded or aerial photography but must be clear enough to be copied in black and white. Check with the local recording office for additional requirements. See an [example map](#). The map must include the following:

- RCO project number and name
- Project sponsor name and signature
- Date of the map preparation
- Adjoining streets, roads, and water bodies
- Boundary line of land protected by the Deed of Right, Assignment of Rights, or easement. If an easement includes a building envelop or multiple zones (where different sets of permitted and prohibited activities apply), the map should clearly delineate each envelop and zone.
- North arrow and scale

Boundary Map

RCO encourages project sponsors to submit for the project file more detailed maps to document other features of the property. Other information that helps identify the property includes deed references, location of all known easements, outstanding rights, deed/lease restrictions, reversionary interests, adjoining ownerships, adjoining water bodies or other natural landmarks, geographic coordinates at the site entrance or corners of the property, survey information, and other measurements. A professional survey is not required; however, if a survey has been completed with RCO funding and the property is acquired successfully, the survey must be recorded with the county auditor and a copy provided to RCO.

Electronic Submissions

RCO encourages project sponsors to submit electronic maps of the property boundaries. RCO accepts polygon files formatted in an ArcGIS Geodatabase (.GDB), ArcGIS Layer Package (.LPK), Shapefile (.SHP), AutoCAD Drawing (.DWG), or GPS Exchange Format (.GPX) in Washington State Plane Coordinate System in NAD83 or HARN datum, or geographic coordinates WGS84.

Section 7: Post-Award Issues

In this section, you'll learn about the following:

- ✓ Project agreements
- ✓ Changing your project or grant agreement
- ✓ Conservation easement monitoring
- ✓ Utility permits
- ✓ Tree removal
- ✓ Allowable uses framework
- ✓ Income and income use
- ✓ Long-term obligations
- ✓ Other things to know

Project Agreements

Project Approval and Authorization to Proceed

After your project has been approved for funding, RCO staff will work with you to prepare a project agreement. An [example of the project agreement](#) is on the RCO Web site. Project applicants should review carefully the terms and conditions.

Project sponsors may not begin a project before executing a project agreement with RCO. To do so means you won't receive reimbursement for your work, except for eligible pre-agreement costs mentioned in the previous section.

Additional Requirements Instructions

RCO may issue additional or modified rules, instructions, interpretations, and guides from time to time as it believes necessary for the effective conduct of the grant program. Such changes will apply to all projects. Whenever possible, sufficient lead time will be given between the announcement and the effective date to minimize impacts to projects already in process at the time of announcement.

Changing Your Project or Grant Agreement

Project Agreement Amendments

The project agreement may be amended by execution of a project agreement amendment. Amendments for minor changes in scope and extensions to the project period may be authorized by RCO. Major changes in scope for acquisition projects may be authorized only by Recreation and Conservation Funding Board or the Salmon Recovery Funding Board. All amendment requests shall be made in writing and must include detailed justification.

Time Limits and Extensions

Sponsors must complete funded projects promptly. For this reason RCO staff, with applicant assistance, establishes a timetable for project completion, including enforceable milestones and a project completion date. To avoid the risk of RCO withdrawing the grant, and to help ensure reasonable but timely project completion, accountability, and the proper use of public funds, the following must be accomplished:

- Applicants submit only projects likely to be completed within 4 years for a Recreation and Conservation Funding Board project and 5 years for a Salmon Recovery Funding Board project.
- Applicants must provide reasonable assurance that the project can be completed within a reasonable timeframe that meets milestones and does not exceed the board-approved time limit. Reasonable assurance may include such evidence as:
 - Appraisals and review are completed.
 - Bid documents are prepared.
 - Environmental assessment is completed.
 - Hazardous substances review is completed.
 - Option agreement is signed.
 - Permits are in-hand.
 - Property is in escrow.
 - Waiver of Retroactivity is in-hand and signed.

Applicants must submit the post approval materials requested by RCO within 60 days of funding approval. Once an agreement has been sent to the applicant, the applicant must return it in 3 months.⁴⁵

RCO staff monitors critical project milestones (for example, ordering appraisals and reviews). Unsatisfactory progress may be cause for project termination or other remedies.

The RCO director may approve time extensions to a maximum of:

- 4 years for Recreation and Conservation Funding Board projects.
- 5 years for Salmon Recovery Funding Board projects.

Requests for extensions that would exceed those periods may be referred to the funding board for action. Also, any RCO director decision may be appealed to the appropriate funding board.

Extension requests must be in writing and provided to RCO not less than 60 days before expiration of the project's completion date. The request must (a) justify the need and (b) commit to a new set of specified milestones.

Property Transfers⁴⁶

An eligible sponsor may apply for a grant with the understanding that the property will be transferred to another eligible sponsor. A sponsor may transfer property to another eligible sponsor after both parties request an amendment to the project agreement to change sponsors and the amendment is signed by RCO and both the original sponsor and the new sponsor. The new sponsor becomes responsible for complying with the terms of the project agreement.

An eligible sponsor that intends to transfer property to another eligible sponsor but will retain a portion of the property rights, including any rights or encumbrances such as a covenant or conservation easement, must remain as a sponsor to the project agreement. The sponsor receiving property rights must be added as a sponsor to the project agreement with an amendment signed by RCO and both the original sponsor and the new sponsor. Alternatively, RCO may issue a new project agreement to the sponsor receiving property for the portion of the property transferred. This ensures that the complete bundle of rights acquired with a grant continues to be protected by the terms of a project agreement.

⁴⁵Washington Administrative Code 286-13-040

⁴⁶Recreation and Conservation Funding Board Resolution 2016-13 and 2017-31

Scope Changes

This section describes guidelines for changing the scope of an acquisition project to a property other than property that is identified in the grant agreement. For a scope change to be approved, the sponsor must demonstrate that the newly targeted property meets all of the following:

- Is eligible in the same grant program category as the originally targeted property.
- Has similar and at least equivalent conservation, farmland or forestland preservation, habitat protection, recreation, and/or salmon recovery values as the originally targeted property.
- Is contiguous⁴⁷ to the originally targeted property or is within the recreation service area, geographic envelope, or stream reach, estuary, or nearshore area identified in the grant agreement.

A scope change that meets these criteria can be approved by the director. A scope change that does not meet these criteria is considered a major scope change and the request must be submitted to either the Recreation and Conservation Funding Board or a Salmon Recovery Funding Board subcommittee for approval. A major scope change for a project funded by both boards will be submitted to the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board subcommittee for approval. RCO staff will submit recommendations for approving or denying the scope change to either board's subcommittee.

Project sponsors must make all requests for amendments in writing and must include detailed justification. The landowner acknowledgement and local jurisdiction review requirements in Section 3 of this manual apply to all project scope changes.

For projects funded by the Recreation and Conservation Funding Board, the director may submit the request for a scope change to an ad hoc review panel for evaluation before submitting the request to the full board. The review panel shall be comprised of at least five members who do not represent the interests of the requesting sponsor and who have experience evaluating projects in the same grant program or category.

For projects funded by the Salmon Recovery Funding Board, the sponsor must submit a request in writing to the RCO grants manager, accompanied by concurrence from the lead entity. RCO's director may consider such requests, may recommend consideration from the Salmon Recovery Funding Board, or may ask for review by the Salmon Recovery Funding Board Review Panel. For more information on Salmon Recovery Funding Board project agreement amendments, please refer to *Manual 18, Salmon Recovery Grants*, and

⁴⁷Contiguous means touching.

specifically the Salmon Recovery Funding Board Amendment Request Authority Matrix found in the manual's appendices.

