

Resource Analysis Guidance – Land and Water Conservation Fund Recreation Areas (Section 6(f))

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Acronyms and Abbreviations

CFR	Code of Federal Regulations
DOI	U.S. Department of the Interior
FHWA	Federal Highway Administration
LPA	Local Public Agency
LWCF	Land and Water Conservation Fund
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act of 1969
NGPC	Nebraska Game and Parks Commission
NPS	National Park Service
NPS manual	Land and Water Conservation Fund State Assistance Program manual
PD/ESF	Proposal Description and Environmental Screening Form
SCORP	Statewide Comprehensive Outdoor Recreation Plan
SF	Standard Form
SLO	State Liaison Officer
UASFLA	Uniform Appraisal Standards for Federal Land Acquisitions
USC	United States Code
U.S. DOT	U.S. Department of Transportation

1 Introduction and Purpose

Many outdoor recreation properties and facilities nationwide exist because of federal financing through the Land and Water Conservation Fund (LWCF) Act or other federal grant programs. Section 6(f) of the original LWCF Act provides protection for federal investment in public outdoor recreation. The primary protection is a requirement to replace any LWCF outdoor recreation property with property of equal or greater economic and recreational value if the original property will be converted to another use that is not considered as an outdoor recreation use. This is referred to as full or partial conversion and is discussed in Sections 3 and 4 of this guidance document. The LWCF Act also includes procedures for small conversions and temporary uses of protected land, as discussed in Section 5 of this guidance document.

The U.S. Department of the Interior (DOI) National Park Service (NPS) oversees LWCF protections of public outdoor recreation property developed through federal assistance to the states, which is the subject of this guidance. The DOI U.S. Fish and Wildlife Service and the U.S. Department of Agriculture, Forest Service oversee other federal grant programs that provide similar land protections. These programs are discussed briefly in Section 6 of this guidance document.

The Nebraska Game and Parks Commission (NGPC) represents the State of Nebraska and is responsible for compliance with, and enforcement of, LWCF provisions.

This Section 6(f) Resource Analysis Guidance is intended for use by Nebraska Department of Transportation (NDOT) staff, Local Public Agencies (LPAs), and consultants who write National Environmental Policy Act of 1969 (NEPA) documentation or obtain permits for NDOT projects in

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Nebraska, collectively referred to herein as environmental analysts. This guidance document provides an overview of LWCF recreation area requirements as they are administered in Nebraska and as they apply specifically to projects administered by NDOT or LPAs. However, the Section 6(f) requirements for any specific project may not be fully understood until discussions have occurred with LWCF administrators and after consulting NPS guidance, as identified in Section 7 of this guidance document.

Although there is overlap, Section 6(f) of the LWCF Act should not be confused with Section 4(f) of the U.S. Department of Transportation (U.S. DOT) Act. The relationship between these two laws is discussed in Section 2.3 of this guidance document.

2 Background

2.1 Legal and Regulatory Context

The LWCF Act of 1965 (Public Law 88-578, as amended) is codified at [54 United States Code \[USC\] 2003](#)), and its accompanying regulations are at [36 Code of Federal Regulations \[CFR\] 59](#). The original law has been re-codified, and Section 6(f)(3) of the original law is now Section 200305(f)(3). NPS uses the term LWCF recreation area in place of Section 6(f) property, but the term Section 6(f) is common and is likely to remain in use. This document uses the terms Section 6(f) property and LWCF recreation area interchangeably. NPS provides substantial information about Section 6(f) in its Land and Water Conservation Fund State Assistance Program [Federal Financial Assistance Manual \(NPS manual\)](#).

Regarding LWCF recreation area protections, [54 USC 200305\(f\)\(3\)](#) states:

No property acquired or developed with assistance under this section shall, without the approval of the Secretary [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 comprehensive statewide outdoor recreation plan 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 reasonably equivalent usefulness and location.

The federal regulations ([36 CFR 59](#)) were developed to establish a process for conversion and replacement of outdoor recreation property. As suggested in [54 USC 200305\(f\)\(3\)](#), Nebraska has a Statewide Comprehensive Outdoor Recreation Plan (SCORP), and it is administered by NGPC.

2.2 Roles and Responsibilities

When Section 6(f) land is proposed for conversion to another use, such as transportation, the law and regulations establish a process that is to be followed by a state agency (that is, NGPC) and the U.S. government (that is, NPS). Formal communication is between NGPC and NPS, but the project sponsor (NDOT or an LPA) and the owner or manager of the property in question (owner/manager) are also involved in this process. The responsibilities of these entities are as follows:

