

**U.S. DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE**

**LAND AND WATER CONSERVATION FUND  
STATE ASSISTANCE PROGRAM**



**FEDERAL FINANCIAL ASSISTANCE MANUAL  
Volume 70**

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**PREFACE**

These policies set forth the administrative procedures and guidelines for Land and Water Conservation Fund (LWCF) federal assistance (Catalog of Federal Domestic Assistance #15.916) to the States by the U.S. Department of the Interior, National Park Service (NPS). It supersedes the program's existing administrative procedures as detailed in the LWCF GRANTS MANUAL (NPS-34), and the 2008 LWCF State Assistance Program Federal Financial Assistance Manual (Volume 69), and is intended to serve as a basic reference for those who are engaged in the administrative, financial management and stewardship responsibilities of LWCF State Assistance Program.

Participation in the LWCF State Assistance Program is deemed to constitute a public trust. It is the responsibility of the States to comply with this guidance and all terms and conditions of the grant agreement, to efficiently and effectively manage funds in accordance with the approved budgets, to promptly complete grant assisted activities in a diligent and professional manner, and to monitor and report performance. This responsibility cannot be delegated nor transferred.

The policies and procedures contained herein are subject to applicable federal laws and regulations, and any changes made to these laws and regulations subsequent to this publication. In the event that these policies and procedures conflict with applicable federal laws, regulations, and policies, the following order of precedence will prevail:

1. Federal Law
2. The Code of Federal Regulations
3. Terms and Conditions of Grant Award
4. Land and Water Conservation Fund Program Manual

The State bears primary responsibility for the administration and success of grant-supported operations, including performance by third parties under subawards made by the State for accomplishing non-construction and construction project objectives. The provisions included herein shall be applied by the State to subrecipients and contractors performing work under the LWCF State Assistance Program.

This edition of the LWCF Program Manual supersedes all previous editions and amendments through Volume 69, effective October 1, 2008. Subsequent updates shall be distinguished by the effective date denoted within the footer appearing at the bottom of each chapter page. The

Manual in effect at the time a grant is awarded governs the project except for post-completion requirements. A current version of the Manual can be found at the [LWCF Website](#).

## **A. Background**

The LWCF State Assistance Program was established by the LWCF Act of 1965 (Section 6, Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578) and enacted as positive law at 54 U.S.C. § 200301 et seq. (hereinafter, “the LWCF Act”) to stimulate a nationwide action program to assist in preserving, developing, and assuring to all citizens of the United States of present and future generations such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation. The program provides matching grants to States and through States to local units of government, for the acquisition and development of public outdoor recreation sites and facilities. Grant funds are also available, to States only, for fulfilling the Statewide comprehensive outdoor recreation planning requirements of the program.

The LWCF program was administered by the Bureau of Outdoor Recreation from its beginning in 1965 to 1978 when the Heritage Conservation and Recreation Service (HCRS) was created. HCRS then administered the program until 1981 when the LWCF was transferred to the NPS.

Since the origin of the program in 1965, over \$4.8 billion has been apportioned to the 50 States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands for planning, acquisition, and development of outdoor recreation resources in the United States. More than 44,000 projects have been approved to assist State and local efforts to acquire land and develop facilities for public outdoor recreation purposes. The federal investment has been matched by State and local contributions for a total LWCF grant investment of over \$9.6 billion. A LWCF-assisted park is located in over 98 percent of counties in the United States.

The income for the LWCF is provided largely from Outer Continental Shelf mineral receipts. In 2020, the Great American Outdoors Act (Public Law 116-152) made annual appropriations for the LWCF mandatory and not subject to further Congressional appropriation. This amount is supplemented by a guaranteed amount set aside each year in a special Treasury account from other qualified off-shore revenues pursuant to the Gulf of Mexico Energy Security Act, Public Law 109-432.

## **B. Program Information**

LWCF grants are provided to the States, and through the States to local governmental jurisdictions, on a matching basis for up to fifty percent (50%) of the total project-related allowable costs for the acquisition of land and the development of facilities for public outdoor recreation and for fulfilling the program's planning requirements. Grants to eligible insular areas (American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands) shall be for 100% assistance. Payments for all projects are made to the State agency that is authorized to accept and administer funds paid for approved projects. Local units of government participate in the program as subgrantees of the State with the State retaining primary grant compliance

responsibility. Each State must have a “State Liaison Officer” (SLO) appointed by the governor or designated by the State legislature to administer the LWCF program at the State level.

Information about the LWCF State Assistance Program, including contact information for the NPS, can be found on the Web at [www.nps.gov/lwcf](http://www.nps.gov/lwcf) or contact [lwcf.grants@nps.gov](mailto:lwcf.grants@nps.gov)

## CHAPTER 1 - GENERAL PROGRAM INFORMATION

### A. Program Summary

1. Purpose. The LWCF Act was enacted "...to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the federal acquisition and development of certain lands and other areas."

