



Oregon

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June 11, 2026, Acquisitions, Restorations, and Emerging Issues Committee Meeting
Staff report – LAND ACQUISITION MODERNIZATION PROGRAM RECOMMENDATIONS

MEMORANDUM

To: Acquisitions, Restoration, and Emerging Issues Committee

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I. Introduction

As requested by the ARE Committee at the meeting on March 5, 2026, OWEB staff have developed a suite of recommendations in the attached table for many of the key topics that have been discussed by this Committee with staff and partners. These draft recommendations are informed by extensive input OWEB has received during the Land Acquisition modernization process through such pathways as written and verbal public comment at various OWEB meetings, panel discussions with Tribes, grantees, and partners at ARE Committee meetings, staff learnings and experience throughout OWEB's Land Acquisition Grant Program lifespan, and early input from ARE Committee members.

The program modernization recommendations primarily connect to the first two foundational questions, which relate to the use of conservation easements (CEs) and expectations about habitat significance and active restoration, since those two questions have already been thoroughly discussed at ARE Committee meetings. The fourth foundational question about the agency's approach to risk is woven in line-by-line in the attached table. The third foundational question – how other potential land uses fit into the program – is addressed for the first time in detail with this Committee in a separate 'Other Uses' memo. For this reason, staff did not develop explicit recommendations about other uses in the attached table. Recommendations for the Tribal workstream are not included in this table and will be developed and presented separately, based on follow-up coordination with federally recognized Tribes.

Committee members may also note that many of the recommendations require additional exploration and coordination with partners to fine-tune specific changes in program guidance, templates, practices, and documents. We believe that the level of detail involved – and the need to consult frankly and thoroughly with grantees and

applicants to ensure that we avoid unintended consequences – lends itself better to a focused staff-partner workgroup than to board committee meetings.

Our proposed approach to the next phase of work is:

- Following the Committee’s June meeting, staff will revise and adapt recommendations as needed to develop a draft set of recommendations from the ARE Committee to the full Board.
- Based on the policy direction set by this recommendation and following adoption by the OWEB Board, staff will convene and charter internal-external workgroup(s) with past, current, and potential program applicants and other interested parties, similar to the short-term group that worked on “low-hanging fruit” changes in advance of the 2025 application cycle.
 - The workgroup(s) will create a workplan to scope changes to program guidance, online grant application, templates, etc., with an additional eye to streamlining where possible. The workplan will consider cadence of program changes relative to annual grant application cycles for land acquisitions.
 - The workplan will also plan for scoping changes to program processes (e.g., items in recommendations table, minor refinements to public notifications, necessary adjustments to process for applying community benefits and impacts evaluation criterion).
 - In parallel with the workgroup process, staff will complete the necessary legal research to apply the refined lens on risk tolerance per direction from the OWEB board while preparing for revisions to program materials.
- The workgroup(s) will present the workplan and periodically share results with the ARE Committee about specific proposed edits to program materials and identified areas where additional policy guidance and/or rule changes may be needed.
- Staff will incorporate changes and implement the refined program with annual grant solicitation cycles and ongoing work on awarded projects and past grants.
- Staff will work with the ARE Committee to establish a schedule for periodic program updates to the Committee and, as appropriate, the OWEB Board about status of modernization implementation, project highlights, lessons learned, etc. to create opportunities for dialogue.

II. Program Modernization Recommendations Table

Staff built this table of program modernization recommendations by first selecting topics to evaluate that have emerged as key practices and processes associated with the foundational questions. In the table, we define the topic and the associated conservation principle it addresses. We then explain the current practice and context to provide grounding for the Committee. Finally, we present two staff-developed options for the Committee to consider, with the preferred option indicated. A brief risk assessment is

also described for each option. For some topics, staff came to consensus on the preferred option, while for others, opinions differed. In these instances, the OWEB director and program manager worked together to select a preferred option. Many of the topics are interrelated and the decision on one will influence the decision on another. We look forward to discussing the content of this recommendations table with the Committee.

The recommendations table is not intended to be an exhaustive listing of all feedback received throughout the land acquisition modernization process and a point-by-point response to this feedback. Rather, it focuses on those issues and chronic challenges about which we received substantial feedback, and proposes changes that could be implemented within existing legal authorities and that staff expect would improve program demand, customer service, and—ultimately—the scale of conservation implemented for the benefit of native fish and wildlife species and their habitats.

Although more granular in nature than the high-level foundational questions that were presented to the ARE Committee at the outset of its work, the program modernization recommendations in the accompanying table tie back to the foundational questions and are informed by feedback that we have heard thus far during the modernization process. To help the Committee connect from the recommendations back to the foundational questions, staff have summarized brief responses by question below.

III. Foundational Question #1 – Recommendations

Should OWEB allow the use of alternative land protection instruments, or continue to require the use of CEs to meet constitutional directives and statutory title restriction requirements?

Committee discussion, grantee conversations, and internal process review have all led us to see concerns about OWEB’s use of CEs as being less about the instrument itself and more about concerns regarding how the agency has structured use and implementation of CEs in the context of the Land Acquisition program.

Based on the land acquisition modernization process findings, including legal analysis, staff recommend that yes, OWEB should continue use of CEs to meet the agency’s statutory requirement for a title restriction. CEs provide assurance that program investments will meet Measure 76 (M76) expectations for land acquisitions, and we believe CEs can be implemented in a more streamlined way that addresses many partner concerns. We also recognize that using alternative forms of title restriction (such as deed restrictions) would not necessarily resolve the specific concerns and frustrations that partners shared.

Instead of proposing a change in title restriction instrument, the options in the attached table outline ways we would like to explore updating the CE template and associated documents and guidance to make it more user friendly and flexible for grantees and describe a process that ensures collaborative implementation of land acquisition projects.

Other aspects of the program’s implementation are integrally tied to CEs (e.g., use of description of restored conditions, requirements for desired future conditions, process for management planning). The updating process for OWEB’s CE template will fold in other proposed updates related to these issues that are described below and in the recommendations table.

Separate from these initial ARE recommendations, for federally recognized Tribes, we will continue to work with these Tribes to explore interest and potential for tools such as unique CE templates. (Note: Recommendations from the Tribal workstream—including options and next steps for topics well beyond potential use of unique CE templates—will be summarized and presented separately.)

IV. Foundational Question #2 – Recommendations

Should OWEB’s land acquisition program incorporate an expectation of active restoration of properties acquired, or is a land transaction that solely protects land sufficient to meet OWEB’s interpretation of Constitutional and statutory requirements, even if existing habitat values are more modest, limited, or marginal?

This question does not lend itself as easily to a simple recommended approach, but, as outlined in the recommendations table, staff propose an extensive re-look at how the agency approaches habitat considerations in its grantmaking.

This re-look would include (see table for additional details):

- Focusing CE language on habitat protection (rather than detailed expectations about future restoration and/or condition);
- Encouraging applicants and grantees to describe opportunities for stewardship and, where appropriate, restoration, without prescribing these in detail in the CE, baseline, and/or management plan; and
- Leveraging technical information such as the State Wildlife Action Plan to better describe expectations about “significant habitat;” among other changes proposed in the recommendations table.

Staff further request that the Committee’s eventual recommendation and board policy guidance include these key themes that emerged in our committee conversation:

- Eligible and funded land acquisitions must have the potential—at present or in the future—to provide significant habitat.
- Properties with more modest existing habitat values (for example, as demonstrated by lower ecological function at present) may still be eligible within the Land Acquisition Grant Program, and staff would welcome additional guidance from the Committee and/or Board about how best to evaluate these projects alongside those with significant existing habitat values. Applicants to the program should be

prepared to describe current habitat status for a property and their vision for protecting and/or improving habitat condition and function.

- Program guidance and practices should be modified to clarify and ensure that active restoration will not be required or prescribed across the board for all land acquisition projects.
- Where a grantee chooses to outline active restoration plans, the agency should take more of a “shoulder-to-shoulder” approach with grantees, including approaching stewardship as a conversation while grantees get to know the property and its needs and potential.

V. Foundational Question #3 – Initial Thoughts

In evaluating land acquisition proposals, agreements, management plans, and project outcomes, how should OWEB staff balance M76 purposes against other potential land uses, including in cases when multiple funders are involved in protecting, restoring, and managing an individual property?

