



Chehalis Basin Strategy Voluntary Acquisition Handbook

Policies and protocols for voluntary acquisition projects

Office of Chehalis Basin

Washington State Department of Ecology

Olympia, Washington

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Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region
360-407-6300

Northwest Region
206-594-0000

Central Region
509-575-2490

Eastern Region
509-329-3400

Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
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DEPARTMENT OF
ECOLOGY
State of Washington

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Chapter 1: Handbook overview

About this handbook

This handbook provides basic information about policies and protocols for acquiring real property with funding from the Washington State Department of Ecology's Office of Chehalis Basin (OCB). Several OCB programs currently fund, or may fund in the future, fee simple and less-than-fee voluntary acquisitions in support of the Chehalis Basin Strategy's habitat restoration/protection and flood damage reduction goals. These programs include:

- Aquatic Species Restoration Program (ASRP)
- Community Flood Assistance & Resilience Program (CFAR)
- Multi-Benefit Acquisition Program (MAP)
- Erosion Management Program (EMP)

Individual programs will continue to make decisions and manage acquisition projects that they fund and will retain the flexibility to approach acquisitions differently based on differing needs and operational contexts. Use this handbook, along with the funding guidelines for the respective programs above and [Administrative Requirements for Recipients of Ecology Grants and Loans \(Yellow Book\)](#)², for all acquisition projects under the Chehalis Basin Strategy.

Applies to new acquisition projects

The policies, protocols, and templates in this handbook only apply to new acquisition projects seeking funding from an OCB program as of the publication date (March 2025). Recipients with acquisition projects funded by OCB prior to March 2025 and that followed Recreation Conservation Office (RCO) Manuals 3, 7, and 8 requirements are expected to continue managing those project and properties according to their project agreements.

Periodic updates

OCB may support future voluntary acquisition projects related to mitigation of large flood damage reduction projects (e.g., flood retention facility, levees, diversions and conveyance infrastructure), to be determined by the Chehalis Basin Board's direction on a flood damage reduction strategy and the outcomes of any necessary local, state, and federal permitting. OCB will update this handbook if needed once the Chehalis Basin Board finalizes the long-term integrated Chehalis Basin Strategy.

² <https://apps.ecology.wa.gov/publications/SummaryPages/2301002.html>

Additionally, the Chehalis Basin Board, OCB Director, or individual OCB funding programs may issue additional or modified rules, instructions, interpretations, and guides from time to time as it believes necessary for the effective conduct of its funding programs. Such changes will apply to all new projects. Whenever possible, OCB will give sufficient lead time between the announcement and the effective date to minimize impacts to projects already in process of applying at the time of announcement.

About the Chehalis Basin Board and Office of Chehalis Basin

In 2016, the Washington State Legislature passed House Bill (HB) 2856, creating the Chehalis Basin Board and the Office of Chehalis Basin within the Washington State Department of Ecology (Ecology) and to advance the long-term Chehalis Basin Strategy.

Chehalis Basin Board

The Chehalis Basin Board (the Board) is tasked with developing and providing long-term oversight of the Chehalis Basin Strategy, as well as developing biennial and supplemental budget recommendations to the Governor. The Board consisting of seven voting members and five ex officio non-voting members, including representatives from the two sovereign tribal nations in the Chehalis Basin — the Confederated Tribes of the Chehalis Reservation and the Quinault Indian Nation — as well as community leaders and state agency officials with diverse interests and perspectives. All Board meetings adhere to Open Public Meetings Act.³

Office of Chehalis Basin

OCB's charge is to aggressively pursue implementation of an integrated Strategy and administer funding from the Washington State Legislature to implement long-term flood damage reduction and aquatic species restoration in the Chehalis River Basin. OCB advances the Strategy by supporting the Chehalis Basin Board, coordinating with partner networks, and providing transparency and accountability to the public.

The role of OCB and the Board is to award funding, not to act as hearings boards that rule on land use issues.

Board and OCB decisions

The Chehalis Basin Board, OCB Director, and/or the OCB Director's designee (e.g., awarding program manager) make the following voluntary acquisition project decisions:

- Approve initial funding amounts and recipients.
- Waive appraisal requirements for property that does not exceed \$50,000.
- Approve reimbursement of more than one appraisal and/or appraisal review per property.
- Approve disregarding of new encumbrances on the property when determining appraised value.

³ RCW 42.30 <https://apps.leg.wa.gov/rcw/default.aspx?cite=42.30>

- Approve payment up to 10 percent above the review appraised value of a property.
- Approve environmental assessment costs above 10 percent of the reviewed appraised value of a property.
- Approve all draft legal documents for less-than-fee acquisitions, in consultation with the Attorney General's Office.
- Issue a Waiver of Retroactivity to purchase property before execution of an Ecology project agreement.
- Approve payment of delinquent taxes due at the time of closing.
- Approve acquisition of property with informal or no legal access.
- Authorize project reimbursements.
- Authorize any project cost increase of the project total in the project agreement.
- Authorize to pay more than 10 percent in administrative costs of the total land and incidental costs combined.
- Verify the qualifications of a relocation agent.
- Approve interim and compatible uses of an OCB-assisted site.
- Approve any minor or major scope change in the property to be acquired.
- Authorize a conversion that changes the project site or how the site is used from that described in the project agreement and Conservation Covenant or Assignment of Rights.
- Approve changes in policy; for example, establishing new grant limits or eligible expenditures.
- Authorize time extensions of the total contract duration.
- Approve delayed restoration or development for future uses.
- Terminate the project agreement.
- Require that funds be repaid to OCB if spent in a manner that conflicts with the project agreement or applicable statutes, rules, or program policies.

Applicants and recipients may request that a decision made by the Board, OCB Director, or Director's designee (e.g., awarding program manager) be reconsidered. This is done by writing to the OCB Director, after which the petitioner will have an opportunity to meet with OCB staff.

The petitioner may also request that a decision made by the OCB Director be reviewed and reconsidered by the Board. Requests for Board review should be made at least 60 calendar days before the next Board meeting, and requests will be placed on the meeting agenda with an opportunity for the petitioner to address the Board. Any subsequent Director or Board decision is final.

Note: Washington State Department of Ecology (“Ecology”) is referenced throughout this document as the legal entity within which OCB resides. In certain cases, OCB is referenced directly due to the specific decision-making, guidance, or funding provided by OCB staff, an awarding program, or the OCB Director.

Where to get additional information

OCB staff are available to assist by answering questions concerning the information contained in this handbook. Please feel free to e-mail or call:

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Chapter 2: Quick references

Definitions

The following terms are used throughout this handbook.

Acquisition: A project that purchases or receives a donation of a right to, or in, real property including, but not limited to, fee simple land acquisition, conservation easement, covenants, leases, and water rights.

Applicant: An entity that applies for OCB funding to support a property or lease acquisition. This term is synonymous with *project sponsor* and is often, in the case of acquisitions, a land trust, conservation organization, or local government. (If an application is awarded funding, the same entity is then referred to as a *recipient*; see definition below).

Assignment of Rights: The legal instrument that ensures Ecology has certain rights for access and remedies of the property in the case of an easement or a lease.

Awarding program: The OCB program that provides funding for an eligible project that is selected to receive funding support.

Compliance: A project status that results when the terms and conditions of the project agreement are being met.

Compliance period: The timeframe of the long-term obligation that begins when the project is accepted as completed by Ecology. This period may be perpetual or for a specified number of years.

Conservation easement: A legal agreement between a landowner and a land trust that may permanently limit the use of the land in order to protect its conservation values. It allows the property owner to continue to own the land, including the ability to sell or pass it on to heirs.

Conversion: A conversion occurs when an entire site or a portion of a site funded by a project agreement is no longer consistent with the awarding program's goals (e.g., uses not included in the project agreement are conducted in a manner that impairs the originally intended purposes of the project area).

Conservation Covenant: A promise made in a deed burdening or favoring a landowner to engage or refrain from conduct that protects or enhances the land. This is the preferred deed restricting legal instrument that Ecology for fee simple acquisitions and is analogous to a Deed of Right.

Deed: The legal document that transfers title to a property and is recorded with the county auditor's office.

Deed of Right: The legal instrument used by RCO that conveys the right to preserve, protect, and/or use the property for public purposes consistent with the funding program and the project agreement in perpetuity. This legal instrument may be used when a project is funded by both Ecology and RCO.

Deed restriction: A legally binding restriction on the use of land in the form of a written instrument that affects the title to the land and is generally recorded where deeds are recorded. This is an umbrella term that includes Conservation Covenant and Deed of Right.

Due diligence: Reasonable steps taken by the applicant to thoroughly investigate a land or conservation easement transaction to ensure it is legally, ethically, and technically sound. Due diligence includes, but is generally not limited to, title searches and certifications, appraisals, survey and legal description review, as well as specific, specialized information, such as baseline documentation reports, mineral searches, environmental assessments and real estate tax assessments or other outstanding debt.

EAGL: Ecology's Administration of Grants and Loans. This is Ecology's web-based system used to apply for, manage, track, monitor, and close out grants and loans issued by Ecology.

Easement: The grant of a nonpossessory property interest that gives the easement holder permission to use another person's land.

Encumbrance: Restrictions/claims that come up on title report. These may include liens, mortgages, rights to resources, easements, etc. held by a third party.

Fee simple (also known as **fee title**): Transfer of full ownership of the property, including the underlying title, to another party.

Growth Management Act (GMA): The Washington state law (RCW 36.70A) that requires that the fastest-growing cities and counties complete comprehensive plans and development regulations to guide future growth and, if necessary, revise their plans every ten years to ensure they remain up to date.

Interest or right: Ownership or possessory right to land or a resource on the land.

Lease acquisition: A method used to acquire the right to use a portion of land through a lease agreement with the landowner, rather than outright purchasing the property, allowing them to conserve the land for a specified period without full ownership; or the transfer of an existing lease on a recently acquired property to the new landowner.

Less-than-fee simple acquisitions (also known as **less-than-fee title acquisitions**): Less-than-fee simple acquisition includes the purchase of lease, easement (conservation, agricultural, etc.), other property rights (development, mineral, timber, water, etc.), or a reserve interest deed. A reserve interest deed conveys all rights to a property except those rights specifically reserved by the seller.

Long-term obligation: A recipient's contractual obligation after the project agreement period of performance end date, as specified in the project agreement, applicable regulations, policies, and guidance.

Non-compliance: A project status that results when the recipient or Ecology identifies a compliance issue (i.e., is not adhering to the terms and conditions in the project agreement).

Project agreement: The legally binding document signed by Ecology and the recipient that details the scope, funding, timeline, and other restrictions of the project.

Project area: The defined geographic area where the project occurs, as described in the project's boundary map.

Recipient: The entity that is awarded OCB funding administered by Ecology to support a property or lease acquisition and is accountable for the use of the funds in the project agreement document. This term is synonymous with *project sponsor* and is often, in the case of acquisitions, a land trust, conservation organization, or local government. (Prior to the funding award, the same entity is referred to as an *applicant*; see definition above).

Terms and Conditions: All requirements of the grant or contract, whether in law, regulations, administrative and program requirements, or the agreement document, including:

- Agreement-specific Terms and Conditions: Terms and conditions that apply only to a specific agreement.
- General Terms and Conditions: Terms and conditions that apply to all Ecology grants and contracts.
- Special Terms and Conditions: Terms and conditions that apply only to agreements under a specific funding program.

Voluntary acquisition: The process by which an applicant or recipient acquires fee or less-than fee interests (i.e., land or a conservation easement) from a willing landowner where the landowner chooses to sell or donate their land or restrict its use through a conservation easement to for conservation purposes, rather than being forced to do so. This process is entirely based on the landowner's consent.

Waiver of Retroactivity: Advance approval provided in writing from Ecology to an applicant to purchase a property and preserve eligibility of land acquisition and other incidental costs incurred before the project agreement is executed. Note: Approval of a waiver does not guarantee funding, nor is it Ecology's approval that the applicant has met all of the programmatic requirements for the acquisition.

Acquisition process checklist

The table below summarizes the step-by-step process that is intended to guide applicants in meeting the required procedures for acquisition, as well as required deliverables that must be submitted to Ecology, unless otherwise noted.

See Chapter 4: Acquisition process and project requirements for additional details.

Table 1: Acquisition Process and Required Deliverables Checklist

Acquisition process steps for applicants and recipients	Deliverables submitted to Ecology
Application Requirements	
<input type="checkbox"/> Establish communication with the landowner to understand their interests, offer options, determine other entities that hold interest in the property	<input type="checkbox"/> Landowner Acknowledgement Form <input type="checkbox"/> Voluntary Acquisition Notice to Owner
<input type="checkbox"/> Coordinate with local jurisdictions (those subject to GMA requirements only) and conservation districts (agricultural land only)	<input type="checkbox"/> Documentation of Jurisdiction Review and Conferral
<input type="checkbox"/> Notify adjacent and adjoining neighbors (for medium or large acreage projects only, as requested by the program)	
Due Diligence	
<input type="checkbox"/> Review the preliminary title report, clear any title actions and quell outstanding interests	<input type="checkbox"/> Preliminary Title Report Checklist
<input type="checkbox"/> Initiate cultural resources review	<input type="checkbox"/> Cultural Resources Review Checklist
<input type="checkbox"/> Get appraisal and appraisal review	<input type="checkbox"/> Appraisal <input type="checkbox"/> Appraisal Review
<input type="checkbox"/> Survey of property boundaries, if needed	<input type="checkbox"/> Boundary Map
<input type="checkbox"/> Conduct environmental audits	<input type="checkbox"/> Environmental Site Assessment <input type="checkbox"/> Hazardous Substances Certification <input type="checkbox"/> Property Assessment Checklist
<input type="checkbox"/> Determine if any relocation is needed	<input type="checkbox"/> Relocation Plan
<input type="checkbox"/> Prepare baseline documentation	<input type="checkbox"/> Baseline Inventory
<input type="checkbox"/> Provide Ecology with draft legal documents for review	<input type="checkbox"/> Draft Conservation Covenant or Assignment of Rights <input type="checkbox"/> Purchase and Sale Agreement (prior to signature)

Acquisition process steps for applicants and recipients		Deliverables submitted to Ecology
<input type="checkbox"/> Obtain approval for any interim land uses on the property		
Negotiations		
<input type="checkbox"/> Negotiate a purchase price with the landowner		<input type="checkbox"/> Notice of Just Compensation letter
<input type="checkbox"/> Complete any relocation if displaced person on the property		<input type="checkbox"/> Relocation Plan
Closing		
<input type="checkbox"/> Request escrow payment, if needed		
<input type="checkbox"/> Record legal documents		
<input type="checkbox"/> Obtain title insurance policy		
After Closing/Short-term Maintenance		
<input type="checkbox"/> Provide OCB with copy of recorded legal documents		<input type="checkbox"/> Signed and recorded Deed or Easement
		<input type="checkbox"/> Signed and recorded Conservation Covenant or Assignment of Rights with project boundary map
<input type="checkbox"/> Provide OCB a copy of the final title insurance policy		<input type="checkbox"/> Final title insurance policy
<input type="checkbox"/> Finalize cultural resources review for any ground disturbance or demolition activities		<input type="checkbox"/> Cultural Resources Review Checklist
<input type="checkbox"/> Submit Stewardship Plan		<input type="checkbox"/> Stewardship Plan
<input type="checkbox"/> Demolish ineligible structures		
<input type="checkbox"/> Install fencing, if needed		
<input type="checkbox"/> Remove noxious weeds, if needed		
<input type="checkbox"/> Install signs, if needed		
<input type="checkbox"/> Submit progress reports and annual billings in EAGL		<input type="checkbox"/> PRPR and annual billings
<input type="checkbox"/> Complete and submit final report in EAGL		<input type="checkbox"/> Final report and billings
Long-term Stewardship		
<input type="checkbox"/> Ensure any approved interim land uses are discontinued within 3 years		
<input type="checkbox"/> Submit a Monitoring Report once every 5 years		<input type="checkbox"/> Monitoring Report
<input type="checkbox"/> Consult OCB on proposed allowable uses in advance		
<input type="checkbox"/> Comply with income generation requirements		<input type="checkbox"/> Income tracking and management (upon request)

Acquisition process steps for applicants and recipients	Deliverables submitted to Ecology
---	-----------------------------------

- | | |
|---|--|
| <input type="checkbox"/> Contact OCB if your future restoration or flood damage reduction plans are behind schedule | |
|---|--|

Online acquisition resources

The templates, forms, and checklists available on the Chehalis Basin Strategy [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)⁴ webpage – many of which are listed as deliverables in the table above – are intended to help provide consistency across individual OCB funding programs and to provide applicants, recipients, and programs with guidance for documenting the acquisition. Program staff will be able to provide additional templates or examples for applicant and recipient use upon request.