Upon submittal of the request, the review panel shall determine whether the amended project has similar and at least equivalent conservation, farmland or forestland preservation, habitat protection, recreation, and/or salmon recovery values as the originally targeted property.

Requests for such scope changes also must include documentation from the requesting sponsor explaining the following:

- Why the change is being requested and how the sponsor has considered alternatives to amending the agreement.
- How the newly targeted property meets each of the program evaluation criteria.
- How the amended project will affect the sponsor's ability to perform the obligations of the original agreement.
- A determination of the newly targeted property owner's willingness to sell.
- How the amended project will affect the sponsor's ability to spend the grant funds by the milestone dates set forth in the original agreement.
- That the sponsor has informed the local government (in the case of Recreation and Conservation Funding Board-funded projects) or lead entity (in the case of Salmon Recovery Funding Board-funded projects) of the scope change request.

The Recreation and Conservation Funding Board and the Salmon Recovery Funding Board subcommittee shall consider the following factors in deciding whether to approve a major scope change for acquisition projects:

- Is the amended project eligible in the same grant program category? Is it eligible in another program category?
- What is the reaction and/or position, if any, of the local government (for Recreation and Conservation Funding Board-funded projects) or lead entity (for Salmon Recovery Funding Board-funded projects) with regard to the requested amendment?
- How does the amended project fit with priorities identified in state approved strategies including, but not limited to, the *Natural Heritage Plan*, *Washington State Recreation and Conservation Plan*, *Lands 20/20*, *Biodiversity Strategy*, *A Regional Recovery Plan*, or a 3-year work plan for salmon recovery?
- Will federal or other matching resources be lost if a scope change is not approved? If so, how, why, or how much?

- What opportunity will be lost if the request is not granted? (Consider, for example, consequences to the public, the resources, and the grant program.)
- What other project or projects could the money go to if this request is denied?
- How does the amended project compare with the original project and with the alternate project on the funding priority list?

Cost Increases

Recreation and Conservation Funding Board

On occasion, the cost of completing a project exceeds the amount written into the agreement. Such overruns are the responsibility of the project sponsor. If funds are available, however, and on written request, the Recreation and Conservation Funding Board will consider a cost increase. The director may approve cost increase requests that do not exceed 10 percent of the total project cost, which includes both the grant and the sponsor's match. The board will consider approval of other amounts.

Land acquisition project cost increases must meet the following criteria:

- The sponsor must have diligently pursued the acquisition at the estimated fair market value, as appraised, and reviewed.
- An appraisal, developed using a technique accepted by Recreation and Conservation Funding Board (see Section 5 in this manual), supports the increased real market value.
- A written report from the sponsor must explain any relocation cost over-runs.

An individual parcel review is the basis for any land acquisition cost increases. Compensation for the property and direct relocation cost is the basis for any condemnation increases allowed. Court or legal costs are not eligible for reimbursement.

Salmon Recovery Funding Board

Sponsors with a project funded by the Salmon Recovery Funding Board may request cost increases to their contract amounts. Requests to increase the contract amount may be made only for project overruns. Cost increase requests may be considered only if funding is available.

The sponsor must request the amendment in writing and must include detailed justification. The request must be accompanied by a letter of concurrence from the lead entity. To provide the letter of concurrence, the lead entity must obtain a decision from its technical and citizens committees. Sponsors in a Puget Sound lead entity also must receive a letter of concurrence from the Puget Sound Partnership.

Depending on the dollar amount of the request, the RCO director or the Salmon Recovery Funding Board will authorize the amendment. RCO staff may consult with the board's review panel when considering project amendment requests. Staff will seek review panel consultation in select cases to ensure that the amendment request meets the technical criteria for benefit to fish and certainty of success.

Conservation Easement Monitoring

The model habitat and agricultural conservation easement templates in Appendices C and D require that each easement include a provision to provide access to RCO's project sponsor to inspect the easement area and monitor compliance with the easement terms. Project sponsors must develop and implement an easement monitoring plan for RCO funded conservation easements. RCO recommends a project sponsor conduct easement monitoring at least annually. A conservation easement monitoring report based upon the project sponsor's adopted plan must be submitted to RCO once every 5 years.⁴⁸

Utility Permits

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

- Not be an easement giving property rights to a third party.
- State that the pipe or power line will be underground.
- Require that the third party give prior notice to and receive approval from the sponsor to enter the site for construction or maintenance. Regularly scheduled periodic maintenance checks and the method(s) of performance (which must not involve disruption of any recreation or habitat conservation function), must have prior approval on the basis of a schedule. Emergency maintenance would not normally require prior notification and approval. Adequate assurance of surface restoration also is necessary.
- State a *duration* for construction and include language that allows setting a duration for reconstruction.

⁴⁸Recreation and Conservation Funding Board Resolution 2010-34

Tree Removal⁴⁹

Tree removal is allowed on funded project sites provided it does not diminish the essential purposes of the grant and meets any of the following:

- Tree removal is included in the project agreement and project evaluation materials.
- Trees are removed to prevent potential risk to public safety.
- Trees are removed in accordance with a Washington State Parks and Recreation Commission's tree assessment or an approved site-specific stewardship plan, including a park master plan, to protect or enhance forest health or the health of species targeted by the grant.

Tree removal must be managed consistently with International Society of Arboriculture (ISA) guidelines and in compliance with the Washington Forest Practices Act (Revised Code of Washington 76.09) and Forest Practices Rules (Title 222 Washington Administrative Code). While revenue may be derived from tree removal, revenue generation must not be its primary purpose.

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

Requests for tree removal that do not meet the criteria in this policy must be reviewed under the allowable uses framework in this manual.

Allowable Uses Framework⁵⁰

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

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

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

⁴⁹Recreation and Conservation Funding Board Resolution 2012-21

⁵⁰Recreation and Conservation Funding Board Resolution 2012-21

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

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

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

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

Income and Income Use

Income

The source of any income generated in a funded project or project work site must be compatible with the funding source and the agreement. User and other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with all of the following:

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

Excepted are **Firearms and Archery Range Recreation** program safety classes (firearm or hunter) for which a facility/range fee must not be charged.⁵¹

⁵¹Chapter 79A.25.210 Revised Code of Washington

Fees Based on Residence⁵²

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

Use of Income

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

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

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

This fund must meet the following:

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

⁵²Washington Administrative Code 286-13-115

Concessions and Leases

A project sponsor may provide for the operation of a board-funded facility by granting a concession agreement or lease to a private organization or individual under certain conditions. The project sponsor is responsible for assuring compliance with all applicable state and federal requirements. Delegation or transfer of certain management or operational responsibilities to concessionaires or lessees does not relieve the project sponsor of any project agreement compliance obligations, including those relating to conversion of board-funded properties.

All concession or lease documents for the operation of board-funded projects by private organizations or individuals must address the following:

- In order to protect the public interest, the project sponsor must have clear ability to periodically review the performance of the lessee or concessionaire and terminate the lease or agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met.
- The document shall clearly indicate that the leased/concession area is to be operated by the lessee/concessionaire for public purposes in compliance with the provisions of the project agreement and/or the Land and Water Conservation Fund Act and implementing guidelines.
- The document shall require that the area be identified as being publicly owned and operated for public outdoor recreation and/or habitat conservation purposes on all signs, literature, and advertising, and that the lessee/concessionaire be identified as such so as not to mislead the public into believing that the area is private. Signs also should be posted identifying the facility as being open to the public (see project agreement).
- The document shall require that all fees charged by the lessee/concessionaire to the public must be competitive with similar facilities.

