

Manual 7

Funded Projects

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Section 1

Introduction

In this section, you'll learn about:

- ✓ The funding boards
- ✓ Information you'll need
- ✓ Where to get help

About RCFB and SRFB

The policies in this manual are administered by two state agencies, the Recreation and Conservation Funding Board (RCFB) and the Salmon Recovery Funding Board (SRFB). Together, these boards provide leadership, funding, and technical assistance to enhance Washington's natural and recreational resources for current and future generations. The boards do not manage lands or operate facilities, but they do provide grants for many types of facilities and habitat enhancement work, including:

- Athletic fields
- Boating and water access
- Farmland preservation
- Habitat conservation
- Parks
- Salmon recovery
- Shooting and archery ranges
- Trails

RCFB and SRFB are assisted by the Recreation and Conservation Office (RCO), an agency that also is assigned by the state Legislature to support other boards, forums, and councils. RCO's staff consists of a director appointed by the Governor and others engaged in administrative, planning, and grant management functions.

Background

This manual contains policies that apply to fund recipients of all grant programs, current and past, including:

- Aquatic Lands Enhancement Account (ALEA) Program
- Boating Activities Program (BAP)
- Boating Facilities Program (BFP)
- Boating Infrastructure Grant (BIG) Program
- Family Forest Fish Passage Program (FFFPP)
- Firearms and Archery Range Recreation (FARR) Program
- Hatchery Reform Program
- Land and Water Conservation Fund (LWCF) Program
- Recreational Trails Program (RTP)
- Nonhighway and Off-Road Vehicle Activities (NOVA) Program
- Salmon Habitat Recovery Program
- Washington Wildlife and Recreation Program (WWRP)
- Youth Athletic Facilities (YAF) Program

For more guidance, refer to the individual policy manuals for these programs.

Related Information

RCO's Web site (www.rco.wa.gov) provides more information on these and related programs, including:

- Summary brochures and fact sheets that describe each program's goals, funding, and schedules
- Program policy manuals
- Technical assistance guides
- Statutes and rules
- State plans that give broad policy background.

Contact RCO to obtain a list of these free publications. Each can be made available in an alternative format for people with special needs.

Manual Authority

Authority for the information in this manual is found in the following statutes¹ and rules²: RCW 46.09.240(1), 79A.15.070, 79A.25.080(2), 79A.25.210, and Title 286 WAC. RCFB adopted the policies in this manual in a public meeting. SRFB has also accepted these policies.

Contact Information

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¹ Same as RCW, the Revised Code of Washington, statutes enacted by the Legislature.

² Same as WAC, Washington Administrative Code, adopted by state agencies, often to implement a statute.

Section 2

General Policies

In this section, you'll learn about:

- ✓ Grant time limits
- ✓ Reporting
- ✓ Construction plans and contracts
- ✓ Standards of construction, operation, use, and maintenance
- ✓ Concessions and Leases

1. Project Approval and Authorization to Proceed

A project sponsor¹ may not proceed with an RCFB-SRFB approved project before executing a project agreement with RCFB-SRFB. To do so may render the project or project elements ineligible for reimbursement. Review policy manuals 3 and 4 for eligible pre-agreement and retroactive costs.

The project agreement will be prepared in accord with the components contained in the sponsor's application as approved by RCO-SRFB, and forwarded for execution. An example of the project agreement is in Section 4—project applicants should carefully review the terms and conditions.

2. Successful Applicant Workshops

Of particular importance to those awarded funding are RCO's Successful Applicant Workshops, conducted soon after grants are announced. At these workshops, participants receive important information on:

- Project sponsor responsibilities— including compliance with the project agreement.

¹ An applicant becomes a sponsor on execution of an RCO-SRFB Project Agreement, after funding has been approved.

- Amendments to the agreement — including project changes, time extensions, and cost increases.
- Land acquisition procedures — including appraisals, appraisal reviews, deed of right, offer to purchase, land donations, title insurance, etc.
- Development/restoration projects — including construction plans, barrier-free design requirements, bid procedures, donations, specifications, etc.
- Planning, education/enforcement, and maintenance/operation projects — including reporting requirements, eligible costs, etc.
- Project implementation — including billings, milestones, progress reports, inspections, long term compliance, etc.

3. Grant 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 RCFB-SRFB or the director 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:

Application Phase

- Applicants submit only projects likely to be completed within a specified period of time after the grant award:
 - RCFB projects – maximum four years
 - SRFB projects – maximum five years
 - FFFPP projects – maximum two consecutive construction seasons; projects not completed will be re-evaluated and funding may be terminated.
- 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 implementation period. 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(s) is signed.
 - Permits are in-hand.
 - Property is in escrow.
 - Waiver of Retroactivity is in-hand and signed.
- RCFB and FFFPP projects: At least 30 days before the funding meeting, when requested by RCO staff, applicants must provide written certification of matching fund availability.

Post Approval Phase

- Applicants must submit the post approval materials, described in the grant Application Manual 5, within 90 days of funding approval.
- With RCO staff assistance, applicants must develop milestones, to be included in the project agreement, and a timeline that does not exceed:
 - FFFPP – two years
 - RCFB projects – four years
 - SRFB projects – five years

Implementation Phase

- RCO staff monitors critical project milestones (for example, ordering appraisals and reviews, starting construction, etc.). Unsatisfactory progress may be cause for project termination or other remedies (project agreement—Termination and Other Remedies). Any RCO director decision may be appealed to the RCFB-SRFB.
- The director may approve projects to a maximum of:
 - FFFPP – two years
 - RCFB projects – four years
 - SRFB projects – five years

Requests for extensions that would exceed these periods may be referred to RCFB-SRFB for action.

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. (See the sample Milestone Status Tracking Sheet on page 65.)

4. 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, development/restoration, and non-capital projects may be authorized only by RCFB-SRFB, or for FFFPP projects, by the Department of Natural Resources/Washington Department of Fish and Wildlife. All amendment requests shall be made in writing and must include detailed justification.

5. Scope Changes for Acquisition Projects

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. In order for a scope change to be approved, the sponsor must demonstrate that the newly targeted property:

- A. Is eligible in the same grant program category as the originally targeted property; and
- B. Has similar and at least equivalent conservation, farmland preservation, habitat protection, recreation, and/or salmon recovery values as the originally targeted property; and
- C. Is contiguous¹ 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 RCFB or a SRFB subcommittee for approval. A major scope change for a project funded by both boards will be submitted to the RCFB and the SRFB subcommittee for approval. RCO staff will

¹ "Contiguous" means 'touching.'

submit recommendations for approving or denying the scope change to the RCFB or SRFB subcommittee.

For RCFB funded projects, the director may submit the request for a scope change to an ad hoc review panel for evaluation before submitting the request to the RCFB. 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 SRFB funded projects, the director may submit the request for a scope change to the salmon recovery technical review panel for evaluation before submitting the request to the SRFB sub-committee.

Upon submittal of the request, the review panel shall determine whether the amended project has similar and at least equivalent conservation, farmland 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:

- 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 RCFB-funded projects) or lead entity (in the case of SRFB-funded projects) of the scope change request.

The RCFB and the SRFB 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 RCFB funded projects) or lead entity (for SRFB 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, State Comprehensive Outdoor Recreation Plan, Lands 20/20, Biodiversity Strategy, A Regional Recovery Plan, or a three-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?

Sponsors and their outdoor grants manager shall provide information related to these factors to the board or board subcommittee.

6. RCFB Fund Allocations

If a project is terminated or completed under budget, as soon as possible and assuming board authorization, the director will allocate the “returned” funds to an alternate project. RCFB will lapse funds only if no authorized uses remain.

7. Additional Rules and Instructions

RCFB-SRFB 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.

8. Reporting

In addition to billing reports, from time to time, RCO staff may require the sponsor to submit a written status report summarizing the progress to date on all active

projects. In addition, sponsors of completed projects are required to report on specific matters whenever requested to do so by RCO.

9. Cost Increases: RCFB

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, RCFB will consider a cost increase. The director may approve cost increase requests that do not exceed 10 percent of the total project cost. RCFB will consider approval of other amounts.

RCFB Acquisition Projects

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 RCFB (see Manual 3, Acquiring Land: Policies), supports the increased real market value.
- A written report from the sponsor must explain any relocation cost overruns.

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.

RCFB Development/Restoration and Non-Capital Projects

The project's total approved cost is the basis for such cost increases which must meet the following criteria:

- The sponsor must have fully explored all practical alternatives to completing the intent of the Agreement.
- The sponsor must have had little control over the condition(s) causing the overrun.
- Any increase must only be used for elements in the project agreement.

