



STATE OF WASHINGTON

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**TO:** IAC Members and Designees  
**FROM:** Laura Johnson, Director   
**PREPARED BY:** Jim Eychaner, Senior Outdoor Resources Planner  
**SUBJECT:** Updates:

- Grant Compliance and Conversion Policies Review
- Special Assistant Attorney General
- "SCORP"

**Grant Compliance and Conversion Policies Review**

In February of this year, we briefed the Board on the need for this review. As a reminder, IAC/SRFB expects grant-supported projects to be in compliance with the grant agreement or contract signed when a grant is made. A project found to be out of compliance with the agreement may be a "conversion." IAC/SRFB rules on grant compliance are found in Manual 7 Section 3.

In February, we proposed to:

- Ask for a citizen member of the IAC and a citizen member of the SRFB to join a small working group of affected sponsors and interested "stakeholders,"
- Review issues and direction with the working group,
- Take working group consensus to a broader public through a series of meetings (workshops, focus groups),
- Develop and circulate draft proposals, and
- Develop a final set of recommended policies and procedures to be implemented by revision of appropriate documents including Manual 7.



We have formed the advisory group and have been fortunate to find people with in-depth experience with current compliance/conversion policies. The members of the group are:

Sharon Claussen, King County  
Jeroen Kok, Vancouver-Clark Parks  
Arvilla Ohlde, citizen  
Jeff Parsons, IAC Board  
Peggy Panisko, citizen  
Joe Ryan, Salmon Recovery Funding Board  
Pene Speaks, Department of Natural Resources

To maximize the ability of these people to participate, we managed this group electronically. Beginning in May, we used a series of e-mails to introduce and review draft concepts. The concepts became text proposed to replace the text currently found in Manual 7 Section 3. A copy is attached.

Highlights of the text include:

Improved overarching policy statement regarding project changes  
Improved definitions of current terms  
Proposed new terms: "minor" and "major" element change  
Proposed requirement for appropriate public involvement  
Proposed higher threshold for Director review (increase delegation authority)  
Proposed consequences for unresolved compliance/conversion issues.

The draft text was reviewed internally, and published on the IAC/SRFB web site. Using e-mail and post cards, we notified about 3,000 people and organizations that the draft text is available for review and comment. Comment closes September 29, 2006.

We discussed whether to hold "typical" public meetings and decided that it would be more cost effective to first gage interest. If we perceive that we have significant interest that points out the need, we will schedule and conduct open public meetings of some kind.

Staff will consider all comments and issue a revised draft for further review. We hope to be able to bring a proposed new Manual 7 Section 3 to both IAC and SRBF in February 2007.

### **Special Assistant Attorney General**

IAC was briefed previously on the desirability of developing new grant agreement documents. Current grant agreement documents are about 40 years old. It is timely to consider new grant agreement documents in order to take advantage of advances in the

legal profession concerned with property rights descriptions, including conservation easements.

The Office of the Attorney General (OAG) advised us that it would be in the best interests of the State to find a legal specialist to augment their general knowledge of the topics. The OAG issued a request for qualifications. In May, IAC/SRFB staff assisted in a series of interviews of the qualified legal specialists who responded. Based in part on IAC/SRFB comment, the AG's office retained the law firm of Buck and Gordon.

We are now working with Duncan Greene, Associate of Buck and Gordon, to develop appropriate grant agreement documents. We hope to have the documents available by the end of this year.

### **“SCORP”**

“SCORP” is an acronym for “State Comprehensive Outdoor Recreation Plan.” SCORP is required for a state or territory's eligibility for grant-in-aid assistance from the Land and Water Conservation Fund (LWCF) managed by the National Park Service.

At present, IAC/SRFB staff is working with a contractor to conduct a statewide survey of outdoor recreation participation.<sup>1</sup> The survey is designed to capture all seasons of activity statewide, and to capture data in 10 state regions.<sup>2</sup> The activity categories are modeled on our previous statewide survey, to facilitate comparison and our ability to detect trends. The survey is being funded in part by a planning grant from the National Park Service.

We are scheduled to complete the survey by December of this year. We will start to develop an analysis plan with our contractor in the next few weeks. Survey data and analysis should be available early next year. Historically, the data we gather has proven to be in high demand and influential. The data has been used by federal, state, and local agencies as they plan for and manage public recreation sites and facilities. Immediate uses of the data and analysis potentially include:

1. Technical reports to inform the Priorities of Government (POG) recreation/cultural activities group. This group uses three indicators: participation, equity of participation, and dollar value of volunteers' time and dollars donated. The survey results will obviously address participation.
2. Technical reports to inform government management and accountability (GMAP). GMAP is data driven. Agencies including but not limited to IAC,

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<sup>1</sup> Clearwater Research of Boise, Idaho, selected after a competitive process reviewed by a planning advisory team.

