

# NEW MEXICO STATE PARKS



## Land and Water Conservation Fund Conversions of Use Regulations and Procedures

03/09

Property acquired or developed with Land and Water Conservation Fund (LWCF) assistance shall be retained and used for public outdoor recreation. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of the National Park Service (NPS) pursuant to Section 6(f)(3) of the LWCF Act and these regulations. The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and these regulations apply to each area or facility for which LWCF assistance is obtained, regardless to the extent of participation of the program and consistent with the contractual agreement between the State and the local sponsor.

Responsibility for compliance and enforcement of these provisions rests with the sponsor of the project. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the State and the Department of the Interior. This mutually agreed to area normally exceeds that actually receiving LWCF assistance so as to assure the protection of a viable recreation entity.

The NPS Regional Director has the authority to approve or disapprove conversion requests and/or reject proposed parkland substitutions. NPS approval is a discretionary action and should not be considered a right of the project sponsor. The sponsor cannot move forward with conversion actions until approval has been granted by NMSP and NPS.

Local sponsors must consult early with the New Mexico State Parks (NMSP) when a conversion is under consideration or has been discovered. **A critical first step is for the project sponsor and NMSP to agree on the size of the Section 6(f) parkland impacted by any non-recreation, non-public use, prior to any appraisal activity.** Any previous LWCF project agreements and actions must be identified and understood to determine the actual Section 6(f) boundary.

Contact Maurice (Moses) A. Mondary, Federal Grant Manager, New Mexico State Parks at (505) 827-3558 or [maurice.mondary@state.nm.us](mailto:maurice.mondary@state.nm.us) with any questions.

**A. Situations that trigger a conversion include:**

1. Property interests are conveyed for private use or non-public outdoor recreation uses.
2. Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof, including those occurring on pre-existing rights-of-ways and easements, or by a lessor.
3. Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities or sheltering of an outdoor facility.
4. Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.

**B. Situations that may not trigger a conversion if certain criteria are met. Proposals must be submitted to NMSP for review and are subject to final approval by NPS. Situations include:**

1. Underground utility easements that do not impact the recreational use of the park and is restored to its original surface condition.
2. Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within a Section 6(f)(3) protected area where it can be shown there is a gain or increased benefit to the public outdoor recreational opportunity. The local sponsor should consult with NGPC early in the formative states of developing proposals to construct indoor facilities on Section 6(f)(3) protected lands.
3. Proposals for “temporary non-conforming uses,” that is temporary non-recreation activities of less than a six-month duration within a Section 6(f)(3) protected area.
4. Proposals to build sheltered facilities or to shelter existing facilities within a Section 6(f)(3) protected area provided they do not change the overall public outdoor recreation characteristics and otherwise meet the sheltering criteria (contact NGPC for criteria).
5. Proposals for changing the overall outdoor recreation use of a Section 6(f)(3) protected area from that intended in the original LWCF project agreement.

**C. Prerequisites for Conversions**

Formal requests from the project sponsor for permission to convert LWCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the sponsor to NMSP in writing and conform to the prerequisites set forth in 36 CFR 59.

Project sponsors shall consult with NMSP when conversions are proposed or discovered and prior to making a formal request to NMSP. Project sponsor shall use the Proposal Description and Environmental Screening Form (PD/ESF) to prepare its conversion proposal (Attachment 1). The PD/ESF guides the development of the conversion proposal, including the incorporation of **the following prerequisites that must be met before NMSP will forward the proposal to NPS for consideration of approval of the conversion request:**

1. Alternatives. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
2. Appraisal. The fair market value of the property to be converted has been established and the property proposed for replacement is of at least equal fair market value as established by a New Mexico General Certified Real Property Appraiser. The established value will exclude the value of structures and facilities that will not directly enhance its outdoor recreation utility. A separate appraisal report is required for both the converted property and the replacement property (do not combine reports).

Appraisal reporting requirements differ based upon the estimated value of the real property. If the acquisition is uncomplicated and the estimated value of the real property is \$10,000 or less, the sponsor may prepare a waiver of valuation. When the estimated value of the real property exceeds \$10,000, a formal appraisal prepared in accordance with the Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA) is required (see Attachment 2 for UASFLA and waiver valuation requirements).