A sponsor must obtain RCFB or director approval for any significant change in project scope and/or design that results a cost increase request. This approval must be granted prior or simultaneously to the cost increase.

10. Construction Plans and Specifications

One copy of all construction plans and specifications must be submitted to RCO as follows:

- Contract Construction - submit at least two weeks before advertising for bids.
- Force Account (In-Kind) and Donation Construction - submit at least two weeks before starting work.

The RCO staff will review the plans and specifications and determine conformance with the project agreement.

11. Construction Contract Change Orders

Sponsors must get prior written approval for all change orders that significantly alter the scope of the project as finally approved by RCFB-SRFB, or, for FFFPP projects, by the Department of Natural Resources/Washington Department of Fish and Wildlife.

Justification for change orders must be provided by the sponsor when requested by RCFB-SRFB, or, for FFFPP projects, by the Department of Natural Resources/Washington Department of Fish and Wildlife. This justification may include, but not be limited to, an explanation of the situation necessitating the change, the effects of the change, and the alternatives considered.

Change orders for projects assisted with LWCF funds are subject to National Park Service (NPS) approval before reimbursement of costs.

12. Standards of Construction, Operation, Use, and Maintenance

Except for habitat conservation¹ areas that are generally closed to the public, sponsors must ensure that properties or facilities assisted with RCFB funds, including undeveloped sites, are built, operated and maintained in accord with the project agreement:

1. *Laws.* According to applicable federal, state, and local laws and regulations, including public health standards and building codes.

¹ In this context, the words habitat conservation refers to the programs in RCFB's Habitat Conservation Account: Critical Habitat, Natural Areas, Riparian Habitat, and Urban Wildlife Habitat. It also refers to the Salmon Recovery Program.

2. *Safety.* In a reasonably safe condition for the project's intended use.
3. *Maintenance.* Throughout its estimated life so as to prevent undue deterioration.
4. *Nondiscrimination.* In compliance with all federal and state nondiscrimination laws, regulations and policies.
5. *Accessibility.* In compliance with all state and federal accessibility guidelines.
6. *Appearance.* To appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
7. *Availability.* For public use at reasonable hours and times of the year, according to the type of area or facility.

13. Site Inspections

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. Development/restoration projects only. This site review takes place after the sponsor requests a final payment and/or final inspection. This request must be made only after the project is complete, architects and/or engineers have made their inspection, and defects have been corrected. 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 may also perform these inspections.

14. Nonrecreational Income Derived During the Project Agreement Period

Any nonrecreational income that accrues to an RCFB-SRFB assisted area during the project implementation period per the executed project agreement from sources other than the intended use will be used to reduce the total cost of the project.

Any such use of an area, especially as regards to the removal of timber or structures or the alteration of the land, must be consistent with the intended use of the area described in the project agreement.

15. Nonrecreational Income Derived after the Project Agreement Period

Any nonrecreational income accruing after the project completion date in the project agreement, including income from land management practices, must be used only to offset expenses of operation and maintenance of the facility funded or for park and recreation, habitat conservation, or salmon recovery capital acquisition and development/ restoration unless precluded by state law. Such management practices must be compatible with, and complementary to, the outdoor recreation, habitat conservation, or salmon recovery use of the area and any practice which alters the use or purpose of the area is prohibited.

16. Concessions and Leases

A project sponsor may provide for the operation of an RCFB-SRFB assisted 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 RCFB-SRFB Agreement compliance obligations, including those relating to conversion of RCFB-SRFB assisted property, section 16.

All concession or lease documents for the operation of RCFB-SRFB assisted projects by private organizations or individuals must address the following:

1. 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.
2. 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.
3. 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 should also be posted identifying the facility as being open to the public, Terms and Conditions, Section 7.

4. 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/agreement between the sponsor and the lessee/concessionaire, the proposed lease/agreement must be reviewed and approved by RCO staff.

17. Granting of 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:

1. Not be an easement giving property rights to a third party.
2. State that the pipe or power line will be underground.
3. 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 is also necessary.
4. State a *duration* for construction and include language that allows setting a duration for reconstruction.

18. Federal Programs

Recipients of federal funds administered by RCFB-SRFB are subject to the following OMB (Office of Management and Budget) Circulars. Circulars may be viewed online at: www.whitehouse.gov/omb/circulars/index.html#numerical.

- Any sponsor that receive \$300,000 or more from any federal source must have OMB Circular A-133 audit. For state and local agencies, this is generally performed by the State Auditor's Office.
- Non-profit organizations that receive federal funds, regardless of the amount, are subject to the requirements of OMB Circular A-122, Cost Principles for Non-Profit Organizations.

- State, local, and federally-recognized Indian tribes are subject to the requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
- Educational Institutions are subject to the requirements of OMB Circular A-21, Cost Principles for Educational Institutions.

In addition, all recipients of federal Land and Water Conservation Fund grants must sign a CD-512 certification form regarding debarment, suspension, ineligibility, and voluntary exclusion—lower tier covered transactions and lobbying.

LWCF and BIG

In the event that funds from either of these programs have been recommended for the project, it will be necessary for RCFB to submit an application to the federal administrator, the National Park Service (NPS) or the US Fish & Wildlife Service. In such cases the sponsor is required to provide supplemental information. The project agreement between RCFB and the sponsor must not be executed by RCO until federal approval is received.

The General Provisions of NPS which are referenced in the project agreement (General Provisions Page 53, Section 31) apply to all approved projects utilizing LWCF.

Section 3

Compliance

In this section, you'll learn about:

- ✓ Policies for change of use
- ✓ Policies on recreation facilities
- ✓ Policies on habitat
- ✓ Compliance inspections

1. Introduction

It is your responsibility as the project sponsor to comply with the terms and conditions of RCFB/SRFB grant-in-aid funding assistance. After your project is complete (that is, after final reimbursement is made), RCFB/SRFB documents you have signed continue to govern the site, structures, or facilities for which funds have been granted. Unless otherwise allowed by policy, program, or agreement, RCFB/SRFB expects that your project will continue to function as originally funded in perpetuity – that is, forever. Changes may be made only with the approval of RCFB/SRFB.

2. Policy

Use of RCFB-SRFB grant funds creates a condition under which funded property and structures become part of the public domain in perpetuity.

The original fund source will help determine compliance. Funds from recreation programs are intended to result in opportunities for public recreation in perpetuity. Funds from habitat programs are intended to result in habitat values or functions in perpetuity.

RCFB-SRFB policy, consistent with state law,¹ is that interests in real property, structures, and facilities acquired, developed, enhanced, or restored with RCFB-SRFB funds must not be changed, either in part or in whole, nor converted to uses other than those for which the funds were originally approved. If an RCFB-SRFB funded project is found to be changed or converted (out of compliance with the project agreement or agreement amendments), the project sponsor is responsible for replacing the changed or converted interests in real property, structures, or facilities with interests, structures, or facilities of equivalent size, value, and utility.

There are a number of ways a project can be out of compliance with the project agreement, the most serious of which is a conversion. If a compliance issue arises, RCFB-SRFB works with sponsors to resolve the compliance issue.

2a. Policy on Recreation Structures and Facilities

RCFB-SRFB recognize a difference between projects that acquire interest in real property (land) and projects that fund structures or facilities.² Compliance with project agreements involving structures or facilities for outdoor recreation will be tied to a reasonable agreed-upon service life for the structure or facility, with the further provision that the development of the structure or facility constitutes the sponsor's agreement to provide outdoor recreation opportunity on the development site in perpetuity.

Example: RCFB funding for a baseball field results in the underlying property remaining in the public domain as outdoor recreation property. The specific recreation use may change from a baseball field to an outdoor soccer field without resulting in a conversion. Changing use of the land to any non-outdoor, non-recreation purpose will result in a conversion.

2b. Policy on Habitat

RCFB/SRFB habitat grants seek to support properly functioning habitat conditions.

If a plant or animal is specified in a grant agreement and that plant or animal is lost as the result of events beyond the control of the sponsor, it does not constitute a non-compliance issue. Examples of events beyond the control of the sponsor include but are not limited to: acts of nature (floods, drought), actions of upstream or adjacent landowners, and ocean conditions.

