

Staff Recommendations regarding Remaining Land Acquisition Modernization Work Areas

During the Acquisition, Restoration, and Emerging Topics (ARE) committee's work on land acquisition modernization, themes that arose include a desire to have a trust-based and collaborative approach to land acquisitions—from application to post-acquisition obligations. Program participants urged OWEB to approach accountability from a perspective of shared goals to provide meaningful conservation outcomes for protected fish and wildlife habitats. The ARE committee discussions echoed these considerations, reinforcing a desire for OWEB to explore increased flexibility, while ensuring durability of the habitat protected—at least in part—with OWEB funding.

Table 2 of the July 2026 OWEB board meeting staff report ([Item I. Land Acquisition Modernization Update and Initial Recommendations](#)) outlined recommendations that were revised to reflect input from the ARE committee at its June meeting. However, these items required one additional touchpoint with the committee prior to being presented for deliberation by the board in October. During the intervening time period, staff have considered how these topics could be framed to balance flexibility and accountability in preparation for convening an internal/external workgroup to delve into detailed work in preparation for more significant program updates prior to the 2027 land acquisition grant cycle.

ARE recommendations and discussion to date have focused on the land acquisition program's approach to projects where OWEB provides funding to support a grantee's acquisition of the property in fee simple. This focus is due in large part to the vast majority of OWEB's grants to date supporting fee-simple properties. Though many of the considerations and recommendations may be applicable in the context of the program funding the acquisition of a conservation easement, it is important to explicitly acknowledge this focus thus far. The intent is to also bring these concepts forward into how OWEB approaches its investments in third-party conservation easements, to the extent possible.

This document summarizes staff's recommendations regarding focus areas for the workgroup efforts and examples of discussion topics within these areas. The following recommendations focus on:

- 1) Expectations around ecological function of properties proposed for investment;
- 2) OWEB's use of a conservation easement to secure the land acquisition investment, the interaction of that conservation easement with the management plan obligation, the identification and description of conservation values in the Conservation Easement and accompanying documents, and the overall concept of

using Description of Restored Conditions¹ and Desired Future Conditions² to drive management and restoration obligations as OWEB has used in the past;

- 3) The management plan development and approval process;
- 4) Considerations around areas of impact within an OWEB-funded property; and
- 5) Approach for multiple uses on a property.

The recommendations outline content that will be explored with an internal/external workgroup, which is to ensure that the agency's decisions related to major changes in program implementation and requirements are conducted in a manner that includes information and perspectives of those entities that utilize OWEB funding. An overarching goal will be to work with partners to determine a shared understanding about what accountability looks like, with the intent of building a collaborative relationship and focusing on accountability from a place of partnership. The recommendations and concepts below are what staff propose to explore with the workgroup, with the goal of making major changes to implement in the 2027 cycle, to the greatest degree feasible.

1) Expectations around Ecological Function of Properties Proposed for Investment

To ensure transparency for program applicants, staff request that the board determine if it has any expectations about habitat function for projects being proposed to the program. Based on the ARE discussions, staff's understanding of the recommended approach is that applicants should be directed to review the land acquisition program materials and consider fit of their project relative to the program intent of protecting habitat for native fish and wildlife, evaluation criteria in administrative rule, and more detailed information requested of applicants (e.g., connections to the State Wildlife Action Plan) in grant applications. After applications are submitted, the agency will complete the review process, with each application being reviewed relative to the evaluation criteria and ranked relative to other applications received that grant cycle.

Conceptually, it is important to have clarity from the board about expectations around ecological function and how to evaluate properties with lower existing function and higher potential function with restoration. If there are expectations for projects that involve habitat with a lower degree of function or extensive habitat restoration to demonstrate a plan, trajectory, and timeline for improvements, that should be stated by the board upfront. This

¹ A Description of Restored Conditions was previously established and used by OWEB. A Description of Restored Condition is required for highly altered properties and demonstrates the grantee and landowner's intent and willingness to pursue the restoration described in the grant application and documented in the baseline and incorporated in the CE.