Reflecting the goals of the LWCF Act, the goals of the LWCF State Assistance Program are to:

- a. Meet State and locally identified public outdoor recreation resource needs to strengthen the health and vitality of the American People.
- b. Increase the number of protected State and local outdoor recreation resources and to ensure their availability for public use in perpetuity.
- c. Encourage sound planning and long-term partnerships to expand the quantity and to ensure the quality of needed State and local outdoor recreation resources.

The LWCF State Assistance Program provides matching grants to States, and through the States to local governments, for the acquisition and development of public outdoor recreation areas and facilities. Planning grants are also available to the States to assist in the development of Statewide Comprehensive Outdoor Recreation Plans (SCORP).

2. Delegation of authority. The LWCF Act authorizes the Secretary of the Interior to provide financial assistance to States for outdoor recreation purposes. Except for the apportionment of funds among the States, this authority has been delegated to the Director of the NPS.
3. Appointment of State Liaison Officer and alternate. To be eligible for assistance under the LWCF Act, the governor of each State shall designate in writing a State official, by name or position, to serve as its SLO who has authority to accept and administer funds for purposes of the LWCF Program and to perform the other functions set forth in this Manual. The designation of the SLO may also be accomplished by State statute. To facilitate the administration of the LWCF Program, a concurrent designation (either by the governor or State statute) of an alternate(s) to act on behalf of the SLO is strongly encouraged.

If the SLO and alternate are gubernatorially appointed, a new governor, upon taking office, shall re-designate in writing the sitting SLO and alternate, or appoint new officials to represent and act for the State in dealing with the LWCF program.

If State statute designates the SLO (and alternate) by position, the appropriate NPS Leadership shall be notified in writing by the incumbent upon assuming the responsibilities of the position.

4. Apportionment of funds. LWCF monies are apportioned to the States by the Secretary of the Interior each fiscal year in accordance with the apportionment formula contained in the LWCF Act. This formula includes a factor for equal distribution of a portion of the funds among the States, as well as factors for distribution on the basis of need. Funds are apportioned to the individual States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, which are collectively referred to as "the States" for the purposes of this program. Funds may be made available through the States to political subdivisions of the State and other appropriate public agencies, including federally-recognized Indian tribes, which qualify for LWCF assistance.
5. State planning and project selection requirements. To be eligible for LWCF assistance for acquisition and development grants, each State shall prepare a SCORP and update it at least once every seven years. A SCORP program evaluates the demand and supply of public outdoor recreation resources throughout a State; identifies capital investment priorities for acquiring, developing, and protecting all types of outdoor recreation resources; assures continuing opportunity for local units of government and private citizens to take part in planning for Statewide outdoor recreation; and coordinates all outdoor recreation programs throughout the State.

Each State shall develop an Open Project Selection Process (OPSP) that provides objective criteria and standards for grant selection that are explicitly based on each State's priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP. The OPSP is the connection between the SCORP and the use of LWCF grants to assist State efforts in meeting high priority outdoor recreation resource needs. Planning grants and technical assistance are available through the LWCF program to help the States develop and update their SCORP planning process.

6. Acquisition and development grants. LWCF assistance may be available 1) to acquire lands and waters or interests in lands and water for public outdoor recreation, and 2) to develop basic outdoor recreation facilities to serve the general public. To be eligible for assistance, projects must be in accord with the SCORP, be sponsored by a governmental agency, and meet other State and federal requirements.
7. Basis for assistance. LWCF assistance is provided on a matching basis, up to 50%, to individual projects which are submitted through the SLO to the NPS for approval. Project costs shall be determined in accord with 2 C.F.R. Part 200 and this Manual. All claims shall be subject to verification by federal audit.



In accordance with Section 601 of Public Law 96-205, as amended, LWCF grants shall be made available on a 100% basis to the Insular Areas participating in the LWCF program (i.e., American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands).

8. Program administration. The SLO is responsible for administration of the LWCF Program in his/her State. This includes: implementation of an ongoing SCORP planning process; evaluation and selection of projects in accord with an OPSP; assuring compliance of projects with the requirements of this Manual and published regulations; preparation and submission of applications and amendments; financial management of apportionments and individual grant awards; inspection of project sites to insure proper completion, operations, maintenance, stewardship of LWCF-assisted areas; and other functions necessary for proper program administration and management.
9. Conversion policy. The LWCF Act requires the States to operate and maintain by acceptable standards the properties or facilities acquired or developed for public outdoor recreation use. Further, Section 6(f)(3) of the LWCF Act (now codified at 54 U.S.C. § 200305(f)(3)) requires that no property acquired or developed with LWCF assistance shall be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior, and only if he/she finds it to be in accord with the then existing SCORP and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location (36 C.F.R. Part 59).