Individual programs will continue to make decisions and manage acquisition projects that they fund and will retain the flexibility to approach acquisitions differently based on differing needs and operational contexts. Applicants, recipients, and program managers should work together to ensure that all documentation needs and deliverables have been adequately met.

⁴ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

Chapter 3: Eligible projects and costs

Eligible projects

A voluntary acquisition project is one that purchases or receives a donation of fee or less-than-fee interests in real property from a willing landowner; i.e., the landowner chooses to sell or donate their land or restrict its use for conservation purposes, rather than being forced to do so. Less-than-fee interests include, but are not limited to, conservation easements, covenants, development rights, water rights, timber rights, mineral rights, and leases.

Funding from OCB for a voluntary acquisition may be used to buy real property for flood damage reduction, aquatic species restoration/protection, or a combination of those purposes. Real property is defined as land, crops, timber, mineral and water rights, land improvements, and structures and appurtenances to them.

In general, OCB funding may be used to buy real property in several ways. Funding can be used to buy the land itself, called fee simple acquisitions, or to buy an interest in the land, such as an easement, called less-than-fee simple acquisitions.

The organization that will hold title to the real property interest must be a party in the Ecology project agreement, which can be a grant or contract between Ecology and the funding recipient, as either a primary recipient or secondary recipient. All recipients must be eligible to receive funds in the specific OCB program.

Note: Neither Ecology, nor OCB, nor the Chehalis Basin Board will be a holder or co-holder of property title under any OCB programs.

Fee simple acquisitions

Fee simple acquisition includes the purchase of land and improvements. Fee simple acquisitions may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will support the protection of the property for public purposes. Fee simple acquisitions require recipients to maintain the acquired property in accordance with OCB awarding program goals. The legal instruments used for fee simple acquisitions are described below.

Deeds

A deed is the legal document that transfers title to a property and is recorded with the county auditor's office. Eligible types of deeds are statutory warranty, special warranty, bargain and sale deed, or quit claim. Other types of deeds may be eligible on a case-by-case basis. Consult Ecology if the type of deed proposed for acquisition differs from the types listed here.

- **A statutory warranty deed** (or general warranty deed) is the most protective type of deed and Ecology's preferred type of conveyance for property. The statutory warranty

deed binds the seller to the chain of title back to the origin of the property including all covenants and encumbrances on the title.

- **A special warranty deed** is a less protective form of property conveyance for the recipient. The seller conveys the property with only the warranty that they own the property and warrants the encumbrances placed on the property during their period of ownership. It does not warrant the chain of title before the seller's ownership period. Executors and trustees frequently use special warranty deeds.
- **A bargain and sale deed** warrants only that the seller holds title to the property, but not the condition of the title and any covenants or encumbrances on the property. This type of deed is used frequently for land donations and foreclosures.
- **A quit claim deed** is the least protective type of deed. It conveys the property without any warranty as to the seller's interest in the property or any of the covenants or encumbrances. Quit claim deeds may be used to transfer property between family members or cure defects in the title or for other transactions. Ecology will only approve quit claim deeds in special cases.

Conservation Covenants

To protect the State of Washington's investment in the land acquired through fee simple acquisitions, Ecology requires a Conservation Covenant be recorded on the title of the property. The Conservation Covenant is a type of deed restriction (analogous to a Deed of Right) and is the legally recorded document that outlines the agreement between the funding agency (Ecology) and the recipient who owns the purchased property upon closing. It specifies permitted uses and activities as well as specific restrictions to the use of the property and conveys to the people of the State of Washington the rights to preserve, protect, and/or use the property consistent with the program and the Ecology project agreement. Both apply to the original parties of the project agreement and all successors with an interest in the property. Conservation Covenants will vary by the funding program and type of project.

Deeds of Right

For fee simple acquisitions in which funding from both OCB and another funding agency is anticipated, Ecology and that agency may craft a joint Deed of Right instead of the preferred Conservation Covenant) to avoid any conflicts in interpretation or priority between the agencies' legally recorded documents on the property. Ecology strongly encourages that applicants communicate any anticipated joint funding of projects early to the program manager of the OCB program from which they are seeking funding. See the Joint and cooperative projects section of this handbook for additional information and requirements related to jointly funded projects.

Less-than-fee simple acquisitions

Less-than-fee simple acquisition includes the voluntary purchase of a conservation easement, lease, and other property rights (development, mineral, timber, water, etc.), or a reserve interest deed. A reserve interest deed conveys all rights to a property except those rights specifically reserved by the seller. Ecology assumes that a project acquiring a less-than-fee simple acquisition will acquire a perpetual interest, except when purchasing a lease, unless otherwise approved in the project agreement. The holder of the easement or lease has control of specific property rights but does not own the land. Acquiring title property rights can be an appropriate strategy for some acquisition projects.

As with fee simple acquisitions, less-than-fee acquisitions (most often easements) will vary by the funding program and type of project. All policies included in this handbook also apply to voluntary acquisition of less-than-fee rights (including appraisal and appraisal review requirements, hazardous substances certifications, filing an Assignment of Rights, and title insurance). Note that the processes for purchasing different types of property rights vary, and recipients must also follow specific guidance for these purchases when available.

Assignment of Rights

Recipients record an Assignment of Rights for all easements or leases being acquired unless otherwise noted in this handbook. An Assignment of Rights ensures Ecology has certain rights for access and stewardship of the property.

The Assignment of Rights is intended to secure the public's interest in the easement or lease. To accomplish this, the Assignment of Rights does the following four things:

- It commits the recipient holding the easement or lease to monitor and enforce the terms of the easement or lease.
- It gives Ecology certain rights, which are co-held with the recipient, for access to the property covered by the easement or lease.
- It indemnifies the state with respect to the acts or omissions of the landowner and recipient on the property.
- It requires the recipient to consult with Ecology for any amendment of the easement or lease, or conversion of the land to another use.

Collectively, the Assignment of Rights ensures that Ecology has the legal ability to act if the recipient fails to manage or defend the easement or lease.

Purchase of water rights

Applicants considering any purchase of water rights must first initiate a conversation with the local conservation district of the proposed purchase to determine the use of the right and other relevant considerations. Conservation district staff may know or be able to determine to what extent the water right is important to the ongoing agricultural viability of the property. If the

applicant moves forward in proposing a water rights purchase, Ecology will consider potential instream flow, agriculture, and other consumptive use benefits of the right. A valuation method other than a standard appraisal may be allowed depending on the estimated acquisition costs and specific circumstances of the proposed water rights acquisition. The OCB Director may require Chehalis Basin Board approval of water rights purchases.

Purchase of leases

The following terms are required for any lease acquisition:

- The lease may not be revoked unilaterally by either party signatory to the project agreement (or “revocable at will” by the signatories). Leases may include a “mutually revocable” clause. If the lease is revoked, the recipient will need to mitigate for the lost lease per Ecology’s conversion policy; see Chapter 6: Compliance, non-compliance, and long-term obligations.
- The lease value must be determined by an appraisal and appraisal review that meets Ecology guidelines as described in this handbook.
- Payment of the lease must be in a lump sum at the start of the lease, not over a period of years, and paid within the active period of the Ecology project agreement unless payments have been made under an approved Waiver of Retroactivity.

Examples of legal documents

Legal documents will vary by program and project type. For more information or to see an example Conservation Covenant, easement, leases, or Assignment of Rights, please contact the OCB awarding program manager, and see the section on drafting and reviewing legal documents to learn more about the process for how to develop the legal documents between the recipient and Ecology. These legal documents will need to be reviewed by the Attorney General’s Office; please anticipate adequate time for review as specified in the section linked above.

For guidance on non-conversion covenants, please consult the Community Flood Assistance and Resilience (CFAR) program manager.

Special project characteristics

Phased projects

Large voluntary acquisition projects can be complex, multi-year, multi-partner, and require extensive analysis, coordination, and implementation. An applicant should consider the potential complexity that large-scale or multimillion-dollar projects may create and should discuss phasing with OCB staff. Phased acquisition projects are subject to the following criteria:

- Approval of any single phase is limited to that phase. No endorsement or approval is given or implied toward future phases.
- Each phase must stand on its own merits as a viable project.
- Each phase must be submitted as a separate application.

OCB and the Chehalis Basin Board may consider progress and applicant performance on previously funded phases when making decisions on current proposals.

Acquisition for future use

When a recipient acquires real property to benefit the goals of the awarding program in the future, the property must be restored or managed as described in the project agreement within 5 years of acquiring the property. If the property was acquired under a Waiver of Retroactivity, it must be restored or managed within 5 years of the project agreement end date. This ensures that the primary purpose for the acquisition is realized within a reasonable time and the public receives the intended benefit from its investment.

At the time of the project application, the applicant may propose a timeline longer than 5 years for large scale, multi-phased projects. If the application is awarded a funding, Ecology may incorporate the longer timeline in the project agreement.

If the planned future use of the property will be delayed for more than 5 years, the recipient must request in writing an extension before the period of performance expires. Ecology may approve an extension based on the recipient's plans and construction schedule. Projects receiving an extension will remain in compliance with the project agreement.

Projects that are not constructed as proposed in the voluntary acquisition project or not granted an extension will be reviewed per Ecology's compliance policy. If circumstances change such that the scope will not be completed as originally proposed, then a recipient may request a scope change to the project agreement and must revise the stewardship plan, when applicable. See handbook sections on non-compliance and project amendments.

Joint and cooperative projects

Some projects may have two or more applicants. For example, a joint project could be where two or more entities partner to provide financial support for a project or to split ownership between specific parcels acquired as part of the project. Ecology encourages such cooperation. In such cases, Ecology may ask joint applicants to complete the following:

- Sign the Ecology application and project agreement. All parties must meet eligibility requirements to be co-applicants on the application and project agreement.

- Comply with the [Interlocal Cooperation Act](#)⁵ or execute an agreement, policy statement, or resolution. All applicants must certify the following:
 - Which of the parties is the primary applicant
 - The roles and responsibilities of each party
 - The project will provide for flood damage reduction and/or habitat restoration/protection on at least an equal basis with other needs
 - Signs will clearly identify the site's availability for general public access when public access is an allowable use articulated in the project agreement
 - Maintenance and operation or monitoring responsibilities of each agency or organization

Applicants must submit a draft of any agreement, policy statement, or resolution prepared to Ecology by the grant or project application deadline, where applicable. A signed agreement is required before Ecology will execute a project agreement.

Partnerships

Two or more eligible project applicants may apply for funding together when they are working in partnership to buy property.

Applicants that plan to buy property before receiving a project agreement must request a Waiver of Retroactivity in advance of the purchase.

OCB prohibits the use of program funding to support the purchase of property by one eligible applicant from another at a profit. Regardless of how partnerships are formed, Ecology's voluntary acquisition policies and procedures, including appraisal requirements, offers of just compensation, and relocation benefits, also apply to the property owner who is not eligible to receive funds.

When multiple eligible applicants partner, all applicants that will acquire property in the project, including property donated or used as match, must be included in the project application.

Land donations

Property acquired at less than its appraised market value is eligible for OCB funding as a land donation from the seller. The land donated must meet the awarding program's eligibility requirements. The land donation transaction must follow the acquisition process and project

⁵RCW 39.34, <http://apps.leg.wa.gov/RCW/default.aspx?cite=39.34>

requirements of this handbook and provide all the required documentation including appraisal, appraisal review, hazardous substances certification, title insurance, etc. Transaction costs associated with acquiring donations of land are eligible expenses.

If the property is acquired at less than the appraised market value, the recipient must provide a Purchase and Sale Agreement or obtain a statement signed by the landowner acknowledging that before the sale, the owner met all of the following conditions:

- Was provided a statement of just compensation that identifies the appraised value of the property including land, improvements, and relocation.
- Is donating all or a portion of the value of the property voluntarily, as an act of free will.

The landowner donation statement must be provided at the time the recipient requests reimbursement from Ecology.

Federal rules

For all projects funded with federal funds or other grants that are used by Ecology as match to a federal source, grant administration is governed by [Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)⁶.

Ecology may require additional information to meet federal grant requirements. Ecology will provide an “Applicant’s Next Steps” document outlining these additional requirements.

Pre-award eligibility inspections

OCB staff will conduct a pre-award inspection or meeting during a project funding application phase, normally with the applicant, to assess the project area and scope of work for eligibility concerns and compatibility with the funding program.

Eligible costs

Only eligible acquisition costs can be reimbursed by Ecology. Eligible acquisition project costs include administrative, incidental, and property costs. See the Reimbursements section for more details on the reimbursement process.

⁶ <https://www.ecfr.gov/cgi-bin/text-idx?SID=6fe24c76004f565cdfd8cef80053ab59&node=pt2.1.200&rgn=div5>

Administrative costs

Eligible project administrative costs include direct costs associated with administering and managing the project agreement. These include the following:

Advertising	Contract award
Attorney fees – document review and drafting, clearing title, and other project related work	Correspondence
Billing Preparation	GIS mapping
Communication	Meetings
Consultation	Negotiations
	Progress report preparation
	Project Administration

Administrative costs are limited to no more than 5 percent of the total costs of the property and incidental costs combined. Ecology may approve a request to pay up to 10 percent administrative costs on a case-by-case basis. Increases above 10 percent may require OCB Director or Chehalis Basin Board approval (depending on funding award amount). To request an increase above 5 percent, the recipient must provide a letter to OCB staff addressing the following:

- What amount of administrative cost is requested?
- Why is the additional administration costs needed?
- What has been accomplished to date? Provide specific information about the status of property negotiations.
- How will the additional administrative expenses impact the project scope? Will the original scope of work still be completed?
- What is the updated project completion timeline?

Property costs

Direct costs for the purchase of real property or property rights are eligible. These include fee ownership and less-than-fee ownership costs.

Fee ownership costs include land, shore land, tideland, improvements, and structures. Fee acquisitions also may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will further support the protection of the property for public purposes.

Less-than-fee ownership costs may include easements, leases, and separate property rights such as development, minerals, timber, or water rights, depending upon the specific program.

Property costs are established by conducting an appraisal to determine just compensation (i.e., market value) to the landowner. The appraised value must be confirmed by an independent appraisal review. See the section on appraisal and appraisal review for more details on appraisal requirements.

Right of First Refusal

A Right of First Refusal is a contractual right to be offered the first opportunity to purchase a property (typically at a discount from an offered purchase price) before another buyer can, up to a stated date of expiration. This right has its own value beyond the value of the land and the, as determined in an appraisal. In the context of acquisitions funded by the Chehalis Basin Strategy, this right may be purchased by a recipient to, e.g., prevent a property that is used for commercial agricultural production and has an agricultural easement on it to be purchased by a buyer who does not intend to continue that use. The cost of this additional right may be eligible for reimbursement, subject to approval by the OCB funding program manager and OCB Director. Applicants and recipients interested in purchasing a Right of First Refusal are encouraged to communicate their intent to OCB as early as possible.

Acquisition for more than the appraised value

Ecology reimburses for property costs based upon the property's appraised value confirmed by an appraisal review. The appraised value is the just compensation for purchase of the property and the amount eligible for OCB funding and recipient matching share. If negotiations with the property owner establish a higher price, the recipient may agree to pay a higher price and only seek reimbursement from Ecology based upon the appraised market value.

