

LAND AND WATER CONSERVATION FUND
GRANT PROGRAM

CONVERSIONS

A HANDBOOK FOR PROJECT SPONSORS

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF PARKS AND OUTDOOR RECREATION
GRANTS AND ADMINISTRATION SECTION

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SECTION I

INTRODUCTION

The Land and Water Conservation Fund (LWCF) grant program was established in 1965 to provide matching funds to the states for the acquisition of land and development of outdoor recreation areas. Those parks and recreation areas that were 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. Furthermore, the LWCF Act requires that project sponsors operate and 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 that can only be removed by an Act of Congress. Conversions are remedies to otherwise unresolvable 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.

SECTION II

WHAT IS A CONVERSION OF USE

Funds for outdoor recreation projects are made available by the Land and Water Conservation Fund Act of 1965 through Alaska Division of Parks and Outdoor Recreation (ADPOR). The expressed intent of the LWCF Act is to acquire and develop property and then retain it as an outdoor recreation resource for the future. Federal laws require that a major commitment must be made by project sponsors prior to the grant being awarded, to maintain acquired and/or developed property for outdoor recreation uses in perpetuity.

The law does permit acquired or developed property to be converted to a non-outdoor recreation use provided that other property of equal fair market value, recreation utility, and location is substituted as discussed below. The process is referred to as a conversion of use and requires the approval of ADPOR and the National Park Service (NPS) prior to any change in the original project.

The conversion provisions of Section 6(f)(3) of the LWCF Manual apply to each area or facility for which LWCF assistance was obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the

contractual agreement between NPS and the State. 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 Department of the Interior. In many instances, this mutually agreed upon area exceeds that actually receiving LWCF assistance so as to assure the protection of a viable recreation entity.

Conversions generally occur in the following four situations:

1. Property interests are conveyed for non-public outdoor recreation uses.
2. Non-outdoor recreation uses (public and private) are made of the project 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 or 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 or Federal grants staff.
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.

- A. REQUEST FOR DETERMINATION - When any construction on LWCF assisted park property is necessary, the local sponsor must contact ADPOR. Do not begin any work on, or disturbance of the park site until this contact is made.

A written preliminary request should be sent to ADPOR describing the proposed conversion and substitution. This should include maps showing the original project boundary of the grant area, the changes proposed by the conversion, and the proposed substitution.

ADPOR will review the proposal, consult with you, and advise you whether a conversion is appropriate.

B. EXCEPTION PROCEDURE - According to LWCF Manual Section 675.9(3)A(5), exceptions to a conversion may be allowed for the following:

1. Underground utility use permits that do not have significant impacts upon the recreational utility of the park will not constitute a conversion.
2. Proposals to construct public facilities, or to shelter or enclose Fund assisted or non-assisted outdoor recreation facilities without LWCF assistance, where it can be shown that there is a gain or increased benefit to public recreational opportunity, will not constitute a conversion.

Final review and approval of such cases shall be made on a case-by-case basis by the responsible NPS office and in accordance with the LWCF Grants Manual.

In the event it is determined that either #1 or #2 above 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 use permits:

1. Written justification for granting the permit.
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.

One copy of the above-mentioned documentation must be submitted to grant staff for review before approval of the exception 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 areas, kitchen, gymnasium, multi-purpose 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 that 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 and 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. (i.e. 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 following information:
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 following format.

- a. 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, and, if applicable, its relation to other Federal, State, or local projects and proposals.
- b. 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.
- c. Environmental Impacts of Proposed Action. Describe those environmental elements that 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/archaeological resources
- transportation/access
- consumption of energy resources
- socio-economic effects
- discuss any existing easements, rights-of-way, 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 that could be caused by users, upon the physical and biological environment

as well as upon cultural, aesthetic, and socio-economic conditions.

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

D. 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.

One copy of the above documentation must be submitted to grants staff for review before approval of the exception can be granted.

C. **CONVERSION PROCEDURES** - In the event the activity or planned activity is not allowable, or does not qualify as an exception, grants staff will determine if it can be removed voluntarily from the park or if the plans will be altered voluntarily by the project sponsor to preclude conversion. If not, the following procedure shall be followed:

1. Grants 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 project 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 consideration for 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. It is important the replacement property not be acquired before NPS approval and execution of the amendment because property already publicly owned is generally not acceptable as substitution. The acquisition must comply with the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970.

To determine if the property qualifies as replacement property, the program sponsor must submit the following:

- a. 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, and must meet the Uniform Appraisal Standards for Federal Land Acquisition published by the Land Acquisition Conference.
 1. 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. The project sponsor will be responsible for the cost of the appraisals and reviews.
 2. 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 that directly enhance its

outdoor recreation utility.

- b. A written narrative that demonstrates 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. Generally, it must, however, be administered by the same political jurisdiction as the converted property.

Equivalent usefulness and location will be determined based on the following criteria: 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.

In accordance with Section 6(f)(3) of the LWCF Act as amended by Section 303 of the Emergency Wetlands Resources Act of 1986, wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

- c. A statement of assurance that the property proposed for substitution meets the eligibility requirements for LWCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area.

Public land may not be used for substitution on acquisition projects unless it meets the criteria for an eligible acquisition project.