- NPS represents the federal government and ultimately is the agency that approves the conversion of Section 6(f) land to other uses. NPS typically is also the entity that approves temporary non-conforming uses.
- NGPC represents the State of Nebraska and has specific staff who are the designated State Liaison Officer (SLO) and Assistant State Liaison Officers (ASLO) for the LWCF program. The SLO or ASLO is the main point of contact for the project sponsor and handles negotiations regarding land conversions. NGPC is responsible for compliance with and enforcement of LWCF provisions.
- The owner/manager of the LWCF recreation area is officially the entity responsible for maintaining the federal investment in public outdoor recreation. Typically, this is a city, county, state agency, or other political subdivision. The property owner/manager's role in the conversion process is to determine impacts on the property, communicate the request for conversion to NGPC (including filling out NPS forms), find suitable replacement property, and identify other impact mitigation efforts that will ensure no overall loss of outdoor recreation land or outdoor recreation function. When NDOT or an LPA is requesting use of the land for a transportation project, the property owner/manager may ask the project sponsor to conduct much of the work on its behalf.
- NDOT or an LPA, as sponsor of a transportation project that may need to use protected property, plays a key role in the Section 6(f) process. The property owner/manager may request that NDOT or the LPA prepare and submit documentation to NGPC, find any replacement property required, perform fair market value analysis of land, and complete other required tasks. NDOT or the LPA also generally will need to fund the effort and whatever mitigation is required (but may use federal-aid highway funds provided for the project).

The property owner/manager may request that NDOT or the LPA prepare and submit documentation to NGPC, find any replacement property required, perform fair market value analysis of land, and complete other required tasks.

2.3 Relationship of Section 6(f) to Section 4(f)

Section 6(f) of the LWCF Act could be confused with Section 4(f) of the U.S. DOT Act because both laws protect outdoor recreation properties. Although they are separate laws, there is a relationship between properties protected under Section 6(f) and properties protected under Section 4(f). The Federal Highway Administration (FHWA) regulations regarding Section 4(f) acknowledge Section 6(f) issues and require coordination with NPS (see Section 4(f) regulations at [23 CFR 774.5\(d\)](#)). The [NPS manual](#) requires that Section 4(f) issues be resolved before Section 6(f) approval.

Section 6(f) requirements apply when a project uses (that is, requires conversion of) a Section 6(f) property, regardless of funding source. Section 4(f) requirements apply when a project uses protected property and when U.S. DOT funds are used for the project or the project requires U.S. DOT approval. When a transportation project is funded through U.S. DOT (typically FHWA) and requires the conversion of recreation or park property protected by Section 6(f), the property generally is protected under Section 4(f) as well.

For more information on Section 4(f), see the NDOT *Environmental Procedures Manual*, [Chapter 8, Technical Resource Analysis](#), Section 8.10.

2.4 Definitions

NPS does not formally define the terms used in the [NPS manual](#). For purposes of this guidance document, the various uses of the term “conversion” are defined based on how they are used in the [NPS manual](#).

Conversion: The term “conversion” is from the LWCF Act’s statement that no property acquired or developed with LWCF assistance shall be *converted* to other than public outdoor recreation uses without approval of the DOI Secretary. Conversion may occur by a change in use or a change in land ownership, such as when acquisition occurs for a transportation project. When land from an LWCF recreation area is converted to another use, that land must be replaced with land that is of at least equal fair market value and is of reasonably equivalent usefulness and location (see the [NPS manual](#), Chapter 8, Section E.3.c).

Conversion may occur by a change in use or a change in land ownership, such as when acquisition occurs for a transportation project.

Full conversion: Full conversion, sometimes called whole conversion, means that the entire LWCF recreation area would be converted to uses other than public outdoor recreation. As used in this guidance document, the term applies to both the act of converting property and to the process required to obtain NPS approval for the conversion.

Partial conversion: Partial conversion refers to conversion of a portion (greater than 10 percent) of an LWCF recreation area. The process for partial conversions is the same as for full conversions.

Small conversion: Small conversions are “partial conversions in which no more than ten percent of the whole LWCF recreation area will be removed” ([NPS 2008](#)). Small conversions must not cause significant impacts and are in a category excluded from further evaluation under NEPA, so processing and documentation requirements are typically less stringent than the requirements for full conversions or larger partial conversions.

Temporary non-conforming use: Temporary non-conforming use is the authorized use of an LWCF recreation area for up to 6 months, but not longer, for purposes other than public outdoor recreation. This is considered an exception to the conversion requirements. Temporary non-conforming uses longer than 6 months are considered a conversion of use.

3 Section 6(f) Applicability and Process Overview

3.1 Determining When Section 6(f) Applies

Section 6(f) protections apply to lands purchased with LWCF monies and to lands enhanced or developed through the LWCF program. Enhancement typically includes development of recreation facilities such as playground equipment, swimming and aquatic facilities, trails, picnic facilities, ball fields, and ball field lighting. If LWCF monies were used to purchase all or part of the property or to make improvements to the property, then Section 6(f) applies to any use of any part of the property as identified in the original project agreement. For example, if a transportation project will use the undeveloped northeast corner of a property, and if LWCF monies funded development of a playground in the southwest corner of the property, Section 6(f) protections usually will apply to the entire property, and the project will have to complete the Section 6(f) process.