## **B. State Apportionment Formula and Special Reapportionment**

1. Apportionment percentage to States. The LWCF Act creates a fund consisting of certain earmarked revenues from which money is made available for public outdoor recreation purposes. Through Fiscal Year 2020, funds were provided via Congressional appropriation. However, with the passage of the Great American Outdoors Act (Public Law 116-152) in August 2020, allocation became mandatory at the full authorized level of \$900 million per year. The John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law 116-9), enacted in 2019, made the LWCF Act permanent and further provided that of the total amount made available not less than 40 percent shall allocated each for federal and State purposes.
2. The amount apportioned is essentially a reserve. Apportionment of funds to the States does not confer absolute entitlement to such funds. The apportionment is evidence of a commitment by the Federal Government to withhold from other uses a specified amount for a State for a given period of time. To receive apportioned funds, the States must (a) prepare and maintain a SCORP that has been found by the NPS to be adequate for the purposes of the Act; (b) submit and receive approval of projects requiring the use of apportioned funds; and (c) request the Federal Government to obligate apportioned funds for use on approved projects.
3. Basis for apportionment. Apportionment of funds to the States is made by the Secretary in accord with the legislative mandate Stated in 54 U.S.C. § 200305(b). The amount

apportioned to each State is the amount of new authority for obligation each State will have in the fiscal year unless Congress or the President decides later to defer or rescind some portion of the amount.

4. Certificate of apportionment. The Secretary will notify each State of its apportionment.
5. Reports on status of State apportionment. The NPS will periodically notify each State of the status of each fiscal year's apportionment. This financial report shall include for each fiscal year: the total amount of current apportionments (including adjustments), the total obligations, and the total expenditures. The report will also notify the State of the balance remaining available in each apportionment. The State is expected to maintain its own accounting records on the status of apportionments.
6. Availability of State apportionment. The funds apportioned to a State will remain available for obligation during the fiscal year that notification is given and for two fiscal years thereafter. In accord with 54 U.S.C. 200305(b)(4), any portion of an apportionment that remains unobligated at the expiration of this three-year period is lost to the State and shall be reapportioned by the Secretary in accordance with 54 U.S.C. 200305(b)(2).
7. Disposition of unexpended project balances into a Special Reapportionment Account. Funds obligated for an approved project will remain available for expenditure by the project sponsor until the project is completed, has expired, is withdrawn, or is terminated.

Should total expenditures be less than the obligated amount or should the project be withdrawn or terminated, the unexpended balance will revert to the State's "special reapportionment account" (SRA). This special account containing previously apportioned and obligated but unexpended funds does not confer entitlement to such funds by the State. The Secretary may, at his/her discretion, reapportion such unexpended balances back to the respective State from which it came on the basis of need. The determination of need for each State will be based on its efficient management of LWCF obligations and expenditures, demonstrated need for additional funding, and satisfactory compliance with all LWCF program requirements.

The State must request SRA funds from the NPS within six (6) months from the end of the fiscal year in which the reapportionment funds become available (i.e., by March 31 of the following year). States must submit their SRA requests to the Director's Office in sufficient time to allow for the request to be reviewed and processed by this date. NPS will only process State requests for SRA funds when:

- a. a State has obligated all of its available regular apportioned LWCF funds for the year in which the monies were deobligated, or
- b. a State certifies that it has identified eligible projects/amendments for LWCF assistance that remain unfunded and those projects/amendments will fully obligate the available regular apportioned LWCF funds as well as the SRA funds being requested. Actionable projects and amendments must be submitted to NPS for review and processing as soon

as possible to ensure that NPS has sufficient time to obligate funds by the end of the current fiscal year (September 30). Projects for funding that are not complete and fully documented will be returned to the State. A State may request less than the full amount in its SRA account and may add SRA funds to any remaining available regular apportionment to fund a project or project amendment.

Any SRA funds not requested from NPS within six (6) months from the end of the fiscal year in which the funds became available or any funds reapportioned but not obligated by the end of that fiscal year will revert to the LWCF competitive grants program.

A State may not make more than one SRA request every three months. Requests for SRA amounts of less than \$5,000 shall not be processed except in March for the balance carried over from the previous fiscal year. Exceptions to the minimal request limitation may be allowed only when the moneys will be immediately applied to an approvable grant application in the hands of the NPS for which available funds are insufficient to cover the costs of the project.

The procedure and timeframes for requesting SRA funds will be communicated to the States on an annual basis and will include a review of each State's identification and justification of need for SRA funds and State compliance with all LWCF program requirements. Upon NPS approval, a Certificate of Reapportionment will be issued to the State.

