



STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

Meeting Date: November 2009 Item Number: 7
Title: Scope Changes for Acquisition Projects
Prepared By: Dominga Soliz, Policy and Planning Specialist
Approved by the Director:

Proposed Action: **Decision**

Summary

Current policies require board (or board subcommittee) approval for major changes in an acquisition project's scope, but do not define the term "major scope change." Recreation and Conservation Office (RCO) staff convened a stakeholder group to develop policy proposals for public comment. Staff is asking the Recreation and Conservation Funding Board (board) to approve the policies for the 2010 grant cycle.

Strategic plan link

Consideration of these policy changes supports the board's objectives to (1) evaluate and develop strategic investment policies and plans so that projects selected for funding meet the state's recreation and conservation needs, and (2) fund the best projects as determined by the evaluation process.

Recommendation

RCO staff recommends that the board adopt the revised policies via resolution #2009-30.

Specifically, these policies would:

- a. Define a major scope change as one that is either ineligible in the same grant program category as the original property; of different values than the original property (e.g., preservation, recreation, habitat, etc.); or either not contiguous to the property *or* outside the identified geographic envelope.
- b. Clearly describe the process by which scope changes for acquisition projects are reviewed by staff, including when the director might use an ad-hoc review panel to evaluate the request, and whether decisions will be made by the director or the board.



Background

Sponsors that propose acquisition projects must identify either a property or “geographic envelope” in their application. The characteristics of the property are part of the evaluation process. If the board awards grant funds, the property or geographic envelope is described in the contract with the RCO. This is true for both the Recreation and Conservation Funding Board and the Salmon Recovery Funding Board (SRFB).

There have been situations in which sponsors need to purchase property other than the property that was originally proposed in the application and incorporated into the agreement with the RCO. When this request for a change in geographic boundaries happens after a contract is signed, but before the RCO reimburses for the acquisition, it constitutes a scope change.

Sponsors sometimes request this kind of scope change when they cannot complete the original target acquisition because negotiations with the landowner fail, or because the sponsor identifies other land that it prefers to purchase.

Current policies require board approval for major changes in any project’s scope, but do not define a major scope change. Some recent requests to both boards have highlighted the need for a clear and consistent policy for decisions related to acquisition scope changes.

Analysis

Staff worked with a group of stakeholders to develop a policy proposal to (1) define a “major” scope change and (2) determine a process for approving scope changes related to acquisition projects.

Stakeholders included the following:

Name	Organization
Bill Koss	State Parks and Recreation Commission
Dan Budd	Department of Fish and Wildlife
Elizabeth Rodrick	Department of Fish and Wildlife
Craig Calhoun	Department of Natural Resources
Peter Mayer	Vancouver-Clark Parks and Recreation, Washington Recreation and Parks Assn.
Bob Bugert	Chelan-Douglas Land Trust
Marcia Fromhold	Washington Wildlife and Recreation Coalition

Define a “Major” Scope Change

Scope changes to purchase property other than the property identified in the agreement with RCO can result in a project that is significantly different than it was at the time of evaluation, ranking, and contract formation. Stakeholders agreed that the RCO scope change policy should:

- Ensure the intent of the original grant contract with RCO is met; and
- Promote fairness to applicants that competed against the project for funding.

Policy should assure competing applicants and the public that a scope change that significantly changes a project's values could be approved only by the funding board (or board subcommittee). Since current policy requires major scope changes to be approved by the appropriate funding board (or board subcommittee), the policy assurance that is needed can be accomplished by defining the term "major scope change."

RCO staff currently consider several criteria in deciding whether a scope change will change a project significantly:

- Is the substitute property eligible in the same category as the original project?
- Does the substitute property have similar conservation values, habitat types and target species, recreational values, or salmon recovery values as the original project?
- Is the substitute property contiguous or geographically close to the original project?
- Would the substitute property have scored well or better than the original project?

Stakeholders agreed these criteria should be included in policy to define a major scope change.

Determine Process for Approving Scope Changes

Stakeholders and staff also agreed that the process for requesting and evaluating a scope change should be clarified, as described below and shown in the picture on the next page.