Before execution of the lease or agreement between the sponsor and the lessee/concessionaire, the proposed lease or agreement must be reviewed and approved by RCO staff.

Long-term Obligations

Project Area Stewardship and Ongoing Obligations⁵³

An RCO grant comes with long-term obligations to maintain and protect the project area⁵⁴ after a project is complete. The long-term obligations are in RCO's project agreement standard terms and conditions, the project agreement, and *Manual 7, Long-term Obligations*. See a [template of the project agreement](#) on RCO's Web site.

RCO recognizes that changes occur over time and that some facilities may become obsolete or the land needed for something else. The law discourages casual discards of land and facilities by ensuring that grant recipients replace the lost value when changes or conversions of use take place.

In general, the project area funded with an RCO grant must remain dedicated to the use as originally funded, such as outdoor recreation, habitat protection, farmland and forestland preservation, or salmon recovery purposes, for as long as defined in the project agreement. For development and restoration projects, the period is determined by the type of control and tenure provided for the project.

A conversion occurs when the project area acquired, developed, or restored with RCO grant funding is used for purposes other than what it was funded for originally. See RCO *Manual 7, Long-term Obligations* for a discussion of conversions and the process required for replacement of the public investment. Non-compliance with the long-term obligations for an RCO grant may jeopardize an organization's ability to obtain future RCO grants.

After a project is complete (that is, after RCO's final reimbursement and acceptance of the project), RCO documents that were signed by the sponsor continue to govern the project area described in the boundary map for which funds have been granted.

Changes may be made only with the prior approval of the funding board or director. If a compliance issue arises, RCO staff works with sponsors to resolve the issue. Unresolved, identified issues could result in restrictions on applying for or receiving future grants.

Converting the Use of an RCO-Funded Acquisition Project

A conversion occurs when a property acquired with RCO grant will be used for purposes other than originally stated in the project agreement. See RCO *Manual 7, Long-term Obligations* for a complete discussion of conversions and the process required for

⁵³Revised Code of Washington 79A.25, Washington Administrative Code 286, RCO's project agreement standard terms and conditions, and *Manual 7, Funded Projects*.

⁵⁴Project area is the defined geographic area where the project occurs and is described in the project's boundary map.

replacement of the public investment as required by the RCO Deed of Right or RCO Assignment of Rights.

Removing or Changing a Deed of Right

If a project sponsor needs to revise or remove a recorded Deed of Right, it may trigger a conversion of use. You should contact RCO to discuss the situation and how to meet the project agreement requirements. RCO will provide the necessary legal documentation needed to remove the Deed of Right from the property.

Other Things to Know

Federal Rules

For all projects funded with federal funds or other grants that are used by RCO as match to a federal source, grant administration is governed by [Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#).

RCO may require additional information to meet federal grant requirements. RCO will provide an "Applicant's Next Steps" document outlining these additional requirements.

Funding Acknowledgement and Signs

All acquisition projects, except projects in the **Washington Wildlife and Recreation Program's Farm and Forest Account**, must acknowledge the RCO grant, by program, at the project site. Funding acknowledgement must be posted before the project agreement end date. Project sponsors must send evidence of the funding acknowledgement to RCO by a photograph or some other way.

Some habitat conservation or salmon habitat recovery areas contain species or other resources so sensitive that it is unwise to place signs at the site. In these cases, the project sponsor may seek RCO approval to waive signing requirements.

Acknowledgement includes the following:

- Prominent placement of a sign on the property, unless waived by RCO. The sponsor may build signs to harmonize with a design standard or request a standard acknowledgement sign from RCO.
- Recognition in any release or publication developed or modified for the project.
- Recognition at dedication ceremonies. Notify RCO at least 2 weeks before the ceremony if you wish to have a representative of RCO at the ceremony. Notify RCO 30 days in advance if you wish to have a speaker from RCO.

Inspections and Reporting

RCO may visit an acquisition project at the application phase, before project funding, during the active project agreement, and after a project is completed. For less-than-fee title acquisitions, RCO will follow the terms of access in the legal document.

RCO staff conducts four types of project site visits:

- **Pre-award.** Made during the application phase, normally with the applicant to assess the project area and scope of work for eligibility concerns and compatibility with the grant program.
- **Interim.** This inspection, normally coordinated with the sponsor, is made sometime during project implementation to help resolve any apparent or anticipated problems and to monitor project progress.
- **Final.** This optional site review takes place after the sponsor requests a final payment or final inspection. This request must be made only after the project is complete, including relocation, removal of structures, and installation of fencing and signs. When RCO staff's final inspection verifies that the project is complete as described in the agreement, the final payment, including retainage, will be made.
- **Post Completion Compliance.** After verification of project completion (see previous paragraph), RCO staff will periodically check the site to ensure that it is being used and maintained according to the terms of the project agreement. After making special arrangements with RCO staff, the sponsor's staff also may perform these inspections.

After project funding, the sponsor shall provide RCO, its officers, any other authorized agent or official of the State of Washington or the federal government, the right of access to the project area, at all reasonable times, to monitor and evaluate performance, compliance, and quality assurance.

Reporting

In addition to annual billings, sponsors must submit written status reports summarizing the progress to date on all active projects. Due dates for progress and final reports are outlined in the project agreement milestones. In addition, sponsors of completed projects are required to report on specific matters whenever requested to do so by RCO. Public Disclosure Rules

RCO records and files, including those related to acquisitions, are public records that are subject to the Public Records Act.⁵⁵ The appraisal and appraisal review are exempt from public disclosure for 3 years or until the sale is completed or abandoned. More information about [RCO's disclosure practices](#) is available on the Web site.

Additional Rules and Instructions

The Recreation and Conservation Funding Board and Salmon Recovery Funding Board may issue additional or modified rules, instructions, interpretations, and guides from time to time as it believes necessary for the effective conduct of the grant programs. Such changes will apply to all projects. Whenever possible, sufficient lead time will be given between the announcement and the effective date to minimize impacts to projects already in process at the time of announcement.

Public Disclosure Rules

RCO records and files are public records that are subject to the Public Records Act.⁵⁶ More information about [RCO's disclosure practices](#) is available online.

⁵⁵Chapter 42.56 Revised Code of Washington

⁵⁶Revised Code of Washington 42.56

Appendix A: Deed of Right (Recreation)

Deed of Right to Use Land for Public Outdoor Recreation

Upon Recording, Please Return To:
Washington State Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: _____

DEED OF RIGHT TO USE LAND FOR PUBLIC OUTDOOR RECREATION PURPOSES

Grantor: (Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the WASHINGTON STATE RECREATION AND CONSERVATION FUNDING BOARD and the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, including any successor agencies

Abbreviated Legal Description: _____ (More particularly described in Exhibit "A" (Legal Description) and as depicted in Exhibit "B" (Property Map)),

Assessor's Property Tax Parcel Number(s): _____

Reference Numbers of Documents Assigned or Released: _____

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____ Account. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled _____, Project Number _____ signed by the Grantor on the ___ day of ___ and the Grantee the ___ day of ___ and supporting materials which are on file with the Grantor and the Grantee in connection with the Project Agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description for _____ purposes, consistent with the Project Agreement, so as to provide public access to outdoor recreation opportunities in perpetuity and protect public outdoor recreation and park resources.
2. The Grantor shall allow public access to the Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the Project Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with outdoor recreation purposes and the Project Agreement.
3. The Grantor shall provide access to the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without the prior written consent of the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute recreation land must be of reasonably equivalent usefulness and location for the public outdoor recreation purposes as the Real Property prior to any inconsistent use; (2) the substitute recreation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the Project Agreement includes any amendments thereto that occur prior or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Washington State Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

Exhibits to Include:

- EXHIBIT A: Legal Description of PARCEL "A"
- EXHIBIT B: Property Map. Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable; (5) boundary line of land acquired; and, (6) North arrow and scale. A professional legal survey may substitute for the preceding map elements.

