

Conversion of Use General Information

Section 6(f)(3) of the Land & Water Conservation Fund Act of 1965, (LWCF) as amended, requires that property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation in perpetuity. 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 NPS pursuant to Section 6(f)(3) of the LWCF Act.

The conversion provisions of LWCF Section 6(f)(3), 36 CFR Part 59, and long-term commitment responsibilities cited 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 National Park Service (NPS). This mutually agreed to area normally exceeds the footprint of the recreational facility receiving LWCF assistance in order to assure the protection of a viable recreation entity.

Local sponsors must consult early with the Department of Conservation & Recreation (DCR) when a potential conversion triggering activity is under consideration or has been discovered. Early contact allows DCR to consult with their NPS LWCF Regional Office manager from the beginning of the potential conversion process to verify if the proposed activity constitutes a conversion and to sort out and discuss details of the proposal to avoid mid-course corrections and unnecessary delays.

Situations that trigger a conversion include but are not limited to:

- Property interests are conveyed for private use or non-public outdoor recreation uses.
- 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-way and easements, or by a lessor.
- Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
- Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.

Situations that may not trigger a conversion if NPS determines that certain criteria are met include:

- Underground utility easements that do not impact the use of the land and are restored to original surface conditions. Sponsors should consult with DCR, early, to determine if proposed underground utility easements will trigger a conversion and what steps to follow.

- 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. These proposals must be reviewed by the NPS as a “public facility request”. Local sponsors should consult with the DCR early in the formative stages of developing proposals to construct indoor facilities on Section 6(f)(3) protected land to determine if the action will constitute a conversion of use.
- 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 of the program. Local sponsors must consult with DCR to determine the proper steps to follow.
- Proposals for "temporary non-conforming uses," that are temporary non-recreation activities of less than a six-month duration within a Section 6(f)(3) protected area, must be reviewed and approved by DCR and the NPS.
- Proposals for changing the overall outdoor recreation use of a Section 6(f)(3) area from that intended in the original LWCF project agreement. These proposals must be reviewed by DCR and the NPS before any changes are made.

Localities and state agencies should consult with DCR early in the planning of activities that may trigger a conversion to allow DCR to consult with NPS. A critical first step is for agreement to be reached on the size of the impact to the Section 6(f) protected area and the suitability of the required replacement land for recreation.

Formal requests for permission to convert LWCF assisted properties in whole or in part must be submitted in writing by the locality or state agency with jurisdiction over the LWCF property to DCR for review and approval prior to submission to the NPS by DCR. Requests must conform to the prerequisites set forth in 36 CFR 59

(http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title36/36cfr59_main_02.tpl).

At a minimum, conversion proposal requests require appraisals and metes and bounds maps for the converted area of the park and the replacement property. A metes and bounds map of the remaining Section 6(f)(3) area is also required. Conversion requests must include an analysis of the alternatives considered to the proposed action and why the decision to convert the protected parkland is the best course of action. In almost all cases, conversions require environmental assessment in accordance with the National Environmental Policy Act. All expenses associated with conversion requests are the sole responsibility of the locality or state agency which has jurisdiction over the LWCF area.

LWCF requires that the replacement property used to satisfy conversion process requirements be equal or greater in fair market value and equal or greater in recreational usefulness as the

converted area. The fair market value of the property to be converted and the property proposed for substitution must be established by an appraisal to the Uniform Appraisal Standards for Federal Land Acquisition (commonly referred to as “yellow book”) and certified by an independent appraisal reviewer.

Equivalent recreational usefulness of the proposed replacement property will be determined based on the following criteria: Property to be converted must be evaluated by the SLO/ASLO 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. Likewise, the property being proposed for substitution must then be evaluated to determine if it will meet recreation needs that are similar in magnitude for the user community as the converted site.

The property proposed for replacement 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.

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 considered converted and replaced as well.

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.

The conversion of use process involves many steps. In Virginia, recent, simple, non-controversial conversions typically take 24 months for approval. For more detailed information about LWCF conversion requirements call 804.371.4918 or email Jett.Johnson@dcr.virginia.gov.