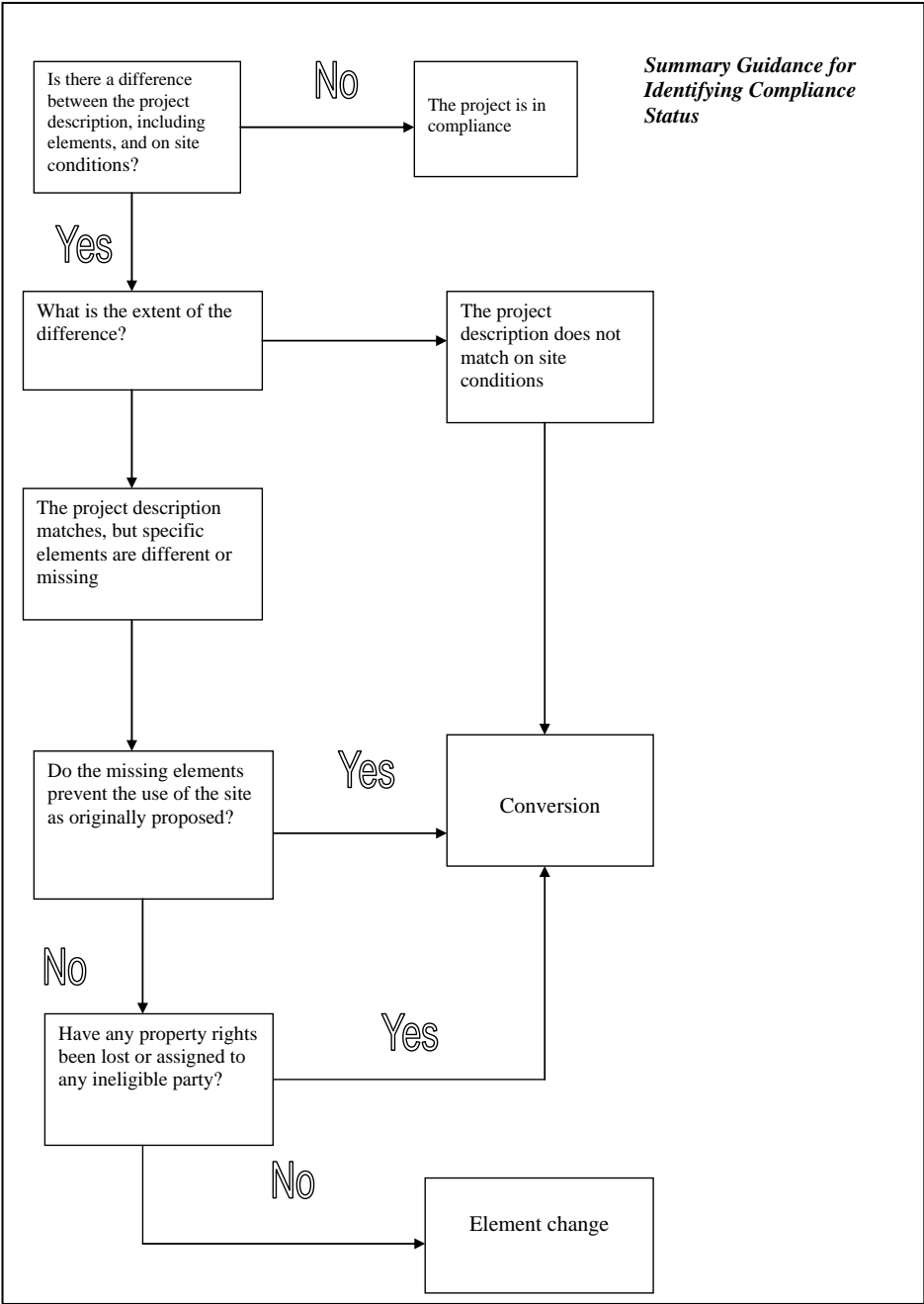
¹ See especially RCW 79A.25.100 and RCW 79A.15.030(8).

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

If a plant or animal is specified in the agreement and that plant or animal is lost as the result of events in the control of the sponsor, including sponsor inaction, it may result in a non-compliance issue even if a habitat function remains. The sponsor is expected to act with due diligence as steward of the property in question.

If no plant or animal is specified in the grant agreement, loss of a specific species does not constitute a non-compliance issue as long as the site continues to support properly functioning habitat conditions.

Flow diagram: Summary Guidance for Identifying Compliance Status



3. Definitions

Non-compliance. A project status that results when one or more elements of a completed project is found to be inconsistent with one or more elements of a project agreement. Non-compliance does not necessarily result in conversion.

Conversion. A project status that results when use or function of recreation or habitat land or facilities paid for by RCFB-SRFB changes to uses or functions other than those for which assistance was originally approved.

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

- An RCFB-SRFB funded structure or facility has become outmoded due to change in generally accepted professional design and construction practices that now renders the structure or facility out-of-date.
- Significant and documented changes in prevailing outdoor recreation participation in the sponsor's jurisdiction over a period of not less than five (5) years.
- A structure reaches the end of its anticipated or agreed upon service life.
- In the instance of a structure placed or built for habitat purposes, to habitat changes beyond the control of the project sponsor.

Perpetuity. Perpetual, seemingly ceaseless¹, or the condition of an estate that is limited so as to be inalienable either perpetually or longer than the period determined by law².

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

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

¹ Princeton University WordNet Internet site <http://wordnet.princeton.edu>

² Webster's II New Riverside University Dictionary

4. Policy Implementation: Compliance Inspections

RCFB-SRFB staff is responsible for implementation of the compliance policy. RCFB-SRFB has a policy to inspect completed projects to compare actual conditions to the terms and conditions of the project agreement. An inspection may be done at any time during the life of the signed grant documents. Inspection will result in a determination of compliance, non-compliance, or conversion.

RCFB-SRFB encourages sponsors to regularly inspect their projects and to advise RCO if potential compliance issues exist.

5. Non-compliance: Element Change

Non-compliance is when at least one element of a completed project does not meet the terms and conditions of the agreement. Element changes may be minor or major. In most cases, remediation will be required.

- **Minor element changes** are those that do not conform to the project agreement but with no negative effect on the recreational opportunity or habitat function for which the project was originally funded.

A project amendment will be required to account for the change, and may be subject to review by RCFB-SRFB's director or governing Board.

- **Major element changes** are those that do not conform to the project agreement and negatively affect, but do not eliminate, the recreational opportunity or habitat function for which the project was originally funded.

RCFB-SRFB staff will work with the sponsor to find remedies for major element changes. A project amendment will be required to account for the change, and will be subject to review by RCFB-SRFB's director or governing Board.

5a. Examples of Element Changes

Recreation minor element change: RCFB helps fund a trailhead. The original agreement calls for 15 vehicle parking stalls. Actual construction results in 12 stalls. The results do not conform to the project agreement but do not have a negative effect on the recreational experience.

Recreation major element change: A sponsor intends to asphalt a 5-mile trail. Inspection reveals that 3 miles have been asphalted, and 2 miles have been surfaced with crushed rock.

Habitat minor element change: SRFB funds the removal of 5,500 feet of levee in order to expose 50 acres of floodplain to natural channel migration. 5,200 feet of levee are removed, but the target of 50 acres is achieved.

Habitat major element change: SRFB funds a project to improve riparian conditions by fencing out cattle and planting trees and shrubs. The final project results in fencing and shrub planting, but no trees. Lack of "trees" as a project element results in poor shading and therefore water temperature goals are compromised, but fish are not lost.

5b. Element Change: Exceptions

Under certain circumstances, an element change beyond the control of the sponsor may be deleted from a project agreement without a need for remediation. The conditions are:

1. Obsolescence, defined above.
2. Extraordinary vandalism that renders the element useless or dangerous.
3. Acts of nature including but not limited to floods, earthquake, volcanic eruption, forest fire, and adverse weather.
4. Fire, whether criminal arson or accidental.
5. Permit requirements that disallow specified elements.
6. Interstate Commerce Commission National Trails System Act reversion order (National Trails System Act 8(d), 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

5c. Review for Approval or Remediation of an Element Change

As soon as the sponsor or RCFB-SRFB staff identifies a non-compliance issue or element, steps shall be taken to begin approval for remediation of the issue or element. Usually, remediation will be documented in a revised grant agreement.

The sponsor must:

1. Arrange for a site visit with RCFB-SRFB staff.
2. After initial contact and the site visit, prepare documentation to accompany a written request for RCFB-SRFB approval of the project replacement or project change. Staff will work with the sponsor to determine the kind and

amount of documentation necessary to support a revised project agreement.