While the Committee has not yet discussed this question, the separate *Other Uses* memo lays out key considerations and details requests to the Committee for process input. In addition, the recommendations table does include a few relevant topics—such as areas of impact on portion(s) of the protected property—as food for thought to the ARE Committee.

As the Committee will see in both the memo and the recommendations table, there are many considerations within this foundational question that could result in an “it depends” answer. Staff aim to avoid the lack of clarity and the uncertainty grantees experience when other uses are evaluated entirely on a case-by-case basis. Our hope is that the Committee can provide some conceptual guidance on how to create more space for cultural, working lands, and recreational uses, while remaining consistent with our M76 sideboards. From this conceptual guidance and direction to staff, the internal-external workgroup(s) can then use this information to more clearly define risk tolerance as it relates to other uses and process guidance for decision-making related to requests regarding other uses.

VI. Foundational Question #4 – Answer

How should OWEB Board and staff, in partnership with other parts of the state enterprise and grantees, best understand, evaluate, and manage the risks associated with this program?

It is clear from committee conversations thus far that OWEB should and will increase its risk tolerance for land acquisition projects. This change weaves through many aspects of and steps within the program. We begin by considering risk more explicitly in the recommendations table and presenting to the Committee the risk associated with different options. This information empowers the Committee and, ultimately, the Board to consider the various types of risks included in the risk matrix (initially presented at the

September 2025 ARE Committee meeting) and the likelihood/probability of a particular situation happening, the severity of risk if the situation occurs, and the subsequent cost/impact of that risk.

This proactive consideration of various types and components of risk will ensure that the OWEB Board—as the decisional body for all OWEB grants—is consistently applying a risk management lens across OWEB programs. It also will enable the Board to provide direction to staff regarding how and where to increase risk tolerance in the Land Acquisition program, recognizing that not all risks are equal. In addition, individual recommendations in the table demonstrate how increased risk tolerance will be incorporated into various steps of the land acquisition grantmaking process, ranging from eligibility and application review to the due-diligence and post-closing processes.

These changes will clarify the different roles between OWEB—as a funder focused on achieving its conservation mission and accountable use of public funds—and our grantees—as the holders and day-to-day managers of property interests. The Committee has indicated an expectation for the program to take a more “shoulder-to-shoulder” approach with grantees, including open communication about opportunities and challenges, collaborative problem solving, and an improved relationship of mutual trust that the agency and its partners have a common goal of elevating habitat conservation for the benefit of native fish and wildlife.

VII. Incorporating ARE Committee and Board Direction into the Land Acquisition Grant Program

Staff will use direction from the OWEB Board regarding land acquisition modernization recommendations to incorporate changes and refinements into the program. See information on page 2 of this memo regarding the next phase of work; while not an exhaustive list of next steps, it provides the Committee with a sense of upcoming work.

Staff present these draft recommendations as logical, feasible, concrete steps for program modernization. As we track effectiveness of these program changes and learn from them, the Board may ultimately decide to take future, additional steps—such as initiating rulemaking—to formalize as needed the initial changes from modernization or scope future changes that may be warranted to address land acquisition modernization workstreams.

Land Acquisition Modernization Program Recommendations

Presented at June 11, 2026 ARE Committee Meeting

Topic and Conservation Principle	Current Practice and Context	Option 1 from Staff	Risk for Option 1	Option 2 from Staff	Risk for Option 2
Conservation easement (CE) as instrument to meet ORS 541.960: Legal protection to ensure durability of program constitutional and statutory requirements	OWEB had to choose a title restriction instrument and settled on CEs due to greatest assurance given its existence in separate ORS and ability to withstand legal challenge to date. (OAR 695-045-0206 indirectly references this decision by stating, "...for the purpose of monitoring and enforcing OWEB's Conservation Easement rights" but does not elaborate on the agency's policy decision to use CEs to meet the title restriction requirement.) A "streamlined" template was created as part of a past Land Acquisition process.	Keep as is, with the rationale of risk management benefits based on past learnings along with adherence to decisions that were made during a past land acquisition process.	Potential for persisting conflicts with grantees and reduced program demand	Explore revisions to CE template to identify where terms might be able to modified to be more flexible for grantees (e.g., changes to "prohibited uses" to better enable stewardship that aligns with conservation values and intent of the grant funding). -- PREFERRED	Potential for ambiguities to be introduced that could create conflicts between OWEB and grantees, and possible challenges to OWEB's ability to enforce the CE if not carefully crafted. Retains use of the CE instrument, which helps the agency manage risk, while committing to CE changes that aim to address partner concerns.
OWEB administrative rights in CE: OWEB CE includes agency rights for enforcement, monitoring, access, and funds recovery.	These administrative requirements are included in the CE language because CEs are perpetual and recorded in the public records, whereas project documents such as the grant agreement (GA) eventually terminate.	Keep as is because of risk reduction benefits for OWEB, identified in Current Practice and Context.	Potential for ongoing, periodic misalignments with other funding sources	Evaluate OWEB administrative language requirements in the CE to determine how language can better facilitate consistency with match funders and reduce administrative burden on agency and grantees -- PREFERRED	Potential risk of adjusting OWEB administrative requirements in CEs to the degree that other agencies' priorities begin to override OWEB's responsibilities under Measure 76. Aims to address concerns expressed by partners, while helping the agency to manage the risk of relying on a time-limited GA.
CE's description of conservation values: Conservation Values are the driving force behind CEs and should be a concise summary of the characteristics of the property that have been identified for protection and the rationale for protecting them.	OWEB required CE content includes conservation values as existing at the time of the grant <i>and those likely to exist in the futur e</i> . Management plans incorporated into the CE include Desired Future Conditions (DFCs), which are forward looking. (From CE template: "Those ecological features, whether currently existing, or likely to exist in the future, are referred to as the "Conservation Values" herein.")	Remove reference and/or requirements within CE language that speak to future conditions. Instead, focus CEs on existing conditions, and in the instances where restoration is intended, a reference that the property provides <i>the opportunity</i> to do that work and create those enhanced conditions. This can balance the concern that expectations of conditions are prescribed before grantees fully understand the capabilities of the property for a specific condition. This change would remove specific restoration and enhancement outcomes from the CE and put less focus on "compliance" of the CE in relation to the DFCs in the management plan. -- PREFERRED	Less certainty around the timeline of meeting any restoration and enhancement objectives identified in the application that may have factored into the Board's award decision. This could also reduce certainty that the habitat conditions will be improved/restored, and that if conditions are restored, they will not be considered as conservation values protected by the CE. However, the latter risk is likely reduced by incorporating CE terms that prohibit the most impactful activities that could lead to conversion of restored areas (e.g., commercial development).	As a compromise space between current practice and Option 1, include a statement in the CE in relation to the conservation values that future habitat conditions are intended/expected to be maintained or improved, generally in keeping with the description in the grant application on file with OWEB. Also state that the management plan, agreed to by grantee and OWEB, will guide stewardship work. This could involve reworking the application to make sure that the information and goals/objectives solicited from applicants does not inadvertently create rigidity.	Continues to require commitments to restoration--via continued, broader expectations about future habitat conditions--that could result in persisting conflicts with grantees and reduced program demand.
Description of Restored Conditions (DRCs) at time of grant agreement and in CE: Mechanism for ensuring that properties in need of significant restoration to accomplish ecological goals that are identified in grant applications are stated and completed--through the use of DRCs in the grant agreement and CE--with the intent of ensuring the project meets expectations that were the foundation of the agency/Board's funding.	For highly altered properties, DRCs are documented in the baseline and incorporated into CEs. DRCs require the grantee to accomplish restoration for highly altered properties as described in funding conditions developed for restoration requirements at time of Board award. The OWEB CE document states that the baseline includes a description of the conditions that, once achieved, will become part of the conservation values protected by the CE. The baseline is explicitly incorporated into the CE, which makes the baseline (and DRCs) a part of the overall agreement. The actions and timeline for restoration are included in the management plan, which can be amended through a separate process to incorporate changes.	Continue current practice that requires DRCs to be included in baseline and incorporated as a compliance consideration in the CE	Expectations of conditions are prescribed before grantees fully understand the capabilities of the property for a specific condition.	Remove reference and/or requirements within CE language that speak to DRCs incorporated into the baseline. Remove DRCs from baseline and instead include an expectation that the baseline be updated or a description of the restored conditions be appended upon completion of significant restoration events. This results in the restored conditions achieved being part of the baseline to be protected under the CE. Include a statement in the CE that restored conditions are intended/expected, generally in keeping with the description in the grant application on file with OWEB. Also state that the management plan, agreed to by grantee and OWEB, will guide the restoration work. -- PREFERRED	Additional administrative processes for grantees and OWEB if baselines are to be updated following completion of restoration work. Potential that restoration of highly altered properties will not occur if no other mechanism is substituted. Reduced certainty in OWEB's ability to require restored conditions via the CE, along with lack of certainty that restored conditions will persist in the future if the baseline is not updated. With either outcome, OWEB's role in the certainty that a project will accomplish the permanent protection of significant habitat is reduced. Proposed projects that currently have lower functioning habitat may be disadvantaged in the evaluation process if restoration is not guaranteed.
Management plan (MP) incorporated into CE: Allows less prescriptive restrictions in CE by qualifying prohibited uses to allow activities.	The CE establishes prohibited and allowable uses. The MP accomplishes the structuring of specific uses to ensure that they are consistent with the purpose of the program. Older OWEB CEs referenced MPs, but did not explicitly connect Measure 76 funding intentions for Conservation Values in the CE as being delivered through implementation of the OWEB-approved MP. Older CEs also included more detailed lists of prohibited activities than the current CE template, which created situations in which property management options were permanently limited rather than conditionally allowed. A streamlined OWEB CE template was created more than a decade ago to address these challenges.	Keep as is because of rationale described in Current Practice and Context	Potential for ongoing grantee frustrations with a CE template that is largely prohibitive except when activities are outlined in a MP that is approved by OWEB. Ongoing reliance on management planning to define details of Conservation Values expected of OWEB.	Revisit and revise as necessary the CE template to ensure that it does not overly depend on MP to provide protection of conservation values and unnecessarily burden management and stewardship decisions. Revisions may include: changes to how MP is referenced in the CE (such that the MP documents a shared understanding between OWEB and the grantee, but is not enforceable akin to the CE), in particular if the MP drafting/review/approval processes are altered (see MP rows below); removal of the MP component from the CE entirely; etc. In addition, if MP requirements remain the same as current practice, updates to program guidance would be expected to fully document the existing MP review and approval process and underscoring existing areas for flexibility, along with exploring/increasing flexibility where possible. -- PREFERRED	Potential for ambiguities to be introduced that could create conflicts between OWEB and grantees, and possible challenges to OWEB's ability to enforce the CE if not carefully crafted.