First, the policy should require that a sponsor submit additional information that justifies the request, including the following:

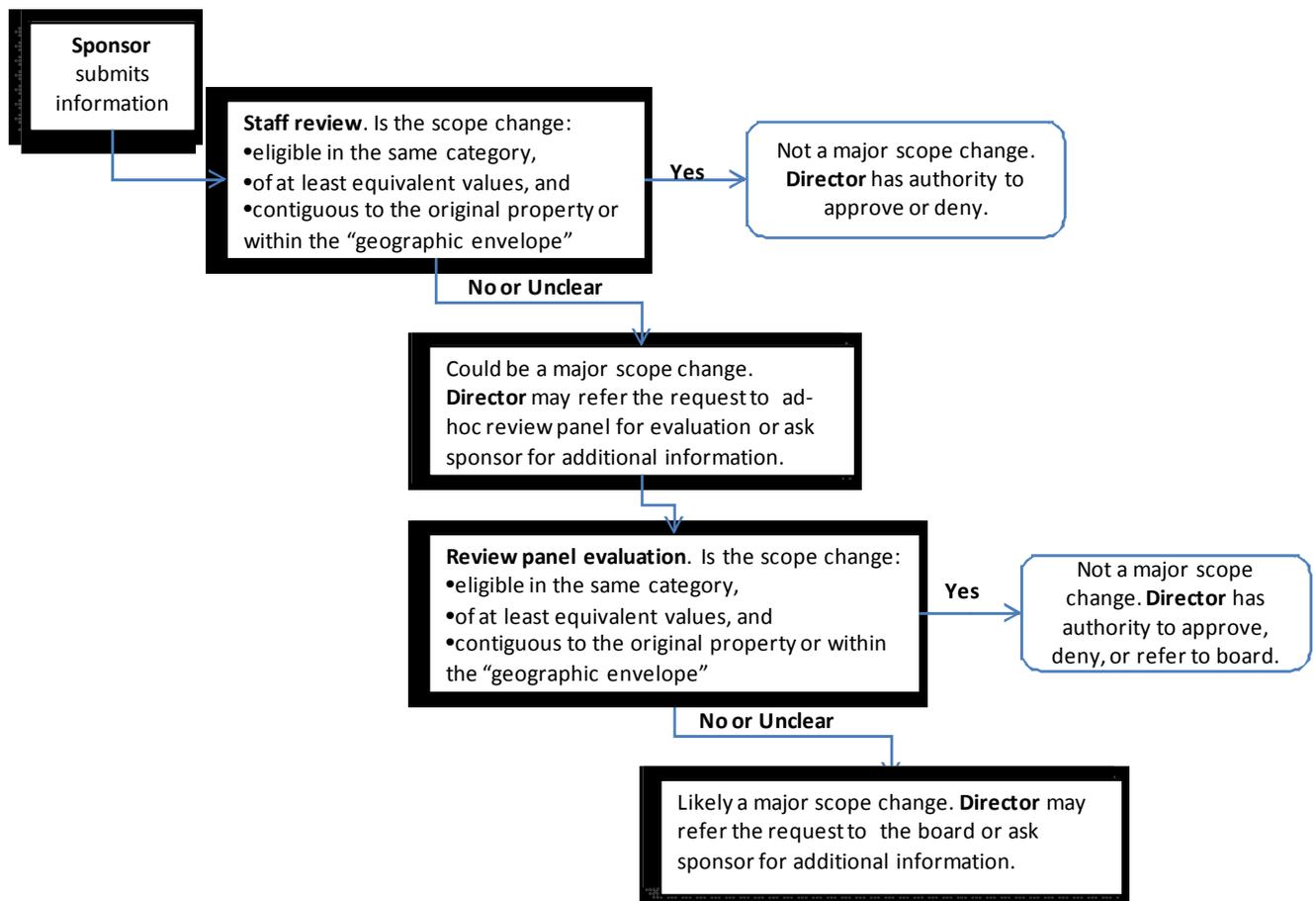
- documentation explaining why the original target property is no longer being pursued
- how alternatives to the request were considered
- how the new property meets program criteria
- a determination of the newly targeted property owner's willingness to sell
- how the amendment will affect the sponsor's ability to perform the obligations of the existing contract, and
- whether the local government (for RCFB-funded projects) or lead entity (for SRFB-funded projects) was notified about the scope change request

In many cases, staff would review the request and make a recommendation to the director. In general, the director would be able to approve a scope change if it were eligible in the same grant program category, clearly had at least equivalent values, and were contiguous to the original property or within the "geographic envelope" delineated with the grant application. A scope change request that meets these criteria would not be considered a major scope change.

However, stakeholders suggested that in cases where projects might be significantly different or evaluation more complex, the RCO could submit the projects to an independent team of experts

for review. In keeping with the board's established evaluation processes, these ad-hoc panels of experts would help RCO staff evaluate the information. In particular, they would determine how the values of the amended project compare to the values of the original project.

If the review panel found that the project had similar values, the change would be referred back to the director. If the review panel determined the amended project did not have similar values as the original project, the director would either submit the scope change request to the board as a major scope change, or ask the sponsor to provide more information. The board would either approve or deny the request based on criteria that staff will propose at the March 2010 board meeting.