GRANTOR:

Grantor Name:

By:

Name:

Title:

Dated this _____ day of _____, 20

STATE OF WASHINGTON)

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Grantor, _____ and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

GRANTEE:

State of Washington, acting by and through THE WASHINGTON STATE RECREATION AND CONSERVATION FUNDING BOARD, administered by the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

By:

Name:

Title:

Dated this _____ day of _____, 20__

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Recreation and Conservation Office and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

Appendix B: Deed of Right (Conservation)

Deed of Right to Use Land for Conservation Purposes

Upon Recording, Please Return To:
Washington State Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: _____

DEED OF RIGHT TO USE LAND FOR CONSERVATION PURPOSES

Grantor: (Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the WASHINGTON STATE RECREATION AND CONSERVATION FUNDING BOARD, and the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, including any successor agencies

Abbreviated Legal Description: _____ (More particularly described in Exhibit "A" (Legal Description), and as depicted in Exhibit "B" (Property Map)),

Assessor's Property Tax Parcel Number(s): _____

Reference Numbers of Documents Assigned or Released: _____

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____ Account. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled _____, Project Number _____ signed by the Grantor on the ___ day of ___ and the Grantee the ___ day of ___ and supporting materials which are on file with the Grantor and the Grantee in connection with the Project Agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the Project Agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes _____ habitat. This habitat supports or may support priority species including but not limited to _____.
2. The Grantor shall allow public access to the Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the Project Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with habitat conservation purposes and the Project Agreement.
3. The Grantor shall provide access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without prior written consent by the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the conservation purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the conservation purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute conservation land must be of reasonably equivalent habitat qualities, characteristics and location for the conservation purposes as the Real Property prior to any inconsistent use; (2) the substitute conservation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other

grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the Project Agreement includes any amendments thereto that occur prior to or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Washington State Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

Exhibits to Include:

- EXHIBIT A, Legal Description of PARCEL "A"
- EXHIBIT B, Property Map. Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable, (5) boundary line of land acquired; and, (6) North scale and scale. A professional legal survey may substitute for the preceding map elements.

GRANTOR:

Grantor Name:

By:

Name:

Title:

Dated this _____ day of _____, 20__

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Grantor, _____ and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

GRANTEE:

State of Washington, acting by and through THE WASHINGTON STATE RECREATION AND CONSERVATION FUNDING BOARD, administered by the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

By:

Name:

Title:

Dated this _____ day of _____, 20__

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Recreation and Conservation Office and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

Appendix C: Deed of Right: (Salmon Recovery)

Deed of Right to Use Land for Salmon Recovery Purposes

Upon Recording, Please Return To:
Washington State Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: _____

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY PURPOSES

Grantor: (Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the WASHINGTON STATE SALMON RECOVERY FUNDING BOARD and the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, including any successor agencies.

Abbreviated Legal Description: _____ (More particularly described in Exhibit "A" (Legal Description), and as depicted in Exhibit "B" (Property Map)),

Assessor's Property Tax Parcel Number(s): _____

Reference Numbers of Documents Assigned or Released: _____

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____ Account. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled _____, Project Number _____ signed by the Grantor on the ___ day of ___ and the Grantee the ___ day of ___ and supporting materials which are on file with the Grantor and the Grantee in connection with the Project Agreement.

1. The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties: The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the Project Agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes _____. This habitat supports or may support priority species or groups of species including but not limited to _____.
2. The Grantor shall allow public access to the Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the Project Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with salmon recovery purposes and the Project Agreement.
3. The Grantor shall allow access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without prior written consent by the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the salmon recovery purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the salmon recovery purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute salmon recovery land must be of reasonably equivalent habitat qualities, characteristics and location for the salmon recovery purposes as the Real Property prior to any inconsistent use; (2) the substitute salmon recovery land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed, the Project Agreement includes any amendments thereto that occurred prior to or may occur subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Salmon Recovery Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Washington State Salmon Recovery Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this Deed.

Exhibits to Include:

- EXHIBIT A, Legal Description of PARCEL "A"
- EXHIBIT B, Property Map. Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable, (5) boundary line of land acquired; and, (6) North arrow and scale. A professional legal survey may substitute for the preceding map elements.

GRANTOR:

Grantor Name:

By:

Name:

Title:

Dated this _____ day of _____, 20

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Grantor, _____ and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

GRANTEE:

State of Washington, acting by and through the WASHINGTON STATE SALMON RECOVERY FUNDING BOARD, administered by the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

By:

Name:

Title:

Dated this _____ day of _____, 20__

STATE OF WASHINGTON

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ for the Recreation and Conservation Office and to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signed: _____

Notary Public in and for the State of Washington, residing in _____.

My commission expires _____.

Appendix D: Conservation Easement Requirements for Habitat and Salmon Recovery

Introductory Key

=Required provisions

=Provisions to **strongly consider**

Gray background text=Sample language

[Italicized/bracketed language]=text choices which may or may not apply

Recitals: Background Information

- Separately identify the portion of the property that contains the habitat or conservation value that will be protected, or protected and restored or enhanced, by the conservation easement.

The portion of the Property containing conservation values and protected by this Easement is described in Exhibit __ (description) and shown in Exhibit __ (site map), which are attached and incorporated into this Easement by this reference.

- Note conservation values provided by the property.

The Conservation Zone provides habitat and other natural values (collectively, the "Conservation Values"), as more particularly described in Recitals __ and __ below.

- Refer to the baseline documentation.

The specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated _____ *[on file at the offices of*

Grantee][attached hereto as Exhibit ___] and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of conservation easement acquisition, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

Conveyance and consideration

- Track statutory language necessary to convey real property interests in Washington State.
- Identify term of conservation easement (e.g., 30 year-term or in perpetuity).

Purpose

- Identify habitat protection as one of the specific purposes of the conservation easement.

Purpose. The purpose of this Easement is to assure that the Conservation Zone will be retained predominantly in its natural condition [*as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,"*], and to prevent any use of, or activity on, the Conservation Zone that will [*significantly*] impair or interfere with the Conservation Values of the Conservation Zone (the "Purpose"). This Purpose includes the protection of habitat as defined in Recital I.__ of this Easement. Grantor intends that this Easement will confine the use of, or activity on, the Conservation Zone to such uses and activities that are consistent with this Purpose. [*Except as specifically provided for in Section __, t*][*T*]his Easement shall not be construed as affording to the general public physical access to the Property.

- Identify, as appropriate, any plans to monitor, protect, maintain, restore or enhance the Conservation Zone.