Topic and Conservation Principle	Current Practice and Context	Option 1 from Staff	Risk for Option 1	Option 2 from Staff	Risk for Option 2
Expectations for Desired Future Conditions (DFCs): MP includes expectations for describing goals and actions for maintaining current conditions and accomplishing any restoration objectives, along with time horizons. DFCs describe what the property is expected to look like at the end of the MP's term. DFCs may involve maintaining current conditions or restoring conditions, depending on what is appropriate for the property.	OWEB requires a MP to be developed, to ensure stewardship through time and a plan and timeline for any restoration identified. Except in the case of highly altered properties for which restoration is required to achieve significant habitat, DFCs do not overlap with DRCs. MPs are incorporated by reference into CEs. OWEB requires review and approval authority for plans and revisions to ensure that DFCs remain consistent with the expected ecological outcomes in the application. DFCs can include restoration if restoration is necessary, but conversely, can be a description of property conditions that will be maintained through stewardship.	Keep as is because of rationale described in Current Practice and Context	Potential for ambiguities to be introduced that could create conflicts between OWEB and grantees, and reduced program demand.	Reconsider level of required detail regarding DFCs in MPs and interaction between DFCs and CE obligations. In addition, consider adjusting expectations for achieving DFCs, given that OWEB does not guarantee stewardship or restoration funding at time of a funded land acquisition grant. Allow for aspirational considerations that can evolve over time if reality becomes different due to complications with permitting/funding/etc. -- PREFERRED	DFCs are included in MPs, and MPs are incorporated by reference into CEs, creating the potential for expectations that DFCs must be accomplished by grantees despite OWEB not providing funding for this in the acquisition grant.
Management plan development/review/approval: MPs are a tool for guiding property management decisions and uses where specific uses may conflict with the conservation purposes of the property. MPs can be used to mitigate the impacts of a potentially conflicting use, ensuring the use is done in a manner compatible with the protection of the conservation values.	MPs are intended to guide both conservation and non-conservation uses of the property. Regarding non-conservation uses, OWEB's grant application and MP guidance provide some direction about expectations for these uses of property. The MP guidance outlines required minimum content that includes specific sections and subsection content. The required MP can be amended at any time with the approval of OWEB, to include new or different actions and timelines for accomplishing them. The MP guidance encourages adaptive management. OWEB approves MPs to ensure that uses of property are consistent with the purpose of the program and the protection of the property's conservation values and align with project outcomes described in the grant application. The process is central to fee projects, where the CE is streamlined for flexibility (based on a past grant-streamlining process several years ago). Currently, the CE template completely and outright prohibits a relatively small number of uses (e.g., subdivision, dumping of hazardous materials, and minerals extraction). Other uses are considered prohibited per the language of the CE template unless authorized in the MP that is reviewed and approved by OWEB.	Include a statement in the CE that a MP is required, must be implemented, and that if the grantee engages in a good faith effort to develop and implement the plan, they will be in compliance with the terms of the CE. Retain the requirement for inventories of resources that will be actively managed to limit impacts to conservation values (e.g., invasives). This will ensure that management is based on an understanding of the resources present. Skip inventories for resources that aren't a management focus. Keep current agency approval process for MPs.	"Good faith" is ambiguous and will require careful thought to structure; otherwise, it may present risk in enforcing in the CE. Potential for conflicts between OWEB and grantees during MP review and approval process, absent changes in how that process is undertaken.	Adjust terms in CE that require most uses to be done only "as authorized in the management plan" to reduce administrative reviews of actions for the purpose of stewardship and restoration. Explore alignment with Land Trust Alliance requirements for MPs on property owned in fee by land trusts to address concerns related to cumbersome content requirements. Allow MP content to be grantee driven. Utilize an iterative, collaborative process for review and acknowledgement by OWEB. -- PREFERRED	OWEB's streamlined fee CE template is built on the concept of prohibiting most property uses, unless those uses are included in the MP. This documentation is intended to confirm that uses will be implemented in a manner that is consistent with the protection of significant habitat. Reducing MP content could necessitate increased detail in the CE. OWEB awareness of potentially harmful actions could be delayed, resulting in remediation rather than prevention.
Management plan implementation as part of Conservation Easement Compliance: MPs are developed to have realistic and attainable actions geared toward protecting, maintaining, and restoring (where applicable) conservation values.	MP implementation is a component of CE compliance.	Keep as is because MP content is currently inextricably tied to CE prohibited uses.	Potential risk of ongoing reliance on MP implementation being core to determining CE compliance, despite infrequent monitoring by the agency and lack of agency familiarity with the property. Continued concern from grantees that OWEB is substituting their own judgement for that of the landowner.	Following previously noted program changes regarding conservation values, DRCs, DFCs, qualification of prohibited uses in the CE, and MP development and review process, decouple MP implementation from CE "compliance" considerations. -- PREFERRED	Absent completing these program changes as a package, OWEB's enforcement of CE could be complicated, thus increasing risk and potential for property management actions not to occur. In addition, overarching program changes that significantly adjust CE design and structure can inherently introduce risk.
Management plan implementation as part of Organizational Capacity evaluation for Grant Applications: MPs are developed to have realistic and attainable actions geared toward protecting and maintaining conservation purposes.	Over the program's history, MP implementation has periodically, yet inconsistently been considered as part of a grantee's capacity evaluation in future grant applications.	As noted in Current Practice and Context, the agency has periodically, yet consistently considered MP implementation during the Organizational Capacity evaluation portion of application review. Implement consistent consideration of applicant/grantee track record of implementing MPs as part of Organizational Capacity evaluation. In addition, develop agency policy for evaluating applicant/grantee track record related to promises/commitments in grant applications relative to actual implementation and accomplishment of outcomes. This option would notify applicants/grantees that issues with meeting promises/commitments in previous grants may impact future awards unless an applicant/grantee provides rational justification for delays/changes in scope.	Potential risk for applicants/grantees may feel penalized for circumstances they consider outside their control, and chronic conflict about detailed oversight/analysis by agency about MP implementation.	Decouple MP implementation from capacity evaluation in future applications. -- PREFERRED	Beyond compliance/portfolio monitoring conducted by the agency, potential risk of not having a way to ensure MPs are implemented or avoid repeatedly funding underperforming grantees. Risk likely mitigated with pending addition of new transaction/stewardship position at OWEB.