In limited circumstances, the OCB Director may approve paying up to 10 percent more than the appraised market value of the property. Approval to pay more than the appraised market value is not approval for additional funds or a cost increase. It allows Ecology to reimburse at the higher approved purchase price. Approvals are made on individual properties, not for the entire scope of a project. OCB Director will not approve reimbursements for more than 10 percent of the appraised market value.

A recipient must request approval to pay more than the appraised market value before closing on the property. The OCB Director will not approve a request to pay above the appraised market value if the request is submitted after the recipient has closed on the property. The written request must include a copy of the appraisal, appraisal review, and draft Purchase and Sale Agreement or option agreement and should address some or all of the following questions:

- What was the appraised value of the property?
- What is the proposed purchase price?

- Why might the appraised value not reflect the property's market value (e.g., the impact of prior structural flood damage)? Include adequate market data to substantiate the purchase price.
- How far back in time or how far afield did the appraiser need to go to find comparable values? Were there adequate comparables readily available?
- What is the likelihood that this property will be converted to a use less desirable to the Chehalis Basin Strategy's goals of aquatic species habitat restoration/protection and flood damage reduction (e.g., is the parcel zoned for development)?
- How will the additional property expense impact the project scope? Will the original scope of work still be completed even if a higher purchase price is approved?
- How important is the property in meeting the awarding program's goals? Are there alternative properties in the project agreement that could be pursued or is this project unique in some way (e.g., specific location provides unique aquatic species habitat restoration and/or flood damage reduction benefit potential)?
- Are there other potential buyers you're competing against (i.e., is this an on-market purchase)?
- Why is it important to agree to purchase above appraised value?
- What are the public benefits versus the private landowner gains to paying the proposed higher price?

When considering whether to pay above the appraised market value, the OCB Director will consider both the negotiated price and appraised market value in establishing its reimbursement and funding amount. If the OCB Director denies approval to pay above the appraised market value, the recipient may pay the higher price at its own expense and the amount is not eligible for OCB funding or as match.

In general, Ecology strongly recommends that any additional negotiated costs to benefit the seller (e.g., moving assistance) are separated from the purchase cost of the property to avoid impacts to the market.

Ecology will contract with a third-party real estate services firm on a periodic basis to provide a review of OCB-funded acquisition property costs within a broader local market analysis. If any impact is suspected, purchase cost approval procedures will be adjusted for future projects.

Incidental costs

Incidental costs are those costs incurred when purchasing land or property rights, such as conducting due diligence investigations and closing on the transaction. Once an incidental item

has been completed, the final document (e.g., appraisal, environmental assessment, relocation plan, etc.) must be submitted along with the invoice requesting reimbursement of the incidental cost item. Electronic documents are preferable.

The following are eligible incidental costs in an acquisition project:

- Appraisal and appraisal review—one per property
- Baseline documentation
- Boundary line adjustments, lot line adjustments, and subdivision exemptions
- Closing fees
- Cultural resources⁷ (survey, excavation, on-site monitoring, data recovery, and other costs)
- Demolition of structures
- Decommissioning of existing utilities (e.g., existing septic systems or sewer connections)
- Fencing
- Environmental audits, chain of title reports, and site investigation such as test pits, test wells, and sample analysis (limited to 10 percent of the appraised market value of the property)
- Environmental audit recommendations that do not trigger formal cleanup action but will improve the condition and safety of the property such as debris removal; well, sewer, or septic system decommissioning; non-hazardous (below Model Toxics Control Act cleanup levels) contaminated soil removal; and other recommended action items.
- Land survey (i.e., property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with OCB funding.
- Moving cost assistance to willing sellers in the form of truck or storage facility rentals, mortgage differential, etc., as defined in WAC 468-100. Additional moving cost assistance above the amount calculated by following WAC 468-100 may be eligible with

⁷Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

justification, subject to approval by the OCB Director.⁸ Recipients must submit a written request to Ecology.

- Monitoring costs for monitoring conducted during the project agreement term
- Noxious weed control
- Recording fees
- Relocation for eligible displaced tenants only when the property is acquired from a willing seller (including administration). See the section on relocation requirements for specific requirements and eligible costs.
- Relocation of structure(s) or portion of a structure out of a flood inundation area. If the cost exceeds the structure's assessed value, the eligibility of these costs is subject to OCB Director approval.
- Signs—boundary, entrance, notices, rules, etc.; requirements determined on a case-by-case basis by the awarding program
- Stewardship plans
- Taxes due at closing (compensating, excise, and pro rata taxes). Delinquent taxes owed on a property before the date acquired are eligible costs on a case-by-case basis with pre-approval from Ecology.
- Preliminary title reports
- Title reports and insurance—extended title insurance may be approved on a case-by-case basis.
- Critical area delineations

Pre-agreement costs

Pre-agreement costs are project costs incurred before fully executing a project agreement that are eligible for reimbursement once a project agreement is signed. Some administrative and incidental costs are eligible pre-agreement costs if incurred up to 3 years before the start date of the project agreement, subject to approval by the awarding program. Note: This time limit may be adjusted for properties acquired under a Waiver of Retroactivity.

⁸ Calculations for eligible supplemental moving cost assistance will follow WSDOT Real Estate Services Office's guidance, <https://wsdot.wa.gov/sites/default/files/2021-10/WSDOT-Relocation-Residential-Brochure.pdf>.

Pre-agreement costs eligible for reimbursement are limited to the following:

- Administration costs
- Incidental costs limited to:
 - Appraisal and appraisal review (must meet the appraisal shelf-life requirements detailed in the appraisal and appraisal review section)
 - Baseline documentation
 - Boundary line adjustments, lot line adjustments, and subdivision exemptions
 - Cultural resources⁹ (survey, excavation, on-site monitoring, data recovery, and other costs)
 - Environmental audits as described in this handbook
 - Land survey (i.e., property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with OCB funding.
 - Preliminary title reports
 - Relocation administration
 - Stewardship plans
 - Critical area delineations

All pre-agreement costs incurred must adhere to the requirements in this handbook for the costs to be eligible for OCB funding or used as recipient match. For example, recipients must ensure that incidental items such as appraisals, cultural resources review, and relocation costs meet the policies in this handbook.

Contract or installment sales

Ecology will not financially assist property bought on a contract or installment basis if the contract period exceeds the project agreement period. Full payment must be made to the seller within the project agreement period to qualify for assistance from Ecology. This ensures that the recipient meets both the following two conditions:

⁹Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

- Has clear ownership of the property.
- Can meet the Conservation Covenant requirements.

Ecology recognizes that this may be an obstacle when buying from an owner who, for tax reasons, wants to sell on a multi-year installment or contract basis only. Private non-profit land trusts may offer a solution to this problem for state or local agencies by acting as an intermediary to the transaction. For example, the land trust may contract to purchase the property on a seller-financed basis with note payments scheduled according to the seller's tax needs. The land trust could then sell the property to the sponsoring agency on a lump sum basis, while retaining liability for the note payments.

If the seller so requests, the land trust may provide collateral in several ways other than using the property itself. For example, the trust could arrange for a letter of credit in favor of the seller to secure the note. Another potential alternative is for the trust to purchase a certificate of deposit, which could be assigned to the seller for security purposes. Typically, either of these cash collateral methods of security can be acceptable to sellers and both would result in the acquisition of the land free of purchase money encumbrances.

Ecology describes these potential voluntary processes as a way of increasing the options available to applicants as they seek to acquire property with OCB funds.

Waiver of Retroactivity

Applicants that plan to buy property before receiving a project agreement must request a Waiver of Retroactivity in advance of the purchase.

In most situations, except for eligible pre-agreement costs, Ecology will reimburse only for expenses incurred after the project agreement is fully executed. However, an eligible entity may get advance approval in writing from Ecology to purchase a property and preserve eligibility of land acquisition and other incidental costs incurred before the project agreement is executed. The approval is called a Waiver of Retroactivity, which waives the prohibition to reimburse costs incurred before the project agreement. All acquisition costs that would be eligible during the project agreement period become eligible for reimbursement when a Waiver of Retroactivity is issued, not just pre-agreement costs.

An eligible entity must request a Waiver of Retroactivity before acquiring property that will be the subject of a new project application, including property that will be used to satisfy the applicant's matching share. One Waiver of Retroactivity is issued per property and may be used by any eligible applicant in the awarding program. The waiver may be requested only when immediate action is necessary, and the funding won't be awarded in time. When a waiver is approved, it authorizes the entity to acquire the property in advance of a signed project agreement without forfeiting eligibility to receive funding for the project. Approval of a waiver does not guarantee funding, nor is it Ecology's approval that the applicant has met all of the programmatic requirements for the acquisition. When approved, a waiver is valid for two years,

though exceptions may be allowed depending upon the funding program. Ecology requests that any changes to the property or its ownership within that timeframe be communicated to OCB. The waiver is specific to the target property should the applicant change.

To request a Waiver of Retroactivity, an applicant must submit the following:

- A written request with a justification regarding the time sensitive need to purchase the property
- Location map
- Parcel map
- Landowner Acknowledgement Form (if the purchase is off market)
- Voluntary acquisition notice (if the purchase is off market)
- Preliminary title report
- Preliminary Title Report and Commitment checklist
- Landowner donation statement, if applicable
- Documentation that shows local jurisdiction review and conferral (only for properties within jurisdictions subject to GMA requirements).
- Documentation that the applicant has completed an initial review for potential environmental contamination on the property. (This can include results of a search on [Ecology's Facility/Site database or map tool](https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Facility-Site-database)¹⁰.)

The eligible entity also may submit the appraisal, review appraisal, and other incidental documents with the request for Ecology review, if available. Ecology may request additional documentation for review of the request. The request must be submitted before closing on the property, preferably at least 30 days in advance.

Applicants compelled to acquire property before securing a project agreement do so at their own risk. Be aware, if funding is not awarded, Ecology will not reimburse any expenses. Should funding subsequently be awarded to acquire the property, all applicable policies in this handbook must be met to receive reimbursement or to use the acquisition costs as match toward a funding award. For example, the title must be free of encumbrances that limit the value or uses on the property disproportionately to the public benefit, relocation, and cultural

¹⁰ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Facility-Site-database>

resource review must be completed, if appropriate, and the appraisal must be conducted to the appropriate standards.

In addition, costs associated with less-than-fee simple property rights must meet the terms as outlined in this handbook. For example, a conservation easement or lease must be assignable to Ecology. Eligible entities considering a less-than-fee simple acquisition and planning to seek OCB funding should consult the OCB funding program about less-than-fee simple requirements.

Because Ecology is a signature party to a conservation easement, Ecology must sign the easement before closing. In cases where an easement is being acquired while OCB funding is still pending, a clause can be inserted into the easement agreeing to amend Ecology out of the easement if funding is not received.

Ineligible applicants, projects, and costs

Ineligible applicants

Eligible applicants vary by program, though federal agencies are not eligible for land acquisition funding across OCB programs. See the awarding program's funding guidelines for more specifics on applicant eligibility.

High-risk recipient

The OCB Director, in consultation with OCB program staff, may recommend to Ecology and the Chehalis Basin Board that a recipient that has failed to meet the terms and conditions of a project agreement (e.g., through one or more unresolved conversion; see the section on conversions of this handbook) should be designated a "high-risk recipient." High-risk recipient may become ineligible to receive future funding and may be subject to additional monitoring inspections by Ecology during the compliance period. The OCB Director will notify a recipient in writing that it is responsible for one or more issues in failing to meet a project agreement and that, without substantial progress, the OCB Director will designate the recipient as "high risk."

If the eligible recipient wishes to appeal this designation, they must notify the OCB Director in writing. The recipient will have the opportunity to contest the designation before the Chehalis Basin Board, noting specific project references and actions that constitute substantial progress. The Chehalis Basin Board will have ultimate decision on whether to retract an appealed high-risk recipient designation.

Substantial progress

The OCB Director will decide if a recipient shows a record of substantial progress. Substantial progress is indicated when a recipient has (1) expressed, in writing, a willingness to remedy the failure to meet the project agreement and (2) has taken specific and timely actions as stipulated by Ecology and the OCB Director.

Applying for new funding

A high-risk recipient may apply and compete for additional funding for one funding cycle or calendar year from the date of designation (whichever is longer). After that time, Ecology will not accept project applications from the recipient until the high-risk designation is removed.

If a high-risk recipient's new application is successful, the recipient will be given ninety days to have the high-risk recipient designation removed pursuant to "Removal of Designation" section below. If, after ninety days the recipient still has the high-risk designation, OCB will not issue the new project agreement, and the funds will be redistributed.

Removal of designation

If a recipient believes that it should no longer be designated as "high-risk," it may petition the OCB Director to remove the designation. The Director shall have authority to remove the designation if they determine that the compliance issues have been fully resolved.

Ineligible projects and activities

Each OCB program funding guidelines will contain specific information about ineligible land acquisition activities. Ineligible land acquisitions are not eligible for funding and as such cannot be used to fulfill a recipient's match to a funded project. The following is meant to provide broad guidance in this area. Funding may not be used to acquire:

- Property or property rights already owned by an eligible entity, unless the property meets the eligibility requirements described in the sections on acquisition of existing public property or Waivers of Retroactivity in this handbook.
- Land with sufficient revenue producing potential to finance the project's cost.
- Land that is contaminated per Model Toxics Control Act unless it meets one of the exceptions in the Hazardous Substances Certification section in this manual.
- Land donated by a third party in lieu of mitigation fees, permit fees, and impact fees required for a development. See the section in this handbook on land donations for more details.
- Property through condemnation per Chapter 8.26 RCW or the threat of condemnation.
- Transfer of development rights.

Acquisition of existing public property

In general, property that already is under public ownership or management is not eligible for OCB funding. Land held by a tribal government is not considered public land. There is exception to this policy that allows existing public property to be eligible for OCB funding, if all the following conditions are satisfied:

- State law requires that the agency selling the land must receive compensation.
- The land was not originally acquired by the selling agency for aquatic species habitat restoration/protection and/or flood damage reduction.
- The land has never been publicly managed for aquatic species habitat restoration/protection and/or flood damage reduction.

State law¹¹ provides for the transfer of land from one public body to another without the requirement of full value compensation. Therefore, an applicant must provide other statutory evidence that the selling agency must receive compensation for the property. For example, state law¹² requires full value compensation of land when a local government transfers property from one department to another, and another state law¹³ requires irrigation districts to receive reasonable market value in certain transactions.

Ineligible costs

OCB funds and recipient matching funds may not be used for costs peripheral to buying land or property rights. Ineligible costs include, but are not limited to the following:

- Annual property taxes beyond the pro rata taxes due at closing
- Bonus payments
- Ceremonial or entertainment expenses
- Costs associated with fundraising activities
- Costs of preparing any project application
- Court costs
- Damage judgments arising out of acquisition, construction, or equipping of a facility, whether determined by judicial decision, arbitration, or otherwise
- Deficit and overdraft charges, fines, penalties, interest expenses
- Donations or contributions made by the recipient, such as to a charitable organization or for organizational memberships and professional affiliations
- Earnest money

¹¹RCW 39.33, <https://app.leg.wa.gov/rcw/default.aspx?cite=39.33>

¹²RCW 43.09.210, <https://app.leg.wa.gov/rcw/default.aspx?cite=43.09.210>

¹³RCW 87.03.136, <https://app.leg.wa.gov/rcw/default.aspx?cite=87.03.136>

- Indirect costs¹⁴ and costs not directly related to implementing the project such as overhead charges
- Landowner liens and lien fees
- Lobbying or legislative activities
- Monitoring costs related to long-term compliance beyond the project agreement term
- Option payments
- Publicity expenses except legal requirements for public notices related to bids, etc.
- Purchase of personal property including movable machinery and equipment
- Retroactive costs incurred before execution of the project agreement. See pre-agreement cost information for exceptions.
- Taxes for which the organization involved would not have been liable to pay
- Value of discounts not taken
- Value of personal property, unless specifically approved in advance by the OCB Director

Additionally, on occasion, the total cost of completing a project exceeds the amount written into the agreement. Such overruns are the responsibility of the recipient. If funds are available, Ecology will consider a recipient's request for a cost increase. The recipient must submit this request in writing. The OCB Director may approve cost increase requests and may engage the Chehalis Basin Board on certain requests

¹⁴Indirect costs are allowable in some programs funded with federal dollars. Check with individual program funding guidelines.