However, in the case of development projects for which the match was not derived from the cost of the purchase of the land or value of a donation of the land to be converted, public land not historically been used for outdoor recreation and that is not

currently dedicated to or managed as recreation or conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

Unless each of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an LWCF project:

1. 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.
2. The land was not originally acquired by the seller for recreation, if seller is a public agency.
3. The land has not been managed for recreational purposes while in public ownership.
4. 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).

5. 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.
 6. The requirement of appraisal, history of conveyances, and evidence of title are the same as normal purchases.
 7. If the selling agency is Federal, fair market value is paid.
- d. 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.
- e. A complete environmental assessment for the property to be converted AND the substitute property (see outline on pages 10 - 13).
3. Drawings must be submitted as follows:

- a. Submit a plot map drawn to scale showing the layout of the existing property. Show bearings and distances of the total project boundaries in relation to a legal landmark. Identify the property that is to be converted by showing the bearings and distances around it in relation to the same legal landmark. All streets must be labeled, include a north arrow, etc. This map must be signed and dated by the project sponsor.

- b. Submit a plot map drawn to scale showing the layout of the proposed replacement property in relation to adjoining property. Identify any adjacent property that currently may be or is proposed to be in recreation use. Show bearings and distances of the project boundaries in relation to a legal landmark. All streets must be labeled, include a north arrow, etc. This map must be signed and dated by the project sponsor.

- c. Submit a map that shows location of replacement site. The location map must give sufficient detail so site can be found by a person never before in the area.

NOTE: Drawings b and c may be combined.

- d. Submit a site development plan for the replacement property, drawn to scale, showing layout of all intended development in relation to the boundaries discussed above, include a narrative and development schedule. All streets must be labeled, include a north arrow, etc.

DPOR will review the plan and advise you whether it will meet the recreation utility requirements. Using it, DPOR will prepare a justification to request NPS approval.

4. At least 30 days prior to DPOR's submission of a request to NPS to convert an LWCF property, the sponsor must advertise and hold a public hearing. A report on the consensus of public opinion at the hearing will be provided to DPOR. A request for conversion cannot be forwarded to NPS without this report.

Two copies of the aforementioned documentation are required for review of the proposal. After review, the State Liaison Officer (SLO) will approve or reject the proposal. If the SLO concurs with the proposal, it will be sent to the NPS for final review and approval. If the SLO 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.

What we have described is a "typical" conversion. There may be circumstances that require special handling.

SECTION III

SPONSOR COST ASSOCIATED WITH A CONVERSION

The project sponsor is responsible for all costs associated with processing a conversion of use. These costs include the actual costs of replacement property and facilities, appraisals, review appraisals, etc

SECTION IV

CONCLUSION

A final title policy must be purchased after the conversion is completed. Once the replacement property is approved, the sponsor will be asked to place restrictions on the title of all LWCF properties. This is a matter of adding the following to the title:

"This property is being held in perpetuity for outdoor recreation under the Land and Water Conservation Fund Act of 1965. With approval from Alaska Division of Parks and Outdoor Recreation and the National Park Service, the property may be replaced with land of equal or higher fair market value, recreation utility and location."

The Alaska Division of Parks and Outdoor Recreation stands ready to assist local governments with their outdoor recreation needs. 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 National Park Service when considering changes in your LWCF assisted facilities.

Exceptions to Section 6(f)3 Requirements

Checklist of Required Documentation

- A. **Utility Easements Proposals** (see Handbook pages 8 through 10)
 - 1. Written justification for granting the easement.
 - 2. Written description of the possible impacts on the park.
 - 3. A detailed site plan of the park site.
 - 4. A statement of assurance regarding transfer of rights or interest.
 - 5. A statement of assurance regarding future use and condition of site.

- B. **Public Facilities Proposals** (see Handbook pages 10 through 14)
 - 1. Complete detailed plans for the proposed development.
 - 2. A detailed site plan of the park site.
 - 3. A description of how the proposed facility will increase public recreation use (positive net impact).
 - 4. The proposed construction schedule.
 - 5. A statement outlining public support for the project.
 - 6. An analysis of the impact on existing outdoor recreation facilities.
 - 7. A complete environmental assessment.
 - 8. A statement of assurance regarding transfer of rights or interests.
 - 9. A statement of assurance regarding future use of the project site.
 - 10. A statement of assurance regarding condition of site after construction.

Conversion Procedures

Checklist of Required Documentation

1. **Prerequisite Documentation** (see Handbook page 14)
 - 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. **Property Documentation** (see Handbook pages 14 through 19)
 - a. Appraisals of the fair market value of the parcel/s to be converted and the replacement property, and appraisal reviews by State approved appraisers. Appraisals must meet Uniform Appraisal Standards for Federal Acquisition and be less than one (1) year old.
 - b. A comparative analysis that demonstrates reasonably equivalent usefulness and location.
 - c. A statement of assurance that the substitute property meets the eligibility requirements.
 - d. A statement that the project sponsor complies with the requirements of P.L. 91-646 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1
 - e. A complete environmental assessment for both the parcel/s to be converted and the replacement property.

3. **Proposal Information** (see Handbook pages 19 through 21)
 - a. A plot map for existing project site.
 - b. A plot map for substitute property.
 - c. A location map for the substitute property.
 - d. A site plan, narrative and development schedule on substitute property.

4. **Report on Public Hearing** (see Handbook page 21)