



# Oregon

Tina Kotek, Governor



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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

**From:** Sara O'Brien, Executive Director

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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).
  - As part of the workgroup process, staff will coordinate with Department of Justice (DOJ) to communicate the refined lens on risk tolerance per direction from the OWEB Board and overlay necessary legal considerations on revisions to grant agreement and CE templates.
- 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 guidance from DOJ, 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>Conservation easement (CE) as instrument to meet ORS 541.960:</b><br>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).<br>-- <b>PREFERRED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 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.                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>OWEB administrative rights in CE:</b> 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<br>-- <b>PREFERRED</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>CE's description of conservation values:</b> 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.<br>-- <b>PREFERRED</b> | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Description of Restored Conditions (DRCs) at time of grant agreement and in CE:</b> 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.<br>-- <b>PREFERRED</b>                                                                                                                                                    | 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. |
| <b>Management plan (MP) incorporated into CE:</b> 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.<br>-- <b>PREFERRED</b> | 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                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <b>Expectations for Desired Future Conditions (DFCs):</b> 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.<br>-- <b>PREFERRED</b>                                                    | 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.                                                                                                                                                                                                                                            |
| <b>Management plan development/review/approval:</b> 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.<br>-- <b>PREFERRED</b> | 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. |
| <b>Management plan implementation as part of Conservation Easement Compliance:</b> 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.<br>-- <b>PREFERRED</b>                                                                                                                                                                                                                                                        | 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.                                                                                                                                                               |
| <b>Management plan implementation as part of Organizational Capacity evaluation for Grant Applications:</b> 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.<br>-- <b>PREFERRED</b>                                                                                                                                                                                                                                                                                                                                                                                                                     | 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                                                                                                                                                                                                                                                                                                                                                                   |
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| <p><b>Constitutional and statutory reference to "significant habitats for native fish and wildlife":</b> Expectation for OWEB Land Acquisition investments to "secure long-term protection for lands... that provide significant habitats for native fish and wildlife"</p>                                                                                                                            | <p>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.</p> | <p>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.</p> | <p>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.</p>                                    | <p>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).</p> <p>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."<br/>-- PREFERRED</p> | <p>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.</p>                                                                       |
| <p><b>Areas of impact on portion(s) of the protected property:</b> 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?</p>                                                                                                 | <p>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.</p>                                                                                                                                                                                                                 | <p>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</p>                                                                                                                                                                                                                                                                                           | <p>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.</p>                                                                                                                                       | <p>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&amp;W habitat.<br/>-- PREFERRED</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Potential for ambiguity in level of acceptable impact (including temporal, spatial, severity considerations).</p>                                                                                                                                                                                                                                                                |
| <p><b>Degree or extent of ecological function for properties proposed for acquisition:</b> 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.</p> | <p>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.</p>                   | <p>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.</p>                                                                                                                             | <p>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.</p>                                                                                                      | <p>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.<br/>-- PREFERRED</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Lowering the threshold of acceptable level/extent of ecological function may result in properties being less beneficial to native fish and wildlife.</p>                                                                                                                                                                                                                         |
| <p><b>Application evaluation:</b> Ensuring that applications recommended for funding are in line with the purpose of the program.</p>                                                                                                                                                                                                                                                                  | <p>Application evaluation includes:<br/>1. Soundness review by contractors, staff, and DOJ.<br/>2. Organizational capacity review by contractors and OWEB staff.<br/>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).<br/>4. Synthesis, evaluation write-up, rankings, and funding recommendations by small group of OWEB staff and management.</p>              | <p>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).</p>                                                                                                                                                                                                                                                                                                                 | <p>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.</p> | <p>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:<br/>- Remove option of allowing applicants to nominate eco reviewers<br/>- OWEB selects a statewide technical review team (TRT) that covers the expertise needed for different species, habitats, and localities.<br/>- 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.<br/>- OWEB staff will communicate the soundness and organizational capacity reviews to the TRT to inform their evaluations and rankings.<br/>- 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.<br/>-- PREFERRED</p>                                                                                                                                                                                        | <p>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.</p> |

| Topic and Conservation Principle                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Current Practice and Context                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Option 1 from Staff                                                                                                                            | Risk for Option 1                                                                                                                                                                                                                                                                                                                                                                                                                              | Option 2 from Staff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Risk for Option 2                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p><b>Due diligence information review at application in the context of project soundness portion of the review:</b> 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.</p> | <p>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.</p>                                                                                                                          | <p>Keep as is because of risk reduction benefits for OWEB, identified in Current Practice and Context, benefitting both OWEB and grantees.</p> | <p>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.</p> | <p>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.</p> <p>-- <b>PREFERRED</b></p> | <p>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.</p> |
| <p><b>Due diligence review after a grant is awarded:</b> Properties that OWEB invests in must be acquired through a technically sound manner to ensure the property interest endures over time.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>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.</p> | <p>Keep as is because of risk reduction benefits identified in current practice and context, ultimately benefitting both OWEB and grantees</p> | <p>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.</p>                                                                                                                                                                                                                                                     | <p>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."</p> <p>-- <b>PREFERRED</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>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.</p>                                                                                                                                                |