Chapter 4: The acquisition process and project requirements

Overview of the acquisition process

All recipients of all OCB-funded voluntary acquisition projects must follow the acquisition procedures in RCW 8.26.180 and Chapter 468-100 Washington Administrative Code (WAC). These procedures apply to all OCB-funded acquisition projects. Below is an overview of the process, intended to guide applicants and recipients in meeting the required procedures and expanding on the [Acquisition Process and Required Deliverables table](#) earlier in this handbook. See required documentation and deliverables in the table. Additional sections further in this chapter also provide for more detailed information and instructions by acquisition phase. Steps 1-5 are required prior to when the applicant submits their funding application for review.

If an applicant or recipient has a different process, contact Ecology to ensure compliance with the requirements.

1. Contact the landowner to learn if the property is for sale or if they are willing to entertain an offer. Discuss and explore what options they may be interested in, if applicable (e.g., fee simple purchase, conservation easement, lease, etc.).
2. Inform the landowner that they are not compelled to sell the property to the agency, rather this is a voluntary transaction and relocation assistance will be provided for eligible displaced tenants in accordance with the Uniform Relocation Act.¹⁵ The value of the property or the purchase price is not discussed at this time. The parties may discuss how the property will be valued and how they will determine a purchase price. Provide a copy of the notice to Ecology, or the awarding program manager, where appropriate.
3. After the written notice is provided, the applicant should follow up a verbal communication to the landowner within 3-5 days to reiterate the voluntary nature of any potential transaction. If not already determined, this is also a good opportunity to confirm who the title holder is, whether there are other individuals or entities that hold rights to the property (e.g., mineral, water, timber), whether there are tenants, if adjacent neighbors are aware of the intended transaction and/or interested in the property, etc. See [checklist of questions to ask landowners](#) in this initial conversation.
4. If the property lies on agricultural land, contact the local conservation district to understand the importance of the property to the local agricultural community and identify any known interest from other potential buyers that would continue agricultural use.
5. If the property lies within a jurisdiction subject to Growth Management Act planning requirements, confer with the local jurisdiction about the proposed project.

¹⁵ RCW Chapter 8.26, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

6. If the property is of medium or large acreage, notify adjacent and adjoining neighbors as requested by the OCB program.
7. If applicable, consult with an approved relocation agent and determine the eligibility of any relocation assistance for any tenants. See the section on [relocation requirements](#).
8. If applicable, provide the landowner a written notice describing the relocation program.
9. Review the preliminary title report.
10. Obtain an appraisal of the property¹⁶ and provide the landowner an opportunity to be present during the appraiser's inspection.
11. Obtain a review of the appraisal by a third party to confirm the value of record.
12. Conduct any due diligence proceedings (e.g., title review, hazardous substances review, etc.), ensure compliance with Ecology policies, and obtain Ecology approval for any draft legal documents.
13. Present the landowner with a notice of just compensation and relocation, which informs the landowner of the appraised market value of the property and offers eligible tenant relocation assistance, if applicable.
14. Negotiate an option agreement or Purchase and Sale Agreement with the landowner, a copy of which should be provided to Ecology before signing. If an option agreement or Purchase and Sale Agreement is secured before execution of an Ecology project agreement, the agreement should meet all of the following criteria:
 - A. Be based upon the notice of just compensation value established by an appraisal and confirmed by an appraisal review.
 - B. Not commit the applicant to acquire the property unless Ecology funding is secured.
 - C. Stipulate that any cost of securing an option is to be applied to the purchase price (This ensures that the cost of the option is an eligible Ecology expense later.)
 - D. Be valid at least 40 days beyond the date an Ecology project agreement is issued.
15. Acquire the property and record conveyance documents (e.g., deed, easement, lease) and a Conservation Covenant or Assignment of Right, as applicable, with the county auditor's office.

¹⁶ Applicants may use published lists from other state agencies. For example, see [Washington State Department of Natural Resources approved appraiser list](#), or [Washington State Department of Transportation's approved list](#).

Project initiation and application requirements

Landowner engagement & acknowledgement

Each acquisition begins with a conversation with the current landowner. Several acquisition options are available to landowners with relative benefits and disadvantages of each. These options include:

A termed lease agreement with a recipient as an alternative to an acquisition. In some cases, entering into a lease agreement or lease acquisition in which a recipient could pay the property owner to conduct a beneficial use (e.g., grow riparian habitat, graze, farm, conduct regenerative farming practices such as silvopasture, etc.) may be a more desirable alternative for the landowner reticent to sell their property.

A less-than-fee acquisition (e.g., conservation easement, purchase of development rights)

A fee-simple acquisition, with the possibility to enter into a lease agreement with the selling landowner to conduct a beneficial use after the purchase has been completed.

As part of any project application for acquisition of real property, the applicant must demonstrate that the landowner is aware of the applicant's interest in purchasing their property. To accomplish that, the applicant must complete one of the four options below for each landowner. The acknowledgement must identify which parcels are being considered.

Option 1—Submit a Landowner Acknowledgement Form (available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)¹⁷).

Option 2—Submit evidence of some other previous communication instead of the form. Evidence (e.g., letter, option agreement, or Purchase and Sale Agreement) must demonstrate that the current landowner was contacted and has been made aware the applicant is interested in purchasing the property.

Option 3—Submit a copy of a letter to the current landowner that notifies him/her that the applicant is interested in acquiring the property and is submitting a project funding application to Ecology.

Option 4—Submit an affidavit from the applicant's chief executive to Ecology that states the landowner has been contacted but wishes to remain anonymous. An affidavit is a written statement of facts made by the chief executive officer under an oath or affirmation administered by a notary of the public, court clerk, recording officer, or other authorized public officer.

¹⁷ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

Landowner acknowledgement documentation may be stored in Ecology's project application online database (EAGL) and restricted from public view or within the project file at Ecology. However, such information would be subject to disclosure should a public disclosure request be filed. See the section on public disclosure rules for more information.

Questions to ask landowners

Recommended questions that applicants should ask of landowners early on in the project initiation phase include:

What goals do you have for the property/project?

Are there other title or interest holders that we should be aware of? Tenants? How should we best communicate with them?

Have you communicated with neighbors about your intent to sell?

(For agricultural properties) Have you engaged your local conservation district to determine if there are interested buyers within the local agricultural community and/or potential concerns about the intended acquisition?

Are there any considerations or goals you'd like to discuss related to the long-term stewardship of the property?

Applicants should also communicate with the landowner:

Project team roles and responsibilities, including who will be the single contact point for landowner

Communication protocols and frequency

What to expect from the acquisition process

The funding program's missions and values, which will drive the protection and stewardship after acquisition

Intended maintenance and stewardship goals and activities

Project review by the local conservation district

Ecology requests that applicants seeking funding for the fee-simple acquisition of land currently zoned for agricultural use discuss the project with the local conservation district, in coordination with the landowner. The purpose of the conversation is to better understand the agricultural value of the property, understand the potential impact of any water rights purchases, and determine if the conservation district is aware of other interested buyers who would continue the property's agricultural use.

Project review by local jurisdictions

Before applying for funding to acquire property, applicants must determine if the property of interest lies within a city or county that is subject to Washington State Growth Management Act (GMA) planning requirements.¹⁸ If the property lies within a jurisdiction for which GMA requirements apply, the applicant must confer with the county or city with jurisdiction over the project area and communicate if development rights will be extinguished as a result of the proposed acquisition. The applicant must then provide documentation that it has conferred with the local county or city officials. The jurisdiction's legislative authority may submit a letter to the OCB Director stating its support or opposition of the project within 30 days of receiving the applicant's letter. Note that applicants proposing acquisitions within jurisdictions that are *not* subject to GMA requirements are not required to follow this conferral process.

To meet this requirement, the applicant must demonstrate that the conferral¹⁹ process has begun by providing the jurisdiction's planning director or equivalent with the following:

- A cover letter requesting to confer with city or county officials about the project. The letter must state the option for the county or city to send a letter to the OCB Director stating its position on the project.
- A draft project description similar to what will be submitted in the project application.
- A location map and parcel map of the proposed acquisition properties.
- The geographic envelope of the proposed project if the applicant is pursuing a multi-site acquisition strategy.
- A description of any proposed extinction of development rights on the proposed acquisition properties.
- A copy of the relevant correspondence must be attached to the project application in EAGL before the application deadline.
- The applicant also must document that the conferral process took place. The documentation must include all of the following:
 - Conferral dates.

¹⁸ [Chapter 36.70A RCW](#)

¹⁹ Confer is defined as a dialogue between applicants and local county or city officials with the purpose of early review of potential projects. The dialogue may include any matter relevant to a particular project, which may include but need not be limited to: Project purpose and scope; project elements; estimated project cost; costs and benefits to the community; plans for project management and maintenance; impacts to the development potential of the parcel(s), and any intended public access.

- Name and title of each person participating in the conferral process and their relevant organization.
- A list or map of acquisition properties under consideration and any development rights being proposed for extinction.
- A list of the county or city official's key questions or concerns.
- A description of any project revisions resulting from the conferral process.
- A summary of any relevant follow-up actions.
- A copy of the documentation must be attached to the project application in EAGL before the application deadline.

A local government proposing to acquire property within its own political boundaries meets this requirement by submitting the adopted resolution that is required with the Ecology project application before the application deadline. A local government proposing to purchase property outside its jurisdiction (e.g., a city acquiring land outside its city limits or a county acquiring land within a city's limits) must comply with the conferral requirement.

Project scoping

When applying for funding, the applicants should clearly identify the intended uses of the property to ensure those uses are eligible or compatible with the goals of the OCB funding program. If the applicant wishes to use portions of the property for ineligible project activities, such as keeping ineligible structures or unallowed uses, the applicant must consult with OCB program staff when applying for funding or before acquisition.

Ecology can work with the applicant to exclude areas intended for ineligible activities from its Conservation Covenant or Assignment of Rights and the project agreement. Applicants should clearly delineate the area by a survey or legal description and value in the appraisal process. The covenant must include a legal description of the area that will remain in the Ecology-funded portion of the project.

The applicant must also establish the appraised value of the area excluded either through a separate appraisal or appraisal update, or by calculating the property value with the existing appraisal information. Applicants can consult Ecology about negotiating the area to be excluded and the appropriate method for valuing the property.

Due diligence

Notification to neighbors

Medium to large projects may require notification to neighbors, at the discretion of the individual funding program. Applicants and recipients may be required early in the due diligence phase to send notification via mailed postcard to all adjacent and adjoining landowners (including those on an opposite riverbank) notifying them of the intended acquisition and sharing OCB program staff contact information to whom they can direct feedback. In the case of large acquisition projects, the OCB Director will evaluate and determine if a wider distribution of notification postcard is needed to meet the scale of intended acquisition.

Preliminary title review

As a first step in reviewing title, Ecology encourages applicants to inquire with landowners in early conversations about any additional parties that hold a title interest (e.g., timber, water, or mineral rights) or other encumbrances (liens, mortgages, access easements, etc.) held by a third party. See the checklist of questions to ask landowners.

A preliminary title review is required. Preliminary title review occurs early in the active phase of a project. The preliminary title commitment for insurance must be reviewed to ensure the property is free of unacceptable encumbrances that may conflict with the purpose of the project.

Ecology requires a preliminary title report be submitted before issuing an agreement, and may request it as part of a project application if the conditions of the property are unclear or may potentially be ineligible for funding. Ecology recommends recipients request an updated preliminary title report 1 month before closing on the property to ensure no new encumbrances have been placed on the property since the last title review.

Ecology requires preliminary title review of all proposed acquisitions to ensure policies are met before closing on the property. Applicants and recipients may choose one of the following two options for conducting preliminary title review.

- Submit the Preliminary Title Report Checklist (available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)²⁰) along with the preliminary title report. On the checklist, the applicant or recipient certifies that they have reviewed the title and identified which encumbrances will be cleared before closing. Ecology will review the checklist and contact the applicant or recipient with any outstanding concerns.
- Request approval from Ecology to conduct preliminary title review independently (without Ecology review) for all Ecology -funded projects. An applicant or recipient may request independent review approval as an organization if it conducts multiple acquisitions with Ecology funding. The request must demonstrate the best practices for clearing title and ensuring that properties will meet Ecology requirements in this manual.

²⁰ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

If approval is granted, an applicant or recipient proceeds with acquiring land at their own risk. Ecology will withhold reimbursement if a property title does not meet Ecology requirements.

On the rare occasion that the preliminary title report cannot be obtained in time, the recipient may request a special condition be added to the project agreement that will require submittal of the preliminary title report before Ecology reimburses for any costs.

Appraisal requirements

Just compensation

Ecology determines just compensation to landowners based on appraisals and reviews of those appraisals. The applicant first contracts for an appraisal of the property to determine the market value of the property, including the land and any additional interest rights, e.g., development, water, mineral, timber, or a Right of First Refusal.²¹ Then the applicant contracts for an independent review of the appraisal to confirm the market value identified in the appraisal. The applicant is responsible for ensuring that the appraisal accurately reflects the subject property and rights to be acquired.

The appraisal and review appraisal must be procured on behalf of the applicant. The appraisal and review appraisal may not be procured on behalf of the landowner or other third party with an interest in the sale unless approved by Ecology in advance. If the applicant is partnering with a third party (e.g., another organization that is assisting with negotiating the transaction, co-holding rights, or holding third party rights), then the appraisal and appraisal review may be procured on behalf of, and authorized by, the applicant and the third party. The applicant must be listed as an intended user of the appraisal.

Note that a donated land may be subject to additional appraisal requirements or standards. Applicants are encouraged to communicate with the funding program to determine what is required and what additional appraisal costs are eligible for reimbursement.

In the case of stand-alone water rights acquisitions, a valuation method other than a standard appraisal may be allowed depending on the estimated acquisition costs and specific circumstances of the proposed water rights acquisition. The applicant must consult with the OCB funding program to determine what valuation method will be accepted.

Appraisal and review appraisal standards

There are two forms of acceptable appraisal and review appraisal standards depending upon the source of funding for the acquisition project. For projects funded with state money, the

²¹Applicants may use published lists from other state agencies. For example, see Washington State Department of Natural Resources approved appraiser list (<https://www.dnr.wa.gov/dnr-land-appraisal-unit>), or Washington State Department of Transportation's approved list (<https://fmdata.wsdot.wa.gov/ROWservices/approvedrowlist.php>)

applicant must instruct the appraiser and review appraiser to use the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) publication. The appraised market value of the property must be a point value, rather than a value range. (Example: \$257,000 rather than \$240,000 to \$270,000). Sample appraisal instructions and review appraisal instructions that applicants must use when hiring an appraiser and review appraiser are available via the online resources for voluntary acquisitions.

Projects with federal funding

For projects funded with the any federal funding, the applicant must instruct the appraiser and review appraiser to use the standards set forth in the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA). When an acquisition project will receive funding from both state and federal sources, the applicant must apply the federal standards to the entire project.

If you have a matching federal grant, check with the federal funding agency to see which standards to use.

Extraordinary assumptions and hypothetical conditions

All appraisal reports include a statement of assumptions and limiting conditions. In addition, an appraisal may include extraordinary assumptions or hypothetical conditions upon which the appraiser based the market value of the property. Applicants should avoid the use of extraordinary assumptions or hypothetical conditions unless consistent with the uniform appraisal standards. If the appraiser uses extraordinary assumptions or hypothetical conditions, the appraiser must clearly state these within the report and must provide a reasonable justification for using them. Additionally, the review appraiser must list all extraordinary assumptions and hypothetical conditions and comment on their reasonableness. If the findings are that the assumptions or conditions are not reasonable, the value of the land may not be supported. Ecology may not accept the appraisal and require a new appraisal without unsupported assumptions and conditions.

