

LAND AND WATER
CONSERVATION FUND PROGRAM

Post-completion Responsibilities
and 6(f)(3) Conversions

A Manual for Local Sponsors

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Table of Contents

	<u>Page</u>
Introduction	3
Local Project Sponsor Post-Completion Responsibilities	3 - 5
Maintenance and Operation Standards	3 – 4
Discrimination	4 - 5
Use Restrictions	5
Conversion	5 – 10
Construction on Park Site	6 - 10
Utility Easements	7
Construction of Public Facilities	7
Environmental Assessment Information	8 – 9
Conversion Process	10 - 12
 <u>APPENDICES</u>	
I – Local Sponsor Responsibility Checklist	13
II – Exemptions from Section 6(f)3	
Checklist of Required Documentation	14
III – Conversions Proposal	
Checklist of Required Documentation	15

INTRODUCTION

The Land and Water Conservation Fund (LWCF) Program was established in 1965 to provide matching funds to the states for the acquisition of lands and development of outdoor recreation areas. Those parks and recreation areas acquired and/or developed in whole or in part with LWCF assistance are protected by Section 6(f)(3) of the LWCF Act of 1965, as amended. The Act also requires that project sponsors maintain to acceptable standards the properties or facilities acquired or developed for public outdoor recreation use.

Section 6(f)(3) of the Act states that "No property acquired or developed with assistance under this section shall, without the approval of the Secretary (Department of the Interior), be converted to other than public outdoor recreation uses. The secretary shall approve such conversion only if he finds it to be in accord with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location". The Secretary has authority to disapprove conversion requests and/or to reject proposed property substitutions.

The restriction on the use of LWCF assisted properties is a perpetual restriction, which can only be removed by an Act of Congress. Conversions are remedies to otherwise un-resolvable situations, not vested rights in the program.

The basis for determining the area covered by Section 6(f)(3) is through the LWCF Agreement with the state and any attachments made a part of the agreement and the project boundary map.

Post-Completion Responsibilities for Local Project

Maintenance & Operation Standards:

Local Project Sponsors are required as recipients of LWCF assistance to maintain assisted sites and facilities in public outdoor recreation use following project completion.

Property acquired or developed with Land and Water Conservation Fund Assistance shall be operated and maintained according to the following standards:

1. All LWCF assisted project sites must be operated and maintained in a manner, which encourages public participation.
2. The property shall be maintained so as to appear attractive and inviting to the public. Staffing and servicing of facilities shall be adequate.
3. Sanitation and sanitary facilities shall be maintained in accordance

with applicable health standards.

4. Properties, facilities and equipment shall be maintained for proper public safety.
5. All facilities, roads, trails and other improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use. Erosion problems shall be corrected.
6. The facility shall be kept open for public use at reasonable hours and times. Restrooms shall be unlocked during normal park hours.
7. The LWCF acknowledgement sign shall be displayed on site throughout the project life.

Discrimination:

Property acquired or developed with LWCF assistance shall be available to all persons to use and enjoy. The project sponsor must comply with the following:

1. **Discrimination on the Basis of Race, Color, National Origin, Religion, or Sex.** Under Title VI of the 1964 Civil Rights Act property acquired or developed with LWCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. The code of Federal Regulations, Title 43, Part 17, effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from Federal assistance to any other recreation areas administered by the State agency or local agency receiving the assistance. Discrimination is also prohibited on the basis of religion or sex.
2. **Discrimination on the Basis of Residence.** Section 6(f)(8) of the LWCF Act provides that with respect to property acquired or developed with LWCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

Fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservation, membership or annual permit systems available to

residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

3. **Discrimination on the Basis of Handicap.** Section 504 of the Rehabilitation Act of 1973 requires that no qualified person shall, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity, which receives or benefits from federal financial assistance.

Use Restrictions:

Property acquired or developed with Land and Water Conservation fund assistance must be used as outdoor recreation areas. Depending on the area, this use may be restricted.

Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of persons using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments. Project sponsors conduct post-completion self-inspections for the life of the project at the request of the State Parks Division. All items mentioned above will be addressed when these post-completion inspections are made.