Documentation

The sponsor may be required to provide the following, in writing:

1. A description of the element change.
2. Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis.
3. A list and discussion of alternatives for replacement or remediation of the element change.
4. If a major element change has taken place, evidence that the public has been given a reasonable opportunity to participate in development of the request.
5. Additional documents that help explain the element change such as maps, plans, graphics, and/or photographs.

6. Non-compliance: Conversion

A conversion would be determined when one or more of the following takes place, whether affecting an entire site or any portion of a site funded by RCFB-SRFB:

Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery uses.

Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.¹

Non-outdoor recreation, habitat conservation, or salmon recovery uses (public or private) are made in a manner that impairs the originally intended purposes of the project area.

Non-eligible indoor facilities are developed within the project area.

Public use of the property or a portion of the property acquired or developed/restored with RCFB-SRFB assistance is terminated, unless public use was not allowed under the original grant.

¹ An exception is allowed under SRFB rules: property acquired for salmon recovery purposes may be transferred to federal agencies, provided the property retains adequate habitat protections, and with written approval.

If a habitat-project, the property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which RCFB-SRFB funds were originally approved.

Note: prior approval of temporary closure of public access sites will not result in a conversion if the sponsor demonstrates that the closure will last 180 days or less.

6a. Review for Approval or Remediation of a Conversion

As soon as the sponsor and/or RCO determines that a project change may constitute a conversion, the sponsor must begin resolution of the conversion. The steps to take are:

1. Arrange for a site visit with an RCO grant manager.
2. After initial contact and the site visit, prepare documentation to accompany a written request for RCFB-SRFB approval of the project replacement or project change. The request, including a cover letter to the director, must contain a description of the original project, a description of the proposed change or conversion, and the proposed remediation.
3. If the conversion is referred to RCFB-SRFB, the sponsor must be prepared to attend the RCFB-SRFB meeting at which the proposed conversion will be presented and decided.

Documentation

The sponsor must provide the following in writing:

1. A description of the original project proposal funded by RCFB-SRFB.
2. A description of the proposed conversion.
3. A list and discussion of all alternatives for replacement or remediation of the conversion, including avoidance. All practical alternatives to the conversion must be evaluated on a sound basis.
4. Evidence that the public has been given a reasonable opportunity to participate in the identification, development, and evaluation of alternatives. The minimum requirement is publication of notice and a 30-day public comment period.
5. Justification that supports the replacement site as reasonably equivalent recreation or habitat utility and location.

The fair market value of any interest in converted real property must be established and the interest proposed for substitution must be of at least equal current fair market value. The fair market value must be established by appraisal as provided in Manual 3.

Property improvements will be excluded from all fair market value consideration for interest in real property to be substituted. Exceptions may be considered only in those cases where interest in real property proposed for substitution contains improvements that directly enhance its outdoor recreation or habitat conservation utility.

6. Additional documents for specific types of projects:

- *Acquisition*: copies of any appraisal or appraisal review of the proposed conversion.
- *Development or restoration of structures of facilities*: a site plan that clearly indicates the development/restoration proposed for conversion.
- *For all projects*: submit maps, plans, graphics, a completed State Environmental Protection Act (SEPA) check list, archeological or cultural resource reviews, and other documents required by RCO staff.

6b. Conversions: Exceptions

Generally, exceptions to conversions are the same as exceptions to element changes. See 5b, above.

6c. Conversions of Land and Water Conservation Fund (LWCF) Projects

In addition to compliance with the rules found above, sponsors of facilities acquired, developed, or restored with federal LWCF assistance must provide:

1. A National Park Service Project Description / Environmental Screening Form (PD/ESF), an environmental assessment (EA), environmental impact statement (EIS), or other documentation.
2. Evidence of an appropriate intergovernmental review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains:
 - A detailed description of the proposal

- An address where comments may be forwarded, and
- The deadline for comment. At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer (SHPO) and all affected state, area, regional agencies, and Tribal Historic Preservation Offices (THPOs).

3. Copies of all comments, including "no comment."

Director or RCFB-SRFB approval of conversions under LWCF is interim, pending final approval from the National Park Service.

7. Review by the Director

Once all documents are received, staff will determine whether the proposal requires approval by or by the RCFB/SRFB using the following guidelines.

1. The Director may review the following conversion replacement requests:

Those in which conversion of use impacts less than **20 (twenty) percent** of the original project scope

AND the dollar value of the conversion is **\$75,000 or less** in today's dollars.

The Director may choose one of three courses of action: approval of the request, denial of the request, or deferral of the decision to the RCFB/SRFB.

The Director's decision may be appealed to the RCFB/SRFB.

2. All other requests are sent directly to RCFB/SRFB as appropriate.

7a. Appeal of Director's Decision

An appeal must be in writing, at minimum a letter addressed to the Chair of the appropriate funding Board. The appeal must include the reason for the appeal, the preferred outcome, and facts supporting the appeal.

8. Review by RCFB-SRFB

Both RCFB-SRFB meet in open public forums according to pre-published schedules. Review of a replacement/remediation proposal will be subject to a timetable based on the meeting schedule.

A sponsor's request for RCFB-SRFB review must be received by RCO staff at least six weeks prior to a scheduled meeting. RCO staff will then notify sponsors at least

two weeks in advance of the RCFB-SRFB public meeting in which the proposal will be reviewed.

RCO staff will also prepare a memorandum for RCFB-SRFB review explaining the conversion and the proposed replacement/remediation. On examination of the available documentation, RCFB-SRFB may approve or deny the request.

If a project has been funded in part or whole through federal funds, the RCFB-SRFB decision may be forwarded to the appropriate federal agency for further review. Federal law and regulations will apply.

9. Implementing RCFB-SRFB Approval

If approval is granted by the director, or by the RCFB-SRFB, staff will amend the appropriate project agreement(s) to reflect the change.

10. Unresolved Conversions: High Risk Sponsors

1. High risk sponsor designation created:

After July 1, 2009, the director may recommend to the RCFB or SRFB that a sponsor with unresolved conversion projects be designated as a "high risk sponsor." A sponsor may be designated as high risk if it meets the following tests:

- A. Has one or more unresolved conversions of which the combined RCFB and SRFB dollar total exceeds \$1 million dollars or 25 percent of all RCFB and SRFB funds received by that sponsor, whichever dollar amount is less (NOT including local match or contribution) OR
- B. Has a conversion of any size or amount that has been unresolved for two or more years after notification by the RCO, AND
- C. Has no record of substantial progress towards resolving outstanding conversion(s).

2. Substantial progress:

- A. After recommendation by the director, the board will make the decision of whether a sponsor has a record of substantial progress.
- B. Substantial progress is indicated when a sponsor has (1) expressed, in writing, a willingness to replace the converted property or remedy the conversion and (2) has taken specific and timely actions as stipulated by the RCO. These actions may include, but are not limited to, identifying potential replacement property, convening a

task force or assigning staff, demonstrating an adequate public involvement process, ordering appraisals or appraisal reviews, or other relevant actions.

3. Notice to sponsors:

Before making a recommendation to the board, the director will notify a sponsor in writing that they are responsible for one or more unresolved conversion(s) and that the director is recommending that they be designated as high risk.

- A. The RCFB and/or SRFB, as appropriate, shall consider the director's recommendation in an open public meeting.
- B. Sponsor notification will occur at least 30 days before the board meeting and will include (1) the date and time of the meeting, (2) specific project references, and (3) actions that will constitute substantial progress.
- C. If the board chooses to designate a sponsor as "high risk," the director will notify the sponsor in writing.

4. Applying for new grants:

- A. A "high risk" sponsor may still apply and compete for additional grants for one grant round or calendar year from the date of designation (whichever is longer). After that time, the RCO will not accept grant applications from the sponsor until the high-risk designation is removed.
- B. If a high-risk sponsor's new application is successful, the sponsor will be given a 90-day time period following the RCFB or SRFB funding meeting to have the high risk sponsor designation removed pursuant to section 5.
- C. If, after the 90-day period, the sponsor has not been successful at having the high-risk sponsor designation removed pursuant to section 5, the RCO will not issue the project agreement and the funds will be redistributed pursuant to board policy.

5. Removal of designation:

If a sponsor believes that it should no longer be designated as high risk, it may petition the director to remove the designation.

- A. The director shall have authority to remove the designation if he or she determines that the conversion has been fully resolved.
- B. In cases where the conversion has not been fully resolved, the director shall refer the decision to the RCFB or SRFB if the director concludes that the sponsor has made substantial progress toward resolving the conversion or has other legitimate reasons why the high-risk designation might be removed.