### **C. Program Review of State LWCF Program Administration**

1. Purpose. In accordance with the LWCF Act at 54 U.S.C. § 200305(g), the NPS is responsible for continually monitoring each State's effectiveness in administering the LWCF program.

While the review of a State's program is an on-going process, it is measured over a five-year period with NPS visits during that time to the State offices. The State visit represents not only a fact-finding mission, but an opportunity to address those problems, concerns, and issues involving the State's program.

In assessing the present status of a State's LWCF program administration, it provides a basis for improving overall coordination between the State and NPS, insures that program administration is being carried out consistent with program laws, regulations, and policies, and identifies areas where improvements must be made. The State program reviews provide an opportunity to improve program accountability and lessen vulnerability to waste, fraud and abuse.

At a minimum, a program review must be conducted every five years at the State office in the form of a Program Review Report as described in Section C(4) below.

2. State review participants. The review team may be any combination of a team leader, the State's NPS project officer, a secondary project officer, a review appraiser, and/or any other person deemed appropriate by the review coordinator.

3. Scope of the State reviews. The visit to the State office provides the opportunity for the NPS to:
  - c. Gain insight into State systems and operations
  - d. Provide technical assistance
  - g. Discuss any new or proposed legislation affecting the LWCF program
  - h. Review key SCORP, OPSP, and eligibility items
  - i. Assess whether adequate staff exist to administer the LWCF program
  - l. Review the State's application of indirect cost rates.
  - m. Discuss or review SLO/ASLO designations, the inspection agreement, waivers, conversions, environmental review process, administrative and financial project close out, and any other relevant LWCF administration matters
4. Program Review Report. At a minimum, the report shall contain a discussion of the following items:
  - a. Status report on previous recommendations.
  - b. Major problem/opportunity areas identified prior to and during the State visit.
  - c. Recommendations for improvements with timeframe for State resolution.
  - d. Follow-up actions to be undertaken by NPS.
5. Distribution of the final report. The report of findings shall be transmitted under a cover letter to the governor with courtesy copies provided to the SLO and ASLO(s) for use and dissemination. A copy of the report and correspondence to the governor shall be sent to the NPS program office in Washington, D.C.

#### **D. Annual Report**

On an annual basis a report will be produced on the fiscal year performance and accomplishments of the LWCF State Assistance Program. States assist in its production by providing State-specific program accomplishments, testimonials and images. A supply of the report is distributed to the States and is posted on the LWCF State Assistance Program Website. A limited number of hard copies are available to interested parties upon request until supplies are exhausted.

## CHAPTER 2- STATEWIDE COMPREHENSIVE OUTDOOR RECREATION PLAN AND OPEN PROJECT SELECTION PROCESS

### A. State Plan Preparation, Procedures, and Eligibility

1. Purpose. This section explains the objectives, eligibility requirements, and guidelines for the preparation of SCORPs and the NPS review and approval process. The SCORP is required by the LWCF Act.

The guidelines are based on provisions of the LWCF Act, related federal statutes, and determinations of the NPS regarding planning considerations essential for effective administration of the LWCF program.

The governors and/or the officially designated SLOs are the officials authorized to act for the State, as specified under the various provisions of the LWCF Act.

2. Requirements. The LWCF Act at 54 U.S.C. § 200305(d) requires a SCORP from each State prior to consideration by the Secretary of the Interior for financial assistance for acquisition and development projects.

The LWCF Act explicitly requires the SCORP to include the following:

- a. The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of 54 U.S.C. § 200305;
- b. An evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;
- c. A program for the implementation of the plan;
- d. Certification by the governor that ample opportunity for public participation has taken place in plan development; and
- e. Other necessary information, as may be determined by the Secretary.

The SCORP shall take into account relevant federal resources and programs and shall be correlated so far as practicable with other State, regional and local plans.

3. Goals and objectives of the SCORP. The goals of the SCORP and its associated planning process are to direct each State's use of its LWCF apportionment.

The objectives of the SCORP and its associated planning process are to:

- a. Fulfill the purposes of the LWCF Act;

- b. Provide each State the maximum opportunity and flexibility to develop and implement its plan;
- c. Describe the role of the LWCF in the State's provision of outdoor recreation resources and the State's policies for use of its LWCF apportionment;
- d. Provide a basis for determining each State's LWCF eligibility; and
- e. Ensure relevant, influential and timely planning for the State's use of its LWCF apportionment.