Stewardship Plan. To further this Purpose, Grantee may develop a plan for stewardship of the Conservation Zone (the "Stewardship Plan") [*which is attached as Exhibit __ and incorporated into this Easement by this reference*]. The Stewardship Plan [*is intended to describe*] [*describes*] activities to monitor, protect, maintain, and [*restore*] [*enhance*] the original and natural conditions of the Conservation Zone.

Rights Conveyed to Grantee

- List the rights that are being conveyed to the organization holding the conservation easement (Grantee).

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- Provide right of organization to preserve conservation values of the property.

[Identification] Protection [Restoration] [Enhancement]. To [identify,] preserve and protect [in perpetuity] and to [restore] [enhance] [maintain] [and manage] the Conservation Values of the Conservation Zone.

- Provide right of organization to enter the land for inspection and enforcement, and where applicable, environmental monitoring, maintenance, restoration, and enhancement.

Access

1. To enter the Property *[annually]*, at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Conservation Zone to monitor compliance with this Easement.
2. To enter the Property *[, or allow Grantee's invitees or licensees to enter the Property,]* at reasonable times and upon prior written notice to Grantor, for the purpose of *[restoring] [enhancing] [maintaining] [managing]* the Conservation Values of the Conservation Zone through implementation of the Stewardship Plan.
3. To enter the Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

- Provide right to injunction to prevent any activity on or use of the property that is inconsistent with the purpose of the conservation easement and to require restoration of the land to condition at time of the grant of easement.

Injunction and Restoration. To enjoin any use of, or activity on, the Conservation Zone that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require *[or undertake]* the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section__.

- Provide right of organization to enforce terms of the conservation easement.

To enforce the terms of this Easement, consistent with Section __.

Permitted Uses and Activities

- Tailor "permitted uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Permitted uses might include modification of existing structures, construction of roads or structures in specified areas, access by grantor for passive recreation, agricultural or timber harvesting activities in specified areas or under specified conditions.
- Include ability to undertake stewardship activities on the property.

Stewardship Activities. The undertaking of any activity pursuant to any Stewardship Plan covering the Conservation Zone is consistent with the purpose of this Easement.

Prohibited Uses and Activities

- Tailor "prohibited uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Prohibited uses might include agricultural or timber harvesting activities in specified areas, land subdivision, construction of roads or structures, hunting, or mining.

Notice and Approval

- Require advance notice to organization if landowner plans to undertake certain permitted actions that could be inconsistent with the purpose of the conservation easement.
- Provide right of organization to approve, deny or condition proposed actions of landowner.
- Provide addresses of landowner and organization for required notices under the easement.

Dispute Resolution and Grantee's Remedies

- Provide right of organization to give notice of violations to landowner, with demand for repair or restoration.

Notice of Violation, Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

Grantor's Failure to Respond. Grantee may bring an action as provided in subsection ___ if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

Grantee's Action.

1. *Injunctive Relief.* Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

- A. To enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction; and

- B. To require the restoration of the Property to the condition that existed prior to any such injury.

2. *Damages.* Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of environmental values. Without limiting Grantor's liability in any way, Grantee [, *in its sole discretion, may*][*shall first*] apply any damages recovered to the cost of undertaking corrective or restoration action on the Conservation Zone.

Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- Consider providing that costs of enforcing the terms of the easement are to be borne by landowner unless landowner prevails in court.

In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. *[In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.] [If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.]*

- Consider providing that enforcement of the terms of the easement is at discretion of organization.

Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

- Consider providing that landowner waive claims and defenses, based upon waiver, laches, estoppel, or prescription.

Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

- Strongly consider providing that organization cannot bring enforcement action against landowner for injury to the property resulting from circumstances beyond landowner's control.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Conservation Zone or to recover damages for any injury to or change in the Conservation Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Zone resulting from such causes. *[In the event the terms of this*

Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.]

Costs, Liabilities and Insurance, Taxes

- Consider providing that landowner remains responsible for property and for maintaining adequate comprehensive general liability insurance coverage.

Environmental Compliance, and Indemnification

- Consider providing that landowner still pays property taxes, reduced or otherwise.
- Require landowner to represent and warrant that no toxic or hazardous substances are found on the property.

Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge.

1. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;
2. There has been no release, dumping, burying, abandonment or migration from off-site onto the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
3. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values of the Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

- Require landowner to be responsible for environmental cleanup on the property unless caused through the activities of the organization or agency.

Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

- Require landowner to remain responsible for losses, personal injuries, environmental concerns, and other damages unless caused by fault or negligence of the organization.

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Grantee under this Easement;
2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. 9601 et seq.) and MTCA (Chapter 70.105D Revised Code of Washington), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;
3. The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties;

4. The obligations, covenants, representations, and warranties specified in this section.

Extinguishment, Valuation and Subsequent Transfer

- ☑ Provide that conservation easement may be extinguished in whole or in part before expiration of its term only if: (a) the organization determines that the purpose of the conservation easement is no longer practical to accomplish and the parties agree to extinguish the easement or release a portion of the conservation zone from the conservation easement; (b) a court determines that the purpose of the conservation easement is no longer possible to accomplish; or (c) the property is taken by eminent domain. Refer to the Assignment of Rights in Manual 3 Appendix G.

Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, before expiration of the term of the Easement only under one or more of the following circumstances:

1. The parties jointly agree to extinguish this Easement, or release a portion of the Conservation Zone from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section ____.
2. Upon petition by one or all of the parties, a court having jurisdiction over this Easement determines by judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve.
3. All or any of the Conservation Zone is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. *[Grantor and Grantee shall act jointly to recover the full value of the interest in the Conservation Zone subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received.]*

Grantor and Grantee agree that the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Zone subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section ____ of this Easement.

- Specify how to determine the fair market value of the real property interest held by the organization.

This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section __ of this Easement, the parties stipulate to have a fair market value determined by *[multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the effective date of this Easement attributable to improvements) by the ratio of the purchase price for the Easement to the fair market value of the Property, without deduction for the purchase price for the Easement, as of the effective date of this Easement]*.

- Require landowner to reference conservation easement in subsequent deeds and notify organization of sale or transfer and name of prospective transferee (but landowner's failure to do so must not impair the validity of the conservation easement or limit its enforceability in any way).

Subsequent Transfer. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Property;
3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

Easement Amendment

- Consider allowing for amendment of the conservation easement, provided that the amendment does not affect the qualification of the conservation easement or the status of the organization or agency under applicable laws, is consistent with the original purpose of the conservation easement and does not shorten its duration, and is in accordance with the Assignment of Rights.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; *provided* that no amendment shall be allowed that will affect the

qualification of this Easement or the status of Grantee under any applicable laws, including without limitation Chapter 64.04.130, Chapter 84.34 Revised Code of Washington [*or Section 170(h) of the Internal Revenue Code of 1986, as amended*] (or any successor provision((s)) then applicable). Any such amendment shall be consistent with the original Purpose of this Easement and shall not shorten its duration, shall be in accordance with the provisions of the Assignment of Rights referenced in Section ___, and shall be recorded in the official records of _____ County, Washington, and any other jurisdiction in which such recording is required.

Assignment and Succession

- Provide right of organization to assign (transfer) easement to another organization or entity eligible under the RCO, which also *qualifies* under Washington law [and IRS regulations], in accordance with the Assignment of Rights.

Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Chapter 64.04.130 or Chapter 84.34.250 Revised Code of Washington (or any successor provision((s)) then applicable) [*and a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under*] and in accordance with the provisions of the Assignment of Rights referenced in Section ___. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

- Provide for assignment of certain rights in the conservation easement to the State of Washington through the Interagency Committee for Outdoor Recreation.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Recreation and Conservation Office. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit ___.