Section 4

Project Agreement

The following composite sample illustrates the RCFB-SRFB project agreement, used for the following programs:

- Aquatic Lands Enhancement Account Program
- Boating Facilities Program
- Boating Infrastructure Grant Program
- Firearms and Archery Range Recreation Program
- Family Forest Fish Passage Program
- Hatchery Reform Program
- Land and Water Conservation Fund Program
- Recreational Trails Program
- Nonhighway and Off-Road Vehicle Activities Program
- Salmon Habitat Recovery Program
- Washington Wildlife and Recreation Program
- Youth Athletic Facilities Program

The first two pages of the sample project agreement include information unique to each funded project.

The next 11 pages describe the standard terms and conditions which are the same for all projects.

The next three to four pages provide samples of other documents considered a part of the project agreement. These include:

- Post Evaluation Project Summary

- Eligible Reimbursement Activities Report
- Legal Description (only included if the project includes property acquisition)
- Milestone Report



Project Agreement

[Account Name]

Project Sponsor: (full name)

Project Number: xx-xxxxY

Project Title:

Approval Date: xx/xx/xxxx

A. PARTIES OF THE AGREEMENT

This project grant agreement (agreement) is entered into between the State of Washington by and through the [Salmon Recovery Funding Board (SRFB) or Recreation and Conservation Funding Board (RCFB)], P.O. Box 40917, Olympia, Washington 98504-0917 and [parent organization name if it exists] [by and through the] [child organization name] Address, City, State, Zip Code (sponsor) and shall be binding on the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This agreement sets out the terms and conditions by which a grant is made from the [Account Name] of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the sponsor for the project named above.

C. DESCRIPTION OF PROJECT

The subject project is described on the attached project summary.

D. PERIOD OF PERFORMANCE

The project reimbursement period shall begin on [Project Start Date] and end on [Project End Date]. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this agreement or specifically provided for by funding board policy.

Requests for time extensions are to be made at least 60 days before the agreement end date. If a request for a time extension is not made at least 60 days before the agreement end date, the request *may be denied*. If the request is made after the agreement end date, the time extension *will be denied*.

The sponsor has obligations beyond this period of performance as described in Section E.

E. ONGOING OBLIGATION

For acquisition, development and restoration projects the project sponsor’s on-going obligations shall be in perpetuity and shall survive the completion/termination of this project agreement unless otherwise identified in the agreement or as approved by the funding board. It is the intent of the funding board’s conversion policy (see section 26) that all lands acquired and or facilities and areas developed with funding assistance remain in the public domain in perpetuity.

F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed [RCO total].

The funding board shall not pay any amount beyond that approved for funding of the project. The sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
[Grant Program-account - category]	_____	_____
Project Sponsor	_____	_____
Total Project Cost	100	_____

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this agreement are subject to this agreement and its attachments, as now existing or hereafter amended, including the sponsor’s application, project summary, eligible reimbursement activities report, project milestones, and the Standard Terms and Conditions of the Project agreement, all of which are incorporated herein.

Except as provided herein, no amendment/deletions of any of the terms or conditions of this agreement will be effective unless provided in writing. All such amendment/deletions except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by RCO’s director or designee.

The sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in these documents.

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter [REVISED CODE OF

WASHINGTON SECTION(S)] RCW, [Chapter 286 WAC or Chapter 420 WAC], and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. SPECIAL CONDITIONS

(none)

J. FEDERAL FUND INFORMATION

A portion or all of the funds for this project are provided through the following federal funding source.

Federal Agency: _____

Catalog of Federal Domestic Assistance: _____

Federal Award Number: _____ Federal Fiscal Year: _____

If the sponsor's total federal expenditures are \$500,000 or more during the sponsor's fiscal-year, the sponsor is required to have a federal single audit conducted for that year in compliance with Office of Management and Budget Circular A-133. A copy of the final audit report must be provided to RCO within nine months of the end of the sponsor's fiscal year, unless a longer period is agreed to in advance by the cognizant or oversight agency.

Failure to provide required A-133 audits will lead to a suspension of payments and may lead to a suspension of RCO agreements.

K. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications sent to the sponsor under this agreement will be addressed and delivered to:

Project Contact	RCFB-SRFB
Name:	Recreation and Conservation Office
Title:	Natural Resources Building
Address:	PO Box 40917
	Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. ENTIRE AGREEMENT

This agreement, with all amendments and attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this agreement shall exist or bind any of the parties.

M. EFFECTIVE DATE

This agreement, for project [Number], shall be effective on signing by all parties. Reimbursements for eligible and allowable costs incurred prior to the effective date and those costs incurred within the period of performance are allowed only when this agreement is signed by all parties and an original is received by RCO. The period of performance is identified in section D.

The signators listed below represent and warrant their authority to bind the parties to this agreement.

Project Sponsor

By: _____ **Date:** _____

Name: (printed) _____

Title: _____

State of Washington

On behalf of the [Recreation and Conservation Funding Board or Salmon Recovery Funding Board]

By: _____ **Date:** _____

[RCO director name]

Director, Recreation and Conservation Office

Pre-approved as to form:

by: _____/s/_____ **Date:** April 1, 2009

Assistant Attorney General



Standard Terms and Conditions of the Project Agreement

Project Sponsor:

Project Number: xx-xxxxY

Project Title:

Approval Date: xx/xx/xxxx

Section 1. Citations, Headings, and Definitions

Any citations referencing specific documents refer to the current version at the date of project agreement and/or any revisions in the future.

- N. Headings used in this agreement are for reference purposes only and shall not be considered a substantive part of this agreement.
- O. Definitions. As used throughout this agreement, the following terms shall have the meaning set forth below:

acquisition – The gaining of rights of ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.

agreement – The accord accepted by all parties to the present transaction; this agreement, any supplemental agreements, any amendments to this agreement and any intergovernmental agreements.

applicant – Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

application – The forms and support documents approved by the funding board or its director for use by applicants in soliciting project funds administered by RCO.

asset – Equipment purchased by the sponsor or acquired or transferred to the sponsor for the purpose of this agreement. This definition is restricted to non-fixed assets, including but not limited to vehicles, computers or machinery.

cognizant or oversight agency – Federal agency responsible for ensuring compliance with federal audit requirements.

contractor – Shall mean one not in the employment of the sponsor who is performing all or part of the eligible activities for this project under a separate agreement with the sponsor. The term "contractor" and "contractors" means contractor(s) in any tier.

corporate sponsor – Any corporate form of business, including nonprofit organizations, under RCW 23, 23B and 24.

development/renovation – Construction of or improvement of site or site facilities.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

elements and items – Components defined as part of the scope of work, see Section 26 B.

funding board – The board that authorized the funds in this agreement, either the Recreation and Conservation Funding Board (RCFB) created under chapter 79A.25.110 RCW, or the Salmon Recovery Funding Board (SRFB) created under chapter 77.85.110 RCW.

landowner agreement – A landowner agreement is required between a sponsor and landowner for projects located on land not owned, or otherwise controlled, by the sponsor.

milestone – An important event with a defined deadline for an activity related to implementation of a funded project.

period of performance – The time period specified in the agreement, under Section D, period of performance.

post evaluation summary – One of the documents used to summarize and describe the actions undertaken in the agreement.

project – The undertaking that is the subject of this agreement and that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

RCO – Recreation and Conservation Office - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this agreement by Chapters 77.85.110 and 79A.25.240 RCW.

reimbursement – Payment of eligible and allowable costs that have already been paid by the sponsor per the terms of the agreement.

restoration/enhancement – Bringing a site back to its original function as part of a natural ecosystem or improving the ecological functionality of a site.

sponsor – The eligible applicant who has been awarded a grant of funds and is bound by this executed agreement; includes its officers, employees, agents and successors.

Section 2. Performance by the Sponsor

The sponsor shall undertake the project as described in this agreement, post evaluation summary, the sponsor's application, and in accordance with the sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 34.

Timely completion of the project is important. Failure to meet critical milestones or complete the project, as set out in this agreement, is a material breach of the agreement.

Section 3. Assignment

Neither this agreement, nor any claim arising under this agreement, shall be transferred or assigned by the sponsor without prior written consent of the funding board.

Section 4. Responsibility for project

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, or to any third party, other than as is expressly set out in this agreement. The responsibility for the implementation of the project, is solely that of the sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project.