Each State is encouraged to conduct outdoor recreation planning beyond the minimum required to maintain LWCF eligibility. Under Section 8(a) of Public Law 90-543, as amended, and Section 11(a) of Public Law 90-542, as amended, respectively, the Secretary is directed to encourage States to consider in their plans the needs and opportunities for establishing recreation and historic trails, and wild, scenic and recreational river areas. In addition, the SCORP must contain a wetlands component pursuant to Section 303 of the Emergency Wetlands Resources Act of 1986 (see item 4.e below).

4. SCORP requirements. The minimum requirements are:

- a. The plan must describe the process and methodology(s) chosen by the State to meet the guidelines as set forth in this section.
- b. The planning process must include ample opportunity for public participation involving all segments of the State's population.
- c. The plan must be comprehensive. The plan will be considered comprehensive if it:
  - (1) Identifies outdoor recreation issues of Statewide importance based upon, but not limited to, input from the public participation program. The plan must also identify those issues the State will address through the LWCF;
  - (2) Evaluates demand, i.e., public outdoor recreation preferences, but not necessarily through quantitative Statewide surveys or analyses; and
  - (3) Evaluates the supply of outdoor recreation resources and facilities, but not necessarily through quantitative Statewide inventories.
- d. The plan must have an implementation program that identifies the State's strategies, priorities, and actions for the obligation of its LWCF apportionment. The implementation program must be of sufficient detail for use in developing project selection criteria for the State's Open Project Selection Process (OPSP) so projects submitted to NPS for LWCF funding will implement the SCORP.

- e. The plan must contain or reference a wetlands priority component consistent with Section 303 of the Emergency Wetlands Resources Act of 1986 as well as Secretary's Order No. 3388. At a minimum, the wetlands priority component must:
- (1) Be consistent with the National Wetlands Priority Conservation Plan, prepared by the U.S. Fish and Wildlife Service;
  - (2) Provide evidence of consultation with the State agency responsible for fish and wildlife resources;
  - (3) Contain a listing of those wetland types which should receive priority for acquisition; and
  - (4) Consider outdoor recreation opportunities associated with its wetlands resources for meeting the State's public outdoor recreation needs.
- f. In accord with 54 U.S.C. § 200305(d)(1)(D), the Secretary may determine other necessary information the plan should contain. Therefore, each plan shall assess and prioritize the following to (1) support the determination of specific goals to improve the development and provision of future outdoor recreation across the State and (2) guide the obligation of annual LWCF apportionment dollars for grant-funded projects:
- (1) Acquisition of land or water, or interests therein, that, in addition to providing public outdoor recreation, also:
    - i. Are identified as a priority recovery action in an approved recovery plan for an Endangered Species Act (ESA)-listed species;
    - ii. Reduce or eliminate a threat related to the present or threatened destruction, modification, or curtailment of habitat for an ESA-listed species or a species proposed for listing under the ESA;
    - iii. Reduce or eliminate a threat identified in a 12-month petition finding or candidate review form as contributing to designation of a species as a candidate for listing under the ESA; or
    - iv. Are identified as a conservation strategy for one or more Species of Greatest Conservation Need in an established State Wildlife Action Plan.
  - (2) Creation of wetlands to provide habitat for fish, waterfowl and other wildlife, improve water quality; and reduce the impact of floods and storms to communities while also providing recreational opportunities such as fishing, hunting, photography, and wildlife observation.
  - (3) Increased safety in urban parks, to include facility-related security installations within or adjacent to public parks and recreation areas.
  - (4) Enhanced physical connectivity between Federal and State-managed lands for recreational opportunities including hunting, hiking, fishing, boating, camping and wildlife observation.
  - (5) Development of recreation sites such as sports shooting facilities.

- (6) Improved big-game winter range and migration corridor habitat on State lands in concert with planning efforts through SO 3362 (when such lands are accessible to the public and suitable for outdoor recreation use and facility development).
  - (7) Investment in infrastructure techniques using plants, stone, sand fill, and other structural and organic materials to stabilize shorelines providing benefits such as nutrient pollution remediation, fish and migratory bird habitat, and buffering of shorelines from waves and storms.
- g. The plan may consist of a single document or may be comprised of multiple documents as long as the guidelines as set forth in this section are met.
5. SCORP cooperation. An effective working partnership between each State and the NPS is necessary to consult and coordinate on such elements as scheduling, planning methodology(ies), public participation, and the NPS assistance needed by the State. Each State is strongly encouraged to consult and coordinate with the NPS on a regular basis, especially at the start of its planning cycle, to ensure that the planning process and its products are mutually acceptable.
6. Submission of SCORP documentation. The minimum documentation required to be submitted by each State to NPS as evidence of conformance with this chapter is a new or revised SCORP. The SCORP must be approved by and contain a certification by the governor that ample opportunity for public participation has taken place in the plan's development. The State must submit three (3) copies of the SCORP to the NPS. States are encouraged to post the SCORP on the agency's Website and use other means as appropriate to make it available to the public.