Ecology recommends that any extraordinary assumptions or hypothetical conditions (e.g., those related to legal access, zoning, encumbrances, etc.) provided to the appraiser first be reviewed by Ecology for compliance with Ecology policies and the project agreement. Ecology reserves the right to require an applicant to update an appraisal or get a new appraisal, at the applicant's expense, if the appraised value of the property is subject to any extraordinary assumption or hypothetical conditions not previously reviewed and approved by Ecology.

Encumbrances

When determining the property's market value, the appraiser and review appraiser must consider encumbrances and reservations that will be on the property as it is finally to be conveyed, which may be different than characterized on the preliminary title report. The applicant must provide the appraiser and review appraiser with the preliminary title report and the encumbrance documents. In addition, the applicant must inform the appraiser of any changes on title to be made up to closing, including encumbrances that will be cleared and any

new encumbrances or reservations that are to be created (except for Ecology's Conservation Covenant). Ecology may require supplemental information or an appraisal update before reimbursement or the release of escrow funds if the original report does not reflect accurately the encumbrances in place at the time of conveyance.

Appraisal report formats

State-funded projects

The *Uniform Standards of Professional Appraisal Practice* requires an appraisal report for all appraisal assignments. Ecology requires additional documentation beyond the standard *Uniform Standards of Professional Appraisal Practice* appraisal report for certain appraisal problems as described below. In all appraisals using the sales comparison approach, the appraiser shall include a comparable sales adjustment table. Ecology has included these requirements to ensure the accountability and transparency of the public's investment.

The following two report formats are acceptable for OCB-funded projects.

- **Appraisal Report:** Used if the appraisal problem involves only “whole takes” of the subject property. In other words, use this report when non-complex acquisition of an entire parcel(s) occurs with no partial takings or resulting damages to remaining properties.
- **Expanded Appraisal Report:** Used if the appraisal problem involves partial land takes, acquisitions involving damages, conservation or other easements, complex appraisal issues, etc.
- The expanded appraisal report is Ecology's requirement and is not defined in the *Uniform Standards of Professional Appraisal Practice*. It is similar in scope to a self-contained appraisal report, which was described in previous editions of the *Uniform Standards of Professional Appraisal Practice* but is not in the current set of standards. Therefore, applicants must clearly instruct their appraisers if they need expanded appraisal reports when they contract for appraisers' services and be clear about the appraisal reports expectations.
- The reason for the additional documentation in the expanded appraisal report is to fully illustrate the market value of the property to be acquired and the methodology used to make that determination.
- Ecology recommends applicants use the following language when soliciting for appraisal services and issuing contracts for an expanded appraisal report:
- *The appraisal must be reported in a fully self-contained appraisal report format to exceed the requirements outlined in the most current “Uniform Standards of Professional Appraisal Practices.” The report must describe in detail the information analyzed and the reasoning and methodology that supports any analyses, opinions, and conclusions. The*

report will be subject to review and the appraiser will be required to clarify any issues in writing. Failure to do so may result in the report being considered unacceptable.

- Applicants should consult with the appraiser and Ecology to determine whether standard appraisal reports or expanded appraisal reports will be required for their projects. Ecology may reject an appraisal report if it does not meet the intent of the policy described herein.

Federally-funded projects

Unless stated otherwise by the federal grant source, the *Uniform Appraisal Standards of Federal Land Acquisitions*, commonly called the “Yellow Book,” must be used to prepare appraisals and appraisal reviews for federally-funded acquisition projects. The Appraisal Foundation’s [Yellow Book](#)²² is revised annually and can be found on the Appraisal Foundation’s Web site. If the project involves federal funds, this requirement applies to new projects and to land transactions that occur as a result of a conversion.

Appraisal Shelf Life

State-funded projects

Appraisals for state-funded projects are valid for 1 year from the effective or valuation date of the appraisal. Recipients must either purchase the property or have a signed Purchase and Sale Agreement within 1 year of the effective date of the appraisal.

If the property is not acquired or a Purchase and Sale Agreement is not secured within 1 year of the effective date of the appraisal, the applicant or recipient must obtain a new appraisal statement from the appraiser stating that land values have not changed and the appraised value is the same since the effective date of the appraisal. If the appraiser cannot or will not provide such a statement, the applicant or recipient must obtain an appraisal update (see below). Costs associated with the appraisal statement may be reimbursed by Ecology. The shelf life of an appraisal for any state-funded project may not exceed 18 months under any circumstances.

Federally-funded projects

Appraisals for federally-funded projects are valid for 12 months. Recipients using federal funds must either purchase the property or have a signed Purchase and Sale Agreement within 1 year of the effective date of the appraisal.

Appraisal updates

²² https://www.appraisalfoundation.org/imis/TAF/Yellow_Book.aspx

An appraisal update is a new appraisal assignment to the original appraiser that incorporates information and analysis from the original report to get a current market value. A review appraisal is required for all appraisal updates. Appraisal and review appraisal updates may be reimbursed by Ecology. An appraisal update obtained within 24 months of the original appraisal effective date is not considered a new appraisal. For Ecology reimbursement purposes, appraisal updates after 24 months are acceptable to determine the market value, but will not be an eligible cost for reimbursement. Appraisal updates may be needed if new encumbrances arise on the property as a result of negotiations prior to closing.

Appraisal waivers

When the estimated value of the property does not exceed \$50,000, and the acquisition is not complex, applicants may be exempt from having to meet appraisal and appraisal review standards. Such exemptions must be requested in writing before closing on the property. In lieu of the appraisal standards, an applicant may submit a written “Finding of Value” that includes:

- The preparer’s name, experience, and qualifications. The preparer must have sufficient understanding of the real estate market and shall not have any interest, direct or indirect, in the real property to be valued for compensation. Applicant staff may not prepare the “Finding of Value.”
- A description of the methods and factors used to reach the value for compensation. This description must have enough detail to allow Ecology to understand how the preparer used market information to decide a market value.

Examples of “Findings of Value” may include an “Administrative Offer” prepared by a certified right-of-way agent, a “Broker Price Opinion” prepared by a qualified real estate broker or other individual, or other narrative summary of recent market information and the analysis used to decide the market value of the property.

Appraisal reviews

Independent appraisal reviews are required for all appraisals to confirm just compensation for the property. If the original appraisal relies on a timber cruise, other special reports, or research to establish property value, those also must be reviewed. Appraisal reviews must include the following:

- Field inspections of the property and comparable sales when the appraisal sets the property value of the acquisition project at \$250,000 or higher. Desk reviews are acceptable for properties having a value less than \$250,000.
- The review appraiser must comment on whether the following conditions are met:
 - The appraisal is complete within the scope of work applicable and the appraisal assignment.

- The appraisal met applicable appraisal standards.
 - The appraiser's extraordinary assumptions are reasonable and justified.
 - The appraiser's hypothetical conditions are reasonable and justified.
 - The appraiser's consideration of encumbrances was satisfactory.
 - The appraiser's data and adjustments are adequate and relevant.
 - The appraiser's methods and techniques are appropriate.
 - The appraiser's analysis, opinions, and conclusions are reasonable.
- The review appraiser must approve or reject the value conclusion in the original appraisal.
 - If the review appraiser approves the market value established in the original appraisal, they either can acknowledge that the appraisal meets the appraisal guidelines in this manual or do the necessary work to bring the original appraisal into compliance. The confirmed market value is the final just compensation for the property.

If the review appraiser rejects the value established in the original appraisal, the applicant must either instruct the review appraiser to establish a new property value or obtain a new appraisal. The new property value then becomes the just compensation for the property. If the review appraiser previously had conducted a desk review of the property and now is working to establish a new property value, the review appraisal must take the form of a field review.

Appraiser and review appraiser qualifications

RCW Chapter 18.140, Certified Real Estate Appraiser Act, establishes four certification or license categories.

- **State-certified general real estate appraiser** (license number begins with 270-11): Eligible to develop and communicate real estate appraisals of all types of properties.
- **State-certified residential real estate appraiser** (license number begins with 270-17): Eligible to develop and communicate real estate appraisals of all types of *residential* property of one to four units without regard to transaction value or complexity and *nonresidential* property having a transaction value less than \$250,000.
- **State licensed real estate appraiser** (license number begins with 270-16): Eligible to develop and communicate real estate appraisals of noncomplex, one to four residential units having a transaction value less than \$1 million; complex, one to four residential

units having a transaction value less than \$250,000; and nonresidential property having a transaction value less than \$250,000.

- **State registered appraiser trainee** (license number begins with 100): Eligible to assist certified real estate appraisers while gaining experience. The appraisal or review appraisal also must be signed by a certified real estate appraiser.

Applicants must select an appraiser and review appraiser with appropriate certifications or licenses from Washington State to perform appraisal work unless the appraisal review is conducted by the Natural Resources Conservation Service for farmland acquisitions. Review appraisers must have an equal or greater license certification than the original appraiser and cannot be selected from the same firm, organization, or agency who conducted the original appraisal.

Applicant staff may perform appraisals or review appraisals if they meet the state licensing requirements. Applicant staff may not conduct both the appraisal and appraisal review on the same property. If a staff person is conducting appraisal work on behalf of the applicant, they may communicate with the independent appraiser in the role as an appraiser, not as the client or the intended user of the appraisal. A staff person functioning as a negotiator with a property owner may not supervise or formally evaluate the performance of any appraiser or review appraiser.

Appraisal costs

The cost to procure an appraisal and review appraisal are eligible project costs and are reimbursable per the project agreement. A copy of the appraisal and review appraisal must be submitted to Ecology at the time of the reimbursement request for the appraisal and review costs. Ecology requires the recipient to submit the appraisal and review appraisal in advance of closing on the property for Ecology approval to ensure that the scope of the appraisal meets the terms of the project agreement and this handbook.

Only one appraisal and one review appraisal for each property is eligible for reimbursement. Ecology may approve the cost for a new appraisal and review appraisal on a case-by-case basis in advance. The recipient must submit a written request to approve reimbursement for a new appraisal and review that includes adequate justification as to why the new work is required.

Encumbrances

Property rights acquired with Ecology funding must be free of encumbrances that disproportionately limit the benefit to the Chehalis Basin Strategy (i.e., aquatic species habitat restoration/protection and/or flood damage reduction). Prior to closing, Ecology will review all encumbrances that will stay with the property after acquisition and will provide approval, in writing, to proceed to closing.

For example, an encumbrance on the property that allows for maintenance of a river dike may conflict with the aquatic species restoration purpose of the Ecology funded project. Other

examples of encumbrances that may be of concern are liens, lack of legal access, leases, septic drain fields, and other items that may impede project success or programmatic goals.

Appraisal reports must consider the impact of all encumbrances to the market value of the property at the time of closing for the acquisition to qualify for reimbursement. If the appraisal contains assumptions that may impact value, Ecology may require those assumptions to be resolved at closing (e.g., assumptions regarding legal access would need to be acquired). The final title insurance policy must show that the property rights are free of unacceptable encumbrances as determined by Ecology.

Complementary covenants or deed restrictions from other funders

If an acquisition project includes funding from other sources that also require some form of encumbrance on the property such as a Notice of Grant, Deed of Right, deed restriction, or other encumbrance, the recipient must provide a draft of the encumbrance to Ecology for review prior to recording. Ecology will review the encumbrance for consistency with Ecology's Conservation Covenant or Assignment of Rights and the project agreement before the recipient can proceed with closing on the property. As long as the encumbrance from the other funding source is consistent and compatible with OCB's funding, no conversion will occur per the policies in [Chapter 6: Compliance, non-compliance, and long-term obligations](#) of this handbook. When there are multiple funding sources, Ecology will seek to work with the other funding entities to develop a mutually agreed-upon deed restriction or Deed of Right.

Cultural resources

Governor's [Executive Order 21-02](#)²³, Archaeological and Cultural Resources, directs state agencies to review certain acquisition and construction projects for potential impacts to cultural resources²⁴ to ensure that reasonable action is taken to avoid adverse impacts to these resources. The federal government, through Section 106 of the National Historic Preservation Act, requires the same compliance for federally-funded projects and projects with other federal involvement, for example, projects on federal lands or those that require a federal Army Corps of Engineers permit.

Ecology (for projects addressing flood damage reduction or multiple benefits) and WDFW (for projects focused on habitat restoration/protection) will serve as lead agencies and will initiate consultation and review under the Governor's executive order. The appropriate lead federal agency facilitates review under Section 106 of the National Historic Preservation Act. If the federal review covers the entire project area, there is no additional review required to meet state requirements. Both processes require review, analysis, and consultation with the

²³ <https://rco.wa.gov/wp-content/uploads/2021/04/CulturalResourcesExOrder.pdf>

²⁴ Cultural resources means archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to affected tribes.

Washington Department of Archaeology and Historic Preservation and affected Native American tribes for archaeological and cultural resources.

Cultural resources review is required for projects that involve the expenditure of state funds for construction, demolition, or acquisition.

21-02 Review Process

After being awarded funding, the recipient must submit a consultation checklist to the project manager (available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)²⁵). Using materials from the recipient checklist, Ecology or WDFW submits project information to the Department of Archaeology and Historic Preservation (DAHP) and affected Tribes to determine if the project has the potential to impact cultural resources and whether further consultation will be required. The recipient must include an Area of Potential Effect Map, which shows the geographic areas where a project may change directly or indirectly the character or use of historic properties or archaeological resources. The consultation period is 30-60 days and should be considered when planning project milestones.

Either Ecology or WDFW will be the lead consulting agency; Ecology will typically be the lead agency for flood damage reduction projects and WDFW will be the lead agency for ASRP and habitat-focused projects. For all acquisitions, the lead state agency will conduct a high-level desktop review prior to, or parallel to, consultation with Tribes, DAHP, and USACE.

Important Note: Funding recipients may not disturb the ground within the project area until after receiving a notice to proceed from Ecology or WDFW, which sometimes might be in the project agreement with Ecology.

Except for state agency applicants (see below), all consultation through Executive Order 21-02 will be initiated and led by Ecology or WDFW and will involve the recipient, DAHP, and affected Tribes. After the consultation period has ended, there may be additional actions requested by DAHP or Tribes. The outcome of the consultation may require the recipient to initiate a cultural resource study (e.g., desktop review, draft work plan or survey) incorporating consultation feedback. The recipient may also be requested to carry out a cultural resource survey, offering site visit to Tribes and agencies. The recipient should provide draft plans and reports to the lead agency for review. The consultation must be completed prior to the expenditure of any state funds for construction, demolition, or acquisition.

After the draft plans have been reviewed, the recipient will incorporate feedback and finalize report, then develop an Inadvertent Discovery Plan (IDP) and provide to field and construction personnel in accordance with the 21-02 process.

²⁵ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

The costs for cultural resources review and survey are eligible for reimbursement and may be included in the project agreement.

Federal Section 106 Review

If a federal nexus exists (federal funding, federal land, or issuance of a federal permit) then the project may be subject to review under Section 106 of the National Historic Preservation Act, and would be deemed exempt from Governor's Executive Order 21-02. The recipient must submit to Ecology or WDFW evidence of completion of the Section 106 consultation prior to the expenditure of any federal funds for construction, demolition, or acquisition.