If LWCF monies were used to purchase all or part of the property or to make improvements to the property, then Section 6(f) applies to any use of any part of the property as identified in the original project agreement.

Early in project development, the environmental analyst determines (1) whether park or recreational land or open space is present in the project area,¹ and (2) whether these properties are protected under Section 6(f).

The primary method for determining whether properties are protected under Section 6(f) is consultation with NGPC.

The primary method for determining whether properties are protected under Section 6(f) is consultation with NGPC. Another method is to search an [NPS online database](#) by county for protected properties and to consult with the park or recreation area owner/manager. However, consultation with NGPC will still be required to confirm Section 6(f) applicability, and to determine site boundaries and details. If

protected property does exist, NGPC can provide boundary maps or further information. NGPC can be reached at its headquarters in Lincoln at:

2200 N. 33rd Street (physical address)
 PO Box 30370 (mailing address)
 Lincoln, NE 68503-0370
 402-471-5539 (main number)

A current direct phone number for the NGPC SLO or ASLO may be available on NPS's LWCF [contact list](#), by state.

Ultimately it will be NGPC and NPS that determine whether Section 6(f) applies—that is, to declare whether a property is or is not protected under Section 6(f) and whether a proposed project would use land from the protected property.² Therefore, consultation with NGPC is recommended as soon as it is determined that a park, recreation area, or open space may be involved. For any transportation project

¹ In this instance, project area is the area that could be affected by right-of-way acquisition or property deed restriction for any alternative or variation, as determined by the right-of-way design engineer.

² A transportation project could remove or heavily restrict access to an LWCF recreation area without actually converting any land use. In this case, the conversion process technically may not apply, but other negotiation to retain the function of the recreation area may be appropriate. The [NPS manual](#) (Chapter 8, Section B.3) states that LWCF recreation properties "shall be kept reasonably... accessible..." in perpetuity (2008). If it appeared that a project would seriously restrict access, the project sponsor should contact NGPC for a determination of the best way forward.

that may require new or expanded right-of-way, it may be worthwhile to contact the SLO to verify that no LWCF recreation area would be affected, even if it appears that the likelihood of LWCF recreation areas is low. Documentation of this consultation should be attached to the NEPA documentation and included in the project files.

The conversion process is intended to ensure compensation and mitigation for impacts on Section 6(f) land. The process can be lengthy, and avoidance of the impact is preferable. Alternatives that avoid use of the LWCF recreation area must be considered, as indicated in Section 4.2.3 of this guidance document, and conversion is pursued only if there is a sound basis for rejecting these alternatives. If use of an LWCF recreation area appears inevitable, efforts should be made to minimize impact.

3.2 Typical Steps in the Section 6(f) Process

The Section 6(f) process includes multiple steps when a protected LWCF recreation area is proposed for conversion to transportation or other use. The process is informal and iterative, with some steps potentially overlapping.

The following are typical steps if a conversion is required:

1. Consult with NGPC and NDOT Right-of-Way Division
2. Agree on land affected
3. Coordinate with NDOT Right-of-Way Division for fair market value analysis for land affected as well as for land needed for mitigation
4. Prepare mitigation/conversion proposal (including any NEPA documentation)
5. Submit proposal package to NPS (NGPC action)
6. Review proposal (NPS action)
7. Approve amendment and mitigation/conversion proposal (NPS action)
8. Acquire LWCF recreation area immediately³
9. Inspect completed conversion (NGPC action)

Projects funded or approved by federal transportation agencies typically will require approval through the NEPA process and, if they use LWCF recreation areas, will require adhering to Section 4(f) requirements. In that case, it will be necessary to undertake most of the aforementioned steps during the project development phase of the project.

For transportation projects funded with state, local, or private funds—projects where U.S. DOT NEPA and Section 4(f) approvals, as assigned to NDOT, otherwise would not be required—LWCF protections still apply and must be addressed. LWCF conversions require NPS approval, so they are considered federal actions that require their own NPS NEPA processes.

In this guidance document, the steps in the Section 6(f) process are discussed in more detail in Section 4, which addresses full and partial conversions. The steps are also discussed briefly in Section 5, which addresses small conversions. Most steps also may apply to temporary non-conforming uses of protected property, which are also addressed in Section 5.

³ The NPS manual states that “Once the conversion has been approved by NPS, replacement property should be immediately acquired and developed according to the replacement proposal timetable” ([NPS 2008](#)).

4 Full and Partial Conversions

The typical steps for full and partial (greater than 10 percent of an LWCF recreation area) conversions are listed in Section 3.2 of this guidance document. As noted, the process can be iterative, with some steps potentially overlapping. This section of this guidance document provides greater detail about each step, and the [NPS manual](#) (Chapter 8, Section E) provides even more detail. Note that full and partial conversions due to transportation projects are rare in Nebraska. Small conversions and temporary non-conforming uses are more typical and are addressed in Section 5 of this guidance document.

Full and partial conversions due to transportation projects are rare in Nebraska. Small conversions and temporary non-conforming uses are more typical.

4.1 Identification and Coordination (Step 1)

Step 1, Consult with NGPC

The first step of the Section 6(f) process occurs during planning or early NEPA, and consists of determining whether properties protected under Section 6(f) may be affected by the project, either temporarily or permanently. This requires consultation among the property owner/manager, project sponsor, and NGPC. The property owner/manager is responsible for the conversion process, but the property owner/manager will likely request that the project sponsor (NDOT or LPA) complete the process on its behalf. Consultation between the project sponsor and NGPC should continue throughout the Section 6(f) process. In turn, NGPC will coordinate with NPS throughout the process. Once consultation with NGPC is initiated, NPS can provide further guidance to NGPC, and NGPC will provide guidance to the property owner/manager and project sponsor. The property owner/manager and project sponsor do not consult directly with NPS.

Several situations noted in the [NPS manual](#) (Chapter 8, Section E.1) trigger the full or partial conversion process, including changing land use from outdoor recreation to indoor recreation, terminating outdoor recreation use, and changing public recreation to private recreation. The most

The most likely Section 6(f) trigger for a transportation project is proposed purchase of LWCF recreation area property, which would convert the land from public outdoor recreation use to transportation use.

likely Section 6(f) trigger for a transportation project is proposed purchase of LWCF recreation area property, which would convert the land from public outdoor recreation use to transportation use. Consultation among the project team, including NDOT's Environmental Section and Right-of-Way Division, should occur as soon as a Section 6(f) conversion is identified as likely. The Section 6(f) process includes a requirement to "immediately acquire" the LWCF replacement property once NPS has approved the conversion (see Section 4.2.3 and Section 4.4 of this guidance document).

None of the following steps are necessary if the LWCF recreation area can be avoided by the transportation project (see Section 3.1 of this guidance document).

4.2 Proposal, Fair Market Value Analysis and Assessment (Steps 2–4)

4.2.1 Land and Fair Market Value Analysis

Step 2, Agree on land affected

Once the project has advanced enough to determine that conversion of an LWCF recreation area is likely to be necessary, the property owner/manager, the project sponsor (NDOT or LPA), and NGPC can initiate the actual conversion process. Typically, this will entail identifying replacement land(s) of equal value to convert to outdoor recreation purposes as replacement for the existing Section 6(f) land proposed for transportation use.

NPS emphasizes in its manual that “a critical first step is for the State and NPS to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity” ([NPS 2008](#)). For typical transportation projects, preliminary design, including definition of proposed right-of-way, will be required for the property owner/manager, project sponsor, and NPS to all agree on the boundaries and land area that would be affected. Knowing the precise boundaries and land area that would be converted allows for the correct amount of replacement land to be identified and analyzed for fair market value. Discussion with NGPC should not wait until preliminary design is complete; discussion should begin at Step 1. Step 2 may occur much later, after the design has progressed and the project sponsor and property owner/manager are ready to begin the conversion process.

During the project development phase, the transportation project sponsor should consult with the owner/manager of the LWCF recreation area to identify potential replacement property considered to be of equal value, usefulness, and location.

Step 3, Coordinate for fair market value analysis

A fair market value analysis of the property to be converted must be performed by a person with sufficient understanding of the local real estate market. The replacement property identified must ultimately have fair market value at least equal to the fair market value of the land to be converted. This amount is not to include the value of structures or facilities that will not directly enhance the recreation utility. The property owner/manager and project sponsor will likely negotiate who will undertake the fair market value analysis effort. Although under Section 6(f) it is the property owner/manager’s responsibility, the property owner/manager may ask that the project sponsor fund this step of the process or undertake it completely.

4.2.2 Conversion Proposal Forms and Process

Step 4, Prepare mitigation/conversion proposal (including any NEPA documentation)

NPS requires that multiple forms be completed for the formal application for conversion, as listed below (see the [NPS manual](#) [Chapter 8, Section E.8]). NGPC or the property owner/manager will likely ask the project sponsor to complete these forms for submittal to NGPC. The following are requirements for submittal:

- Transmittal letter (from NGPC to NPS).
- Standard Form (SF) 424, Application for Federal Assistance.
- Amendment to Project Agreement form. This form is specific to amendments to LWCF agreements because approval of a conversion requires amendment of the original agreement.

- Proposal Description and Environmental Screening Form (PD/ESF). This form describes the proposal and provides NGPC, and ultimately NPS, with an indication of environmental impacts.
- Environmental assessment. The environmental assessment is prepared in accordance with NEPA for the property to be converted and for the replacement property. It can be part of the NEPA documentation prepared for the entire transportation project, as discussed in Section 4.2.3 of this guidance document. In some cases, where significant impacts are likely, a full environmental impact statement may be required. As part of the NEPA process, documentation of outreach to the public will be required.
- LWCF recreation area boundary map(s). Maps should cover any remaining recreation area land resulting from partial conversion, and should show the replacement site(s). Maps are to be signed and dated by NGPC.
- Description and Notification Form. This form provides data about the recreation property for input to NPS's LWCF database.

The environmental assessment is prepared in accordance with NEPA for the property to be converted and for the replacement property. It can be part of the NEPA documentation prepared for the entire transportation project.

Once consultation has resulted in general agreement on the conversion and replacement proposal, the project sponsor prepares documentation demonstrating that the replacement property is acceptable to the property owner/manager and meets nine substantive prerequisites in the Section 6(f) regulations ([36 CFR 59.3](#); see also the [NPS manual](#) [Chapter 8, Section E.3]). The documentation includes any conditions agreed to by NDOT or the LPA, the property owner/manager, and NGPC, and ultimately NPS. The primary form used to document the proposal is the PD/ESF.⁴

The prerequisites are briefly summarized as follows (numbering refers to the [NPS manual](#) [Chapter 8, Section E.3], which provides much more detail):

- **3.a.** All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- **3.b.** Fair market value has been established via state-approved appraisal for the property to be converted and the property proposed for replacement.
- **3.c.** "Reasonably equivalent usefulness and location" of the replacement property has been established (there are four criteria).
- **3.d.** Replacement property meets eligibility requirements and is not already recreation land.
- **3.e.** If the conversion is a partial conversion, impacts of the conversion on the remainder of the property have been considered, and the unconverted area will remain recreationally viable (or the entire property must be replaced).
- **3.f.** All required coordination with federal agencies has been satisfactorily accomplished including, for example, coordination for Section 4(f), Section 106, and Section 404.⁵
- **3.g.** NEPA environmental review has been completed to NPS's satisfaction. NPS explains its NEPA requirements in the [NPS manual](#) (Chapter 4). See also Section 4.2.3, below.

⁴ Consultation and documentation development may occur during NEPA; however, formal documentation submittal occurs following NEPA.

⁵ The requirement is that the coordination has taken place, not that the final decisions have been made or approvals obtained.

- **3.h.** The process has adhered to state intergovernmental review procedures as appropriate. See [NPS manual](#) (Chapter 4).
- **3.i.** Conversion and substitution are in accord with Nebraska’s Statewide Comprehensive Outdoor Recreation Plan (SCORP).

As guided by the PD/ESF, submittals typically will include maps and a project timetable, specifically the proposed timing of the acquisition of replacement property.

4.2.3 NEPA Assessment and Section 6(f)/Section 4(f) Coordination

If the transportation project is state funded and does not require U.S. DOT NEPA approval as assigned to NDOT, it will be necessary to complete NEPA documentation (usually an environmental assessment) for NPS specific to the conversion. In this case, NPS is responsible for compliance with NEPA; however, the project sponsor is typically responsible for preparing the NEPA documentation. If the transportation project is funded in part through, or approved by, a U.S. DOT agency, or has other federal approvals that require compliance with NEPA, the effects of the conversion may be discussed in the overall project NEPA documentation, and NPS will make its conversion decision based on the LWCF assessment in the NEPA documentation.⁶ LWCF issues typically are given their own subsection in the project NEPA documentation, which often includes the identification of potential replacement lands.⁷

If the project is funded through, or approved by, a U.S. DOT agency, and if the property has been determined to be a Section 4(f) property as well as a Section 6(f) property, the Section 4(f) and Section 6(f) requirements intersect.

If the project is funded through, or approved by, a U.S. DOT agency, and if the property has been determined to be a Section 4(f) property as well as a Section 6(f) property, the Section 4(f) and Section 6(f) requirements intersect. Depending on the project, the convergence of the approvals may mean that the Section 4(f) analysis is dependent on the outcome of the Section 6(f) conversion agreement or vice versa, and both requirements will need to be completed simultaneously.

For state-funded transportation projects where NEPA applies only to the conversion, the focus of the NEPA documentation can be quite narrow. In such a case, the proposed federal action is not the entire transportation project; instead, it is approval of the conversion only. The [NPS manual](#) (Chapter 8, Section 3.G) states that “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” (NPS 2008; emphasis added). This statement applies to NEPA documentation prepared solely for the conversion. If the conversion impact is discussed within NEPA documentation for a federally funded transportation project, the entire project would be the subject of the NEPA documentation, and the LWCF conversion would be a limited part of the NEPA documentation.

For state-funded transportation projects where NEPA applies only to the conversion, the proposed federal action is not the entire transportation project; instead, it is approval of the conversion only.

⁶ In this scenario, the project sponsor should consult NGPC or NPS, or both, early in the NEPA process to determine their willingness to adopt the project sponsor’s NEPA document and to identify specific content necessary to facilitate potential adoption.

⁷ Replacement lands are re-evaluated prior to acquisition, as needed. Re-evaluations may include discussion of alternative or additional replacement lands that were not discussed in the original NEPA documentation, and may require surveys of the property for habitat, wetlands, archeological resources, etc.