<sup>2</sup> The regions are based on the Tourism Department's tourism regions.

SRFB, Parks, Fish and Wildlife, and Natural Resources can use the data to help determine whether current programs need adjustment.

3. Technical reports made available to local providers and others who can compare our results to local surveys.
4. As the statistical foundation for a document addressing RCW 79A.25.020, which calls for the office to prepare and update "a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space."
5. As the statistical foundation for a general assessment of outdoor recreation in the state, as we did with the 2002 *Assessment of Outdoor Recreation in Washington State*.
6. As the statistical foundation of a "comprehensive" document developed for LWCF eligibility.

As of today, we anticipate that we will develop a general assessment that could be interpreted as relevant to 79A.25 RCW and perhaps LWCF requirements. We do not anticipate that we will write a document called "SCORP." In fact, IAC has not developed a single document called the "statewide comprehensive outdoor recreation plan" in over 20 years. Rather, we have developed a series of studies, policy plans, and reports under the working title of state comprehensive outdoor recreation *planning* [emphasis added]. Simply put, there has not been sufficient LWCF funding available to justify the considerable time and money needed to develop a "SCORP." In addition, we believe the SCORP model as found in National Park Service requirements is obsolete.<sup>3</sup>

Therefore, we believe it is the best use of limited agency resources to develop the general statistical and planning assessment that can be used for a variety of purposes, but especially to inform the on-going dialogue among recreation proponents.

We will update the Board on the survey early in 2007.

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<sup>3</sup> The NPS model is based on the theory that supply minus demand equals need. We do not agree. The supply-demand model was developed in the field of economics to help explain prices of goods and services. Supply-demand may help explain "willingness to pay" for recreation opportunity, but it cannot define need.

## Attachment

### Proposed Revisions to Manual 7, Section 3. Compliance

<b>1. Introduction</b>	<p>It is your responsibility as the project sponsor to comply with the terms and conditions of the project agreement or agreements governing grant-in-aid funding assistance. After your project is complete (that is, after final reimbursement is made), IAC/SRFB expects that your project will continue to meet the terms and conditions of the project agreement.</p>
<b>2. Policy</b>	<p><b>It is the policy of IAC/SRFB</b> that interests in real property, structures, and facilities acquired, developed, enhanced, or restored with IAC/SRFB funds are not to be changed, either in part or in whole, nor converted to uses other than those for which the funds were originally approved. If an IAC/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.</p> <p>IAC/SRFB recognizes a difference between projects that acquire interest in real property (land) and projects that fund structures or facilities. Post-completion compliance is generally not an issue for projects in which IAC/SRFB has provided funds for planning, maintenance, operation, education, and enforcement activities.</p> <ul style="list-style-type: none"><li>• Public recreation land is expected to be available for public recreation purposes in perpetuity; that is, forever. Habitat land is expected to provide a habitat function in perpetuity.</li><li>• A habitat function is a feature or characteristic that supports plants, animals, or fish in a natural ecosystem.<ul style="list-style-type: none"><li>○ The loss of a species of interest, if as the result of events beyond the control of the sponsor, does not constitute a non-compliance issue if a <i>habitat function</i> remains.</li><li>○ Loss of a species of interest as the result of events in the control of the sponsor, including</li></ul></li></ul>

	<p>sponsor inaction, may result in a non-compliance issue even if a habitat function remains.</p> <ul style="list-style-type: none"> <li>• Compliance with project agreements involving structures or facilities 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 recreational opportunity or habitat utility on the development site in perpetuity.</li> </ul> <p>There are a number of ways a project can be out of compliance with a project agreement, the most serious of which is a conversion. If a compliance issue arises, IAC/SRFB works with sponsors to avoid, correct, or mitigate compliance issues, and uses the following definitions.</p>
<p><b>3. Definitions</b></p>	<p><i>Non-compliance.</i> 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.</p> <p><i>Conversion.</i> A project status that results when use or function of recreation or habitat land or facilities paid for by IAC/SRFB changes to uses or functions other than those for which assistance was originally approved.</p> <p><i>Obsolescence.</i> IAC/SRFB limits the application of "obsolescence" to built structures and facilities. "Obsolescence" is when one or more of the following applies: an IAC/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, documented changes in prevailing outdoor recreation participation in the sponsor's jurisdiction over a period of not less than ten (10) years; a structure reaches the end of its anticipated or agreed upon service life; or, in the instance of a structure placed or built for habitat purposes, to ecosystem changes beyond the control of the sponsor.</p>