Topic and Conservation Principle	Current Practice and Context	Option 1 from Staff	Risk for Option 1	Option 2 from Staff	Risk for Option 2
Constitutional and statutory reference to "significant habitats for native fish and wildlife": Expectation for OWEB Land Acquisition investments to "secure long-term protection for lands... that provide significant habitats for native fish and wildlife"	In 2004, the OWEB Board adopted conservation principles and priorities in the "OWEB Ecological Priorities for Land Acquisition by Basin." The document describes priority habitat and species types and conservation principles that "should be supported by acquisition projects." Since then, the document has served as guideposts for the agency's evaluation of grant applications, including for significance of habitats and ecological outcomes of proposed land acquisition projects.	Continue to use OWEB Ecological Priorities for Land Acquisition for both Conservation Principles and Priority Habitats and Species. Ask applicants to demonstrate how and why property contains "significant habitat" until the OWEB Ecological Priorities for Land Acquisition can be updated. An update would include revisions to be more reflective of current agency considerations and include agency definition of "significant habitat," which possibly would need to be defined in rulemaking.	Continued confusion from grantees and potential for inconsistent application of program practices and policies dependent on staff interpretations of significant habitat. Regarding an update of OWEB Ecological Priorities for Land Acquisition, potential for limited staff and contracted services resources to be required for the update process.	Continue to utilize the Conservation Principles section in OWEB Ecological Priorities for Land Acquisition (referenced in OAR and based in conservation science). Implement change to stop using the Priority Habitats and Species from that document and instead rely on habitats and species priorities identified in the recently-revised State Wildlife Action Plan (SWAP; 2026). Because "significant habitat" is not defined in the Constitution, ORS, OAR, or OWEB Ecological Priorities for Land Acquisition, to more clearly describe what is intended by significant habitat, applications will be reviewed for: 1) consistency with Conservation Principles in OWEB Ecological Priorities for Land Acquisition, and the 2026 SWAP conservation priorities, as well as conservation priorities in other local, regional, Tribal, and federal conservation plans, and 2) "the significance of the projected ecological outcomes" as these relate to conservation principles, priorities, and needs in the aforementioned documents. During the agency's next Division 45 rulemaking, include a definition for terms such as "significant habitat" and/or "significance of the projected ecological outcomes." -- PREFERRED	Conservation priorities in OWEB Ecological Priorities for Land Acquisition are in place. Without careful explanation of if/how applicants should reference these existing priorities in grant applications, potential for agency reputational risk of discounting existing program guidance documents.
Areas of impact on portion(s) of the protected property: Tolerance of areas impacted/not providing significant habitat (e.g., utility line, trails, parking lots) on one portion of the property if elsewhere, the property enables conservation of important fish and wildlife habitat?	Evaluated on a project-by-project basis, recognizing that it is desirable for projects to accomplish as much protection of significant habitat as possible, but that some projects can produce strong outcomes without the entire property functioning as significant habitat.	Keep as is where impacts to portions of the property are interpreted as inconsistent with the CE, requiring grantees to address even if marginal impacts to overall conservation benefit provided by property	Potential risk of creating a situation where all portions of a property--other than those identified for non-conservation purposes in the OWEB approved MP--must be in compliance, otherwise OWEB is not meeting obligations to enforce our own CE.	Develop CE language that is better equipped to manage circumstances where an "area of impact" that experiences chronic issues, but otherwise the property continues to enable conservation of important F&W habitat. -- PREFERRED	Potential for ambiguity in level of acceptable impact (including temporal, spatial, severity considerations).
Degree or extent of ecological function for properties proposed for acquisition: Determine program acceptance of "lower function" habitats and better define expectations the Board may have for demonstration of a plan, trajectory, timeline, etc. for more "impacted" or "lower function" habitats as they are being proposed to and evaluated by the Land Acquisition grant program.	Currently, if a property isn't highly altered (requiring DRCs) yet is only somewhat functional from an ecological standpoint, reviewers look to the grant application to understand what the applicant intends to accomplish to improve conditions. The grant application becomes part of the grant agreement, with the expectation (but not an explicit requirement in the CE) that the grantee will create a throughline, from the grant application to actions in the MP.	Keep as is, where there is no direct statement or guidance to applicants about if/what lower threshold for acceptable ecological function may exist. Rather, if a project with lower ecological function is funded and DRCs are not used in the context of that project's grant award, the MP content is expected to include actions that will enhance ecological function.	Ongoing confusion and potential disagreement between program participants and OWEB staff as to the level of ecological function that is acceptable/required for a project to compete in the Land Acquisition grant program and use of MPs to require specific actions on a property.	Work with Board to clearly articulate the lower threshold of acceptable level/extent of ecological function, building on the Board's discussion of "significant habitat" and "other uses." The intent of this is to proactively provide guidance to applicants. -- PREFERRED	Lowering the threshold of acceptable level/extent of ecological function may result in properties being less beneficial to native fish and wildlife.
Application evaluation: Ensuring that applications recommended for funding are in line with the purpose of the program.	Application evaluation includes: 1. Soundness review by contractors, staff, and DOJ. 2. Organizational capacity review by contractors and OWEB staff. 3. Ecological review by review team members (based on agreements during a past land acquisition process, half of reviewers are selected by OWEB and half are nominated by applicant). 4. Synthesis, evaluation write-up, rankings, and funding recommendations by small group of OWEB staff and management.	Keep as is, with the rationale of risk management benefits based on past learnings along with adherence to long-standing practice that resulted from past land acquisition process(es).	There is a risk of inconsistent review quality due to different reviewers for each project, as well as reviews that are not informed by an understanding of the competitive environment posed by the suite of applications from across the state. Potential for continued frustration and concerns from applicants about lack of understanding of and transparency in the review process.	Keep soundness and organizational capacity generally as is, with minor refinements based on lessons learned in 2025 grant cycle. Adjust other aspects of the review process as follows: - Remove option of allowing applicants to nominate eco reviewers - OWEB selects a statewide technical review team (TRT) that covers the expertise needed for different species, habitats, and localities. - The TRT functions akin to other TRTs at OWEB in which they review all applications, attend site visits (potentially virtual due to statewide program), and then meet to discuss, evaluate, and rank applications. - OWEB staff will communicate the soundness and organizational capacity reviews to the TRT to inform their evaluations and rankings. - Following TRT meeting, OWEB staff and leadership incorporate consideration of any unique/extraordinary circumstances to inform and, if necessary, refine TRT recommendations, then provide evaluations and funding recommendations to the OWEB Board. -- PREFERRED	Potential risk of losing site-specific ecological knowledge without careful design to ensure statewide TRT representatives coordinate with local staff from their agencies. Changes do not make a full transition to TRT-only funding determinations, in order to preserve space for policy and legal considerations by OWEB leadership that may present risk to the agency.