If cultural resources are discovered during construction

If archaeological or historic materials are discovered after ground-disturbing activities have started, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following groups:

- Concerned Native American tribes' cultural resources staff and cultural committees
- Ecology or WDFW Project Manager, who will report it to appropriate agency personnel.
- Department of Archaeology and Historic Preservation

If human remains are discovered during ground-disturbing activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the groups listed below in the most expeditious manner possible, in compliance with state law.²⁶

- Concerned Native American tribes' cultural resources staff and cultural committees
- Ecology or WDFW
- Department of Archaeology and Historic Preservation
- County coroner
- Local law enforcement

State agencies

State agency recipients have the authority to act as lead for ensuring compliance with archaeological, historic, and cultural resource requirements. Ecology will not initiate review or consultation for projects sponsored by another state agency. Before initiating any ground-

²⁶Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCW 68.50.645, 27.44.055, and 68.60.055)

disturbing activities, the state agency recipients must submit to Ecology and/or WDFW evidence of completion of the appropriate cultural resource review process and receive from Ecology a notice to proceed. Ecology will withhold reimbursements for any development or restoration (including demolition, fencing, and noxious weed control) expenditures until this requirement is met.

Environmental audits

An environmental audit is required supporting documentation for each Hazardous Substances Certification. Acceptable environmental audits are the following:

- Environmental site assessments per American Society for Testing and Materials (ASTM) standards.
- All Appropriate Inquiries per U.S. Environmental Protection Agency standards.
- Property Assessment Checklist (available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)²⁷)

If there are significant findings or recommendations in the environmental audit, Ecology may request the audit report be provided to the appraiser for consideration to determine whether the findings would affect the appraised value of the property. If an environmental audit identifies action items that are not related to cleanup of a hazardous substance (e.g., debris cleanup, empty tank removal, structure removal, well decommissioning, materials below Model Toxics Control Act cleanup levels, etc.), the recipient must implement the recommendations and such costs are eligible demolition expenses. If the findings or recommendations will not be addressed during the active project agreement, the recipient must provide Ecology with a plan to address the findings or recommendations in the future.

Buying contaminated property

Purchase of property contaminated with any hazardous substances not meeting standards as determined by the Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act is ineligible for Ecology funding except under any one of the following circumstances:

- The intended future use of the property as proposed in the project application can proceed and Ecology or U. S. Environmental Protection Agency has determined that cleanup is complete or no further cleanup action is needed.
- The intended future use of the property as proposed in the project application can proceed while cleanup monitoring is ongoing.

²⁷ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

- The property contains contaminated pilings, which the applicant plans to remove in a future action or in combination with Ecology funding.

If a property is listed as contaminated with Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act, the applicant must provide Ecology with a letter from the appropriate state or federal agency that states cleanup is complete or no further action is needed and the proposed project application can move forward. If the applicant fails to provide Ecology with this letter, the property is not eligible for Ecology funding.

Ecology strongly advises applicants to buy land that has never been contaminated or is certified as meeting hazardous substances requirements. Clean-up costs are very hard to predict. Attempts to clean up a site can result in substantial expenses that are not eligible for Ecology reimbursement or as match. If an applicant wishes to purchase a contaminated property that does not meet one of the above exceptions, the applicant may request a Waiver of Retroactivity. The property will be eligible for Ecology funding after it has been cleaned up as long as the property is cleaned up before the expiration of the Waiver of Retroactivity.

Hazardous substances certification

Recipients that receive funding to buy real property must certify that each parcel meets standards established under the Model Toxics Control Act.²⁸ Purchase of property contaminated with any hazardous substance not meeting the Model Toxics Control Act's standards is ineligible for Ecology funding. A hazardous substance is defined as the following:

- Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010 (5) and (6) RCW or any dangerous or extremely hazardous waste designated by rule pursuant to RCW Chapter 70.105 RCW.
- Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105 RCW.
- Any substance that, on March 1, 1989, is a hazardous substance under Section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14).
- Petroleum or petroleum products.
- Any substance or category of substances, including solid waste decomposition products, determined by the Ecology Director (or designee) by rule to present a threat to human health or the environment if released into the environment.

²⁸Chapter 70.105D RCW

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.

Recipients must complete a Hazardous Substances Certification Form (available via the online resources for voluntary acquisitions) for each parcel and provide documentation to support the certification. The certification ensures that the recipient has inspected, investigated, and conducted an environmental audit (see below) of the parcel for the presence of hazardous substances.

The recipient must certify the following:

1. No hazardous substances were found on the site, or
2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed “clean.”
3. The recipient will defend, protect, and hold harmless Ecology and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

Recipients should complete the hazardous substances certification before acquiring the property. The certification must be submitted to Ecology before reimbursement of the property costs.

Baseline inventory

A baseline inventory is required for all property acquired with OCB funds. A baseline inventory records and characterizes the environmental aspects of the property at the beginning of the project agreement. The inventory provides the basis for future monitoring and, if necessary, enforcement. It is particularly important in the event of a violation. A baseline inventory also is required by the Internal Revenue Service for any tax-deductible easement gifts.

The baseline inventory must be prepared before closing and signed by the landowner and easement or title holder at closing.

If the baseline inventory is not filed as an attachment to the conservation easement or Conservation Covenant, the legal documents must reference its existence and location. In determining where the original baseline inventory will reside, you may want to consider who may be undertaking future compliance monitoring and enforcement activities. Ecology must be provided with a copy of the signed baseline inventory.

Baseline data should characterize and document the condition of property features protected or affected by the project agreement terms. The baseline inventory should be descriptive and include maps, plans, photographs (aerials or ground), and narratives. Documentation methodology should be objective and reproducible so that future monitoring can be repeated in a comparable manner. Include ecological, biological, geological, land use, and other property features. The level of detail for each category may vary depending on physical land features and the specific terms of the project agreement. The baseline inventory will be used as a compliance tool over time, and will help protect the landowner from potential future compliance issues. The more detailed the baseline inventory, the easier it will be to understand problems existed at the time of acquisition/protection or if they have arisen after and need to be addressed through a compliance process. Generally, the more restrictive the terms of the agreement, the more detailed the documentation should be. See Example Baseline Inventory Outline (available via the [online resources for voluntary acquisitions](#)).

The baseline inventory must include:

- U.S. Geological Survey quad map (1:24,000, 7.5), showing property lines and other contiguous or nearby protected areas, and a parcel map or county assessors map showing property boundaries.
- A map of the area drawn to scale showing all existing human-made improvements or incursions (such as roads, buildings, fences, or structures), vegetation and wildlife (species locations, breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and riparian areas).
- A narrative description of the property (at or near the time of purchase). Include habitat values, unique and existing land features, natural resources (include vegetation and fish and wildlife), water quality and quantity, and historic and current land uses.
- Photographs taken at permanent photograph point locations on the property that adequately depict the conservation easement area and natural resources to be protected. The photographs should document the condition of the resource at or near the time of purchase. Include aerial photographs with property boundaries indicated (if possible).

In the event of poor seasonal conditions for documenting all conservation values, an interim baseline inventory with a completion schedule must be signed at closing. If the baseline inventory has been completed and a significant amount of time has elapsed before the property or easement is transferred, Ecology may request updates before closing.

The [Land Trust Alliance](http://www.landtrustalliance.org/)²⁹ has two references regarding baseline inventories, monitoring, and stewardship of easements: Managing Conservation Easements in Perpetuity; and Conservation Easement Stewardship.

Map requirements

Map for legal documents

Ecology requires a property boundary map for each parcel acquired to be filed with the Conservation Covenant, Assignment of Rights, or easement. The map background may be shaded or aerial photography but must be clear enough to be copied in black and white. Check with the local recording office for additional requirements. The map must include the following:

- Ecology project number and name consistent with what is listed in EAGL
- Recipient name
- Date of the map preparation
- Adjoining streets, roads, and water bodies
- Boundary line of land protected by the Conservation Covenant, Assignment of Rights, or easement. If an easement includes a building envelope or multiple zones (where different sets of permitted and prohibited activities apply), the map should clearly delineate each envelop and zone.
- North arrow and scale
- Recipient signature and date

Property map

Ecology encourages recipients to submit to EAGL more detailed maps to document other features of the property. Other information that helps identify the property includes deed references, location of all known easements, outstanding rights, deed/lease restrictions, reversionary interests, adjoining ownerships, adjoining water bodies or other natural landmarks, geographic coordinates at the site entrance or corners of the property, survey information, and other measurements. A professional survey is not required; however, if a survey has been completed with Ecology funding and the property is acquired, the survey must be recorded with the county auditor and a copy provided to Ecology.

²⁹ <http://www.landtrustalliance.org/>

Drafting and reviewing legal documents

The process for draft and review of the Conservation Covenants and Assignment of Rights documents is as follows:

- Ecology drafts the Conservation Covenant or Assignment of Rights and shares it with the recipient's project manager for comment. The recipient will have an opportunity to comment on the draft. Note that recipients should expect a draft within 30-60 days of the effective date of the project agreement.
- Upon receiving the draft back from the recipient, Ecology will edit it, if needed, and then route it for review by the Attorney General's Office. Note that recipient should anticipate a 30-day review timeline for this review.
- Ecology will then send the signed Conservation Covenant or Assignment of Rights to the recipient for its legal review and notarized countersignature.
- The recipient records the signed and notarized Conservation Covenant or Assignment of Rights with the county auditor. The county auditor sends the original recorded document to the recipient. The recipient submits a copy of the recorded Conservation Covenant or Assignment of Rights to Ecology once it is received back from the county auditor.

Note: Since legal documents will need to be reviewed by the Attorney General's Office, please anticipate adequate time for review prior to closing.

An alternative to recording an Assignment of Rights is to incorporate the required language from the Assignment of Rights directly into the easement or lease document, thereby eliminating the need to record a separate document with the county auditor's office. When the easement or lease directly incorporates the Assignment of Rights, Ecology becomes a third-party beneficiary to the easement and must sign the easement or lease document. The easement or lease language will depend upon the situation. Recipients must submit the draft language to Ecology for approval before executing the easement or lease.

A map is a required exhibit for each Conservation Covenant or Assignment of Rights. See more information on map of legal documents section above.

Closing/Post-closing

Ecology disburses grant funds to recipients on a cost-reimbursable basis. The recipient must incur eligible costs within the effective date and expiration date of the grant agreement. Cash advances are not allowed, except for escrow payments approved in advance with Ecology.

Escrow payments

Although Ecology operates on a reimbursement basis, Ecology can deposit money in an escrow account for a pending acquisition if the conditions below are met. Ecology requires a minimum of 30 days to process an escrow payment after it is requested, however it is strongly encouraged that an applicant who anticipates needing an escrow payment communicate that need to funding program staff at the time of application to help prevent any last-minute issues. Once an escrow payment is approved, it can take 3-7 business days for the funds to be received in escrow. See more information on the escrow payment requests process in the [online resources for voluntary acquisitions](#) and contact the awarding program for additional and specific instructions.

A recipient must request an escrow deposit by submitting a Progress Report and Payment Request (PRPR) in EAGL, completing all screens required for an escrow payment and sending the wiring instructions from the title company to the awarding program manager. The following documents must be uploaded in EAGL:

- The Voluntary Acquisition Notice and the Just Compensation and Relocation Notice.
- Landowner donation statement, if applicable.
- A legally binding agreement between the recipient and the landowner, typically a Purchase and Sale Agreement or an Option Agreement.
- A copy of the Buyer's Estimated Settlement Statement with evidence showing that the recipient's matching share has been deposited into the escrow account.
- Escrow payment instructions that include reference to recording Ecology's Conservation Covenant or Assignments of Rights, as applicable.
- The draft transfer deed, easement, or lease.
- The draft Conservation Covenant or Assignment of Rights.
- Baseline inventory.
- An updated preliminary title insurance report, if not previously provided.
- Appraisal and appraisal review.
- Hazardous Substances Certification and supporting checklist or environmental audit.

Once Ecology deposits funding into the escrow account, closing must occur within 30 days or Ecology may request the money be returned. After the transaction is complete, a copy of the executed and recorded conveyance document (e.g., deed, easement, or lease), recorded Conservation Covenant or Assignment of Rights, and final title insurance policy, naming the recipient as legal owner, must be provided within 60 days of closing.

Recording

For fee simple acquisitions, the deed and Conservation Covenant must be recorded immediately with the county auditor and before a recipient can request reimbursement for the land costs, unless Ecology will be depositing funds directly into the escrow account. If the deed is recorded after closing, Ecology may request an updated final title report or endorsement to the title insurance policy to ensure no new encumbrances have been placed on the property before the filing of the Conservation Covenant.

Similarly, for conservation easements, the easement and Assignment of Rights must also be recorded immediately with the county auditor. Ecology will not reimburse the recipient for property costs until the easement and Assignment of Rights is recorded.

Title Insurance

A title insurance policy must be purchased on all real property acquisitions for the appraised value of the property to safeguard the rights acquired with OCB funding. Extended or enhanced title insurance may be appropriate for certain acquisitions to mitigate for risks associated with the condition of the title. Extended title insurance may require a boundary survey and other additional costs. Contact OCB program staff if you are required or are considering purchasing extended title insurance and seeking Ecology reimbursement for the cost.

In some cases, a recipient may not be able to purchase title insurance because the property is uninsurable. An exception to the title insurance requirement may be the purchase of land from a railroad company or other unusual transactions. The recipient must consult with Ecology early in the project if they cannot obtain title insurance.

Relocation requirements

All voluntary acquisition projects funded through the Chehalis Basin Strategy must follow federal and state laws, which require Ecology to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly referred to as the Uniform Relocation Act (or URA), on all federally- and state-funded projects.³⁰

An OCB-funded acquisition that involves the purchase of property from a willing seller is considered a voluntary transaction.³¹ The applicant must provide the property owner written assurance that the property will not be acquired through condemnation at the beginning of any negotiation. As the acquisition is a voluntary transaction, the seller is not eligible for reimbursement of relocation expenses. However, any tenant that qualifies as a displaced person is eligible for relocation per an approved relocation plan. A tenant is a person who has

³⁰Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, P. Law. 100-17-1987; and chapter 8.26 Revised Code of Washington

³¹Washington Administrative Code 468-100-101(2)(a).

the temporary use and occupancy of real property owned by another.³² A tenant may have a residential or business use on the property. Moving cost assistance may also be provided to willing sellers (residential or commercial) as an outcome of negotiations and is a conditionally eligible cost.

The recipient must conduct administrative services needed to comply with the Uniform Relocation Act,³³ if there are eligible displaced people associated with the property. These services may include preparation of a relocation plan, relocation cost estimate, and relocation services. The relocation agent must be approved by the Washington Department of Transportation, and Ecology must agree in advance on the qualifications of the relocation agent. When contracting for relocation services, recipients should instruct the relocation agent that the acquisition is a voluntary transaction. Administrative costs and contracts to conduct relocation are eligible relocation expenses in an Ecology project.

For more information about relocation assistance or acceptable forms to be used in providing relocation assistance, contact the Department of Transportation's [Real Estate Services Relocation Program](#)³⁴.

Stewardship plans

All OCB-funded acquisition projects require a stewardship plan. Recipients must provide a stewardship plan following closing and before the project agreement ends. A plan is necessary to ensure the recipient meets the project objectives per the project agreement by maintaining and monitoring the site in perpetuity. Generally, stewardship plans are required within 12 months of closing, however the timing will be dependent on the individual project agreement. Preparation of a stewardship plan is eligible for reimbursement. See the stewardship plan outline available via the online resources for voluntary acquisitions.

Ecology strongly recommends that applicants and recipients communicate intended stewardship goals and actions with landowners or lessees as early as possible, prior to establishing the stewardship plan, to ensure that there is mutual understanding and commitment to the long-term monitoring and management of the land before stewardship is underway.

Additional rules and instructions

Legal access

In most cases, all property acquired in fee simple with OCB funding must have direct legal access to the property. Access should be confirmed prior to acquisition. Legal access is

³²Washington Administrative Code 468-100-002

³³Chapter 8.26 Revised Code of Washington

³⁴ <http://www.wsdot.wa.gov/realestate/>

important for property management, public access, and Ecology and/or recipient compliance and inspection purposes.

For all OCB acquisition projects, the legal access requirements are as follows:

1. **Legal access.** Regardless of whether OCB allows or restricts public access on a fee simple acquisition, the property must have direct legal access for the property to be managed by the recipient and Ecology to conduct compliance inspections.