Effective with this Manual, the planning cycle is extended from five to seven years. Plans active as of January 15, 2020 will maintain their current five-year horizon and expiration date until a new or amended SCORP is submitted reflecting the Secretary priorities as outlined in section A.4.f above, at which point the plan will be approved for seven years.

Amendments to the SCORP may be submitted at any time. Amendments will follow the same review and approval procedures as new plans.

7. State LWCF eligibility related to planning. The LWCF Act requires an adequate and approved SCORP prior to the consideration by the Secretary of financial assistance for acquisition or development projects in order to maintain the State's eligibility to participate in the LWCF Program. NPS approval of a formal SCORP submission must occur prior to the expiration of the State's current SCORP to maintain LWCF eligibility.

Should the State fail to meet this deadline or if NPS finds that the pending SCORP currently under review is inadequate, NPS will provide written notification to the SLO that the State must correct the identified deficiencies within ninety (90) days following the last SCORP's expiration date, during which time NPS approval of acquisition and development projects may continue. However, if the State fails to take corrective action within the 90 days, the NPS will suspend the State's eligibility.



The State may appeal a finding that a pending SCORP is inadequate to the NPS Director, along with appropriate justification, within 30 days following the 90-day notice. Appeals will be considered by the Director prior to the termination of the 90-day notice of the State's eligibility. The decision of the Director will be final.

## **B. Open Project Selection Process**

1. Purpose. The purpose of this section is to establish requirements for the States to develop and conduct an OPSP that will better assure equal opportunity for all eligible project sponsors and all sectors of the general public to participate in the benefits of the LWCF State Assistance Program, and to enable the States to affirmatively address and meet priority recreation needs. OPSPs shall perform three essential functions:
  - a. Establish a public notification process, LWCF application assistance, and review systems that assure equitable opportunities for participation in grant funding by all potentially eligible applicants.
  - b. Provide objective criteria and standards for project selection that are explicitly based on each State's priority needs for park land acquisition and outdoor recreation development as identified in the SCORP. The OPSP supplies the most visible connection between a State's planning efforts and its use of LWCF grants to meet some of the high priority needs identified through its SCORP program.
  - c. Assure the distribution of LWCF assistance is accomplished in a non-discriminatory manner, especially with regard to minority, elderly, disabled, and other underserved populations and ensure a fair and equitable evaluation of all applications for LWCF assistance.
3. Requirements for an OPSP. Each State shall, as a condition of eligibility to receive LWCF assistance, implement an OPSP that has the following components:
  - a. Priority rating system. Each State shall develop a priority rating system for selecting projects that is consistent with the priorities identified in Secretarial Order 3388 and listed in section A(4)(f) of this chapter and encourages public participation in the formulation of grant proposals at the project sponsor level.
  - b. Project selection process. Each State shall develop a project selection process that evaluates and selects projects on the basis of quality and conformance with its priority rating system. The practice of dividing a State's apportionment between State and local projects may continue at the State's option. In this case, the State's project selection process may involve a single competition among all State and local projects or distinct processes and competitions for each of the two categories (i.e., State projects and local projects).
  - c. Amendments to add funds to existing projects. A State may honor requests to amend grants to increase the cost of a State or locally sponsored project, including the federal

share, without further OPSP competition only if the State has proposed, and the NPS approved, guidelines that are incorporated in the OPSP to cover this contingency. If no procedure is established, cost increase projects must undergo OPSP competition to be amended for additional funding.

- e. Applicant notification. Each State shall inform all potential LWCF applicants about the availability of LWCF funding through direct contact with all potential sponsors or indirectly through State and local organizations. The information supplied shall include the types of areas and facilities eligible for funding, a statement of the State's overall objectives for use of funds under the LWCF grants program, guidance on how to apply for LWCF assistance and an explanation of how the State's OPSP works. Each State should also have available for review by potential applicants a list of the criteria it will use in selecting projects for priority funding during the current funding cycle.
  - f. Program assistance. Each State shall, to the extent practicable, provide assistance to any potential project sponsor who requests assistance with project formulation, proposal preparation in obtaining the non-federal matching share, and other matters necessary for participation with the program.
6. Process review and updating. To ensure continuing close ties between a State's SCORP program and its OPSP, States must review project selection criteria each time that a new or amended SCORP is approved by the NPS. States must submit to the NPS a revised set of OPSP criteria that conform to any changes in SCORP priorities or submit an appropriate certification that no such revisions are necessary. The NPS will evaluate such revised submissions or certifications in the same manner as original submissions, and will ensure accurate conformity to the SCORP and to the objectivity and public participation objectives of this section before approving their use for LWCF project selection.

