

**Pennsylvania Department of Transportation
On Behalf of the Federal Highway Administration – Pennsylvania Division**

**Section 6(f) of the Land and Water Conservation Fund Act
Evaluation**

GUIDANCE

1. Introduction

The *Land and Water Conservation Fund Act (LWCF)* of 1965 (16 USC 4601-4 to 4601-11) was enacted to establish a funding source to assist the States and Federal agencies in meeting present and future outdoor recreation demands and needs. Federal assistance (funds) from the Act are authorized to the States for the planning, acquisition, and/or development of needed land and water or utilized, directly, by Federal agencies for the acquisition and development of “certain lands”.

Administration of the LWCF Act is by the National Park Service which, in turn, delegates many of the roles and responsibilities to a department within the state, whose Secretary then serves as the State Liaison Officer. In Pennsylvania, statewide administration has been delegated to the Department of Conservation and Natural Resources (DCNR) Bureau of Recreation and Conservation.

Section 6(f) of the Act requires that all properties “acquired or developed, either partially or wholly, with LWCF funds” must be maintained as such in perpetuity. Section 6(f)(3) states that those properties acquired or developed with LWCF funds shall not be converted to a use other than public outdoor recreation without the approval of the Secretary of the Department of the Interior, acting through the National Park Service and at the request of the state delegate/State Liaison Officer.

For projects carried out with Federal or state funds by the Pennsylvania Department of Transportation (PennDOT) that may change the usage of a property acquired or developed with LWCF funds, appropriate steps should be taken to comply with the law. The following provides guidance to accompany the Section 6(f) checklist, including a discussion on the relationship between Section 6(f) and Section 4(f).

<p><u>Note:</u> Section 4(f) has been included in this discussion because lands acquired and/or developed with LWCF funds are considered public parks or recreation areas and are, therefore, subject to the requirements of Section 4(f).</p>
--

2. Checklist

The attached checklist has been developed to assist in compliance with Section 6(f) of the LWCF. More specifically, it is meant to provide the user with a guideline for evaluating potential conversions or changes in use of Section 6(f) land resulting from a proposed transportation project and for selecting an appropriate replacement property. Once complete, the checklist and associated correspondence should be attached to the CEE or EA prior to NEPA approval by FHWA. Although the evaluation contained in the checklist is meant to be comprehensive, additional information and/or coordination may be included, as appropriate.

Applicability of Determination

If a Section 6(f) property has been identified near, adjacent to, or within the project area, the decision must be made as to whether or not there will be a conversion or a change in use of the property. If it is determined that the property is to be converted (to a different use in whole or in part) or the use altered by a proposed transportation project, approval must be granted by the National Park Service at the request of the State Liaison Officer- the DCNR Bureau of Recreation and Conservation. The request, provided directly from DCNR, should be written

and must provide the NPS Regional Director with relevant information regarding the following prerequisites for conversion:*

1. All practical alternatives have been evaluated;
2. The fair market value of the replacement property is at least equal to that of the converted property;
3. The replacement property is at least as useful and of similar location as the converted property;
4. The replacement property has met the eligibility requirements for LWCF assisted acquisition as outlined in 36 CFR 59.3(b)(4)(i-iv);
5. All other relevant agency coordination has been completed, including compliance with Section 4(f); and
6. The proposed conversion and replacement is in accordance with the Statewide Comprehensive Outdoor Recreation Plan (SCORP), which identifies public recreation trends and provides strategies for improving outdoor recreation within the state.**

There may be situations in which the result of the proposed transportation project is the partial conversion or use of the Section 6(f) property, as a whole. Regulations state that, should this occur, an evaluation of the remaining Section 6(f) property should be conducted to determine whether there has been a change to its “usefulness” as a viable public outdoor recreation area. If the conversion is approved by the NPS and it is determined that the remaining property is altered to the point in which the usefulness has diminished, further evaluation and coordination should take place to establish whether the remaining land should be replaced, as well.

Furthermore, cases may arise in which LWCF funds were used to purchase and/or construct items or equipment to enhance the recreational use of a park; however, the park land, itself, was not acquired with these funds. Generally, in these situations it is important to review the boundary maps of the Section 6(f) property and coordinate with the DCNR to determine the effect of equipment placement on the recreational use of the property. In other words, establish whether the placement of the equipment creates a Section 6(f) property by extension and, if so, the extent of the property boundary.