Topic and Conservation Principle	Current Practice and Context	Option 1 from Staff	Risk for Option 1	Option 2 from Staff	Risk for Option 2
Due diligence information review at application in the context of project soundness portion of the review: OWEB review of due diligence, soundness considerations, and ecological outcomes at application stage includes review and identification of inherent risk and possible issues for resolution. Due diligence information is requested if present at application, with title information being required. Evaluated from a readiness perspective (in particular, due to the 18-month requirement to achieve closing that is documented in administrative rule) and for possible conflicts with conservation objectives.	Evaluated by staff, contractors, and DOJ (project soundness) and ecological reviewers (ecological outcomes). Risk associated with circumstances presented by application materials is described in the project evaluation. Issues are identified that would need to be further investigated for consistency of project design elements with identified outcomes and the purpose of the program.	Keep as is because of risk reduction benefits for OWEB, identified in Current Practice and Context, benefitting both OWEB and grantees.	A deeper, upfront analysis of due-diligence issues at time of application risks continuing situation by which agency resources are spent on problem solving and issue spotting for projects that are ultimately not awarded funds. Risk that applicants feel unreasonably expected to have projects more fully developed before they know if there will be funding from OWEB for the project, which may reduce interest in the program.	Increase level of risk agency is willing to incur at application stage, giving grantees space to resolve issues during due diligence. Clarify the interrelated aspects of "soundness" as it pertains to legal sufficiency and likelihood of intended eco outcomes. Ask about this explicitly in the application with the expectation that the applicant address alternative scenarios if the soundness matter cannot be resolved. Explicitly identify in program guidance any soundness related issues must be addressed in grant applications (e.g., access considerations, impacts of utilities, third-party access rights, warranties in/lacking in Purchase and Sale Agreements, potential of conflicting uses, etc.). This change encourages applicants to proactively and openly discuss risk factors and the ability of a property to provide habitat benefits for native fish and wildlife. Finally, to reflect more risk tolerance at time of application and initial funding award, funding conditions will be fewer in number and less detailed and prescriptive. Rather, a collaborative communication process grounded in joint problem solving will be required. -- PREFERRED	Potential that increased level of risk at the application stage could result in agency time/resources being spent to resolve problems not detected at the time of application. May result in lesser project outcomes than anticipated by the Board, or result in time/resources spent on a project that turns out to be infeasible. More reliance on a collaborative communication process will require a commitment of time by both the agency and grantees.
Due diligence review after a grant is awarded: Properties that OWEB invests in must be acquired through a technically sound manner to ensure the property interest endures over time.	OWEB reviews all due diligence for technical proficiency and acceptable outcomes. Among due-diligence topics: Title review must result in accurate legal descriptions, and ownership and encumbrances information. Title must be clear of encumbrances that jeopardize ownership interest and ability to achieve conservation outcomes. Sufficient legal and physical access must be demonstrated. Property must be demonstrated to be clear of environmental contamination. Water rights must be fully understood, etc.	Keep as is because of risk reduction benefits identified in current practice and context, ultimately benefitting both OWEB and grantees	Continued lower risk tolerance by agency for land acquisitions relative to other OWEB grant programs. Ongoing feelings of lack of trust and discrediting of organization expertise.	Explicitly identify due diligence issues that must be addressed/resolved (e.g., access considerations, impacts of utilities, third-party access rights, warranties in/lacking in Purchase and Sale Agreements, potential of conflicting uses, etc.). During 18-month due diligence period during grant award, allow for space for grantees to propose alternative solutions, and approach review from the perspective of "how can this work." Be clear about which requested corrections/adjustments are "must have" vs. "nice to have." -- PREFERRED	Grantee may proceed with acquisition in a manner that inserts additional risk of unknowns. Potential risks could include lesser ecological outcomes than proposed due to unexpected property issues (e.g., access, title issues) or the need for OWEB to defend its CE interest due to undetected legal issue.



Oregon

Tina Kotek, Governor



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June 11, 2026, Acquisitions, Restorations, and Emerging Issues Committee Meeting Staff report – OTHER USES

MEMORANDUM

To: Acquisitions, Restoration, and Emerging Issues Committee

From: Sara O'Brien, Executive Director

Renee Davis, Acquisitions and Special Programs Manager

Miriam Forney, Land Acquisitions Coordinator

Robin Meacher, OAHP Conservation Easement Specialist

Audrey Squires, DWSP Specialist

I. Introduction

This memo dives into the third foundational question: *In evaluating land acquisition proposals, agreements, management plans, and project outcomes, how should OWEB staff balance Measure 76 (M76) purposes against other potential land uses, including in cases when multiple funders are involved in protecting, restoring, and managing an individual property?*

The grantee community has expressed ongoing frustration that the expectations about the level of acceptable human use and associated effects on M76 funded properties are unclear and at times too restrictive. To date, OWEB has interpreted the split within the natural resources account between habitat/water quality and parks, and the program underpinnings described in this document, to mean that recreational access to lands protected under M76 land acquisition grants should be **limited and carefully managed**. This approach is also applied to the administration of “working lands” uses on M76 land acquisitions.

As a reminder, the Land Acquisition Grant Program provides funding to grantees to support the purchase of land in fee title or the purchase of a conservation easement (CE). While both types of acquisitions need to fulfill the same overarching purpose of M76, there are different considerations for the purchase of a CE. CEs are between the grantee (holder) and a private landowner, where that private landowner in most cases will want to continue certain uses – such as residential (in defined areas), recreational, agricultural, or forestry uses. Fee title transactions, conversely, usually result in a property that is fully in conservation ownership, although non-profit and government partners with broader mandates can and have participated in the program.

In this memo, we look at three broad categories of human use: Tribal/Indigenous cultural use, working lands (farm, grazing, and forestry) management, and recreation/public access. For cultural use, we detail a recommendation for the Acquisitions, Restoration,

and Emerging Issues (ARE) Committee to consider since the topic has already been discussed by the Committee. For working lands management and recreation/public access, we dig into those uses to provide a thorough background and grounding for the Committee and prompt initial committee discussion of the question. Ultimately, our goal is to provide more clarity and guidance upfront to applicants and grantees, create a more standardized lens and process for Other Uses, and increase understanding of where other funding programs have the potential to be used in tandem with OWEB funding.

This memo is a conversational tool intended to guide the Committee's discussion at the June 11th, 2026 meeting. The Committee's discussion will inform the creation of agency processes for evaluating and deciding on use proposals into the future.

II. Request for Committee Input on Process

In this memo, OWEB staff will detail the complexity of considerations within *Other Uses*, which will highlight the challenge that most types of uses lend themselves to an "it depends" answer. We look to the ARE Committee to provide input and direction on several key questions to help OWEB work shoulder-to-shoulder with applicants/grantees to create a consistent process for analyzing and deciding on the acceptability of proposed uses:

What should be considered when making the decision about allowable levels of other uses?

- How species and habitats that are the focus of the proposed or funded land acquisition project may be affected, positively or negatively;
- Intensity of impact, physical impact, spatial impact, and temporal impact (see figure 1 on page 6) relative to overarching intentions of M76 land acquisitions;
- Whether and how proactive planning and implementation of use management and stewardship can effectively reduce negative impacts; and
- Whether other uses that are pre-existing at the time of grant application, and for which impacts may be better understood, are viewed by the Committee as more acceptable than new uses proposed to be developed?

When should the primary decision be made on what level of other uses is allowed?

The options for decision timing could vary from at application for award decisions, to after award prior to closing, to after closing during project implementation/management planning. Staff request input from the Committee and partners (through previous shared perspectives and additional comment at the June 2026 meeting) about whether there are refinements needed to the current "other uses" lens applied at time of application review.

Committee input is also requested on how to evaluate proposed use changes for projects that have already been funded and for which use changes are proposed later. There is a clear rationale for limiting major changes in other uses post-award: potentially competitive funding decisions by the Board are based on the activities and anticipated outcomes provided in applications. However, it is difficult for applicants to have a final plan for other uses at time of submitting a grant application, and conditions, grantee plans, and

community expectations may change a great deal over the course of decades. If proposed uses change significantly after receiving funding, is there a threshold for change beyond which a project is substantially different from what the Board funded? Feedback from the Committee is desired on what lenses and principles staff should consider when there are proposals for projects that have been funded.

Who should inform and who should make decisions about allowable levels of other uses?

At the extreme ends of the spectrum, this could be approached as a top-down decision-making process in which the OWEB Board provides direction that is implemented through OWEB staff decisions, or a fully trust-based approach where the applicant/grantee decides. OWEB staff recommend that the ARE Committee help outline an approach somewhere in the middle, and that it also includes participation from an independent third-party expert, such as colleagues from state or federal agencies with subject matter expertise, to inform the decision.

