

COMMONWEALTH OF PENNSYLVANIA
Department of Conservation and Natural Resources

Bureau of Recreation and Conservation (BRC)
Administrative Policy/Grant Guidelines

SUBJECT: Conversion of Property Interests Acquired or Developed with Federal Land and Water Conservation Funds (LWCF)

EFFECTIVE DATE: 12/2/10

REVISED: 4/10/13; 7/7/14; 10/6/15

Background

Department of Conservation and Natural Resources (DCNR) acquires real property interest or contributes to the development of property for recreation, conservation and/or educational purposes through the provision of grants to eligible applicants who acquire and/or develop property interests. Properties that are acquired or developed with federal Land and Water Conservation Funds (LWCF) are not permitted to be converted to purposes/uses other than outdoor public recreation. No change of use and no transfer of ownership, control, or interest in the property may occur, and no encumbrance may be placed on the property, without written consent of the Department or its successor. The properties may not be transferred through fee disposition lease, or other legal document that transfers the property or control to another entity. This policy outlines issues and legal mandates covering the conversion of property bought and/or developed with LWCF grant program funds administered by DCNR. This policy also includes a checklist to be followed by grant recipients when a conversion is not avoidable. Conversions may include disposition of the property, no public access, accommodating non-recreational uses on a piece of property including but not limited to energy development, commercial development, municipal buildings, telecommunication towers and resource extraction.

Policy

Under Title 36, Part 59 in the U.S. Code of Federal Regulations Title 36, Chapter 1, Part 59 Land and Water Conservation Fund Program of Assistance to States, the States are responsible for compliance and enforcement of the Post Completion Compliance Responsibilities for both state and locally sponsored projects. DCNR must follow the applicable laws, regulations and policies when addressing conversion requests.

Land and Water Conservation Act Purpose:

- i. Provide funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and
- ii. Providing funds for the Federal acquisition and development of certain lands and other areas.

There is a formal process required for any project that is proposed to be converted from public outdoor recreation use. The conversion process must be followed in any disposition or conversion of lands acquired or developed in total or part with Land and Water Conservation Fund dollars. (See Appendix)

Background on LWCF Conversion Requirements:

Section 6(f)(3) of the LWCF Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in LWCF assistance are being maintained in public outdoor recreation use. This

section of the Act assures that once an area has been funded with LWCF assistance, it is continually maintained in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value

This "anti-conversion" requirement applies to all parks and other sites that have been the subject of Land and Water grants of any type, whether for acquisition of parkland, development or rehabilitation of facilities. In many cases, even a relatively small LWCF grant (e.g., for development of a picnic shelter) in a park of hundreds or even thousands of acres provides anti-conversion protection to the entire park site or by the established 6(f)(3) boundary map submitted to NPS.

DCNR is responsible through the State Liaison Officer to coordinate and obtain approval of any conversion request with the National Park Service (NPS). Please note, the Commonwealth of Pennsylvania (with DCNR serving as its agent) and NPS must agree on the size of the Section 6(f) park land impacted by any non-recreational, non-public use, prior to any appraisal activity to determine the value of the land impacted by a proposed or discovered conversion.

Note: If your site was previously funded with both federal and state funding, additional conversion requirements may apply. DCNR will work with you to address these requirements.

This policy remains in effect until revised or rescinded.