Legal access to a property means the recipient has the legal, insurable right and means to reach the property year-round. For properties surrounded by water (i.e., islands), legal access must be obtained across shorelands, tidelands, or bedlands as appropriate.

Legal access must provide sufficient access rights for Ecology to monitor compliance for which the funding was provided and for the recipient to maintain the property.

2. **Informal access.** If the recipient cannot obtain legal access rights to the property as above, informal access may be pre-approved by OCB if all four of the following conditions are met:
 - i. The recipient owns the adjacent property and can access the OCB-funded property from the recipient's existing property holding; or
 - ii. Access to the property can be accomplished through existing public land
 - iii. Ecology will be able to conduct compliance inspections with minimal burden to get to the property
 - iv. The appraised value reflects a lack of legal access to the property.
3. **No access.** If the recipient cannot obtain legal access or demonstrate informal access by one of the above means, Ecology, under limited circumstances, may approve acquisition of property without any means of access on a case-by-case basis if all three following conditions are met:
 - i. All reasonable alternatives have been exhausted.
 - ii. The property to be acquired is critical to implementation of the project agreement.
 - iii. The appraised value reflects a lack of legal access to the property.

Funding acknowledgement

Signs

Some acquisition projects may be required to acknowledge the OCB awarding program at the project site with prominent placement of a sign. This determination will be made by OCB subject to the awarding program manager's discretion and will be informed by the uses of, and public access to, the project site. The recipient may build signs to harmonize with a design standard or to follow the standard acknowledgement sign from OCB. For projects where funding acknowledgement is required, the funding acknowledgement signs must be posted before the project agreement end date. Recipients should include signage location(s) in the final report and stewardship plan.

Other public funding acknowledgements

A project agreement may require the recipient to publicly recognize the funding source via other methods, including:

- Recognition in any release or publication developed or modified for the project.
- Recognition at dedication ceremonies. (Notify OCB at least 2 weeks before the ceremony if you wish to have a representative of OCB at the ceremony. Notify OCB 30 days in advance if you wish to have a speaker from OCB.)

Public disclosure rules

Ecology records and files, including those related to acquisitions, are public records that are subject to the Public Records Act.³⁵ The appraisal and appraisal review are exempt from public disclosure for 3 years or until the sale is completed or abandoned.

³⁵Chapter 42.56 Revised Code of Washington

Chapter 5: Project agreements and reimbursements

Project agreements

Project approval and authorization to proceed

After the project has been approved for funding, Ecology will work with the recipient to prepare a project agreement. See example acquisition task language available via the [online resources for voluntary acquisitions](#)³⁶. Recipients should carefully review the terms and conditions.

Recipients may not begin a project before executing a project agreement with Ecology. For information on what costs may be eligible if incurred prior to the project agreement execution, unless there is a Waiver of Retroactivity in place or the recipient has been approved to incur eligible pre-agreement costs. See the pre-agreement costs and Waiver of Retroactivity sections of this handbook. The standard agreement term is two years from execution, however individual project agreement terms will be determined on a project-by-project basis.

Reimbursements

In general, the recipient must provide the deliverables completed with the corresponding invoice request when it is submitted to Ecology. Be aware that Ecology may reject documents if they do not follow the requirements in this handbook. The awarding program manager is available to review draft documents to ensure compliance with Ecology requirements. Ecology may retain a percentage of the awarded funding until all deliverables are provided.

Refer to individual OCB program funding guidelines for additional requirements on payment requests and progress reports, as well [Ecology's EAGL webpage](#)³⁷ with relevant guidance and forms.

Reporting

In addition to annual billings, recipients must submit written status reports summarizing the progress to date on all active projects. Due dates for progress and final reports are outlined in the project agreement milestones. In addition, recipients of completed projects are required to report on specific matters whenever requested to do so by Ecology. Progress reports must contain a summary of:

- Task accomplishments and a percent the project is complete for the report period
- Reasons for any delays

³⁶ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

³⁷ <https://ecology.wa.gov/about-us/payments-contracts-grants/grants-loans/grant-loan-guidance>

- Reasons for any cost overruns
- Any additional pertinent information and a response to metrics, if applicable

For requirements related to compliance, see the Inspections and monitoring section of this handbook.

Final closeout report

The recipient must submit a final closeout report and all other final closing documentation the OCB funding program requires. The awarding program staff will verify that all documentation is received and the project is satisfactorily completed before approving payment of the final invoice.

Consult the awarding program's funding guidelines and Ecology's [Yellow Book³⁸](#) for additional guidance.

Project agreement amendments

Modifications and changes to the funding agreement may become necessary to address changes to scope or elements of the project. If an amendment is needed, the recipient must submit any proposed amendments or changes in writing to the awarding program manager. Different funding programs may have different procedures or types of modifications that can be allowed. Recipients should work directly with their funding program on proposed amendments. Common reasons for amendments could include:

- Increase or decrease to the budget, redistributing the budget between tasks.
- Scope of work and deliverable changes (see element changes below).
- Changes to required performance.
- Time extensions.

Generally, recipients, the program manager, and fiscal managers will negotiate changes and document the changes as an amendment to the project agreement. All proposed project changes are subject to approval by Ecology. Either the recipient or Ecology may initiate the amendment process. If the program manager concurs with the written request, the fiscal manager prepares the amendment for review and signature by both parties.

Element changes

A change to an element or work type of the project agreement may result in non-compliance and may require an amendment. See the non-compliance section of this handbook. These

³⁸ <https://apps.ecology.wa.gov/publications/SummaryPages/2301002.html>

changes may be minor or major and remediation (reimbursement to Ecology) may be required. Ecology only may approve a request for amendment when a recipient provides documentation that supports the request and the project area remains available for the intended use and purpose.

Minor element changes do not conform to the project agreement but create no negative effect on the purpose for which the project was originally funded. Ecology will require a project amendment to account for the changes. Examples of minor element changes include adjustments to a planting plan or leaving ancillary structures onsite if they can be repurposed to the benefit of the project agreement.

Major element changes do not conform to the project agreement and negatively affect, but do not eliminate, the purpose for which the project originally was funded. Staff from the awarding OCB program will work with the recipient to find remedies for major element changes. Ecology will require a project amendment to account for the change. Examples of major element changes include significant design changes and changes that negatively impact the intended benefit. The recipient should consult the awarding program's funding guidelines to determine what constitutes a major element change.

Time limits and extensions

Recipients must complete funded projects promptly. For this reason, recipients must establish a timetable for project completion, including enforceable milestones and a project completion date, to be reviewed by the awarding program staff. To avoid the risk of Ecology withdrawing the funding, and to help ensure timely project completion, accountability, and the proper use of public funds; applicants must provide reasonable assurance that the project can be completed within a reasonable. Reasonable assurance may include such evidence as:

- Appraisals and review are completed
- Bid documents are prepared
- Environmental assessment is completed
- Hazardous substances review is completed
- Option agreement is signed
- Permits are in-hand
- Property is in escrow
- Waiver of Retroactivity is in-hand and signed

Applicants must submit materials from the list above and requested by OCB within 60 days of funding approval. Once an agreement has been sent to the applicant, the applicant must return it in 3 months.

Awarding program staff monitor critical project milestones (for example, ordering appraisals and reviews). Unsatisfactory progress may result in OCB terminating the project or imposing other remedies.

If a need for a time extension should arise, the recipient should work with the funding program to determine the feasibility and information needed to amend the agreement.

Recipients can reapply for funding of terminated projects from lack of progress, once the project is ready to proceed.

Cost changes and increases

A recipient may request to shift costs between tasks or increase overall project costs.

If a recipient underbudgeted for a specific task, they may request to shift funds. If the project agreement allows, funding can be shifted between tasks if under 10% of total project cost without an amendment. OCB must approve any shifts that move funding between tasks over 10% of the total project cost.

Additionally, on occasion, the total cost of completing a project exceeds the amount written into the agreement. Such overruns are the responsibility of the recipient. If funds are available, Ecology will consider a recipient's request for a cost increase. The recipient must submit this request in writing. The OCB Director may approve cost increase requests and may engage the Chehalis Basin Board on certain requests

Chapter 6: Compliance, non-compliance, and long-term obligations

Complying with the project agreement

When receiving OCB funding, the recipient signs a project agreement with terms and conditions that affect the project area even after the work is completed and the final reimbursement is made. The long-term obligation or compliance period is determined by the individual funding program's policy as specified in its funding guidelines, as well as project type, ownership of the project area, and any other requirements of other grant programs that provide funding for the project as applicable.

The project agreement requires the recipient to operate and maintain the project area for its intended purpose, which is either to provide aquatic species restoration/protection, flood damage reduction, or both, through the specified compliance period articulated in the project agreement – either a specified number of years or in perpetuity. When a scope change is planned at a project site, or portion of a site, a recipient must contact Ecology for review. Ecology will determine if the change creates a compliance issue and if Ecology approval is required as determined by the laws, administrative rules, project agreement, and policies.

Compliance policy

Use of OCB funding creates a public interest in perpetuity or for a specified period of time per the project agreement. The original program funding, the project agreement, the project area boundary, Conservation Covenant, easement, or Assignment of Rights help determine compliance. Ecology and the recipient use the project map (see map requirements above) to ensure long-term compliance with provisions in the project agreement.

In general, the project area funded with OCB funds must remain dedicated to the use as originally funded, such as flood damage reduction, aquatic species restoration/protection, and/or farmland and forestland preservation.

For restoration-oriented acquisition projects, the compliance period is determined by the type of control and tenure provided for the project. Changes may be made only with the prior approval of the awarding program manager and/or the OCB Director. If a compliance issue arises, OCB staff will work with recipients to resolve the issue. Unresolved, identified issues could result in restrictions on applying for or receiving future grants.

Recipients who acquire property rights through an easement must follow long-term obligations for the term of the easement. Agricultural and conservation easements contain conditions that identify permitted and prohibited uses of a funded property. The recipient is responsible for enforcing the terms and conditions of the easement, including addressing and resolving violations. Each easement includes a condition that identifies how to address a conversion or

extinguishment. As a beneficiary of the easement, Ecology has a third-party right of enforcement.

A recipient must submit a monitoring report on the funded property via EAGL every five years as requested by Ecology, after a project has been completed and for the duration of the compliance period. This reporting applies to both fee simple and less-than-fee acquisition projects. See monitoring and reporting section below. Projects with federal funding may have additional requirements.

Allowable uses

OCB funding supports the goals of aquatic species restoration/protection, and flood damage reduction in the Chehalis Basin. Use of a project site must have no overall impairment to these goals, while supporting the viability of working lands to the greatest extent possible.

To be in compliance with a project agreement, use of an Ecology-funded project site must be one of the following:

- Identified in the project agreement
- Allowed by OCB policy
- Approved by the awarding program manager, OCB Director, or the Chehalis Basin Board

For any proposed new uses not specified in the project agreement, recipients must submit an Allowable Use Request Form (available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)³⁹) to request approval of the proposed use in the project area. For the use to be approved by the awarding program manager and the OCB Director, it must meet all of the following criteria:

- The use must be consistent with the essential purposes of the awarding program and the project agreement.
- All practical alternatives to the use, including the option of no action, must have been considered and rejected on a sound basis.
- The use must achieve its intended purpose with the least possible impact to the aquatic species habitat, flood, and working lands viability. If the use adversely impacts the goals of the awarding program, it also must provide at least equivalent benefits to those goals so there is no overall impairment.

To remain in compliance with the project agreement, the project site use must continue in the manner approved by OCB. This policy does not modify other Ecology policies, such as cultural

³⁹ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

resource policies. Income generated on the project site must be managed in accordance with OCB policies; see section on income and income use below.

Interim land uses

Sometimes a landowner or lessee may wish to retain certain uses on a property as part of a negotiation with a recipient to acquire a property. Certain uses may be allowable with prior Ecology approval. A recipient must request approval for an interim land use before closing on the property and taking ownership.

Ecology may approve certain land uses on an interim basis to allow the landowner or lessee an opportunity to continue use of the land as described below.

Pre-existing second party use

A secondary party use is a use that was occurring on the land before the property was acquired by the recipient and the landowner or lessee wishes to continue that use after the property is acquired with OCB funding. The secondary party may be the landowner who sold the property to the recipient or another party.

Ecology may approve a second party use when all of the following conditions are met:

- The use is a continuing second party use. The use already is occurring on the land at the time the property is acquired.
- The use does not unreasonably limit achievement of the purpose of the Ecology project agreement or OCB awarding program.
- The second party's use will be phased out within 3 years of the date of acquisition. If the use will proceed longer than 3 years, it must be reviewed under the compatible use policy in this handbook.
- Use of any income derived from the second party use is consistent with the OCB income policy as described in this handbook.

Life estates

A life estate is a real property interest, in the form of a reservation on the deed that is held for the duration of a person's life. Ecology may approve a life estate when all of the following conditions are met:

- The life estate does not unreasonably limit achievement of the purpose of the Ecology project agreement or OCB awarding program.
- The life estate is for the owner(s) of the property only, not for successive generations.

- The impact of the reservation of the life estate is addressed in the valuation of the property. Appraisers must treat a life estate as an encumbrance.
- The terms or covenants of the life estate have been reviewed and accepted by Ecology prior to closing.

Public access

Public access means that the general public has regular access and use of property acquired with OCB funding. Property acquired with OCB funding may be available for public use as determined on a case-by-case basis and according to the awarding program's goals. Ecology may allow the restriction of public use of a property to protect sensitive natural areas, salmon habitat recovery areas, critical habitats, or cultural resources.

Additionally, where appropriate, public use may be limited to non-motorized access only or as allowed by the program from which funding was derived or as defined in the project agreement. Providing public access to the site does not mean that developed facilities must be provided. Recipients must account for additional stewardship funding required to address the increased stewardship and maintenance needs arising from public access.

Pedestrian access

In some cases, a seller may wish to maintain access to a portion of the property for a specified term after the sale (e.g., to visit a site that retains personal significance to them). An applicant or recipient may ask if the seller would like to retain pedestrian access, if it would not impede the project's intended purpose. Pedestrian access is conveyed via an agreement between the landowner and the pedestrian and does not need to be recorded on the title. It is not transferrable and should be termed to the lifespan of the original seller.

Existing structures

Applicants must consult with the awarding program prior to submitting a project application to determine which structures on property acquired with OCB funding must be removed or demolished. OCB may determine a structure is allowed by program policy and will support the intended uses at the site. Allowable structures vary by program. Consult the appropriate program funding guidelines for guidance and/or the program manager on allowable structures. New proposed uses of structures must be reviewed by Ecology per the requirements of this handbook.

Before demolition or removal of any structure or any ground-disturbing activity, a recipient must comply with cultural resources review requirements in this handbook under the cultural resources review section.

If an applicant wishes to retain a structure that exists on the property, the intended use of the structure must be clearly identified in the project application. Ecology then will determine

whether the structure is eligible to be retained per the specific OCB program policies. If allowed, discussion of the structure's purpose and use must be included in the evaluation process.

If an applicant wishes to retain a structure that is not eligible for OCB funding, then the structure and associated land and support facilities must be excluded from the project proposal. See the project scoping section for more details on how to exclude areas from the scope of an OCB-funded project.

Income, income use, and leases

The source of any income generated by an OCB-funded project must be compatible with the funding source(s) and the project agreement. Lease payments and other fees may be charged in connection with land acquired with OCB funding if the fees are consistent with all of the following:

- The market value of any services furnished
- The market value of any opportunities furnished
- Prevailing range of lease fees in the state for the activity involved

The OCB awarding program may require recipients to track income and income use, depending on the scale of the income generated. Recipients are encouraged to discuss considerations related to income and the use of income with OCB program staff. Additionally, some federal funding programs have strict guidelines for use of income during the project agreement period; recipients whose projects are supported with federal grants should check the specific stipulations about income use. Regardless of whether income or fees generated at a project site (including agricultural or grazing leases, timber harvesting, utility corridor permit, etc.) are gained during or after the reimbursement period cited in the agreement, unless precluded by state or federal law, the revenue may be used only to offset the following:

- The project's total cost
- The expense of operation, maintenance, stewardship, or monitoring of the property purchased with OCB funding
- The expense of operation, maintenance, stewardship, or monitoring of other similar units in the recipient's system within the Chehalis Basin
- Capital expenses for similar acquisition or restoration within the Chehalis Basin

If the income exceeds the recipient's operation, maintenance, or monitoring costs, it must be deposited in a capital reserve fund maintained by the recipient. This fund must meet the following:

- Be identified in the recipient's official annual budget for acquisition.
- Only be used to further the capital goals and objectives identified in the recipient's habitat restoration/protection and/or flood damage reduction plans.
- Only be applied to other of the recipient's OCB-funded projects in the same category.