III. Program Underpinnings and OWEB's Current Approach to Other Uses

Before a detailed discussion of the other uses, it is important to ground that discussion in the program underpinnings from the Oregon Constitution, Oregon Revised Statutes, Oregon Administrative Rules, Board-adopted priorities, and program materials. These underpinnings guide how staff evaluate use proposals.

a. Oregon Constitution:

Article XV, Section 4b(1)(b) directs OWEB to use lottery funds to “secure long-term protection for lands...that provide significant habitats for native fish and wildlife.” (This section of the Oregon Constitution was amended to incorporate this language through the passage of M76.)

b. Oregon Revised Statutes (ORS):

- ORS 541.932(9) – “(OWEB) may fund projects involving the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of maintaining or restoring watersheds and habitats for native fish or wildlife.”
- ORS 541.958 – “Any project that the Board approves for funding shall comply with the following criteria: ... The project provides a public benefit by supporting improved... native fish or wildlife habitat”.
- ORS 541.956 – “...shall be used only for the following activities: (1) Acquiring from willing owners interests in land and water that will protect or restore native fish or wildlife habitats...”

c. Oregon Administrative Rules (OAR):

- [OAR 695-045-0180](#)(2) -- OWEB shall evaluate grant applications for “the significance of the projected ecological outcomes.”

- [OAR 695-045-0205](#) – “The ongoing use of the Property Interest acquired with OWEB Land Acquisition Grant funds shall be consistent with the purposes specified in section 4(b) Article XV of the Oregon Constitution.” [links back to significant habitats]

d. Board-Adopted Program Priorities

- [OWEB Ecological Priorities for Land Acquisition by Basin](#) (2004) – Page 1: “This report identifies high priority ecological attributes...Focusing on applications that address these attributes will help ensure that land acquisition projects provide significant ecological benefits in support of OWEB’s mission.”

e. Management Plan Guidance:

- Management plan guidance provides additional insight and is [found on the OWEB website](#).
- Page 3: “...additional inventory data (e.g., vegetation, hydrology, fish, wildlife) must be collected if necessary to develop sound management actions. For example, if a grazing plan will be developed as part of the management plan, a range assessment is likely necessary for understanding starting range conditions, developing grazing actions that will protect and enhance those conditions, and monitoring changes over time.”
- Page 6: “OWEB does not require public use of a property as a condition of a land acquisition grant award; however, the OWEB Board encourages grantees to assess opportunities for property uses that are consistent with the protection of native fish and wildlife and their habitats. Depending on a property’s ownership circumstances, the sensitivity of its conservation values to disturbance, and the capacity of the landowner to oversee public uses, opportunities may include guided tours, volunteer events, low-impact hunting, and activities that benefit local communities disproportionately impacted by climate change. Infrastructure such as parking lots, bathrooms, pavilions, and extensive or non-native-surface trail networks are not considered low-impact uses of OWEB-funded property.”
- Page 7: “Tribal uses of a property purchased with OWEB land acquisition funds, such as the harvest of culturally significant plants, may be included in the management plan. Where details about the uses are limited to address confidentiality concerns, the plan should describe the landowner’s role in ensuring that the uses comply with the conservation easement.”

f. Project-Specific Documents:

- Grant application: type and extent of other uses, and the capacity of the intended owner to ensure that the uses are consistent with the protection of significant fish and wildlife habitat.

- CE for transactions prior to the adoption of streamlined easement template: any terms and conditions that limit other uses.

IV. Current Decision Process for Other Uses

Currently, use proposals—whether at time of grant application, during the 18-month due diligence period, or during the post-closing/stewardship stage of a project—are addressed on a case-by-case basis. The evaluation of use proposals focuses on whether the proposal is consistent with the protection of habitat for native fish and wildlife species. First and foremost, staff currently consider the species-specific usage and movement patterns on the property and types and locations of sensitive habitat, and that understanding is then applied to the use proposal and its potential impacts. The assessment includes consideration of direct, degrading impacts to habitat, such as the physical alteration of habitat; and indirect impacts such as increased human and pet presence that may result in reduced or less successful usage of the habitat by native species. The type, intensity, and temporal extent of proposed use, and the likely physical and spatial impacts, are considered. As noted above—for example, in the Management Plan guidance section on the previous page—there are some types of recreational infrastructure (e.g., parking lots, bathrooms, pavilions, and extensive or non-native-surface trail networks) that OWEB has interpreted as being generally inconsistent with M76 purposes.

Questions about other uses can arise throughout the lifespan of a project. Other uses are discussed during pre-applications consultations and considered at multiple steps in the land acquisition grant-making process. At time of grant application, results of the review and evaluation process may determine that a grant application includes use proposals that are incompatible with the purpose of the program. In this case, the historical course of action has been to not recommend the project for funding. Staff provide input on appropriate uses if the applicant decides to restructure and resubmit the project for funding consideration.

Balancing of habitat conservation and other uses also arises during the 18-month due diligence period. For example, easement terms may propose a use that could take priority over and conflict with habitat conservation values for the property. In these cases, OWEB works with the grantee to attempt to find an acceptable compromise (e.g., allowing another use in a manner that is consistent with the limits of the easement, which is designed to protect native fish and wildlife habitat).

If the use proposal is for a previously funded project for which the transaction has closed, staff review the grant application for contextual information about uses contemplated at the time of award, species and habitats to be addressed by the funded project, and conservation values documented in the CE for the property. If staff determine that a use proposal for a past project is not consistent with the program's underpinnings, they work to offer the grantee a reasonable alternative.

In each of these scenarios, OWEB management makes the final determination of how OWEB will respond to complicated or challenging use proposals. At times, these situations have underscored that land acquisition projects have terms that are codified in CEs in

perpetuity, unless amended. Yet, perspectives about how best to balance habitat protection and other uses can evolve significantly as time goes by. For older projects in particular, evaluation of use requests can present significant challenges.

V. Impact Categories

To frame this analysis, we can look at the impacts of uses through the categories of intensity of impact, physical impact, spatial impact, and temporal impact. Each of these impact categories need to be considered with respect to the species and habitats intended for protection, and restoration as applicable, as a result of the OWEB investment.

Whether and to what extent a use should be allowed will also depend on the characteristics of the property and how the use will be managed within each of these impact categories, including how applicants/grantees propose to mitigate potential impacts. Due to this complexity, there will likely be few categories of land uses or management practices that can be defined as always acceptable or always unacceptable.

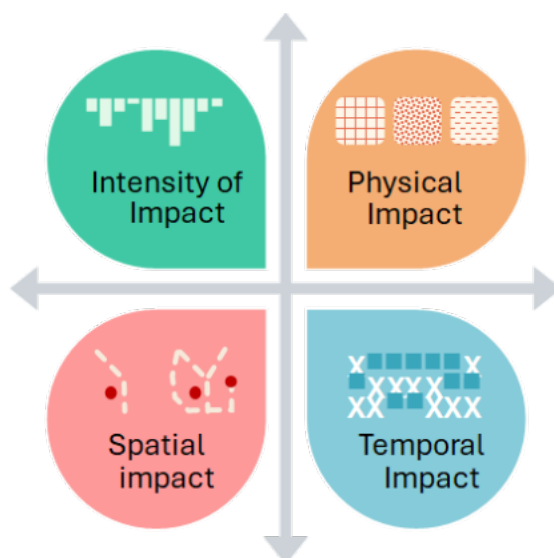


Figure 1. Other Use impact categories, including intensity, physical, spatial, and temporal.

VI. Tribal/Indigenous Cultural Uses – Recommendation

OWEB's current practice for approving Tribal/Indigenous cultural uses is to require a description of the cultural use in the management plan. Where details about the uses need to be limited to address confidentiality concerns, program guidance states that the plan should describe the grantee's role in ensuring that the uses comply with the OWEB CE. Given that cultural uses have already been discussed by the Committee in conversation with Tribal partners (among others), staff present a recommendation in this memo.

Based on discussions with and feedback from Tribal representatives, when **federally recognized Tribes** are the grantee (or intended long-term holder of the property interest), OWEB staff propose that the Board consider changing the current practice detailed above and instead relying on a trust-based relationship. Tribes would then be allowed to manage

cultural uses, such as the harvest of culturally significant plants, hunting, fishing, and holding ceremonies, and would be responsible for ensuring alignment with intentions of M76. If Tribes choose, they can include cultural uses in their management plan, and they could be encouraged (but not required) to report on benefits and impacts of the cultural uses in the five-year progress report to OWEB so that the agency can better understand the interaction of cultural uses and habitat on OWEB-funded properties.