Land and Water Conservation Fund (LWCF) Conversion Process Checklist

- Official letter from local project sponsor/grantee requesting consideration of the proposed conversion along with a detailed explanation of the conversion proposal that includes:
 - Purpose and benefit of doing the conversion.
 - Description of land to be removed from the “6(f) boundary” and description(s) of land to be substituted.
 - Discussion of alternatives to the conversion that have been considered.
 - A statement of the estimated value of the property to be converted and the estimated value of the proposed substitute property(s). If real estate appraisals have been done at this stage, they should be submitted with the letter.
- Location maps of the converted property or property proposed to be converted and the substitute property(s). Maps should be of a scale large enough to clearly show such features as adjacent streets, roadways, rivers, creeks and existing or proposed recreational facilities. If all properties involved in the conversion proposal cannot not be shown clearly on one map, a separate area location map should also be provided that shows the relationship of all the properties involved in the conversion proposal.
- Any other documents that will help the Bureau to more fully understand the impact and benefits of the conversion proposal and to demonstrate that the proposal meets the Prerequisites to Consideration of Conversions (see Section E-3 of the Excerpt from the LWCF Grants Manual below) including consultant reports, pictures and news articles.
- Real estate appraisal report on the land to be removed from the 6(f) boundary designation and on each of the substitute properties. The appraisals must be done by state certified general real estate appraiser and the appraisals must be consistent, to the extent applicable, with the Uniform Appraisal Standards for Federal Land Acquisition (A.K.A Yellow Book Appraisal). The appraiser should certify in writing that each appraisal compiles with Uniform Appraisal Standard for Federal Land Acquisition.
- A LWCF Proposal Description and Environmental Screening Form (PD/ESF) (provided by DCNR).
- State Historic Preservation Office review of the conversion proposal in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended in 1980 and 1992, and the regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation.
- Survey or subdivision plat on each substitute property with metes and bounds, easements, right-of-ways, acreage, etc. If the conversion pertains only to part of the 6(f) boundary property, a survey or subdivision plat will also be required that shows the remaining 6(f) boundary land on the original project site.
- Comments on the conversion proposal from local, county and regional planning agencies.
- Mail the proposal and all documentation to:
 - Department of Conservation and Natural Resources
 - Bureau of Recreation and Conservation
 - 400 Market Street, PO Box 8475
 - Harrisburg, PA 17105
 - Attn: Land Conservation and Stewardship Section

Appendix

Excerpts from Section E-3 of the LWCF Grant Manual

Prerequisites to the NPS consideration of 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 State Liaison Officer to NPS in writing and conform to the prerequisites set forth in 36 CFR 59. States shall consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS. States shall use the Proposal Description and Environmental Screening Form (PD/ESF) to prepare its conversion proposal (see Chapter 4). The PD/ESF guides the development of the conversion proposal, including the incorporation of the following prerequisites that must be met before NPS will consider the formal conversion request:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- b. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal (see Chapter 4 for appraisal guidance) excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility.
- c. 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 the NPS, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider state requests to change the project sponsor for any replacement property when it is determined a different political jurisdiction can meet the criteria for replacement properties. Equivalent usefulness and location will be determined based on the following criteria:

(1) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist 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 at least 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 Statewide 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.

(2) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted 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 substitute area at another location within the jurisdiction.

(3) Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.

(4) The acquisition of one parcel of land may be used in satisfaction of several approved conversions (see Section 6 below) and vice versa.

d. The property proposed for replacement meets the eligibility requirements for LWCF assisted acquisition (see Chapter 3). 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 and timetable for the development of the replacement parks. If full development of the replacement site(s) will be delayed beyond three years from the date of conversion approval, the conversion proposal shall explain why this is necessary (see Chapter 3.B.7).

For proposed replacement property with a history of contamination, proposals must address the nature of the contamination, how the contaminated area has been or will be remediated, how the area will be developed into a safe, public outdoor recreation area, and how provisions will be put in place to monitor the new replacement parkland to ensure public health and safety in perpetuity. Certain contaminated areas may not meet the equal or greater recreational usefulness prerequisite for replacement land. Early coordination with NPS for conversion proposals involving contaminated replacement land, even if remediated, is required (see 3.4 below).

Unless each of the following additional conditions (also see Chapter 3) is met, land currently owned by another public agency may not be used as replacement land for land acquired as part of an LWCF project:

(1) The replacement land was not originally acquired by the sponsor or selling agency for recreation.

(2) The replacement land has not been previously dedicated or managed for recreational purposes while in public ownership.

(3) No federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance.

(4) 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 (see Chapter 3.A.9).

An exception may be made to this condition only in the case of development projects for which the project sponsor's match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself. 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.

e. 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. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

f. 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.

g. The guidelines for environmental review under NEPA have been satisfactorily completed and considered by NPS during its review of the proposed Section 6(f)(3) action. In cases where the proposed conversion arises from another federal action, NPS final review of the State's proposal shall not occur until the 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 not only the Section 6(f)(3) area proposed for conversion, but also the development of the replacement parkland. The purpose and scope of the environmental review must focus on the impacts on the "human environment" resulting from 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 park(s). 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 so the interested and affected public can focus on and understand the details of the proposed federal action of converting parkland including the replacement of new parkland according to 36 CFR 59. 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 detailed guidance on NEPA and how to conduct environmental reviews for LWCF conversions consult Chapter 4 of this manual, and the NPS.

h. Adherence to state intergovernmental review procedures as appropriate (see Chapter 4).

i. The proposed conversion and substitution are in accord with the SCORP.

Land and Water Conservation Fund State Assistance Program – Federal Financial Assistance Manual
<http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf>