

CHAPTER
23

SECTION 6(F) – LAND AND WATER
CONSERVATION FUND AREAS



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SECTION 6(F) – LAND AND WATER CONSERVATION FUND AREAS

The federal government established the Land and Water Conservation Fund (LWCF) Program in 1965 to increase the net quantity of public, outdoor recreational space. Section 6(f) of this Act provides matching funds to states or municipalities for planning, improvements, or acquisition of outdoor recreational lands. Any property that was planned, purchased, or improved with LWCF money is considered a 6(f) property. Typically, Section 6(f) properties are recreational lands that are also regulated under Section 4(f) of the Department of Transportation Act, so the review and approval by federal and District of Columbia agencies under both regulations runs concurrently.

23.1 Summary of Key Legislation, Regulations, and Guidance

23.1.1 Federal Legislations and Regulations

Land and Water Conservation Fund Act (Section 6[f]) at 16 United States Code (USC) 460-4 to 460-11 (P.L. 88-578)

The LWCF Act applies to all relevant projects—public or private. Section 6(f)(3) of the Act states that no property acquired or developed with LWCF money shall be converted

to other than public outdoor recreation uses without the approval of the Secretary of the Interior. If approved, the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location is required.

23.1.2 Guidance Documents

- Land and Water Conservation Fund Grants-in-Aid Manual. National Park Service, 1991. Guideline NPS-34, Release no. 151.
- Guidance for Preparing and Processing Environmental and Section 4(f) Documents. Federal Highway Administration (FHWA) Technical Advisory T 6640.8A, October 30, 1987. This document includes a review of Section 6(f) issues, as well as Section 4(f) and other environmental issues.

23.1.3 Related Regulations

49 USC 303, Department of Transportation Act of 1966, Section 4(f).

23.2 Agency Roles

- National Park Service (NPS), a part of the Department of the Interior. NPS is the lead agency overseeing the administration of Section 6(f). NPS maintains a list of all properties in which Section 6(f) funds have been invested and has the authority to determine if Section 6(f) is involved.
- District of Columbia Department of Parks and Recreation (DPR). The District of Columbia DPR is the recipient of the funds in the Government of the District of Columbia, and the state liaison for Section 6(f) lands as specified in the regulations.
- FHWA. FHWA also oversees the Section 6(f) process to ensure compliance. Typically, the Section 4(f) process includes this review.

23.3 General Methodology for Evaluation

More often than not, Section 6(f) properties also fall under Section 4(f). Therefore, if both regulations are applicable, their evaluations would typically run concurrently, and the Section 4(f) evaluation can incorporate the Section 6(f) documentation as well.

Depending on how LWCF funds are invested in a property, not all of the property may be considered Section 6(f). If the Section 6(f) grant was invested in a particular feature or section of a larger recreational property, it is possible that only a portion of the property is considered Section 6(f) property. On the other hand, if Section 6(f) funds are used for overarching planning or improvements, Section 6(f) may apply to the entire property.

Therefore, the location of Section 6(f) properties may be unclear; their boundaries cannot necessarily be determined simply from property maps. Instead, these boundaries must

be determined through early coordination efforts. As a starting point, NPS lists Section 6(f) investments by county on its website. However, this source simply provides a list. The project team should contact DPR and NPS if any local recreational areas may be affected by the project to determine if Section 6(f) applies to the area in question.

Like Section 4(f), the project team must evaluate and document all practical alternatives to the proposed conversion of Section 6(f) land for transportation use before the acquisition can be approved. This analysis would be similar to that in Section 4(f) and typically is documented in the Section 4(f) evaluation.

It is possible that the project could temporarily affect Section 6(f) lands. Provided the impact to the land and facilities can be restored as approved by DPR and NPS, then the intent of the statute can be met by onsite mitigation. The project team should document the details of the coordination and concurrence of DPR, NPS, and District of Columbia Department of Transportation (DDOT) on mitigation strategies for reference in the National Environmental Policy Act of 1969 (NEPA) document.

If acquisition of a Section 6(f) property is unavoidable, DDOT is required to replace the property. The regulations at 36 Code of Federal Regulations (CFR) 59.3 provide details of the selection of the appropriate replacement property. In summary:

- The replacement property is of at least equal fair market value.
- The replacement property is of reasonably equivalent usefulness and location.
- The replacement property must meet comparable recreation needs to the converted site.