For **all other organizations** (e.g., land trusts, other nonprofits, local governments), staff recommend more limited changes to current practice. Tribal/Indigenous cultural uses would continue to be allowed when specifically included in the management plan, as is current practice, with an explanation of how different priority species and habitats may be affected to ensure alignment with M76. Program guidance and materials should be updated as needed to clarify this option, and to specify that where details about the uses need to be limited to address confidentiality concerns, the plan can simply describe the grantee's role in ensuring that the uses comply with the OWEB CE. Reporting on benefits and impacts will be required of the grantee in the five-year progress report to OWEB, recognizing that grantees and OWEB may need to coordinate about how to ensure confidentiality around sensitive resources and sites. The intent of the reporting is so the agency can better understand the interaction of cultural uses and habitat protection or improvement on OWEB-funded properties.

In both scenarios, OWEB recognizes that infrastructure such as parking lots, bathrooms, and seating areas to allow for accessibility and ease of use for elders, children, and others is an important consideration in the realization of Tribal/Indigenous cultural uses. Staff suggests that the Committee recommend the Board provide direction to work with interested Tribes to create greater flexibility for this infrastructure while considering the impact categories (intensity, physical, spatial, temporal). The intent of balancing flexibility and consideration of impact is to ensure siting in locations that have minimal impacts to species and habitats in the context of the entire property.

VII. Working Lands Management – Initial Discussion

This will be the ARE Committee's first detailed discussion of working lands management, and so rather than presenting a recommendation, this memo outlines the spectrum of potential activities, theoretical scenarios, and how we might approach creating a standard(s) for determining the acceptability of working lands management on property interests purchased with the constitutional direction to protect and maintain fish and wildlife habitat.

"Working lands management" includes activities such as forestry, crop cultivation, and animal husbandry/grazing. Considerations include:

- Do working lands uses need to be in support of and enhance the habitat values (e.g. forest thinning or grazing as restoration tools), or can the use exist on a property if it does not cause an unacceptable level of harm to the habitat values?

- If working land uses are allowed, can these be circumscribed based on area of impact, (e.g., allowing potentially impactful grazing or harvest on one portion of a property, while other areas are focused on habitat conservation).

For any type of working lands uses, it is important to consider whether and how fish and wildlife habitat may be affected relative to the species and habitats intended for protection or restoration as a result of the OWEB investment. For example, there are scenarios where an activity could be considered reasonable from a general land conservation perspective, but on closer examination be found to create unacceptable impacts to important sensitive species and habitats, or to the specific habitat values central to the proposed or funded project. For example:

- The forestry components of the management plan include substantial harvest intended to create significant swaths of early seral forest structure. However, the property is identified as important for the protected northern spotted owl, which is extremely sensitive to logging impacts.
- Grazing is intended as a tool to control invasive weeds, however, protection of wet meadows identified by the applicant was a major factor in the decision to fund the project, and potential grazing impacts to these sensitive resources have not been addressed in the grazing plan (e.g., excluding these areas from grazing during sensitive timeframes).

These examples highlight the importance of understanding the property, key species, and key habitats in conjunction with proposing specific types of working lands activities.

Throughout our analysis of Other Uses, considering spectrums of degree, type, spatial extent and impact helps us to assess whether a use should be allowable. For **forestry activities**, that spectrum, from low impact to high impact, can be presented as:

- Forestry activity is noncommercial, and its primary purpose is to restore forest conditions to a specific type of habitat.
- Forestry activity is commercial but is designed with the habitat needs forefront in unit design.
- Forestry activity is commercial and design considers but does not prioritize habitat needs.
- Forestry activity is commercial and design does not consider habitat needs.

OWEB's Drinking Water Source Protection Grant Program management plan guidance provides an example of how OWEB has approached drawing a line for allowable versus not allowable forestry activities (for a funding source with a different statutory mandate), while also allowing room for variation depending on the property conditions:

Forest stewardship activities should not be focused on maximizing income generation. Forest thinning to retain larger diameter trees, encourage the development of old growth conditions, and reduce the risk of wildfire are examples of objectives that have a direct relationship to protecting, restoring, or enhancing sources of drinking water.

These objectives can be pursued through methods such as precommercial or commercial thinning, as well as other low intensity harvest methods. Intensive timber harvest methods, specifically clear-cutting or regeneration harvest, are not consistent with the statutory intent of the DWSP Grant Program and will not be approved by OWEB; exceptions to this are allowed when salvage harvest after disturbances such as wildfire or excessive windthrow is needed for effective reforestation, as well as for managing and controlling disease outbreaks and pest infestations.

Grazing uses and animal husbandry come with other considerations, including conflicts with wildlife, impacts to native vegetation and soil, and water quality concerns. Certain management practices that may be desirable and/or necessary for livestock uses could conflict with the program's mandate to secure long-term protection for lands that provide significant habitats for native fish and wildlife. As with the forestry uses described above, there are scenarios where an activity could be considered reasonable, yet specific needs and trade-offs must be considered:

- Fencing may be needed to manage conflicts with ungulates and control livestock movement across the property, but could also have significant negative impacts on wildlife unless wildlife-friendly fencing practices are used.
- Depending on the goals of the land manager, the desired types and densities (degree) of livestock use may conflict with what is best suited for appropriately stewarding the habitat components. For example, type of livestock (cattle, bison, goats) and where and when they have access to the property can have measurably different impacts.

Crop cultivation for the purposes of this discussion is the cultivation of domesticated plant species for food, animal feed, and industrial processes. We do not consider this term to include harvest and cultivation of native plants as a traditional cultural use that has been utilized by Indigenous peoples since time immemorial, which falls instead within the Cultural Uses discussion above.

Crop cultivation is by its nature a conversion of natural space, though the type, scale and location are all important considerations for the impact to the habitat identified for protection. Examples of how this type of working lands practice might be presented with an application submitted for a land acquisition project include:

- Riparian property is purchased for the protection of fish and wildlife, with management intended to include large riparian forest zone, with cultivated fields outside the riparian buffer.
- Prairie habitat is identified for protection on the majority of the property, and some portion will continue to be utilized for wheat or other grain production.
- Property will be managed as a large natural area, with a small community garden on the fringes.

As a reminder, OWEB's Oregon Agricultural Heritage Program (OAHP) provides funding specifically for working lands CEs, which are for the purposes of facilitating the ongoing

use of the property for agriculture, while protecting and maintaining habitat, water quality, and other natural resource values. This dual-benefit program has been available for grantees in the context of private lands conservation where a primary motivating factor for the landowner is to maintain private ownership and the agricultural uses on the property. While it is often discussed as the alternative to M76 Land Acquisition funding for projects with a working lands component, it is important to recognize these programmatic distinctions. For example, OAHP is not available to grantees looking to purchase properties in fee. Funding available under OAHP has been limited, and no new application cycles are currently anticipated due to a lack of appropriated funds.

Ultimately, feedback from the ARE Committee and direction from the OWEB Board to staff will ensure that OWEB clearly and effectively communicates expectations about and processes for consideration of working lands in the context of OWEB's grantmaking that is primarily intended to protect habitats for native fish and wildlife.

VIII. Recreation and Public Access – Initial Discussion

Similar to working lands management, this will be the ARE Committee's first detailed discussion of recreation and public access, and so rather than presenting a recommendation, staff are using this memo to outline the spectrum of potential activities, theoretical scenarios, and how we might approach creating a standard(s) for determining the acceptability of recreation and public access on property interests purchased with the constitutional direction to protect and maintain fish and wildlife habitat.

While most direct impacts of recreation and public access are not likely to be positive for species and habitat, there can be indirect benefits of allowing recreation on conserved lands.

As the ARE Committee evaluates the question of whether the program should accommodate greater recreational use and public access, considerations include:

- Does public access or recreational use need to be in support of and enhance the habitat values, or can the use exist if it does not cause an unacceptable level of harm to the habitat values?
- Do the indirect benefits of recreation and public access, such as people building a connection with a place, donating to its ongoing protection, or volunteering on the land, outweigh the direct impacts to species and habitat? If so, how should we think about balancing these conflicting values?
- Are there any types of recreation or public access that are fully inconsistent with the program's purpose and should never be allowed?