### **C. Financial Assistance for SCORP and OPSP Development and Maintenance**

1. Purpose. The purpose of this section is to specify objectives and requirements governing use of planning grants from the LWCF. Such grants are to be used for developing and maintaining a SCORP or OPSP as a decision-making tool, consistent with the priorities set forth in section A(4)(f) of this chapter.
2. Use of LWCF planning grants. LWCF planning grants may be used for expenses reasonably related to development and maintenance of a SCORP or OPSP. This may include grants generally for the process of developing or updating a SCORP, administrative expenses related to developing or maintaining the SCORP including State personnel costs, project identification and selection, or for more specific projects such as solving a problem identified in the last approved SCORP effort that addresses an outdoor recreation challenge or opportunity of Statewide importance, or developing new data and decision tools identified as essential to completion of an upcoming SCORP. Grants for maintenance of the SCORP may also include projects for the development and maintenance of records to track previously accomplished recreation development and acquisition projects.

3. Pre-application consultation. All planning grants should be the result of joint consultations between the NPS and the State on priority needs, within the context of a State's continuing and systematic outdoor recreation planning process.
4. Eligible applicants. Only the SLO is eligible to apply for planning assistance from LWCF. Responsibility for executing a planning project or a portion thereof may be performed by State personnel funded through a planning grant, or subcontracted to an appropriate non-federal governmental agency (general purpose or special purpose government unit) or to another public or private planning organization.
5. Eligible planning projects. To be eligible for Fund assistance, a planning grant project must have a clearly defined objective and end product that addresses needs, problems, or issues identified in a State's currently approved SCORP of Statewide importance, or is otherwise essential, in the judgment of the State, to the production of an upcoming SCORP.
  - a. Project assistance may include administrative expenses, project identification and selection, surveys, planning studies, data collection and analysis, public participation efforts, and other activities related to production of a SCORP.
  - b. Management studies related to improved Statewide financing, operation, maintenance, stewardship, or other use of administrative resources to sustain outdoor recreation resources, including evaluation of the overall capabilities of State and local governments to fully protect and utilize their outdoor recreation investments, may be funded when clearly related to a State's overall SCORP program and to meeting the requirements of the LWCF Act at 54 U.S.C. 200305(f)(3) for continued operation and maintenance of all Fund-assisted areas and facilities.
  - c. Studies of natural, ecological, or recreational resource areas, demonstration studies and topics of Statewide significance or national concern related to public outdoor recreation are also eligible. The study must provide information likely to be used for State or local decision-making on outdoor recreation issues and programs, so it may provide specific recommendations for inclusion in the State's published SCORP.
  - d. Studies aimed at analyzing or documenting the contributions of outdoor recreation resources to a State's economy or environment or at improving State decisions on the appropriate public and private roles in the management of various recreation resources may be eligible for funding when they meet other appropriate criteria for eligibility as outlined elsewhere in this section.
  - e. Detailed plans for capital projects, sketch or site plans, individual area master plans, economic feasibility studies, landscape designs, or architectural and engineering studies are not eligible for planning grant assistance, however, such activities are eligible for funding when carried out as part of a development grant.
  - g. Two or more planning projects may be carried out concurrently providing they do not duplicate one another. Work items funded under an LWCF planning grant must not

overlap with work items assisted by another LWCF grant, or financially-assisted under other federal programs, or otherwise accomplished with federal personnel or resources.

6. Available funding. Up to 50% of the total cost of an eligible planning project is available to a State, on a reimbursement basis, from its LWCF apportionment account. However, grants to the eligible Insular Areas will be made available on a 100% basis.
7. Allowable costs. Project costs incurred to sustain an ongoing outdoor recreation planning process are available as part of an approved planning project. These include personnel costs; the preparation, publishing and distribution of appropriate documents, such as core SCORP and OPSP documents; supplemental recreation policy or action plans; and related studies. Costs of data collection and processing, project identification and selection, public participation activities, special studies, etc. are also eligible for assistance. Contracted professional services for eligible planning activities may be allowed if overall responsibility for planning policies and action recommendations is clearly retained by the SLO or designated State agency. If the State has a negotiated indirect cost rate agreement (NICRA) applicable to the project's costs, then indirect expenses may also be allowable.
8. Length of project period. Planning projects should normally cover a period of two years or less to ensure timely completion and close-out of complex work efforts and reduce audit problems. In no case should a single planning grant include elements from more than one complete SCORP cycle, except where costs of publication and distribution of a SCORP document from a previous cycle may be reasonably included as a public participation element in the next SCORP cycle.
9. Acknowledgement of assistance. When assistance from the LWCF is provided for a project, the resulting document shall include the following acknowledgement:

"The preparation (updating, revision) of this plan (study, analysis, etc.) was financed in part through a planning grant from the National Park Service, United States Department of the Interior, under the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, as amended)."