Political subdivisions must comply with state law when acquiring land for public park purposes and should consult with their legal counsel. Prior to conducting the appraisal, the appraiser must be given permission to enter the seller's premises to conduct the appraisal. The landowner must also be given permission to accompany the appraiser during inspection of their property. As evidence these rights were afforded the landowner, **Attachment 3 must be completed and submitted to NMSP with the appraisals.**

**At this stage the project sponsor may not negotiate price with the landowner nor take title to the land until after NPS has granted approval of the conversion replacement land. The sponsor may only inquire if the proposed replacement land is for sale.**

3. Appraisal Review. Appraisals for the converted property and the replacement property must be reviewed to ensure they meet the requirements of both UASFLA and USPAP (Attachment 2). Reviews are to be conducted by a Nebraska General Certified Real Property Appraiser (independent of the individual/company who conducted the converted and replacement property appraisals). Reviews of the converted and replacement properties should be separate reports (do not combine). Final review documents must include the statement, "It is the recommendation of the reviewer that

the appraisal meets UASFLA and USPAP requirements and therefore be accepted,” and be signed by the reviewer.

Reviews are not required for property meeting conditions resulting in a waiver valuation.

4. Equivalent Usefulness. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Depending on the situation, and at the discretion of NMSRP, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. The replacement property should be administered by the same political jurisdiction as the converted property. Equivalent usefulness and location will be determined based on the following criteria:

- a. Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs that are like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property.

Wetland areas and interests therein shall be considered to be of reasonably equivalent usefulness as compared to the recreational usefulness of the property proposed for conversion if they have been identified in the wetlands provisions of the New Mexico State Comprehensive Outdoor Recreation Plan (SCORP) in accordance with Section 6(f)(3) of the LWCF Act as amended (36 CFR 59.3) by Section 303 of the Emergency Wetlands Resources Act of 1986.

- b. Replacement property does not need to be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the replacement property should meet existing public outdoor recreation needs. While this will generally involve the selection of a site serving the same community or area as the converted site, there may be exceptions. For example, if property proposed for conversion is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the replacement property at another location within the jurisdiction.
  - c. The acquisition of one parcel of land may be used in satisfaction of several approved conversions and vice versa.
5. Acquisition Eligibility. The property proposed for replacement must meet the eligibility requirements for LWCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Viability and recreational

usefulness is dependent upon the proposed outdoor recreation development plan (prerequisite #10 on page 6) and timetable for the development (prerequisite #12 on page 7) of the replacement parkland.

If another public agency currently owns the land proposed for replacement, the following conditions must be met:

- a. The proposed replacement land was not originally acquired by the sponsor or selling agency for recreation.
- b. The proposed replacement land has not been previously dedicated or managed for recreational purposes while in public ownership.
- c. No federal assistance was provided in the proposed replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance (permissible programs can be found in LWCF Manual Chapter 5-4, #5).
- d. Where the project sponsor acquires replacement land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

An exception may be made to this condition if the land to be converted was originally a **development only** project (i.e. land value was not used as a match on the original application). In this case, public land that has not been previously dedicated or managed for recreation/conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost.

6. Partial Taking. In the case of Section 6(f)(3) protected areas that are partially rather than wholly converted, the impact of the converted portion on the remaining area shall be considered. The unconverted area must remain recreationally viable or be replaced as well.
7. Federal Agency Coordination. All necessary coordination with other federal agencies has been satisfactorily accomplished including, for example, compliance with Section 4(f) of the Department of Transportation Act of 1966. Identify the agencies that have been consulted and provide copies of reports from these agencies.
8. Environmental Review. The guidelines for environmental review under NEPA have been satisfactorily completed. In cases where the proposed conversion arises from another federal action, final review of the sponsor's proposal shall not occur until NPS is assured all environmental review requirements for the other federal action have been met, e.g., Army Corps of Engineer permits.

The environmental review process must analyze both the land for proposed conversion and proposed replacement. The purpose and scope of the environmental review must focus on the impacts on the “human environment” resulting for the loss of the Section 6(f)(3) parkland, impacts on any remaining Section 6(f)(3) parkland for partial conversions, and the development of new Section 6(f)(3) replacement parkland. The scope of the environmental review should not include impacts of the action precipitating the conversion on resources beyond the Section 6(f)(3) boundary, such as impacts of a new housing development or a school on a neighborhood.