Recreation and public access is a very expansive category, making the analysis extremely complex. The list of activity types is seemingly endless (see Appendix A), and each one carries different considerations depending on the property's characteristics. Given this, staff expects that there will be few activities that lend themselves to a blanket decision of allowed/not allowed at a programmatic level.

The four impact categories defined earlier in this memo (intensity, physical, spatial, temporal) can also be used here to illustrate the complexity of recreational use, and as a basis for analyzing when different types of recreational use (e.g., trails, public use spaces, consumptive recreation, etc.) could be allowed within a given context. See Appendix A for a case study of a detailed application of the four impact categories on trails.

IX. Non-Recreation Infrastructure

In the history of this program, we have also encountered situations in which other types of infrastructure, such as road networks, transmission lines, and residences have been proposed. Each of these generally needs to be considered on a case-by-case basis, depending on the impacts to species and habitat, as well as what easements or reserved rights exist that would require they be allowed. Staff would encourage the Committee to consider supporting and recommending a process that leaves more flexibility for “areas of impact” on property funded through M76, in recognition that a property’s configuration and infrastructure may not be negotiable in the acquisition, given land use considerations and needs of the seller.

X. Conclusion

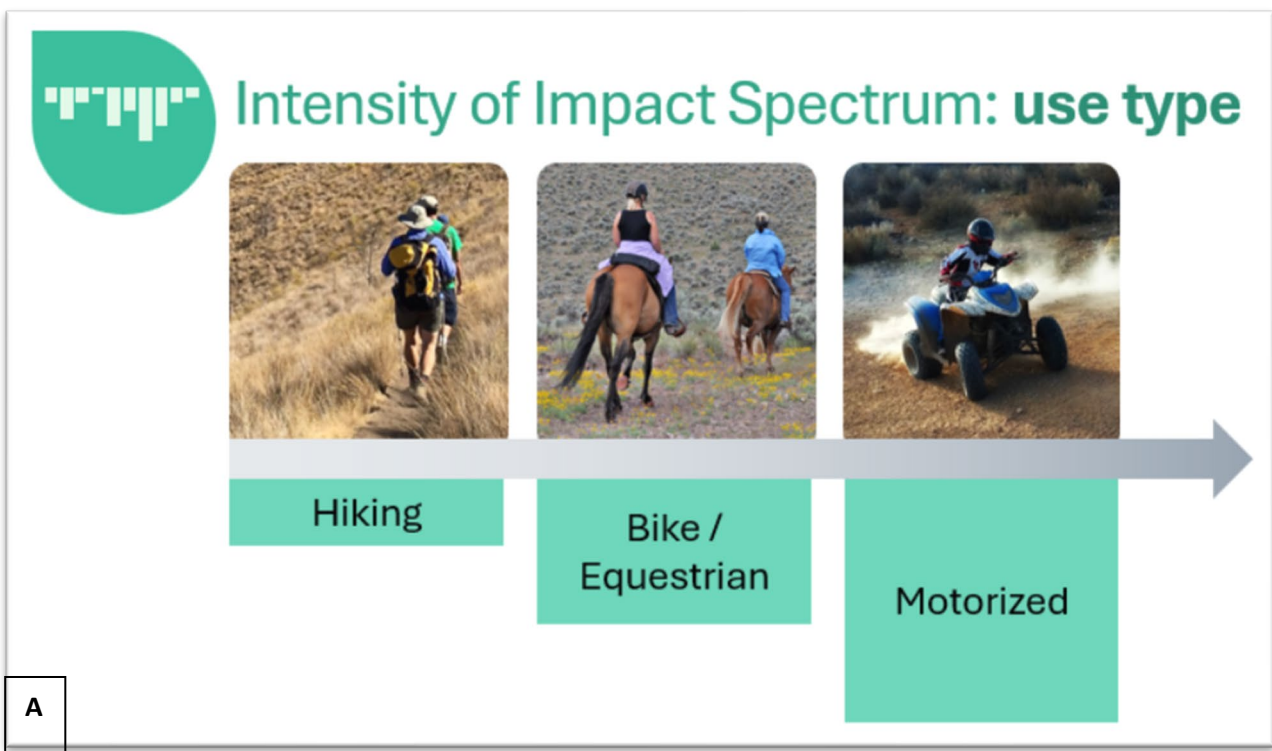
In conclusion, staff ask the ARE Committee to help us sift through the complexity of other uses and help **determine a consistent approach** to making decisions about use proposals, regardless of each property and associated unique use proposal.

Appendix A – Recreation and Public Use in Detail

Trails Analysis Case Study

Trails are one of the most popular forms of recreation and one of the most complex to analyze, so we will walk through the trail impact analysis in detail as a case study for the Committee of the variety of considerations in assessing use proposals. This appendix complements memo content that summarizes both the current approach used by OWEB staff to consider recreation and public use and needs and opportunities for direction from the ARE Committee and OWEB Board to staff about refinements that may be warranted to this decision process. It dives more deeply into complex considerations about trails and other types of recreation and public use.

The following diagrams show a spectrum of impact, generally from low to high, for intensity, physical, and spatial, and a list of considerations for temporal. The four types of impact are interrelated and must be considered together, alongside an understanding of species and habitats that are to be protected.





Physical Impact Spectrum: **trail surface type**



Repurpose
Existing
Road

Native
Surface

Elevated
Boardwalk

Gravel

Pavement

Construct
New Trail

B



Spatial Impact: **trail density & siting**



Low Density

High Density

C



Figure 2 A-D. Impact spectrums and considerations for trails, including intensity, physical, spatial, and temporal.

Each of these impact diagrams has caveats and complexities to keep in mind, expanding the complexity of the exercise. For example:

- **Intensity of Impact:** Motorized trails are typically associated with higher impact and thus could be selected as a type of use that programmatically is not allowed within M76 Land Acquisition projects. However, exceptions should be considered for management access and ADA accessibility (e.g., motorized wheelchairs). Within intensity of impact, we also need to keep in mind the volume of use on the trail(s).
- **Physical Impact:** Repurposing an existing road as a trail is often low impact, but that is not always the case. For example, if an existing road bisects sensitive habitat, then repurposing it as a trail may be considered high impact and a better alternative may be to construct a low-impact trail in another location.
- **Spatial Impact:** Generally speaking, low-density trails have a lighter impact than high-density trails, however, location of the trails is key even if they are low density. Sensitive habitat must be considered when siting trails. Additionally, focusing trail use in one part of the property while leaving other areas without recreational use can reduce the extent of spatial impact.
- **Temporal Impact:** Rather than a spectrum, temporal impact takes into account various daily and seasonal considerations that could have impacts on wildlife and their habitat.

As stated above, this exercise is to highlight the complexity of how to analyze the degree of impact that recreational use or public access may have and how to determine if it should be allowed, and if allowed, in what form, and to what extent. We are not asking the ARE Committee to complete this exercise and make detailed decisions about specific uses and activities that should and should not be allowed (unless there are any that clearly do not align with the constitutional and statutory intent of the program). The questions posed to the ARE Committee at the beginning of this memo will help staff to define when in the grantmaking process decisions about acceptability of other uses should happen, what should be considered, who will inform the decision, and who will make the decision.

Additional Types of Recreation and Public Access

Other types of recreation and public use present a similar level of variation and complexity in their type, intensity, physical, spatial, and temporal impacts. A representative list of other common uses follows, and each presents a similar challenge in how best to balance OWEB staff and grantees' respective roles in defining and managing acceptable uses related to potential impacts to the program's purpose.

- Public Use Spaces
 - River access
 - Swimming & fishing access
 - Boat launches
 - Viewing spaces
 - Kiosks
 - Overlooks
 - Viewing platforms
 - Ancillary infrastructure
 - Benches and picnic tables
 - Parking lots
 - Bathrooms
 - Covered gathering areas
 - Enclosed buildings
- Consumptive Uses
 - Foraging
 - Fishing
 - Hunting
- Events
 - Guided hikes and volunteer events
 - Education/outdoor classrooms
 - Larger gatherings (e.g., rental space, organized races, festivals)
- Intensive Recreation
 - Dispersed camping
 - Campgrounds
 - Dog parks