	<p><i>Perpetuity</i>. Perpetual, seemingly ceaseless<sup>1</sup>, or the condition of an estate that is limited so as to be inalienable either perpetually or longer than the period determined by law<sup>2</sup>.</p>
<p><b>4. Compliance Inspections</b></p>	<p>IAC/SRFB staff is responsible for implementation of the compliance policy. IAC/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 project agreement. Inspection will result in a determination of compliance, non-compliance, or conversion.</p> <p>Sponsors are encouraged to regularly inspect their projects and to advise IAC/SRFB if potential compliance issues exist.</p>
<p><b>5. Non-compliance: Element Change</b></p>	<p>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.</p> <ul style="list-style-type: none"> <li>• <b>Minor element changes</b> 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.</li> </ul> <p>A project amendment will be required to account for the change, and <u>may</u> be subject to review by IAC/SRFB's Director or governing Board.</p> <ul style="list-style-type: none"> <li>• <b>Major element changes</b> 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.</li> </ul> <p>IAC/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 <u>will</u> be subject to review by IAC/SRFB's Director or governing Board.</p> <p>Under certain circumstances, an element change beyond the control of the sponsor may be deleted from a project</p>

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

<sup>2</sup> Webster's II New Riverside University Dictionary

	<p>agreement without triggering the replacement/reimbursement requirement. The conditions are:</p> <ol style="list-style-type: none"> <li>1. Obsolescence under the definition found in 3, above.</li> <li>2. Extraordinary vandalism that renders the element useless or dangerous</li> <li>3. Acts of nature including but not limited to floods, earthquake, volcanic eruption, forest fire, and adverse weather.</li> <li>4. Fire, whether criminal arson or accidental.</li> <li>5. Property or property rights lost as a result of a legal settlement or court decision.</li> <li>6. Permit requirements that disallow specified actions or elements.</li> <li>7. 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)).</li> </ol>
<p><b>6. Resolution of Element Change</b></p>	<p>As soon as the sponsor or IAC/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.</p> <p>The sponsor must:</p> <ol style="list-style-type: none"> <li>1. Arrange for a site visit with IAC/SRFB staff.</li> <li>2. After initial contact and the site visit, prepare documentation to accompany a written request for IAC/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 grant agreement.</li> </ol> <p><b>Documentation</b></p> <p>The sponsor may be required to provide the following, in writing:</p> <ol style="list-style-type: none"> <li>1. A description of the element change.</li> <li>2. Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis</li> </ol>

	<p>3. A list and discussion of alternatives for replacement or remediation of the element change.</p> <p>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.</p> <p>5. Additional documents that help explain the element change such as maps, plans, graphics, and/or photographs.</p>
<p><b>7. Non-compliance: Conversion</b></p>	<p>A conversion would be determined when one or more of the following has taken place, whether affecting an entire site or any portion of a site funded by IAC/SRFB:</p> <ul style="list-style-type: none"> <li>• Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery uses;</li> <li>• Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.<sup>3</sup></li> <li>• 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;</li> <li>• Non-eligible indoor facilities are developed within the project area.</li> <li>• Public use of the property or a portion of the property acquired or developed/restored with IAC/SRFB assistance is terminated.</li> <li>• The property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which IAC/SRFB funds were originally approved.</li> </ul> <p>Note: temporary closure of access sites due to budget reductions will not result in a conversion if the sponsor demonstrates that the closure will last one season or less.</p>
<p><b>8. Resolution of Conversion</b></p>	<p>As soon as the sponsor and/or the Office determines a project change may constitute a conversion, the sponsor shall contact the Office to begin resolution of the conversion. The steps to</p>

<sup>3</sup> 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.

take are listed below.

1. Arrange for a site visit with your grant manager.
2. After initial contact and the site visit, prepare documentation to accompany a written request for IAC/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 IAC/SRFB, be prepared to attend the IAC/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 IAC/SRFB.
2. A description of the proposed conversion.
3. A list and discussion of alternatives for replacement or remediation of the conversion. All practical alternatives to the conversion must be evaluated on a sound basis. Also, evidence must be provided that the public has been given a reasonable opportunity to participate in the identification, development, and evaluation of alternatives
4. Justification that supports the replacement site as reasonably equivalent recreation or habitat utility and location.