Conversion

When an area acquired or developed with LWCF assistance will be used for other than public outdoor recreation use, this use constitutes a conversion under Section 6(f)(3) of the Land and Water Conservation Fund Act. Properties acquired or developed with LWCF assistance are prohibited by Section 6(f)(3) of the LWCF from conversion to other than public outdoor recreation use. As stated earlier, conversions are remedies to otherwise un-resolvable situations, not vested rights in the program.

Conversions generally occur in the following four situations:

1. **Property interests are conveyed for non-public recreation uses.**
2. **Non-outdoor recreation uses (public and private) are made of the area, or a portion thereof.**

3. **Non-eligible indoor recreation facilities are developed within the project area.**
4. **Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.**

Examples of conversions are construction of through-roads, construction of residential, industrial and commercial developments, water and sewer lines, community centers, gymnasiums, senior centers, offices, residences, electrical easements, private circus showing and other uses not permitted under the LWCF Program.

Conversions are normally discovered in the following manner:

1. Inspection by State Park personnel or by National Park Service Regional personnel.
2. Contact with local officials.

Pre-conversion activities, those activities leading to a conversion of park property, may also be discovered using the above-mentioned means and the following:

1. Local news media reports.
2. Intergovernmental review process.

Some examples of pre-conversion activities are plans and specifications for construction, public hearings, application for permits, etc.

Construction on Park Site

What do you do if construction is necessary on a park site?

When any construction on LWCF assisted park property is necessary, the local sponsor must contact the State Parks Division, LWCF Program. Do not begin any work on, or disturbance of the park site until this contact is made. As soon as the Division has been contacted, a meeting will be held with the local sponsor to determine if the activity is allowable, or exempt from the Section 6(f)(3) requirements of the Land and Water Conservation Fund Act. According to LWCF Manual Section 675.9(3) A.(5), exceptions to a conversion may be allowed for the following:

1. Underground utility easements that do not have significant impacts upon the recreational utility of the park will not constitute a conversion.
2. Proposals to construct public facilities where it can be shown that there is a gain or increased benefit to public outdoor recreational

opportunity will not constitute a conversion. Final review and approval of such cases shall be made on a case-by-case basis.

In the event it is determined that either 1. or 2. are applicable, the project sponsor must request, in writing, permission to continue the activity based on their ability to meet the following requirements:

For underground utility easements:

1. Written justification for granting the easement.
2. Written description of the possible impacts on the park and their effect on the outdoor recreation experiences in the park, both positive and negative.
3. A detailed site plan of the park showing the location of the easement, the current development in the park, and planned future development in the park.
4. A statement of assurance that no rights or interests will be granted in the property by project sponsor.
5. A statement of assurance that the intended present and future use of the project will not be impaired, and the property will be restored to its prior condition.

Three copies of the above documentation must be submitted to State Parks Division, LWCF Program, for review before approval of the exemption can be granted.

For construction of public facilities:

1. Complete detailed plans for the proposed development, including:
 - A. Description of the proposal including purpose of facility, potential, users, types of facilities and activities proposed (arts and crafts, reading area, kitchen, gymnasium, multipurpose room).
 - B. Maps and/or drawings depicting the existing recreation facilities with respect to the proposed public facility including additional support necessitated by any new construction (parking areas, road access). Photographs are useful in depicting the area.
 - C. Description of the proposed facility's size and design.

2. A site plan showing to scale the park property, improvements to the property, and the proposed development.
3. A description of how the proposed facility will increase public outdoor recreation use (positive net impact). A narrative must be included which describes how existing recreation opportunities will be enhanced or augmented by construction of the public facility.
4. A statement describing the proposed construction schedule, and any foreseeable interruptions in usage of the park.
5. A statement outlining public support of an involvement in the planning of the project.
6. An analysis of the impact on existing outdoor recreation facilities and its integration into the recreation purpose of the surrounding property. Will any existing recreation facilities be destroyed or relocated either on or off the site? Is the existing facility being used to capacity? Will the facility be constructed on the only area of its type in the community?
7. A complete environmental assessment using the information that follows:
 - A. An assessment of the effect the project will have on the immediate and surrounding environment must be done. The environmental assessment should be a reporting of the effect this project will have on the environment. The assessment should cover the three points listed below in sufficient detail to resolve the test of "major" and "significant". Prepare your assessment in the format shown below, with headings and subheadings and not in a flowing narrative style.
 - (1). The Proposed Action. Include a description of the proposed action, a statement regarding the need for it, a description of what the action is designed to accomplish, location of the project, its scope, the level of impact-causing activities associated with the project, when the action is to take place, if applicable, its relation to other Federal, State, or local projects and proposals.
 - (2). Alternative to the proposed action. This section will include a brief description of alternatives as required by NEPA Section 102 (2) (E).