Public Review

On September 28, 2009, staff circulated a draft to about 3600 people who had expressed an interest to RCO in hearing about issues related to the Washington Wildlife and Recreation Program, the Aquatic Lands Enhancement Account, riparian habitat protection projects, and the Salmon Recovery Funding Board grant programs.

As of October 20, 2009, seven people commented on the proposal. Attachment B includes the comments received, in summary format.

- Some respondents recommended that clear criteria be developed for the board (or board subcommittee) to use in determining whether to approve a scope change.
- One comment recommends the policy be amended to consider cultural resource protection.
- One comment recommends separating SRFB policy from WWRP policy. As a result, staff is conducting outreach to determine whether board and SRFB subcommittee criteria for approving major scope changes may need to be different.
- One respondent noted that SRFB policies do not require sponsors to inform local governments of upcoming acquisitions in their jurisdictions. As a result, staff revised the proposal to allow sponsors of SRFB-funded projects to notify the lead entity, rather than the local government, about the scope change request.

Any additional comments received by the October 28, 2009 comment deadline will be summarized and distributed at the board meeting.

Next Steps

If the board approves the policy revisions, RCO staff will implement the policies starting January 1st and will encourage applicants in the 2010 grant cycle to consider this policy when developing grant submittals.

Additional Policy Revisions

RCO staff is working with stakeholders to develop criteria that the board or SRFB subcommittee can use in deciding whether to approve a major scope change and to review the multi-site acquisition strategy. These criteria will be proposed to the RCFB at the March 2010 board meeting and, if approved, will be used in future decisions on major scope changes.. Staff believes it is important to adopt the definition of “major” scope change now so it is in place for the beginning of the next grant cycle. In that way, project sponsors will be able to prepare their grant applications knowing the possible consequences of seeking major scope changes later in the process.

Attachments

Resolution #2009-30

- A. Proposed Policy Language
- B. Public Comments on the Proposal

RESOLUTION #2009-30
Revising Scope Change Policies for Acquisition Projects

WHEREAS, Recreation and Conservation Funding Board (board) program policies do not provide a definition of a “major” scope change for acquisition projects; and

WHEREAS, the board could benefit from clear policies for approving scope changes for acquisition projects; and

WHEREAS, Recreation and Conservation Office (RCO) staff developed and circulated a policy proposal for review and public comment and received no comments in opposition of the proposal; and

WHEREAS, the policy proposal would use the board’s established practice of project evaluations that involve subject-matter experts and members of the public, thus supporting the board’s goal to conduct its work in a manner that is fair and open to the public; and

WHEREAS, adopting this revision would further the boards’ strategic goal to “[f]und the best projects as determined by the evaluation process”;

NOW, THEREFORE BE IT RESOLVED, that the board does hereby adopt the new policy language shown in Attachment A to the November 2009 board memo to define a major scope change as one that is either ineligible in the same grant program category as the original property; of different values than the original property (e.g., preservation, recreation, habitat, etc.); not contiguous to the property; or outside the identified geographic envelope; and

BE IT FURTHER RESOLVED, that the board does hereby adopt the new policy language shown in Attachment A to the November 2009 board memo to clearly describe the process by which scope changes for acquisition projects are reviewed by staff, including that the director might use an ad-hoc review panel to evaluate the request, and that the decision to approve or deny major scope changes will be made by the board; and

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

Resolution moved by: _____

Resolution seconded by: _____

Adopted/Defeated/Deferred (underline one)

Date: _____

ATTACHMENT A: PROPOSED POLICY LANGUAGE

Staff proposes adding the following policy (including footnotes) to Manual 7 (Funded Projects) under the *General Policies* section:

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 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 5 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:

¹ 'Contiguous' means 'touching.'

- 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.

Staff further proposes revising policy Manual 3 (Acquisitions) as follows (underline indicates new language, strikethrough indicates deleted language):

The following list summarizes many acquisition project decisions that may only be made by the IAC RCFB or SRFB in a public meeting. Each is in accord with statutes, rules, and RCFB and SRFB policies.

1. Initial grant approval.
2. Any project cost increase that exceeds 10 percent of the total previously approved by IAC RCFB or SRFB. Cost increases are not allowed in some ~~IAC RCO~~ programs.
3. A "conversion" that changes the project site or how the site is used from that described in the Project Agreement.
4. A ~~significant~~ major² change in the project's scope. Typically, such a modification includes any that the Director feels may have changed the project's evaluation score. Not included are changes that do not significantly modify the way the public uses a facility or the intended habitat conservation, salmon habitat recovery, or recreational opportunity funded by IAC the RCFB or SRFB.
5. Changes in policy; for example, establishing new grant limits or eligible expenditures

² Major scope changes for acquisition projects is defined in Manual 7 (Funded Projects) in the General Policies section.

ATTACHMENT B: SUMMARIZED PUBLIC COMMENTS ON THE PROPOSED POLICIES

Commenter	Summarized Comments ³	Staff Response
Steve Hahn, State Parks and Recreation Commission	All policy revisions look good to me. I will suggest RCO consider working this issue from the opposite end (scoring criteria). If the goal here is to fund specific properties that scored high and were the original property presented to the review panel, give more weight to project sponsors who have executed Purchase & Sale Agreements signed with the land owner. Additional weight should be applied to project sponsors who have identified a specific property versus those who draw a circle around an area of interest and tell RCO "we will acquire one of these 15 properties within the long term boundary or project area"	
Paul Cereghino, ESRP	Nearshore staff found the policy fair and useful	
Sean Edwards, Stillaquamish Lead Entity Coordinator	Informing the local government of the request would be a new requirement for SRFB projects. I believe it is assumed that local governments become aware of proposed SRFB projects through the local lead entity process.	Staff changed the recommendation accordingly.
Dave Bryant, City of Richland Parks and Recreation	I have no problem with these proposed changes	
Gregory Griffith, Department of Archaeology and Historic Preservation (DAHP)	DAHP supports changes in acquisition scopes that will 1) result in significant cultural resources being protected by the acquisition; or 2) result in avoidance of impacts to significant cultural resources. DAHP recommends the following changes to the proposal: <ul style="list-style-type: none"> • Amend the language to read: "Has similar and at least equivalent conservation, ..., <u>cultural resource protection</u>, recreation, ... values as the originally targeted property;" • Require the requesting sponsor to provide documentation identifying cultural resources that would be affected by the amendment... • Have RCO notify and seek comments from DAHP and consulted tribal governments when considering acquisition scope changes. • Include a DAHP representative, tribal cultural resources staff, or other resource professionals on any ad hoc panel convened to evaluate and compare projects. 	These recommendations have not been included in the staff recommendation because cultural resource protection is not part of the evaluation criteria. Other systems are in place for cultural resource review.

³ In some cases, the remarks have been edited for brevity.

Commenter	Summarized Comments ³	Staff Response
Joanna Grist, Washington Wildlife and Recreation Coalition	<p>This issue is not yet sufficiently refined. We believe that the RCO and work group should continue their efforts to achieve a successful policy. We would suggest the following:</p> <ul style="list-style-type: none"> • Separate the SRFB policy on this issue from the WWRP policy. The SRFB projects are not submitted to the Governor and Legislature and a LEAP project list is not included in the budget. • Convene a work group to more clearly distinguish and define “major” and “minor” scope changes. • Minor scope changes should be within the RCO director’s span of control. Major changes should go to the Recreation and Conservation Funding Board for decisions. ...If the changes are significant enough that they would have resulted in a change in the ranking they should not be approved unless there is no other alternate project. The RCO, on behalf of the RCFB, should make these major changes only in consultation with the leadership of the Legislature’s Capital Budget committees..... 	<p>Staff is conducting outreach to stakeholders to determine whether criteria for the RCFB to use in approving acquisition scope changes should be different from criteria for the SRFB subcommittee.</p> <p>A follow up call to WWRC advised that the proposal is consistent with the second and third comments and that the WWRC supports further outreach to develop board criteria for approving major scope changes.</p>
Mark Clark, State Conservation Commission	<p>We would support this change as long as the substituted project 1) has undergone a full technical review by the Technical Review Panel <i>with</i> improved criteria to evaluate acquisition projects in general, and 2) is compatible with other goals of our state, such as farmland preservation.</p> <p>The .. SRFB’s Technical Advisory Panel recommended that we should “develop criteria to help technical evaluation of acquisitions on a more standardized basis. These criteria should be designed to lead to better understanding of the extent to which habitat to be acquired is currently fully functioning and/or needs extensive restoration; the timeframe in which responses or improvements in habitat functioning are expected; and the continuity of the proposed acquisition with other protected or functioning habitat.” We agree with this recommendation.</p> <p>For proposed acquisition parcels that are not fully functional as salmon habitat, a plan should be required that details the needed restoration and costs, maintenance costs, and timeframe to achieve the claimed functionality.</p> <p>In addition, this review should be conducted by the Technical Panel rather than having a review through the Lead Entity or relying solely on information provided by the sponsor. ...Panel review would be consistent with the required review under RCFB as well.</p> <p>We also want to express support to change policy to use conservation easements on working lands.</p> <p>Lastly, we’d like to point out the need to define “stream reach” in your proposed policy. ...</p>	<p>These comments are largely concerned with the SRFB. Staff is conducting SRFB stakeholder outreach to define reach areas and develop improved acquisition evaluation criteria that are consistent with statewide goals.</p>