Recordation

- Require that the organization or agency record the conservation easement instrument. (Recordation is the only way to put the world at large on constructive notice of the conservation easement.)

Subordination

- Require consent by mortgage holders, owners of easements, lease holders, and other lien holders necessary to "bind" those parties to the terms of the conservation easement.

General Provisions

- Provide that interpretation and performance of the conservation easement is governed by the laws of the State of Washington.
- Provide for liberal construction in favor of the grant of the conservation easement to effect the purpose of the conservation easement.
- Provide that conservation easement terms are binding upon parties and their successors and assigns.
- Require execution and acknowledgment by landowner and organization or agency.

Appendix E: Farm and Forest Easement Template



[Model Agricultural Conservation Easement](#) (with optional co-grantee) for use in the Farmland and Forestland Preservation Categories can be found on RCO's Web site.

Appendix F:

Baseline Inventory

Baseline Inventory

Completing a baseline inventory allows you to record and characterize the environmental aspects of the property at the time of easement acquisition. An inventory provides the basis for future easement monitoring and, if necessary, enforcement. It is particularly important in court in the event of an easement violation. A baseline inventory also is required by the Internal Revenue Service for any tax-deductible easement gifts.

RCO requires that the baseline inventory be completed on all properties with a conservation easement. If the baseline inventory is not filed as an attachment to the conservation easement, it must be referenced in the conservation easements as to its existence and whereabouts. In determining where the original baseline inventory will reside, you may want to consider who will hold the easement and who may be undertaking future compliance monitoring and enforcement activities. RCO must be provided with a copy of the baseline inventory.

Baseline data should characterize and document the condition of property features protected or affected by the easement terms. The baseline inventory should be descriptive and include maps, plans, photographs (aerials or ground), and narratives. Documentation methodology should be objective and reproducible so that future monitoring can be repeated in a comparable manner. Include ecological, biological, geological, land use, and other property features. The level of detail for each category may vary depending on physical land features and the specific terms of the easements. Generally, the more restrictive the terms of the easements, the more detailed the documentation should be.

Using your own format. If you choose to use your own format, the baseline inventory must include:

- U.S. Geological Survey quad map (1:24,000, 7.5), showing property lines and other contiguous or nearby protected areas, and a parcel map or county assessors map showing property boundaries.

- A map of the area drawn to scale showing all existing human-made improvements or incursions (such as roads, buildings, fences, or structures), vegetation and wildlife (species locations, breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and riparian areas).
- A narrative description of the property protected by the conservation easement (at or near the time of easement purchase). Include habitat values, unique and existing land features, natural resources (include vegetation and fish and wildlife), water quality and quantity, and historic and current land uses.
- Photographs (black and white) taken at permanent photograph point locations on the property that adequately depict the conservation easement area and natural resources to be protected. The photographs should document the condition of the resource at or near the time of easement purchase. Include aerial photographs with property boundaries indicated (if possible).

The [Land Trust Alliance](#) has two excellent references regarding baseline inventories, monitoring, and stewardship of easements: *Managing Conservation Easements in Perpetuity*; and *Conservation Easement Stewardship*.

Appendix G: Assignment of Rights Template

Upon Recording, Please Return To:
Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917

Attn: [insert grant manager's name]

Document Title: Assignment of Rights

Reference No. of Related Document:

Assignor: Sponsor Name

Assignee: The State of Washington, through the Recreation and Conservation Office, including any successor agencies

Abbreviated Legal Description:

Assessor's Parcel Nos:

ASSIGNMENT OF RIGHTS WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 20__, by _____, a _____ ("Assignor [name]"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee State"), including any successor agencies.

RECITALS

- Assignor has entered into [insert full title of easement or lease, e.g., Conservation Easement, Easement for Ingress, Egress and Public Access, or Trail Easement or Lease Agreement, etc.] ("Easement or Lease") with [a] certain property owner[s] (collectively "Owner") in _____[insert county name], Washington. The name[s] and address[es] of the Owner and the recording number of the Easement or Lease are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Easement or Lease is set forth in Exhibit 2 attached hereto and incorporated herein.
- The purpose of the Easement or Lease is described in the Easement or Lease. That purpose is also described in the Project Agreement entered into between the recipient of RCO funds ("Sponsor") and the Assignee through the RCO entitled _____ Project Number _____ dated _____, 20__ and the supporting materials which are on file with the Assignee in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes [protection] [and restoration] [and enhancement] [restoration and enhancement] of habitat [public access] [trail, etc.], as defined in the Easement or Lease.
- Owner has authorized Assignor to assign to the Assignee certain rights for access to and stewardship of the property covered by the Easement or Lease. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the [Recreation and Conservation Funding Board or Salmon Recovery Funding Board] administered by the Assignee. Such rights are valuable to the Assignee in connection with ensuring [protection of habitat] [protection of public rights] under the terms of the Easement or Lease. The assignment of such rights to the Assignee State, however, does not in any way relieve the Assignor [name] of such duties to enforce the Conservation Easement or Lease as may be imposed on it under the Conservation Easement or Lease and the Project Agreement.
- These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the Assignee agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the _____ *[insert funding source]* and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the Assignee individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the *Easement or Lease*, the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference and as described in *Exhibit 2* attached hereto. The term "joint right" means a right that both the Assignor and Assignee may independently enforce under the Conservation Easement or Lease. The grant of these joint rights does not in any way relieve the Assignor of its duties to enforce the terms of the Conservation Agreement or Lease, whether under those agreements or under the Project Agreement.
 - A. **Access.** A right to enter the *[Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement [the Property subject to the Easement or Lease]* at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.
 - B. **Enforcement.** A right to enforce the terms and conditions of the Conservation Easement and/or Lease and to seek injunctive relief, including restoration, and/or damages for any breach thereof.
 - C. **Amendments.** A right to review and approve any proposed amendments to the *Easement or Lease*. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreement.
 - D. **Termination for Reasons of Impracticability.** A right to review and approve any proposed agreements to terminate the *Easement or Lease*, or release a portion of the *[Conservation Zone] [Property]* from the terms of the *Easement or Lease*, before expiration of the term of the *Easement or Lease* for the reason that circumstances have rendered the conservation purpose of the *Easement or Lease* impractical to achieve. Absent approval of the Assignee acting through the RCO or entry of an order of the Superior Court in which the property subject to the *Easement or Lease* is located, the Assignor shall not enter into any termination or release agreement.
 - E. **Stewardship and Management Plans.** A right to review any Stewardship and/or Management Plans, *[including habitat restoration and enhancement plans]*, as defined in the *Easement or Lease*. Review by

RCO's Director will be for compliance with the terms of the Project Agreement.