Section 5. Indemnification

To the fullest extent permitted by the law, the sponsor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all claims, actions, costs, damages, or expenses of any nature arising out of or incident to the sponsor's or any contractor's performance or failure to perform the agreement. Sponsor's obligation to indemnify, defend and hold harmless also includes any claim by sponsor's agents, employees, representatives or any contractor or its employees. Sponsor's obligation to defend includes payment of any costs or attorneys' fees.

Sponsor's obligation shall not include such claims that may be caused by the sole negligence of RCO, its officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) RCO, its agents or employees

and (b) the sponsor, its contractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the sponsor or its contractors, agents, or employees. The sponsor expressly agrees to waive his/her immunity under Title 51 RCW to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

Section 6. Independent Capacity of the Sponsor

The sponsor and its employees or agents performing under this agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B RCW.

The sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

Section 7. Conflict of Interest

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the sponsor terminate this agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the sponsor in the procurement of, or performance under, this agreement.

In the event this agreement is terminated as provided above, RCO shall be entitled to pursue the same remedies against the sponsor as it could pursue in the event of a breach of the agreement by the sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

Section 8. Acknowledgment and Signs

- A. Publications. The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project.
- B. Signs. The sponsor also shall post signs or other appropriate media at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.

- C. Ceremonies. The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
 - 1. The percentage of the total costs of the project that is financed with federal money;
 - 2. The dollar amount of federal funds for the project; and
 - 3. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

Section 9. Compliance with Applicable Law

The sponsor will implement the agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

Endangered Species

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the sponsor shall not commence with clearing of riparian trees or in-water work unless either the sponsor has complied with 50 CFR 223.203 (b)(8), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this project agreement. This section shall not be the basis for any enforcement responsibility by RCO.

Nondiscrimination Laws

The sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the sponsor's

noncompliance or refusal to comply with any nondiscrimination law or policy, the agreement may be rescinded, cancelled, or terminated in whole or in part, and the sponsor may be declared ineligible for further grant awards from the funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.

Prevailing Wage

The sponsor agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract when required by state law to do so, and to comply with the provisions of the Davis-Bacon Act, other federal laws and Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries.

Restrictions on Grant Use

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state Legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any sponsor, or agent acting for such sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

Section 10. Archaeological and Cultural Resources

The real property acquired, developed, renovated, or restored through this grant is subject to Governor's Executive Order (EO) 05-05 or compliance with Section 106 of the National Historic Preservation Act concerning the review, analysis, and consultation with the Washington State Department of Archaeology and Historic Preservation and affected Tribes for archaeological and cultural resources. The funding board requires documented compliance with EO 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. In the event that a federal agency declines to consult, the sponsor shall comply with EO 05-05. The sponsor must comply with EO 05-05 or the National Historic Preservation Act before initiating ground disturbing activity. RCO will issue a notice to proceed (if applicable) when appropriate documentation has been received. RCO will not reimburse for construction related activity until the sponsor demonstrates compliance.

In the event that archaeological or historic materials are discovered during project 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 following: concerned

Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. In the event that human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

Section 11. Hazardous Substances

- A. Definition. "Hazardous substance," as defined in Chapter 70.105D.020 (11) RCW, means:
1. Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) RCW, or any dangerous or extremely hazardous waste designated by rule pursuant to Chapter 70.105 RCW;
 2. Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105. RCW;
 3. 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);
 4. Petroleum or petroleum products; and
 5. 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.
 6. 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 law.
- B. Certification. The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances and certify:
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."

- C. Responsibility. Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- D. Hold Harmless. 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.

Section 12. Records Maintenance

The sponsor shall maintain books, records, documents, data and other evidence relating to this agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement. Sponsor shall retain such records for a period of six years from the date RCO closes the project. At no additional cost, these records, including materials generated under the agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Section 13. Public Records

Sponsor acknowledges that the funding board is subject to chapter 42.56 RCW and that this agreement shall be a public record as defined in chapter 42.56 RCW. Additionally, in compliance with RCW 77.85.130 (8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the funding board.

Section 14. Access to Data

In compliance with chapter 39.29 RCW, the sponsor shall provide access, when requested, to data generated under this agreement to RCO, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the sponsor's reports, including computer models and methodology for those models.

Section 15. Treatment of Assets

- A. Assets shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the asset(s) for the purpose for which it was funded, RCO will require the sponsor to deliver the asset(s) to RCO, dispose of the asset according to RCO policies, or return the fair market value of the asset(s) to RCO. Assets shall be used only for the purpose of this agreement, unless otherwise provided herein or approved by RCO in writing.
- B. The sponsor shall be responsible for any loss or damage to assets which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that asset in accordance with sound management practices.

Section 16. Right of Inspection

The sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this agreement.

If a landowner agreement has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

Section 17. Stewardship and Monitoring

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

Section 18. Debarment Certification for Federally Funded Projects

"Lower tier participants" refer to any sponsor receiving a federal grant through RCO. Lower tier participants also refer to any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor funded by RCO. In this section, the sponsor certifies to RCO that neither they nor their subgrantees are suspended or debarred. Any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor certifies to the sponsor directly.

For any federally funded projects, sponsors are required to follow any federal requirements. Furthermore any federal funding requirements will be passed on to any

other entity to whom the sponsor passes funds (also referred to as a lower tier participant).

The sponsor (prospective lower tier participant) certifies, by signing this agreement, that neither it nor its principals nor any other lower tier participants are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The sponsor (prospective lower tier participant) shall provide immediate written notice to RCO if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Should the prospective lower tier participant enter into a covered transaction with another person at the next lower tier, the sponsor (prospective lower tier participant) agrees by signing this agreement that it will verify that the person with whom it or its lower tier participant intends to do business is not excluded or disqualified. The sponsor (prospective lower tier participant) will do this by:

- A. Checking the federal Excluded Parties List System (www.epls.gov) for that person; or
- B. Collecting a certification from that person; or
- C. Adding a clause or condition to the covered transaction with that person.

The sponsor (prospective lower tier participant) agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

Section 19. Project Funding

- A. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this agreement.
- B. **Before the Agreement.** No expenditure made, or obligation incurred, by the sponsor before the effective date of this agreement shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-

agreement costs. The dollar amounts identified in this agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

- C. After the period of performance. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this agreement, the grant amounts identified in this agreement shall be reduced to exclude any such expenditure from participation.

Section 20. Project Reimbursements

- A. Sponsors may only request reimbursement after eligible and allowable costs have already been paid and remitted to their vendors.
- B. Compliance and Payment. The obligation of RCO to pay any amount(s) under this agreement is expressly conditioned on strict compliance with the terms of this agreement by the sponsor.
- C. Compliance and Retainage. RCO reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the agreement are done;
 - 2. On-site signs are in place (if applicable);
 - 3. A final project report is submitted to RCO;
 - 4. Any other required documents are complete and submitted to RCO;
 - 5. A final reimbursement request is submitted to RCO;
 - 6. The completed project has been accepted by RCO;
 - 7. Final amendments have been processed; and
 - 8. Fiscal transactions are complete.
- D. Reimbursement Request Frequency. Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30. Sponsors must refer to current RCO policies and procedures regarding reimbursement requirements.

Section 21. Advance Payments

Advance payments of or in anticipation of goods or services to be provided under this agreement are limited to grants approved by the SRFB and must comply with SRFB policy. See WAC 420-12-060 (5).

Section 22. Recovery of Payments

In the event that the sponsor fails to expend funds under this agreement in accordance with state and federal laws, and/or the provisions of the agreement, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The sponsor shall reimburse RCO for any overpayment or erroneous payments made under the agreement. Repayment by the sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

Section 23. Covenant against Contingent Fees

The sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the sponsor, to terminate this agreement without liability or, in its discretion, to deduct from the agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

Section 24. Provisions Applying to Development/Restoration Projects

The following provisions shall be in force only if the project described in this agreement is for development/restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- A. Document Review and Approval. The sponsor agrees to submit one copy of all development/restoration or construction plans and specifications to RCO for review. Review and approval by RCO will be for compliance with the terms of this agreement.
- B. Contracts for Development or Restoration. Sponsor shall award all contracts for construction, development or restoration using whatever method is appropriate and required for the sponsor.

- C. Contract Change Order. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- D. Control and Tenure. The sponsor must provide documentation that shows appropriate tenure (land owner agreement, long term lease agreement, easement, or fee simple ownership) for the land proposed for development or restoration. The documentation must meet current RCO requirements.
- E. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- F. Use of Best Management Practices. Project sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. The best management practices are described in three documents: "Stream Habitat Restoration Guidelines: Final Draft", 2004; "Design of Road Culverts for Fish Passage", 2003; and "Integrated Streambank Protection Guidelines", 2002. These documents and other information can be found on the AHG Web site.