The project sponsor may need to complete early acquisition of the replacement property using non-federal funds. Consultation with the NDOT Environmental Section and Right-of-Way Division should occur as early as possible.

Because of the Section 6(f) requirement to immediately acquire the LWCF recreation area (see Section 4.4 of this guidance document), the project sponsor may need to complete early acquisition of the replacement property before beginning the project's right-of-way phase using non-federal funds. This is why a consultation with the NDOT Environmental Section and Right-of-Way Division is essential as soon as a Section 6(f) property is identified.

NPS will not approve conversion until all NEPA and Section 4(f) requirements, if appropriate, have been satisfied ([36 CFR 59.3\(b\)\(6\)&\(7\)](#)).

Assuming that Section 4(f) has been found to apply to a Section 6(f) property, all other Section 4(f) requirements will apply. For example, the project must avoid the LWCF recreation area unless there is no feasible and prudent avoidance alternative or unless the federal transportation agency (or NDOT, as assigned by FHWA) finds the impact to be a *de minimis* impact. The LWCF conversion agreement typically will contribute to Section 4(f) findings, such as a *de minimis* impact finding or an "all possible planning" finding. Therefore, the terms of the LWCF conversion agreement typically are documented as part of the Section 4(f) approval.

4.3 Review and Approval (Steps 5–7)

4.3.1 What to Expect from the Nebraska Game and Parks Commission

Step 5, Submit proposal package to NPS (NGPC action)

Once all of the details have been addressed to NGPC's satisfaction, the SLO will submit the conversion proposal package to NPS. NGPC's submittal of the formal proposal package indicates the State of Nebraska's endorsement of the proposal. NGPC may require changes to each document before submittal.

4.3.2 What to Expect from the National Park Service

Step 6, Review proposal (NPS action)

NPS will independently review the proposal using the conversion prerequisites and any other critical factors that may have arisen during proposal development. Ongoing coordination throughout the Section 6(f) process will facilitate NPS's review. However, NPS indicates that revisions may be requested and that issues of "equivalent use" and "equivalent location" tend to be most problematic (NPS 2017).

Step 7, Approve amendment and mitigation/conversion proposal (NPS action)

If the project sponsor, the property owner/manager, and NGPC have adequately addressed the prerequisites, and NPS finds no other reason to deny the request, NPS will document its decision to convert, and NPS will sign an amendment to the original LWCF agreement approving the conversion.

4.4 Land Acquisition, Physical Conversion, and Inspection (Steps 8–9)

Step 8, Acquire LWCF recreation area immediately

Once NPS has approved the conversion, the plan to replace property must be implemented. The [NPS manual](#) (Chapter 8, Section E.8) says the following (NPS 2008):

Once the conversion has been approved by NPS, replacement property should be immediately acquired and developed according to the replacement proposal timetable. If development will be delayed beyond three years from the date of NPS conversion approval, then a request for delayed development beyond three years with a justification for the delay must be made to NPS (See Chapter 3.B.7.c).

This is also stated in the Section 6(f) regulations at [36 CFR 59.3\(c\)](#).

The new property should be acquired quickly by the project sponsor and should be open and available to the public when the old property is closed/converted. However, if the proposal calls for development of facilities (for example, a baseball field), that development may occur later, following a separate schedule negotiated by all parties involved.

The [NPS manual](#) also allows for delayed acquisition in unusual circumstances. The [NPS manual](#) (Chapter 8, Section E.11) states (NPS 2008):

Exceptions to the immediate replacement requirement...will be allowed only when it is not possible for replacement property to be identified prior to the State's request for the conversion. An express commitment must be received from the State to satisfy Section 6(f)(3) substitution requirements within a specified period normally not to exceed one year following conversion approval. Such proposals are not routine and must include sufficient evidence to justify why such a delay is necessary.

The new property should be open and available to the public when the old property is closed/converted. However, if the proposal calls for development of facilities, that development may occur later.

The best way to work through the acquisition and development timing requirement is through consultation with the property owner/manager and NGPC well ahead of formal submittal of the conversion proposal to NPS so that all parties are in agreement on a plan and timeline.

Step 9, Inspect completed conversion (state action)

NGPC is charged by NPS with inspecting LWCF recreation areas to ensure that all terms and conditions are followed and that the land is functioning as laid out in the LWCF amendment. Per the [NPS manual](#) (Chapter 8, Section M), NGPC is to inspect the sites involved within 5 years and at least once every 5 years thereafter. Mostly, the functioning of the LWCF recreation area(s) in question is a matter among the property owner/manager, NGPC, and NPS. However, it may help the project sponsor determine appropriate mitigation for the conversion to know that NPS, in requiring inspections, is looking for the following:

- Is the property being used as intended?
- Is the property attractive and inviting to the public?
- Is upkeep and repair adequate, with good workmanship?
- Is the property readily accessible and open to the public without discrimination?
- Is the area signed well for user information and safety, with acknowledgement of the LWCF?