The environmental analysis must be conducted in a neutral and factual manner and result in statements that reflect this same neutrality. The environmental analysis documents should **not** include statements that promote or justify the action precipitating the conversion, such as proclaiming that the subject parkland is the best location for a new fire station.

For guidance on NEPA and how to conduct environmental reviews for LWCF conversions, contact NMSP.

9. Public Notice. The interested and affected public must have an opportunity to comment by providing public notice on the proposed federal action of converting parkland including the replacement of new parkland through publication in a local newspaper. Publication must occur once a week within a consecutive twenty one day period. The public comment period must remain open for thirty days from the first date of publication. A proof of publication notice and invoice from the newspaper must be provided. The sponsor can add other language as deemed necessary, but must contain at least the minimum points given in the sample notice below.

Notice is hereby given in accordance with the National Park Service, Land and Water Conservation Fund Act, Conversion Policy & Procedures, 36 CFR, Part 59, Section 6(f)(3), an Environmental Assessment is being prepared for conversion of parkland at (Add Park Name and Location) in the City of (Add Name). Replacement land for the converted park will be located at (Add Address). Public comment is welcome and may be submitted to the City Clerk's office in either written or oral form by (Add Date).

10. Site Plan. A site plan for **both** the converted land and replacement land must be submitted on a 8 ½” x 11” or 11” x 17” sheet of paper with the following:
  - a. Legally defensible description of project boundaries (legal description of property which includes section, township and range information).
  - b. Land title information.
  - c. Scale in feet.
  - d. North arrow.

- e. Legal boundaries highlighted with boundary measurements in feet.
  - f. Known outstanding rights and interests in project area held by others including:
    - (1) The measurements and locations of all known easements.
    - (2) All power lines that cross the site.
    - (3) All right-of-ways.
  - g. Existing recreation facilities/developments within project area.
  - h. Proposed recreation facilities/developments.
  - i. Whenever possible, map should include some permanent locator – natural landmarks, adjoining ownership, highways, streets, etc.
11. Plat Map. A plat map of the corporate limits showing the location of both the converted land and replacement land.
12. Timetable. Provide a timetable for the acquisition and development of the replacement land. Development must occur within one year after acquisition of replacement land unless a request for deferred development is submitted (contact NMSP for deferred development guidelines).

**D. Following NPS Approval of Request**

Upon NPS approval of the proposed conversion and replacement request the following must be done:

1. Replacement property should be immediately acquired and developed according to the replacement proposal timetable.
2. After replacement land is acquired the sponsor must dedicate it for public outdoor recreation purposes. A copy of the dedicating resolution must be submitted to NGPC.
3. Sponsor must have an opinion of title prepared or obtain title insurance for the replacement property. A copy of the title opinion or title insurance must be submitted to NGPC.

ATTACHMENT 1

03/09

LWCF Proposal Description and Environmental Screening Form  
for  
Section 6(f)(3) Conversion Proposal

The purpose of this Proposal Description and Environmental Screening Form (PD/ESF) is to provide descriptive and environmental information about the proposed conversion action to be submitted for New Mexico State Parks (NMSP) and National Park Service (NPS) review and decision. The completed PD/ESF becomes part of the “federal administrative record” in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations. The PD portion of the form captures administrative and descriptive details enabling the NPS to understand the proposal. The ESF portion is designed for project sponsors to use while the LWCF proposal is under development. Upon completion, the ESF will indicate the resources that could be impacted by the conversion proposal enabling project sponsors to more accurately follow an appropriate pathway for NEPA analysis: 1) production of an Environmental Assessment (EA), or 2) production of an Environmental Impact Statement (EIS). The ESF should also be used to document any previously conducted yet still viable environmental analysis if used for this federal proposal. The completed PD/ESF must be submitted as part of the project sponsors LWCF proposal to NGPC.

The PD/ESF **must** be completed, including the appropriate NEPA document (EA or EIS), signed by the project sponsor and submitted with the conversion proposal.