To the extent the rights assigned herein overlap with the rights granted to the Assignor under the *Easement or Lease*, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **Assignee's Exercise of Rights.** The Assignee hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the *[conservation] [recreation]* purpose defined in the *Easement or Lease* and the Project Agreement.
3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the Assignee that:
 - A. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.
 - B. Assignor shall enforce the terms of the *Easement or Lease* as provided in the *Easement or Lease*.
 - C. Assignor shall comply with, and the Assignee shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the *Easement or Lease* or the undertaking of any of its rights under the *Easement or Lease*.
 - D. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to the *Easement or Lease* as of the date provided above.
4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the Assignee has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the *Easement or Lease*.
5. **Indemnity.** Assignor shall defend, protect and hold harmless the Assignee, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor and/or its employees, relating to the *Easement or Lease* or in any way relating to Assignor's representations and warranties under this Assignment.
6. **Replacement Property.** The *Easement or Lease* may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the *Easement or Lease*. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or

enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the *Easement or Lease* or the performance of any obligations to the Assignee under the *Easement or Lease*, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.
8. **Assignment Term.** The term of this Assignment shall be the same as the term of the *Easement or Lease*, and shall expire upon the expiration date of the *Easement or Lease* (if any).
9. **Disputes.** Any disputes between Assignor and the Assignee under this Assignment shall be governed by the terms of the Project Agreement.
10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the Assignee involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.
11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

12. **SCHEDULE OF EXHIBITS:**

Exhibit 1–Owner and *Easement or Lease* Recording Number

Exhibit 2–Legal Description of Property Subject to *Easement or Lease*

ASSIGNOR:

_____ ,

By _____

Its _____

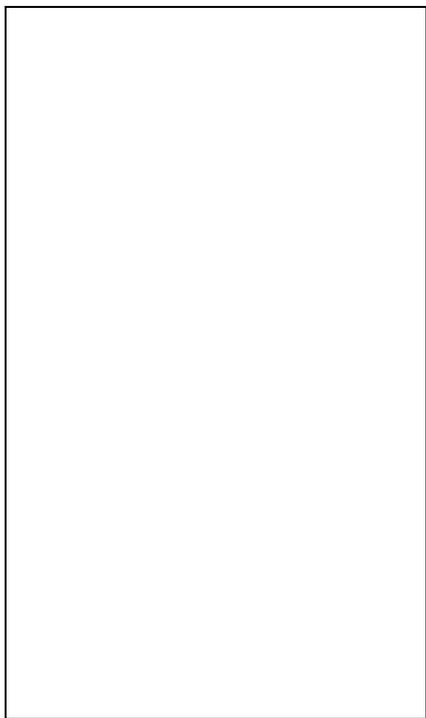
STATE OF WASHINGTON)

) ss:

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

ASSIGNEE:

THE STATE OF WASHINGTON, through its Recreation and Conservation Office

By _____

Typed/Printed Name_____

Its: _____

Date:_____

Its Director

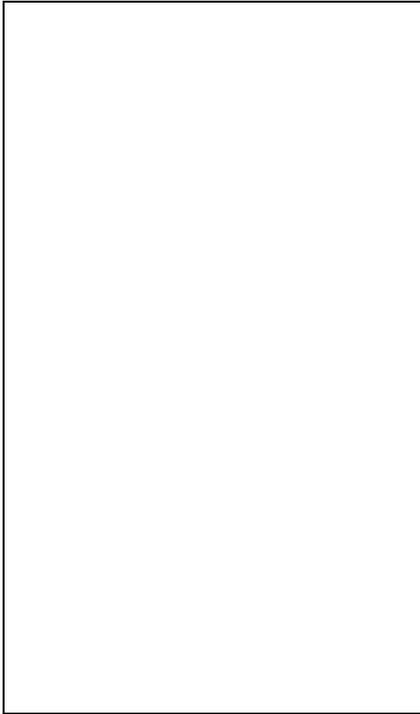
STATE OF WASHINGTON)

) ss:

COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT OR LEASE RECORDING NUMBER *(if applicable)*

Name(s): _____

Address: _____

Recording No.: _____

EXHIBIT 2

LEGAL DESCRIPTION FOR PROPERTY

SUBJECT TO EASEMENT OR LEASE

DESCRIPTION OF CONSERVATION ZONE (if applicable)

Appendix H: Landowner Acknowledgement Form

Landowner Information

Name of Landowner:

Landowner Contact Information:

Mr. Ms. Title:

First Name:

Last Name:

Contact Mailing Address:

Contact E-Mail Address:

Property Address or Location:

1. _____ (Landowner or Organization) is the legal owner of property described in this grant application.
2. I am aware that the project is being proposed on my property.
3. If the grant is successfully awarded, I will be contacted and asked to engage in negotiations.
4. My signature does not represent authorization of project implementation.
5. If I am affiliated with the project sponsor, I will recuse myself from decisions made by the project sponsor to work on or purchase my property.

Landowner Signature

Date

Project Sponsor Information

Project Name:

Project Applicant Contact Information:

Mr. Ms. Title

First Name:

Last Name:

Mailing Address:

E-Mail Address:

Appendix I: Voluntary Acquisition Notice to Owner

This notice to the owner on voluntary acquisition meets step two of the acquisition procedures⁵⁷ outlined in Section 4 in this manual.

In writing, inform the landowner that they are not compelled to sell the property to the agency, rather this is a voluntary transaction and relocation assistance will be provided for tenants that are eligible displaced person in accordance with the Uniform Relocation Act Chapter 8.26 Revised Code of Washington. The value of the property or the purchase price is not discussed at this time. The parties may discuss how the property will be valued and how they will determine a purchase price.

Send this notice to the seller by certified mail or have the landowner sign the notice. Provide a copy of the certified or signed letter to RCO for its records.

Example Voluntary Acquisition Notice to Owner

Date

Name of Owner
Address
City, WA 98XXX

RE: Voluntary Acquisition Notice

Dear *[insert property owners name(s)]*,

This is to inform you that _____*[insert Project Sponsor name]* would like to acquire the property at _____*[insert street address or other property identification]*, if a satisfactory agreement can be reached.

⁵⁷Chapter 8.26 Revised Code of Washington

Because state or federal money may be used in the purchase, we are required to let you know that the sale is voluntary. If you do not wish to sell, we will not acquire your property. The _____ *[insert project sponsor name]* will not/cannot acquire *[choose one]* your property by condemnation (i.e., through powers of eminent domain).

Because the purchase would be a voluntary, you would not be eligible for relocation payments or other relocation assistance under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or the state Real Property Acquisition Policy (Chapter 8.26 Revised Code of Washington) or any other law or regulation. However, any tenants that are eligible displaced people located on the property will be offered relocation assistance.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property, the purchase price will be based upon the fair market value as determined by an appraisal and review appraisal of the property. You also may choose to donate a portion of the purchase price once the fair market value has been established. Please let us know if you have any tenants or businesses as they may be eligible for relocation assistance. If you have any questions about this matter, please contact _____ *[insert name]* at _____ *[insert contact information]*.

Sincerely,

[Your name here]

Appendix J: Just Compensation and Relocation Notice to Owner

The notice to the owner for just compensation and relocation meets step seven of the acquisition procedures⁵⁸ outlined in Section 4 of this manual.

Present the landowner with a statement of just compensation which informs the landowner of the appraised value of the property and offers tenant relocation assistance, if eligible

The notice must be signed by the landowner. Provide a copy of the signed notice to RCO for its records. This notice, in effect, opens official negotiations with the owner. No discussions with the owner before this time should include purchase price.

Example Just Compensation and Relocation Notice to Landowner

Date

Name of Landowner(s)

Address

City, WA 98XXX

RE: Just Compensation and Relocation Notice

Dear *[insert property owners name(s)]*,

This notice is to advise you of the compensation for your property at *[insert street address or other property identification]*. In compliance with state and federal law, the just

⁵⁸Chapter 8.26 Revised Code of Washington

Appendix J: Just Compensation and Relocation Notice to Owner

compensation for _____ [*insert one of the following: fee interest, conservation easement, lease, or other*] in the property is: \$ _____ [*insert the market value as determined by an appraisal and confirmed by a review appraisal*] as determined by the appraisal dated _____ and completed by _____, which was confirmed by the review appraisal dated _____ completed by _____.