Section 25. Provisions Applying to Acquisition Projects

The following provisions shall be in force only if the project described in this agreement is for the acquisition of interest in real property (including easements) for outdoor recreation, habitat conservation, or salmon recovery purposes:

- A. Evidence of Land Value. Before disbursement of funds by RCO as provided under this agreement, the sponsor agrees to supply evidence to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title. The sponsor agrees to show the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this project agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.

D. Conveyance of Rights to the State of Washington. Document securing long-term rights for the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and Leases. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
3. Easements and Leases. The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance

1. When federal funds are part of this agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-- Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
2. When state funds are part of this agreement, the sponsor, if required by law, agrees to comply with the terms and conditions of the Uniform

Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26.010 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.
- F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with section 10 – Archaeological and Cultural Resources before structures are removed or demolished.
- G. Archaeological and Cultural Resources. The sponsor agrees that any real property interests acquired under this agreement, if to be developed in the future, is subject to section 10 (Archaeological and Cultural Resources) prior to any ground disturbing activity.

Section 26. Restriction on Conversion of Real Property and/or Facilities to Other Uses

The sponsor shall not at any time convert any real property or facility acquired, developed, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the agreement or as approved by the funding board.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

- A. A conversion occurs when one or more of the following has taken place, whether affecting an entire site or any portion of a site funded by the funding boards.
 1. Conveyance. Property interests are conveyed for purposes inconsistent with the original grant request.
 2. Conveyance to Ineligible Third Party. Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.

3. Non-eligible Uses. A use occurs that is inconsistent with the original grant request.
 4. Non-eligible Facilities. Non-eligible facilities are developed within the project area.
 5. Termination of Public Use. When public use, as described in the original grant request, is temporarily or permanently terminated or excluded.
 6. Environmental Functions. For habitat projects, if the property acquired, restored or enhanced no longer provides the environmental functions for which funding board grants were originally approved.
- B. Changing a project's elements and items. When approved by the funding board or director, certain elements and items may be deleted from the agreement without being considered a conversion. In the following instances the board may authorize changes without invoking the requirement to replace the elements and items. Such deletions are allowed when the funding board or director determines that the elements and items are not needed or cannot be retained due to one or more of the following conditions:
1. Obsolescence
 2. Extraordinary vandalism
 3. Acts of Nature
 4. Designed life expectancy reached
 5. Fire
 6. Permit requirements that disallow specific elements
 7. Reversion Order (National Trails System Act 8(d), 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

Section 27. Construction, Operation, Use, and Maintenance of Assisted Projects

Sponsors must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

- A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
- B. In a reasonably safe condition for the project's intended use.

- C. Throughout its estimated life so as to prevent undue deterioration.
- D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Facilities open to the public must:

- A. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.
- B. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- C. Be available for use at reasonable hours and times of the year, according to the type of area or facility.

Section 28. Income and Income Use

- A. Income.
 - 1. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the agreement.
 - 2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunities furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.

Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.25.210 RCW).

- B. Income use. 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 only be used to offset:

1. The sponsor's matching funds;
2. The project's total cost;
3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
5. Capital expenses for similar acquisition and/or development.

Section 29. Preferences for Residents

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the funding board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

Section 30. Provisions Related to Corporate (Including Nonprofit) Sponsors

A corporate sponsor, including any nonprofit sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the agreement.
- B. Notify RCO prior to corporate dissolution. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program *and* capable of complying with the terms and conditions of this agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.
- C. Sites or facilities open to the public may not require exclusive use, (e.g., members only).

Section 31. Liability Insurance Requirements for Firearms and Archery Range Sponsors

The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.

The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this agreement.

The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.

The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.

By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

Section 32. Requirements of the National Park Service

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the *LWCF State Assistance*

Program Federal Financial Assistance Manual are also made part of this agreement. The sponsor shall abide by these LWCF General Provisions as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

Section 33. Farmland Preservation Account

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement.

- Section 8 - Acknowledgement and Signs,
- Section 11 - Hazardous Substances,
- Section 17 - Stewardship and Monitoring
- Section 26 – Restriction on Conversion of Real Property and/or Facilities to Other Uses, and
- Section 25 – Provisions Applying to Acquisition Projects Sub-sections D, E, F, and G.

Section 34. Order of Precedence

This agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and/or state statutes, regulations, policies and procedures including RCO/funding board policies and procedures, applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Project agreement including attachments;
- C. Special Conditions;
- D. Standard Terms and Conditions of the Project Agreement.

Section 35. Amendments

This agreement may be amended by mutual agreement of the parties only. Such amendments shall not be binding unless they are in writing and signed by personnel

authorized to bind each of the parties. Period of performance extensions and minor scope adjustments need only be signed by RCO's director or designee.

Section 36. Limitation of Authority

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this agreement is not effective or binding unless made in writing and signed by RCO.

Section 37. Waiver of Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached to the original agreement.

Section 38. Application Representations - Misrepresentations or Inaccuracy or Breach

The funding board and RCO rely on the sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this agreement.

Section 39. Termination and Other Remedies

The funding board and RCO will require strict compliance by the sponsor with all the terms of this agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board.

The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this agreement:

- A. In the event of any breach by the sponsor of any of the sponsor's obligations under this agreement; or
- B. If the sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this agreement. Included in progress is adherence to milestones and other defined deadlines.

In the event this agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

The funding board and RCO may enforce this agreement by the remedy of specific performance, which usually will mean completion of the project as described in this agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this agreement, or under any provision of law, common law, or equity.

Section 40. Non-Availability of Funds

If amounts sufficient to fund the grant made under this agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to RCO for expenditure for this agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this agreement shall terminate. Termination of the agreement under this section is not subject to appeal by the sponsor.

Section 41. Termination for Convenience

Except as otherwise provided in this agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this agreement, in whole or in part. If this agreement is so terminated, RCO shall be liable only for payment required under the terms of this agreement for services rendered or goods delivered prior to the effective date of termination.

Section 42. Dispute Hearing

Except as may otherwise be provided in this agreement, when a dispute arises between the sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;

C. The sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

Section 43. Attorneys' Fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

Section 44. Governing Law/Venue

This agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this agreement, venue shall be proper only in Thurston County Superior Court. The sponsor, by execution of this agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this agreement is between the funding board and a federally recognized Indian Tribe, the following governing law/venue applies:

- A. The State of Washington agrees that it shall initiate any lawsuit against a federally recognized Indian Tribe arising out of or relating to the performance, breach or enforcement of this agreement in Federal Court. Interpretation shall be according to the law of the State of Washington. In the event that the Federal Court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court, but the parties agree that the matter shall not be pursued in superior court unless there is a Federal Court determination that it lacks subject matter jurisdiction.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F- Project Funding of the Agreement in order to satisfy the judgment.
- C. The Tribe hereby waives its sovereign immunity as necessary to give effect to this section, and to the implementation of any judgment. This waiver is only for the benefit of the Tribe and State and shall not be enforceable by any third party or by any assignee or delegate of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

Section 45. Severability

The provisions of this agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the agreement.



RCFB-SRFB Program Category Post-Evaluation Project Summary

TITLE: Sample Project	NUMBER: 00-0000C (Combined) STATUS: Board Funded
SPONSOR: Funded Organization	EVALUATION SCORE: 45.75 BOARD RANKING: 3 of 11
COSTS: RCFB - WWRP - UW \$500,000.00 50% Sponsor Share \$500,000.00 50% Total \$1,000,000.00 100%	SPONSOR MATCH: Appropriations/Cash Donated Land

DESCRIPTION:

The acquisition and development of New Habitat Area is a unique opportunity for an urban community. In eastern Washington, few large wetlands remain in urban areas. The historical use of Habitat as a migratory waterfowl area makes the preservation of this area even more important. Thousands of birds depend on this area for food and refuge every year. More than fourteen species show up every year, including the very showy Tundra and Trumpeter swans. Migratory shorebirds visit the area alongside the waterfowl. Mink, muskrat and beaver are present. Many predators can be observed, including an unusually high number of raptors such as bald and golden eagle, and peregrine and prairie falcon. Coyotes, bobcats, and cougar frequently hunt in the area.