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**Name of LWCF Proposal:**

**Date Submitted:**

**Prior LWCF Project Number(s)**

List all prior LWCF project numbers and all park names associated with assisted site(s):

**Local Project Sponsor:**

**Local Project Sponsor Contact:**

**Name/Title:**

**Office/Address:**

**Phone/Fax:**

**Email:**

The Section 6(f)(3) conversion proposal including the required NEPA environmental review documents (EA or EIS document) must focus on the loss of public outdoor recreation parkland and recreational usefulness, and its replacement per 36 CFR 59; **not** the activities precipitating the conversion or benefits thereof, such as the impacts of constructing a new school to relieve overcrowding or constructing a hotel/restaurant facility to stimulate the local economy. Rather, the environmental review must 1) focus on “resource impacts” as indicated on the ESF (Step 3), including the loss of public parkland and recreation opportunities (ESF A-15), and 2) the impacts of creating new replacement parkland and replacement recreation opportunities. A separate ESF must be generated for the converted park area and each replacement site. Section 6(f)(3) conversions always have more than minor impacts to outdoor recreation (ESF A-15) as a result of loss of parkland requiring an EA at a minimum.

### **Step 1. Proposal Description**

For NMSP and NPS review and decision, the following elements are required to be included in the sponsor’s completed conversion proposal:

1. A detailed explanation of the sponsor’s need to convert the Section 6(f) parkland including all efforts to consider other practical alternatives to this conversion, how they were evaluated, and the reasons they were not pursued.
2. An explanation of how the conversion is in accord with the State Comprehensive Outdoor Recreation Plan (SCORP).
3. Completed “Appraisal/Waiver Valuation Summary” form in Step 4 for each of the converted and replacement parcels.
4. For the parkland proposed for conversion, a detailed description including the following:
  - a. Specific geographic location on a map, 9-digit zip code, and name of park or recreation area proposed for conversion.
  - b. Description of the area proposed for the conversion including the acreage to be converted and any acreage remaining. For determining the size of the conversion, consider not only the physical footprint of the activity precipitating the conversion, but how the precipitating activity will impact the entire 6(f) park area. In many cases the size of the converted area is larger than the physical footprint. Include a description of the recreation resources, facilities, and recreation opportunities that will be impacted, displaced or lost by the proposed conversion. For proposals to partially convert a Section 6(f) park area, the remaining 6(f) parkland must remain recreationally viable and not be impacted by the activities that are precipitating the conversion. If it is anticipated that the precipitating activities impact the remaining Section 6(f) area, the proposed area for the conversion should be expanded to encompass all impacted park land.

- c. Description of the community and population served by the park, including users and uses of the park.
  - d. For partial conversions, a revised 6(f) map clearly indicating both the portion that is being converted and the portion remaining intact under Section 6(f).
5. For each proposed replacement site:
  - a. Specific geographic location on a map, 9-digit zip code, and geographical relationship of converted and replacement sites. If site will be added to an existing public park/outdoor recreation area, indicate on map.
  - b. Description of the site's physical characteristics and resource attributes with number and types of resources and features on the site, for example, 15 acres wetland, 2,000 feet waterfront, 50 acres forest, scenic views, 75 acres riparian, vacant lot, special habitat, any unique or special features, structures, recreation amenities, historic/cultural resources, hazardous materials/contamination history, restrictions, institutional controls, easements, rights-of-way, overhead/underground utilities including overhead wires, towers, etc.
  - c. Identification of the owner of the replacement site and its recent history of use/function up to the present.
  - d. Detailed explanation of how the proposed replacement site is of reasonably equivalent usefulness and location as compared to the property being converted, including a description of the recreation needs that will be met by the new replacement parks, populations to be served, and new outdoor recreation resources, facilities, and opportunities to be provided.
  - e. Identification of owner and manager of the new replacement park.
  - f. Name of the new replacement park. If the replacement park is added to an existing public park area, will the existing area be included within the 6(f) boundary? What is the name of the existing public park area?
  - g. Timeframe for completing the new outdoor recreation area(s) to replace the recreation opportunity lost per the terms of conversion approval and the date replacement park(s) will be open to the public.
  - h. New Section 6(f) map for the new replacement park.
6. NEPA environmental review for both the converted and replacement sites in the same document to analyze how the converted park land and recreational usefulness will be replaced.