² Desired Future Conditions were also previously established and used by OWEB. These are the conditions that describe what the property is expected to look like at the end of the term of the management plan, and do not necessarily entail restoration.

topic informs subsequent topics in this document (e.g., conservation easement content, management plan approach). Thus, a clear signal from the OWEB board is important to ensure that direction from the October 2026 recommendations can be effectively addressed in the subsequent internal/external workgroup that follows the land acquisition modernization process with the ARE committee and the board.

2) OWEB's Use and Implementation of a Conservation Easement

OWEB will continue to require a conservation easement on properties acquired in fee as a condition of grant funding to meet the title restrictions requirement in statute. Three overarching purposes are met with the use of a conservation easement (CE), including guaranteeing the property is used consistent with OWEB funding (i.e., protecting significant fish and wildlife habitat), ensuring the property is not sold for a profit, and capturing other administrative rights necessary to facilitate and ensure durability of OWEB meeting the above requirements.

Specific to the interplay among the content and use of a conservation easement and other documents such as the baseline documentation and management plan, the workgroup will explore the following changes:

- A. Review the administrative rights and provisions for allowable and prohibited property uses in the OWEB CE to ensure the language strikes the right balance between meeting the needs of OWEB's legal obligations and recognition of the agency's role as a grant funder, not an active participant in property ownership or management. Administrative rights that will be reviewed for potential revisions include granting of access to the property for monitoring, funds recovery provisions, and distribution of proceeds in condemnation or termination, among others. The workgroup will also explore how language can better facilitate consistency with match funders and reduce administrative burden for both OWEB and grantees.
- B. Revisit the approach to the identification and description of conservation values in CE and accompanying documents (such as the Baseline Documentation Report), including exploring and answering such questions as:
 - Can conservation values be described in a manner that is accurate while also leaving room for significant restoration that won't require document amendments?
 - For highly altered properties, how can OWEB balance the need to identify conservation values present at time of acquisition while effectively capturing general expectations about future restoration that is not yet planned and for which funding is not yet secured, without requiring formal Descriptions of Restored Conditions?

- Can CE language that speaks to future conditions be deleted or substantially revised, with the CE instead focusing on existing conservation values and recognizing that stewardship and land management into the future is inherent to an acquisition?
 - In instances where restoration is intended or fundamental to meet the OWEB board's expectations of grant funding, how might this be addressed in the CE via a reference to potential habitat conditions, restoration effort that is generally anticipated, and a general sense of timeline anticipated?
 - For properties requiring significant restoration, can the conceptual intent around previously used Description of Restored Conditions be moved entirely to the management plan, other than stating more generally in the CE that restored conditions are intended and expected? This change would remove detailed Description of Restored Conditions from the baseline (and CE by reference). Instead, the CE would acknowledge the management plan will guide future restoration without explicitly tying easement compliance to detailed content that is required in a management plan. This work aims to create flexibility while ensuring the high-level expectations of ecological outcomes intended by OWEB's investment occur. This work also will involve the acknowledgement by both the board and program participants that in the absence of guaranteed funding and a secure pathway to subsequent restoration work, OWEB will need to use its discretion at the time of funding recommendation and award deliberation to consider what level of uncertainty is acceptable for if/when important future habitat conditions would be provided.
 - Also for properties requiring significant restoration, how can restored conditions that alter or improve the property relative to its baseline condition be captured and documented without a complicated process?
- C. Reconsider the relationship between the CE and management plan, including reframing the approach to prohibited and allowable property uses by the grantee as follows:
- Can CE language be simplified to a statement that the uses will be consistent with the purpose of the funding, which is focused on habitat for native fish and wildlife, and conservation values, instead of stating that uses can occur only if described in an approved management plan? This work aims to ensure management plans capture a shared understanding by the grantee and OWEB about intentions for a property's management, without the management plan being a document that is enforceable in the manner that a CE is. It very likely would leverage other concepts outlined in this

document (see below regarding Considerations around areas of impact within a proposed investment area, which would isolate impacts and allow for conservation of important fish and wildlife habitat on the rest of the property). **Note:** This work will be a major change from how OWEB currently administers acquisition grants. Careful consideration will need to be given to ensure the agency's legal obligations are met and obligations important to the board are durable, while creating a more predictable and less cumbersome space for management and stewardship of properties.