Leases

A recipient may enter into a lease agreement with a private organization or individual under certain conditions. Examples of post-acquisition leases include:

- Grazing and agricultural leases: These types of lease agreements can be between the recipient and the seller or a third party. Allowable uses and terms can be aligned with habitat restoration/protection goals, particularly when paired with restrictions on the riparian buffer areas and best management practices and can contribute positively to the long-term stewardship and maintenance of the property.
- Residential lease to the seller: This can extend the timeframe for finding replacement housing or could be on a life estate term if the seller is near end of life, removing the need for replacement housing.

The recipient is responsible for assuring compliance with all applicable state and federal requirements. Delegation or transfer of certain management or operational responsibilities to lessees does not relieve the recipient of any project agreement compliance obligations, including those relating to conversion of OCB-funded properties.

All lease documents must address the following:

- In order to protect the public interest, the recipient must have clear ability to periodically review the performance of the lessee and terminate the lease or agreement if its terms and the provisions of the project agreement, including standards of maintenance are not met.
- The document shall clearly indicate that the leased area is to be operated by the lessee in compliance with the provisions of the project agreement.

For any lease between a recipient and lessee, the recipient must retain and submit the lease or agreement documents and submit to Ecology for review upon request, either before or after execution of the lease or agreement.

Utility permits

After determining that a utility line will have no adverse effect on present and future use of a project site, a recipient may issue a permit so long as it meets the following requirements:

- Not be an easement giving property rights to a third party.
- State that the pipe or power line will be underground, if applicable.
- Require that the third party give prior notice to and receive approval from the recipient to enter the site for construction or maintenance. Regularly scheduled periodic maintenance checks and the method(s) of performance (which must not involve disruption of any project function), must have prior approval on the basis of a schedule. Emergency maintenance would not normally require prior notification and approval. Adequate assurance of surface restoration also is necessary.
- State a duration for construction and include language that allows setting a duration for reconstruction.

Short-term maintenance

Tree removal

Tree removal is allowed on funded project sites provided it does not diminish the essential purposes of the project agreement and meets any of the following:

- Tree removal is included in the project agreement and project evaluation materials.
- Trees are removed to prevent potential risk to public safety.
- Trees are removed in accordance with an approved site-specific stewardship plan

Tree removal must be managed consistently with International Society of Arboriculture (ISA) guidelines and in compliance with the Washington Forest Practices Act (RCW 76.09) and Forest Practices Rules (Title 222 WAC). While revenue may be derived from tree removal, revenue generation must not be its primary purpose.

Income generated on the project site must be managed in accordance with Ecology policies on income and income use; see above.

Requests for tree removal that do not meet the criteria in this policy must be reviewed under the allowable uses framework in this handbook.

Invasive species

WDFW has developed protocols for preventing the spread of invasive species while working in the field. Ecology encourages funding recipients to review [WDFW's Invasive Species Management Protocols](https://wdfw.wa.gov/publications/01490)⁴⁰, consider how their projects may spread invasive species, and work to

⁴⁰ <https://wdfw.wa.gov/publications/01490>

reduce that possibility. Invasive species can be spread unintentionally during construction, maintenance, and restoration activities. Here is how it could happen:

- Driving a car or truck to a field site and moving soil embedded with seeds or fragments of invasive plants in the vehicle's tires to another site. New infestations can begin miles away as the seeds and fragments drop off the tires and the undercarriage of the vehicle.
- Working in streams and moving water or sediment infested with invasive plants, animals, or pathogens from one stream to another via your boots, nets, sampling equipment, or boats.
- Moving weed-infested hay, gravel or dirt to a new site, carrying the weed seeds along with it, during restoration and construction activities. Before long, the seeds germinate and infest the new site.

The key to preventing the spread of invasive species is twofold: Use materials that are known to be free of invasive plants or animals in the project and ensure equipment is cleaned both before and after construction and restoration according to best practices. Equipment to clean should include, but not be limited to, footwear, gloves, angling equipment, sampling equipment, boats and their trailers, and vehicles and tires.

Long-term stewardship and obligations

OCB funding comes with long-term obligations to maintain and protect the project area after a project agreement has ended. The long-term obligations are in Ecology's project agreement standard terms and conditions, the project agreement, and this section.

Ecology recognizes that changes occur over time and that some uses may become obsolete, or the land needed for something else. The law discourages casual discards of land by ensuring that recipients replace the lost public value when changes or conversions of use take place.

In general, the project area funded with OCB funding must remain dedicated to the use as originally funded, namely aquatic species habitat restoration or protection, and/or flood damage reduction purposes, for as long as defined in the project agreement. For restoration-oriented acquisition projects, the period is determined by the type of control and tenure provided for the project.

After a project is complete (that is, after Ecology's final reimbursement and acceptance of the project), Ecology documents that were signed by the recipient continue to govern the project area described in the boundary map for which funds have been granted. Changes may be made only with the prior approval of the OCB Director or Chehalis Basin Board. If a compliance issue arises, OCB staff works with recipient to resolve the issue.

Inspections and monitoring

Inspections

Ecology inspects acquisition projects to compare actual conditions to the terms and conditions of the Ecology project agreement. In addition to a pre-award inspection, any of the following compliance inspections may occur:

- **Interim.** This inspection, normally coordinated with the recipient, is made sometime during project implementation to help resolve any apparent or anticipated problems and to monitor project progress.
- **Final.** This optional site review takes place after the recipient requests a final payment or final inspection. This request must be made only after the project is complete, including relocation, removal of structures, and installation of any fencing and signs. When OCB staff's final inspection verifies that the project is complete as described in the agreement, the final payment, including retainage, will be made.
- **Post-completion compliance.** After verification of project completion and before the compliance period expires, OCB staff may periodically check the site to ensure that it is being used and maintained according to the terms of the project agreement, especially if particular risk factors are present (see risk-based monitoring details below).

Note: The recorded Conservation Covenant, conservation easement, and Assignment of Rights must include a provision to provide access to the recipient and Ecology to inspect the easement area and monitor compliance with the easement terms during the compliance period.

Self-certification via recipient monitoring and reporting

In general, the burden of ensuring compliance with the Conservation Covenant, easement or Assignment of Rights rests on the recipient, unless otherwise indicated by OCB funding program staff. Ecology encourages recipients to regularly inspect their properties and to advise Ecology if potential compliance issues exist or if planned changes will impact the intended use and purpose of the project.

Recipients must develop and implement a monitoring plan for any OCB-funded acquisition. Ecology recommends a recipient conduct monitoring of an acquired property or easement at least annually. A monitoring report based upon the recipient's plan must be submitted to Ecology once every 5 years, or as requested by Ecology. This requirement applies to both fee simple and less-than-fee owned acquisitions. See the Monitoring Report template available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)⁴¹.

⁴¹ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

Risk-based monitoring by OCB programs

As noted above, the burden of ensuring compliance with the Conservation Covenant or Assignment of Rights rests on the recipient, unless otherwise determined by OCB funding program staff. Ecology will utilize a risk-based approach to prioritize lands for more robust monitoring procedures when particular risk factors are present. Examples of risk characteristics that may warrant particular focus or attention for in-person OCB program staff site monitoring activities may include, but are not limited to:

- Property history—has the property or recipient had issues with encroachment or other types of noncompliance in the past (e.g., has it been previously identified during an audit).
- Surrounding land uses that increase risk of encroachment or noncompliance (e.g., development, ineligible recreation activities, transportation infrastructure, etc.).
- Geographic isolation of the property/frequency of recipient/landowner visits; property that receives less attention from subrecipient may be more prone to compliance issues.
- The property contains or is in close proximity to exploitable mineral or hydrocarbon resources.
- The property has significant public usage.
- The recipient/landowner of the real property is not an accredited land trust that has standards and oversight for monitoring and stewardship procedures and/or has been identified as high-risk.
- There are activities, permits, or licenses that could have conflicting purposes (e.g., grazing, logging).
- The property is owned by a recipient that does not have recent or routine communication with Ecology staff.

When resources for OCB program staff in-person site monitoring is limited, potential alternatives will be utilized. These activities may be used by Ecology itself or contracted out to a third-party. Alternative methods may include, but are not limited to, the following:

- Using remote-sensing data (aerial photography, Google Earth, GIS, etc.)
- Using drones/aerial surveys
- Informal citizen monitoring
- Organized volunteer monitoring

- Other Ecology or WDFW staff that can collect information about the status of real property

OCB program staff will use a Property Status Monitoring Form (available via the [online resources for voluntary acquisitions](#)⁴²) to document the results of these monitoring activities, which staff will send to the recipient. When a compliance issue is found during the inspection, this form will identify the action or condition that is inconsistent with the project agreement. The recipient is asked to contact the OCB awarding program's staff with information on the noted issue so that Ecology and the recipient may begin work to resolve the issue.

Non-compliance with a project agreement

There are a number of ways a project could be out of compliance with the project agreement. Examples include the following:

- Ineligible uses are conducted on the project area.
- Ineligible structures are constructed or installed in the project area.
- Loss of a plant or animal specified in the project agreement as the result of events in the control of the recipient, including recipient inaction.
- Transfer of the property or project area to another organization without prior approval

If a compliance issue arises, OCB staff will work with recipients to resolve the issue.

Review of non-compliance and element changes

As soon as the recipient or awarding program staff identifies a non-compliance issue related to an element, steps shall be taken to determine remediation and approval of the change. The recipient contacts the awarding program staff to arrange a site visit. After the initial discussion and site visit, the awarding program staff will identify the documentation necessary to support the requested change. The recipient submits a written request for approval and includes the supporting documentation. The supporting documentation includes the following:

- A description of the element change.
- Justification for the element change, including evidence that all practical alternatives to the element change have been evaluated on a sound basis.
- A list and discussion of alternatives for replacement or remediation of the element change.

⁴²<https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

- Additional documents that help explain the element change such as maps, plans, graphics, or photographs.

Usually, an amendment to the project agreement will document the decision. See the project amendment section of this handbook.

Exceptions to element changes

When there is a change in an element that occurs beyond the control of the recipient, Ecology may remove it from a project agreement without a need for remediation under certain conditions. Approval is limited to instances where the underlying land remains available for the intended use of the original funding. The conditions are as follows:

- Extraordinary vandalism that renders the element useless or dangerous.
- Acts of nature including, but not limited to, flood, earthquake, volcanic eruption, forest fire, sea level rise, and adverse weather.
- Fire, whether arson or accidental.
- Permit requirements that disallow specified elements.

Conversion

A conversion occurs when an entire site or a portion of a site funded by a project agreement is no longer consistent with the awarding program's goals, and one or more of the following takes place:

- Permanent property interests are conveyed for non-aquatic species restoration/protection or flood damage reduction uses.⁴³
- Permanent property interests are conveyed to a third party not eligible to receive funding in the program from which it was derived.
- Uses not included in the project agreement are conducted in a manner that impairs the originally intended purposes of the project area.
- Public use of the property or a portion of the property acquired, developed, or restored with OCB funding is terminated unless public use was not allowed under the original Ecology project agreement.

⁴³Unless approved as an exception to conversion

- If a habitat project, the property or a portion of the property acquired, restored, or enhanced no longer provides the environmental functions for which OCB funds were approved originally.

A conversion is not prohibited; however, prior Ecology approval is required. Approval of a proposed conversion is contingent upon Ecology and the recipient agreeing to an amount equivalent to that portion of the proceeds of the sale, lease, or other conversion or encumbrance lost by the conversion, and is subsequently repaid to Ecology.

Review of a conversion

As soon as the recipient or Ecology identifies a project change that may create a conversion, the recipient must provide enough information for Ecology to verify that the change will result in a conversion. There are several steps a recipient must complete. Consult the conversion approval process checklist available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)⁴⁴.

First, the recipient should arrange a site visit with the awarding program manager. After an initial discussion and site visit, the recipient submits a written request that includes the following:

- A description of the original project.
- A description of the proposed change creating the conversion.
- A map of the proposed conversion area.
- An estimated loss of function or negative impact to the funding program goals.

If program staff determine that the loss is significant, the recipient must provide an alternatives analysis that evaluates alternatives to the conversion and/or a repayment amount.

Approval of a conversion involves approval of repayment. Ecology will determine whether the conversion requires approval by the OCB Director, the Chehalis Basin Board, and/or other Ecology staff.

If the conversion is referred to the Chehalis Basin Board, the recipient must attend Board meeting when the proposed conversion will be presented and decided.

⁴⁴ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

Appraisal requirements for land transactions resulting from conversions

When determining the market value of the property being converted, the recipient must instruct the appraiser to make a special assumption that the Conservation Covenant or Assignment of Rights is not encumbering the property and to assume zoning has kept up with surrounding properties. Because the Conservation Covenant or Assignment of Rights will be extinguished once the conversion is approved, the appraised value must reflect the property free and clear of this encumbrance.

Implementing OCB approval

Approval from OCB is conditioned on the recipient completing the approval process and providing the required documentation. Staff will amend the Ecology project agreement to reflect the change when the recipient submits all required materials and documents.

Exceptions to conversions

Under certain circumstances, a change in the use or function of a project area may be considered an exception to conversion.

A recipient may request Ecology review for an exception to conversion for the actions below when demonstrating the action will have no permanent impact to the intended purpose, use, and function of the project area. Ecology will consider the cumulative impacts of previously approved exceptions and encumbrances. See the recipient request form for an exception to conversion available via the [online resources for voluntary acquisitions](https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/)⁴⁵.

Exceptions that may be considered include the following:

- Relocation of an easement and related infrastructure that would benefit the intended purpose and use of the project area, with restoration in a specified period of time.
- A new easement and/or right-of-way and related infrastructure (such as a utility box, poles, guide wires) that would benefit the intended purpose and use of the project area. Not intended to provide a blanket exception to any new easement, such as conveying an easement to a private party for its convenience.
- A new easement and/or right-of-way for a culvert replacement or improving fish passage that has minimal impact to the intended purpose and use of the project area.
- Changes to an existing easement, right-of-way, or encumbrance (and related infrastructure) that would have minimal impact to the intended purpose and use of the project area.

⁴⁵ <https://chehalisbasinstrategy.com/resources-for-voluntary-acquisitions/>

- Right-of-way for road improvements that improve access to the project area.
- Underground utility easement for electrical, fiber optic, sewer, stormwater, or water, with restoration in a specified period of time.
- Temporary construction easement, with restoration in a specified period of time.
- Levee and related infrastructure relocation that expand and support the original purpose of the project. A levee may consist of a landform or structure such as an embankment, dike, road, or similar structure that inhibits natural floodplain or tidal processes. Related infrastructure relocation may include easements for rights-of-way for roads, utilities, and other infrastructure.
- Granting utility permits.

Removing or changing a Conservation Covenant

If a recipient needs to revise or remove a recorded Conservation Covenant, it may trigger a conversion of use. You should contact the OCB program manager to discuss the situation and how to meet the project agreement requirements. Ecology will provide the necessary legal documentation needed to remove the Conservation Covenant from the property.

Impacts to recipient eligibility

Non-compliance with the long-term obligations for OCB funding may jeopardize an organization's ability to obtain future OCB funding. Unresolved, identified issues could result in restrictions on applying for or receiving future funding. See the high-risk recipients' section of this handbook for more information.