## **Step 2. Summary of Previous Environmental Review**

To avoid duplication of effort and unnecessary delays, describe any prior environmental review undertaken at any time and still viable for this proposal or related efforts that could be useful for understanding potential environmental impacts. Consider previous local, state, federal (e.g. FDWA, HUD, EPA, USFWS, DOT) and any other environmental reviews. Address the following:

1. Date of environmental review(s), purpose for the environmental review(s) and for whom they were conducted.
2. Description of the proposed action and alternatives of past reviews.
3. Who was involved in identifying resource impact issues and developing the proposal (include the interested and affected public and governmental agencies).
4. Environmental resources analyzed and determination of impacts for proposed actions and alternatives.
5. Any mitigation measures to be part of the proposed action.
6. Public comment period (how long, when in process did it take place, who was invited to comment) and any agency response.
7. Any formal decisions and supporting reasons regarding degree of potential impacts to the human environment.
8. Was this proposed LWCF federal action and/or any other federal actions analyzed in any of the previous environmental reviews? If yes, what was analyzed and what impacts were identified? Provide specific environmental review document references.

Use resource impact information generated during previous environmental reviews described above and from recently conducted site inspections to complete the Environmental Screening Form (ESF) portion of this PD/ESF under Step 3. Your ESF responses should indicate your proposal's potential for impacting each resource as determined in the previous environmental review(s) and include a reference where the analysis can be found in any earlier environmental review documents. If the previous environmental review documents contained proposed actions to mitigate impacts, briefly summarize the mitigation for each resource as appropriate. The appropriate references for previous environmental review document(s) must be documented on the ESF and the actual document(s) submitted with this PD/ESF for NGPC and NPS review.

### Step 3. Environmental Screening Form

This portion of the PD/ESF is a working tool used to identify the level of environmental documentation which must accompany the proposal submission. By completing the ESF, the project sponsor is providing support for its recommendation in Step 4 that the proposal requires further analysis through an 1) environmental assessment (EA) or 2) environmental impact statement (EIS).

An ESF alone does not constitute adequate documentation. If an EA is required, the EA process and resulting documents must be included in the proposal submission. If an EIS is required, the sponsor should request NGPC guidance on how to proceed.

As early as possible in your planning process, consider how your proposal/project may have direct, indirect and cumulative impacts on the human environment so planners have an opportunity to design alternatives to lessen impacts on resources if appropriate. When used as a planning tool in this way, the ESF responses may change as the proposal is revised until it is ready for submission. Initiating or completing environmental analysis after a decision has been made is contrary to both the spirit and letter of the law of the National Environmental Policy Act.

The ESF should be completed with input from resource experts and in consultation with relevant local, state, tribal and federal governments, as applicable. The interested and affected public should be notified of the proposal and be invited to participate in scoping out the proposal. At a minimum, a site inspection of the area must be conducted by individuals who are familiar with the type of affected resources, possess the ability to identify potential resource impacts, and to know when to seek additional data when needed.

At the time of proposal submission, the completed ESF must justify the NEPA pathway that was followed: production of an EA or production of an EIS. The resource topics and issues identified on the ESF for this proposal must be presented and analyzed in an attached EA/EIS.

**Part A:** For each environmental resource topic, choose an impact estimate level (none, negligible, minor, exceeds minor) that describes the degree of potential negative impact for each listed resource that may occur directly, indirectly and cumulatively as a result of federal approval of your proposal. For each impacted resource provide a brief explanation of how the resource might be affected, how the impact level was determined, and why the chosen impact level is appropriate. If an environmental review has already been conducted on your proposal and is still viable, include the citation including any planned mitigation for each applicable resource, and choose an impact level as mitigated. If the resource does not apply to your proposal, mark NA in the first column. Add any relevant resources (see A.24 on the ESF) if not included in the list.

**Use a separate sheet** to briefly clarify how each resource could be adversely impacted; any direct, indirect, and cumulative impacts that may occur; and any additional data that still needs to be determined. Also explain any planned mitigation already addressed in previous environmental reviews.