- What types of uses need to be addressed specifically in the CE and with what level of sideboards?
- Is it possible to change to a general notification requirement to OWEB if a change in the uses of the property is contemplated by the grantee and meets certain requirements? This work connects to content below (under Evaluation approach for multiple uses on a property) and also would benefit from looking at other programs' approaches (e.g., State of Washington Recreation and Conservation Office).
- Can CE language be edited to create flexibility in circumstances where parts of a property experience chronic issues, but otherwise the property continues to enable conservation of important fish and wildlife habitat? (See below regarding Considerations around areas of impact within a proposed investment area.)

The workgroup process will review the OWEB CE template and associated companion documents and processes (including grant agreement template, program guidance, etc.), consider CE approaches used by other funders and learn from these, complete research to ensure feasibility of proposed changes, and identify revisions and modifications to OWEB's documents and processes. The ultimate outcome of this work is to create a more flexible and collaborative CE process while delivering high-level ecological outcomes intended by the OWEB board when funding was provided.

3) The Management Plan Development and Approval Process

The workgroup will scope and propose approaches for implementation of the following needed changes that have been flagged:

- A. Recommend that OWEB continue to require management plans for fee land stewardship, but propose revisions that center management plan requirement on supporting grantees in starting off in a strong position regarding land stewardship. The approach would be adjusted to focus on supporting all grantees (both Land

Trust Alliance accredited entities such as land trusts, and other grantees such as Tribes, municipalities, and others) in addressing the following important considerations for fee land stewardship:

- Grantees need to understand the resources on their properties and be alert to threats to their conservation values to facilitate proper protection;
 - Without proper protection, sites can become degraded to a condition that fails to achieve the funding's requirements and the project's conservation goals; and
 - A lack of management that results in a chronic failure to protect the conservation values of the land can lead to lack of public support for conservation acquisition and reduced funding opportunities, among other challenges and risks.
- B. Review and propose revisions to the management plan development process. This work will involve exploring different land management planning methods and requirements our participants may already utilize, including Land Trust Alliance's guidance and requirements on management planning for properties. This work will consider how the development and implementation of management plans can be adjusted to be useful for grantee and less burdensome, while ensuring the important considerations described above are addressed.
- C. Reduce level of detail—including about desired future conditions—that is required in management plan documents to facilitate an adaptive-management mindset.
- D. Utilize an iterative, collaborative process for review, and explore the necessary characteristics of either an acknowledgement or approval process by OWEB of initial management plan.
- E. Decouple implementation of restoration and restorative-based desired future conditions in the management plan—for which OWEB does not provide funding—from CE compliance monitoring completed by the agency.

The workgroup process will review the OWEB management plan requirements and associated documents (e.g., management plan outline of required content, references to management plan in the grant agreement template, program guidance, etc.) and propose revisions, including ideas informed by review of how other funders approach management planning. The ultimate outcome of this work is to create a situation in which OWEB's implementation of the management plan requirement focuses on a shared understanding of grantees' stewardship—and, if appropriate, restoration—plan needs and reducing the CE's reliance on the management plan for compliance and allowable uses. For future restoration, the management plan would guide the

restoration work and support enhanced habitat conditions, but in a way that empowers grantees in decision-making and reduces OWEB approval requirements.

4) Considerations around Areas of Impact within an OWEB-Funded Property

The workgroup will scope and propose approaches for implementation of changes that would account for ‘areas of impact’ within an OWEB-funded property. Staff recommend that the concept of focusing small portions of the property as impacted areas that are not providing significant habitat (e.g., utility line, trails, parking lots) could help to isolate impacts and allow for conservation of important fish and wildlife habitat on the rest of the property. Protected properties can produce important ecological outcomes without the entire property functioning as significant habitat. The workgroup will explore:

- A. Scenarios that result in an ‘area of impact’ such as i) a property’s configuration and infrastructure that may not be a negotiable in the acquisition, given land use considerations and needs of the seller; ii) grazing or harvest on only a portion of a property on which other areas are focused on habitat conservation; iii) trail use in one part of the property while leaving other areas without recreational use; and iv) contained area that faces chronic challenges with invasive weeds, among others.
- B. Based on these scenarios, suggested revisions to CE language that enable and manage circumstances where an ‘area of impact’ exists, but otherwise the property continues to enable conservation of important fish and wildlife habitat.