The environmental impacts of the proposal and the alternatives should be presented in comparative form and should define the issues, pros and cons of a reasonable range of alternatives, and provide a clear basis for choice between them by program staff and the public.

(3). Environmental impacts of proposed action. Succinctly describe those environmental elements which would be affected. Discuss anticipated impacts on the following elements and any means to mitigate adverse environmental impacts:

- land use (project site and surrounding area)
- fish and wildlife
- geology and soils
- mineral resources
- air and water quality
- water resources/hydrology
- historic/archeological resources
- transportation/access
- consumption of energy resources
- socio-economic effects
- discuss any existing easements, right-of-ways, etc., and their effect on the proposed site

"Impacts" are defined as causing direct or indirect changes in the existing environment, whether beneficial or adverse which are anticipated as a result of the proposed action or related future actions. To the extent appropriate, the document will discuss impacts of the action, including environmental damage, which could be caused by users, upon the physical and biological environment as well as upon cultural, aesthetic, and socio-economic conditions.

Elements of impacts which are unknown or only partially understood should be indicated. Any off-site impacts, such as increased traffic on neighborhood roads or increased noise levels in surrounding areas, should be described.

(4). A listing of agencies and persons consulted.

8. A statement of assurance that no rights or interest in the property will be granted in the property by the project sponsor.
9. A statement of assurance that the intended present and future use of the project will not be impaired.
10. A statement of assurance that the property will be restored to its original condition after construction is completed.

Three complete copies of the above documentation must be submitted to the State Parks Division, LWCF Program, for review before approval of the exception can be granted.

Conversion Process

What if a conversion is necessary?

In the event the activity is not allowable, or does not qualify as an exception, program staff should determine if it can be removed from the park voluntarily by the project sponsor. If not, the following procedure shall be followed:

1. Program staff shall inform the project sponsor of the conversion determination, and request the following information as a prerequisite to approval:
 - A. A written description of all practical alternatives to the conversion.
 - B. A statement as to their evaluation and why they were rejected on a sound basis.
2. If a viable alternative to the conversion is available, the program sponsor must use it, either voluntarily or due to the contractual obligations as specified under the funding agreement, and Section 6(f)(3) of the LWCF Act.

If the conversion is necessary, several additional prerequisites are required to be met before approval. In order to convert property that was either acquired and/or developed with LWCF assistance, new property must be substituted for that being converted to other than public outdoor recreation use. To determine if the property qualified as replacement property, the program sponsor must submit the following:

1. Two appraisals establishing the fair market value of the property to be converted, and the property proposed for substitution showing the property proposed for substitution to be at least equal in fair market value to that being converted. This appraisal must be

conducted by a State approved appraiser.

- A. Generally, this will necessitate a review of appraisals prepared in accord with the current Uniform Appraisal Standards for Federal Land Acquisition published by the Land Acquisition Conference for both the property proposed to be converted and that recommended for substitution.
 - B. Property improvements will be excluded from all fair market value consideration for properties to be substituted. Exceptions are allowable only in those cases where property proposed for substitution contains improvements, which directly enhance its outdoor recreation utility.
2. A statement that the property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and the discretion of program staff, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. It must, however, be administered by the same political jurisdiction as the converted property.
 3. A statement of assurance that the property proposed for substitution meets the eligibility requirements for LWCF assisted acquisition as follows: NOTE: **The replacement property must constitute or be part of a viable recreation area.**
 - A. The project sponsor will obtain title or adequate control and tenure of the proposed substitute property in order to provide reasonable assurance that a conversion under Section 6(f)3 of the LWCF Act will not occur without approval.
 - B. The land was not originally acquired by the seller for recreation, if seller is a public agency.
 - C. The land has not been managed for recreational purposes while in public ownership.
 - D. No federal assistance was provided in the original acquisition by the other agency to facilitate the basic project being funded by LWCF assistance, unless the Federal assistance was provided by the supplemental programs allowed by the Act. (see Manual Section 670.1.5)