- The replacement property need not necessarily be adjacent to or close to the converted site.
- The acquisition of one parcel of land may be used in satisfaction of several approved conversions.
- The replacement property meets the eligibility requirements for LWCF-assisted acquisition and must constitute or be part of a viable recreation area.
- If land currently in public ownership, including land owned by another public agency, is to be used as replacement land, each of the following conditions must be met:
 - The land must not have been acquired by the sponsor or selling agency for recreation.
 - The land has not been dedicated or managed for recreational purposes while in public ownership.
 - No federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement Section 6(f) funds assistance.
 - Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land.
- In the case where only a part of a Section 6(f) property is converted, the evaluation must consider the impact of the conversion on the remainder of the Section 6(f) property. The unconverted area must remain recreationally viable, or it must also be replaced.

If requesting permission to convert Section 6(f) properties in whole or in part, DDOT must submit the request to DPR, which in turn submits the request to the NPS regional director in writing. This could be accomplished using the Section 4(f) document, if applicable.

23.4 Format and Contents of Documentation

Although Section 6(f) is a separate process from Section 4(f), Section IX of FHWA Technical Advisory T 6640.8A allows the project team to combine the two processes into a single document. This approach reduces duplication and ideally provides a consolidated mitigation to comply with the requirements of both regulations.

A project team may also prepare a separate Section 6(f) evaluation memorandum to document the Section 6(f) investigations and study efforts. Typically, this process would only be necessary in particularly complex situations with extensive documentation. If prepared, the material contained in this memorandum could be referenced in the Section 4(f) evaluation and in the NEPA document.

The NEPA document should discuss the presence or absence of Section 6(f) land. This means, at minimum, any nearby eligible Section 6(f) land—such as a public park in which LWCF funds were used—should be described briefly in the section on affected environment. If all reasonable alternatives avoid the potential for Section 6(f) conversion, then typically it is sufficient to declare this finding in the NEPA document within the section on environmental consequences.

If the potential for Section 6(f) conversion exists, the section on environmental consequences should document measures to avoid, minimize, and mitigate impacts to Section 6(f) properties. The section also should document the results of agency correspondence between DDOT, DPR, and NPS concerning location, potential conversion of Section 6(f) lands, and proposed mitigation.

23.5 Project Development Process Guidance

It is important to pursue potential Section 6(f) issues early in the project development process, so that the project team

can consider options to avoid impacts; if impacts cannot be avoided, the team can incorporate measures to minimize harm early in the design. The project team also should identify potential Section 6(f) properties through early coordination with the DPR and NPS and incorporate these properties into the project base mapping.

At this time, the project team should consider avoidance alternatives and review possible mitigation measures for temporary impacts with DPR and NPS to avoid the need for land acquisition from Section 6(f) properties.

If acquisition cannot be avoided, the team must consider options for replacement land. DPR may be able to identify properties that it would prefer to acquire. Coordination with other offices in the District of Columbia Office of Planning may also help to identify suitable parcels. As the options are developed, DPR and NPS should be consulted on the acceptability of the options to comply with the statute requirements. Reasonable options should be defined for inclusion in the NEPA and (if applicable) Section 4(f) documents.

DPR and NPS must approve in writing the replacement land that is ultimately selected. It is often appropriate to develop a Memorandum of Agreement (MOA) to be signed by DDOT, DPR, and NPS that specifies the land replacement agreement. Include any MOA in the NEPA document.

23.6 Continuation through Design and Construction

To avoid problems or delays, communication must continue throughout project design and construction.

Clearly, it is important to incorporate all design modifications and measures to minimize harm to the

Section 6(f) property (for example, restoration of temporary impacts) into the design plans and notes as approved by FHWA in the Section 4(f) document and/or the NEPA document.

Where a land exchange is required, DDOT real estate staff must be informed. The specifics of the land purchase should be incorporated into the right-of-way plans as any other right-of-way acquisition, including specifics for the final disposition of the title, so that the transfer may be completed at the time of acquisition.

It is possible that, for unforeseen reasons, changes could occur in the project after the environmental documents are complete, such as changes necessitated by conditions found during construction. Therefore, the impacts to the Section 6(f) properties must be continuously monitored, because design changes and/or onsite construction considerations may force modifications of commitments made previously. Any changes should be coordinated immediately with FHWA, NPS, and DPR because those changes may require revisiting the Section 6(f) process.

23.7 Additional Information

- NPS Land and Water Conservation Fund Program: <http://www.nps.gov/ncrc/programs/lwcf/protect.html>
- Properties in the District of Columbia where LWCF funds have been used: <http://waso-lwcf.ncrc.nps.gov/public/index.cfm>
- Guidance for Preparing and Processing Environmental and Section 4(f) Documents, FHWA Technical Advisory T 6640.8A: <http://environment.fhwa.dot.gov/projdev/impTA6640.asp>