**Complete on ESF for each of the converted and replacement sites.**

<b>A. ENVIRONMENTAL RESOURCES</b> Indicate potential for adverse impacts. Use a separate sheet to clarify responses per instructions for Part A on page 9.	<b>Not Applicable-</b> Resource does not exist	<b>No/Negligible Impacts-</b> Exists but no or negligible impacts	<b>Minor Impacts</b>	<b>Impacts Exceed Minor</b> EA/EIS required	<b>More Data Needed to Determine Degree of Impact</b> EA/EIS required
1. Geological resources: soils, bedrock, slopes, streambeds, landforms, etc.					
2. Air quality					
3. Sound (noise impacts)					
4. Water quality/quantity					
5. Stream flow characteristics					
6. Marine/estuarine					
7. Floodplains/wetlands					
8. Land use/ownership patterns; property values; community livability					
9. Circulation, transportation					
10. Plant/animal/fish species of special concern and habitat; state/federal listed or proposed for listing					
11. Prime or unique farmland					
12. Unique or important wildlife/ wildlife habitat					
13. Unique or important fish/habitat					
14. Introduce or promote invasive species (plant or animal)					
15. Recreation resources, land, parks, open space, conservation areas, rec. trails, facilities, services, opportunities, public access, etc. <i>Conversions exceed minor impacts.</i>					
16. Accessibility for populations with disabilities					
17. Overall aesthetics, special characteristics/features					
18. Historical/cultural resources, including landscapes, ethnographic, archeological, structures, etc. Attach SHPO/THPO determination.					
19. Socioeconomics, including employment, occupation, income changes, tax base, infrastructure					
20. Minority and low-income populations					
21. Energy resources (geothermal, fossil fuels, etc.)					
22. Other agency or tribal land use plans or policies					
23. Land/structures with history of contamination/hazardous materials even if remediated					
24. Other important environmental resources to address.					

**Part B:** This is a list of mandatory impact criteria. If you answer “yes” for any of the mandatory criteria, you must develop an EA or EIS regardless of your answers in Part A (conversions always result in a “yes” on question 2). Explain all “yes” answers on a separate sheet.

<b>B. MANDATORY CRITERIA If your LWCF proposal is approved, would it...</b>	<b>Yes</b>	<b>No</b>	<b>To be determined</b>
1. Have significant impacts on public health or safety?			
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands, wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); and other ecologically significant or critical areas.			
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)]?			
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?			
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?			
6. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?			
7. Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places, as determined by either the bureau or office. (Attach SHPO/THPO Comments)			
8. Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.			
9. Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment?			
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?			
11. Limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?			
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?			



## ATTACHMENT 2

03/09

### Appraisal Standards for Federal Land Acquisitions

- I. Formal Appraisal. When the value of the real property for acquisition exceeds \$10,000 a Nebraska General Certified Real Property Appraiser must prepare a formal appraisal in conformance with the following federal land acquisition appraisal standards.

The Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA), commonly referred to as the “Yellow Book,” shall be used by appraisers in the preparation of appraisals for federal LWCF-assisted acquisitions, donations if used for a federal match, and land exchanges for conversions. Because the appraisals for federal government acquisition purposes, including federally-assisted acquisitions, are bound by federal law relating to the valuation of real estate, it is necessary to apply the UASFLA as warranted by the conditions of the federal appraisal assignment.

The federal standards (UASFLA) are considered “Supplemental Standards” to the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to bolster the minimum level of documentation and yield compliance with the unique and applicable appraisal methods and procedures that have evolved from federal case law. The UASFLA 2000 edition is available online at <http://www.usdoj.gov/enrd/land-ack/>. USPAP is revised annually and can be found on the Appraisal Foundation’s website at [http://www.appraisalfoundation.org/s\\_appraisal/index.asp](http://www.appraisalfoundation.org/s_appraisal/index.asp).

- A. UASFLA and USPAP. Appraisal preparation, documentation and reporting shall be in conformance with the UASFLA, which are generally compatible with standards and practices of both the appraisal industry and the Uniform Standards of Professional Appraisal Practice (USPAP). However, USPAP compliance alone will not result in UASFLA compliance. The project sponsor must recognize the differences between UASFLA and USPAP and ensure the appraiser meets the higher standards of the UASFLA, except where noted below.

The UASFLA incorporates, by reference, most of the provisions found in the USPAP, however, UASFLA is a more detailed and rigorous standard. The UASFLA does deviate from the USPAP on certain occasions. Therefore, it may be necessary to invoke USPAP’s “Jurisdictional Exception Rule” when preparing an overriding federal law relating to the valuation of real estate for LWCF federally-assisted acquisition and LWCF Act Section 6(f)(3) conversion purposes. Consult Part D-1 of the UASFLA for a discussion of the minor conflicts between the 2000 edition of the UASFLA and the USPAP in effect as of the same year.