Typically, the simple acquisition of land from a Section 6(f) property for project purposes would be considered an actual conversion or change in use. However, if the acquisition is necessary as part of a project that would directly enhance the Section 6(f) property, for example providing improved access for visitors or emergency personnel, then there may not be an actual “conversion”. Coordination with DCNR, local officials with jurisdiction, and NPS will aid in distinguishing between whether or not there is a conversion. See the Henry Road Bridge Replacement project in District 5-0 as an example.

Alternatives Considered

As is common practice when evaluating impacts to other resources, avoidance and minimization alternatives to the conversion or use of the Section 6(f) property should be evaluated. If there are no practical avoidance alternatives available, justification should be provided. Similar to the Section 4(f) checklist, the 6(f) checklist directs the user to explain why alternatives such as the No Build, New Location/Alignment, and Transportation Management are not viable options. To reduce processing time and prevent redundancy, the alternatives analysis performed in the Section 4(f) can be incorporated by reference or the Section 4(f) evaluation/checklist can be attached directly to the Section 6(f) checklist.

Replacement

Once the conversion has been approved by the NPS, immediate acquisition of the replacement property is required. Again, the replacement property in question must be evaluated based on its Fair Market Value, location and size, as well as, usefulness. These factors are then compared to the land to be converted by the proposed project. Coordination with a number of parties should be conducted to guarantee equal replacement, including appraisers, officials with jurisdiction (grant sponsors), and personnel from the NPS and DCNR.

* Specific information can be found in 36 CFR Part 59.3(b): *Prerequisites for conversion approval*.

** In PA the SCORP is “Pennsylvania’s Recreation Plan 2004-2008”, which can be obtained by contacting DCNR directly or by accessing the document through DCNR’s website: www.dcnr.state.pa.us/brc/grants/brcrecplan.pdf

The Fair Market Value of the replacement property should be assessed by an approved appraiser. As a general rule, if the value of the land taking is less than \$5,000.00, a full appraisal is not necessary and the assessment will not be challenged by NPS appraisers. If the value of the land is greater than \$5,000.00, a full appraisal should be conducted and the final figures must be approved by NPS.

The location/size and usefulness of the Section 6(f) property should be readily available by speaking with the official(s) with jurisdiction and by looking over the grant agreement and management plan. A delineation map of the property and functional areas should also be used.

Although replacement property should be identified at the time of the conversion request, there may be cases in which this is not possible. If this issue arises, a commitment must be made to the DCNR that the replacement requirements will be satisfied within a specified period of time (not to exceed one year); although every effort should be made to meet these requirements as soon as possible.

Multiple Substitutions

On those occasions in which it is possible to replace multiple smaller 6(f) conversions with a single (large) property, coordinate with the NPS and DCNR to determine if this option is viable and to figure out the most plausible way to assess the value, location, and usefulness of all properties involved.

3. Section 4(f) Compliance

It is the intent of the Pennsylvania Division Office of FHWA to ensure that the Section 6(f) evaluation be processed after the Section 4(f). There are two reasons for this: (1) The prerequisites for conversion as established in 36 CFR part 59.3(b) maintains that “all other relevant agency coordination must be completed, including compliance with Section 4(f) and (2) The evaluation of feasible and prudent alternatives to the use of a Section 4(f) property would satisfy the Section 6(f) requirement that “all practical alternatives... [must be] evaluated.” Although the term “practical” is not specifically defined within the law, it would be reasonable to assume that if an alternative is neither feasible nor prudent, it would not be practical.^{***}

Keep in mind, however, that requirements for choosing and acquiring replacement property for Section 6(f) land are more stringent than those for Section 4(f). Replacement property for Section 6(f) must be substituted at a 1:1 ratio in terms of fair market value and usefulness in comparison to the converted/used land. For Section 4(f), mitigation measures are considered during the “least harm” evaluation (“all possible planning to minimize harm”) and also to provide a “Net Benefit” to a Section 4(f) property. Unlike Section 4(f), there is no *de minimis* provision or programmatic evaluations for Section 6(f). Therefore, this checklist can be applied to any acquisition/use of Section 6(f) land.

^{***} The Department of the Interior provides a similar view on this issue in their *Handbook on Departmental Review of Section 4(f) Evaluations*: “If we do not concur that the first proviso of Section 4(f) is satisfied (in other words, there are feasible and prudent alternatives to the proposed 4(f) use), then we could not concur in a 6(f) conversion either...”