The workgroup products will inform subsequent updates to land acquisition program materials (e.g., OWEB CE template and associated companion documents such as grant agreement template, program guidance, etc.) and processes. Staff will complete research to ensure feasibility of proposed changes, then identify revisions and implement changes. The ultimate outcome of this work is to create more flexible program requirements while delivering high-level ecological outcomes intended by the OWEB board when funding was provided.

5) Approach for Multiple Uses on a Property

Based on the conversation at the June ARE committee, the analysis of whether a use is acceptable on an OWEB-funded property will be the same regardless of when the request is made. To ensure a functional process, staff propose that multiple uses continue to be included in OWEB required management plans and/or post-acquisition documents.

The approach recommended below will be incorporated as questions about anticipated multiple uses in future grant applications for applicants to answer. If the applicant is uncertain about the type and/or extent, if any, of uses unrelated to protecting, maintaining or enhancing the fish and wildlife habitat it intends for the property at the time of

application, grantees will be requested to provide the same level of detail and analysis of the proposed use to OWEB staff during the acquisition due-diligence phase or post-acquisition management planning period. If the desire or need for a use occurs after these timeframes, then the grantee will be responsible for contacting OWEB and providing detail to complete the approach below. OWEB will use this approach determine whether the proposed use continues to meet the purpose of the funding and, if so determined, will ask that the grantee provide an updated management plan that describes the use for documentation in OWEB's records. A grantee's implementation of multiple uses determined inconsistent with the funding could result in compliance concerns and/or impact the grantee's capacity evaluation in review of any pending or future applications.

Staff recommend the following approach for evaluation of multiple uses. Overall, the use of an OWEB-funded property should support and/or enhance the habitat values of the property, or not cause a demonstrable overall impairment to the habitat values of the property. To that end, certain uses of properties, including grazing, timber management, limited public and private use for low-impact activities, and limited development of facilities such as trails, roads, parking, restrooms, signs and kiosks, and fences, may be allowed, as long as the use is managed in a way that prioritizes the protection of the habitats and species the grant is designed to protect.

OWEB will employ a "no overall impairment" standard when evaluating whether a proposed use is consistent with the OWEB grant. Applicants and grantees must demonstrate that the use will meet this standard by describing the following:

- 1) Will the use support or benefit conservation objectives of the property? If so, how?
- 2) How does the use and any associated infrastructure minimize overlap with important habitat for species sensitive to the use?
- 3) Will there be buffer zones for sensitive species and habitats?
- 4) How will areas of use and infrastructure be planned to avoid areas important to migration and population connectivity and to maintain connectivity between habitat patches?
- 5) Will measures be incorporated to reduce noise and visual disturbance to sensitive wildlife? If so, what are they?
- 6) Will the use and infrastructure be consolidated to reduce impacts? If not, describe why the use is necessary to be conducted in a dispersed manner and how that will meet the "no overall impairment" standard.
- 7) How will the grantee/applicant monitor and mitigate the use and infrastructure to ensure no overall impairment from any resulting negative impacts of the use?

Examples of detail that could be provided by applicants and grantees to demonstrate their analysis of appropriateness of the multiple uses include: maps that show known or potential key habitat and/or key corridors for species of concern overlaid with map of potential use and infrastructure; and description of consultations with experts in the habitat and the species impacted, with detail specific to the proposed use on the property. Applicants should do initial research and consultation with experts and seek to engage OWEB early on in those conversations to ensure the proposal is something that is likely to meet the expectations of OWEB.

If a project is funded that includes multiple uses, the grantee will be required to include the above details in the property management plan specific to the use. For example, if the use is recreation, the grantee will be required to provide a recreation plan, or, if the use is grazing, the grantee will be required to include a grazing plan.

The workgroup will review and provide feedback on the staff recommendation above, to inform program changes in advance of the 2027 grant cycle. Staff will complete research to ensure feasibility of proposed changes and identify revisions and modifications to OWEB's documents and processes. The ultimate outcome of this work is to create a more flexible and collaborative process for evaluating multiple uses on OWEB-funded properties while delivering high-level ecological outcomes intended by the OWEB board when funding was provided.