The major difference between the USPAP and UASFLA is the UASFLA mandated procedure of valuing partial takings by utilizing the “before and after” method of analysis. This method addresses the loss of market value suffered by the large parcel as a result of the loss of the real property rights in question. “Severance damages” and “special benefits” affecting the remaining real property are automatically addressed through this appraisal method. The USPAP provides no specific guidelines

with respect to this issue. Lacking specific guidance, most USPAP appraisal reports simply address the value of the real property rights acquired by the grantee and not the overall diminution suffered (or, perhaps, enhancement realized) by the property from which it was acquired. Thus, a landowner, under certain circumstances, may end up “short changed” or unjustly enriched as a result of the lack of direction given in the USPAP in an involuntary or condemnation type acquisition. The reason for this UASFLA requirement is fairness to all concerned parties. Except for appraisals associated with Section 6(f) conversions and replacement land, the “before and after” method is required for appraisals.

Appraisers are obligated to be familiar with the entire UASFLA standard before bidding on an appraisal assignment and/or preparing the appraisal report.

#### B. Specific UASFLA Policies and Guidance for LWCF Appraisals.

1. For the purpose of the UASFLA compliance, any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the UASFLA requirements for a self-contained report if it has been prepared in accordance with the UASFLA.

See Section A of the UASFLA for details on data documentation and appraisal reporting standards. All appraisals are to include the required certification statement found in Part A-4. UASFLA contains an *Appraisal Report Documentation Checklist* located in Appendix A and a *Recommended Format for Federal Appraisal Reports* in Appendix B.

2. The appraiser’s estimate of highest and best use must be an “economic” use. A non-economic highest and best use, such as “conservation,” “natural lands,” “preservation,” or any use which requires the property withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Therefore, any appraisal based on such a non-economic highest and best use will not be approved for federal land acquisition purposes.

In this same regard, an appraiser’s use of any definition of highest and best use which incorporates non-economic considerations (e.g., value to the public, value to the government, or community development goals) will render the appraisal unacceptable for LWCF purposes. (Section A-14 of the UASFLA)

3. For acquisitions not associated with Section 6(f) conversions and replacement land, the “before and after” method of valuation is required if the proposed acquisition is something less than the entire ownership. For example, if the proposed acquisition is a 20-acre parcel and the larger property is a 100-acre property, the required method of analysis is to value the 100-acre property in the “before” condition and then value the 80-acre parcel in the “after” condition. The value of the acquisition is then determined by subtracting the latter value estimate from the former value estimate. Improvements that are unaffected by the partial acquisition, either positively or negatively, need not be valued as long as the appraiser states that to be the case and the property is not to be acquired through condemnation.

4. The use to which the grantee will put the property after it has been acquired is, as a general rule, an improper highest and best use. It is the value of the land acquired that is to be estimated, not the value of the land to the government. If it is solely the government's need that creates a market for land, this special need must be excluded from consideration by the appraiser (Section A-14 of the UASFLA).
5. The UASFLA contains a unique definition of market value (Section A-9 of the UASFLA).
6. The UASFLA contains a unique certification statement (Section A-4 of the UASFLA).
7. Estimates of "marketing time" and "exposure time" are not appropriate and should not be reported in UASFLA-complying reports. The exclusion of the estimate of "exposure time" may be considered a Jurisdictional Exception to the USPAP. (See Sections A-9 and D-1 of the UASFLA. However, the USPAP version effective July 1, 2006 no longer specifies the reporting of exposure time in Standard 2, "Real Property Appraisal Reporting," but does refer to the development of an opinion of exposure time in the "Comment" following S.R. 1-2(c)(iv) as well as in SMT-6. "Marketing time" is no longer mandated, to any extent, in the aforementioned edition of the USPAP.)
8. Because Section 6(f) conversions are land exchanges, the following policies shall apply:
  - a. For partial takings, "part taken" appraisals shall be prepared for the subject parcels rather than employing the classic "before and after" appraisal methodology described above. This is necessary to avoid consequential value distortions that would logically occur as a result of appraisement of partial takings within parent parcels of greatly differing sizes. For example, if a park (conversion) property under appraisement is a five-acre tract within a 1,000-acre larger property and the replacement property (non-park property) is a 5-acre tract within an otherwise similar 8-acre larger parcel, an equal value conclusion would be extremely improbable, and such an appraisal procedure might very well result in an "equal value" exchange of a conversion property being several times the size, and perhaps several times the value (if viewed from the perspective of being a stand-alone parcel), of the replacement property.
  - b. In order to determine the highest and best use of the park property, the appraiser is to ignore the actual zoning of the property if the zoning is a non-economic zoning established to recognize the "open space" characteristics of the park or to foster the preservation of the park. In this situation, the appraiser is to determine the most likely zoning that would have come about under the hypothetical condition the park was never created. In doing so, the appraiser will consider likely property uses based upon all relevant factors as well as the actual present zoning of comparable, nearby, privately owned properties. Under this scenario, the cost, risk and time associated with obtaining a zoning change would not be appropriate. This procedure is necessary to avoid penalizing the conversion property because it was taken out of private ownership and dedicated to a non-economic use.