- E. The selling agency is required by law to receive payment for land transferred to another public agency. Examples would be public school land that can be used for non-school purposes only through payment to the school agency, or excess State prison lands that can be transferred to local government use only on a purchase basis.
 - F. The requirement of appraisal, history of conveyances, and evidence of title are the same as normal purchases.
 - G. If the selling agency is Federal, fair market value is paid.
- 4. A statement that the project sponsor is aware of and complies with the requirements of P.L. 91-646 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
 - 5. A complete environmental assessment for the substitute property (see outline on pages 8-9).

Three copies of the above aforementioned documentation are required for review of the proposal. If the state concurs with the proposal, it will be sent to the NPS for final review and approval. If the state does not concur with the proposal, the project sponsor must submit a new proposal for the replacement property until the conversion is resolved. **NOTE: Repayment of the LWCF grant monies is not an option in resolving a conversion.**

It is the intent of the Land and Water Conservation Fund to provide the means for you and future generations to enjoy outdoor recreation opportunities in your community. Remember the requirements of the contractual obligations in the agreements with the state and the NPS when considering changes in LWCF-assisted facilities.

Appendix I

Local Sponsor Responsibility Checklist		
	Okay	Not Okay
1. Open reasonable hours and time of year?		
2. All facilities open to the public?		
3. Any differential fee system in use?		
4. Any unapproved overhead wiring?		
5. Any evidence of discrimination?		
6. All facilities handicapped accessible?		
7. Is vandalism a serious problem?		
8. Any safety or liability concerns?		
9. Any conflicts with adjacent areas?		
10. Upkeep/repair of facilities adequate?		
11. Staffing/servicing of facilities adequate?		
12. Any directional/use/safety signs needed?		
13. LWCF acknowledgement sign erected?		
14. Is quality of area being maintained?		
15. Is property attractive/inviting to the public?		

NOTE: State and federal officials will make periodic inspections of your facility based on the above criteria.

Appendix II

Exemptions from Section 6(f)3 Requirements		
Checklist of required documentation		Included?
A.	Utility easements	
	1. Written justification for granting the easement?	
	2. Written description of the possible impacts on the park	
	3. A detailed site map of the park.	
B.	Public facility proposals	
	1. Complete detailed plans for the proposed development.	
	2. Site plan including dimensions which are to scale.	
	3. Description of how the proposed facility will increase public recreation – use positive net impact.	
	4. Proposed construction schedule.	
	5. Statement outlining public support.	
	6. Analysis of the impact on existing outdoor recreation facilities.	
	7. Complete environmental assessment.	
	8. Statement of assurance that no rights or interests in the property will be granted in the property by the project sponsor.	
	9. Statement of assurance that the intended present and future use of the project will not be impaired.	
	10. Statement of assurance that the property will be restored to its original condition after construction is completed.	

Appendix III

Conversion Proposal		
Checklist of required documentation		Included?
1.	Prerequisite documentation	
	a. Written description of all practical alternatives to conversion.	
	b. Statement as to their evaluation and why they were rejected on a sound basis.	
2.	Substitute proper documentation	
	a. Appraisal of the fair market value of the two parcels by a state-approved appraiser.	
	b. Statement of reasonably equivalent usefulness and location.	
	c. Statement of assurances that the property meets the eligibility requirements.	
	d. Statement that the project sponsor complies with the requirements of P.L. 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	
3.	Proposal information	
	a. Site plan for substitute property.	
	b. Narrative on proposed development for substitute property.	
	c. Plat for substitute property.	