Typically, once the project sponsor (NDOT or an LPA) has finished any work it committed to complete as part of the conversion process and the LWCF recreation area owner/manager is satisfied, the NDOT or LPA obligation is complete. At the time of its inspection, NGPC will be solely communicating with the area owner/manager.

5 Small Conversions and Temporary Uses

5.1 Small Conversions

A small conversion is a conversion that NPS has determined is in a category of actions excluded from the need for an environmental assessment or an environmental impact statement under NEPA (that is, a categorical exclusion). The [NPS manual](#)⁸ addresses small conversions in Chapter 8, Section E.9.

A small conversion is conversion of a portion of an LWCF recreation area to a use other than public outdoor recreation. To qualify for the categorical exclusion status, the “small” criterion is that the area proposed for conversion must be less than 10 percent of the total protected property. Like a full conversion, replacement property of equal value and reasonably equivalent usefulness and location is required. However, for small conversions, the land proposed to replace the impacted portion of the LWCF recreation area must adjoin an existing park or recreation area parcel.

Small conversions must be less than 10 percent of the total protected property and, by definition, are categorically excluded from the need for further NEPA documentation.

For small conversions, NPS policy provides for simpler documentation. Instead of requiring NEPA documentation (as required in step 4 for full and partial conversions), small conversions require the completion of NPS forms, including the PD/ESF, which typically serves as the NEPA documentation. Small conversions, by definition, are categorically excluded from the need for further NEPA documentation.

When the property owner/manager and project sponsor (NDOT or an LPA) evaluate the potential impacts associated with the conversion, they must consider the significance of the recreation resources being removed from the LWCF recreation area relative to the recreation area as a whole, the viability of the remaining land and facilities as an LWCF recreation area, and the impacts associated with the new replacement parkland. If the project will use only a small part of an LWCF recreation area but that part contains the central feature of the recreation area, the small conversion policy may not apply. If the proposed conversion causes substantial public controversy or has more than a minor impact, the small conversion policy may not apply, and an Environmental Assessment likely will be necessary.

The steps for small conversions are essentially the same as those discussed in Section 3.2 of this guidance document and as explained in more detail for full and partial conversions in Section 4 of this guidance document. Some of the steps are simplified, as noted below:

1. **Consult with NGPC.** Early consultation is necessary because NGPC is required to consult with NPS to ensure that the conversion qualifies under the small conversion policy.
2. **Agree on land affected.** As part of the consultation, all parties should understand and be in agreement regarding the boundaries and land area that will be converted and that it is less than 10 percent of the total land area.

⁸ At the time of publication of this guidance, NPS had recently updated the small conversions policy, and it was not yet incorporated into the online version of the NPS manual. However, NGPC had the replacement section available.

3. **Coordinate for fair market value analysis.** As in a full or partial conversion, it is necessary to analyze the fair market value of the land affected and to identify land of equal value and of equal recreational value to be acquired (see Section 4.2.1 of this guidance document).
4. **Prepare mitigation/conversion proposal (including any NEPA documentation).** NGPC will need to complete the NPS PD/ESF and will likely expect the property owner/manager or project sponsor to prepare it. The [NPS manual](#) (Chapter 8, Section E.9) identifies specific items to highlight in the PD/ESF. NGPC must indicate to NPS why a categorical exclusion is justified and likely will ask the property owner/manager or project sponsor to provide the justification as part of the proposal package. NPS will also require documentation of outreach to the public.
5. **Submit proposal package to NPS (NGPC action).** Upon acceptance of the proposal package, NGPC will submit it to NPS.
6. **Review proposal (NPS action).** NPS will review the conversion proposal and documentation. Ongoing consultation and thorough documentation of the consultation process will facilitate NPS's review. However, NPS could request changes.
7. **Approve amendment and mitigation/conversion proposal (NPS action).** Once documentation has been formally submitted and any comments have been addressed, NPS approves the small conversion.
8. **Acquire LWCF recreation area immediately.** The project sponsor or the property owner/manager will need to acquire the replacement property according to the approved replacement proposal timetable. NDOT or the LPA may need to complete early acquisition of the replacement property before beginning the project's right-of-way phase. See Section 4.4 of this guidance document for additional discussion.
9. **Inspect completed conversion (state action).** NGPC has a duty to inspect the finished LWCF recreation areas following conversion, but the project sponsor typically is not involved in the inspection.

The formal conversion proposal package submitted to NPS must include the following:

- SF 424, Application for Federal Assistance
- Amendment to Project Agreement form
- PD/ESF, which describes the proposal and provides NGPC, and ultimately NPS, with an indication of environmental issues
- LWCF recreation area boundary map(s) for the recreation area land remaining after the small conversion, and for the replacement site
- Description and Notification Form

These forms are further explained in Section 4.2.2 of this guidance document.