c. The same valuation method shall be used on both the converted parcel and the replacement parcel(s).

9. The owner or the owner's designated representative must be given an opportunity to accompany the appraiser during his or her inspection of the property (Section D-14 of the UASFLA).

10. Conflict of interest. No person shall attempt to unduly influence or coerce an appraiser or review appraiser regarding any valuation or other aspect of an appraisal or review. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

II. Waiver valuation. When an acquisition is uncomplicated and the real property value is \$10,000 or below, a waiver valuation may be prepared in accordance with the following guidelines.

A. The acquisition must be uncomplicated in nature.

B. Sufficient local market data (comparable sales) must be available to support the waiver valuation.

C. The waiver valuation must be prepared by a Nebraska General Certified Real Property Appraiser.

1. The qualified appraiser preparing the waiver valuation must have sufficient knowledge of the local real estate market.

2. The qualified appraiser shall not have any interest, direct or indirect, in the real property being valued for compensation.

D. A description of the factors considered and the means by which a conclusion was reached must be included in report. These statements should be sufficiently detailed to enable NGPC to judge their respective merits.

E. A review is not required for property meeting the qualifications for waiver valuation.

ATTACHMENT 3

03/09

Statement of Owner

I am aware that \_\_\_\_\_ is interested in acquiring the following  
(Political Subdivision)

described property for park and outdoor recreation purposes.

Property Description:

It is clearly understood that my response to the questions below does not in any way indicate my willingness to sell or not sell the aforementioned property.

	Yes	No
1. The appraiser was granted permission to enter the premises for the purpose of conducting the appraisal report.	_____	_____
2. I was given the opportunity to accompany the appraiser while they inspected the property.	_____	_____

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Date

ATTACHMENT 4  
03/09

LWCF Conversion Proposal Checklist

- \_\_\_ 1. Alternatives
- \_\_\_ 2. Appraisal/Waiver Valuation
  - \_\_\_ Converted Parcel(s)
  - \_\_\_ Replacement Parcel(s)
- \_\_\_ 3. Signed Statement of Owner Form (Attachment 3)
- \_\_\_ 4. Appraisal Review
- \_\_\_ 5. Equivalent Usefulness of Replacement Land
- \_\_\_ 6. Acquisition Eligibility
  - \_\_\_ Land not originally acquired for recreation.
  - \_\_\_ Land not dedicated or managed for recreation.
  - \_\_\_ No federal assistance provided for original acquisition.
  - \_\_\_ Public agency selling land required to receive payment.
- \_\_\_ 7. Recreation Viability of Remaining Unconverted Parkland
- \_\_\_ 8. Federal Agency Coordination
- \_\_\_ 9. Environmental Review
  - \_\_\_ Converted Parcel(s)
  - \_\_\_ Replacement Parcel(s)
- \_\_\_ 10. Public Notice
- \_\_\_ 11. Site Plan
  - \_\_\_ Converted Parcel(s)
  - \_\_\_ Replacement Parcel(s)
- \_\_\_ 12. Plat Map
- \_\_\_ 13. Acquisition/Development Timetable
- \_\_\_ 14. Following NPS Approval of Request
  - \_\_\_ Acquisition and Development of Replacement Parcel(s)
  - \_\_\_ Dedicating Resolution for Public Outdoor Recreation Purposes
  - \_\_\_ Opinion of Title Prepared or Title Insurance Obtained