This proposal is for acquisition of 590 acres of a southern pristine marshy area, a northern area with large vernal lakes, small year-around ponds, and a central area that has second growth deciduous forest. On completion of the acquisition, plans are to develop the site with plantings to assist with restoration of the habitat. Development will also include trails, interpretive signs, and fencing.

LOCATION INFORMATION:

Fifteen miles southeast of East Side Town.

COUNTY: Any County

SCOPE (ELEMENTS):

Administrative costs	Parking	Signing
Allowable land costs	Permits	Site Preparation
Architectural & Engineering	Riparian	Trails
Fencing & Gates	Sales Tax	Upland
Incidentals	Shelters	

ANTICIPATED ACREAGE:

<u>to Be Renovated</u>	<u>Acres To Be Acquired</u>	<u>Acres To Be Developed</u>	<u>Acres</u>
ACREAGE TYPE			
Lake	46.00	6.50	
Uplands	271.00		
Wetlands	273.00		

FISCAL YEAR: 2008

DATE PRINTED: July 29, 2009



WASHINGTON STATE
Recreation and
Conservation Office

Eligible Reimbursement Activities Report

Project Sponsor: Funded Organ
Project Title: Sample Project

Project Number: 00-0000 C
RCFB Approval: mm/dd/yyyy

Acquisition Project:

Items

- Administrative costs
- Applicable taxes
- Appraisal and review
- Closing
- Fencing
- Hazardous substances assess
- Land
- Noxious weed control
- Recording fees
- Signing
- Survey
- Title reports/insurance

Development Project:

<i>Element</i>	<i>Item</i>	<i>Unit</i>	<i>Quantity</i>	<i>Description</i>
Architectural & Engineering	A & E development	Lump Sum	1.00	
Fencing andGates	Barrier rocks	Lump sum	1.00	
Fencing & Gates	Fencing & gates-other	Lump sum	1.00	Wide Flange Post, 4" rails
Fencing & Gates	Fencing-wire	Linear Ft	29.00	4 smooth
Fencing & Gates	Gates	Each	2.00	Lockable Pipe Types
Parking	Parking-gravel	Spaces	20.00	2 accessible
Permits	Permits	Lump sum	1.00	
Riparian	Livestock fencing	Linear Ft	5,300	
Sales Tax	Sales Tax	Lump Sum	1.00	
Shelters	Kiosk	Each	2.00	100 sq feet each x 2
Signing	Boundary signs	Each	34.00	
Signing	Interpretive signs	Each	2.00	Routed Wood
Signing	Kiosk signs	Lump sum	2.00	
Signing	Traffic/directional signs	Lump sum	1.00	
Signing	Trail signs	Each	10.00	
Signing	Trailhead			
	bulletin board signs	Lump sum	2.00	
Site Preparation	Clearing	Acres	1.90	
Site Preparation	Grading	Acres	1.90	
Site Preparation	Grubbing	Acres	1.90	Parking Area
Site Preparation	Mobilization	Lump sum	1.00	
Trails	Trails - gravel	Linear Ft	5,500.00	4' wide x 3" deep
Upland	Nest boxes	Each	50.00	



Legal Description

Project Sponsor: Dept. of Natural Resources **Project Number:** 00-1427 A
Project Title: North Bay NAP **RCFB Approval:** 07/18/2001

Legal Description

[sample #1: if the legal description of the property to be acquired is known early in the application process, the description (an example of which follows) will be included in the project agreement.]

The NW ¼ of the NE ¼, Less County Road in Section 31, Township 26N, Range 6E, W.M., Sample County Washington; also known as Tax Lot 2 in said section.

[sample #2: if the legal description is unknown, the following paragraph will be included in the project agreement.]

The legal description of the property purchased with funding assistance provided through this project agreement (and protected by a recorded Deed-of-Right) shall be amended into the project agreement before reimbursement of the final payment.



Milestone Report by Project

Project Number: 00-0000 C
Project Name: Sample Project
Sponsor: Funded Organization
RCFB-SRFB Project Manager: Project Manger Name

X	!	Milestone	Target Date	Comments/Description
X	!	Order Appraisal/Review	05/01/2008	Pre-Agreement
X		Environmental Assess Complete	06/15/2008	Pre-Agreement
X		Survey Complete	06/21/2008	Pre-Agreement
X	!	Purchase Agreement Signed	07/01/2008	Pre-Agreement
		Project Start	08/01/2008	
	!	Acquisition Closing	09/01/2008	
	!	RFP Complete/Consultant Hired	09/01/2008	
		Demolition Complete	09/30/2008	
		Recorded Documents to RCFB	10/01/2008	
		Noxious Weed Control Complete	10/15/2008	
		Fencing Complete	11/01/2008	
	!	A&E Complete/Permits Submitted	12/01/2008	
		Plans & Specs Reviewed by RCFB	12/31/2008	
		Bid Awarded	01/30/2009	
	!	Construction Started	04/01/2009	
		Annual Project Billing	07/31/2009	
		Progress Report	07/31/2009	
		Progress Report	01/31/2010	
		Annual Project Billing	07/31/2010	
		Progress Report	07/31/2010	
	!	Project Complete	09/30/2010	
		Final Docs & Billing to RCFB	12/31/2010	

X = Milestone Complete

! = Critical Milestone



Press Release Template

[Funded Organization] Offered Grant to Acquire Lands and Develop Low Impact Public Access to Unique Native Ecosystems or Plant And Animal Communities.

[Funded Organization] was awarded a grant of \$500,000 from the RCFB-SRFB Grant Program, Recreation/Habitat category. The grant was awarded by the Recreation and Conservation Funding Board (RCFB), and will be used for the following:

The acquisition and development of [new habitat area] is a unique opportunity for an urban community. In Eastern Washington, few large wetlands remain in urban areas. The historical use of habitat as a migratory waterfowl area makes the preservation of this area even more important. Thousands of birds depend on this area for food and refuge every year. More than 14 species show up every year, including the very showy tundra and trumpeter swans. Migratory shorebirds visit the area alongside the waterfowl. Mink, muskrat and beaver are present. Many predators can be observed, including an unusually high number of raptors such as bald and golden eagle, and peregrine and prairie falcon. Coyotes, bobcats, and cougar frequently hunt in the area.

This proposal is for acquisition of 590 acres of a southern pristine marshy area, a northern area with large vernal lakes, small year-around ponds, and a central area that has second growth deciduous forest. On completion of the acquisition, plans are to develop the site with plantings to assist with restoration of the habitat. Development will also include trails, interpretive signs, and fencing.

There were 47 applications submitted for consideration in the RCFB-SRFB Program, Recreation/Habitat category. Each project went through an evaluation process prior to being recommended for funding. The Board approved funding for 22 projects on Friday, February 5, 2004.

Funding for the RCFB-SRFB Program, Recreation/Habitat category comes from the sale of state general obligation bonds. [funded organization] will leverage local contributions totaling \$500,000 with grant monies to implement the project. Total estimated project cost is \$1,000,000. RCFB is the state's administrator of the grant program.

Contact: Applicant Contact, [(000) 222-2222 (sponsor project manager)]

Grants Manager Name, (360) 902-3000, darrell.jennings@rco.wa.gov
(RCFBproject manager)

Section 5

Appendix: Milestone Status Tracking Sheet

Project Number: 00-0000C
Project Name: Sample Project
Sponsor: Funded Organization
Project Manager: RCO-SRFB Manager Name

X	!	Milestone	Target Date	Comments/Description
x		Project Start		
	!	Order Appraisal/Review		
	!	Purchase Agreement Signed		
		Environmental Assess Complete		
		Survey Complete		
	!	Acquisition Closing		
		Recorded Documents to RCO		
		Fencing Complete		
	!	RFP Complete/Consultant Hired		
	!	A&E Complete/Permits Submitted		
		Plans & Specs Reviewed by RCO		
		Bid Awarded		
	!	Construction Started		
		Annual Project Billing		
	!	Project Complete		
		Final Docs & Billing to RCO		

Project Status (include major work progress to date, steps currently taking toward project completion, and timeline for remaining work):

Are there known circumstances that could affect the sponsors ability to maintain the timeline above. If yes, please explain.

Activities of the RCFB, RCO, and SRFB are intended to follow state and federal guidelines for nondiscrimination based on race, creed, color, national origin, age, marital status, gender, sexual orientation, residence, veteran status and disability. Persons who believe these agencies or programs discriminate should inform the director at the address listed on page 3 of this publication or the Equal Opportunity Program, US Dept. of the Interior, National Park Service, PO Box 37127, Washington, DC 20013-7127.