By signing this notice, you acknowledge that you were made aware of the just compensation of the property under consideration and provided an opportunity to identify any potential people who may be eligible for relocation assistance. This does not obligate you to sell your property or any rights in it.

Owner(s) signature: _____

Please provide below the name and addresses of anyone living on the property other than the owners or any businesses using the property:

[space name and addresses here]

Please retain this letter for your records, and return a completed copy to me by _____. If you have questions please call me.

Sincerely,

[insert your name]

Appendix K: Preliminary Title Report and Commitment Checklist

Submittal of this checklist is one of the options for satisfying the preliminary title review as described in Section 6. Fill out and attach this form to the Preliminary Title Report or Preliminary Commitment for Title and submit to RCO.

On the checklist, the project sponsor certifies that they have reviewed the title and identifies which encumbrances will be cleared before closing. RCO will review the checklist and contact the project sponsor with any outstanding concerns.

Preliminary Title Report/Commitment Checklist

RCO Project # _____

Project Sponsor/Applicant Name: _____

RCO Policy on Encumbrances

Property rights acquired with RCO funding must be free of encumbrances that disproportionately limit the value or uses for the public (i.e., habitat conservation or salmon habitat recovery values or the recreation use of a site). RCO will make the final determination on which encumbrances on the property do not conflict with the purpose of the RCO funded project. (Manual 3, Section 6)

I have reviewed the attached preliminary title report or commitment, including all noted exceptions/encumbrances, and recommend the following:

[] The following exceptions will remain on title at closing:

Appendix K: Preliminary Title Report and Commitment Checklist

List each exception by number (as listed in report) with a brief description of purpose, location on the property, and impacts (if any) to the project goals and objectives.

- [] The following exceptions will be removed/cleared at closing (e.g., taxes, deeds of trust, monetary liens):

List each exception by number (as listed in report).

- [] The following exceptions should be removed and we will make every effort to do so:

List each exception by number (as listed in report) with a brief description of why you expect to be able to have it removed at closing.

RCO's expectation is that those identified for removal will not appear on the final title policy; failure to do so may result in a withholding of final reimbursement. The project sponsor must document efforts and reasons for any that cannot be cleared.

I certify to the best of my knowledge that with the above action the property and/or rights to be acquired will meet RCO policy.

Print name: _____

Signature: _____

Title: _____

Date: _____

Appendix L: Hazardous Substances Certification

The _____ [insert project sponsor name], as the recipient of funding assistance specified in RCO Project Agreement # _____ [insert RCO project number] titled _____ [insert project name] does hereby give assurance that it does not know and has no reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for remedial action, was released or disposed of, in or at the _____ [insert property name] property or properties that are included in the above-referenced Project Agreement. The _____ [insert project sponsor name] further warrants that it has obtained representations and warranties concerning the environmental condition of the property from the seller and has inspected the property to the scope and extent described in the attached (check applicable):

- Environmental Site Assessments per American Society for Testing and Materials (ASTM) standards*
- All Appropriate Inquiries per U.S. Environmental Protection Agency standards, or*
- RCO Property Assessment Checklist [provided in Appendix M].*

Signature of Project Sponsor

Title

Date

Appendix M: Property Assessment Checklist

Property Assessment Checklist for Hazardous Substances Certification					
Date:		Property Name:			
Legal Description:		Co. Parcel #			
Street Address					
I. Land Use - Subject Property		II. Land Use - Adjacent Properties		III. Public Records	
Use	Yes No Unk	Use	Yes No Unk	List/Agency Action	Yes No Unk
Commercial/industrial	() () ()	Commercial/industrial	() () ()	Federal superfund	() () ()
Dryland agriculture	() () ()	Dryland agriculture	() () ()	Ecology haz sites list	() () ()
Forest	() () ()	Forest	() () ()	Ecology leaking UST list	() () ()
Grazing	() () ()	Grazing	() () ()	Ecology UST list	() () ()
Irrigated agriculture	() () ()	Irrigated agriculture	() () ()	Ecology enforcement	() () ()
Residential	() () ()	Residential	() () ()	County dumps/landfills	() () ()
Vacant undeveloped	() () ()	Vacant undeveloped	() () ()	County enforcement	() () ()
Other	() () ()	Other	() () ()	Fire district response	() () ()
Comment:		Comment:		Comment:	
IV. Field Inspection					
Risk Indicators	Yes No Unk	Risk Indicators	Yes No Unk	Risk Indicators	Yes No Unk
Abandoned equipment	() () ()	Chemical spills	() () ()	Off site water discharge	() () ()
Above ground tanks	() () ()	Chemigation/fertigation	() () ()	Oil used for dust control	() () ()
Attractive nuisances/hazards	() () ()	Discolored soils	() () ()	Piles of "unknowns"	() () ()
Buildings	() () ()	Distressed vegetation	() () ()	Pilings, docks, wharfs	() () ()
* Asbestos	() () ()	Electrical equipment	() () ()	Pits, ponds, lagoons	() () ()
* Fiberglass	() () ()	Excavations/fills	() () ()	Railroads	() () ()
* Hazardous condition	() () ()	Flood hazard	() () ()	Under ground tanks	() () ()
* Lead	() () ()	Foundations	() () ()	Unstable soils/slopes	() () ()
* Urea formaldehyde	() () ()	Garbage dumps	() () ()	Water sheens	() () ()
Burn piles	() () ()	Hazmat use, storage, dumping	() () ()	Wells	() () ()
Chemical filling areas	() () ()	Manholes, fill pipes, drains	() () ()	Other	() () ()
Comment (Note: attach additional comments, map and photographs):					
V. Conclusion and Recommendation					
() No Apparent Risk There is no apparent liability to the department, or it presents an acceptable level of risk, as explained below.					
() Low Level of Risk that can be Mitigated There is a risk level that can be avoided if certain actions are taken or conditions met, as explained below.					
() Risk needs Further Investigation There is a potential or known risk that needs a Phase 1 environmental assessment completed, as explained below.					
() High Risk There is a potential or known risk that outweighs benefit to the department, as explained below.					
Rationale: I reviewed the following documents/undertook the following actions in arriving at the above conclusion: () Aerial photographs; () Title search; () Public Records; () Personal interview (who?); _____; () Site inspection; () Other _____					
Comment:					
Signed		Title		Date	

Appendix N: Waiver of Retroactivity Request Checklist

To request a Waiver of Retroactivity, you must submit the following documents before closing on the property, preferably at least 30 days in advance:

- Written request with a justification regarding the critical need to purchase property
- Location map
- Parcel map
- Landowner Acknowledgement Form (sample available in Manual 3)
- Voluntary acquisition notice (sample available in Manual 3)
- Preliminary title report
- Preliminary title report and commitment checklist (form in Manual 3)
- Landowner donation statement (if applicable)

You also may submit the appraisal, review appraisal, and other incidental documents for RCO review, if available.

RCO may request additional documentation for review of the request.

NOTE: If requesting a waiver for a federally-funded grant program, RCO must get approval from the appropriate federal agency before issuing the waiver. Please allow sufficient time in advance of closing.

Please refer to [Section 4, Acquisition Procedures](#), for additional information and all other acquisition policies and procedures.