The fair market value of the converted real property must be established and the property 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.

5. Additional documents for specific types of projects:

	<p><i>Acquisition:</i> copies of any appraisal or appraisal review of the proposed conversion.</p> <p><i>Development or restoration of structures of facilities:</i> a site plan that clearly indicates the development/restoration proposed for conversion.</p> <p><i>For all projects:</i> submit maps, plans, graphics, a completed State Environmental Protection Act (SEPA) check list, archeological or cultural resource reviews, and other documents as requested by the Office.</p>
<p><b>9. Conversions of Land and Water Conservation Fund (LWCF) Projects</b></p>	<p>In addition to compliance with the rules found above, sponsors of facilities developed/restored with federal LWCF assistance must provide:</p> <ol style="list-style-type: none"> <li>1. An environmental assessment (EA).</li> <li>2. Evidence of an appropriate review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains: <ul style="list-style-type: none"> <li>• A detailed description of the proposal</li> <li>• An address where comments may be forwarded, and</li> <li>• The deadline for comment.</li> </ul> <p>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, and regional agencies.</p> </li> <li>3. Copies of all SHPO comments, even if "no comment" is indicated.</li> </ol> <p>Director or IAC/SRFB approval of conversions under LWCF is interim, pending final approval from the National Park Service.</p>
<p><b>10. Review by the Director</b></p>	<p>Once all documents are received, staff will determine whether the proposal requires approval by the Director or by the IAC/SRFB using the following guidelines.</p> <ol style="list-style-type: none"> <li>1. The director may review the following conversion replacement requests: <p style="margin-left: 40px;">Those in which conversion of use impacts less than <b>20 (twenty) percent</b> of the original project scope</p> <p style="text-align: center;"><i>Or</i></p> </li> </ol>

	<p>Those in which conversion of use is less than <b>20 (twenty) percent</b> of the total project cost within the original project agreement</p> <p style="text-align: center;"><i>Or</i></p> <p>Those in which conversion of use is <b>more than 20 (twenty) percent</b> of the original scope or cost AND the dollar value of the conversion is <b>\$100,000 or less</b>.</p> <p>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 IAC/SRFB.</p> <p>A sponsor may appeal a denial to the IAC/SRFB.</p> <p>2. All other requests are sent directly to IAC/SRFB as appropriate (see next section).</p>
<p><b>11. Review by IAC/SRFB</b></p>	<p>IAC/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.</p> <p>A sponsor's request for IAC/SRFB review must be received at least six weeks prior to a scheduled meeting. Sponsors will be notified at least 30 days in advance of the open public IAC/SRFB meeting at which the proposal will be reviewed.</p> <p>IAC/SRFB staff will prepare a memorandum explaining the conversion and the proposed replacement/remediation. IAC/SRFB will review the request in an open public meeting. Upon examination of the available documentation, IAC/SRFB may approve or deny the request.</p> <p>If a project has been funded in part or whole through federal funds, the IAC/SRFB decision may be forwarded to the appropriate federal agency for further review. Federal law and regulations will apply.</p>
<p><b>12. Implementing IAC/SRFB approval</b></p>	<p>If approval is granted by the Director, or by the IAC/SRFB, staff will amend the appropriate project agreement(s) to reflect the change.</p>

**13. Unresolved  
Non-Compliance  
or Conversion  
Issues**

The Director may recommend to IAC/SRFB that a sponsor with unresolved non-compliance or conversion projects be identified as a "high-risk" sponsor.

A "high-risk" sponsor is one that has one or more unresolved conversions of which the combined grant dollar total exceeds \$1 million or 25% of all IAC/SRFB grants received by that sponsor, whichever dollar amount is less.

The IAC/SRFB will consider the recommendation in an open public meeting. If the IAC/SRFB agrees to identify a sponsor as "high-risk," the following policies will apply:

1. The Director will notify a sponsor in writing that it has been identified as "high risk." Notification will include specific project references and suggestions for remediation.
2. The "high risk" sponsor may still apply and compete for additional grants for one grant round or calendar year (whichever is longer).
3. If the sponsor's new application is successful, the sponsor will be given a 90-day time period following the IAC/SRFB funding meeting to demonstrate substantial, if not complete, progress toward resolving any outstanding conversions.
4. If the sponsor has not demonstrated substantial progress or has not resolved outstanding conversions in that 90-day period, the new grant will be withdrawn and assigned to the next eligible project in the same grant program and category.
5. After the 90-day period, the "high risk" sponsor may not submit further applications until all outstanding conversions are resolved.