



STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

May 2009

**Item #14:** **Policy Regarding the Process and Criteria to Implement RCW 77.85.130(7)**

**Prepared By:** Megan Duffy, Policy Specialist

**Approved by the Director:**

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**Proposed Action: Decision**

**Summary**

RCW 77.85.130(7) allows property acquired with Salmon Recovery Funding Board (board) funds to be conveyed to a federal agency if (a) the agency complies with all terms of the original grant or (b) the board approves changes in the grant terms *and* the property will retain adequate habitat protections.

At the board's request, Recreation and Conservation Office (RCO) staff developed a process and related criteria for implementing conveyances under RCW 77.85.130(7), and presented it at the February 2009 board meeting. Board members indicated support for the conveyance policy, but noted a written request received by Chelan County asking for more time to review the draft policy and provide comments. The board agreed to take action on the proposed policy at its May meeting to allow for additional public review time.

**Staff Recommendation**

Staff proposes the following process and criteria to assist the board in making any determinations regarding proposed conveyances under RCW 77.85.130(7). Staff recommends that the board adopt the suggested conveyance policy, including the process and criteria.

Proposed motion language:

Move to approve the proposed conveyance policy, including the process and criteria, and direct staff to incorporate the policy into Grant Manual 18 and apply the policy to conveyance requests made in 2009 and subsequent years.

**Background**

In 2000, the Legislature gave the board the authority to approve the conveyance of board-funded property to a federal agency if the agency "agrees to comply with all terms of the grant or loan to which the project sponsor was obligated." (Chapter 15, Laws of 2000) Because some federal agencies



cannot accept land with deed restrictions, the Legislature amended this language in 2005 so that properties acquired with a board grant can be conveyed to federal agencies that have different legal requirements, while still maintaining the intent of the original grant. RCW 77.85.130 (7) has yet to be applied.

The relevant statutory language states that:

“Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.”

#### Follow-up to February Meeting

RCO staff has met and discussed the proposed policy with Chelan County in response to its initial questions, which staff highlighted at the February board meeting. In lieu of additional written comments, the county intends to send a representative to the board’s May meeting.

#### **Analysis**

As discussed at the December 2008 and February 2009 board meetings, it is important to define the conveyances to which a policy applies. Staff proposes the following interpretation of the statutory use of conveyance in 77.185.130(7) as:

A transaction that consists of the whole of a SRFB funded property being transferred from an eligible sponsor to a federal agency as authorized in 77.85.130 (7), in which the sponsor receives no compensation. The exception to this interpretation regarding compensation is if the sponsor receives in return for the conveyed property, a property of equal or greater conservation value that is to be protected in perpetuity.

The following process and criteria help ensure that (1) the proposed substitute habitat protections are adequate; (2) the intent of original grant agreements are met; and, (3) the statute is applied consistently across all future requests under 77.85.130(7).

#### Proposed Process Steps

1. Sponsor notifies RCO of intent to convey land to a federal agency
2. RCO grant manager explains to sponsor the process steps and criteria for conveyance
3. RCO grant manager is actively engaged in the development of an agreement mechanism to ensure parties consider the appropriate level and scope of habitat protections. Board-adopted criteria will assist in determining the appropriate level.
4. Sponsor submits draft agreement to the RCO
5. The SRFB Technical Review Panel conducts a technical review and assessment of the proposed substitute habitat protections

6. RCO grant manager and policy staff review the agreement to determine if all criteria have been addressed and the agreement is ready to be presented to board
7. Staff presents the conveyance request to the board at a public meeting with opportunity for public comment.
8. The board may:
  - Approve the conveyance and associated habitat protections as presented
  - Provide additional guidance and request a revised proposal
  - Deny the proposed conveyance

Proposed Criteria

Question	Criteria
1. Does the transaction meet the definition of conveyance for purposes of applying 77.85.130(7)?	<ul style="list-style-type: none"> <li>• The SRFB funded property must be conveyed in its entirety</li> <li>• The sponsor conveying the property cannot receive compensation in any form for the conveyance, unless receiving a property of equal or greater conservation value (than the conveyed property) that will remain protected in perpetuity.</li> </ul>
2. Do the substitute protections meet the original intent of the grant agreement and project?	<ul style="list-style-type: none"> <li>• The conveyance agreement must include the original grant conditions except where those conditions are contrary to federal law and/or policy. In those instances, as directed by the statute, substitute habitat protections must be identified.</li> <li>• Substitute protections must fully meet or exceed goals and objective/s of the original project and result in the outcomes intended in the original grant. If substitute protections cannot be ensured to fully meet or exceed the goals and objective/s of the original grant, other benefits to the targeted species, habitat, or ecosystem functions must be provided that outweigh the potential loss of protection. For example, conveyance for inclusion in a national wildlife refuge would offer a high level of protection and provide opportunity for ecosystem management at a landscape scale.</li> </ul>
3. Do the substitute protections meet the board's mission?	<ul style="list-style-type: none"> <li>• Substitute protections or other intended benefits of the conveyance must support salmon recovery and produce sustainable and measurable benefits for fish and their habitat</li> </ul>

Question	Criteria
<p>4. What functions and geographic area do the substitute protections encompass and over what period of time will the substitute protections be in place?</p>	<ul style="list-style-type: none"> <li>• Substitute protections must apply to the full parcel of land funded by board;</li> <li>• Substitute protections must be long-term or in perpetuity, if possible under federal law and policy;</li> <li>• Substitute protections must support those habitat and other ecosystem functions necessary to survival and health of the target species identified in the original grant</li> <li>• There must be a low likelihood of future uses on the land that are not conservation-oriented or contrary to the original grant conditions. Measures of future uses include but are not limited to commercial value and resource extraction value.</li> </ul>
<p>5. How will the land be managed?</p>	<p>The proposed management plan should provide equal or greater stewardship of conservation values than that intended in the original grant.</p>
<p>6. Are there existing mechanisms in law, statute, or contract that can be used to enforce the substitute protections? What remedies are available if the identified protections are not implemented?</p>	<ul style="list-style-type: none"> <li>• Substitute protections must be legally enforceable</li> <li>• Agreement must clearly identify remedies in law, statute, and contract terms.</li> </ul>
<p>7. What is the nature of the agreement mechanism and is it legally enforceable?</p>	<p>Agreement mechanism must be legally enforceable with known remedies</p>

**Next Steps**

Based on the board decision, RCO staff will incorporate the conveyance process and criteria into Grant Manual 18, to be applied to conveyance requests for 2009 onward.