5.2 Temporary Non-Conforming Uses

Temporary non-conforming uses are uses of protected property that are unrelated to public outdoor recreation and are temporary, with a duration of fewer than 6 months. An example is a temporary easement for construction that would not result in permanent acquisition of any property and would not have any permanent effect on the property's outdoor recreation activities.

Temporary non-conforming uses are uses of protected property that are unrelated to public outdoor recreation and are temporary, with a duration of fewer than 6 months

Technically, it is the property owner/manager's responsibility to request approval for a temporary non-conforming use from NGPC; however, in most cases, the project sponsor does this for the property owner/manager. The project sponsor (NDOT or an LPA) consults with NGPC and the property owner/manager prior to preparing and submitting the formal request for the temporary use. The property owner/manager and NGPC review the request and may indicate additional terms to permit the temporary use. According to the [NPS manual](#), "all requests for temporary uses...must be submitted to and reviewed by the State (i.e., NGPC)."

The request mechanism is NPS's standard form, the PD/ESF. The project sponsor would complete the PD/ESF, addressing five criteria and including several specific items listed in the [NPS manual](#) (Chapter 8, Section I). In total, NGPC will need to submit the following to NPS:

- SLO recommendation that temporary non-conforming use is appropriate
- The PD/ESF
- An acknowledgement by the SLO that a full conversion will result if the temporary use has not ceased after the maximum 6-month period

NPS uses the following criteria to evaluate the request:

- The size of the parkland area affected by any temporary non-recreation use will not result in a significant impact on public outdoor recreation use. This means that the site of the temporary activity should be sufficiently small to restrict its impacts on other areas of an LWCF-assisted park.
- A temporary use will not result in permanent damage to the park site, and appropriate mitigation measures will be taken to ensure no residual impacts on the site once the temporary use is concluded.
- No practical alternatives to the proposed temporary use exist.
- All applicable federal requirements for approval are met.
- The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

The Section 6(f) process for temporary non-conforming uses typically involves steps 1, 2, 4, 5, 6, and 7 (see Section 3.2 and Section 4 of this guidance document). All of these steps must be completed before the project sponsor actually secures a formal temporary construction easement from the property owner/manager of the LWCF recreation area.

6 Other Federal Grant Programs

Other federal grant programs or lands with federal encumbrances may have their own requirements relating to converting property to a different use. Regardless of whether a transportation project is federally funded, any such conversion requirement may apply. The following grant programs are the most common:

- The Federal Aid in Wildlife Restoration Act, also known as the Pittman-Robertson Act ([16 USC 669-669i](#)), can provide funding for wildlife-associated recreation, such as trails, target shooting ranges, and observation blinds that could be impacted by transportation projects. Administrative requirements are in DOI regulations at [50 CFR 80](#).
- The Federal Aid in Sport Fish Restoration Act, also known as the Dingell-Johnson Act ([16 USC 777 et seq](#)), can provide for funding of boating/fishing access, including boat launch ramps

that sometimes are affected by road realignment or widening projects. Administrative requirements are in DOI regulations at [50 CFR 80](#).

- The LWCF Act can provide grants to federal agencies, and lands purchased with those funds may be subject to separate conversion requirements. The LWCF federal grant program provides land protections to national parks, forests, and wildlife refuges through programs overseen by NPS, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture, Forest Service.

These programs are managed by the U.S. Fish and Wildlife Service through its Wildlife & Sport Fish Restoration Program, which allocates funds to states. On the state side, the funds are managed by NGPC through the Federal Aid Administrator in the Planning and Programming Division.

Some partial uses of properties may be handled by paying back the funding source the fair market value of the small portion used by a transportation project (NGPC 2017). For documenting a replacement agreement for property that would be converted to non-fish or -wildlife use, the project sponsor would consult with NGPC's Federal Aid Administrator at (402) 471-5429.

7 Additional Information and References

7.1 Resources for Additional Information

The following resources provide additional information on LWCF recreation area/Section 6(f) requirements:

- LWCF Act, presented in [54 USC 2003](#)
- LWCF Act regulations at [36 CFR 59](#)
- LWCF Act/Section 6(f) state information via NGPC at <http://outdoornebraska.gov/lwcf/>
- NPS Land and Water Conservation Fund State Assistance Program [Federal Financial Assistance Manual](#)
- NPS LWCF Program Forms page at <https://www.nps.gov/nrcr/programs/lwcf/pub.htm>, including links to the PD/ESF and other NPS forms

7.2 References

NGPC. 2017. Personal communication between Tammy Snyder, Federal Aid Administrator, Nebraska Game and Parks Commission, and John Wolfe, HDR. April.

NPS. 2008. Land and Water Conservation Fund State Assistance Program. Federal Financial Assistance Manual. Vol. 69. October 1.
https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf.

NPS. 2017. Personal communication between Roger Knowlton, Acting Chief, Recreation Grants, U.S. Department of Interior, National Park Service (Midwest Region), and John Wolfe, HDR. February and June.