This statement may be expanded at the State's discretion to reflect the manner in which the non-federal share of the total cost was financed.
10. Executive Order 12372 intergovernmental review. For those States participating in the intergovernmental review process, a copy of the planning grant application must be submitted to a State's Single Point of Contact (SPOC) or State Clearinghouse in accordance with the intergovernmental review requirements of Executive Order 12372.
11. Project application. The standard federal forms used for non-construction assistance programs (SF-424, SF-424A, and SF-424B) are required when applying for LWCF planning assistance. They must be accompanied by the required documentation as follows:

- a. Project narrative. For planning grants, States must submit a detailed narrative attachment which covers the following items:
    - (1) Identification of the objectives of the grant, with reference to planning needs identified in existing SCORP documents or other justification in terms of the project's compatibility with overall SCORP program priorities.
    - (2) The planning products that will result and how they will contribute to maintenance of the SCORP program, and, if appropriate, the relationship of a new proposal to other planning grants received by a State.
    - (3) The general approach to be used, including a schedule of key events, the breadth of study coverage, and cost estimates for each work item indicating how funds will be used by object class (personnel, travel, equipment, consultant contracts, etc.).
    - (4) A discussion of the personnel, organizations or outside consultants that may be used to implement the project, with an explanation of any special knowledge or expertise which they will provide.
  - b. Application and Revision (A&R) Form.
  - c. Description and Notification Form (DNF)
12. NPS review. Project applications will be reviewed by the NPS to determine if all planning assistance requirements have been met. This evaluation will focus on the following specific criteria:
- a. The project must be an integral part of the SCORP process and clearly essential to maintenance of the SCORP as a decision-making or management tool.
  - b. Timing, scope, costs, and methodology of the project must be appropriate to the planning benefits received and complementary to any other planning efforts needed to address identified deficiencies in a State's overall planning program.
  - c. Project work elements must be clearly identified with reasonable scheduling, staffing, and cost estimates assigned to each element.
  - d. Grant products such as published plans, studies, new policies or procedures to be adopted, reports, evaluations, or other documents must be explicitly identified.
  - e. Both the agency requesting the assistance and the project itself must be eligible for planning assistance from the LWCF.
  - f. The requirements of Executive Order 12372 relating to review and comment by a participating State clearinghouse must have been completed if applicable.

- g. There must be no duplication of federal assistance for work items funded under the project.
13. Amendments. Changes that materially alter the scope and/or change the cost or the completion time of a project must be approved by the NPS. Amendments will be reviewed and processed following the same procedures used for a complete planning project. Only those changes considered to be major and substantive will be required to receive E.O.12372 clearinghouse review if applicable.
14. Financial procedures. Adequate financial records must be maintained to support all the costs involved in a project. A documentation "trail" adequate to withstand audit should be maintained. Such records must be in accord with the principles established in 2 C.F.R. Part 200 for prevention of fraud, waste and abuse in federal programs. The State should pay particular attention to maintaining good records of in-house personnel costs attributable to the planning grant. Time distribution records must be maintained for each individual for whom LWCF grant costs are to be claimed. Careful records of time spent on planning-related work are especially important when the personnel are splitting their time with other LWCF duties or work on non-LWCF programs.

No grantee reimbursement requests or electronic transfer of funds can be made without NPS review of a progress report covering expenditures and accomplishments under the grant for the requested reimbursement. Requests for reimbursement or electronic transfer of funds may only be made for definable products or completion of distinct planning elements.

15. Reimbursements. NPS will place a financial hold on all planning grants at the time of NPS project approval. States must obtain NPS approval of their progress report BEFORE payments are requested through the Automated Standard Application for Payments (ASAP) system. Each ASAP drawdown for planning grants must be preceded by a reimbursement request (SF-270 Request for Reimbursement for Non-construction Grants) and a progress report (see next item) for NPS review. Upon approval, NPS will provide the State with an email authorizing a drawdown for the approved reimbursement amount.
16. Progress reports. Reports of progress toward the completion of a planning project must accompany each payment request (see above). Progress reports shall include:
- a. A list of the major work elements agreed to in the grant scope and a narrative description of the status of work for each, including actual or projected completion dates.
  - b. Identification of any elements that are behind schedule and why.
  - c. Estimated costs incurred during the billing period for each work item.
  - d. Total costs incurred and total costs previously billed for all parts of the project to date.

## CHAPTER 3 - ACQUISITION AND DEVELOPMENT PROJECT ELIGIBILITY

### A. General Project Criteria

1. Purpose. The LWCF Act authorizes the Secretary of Interior to provide financial assistance to States for the acquisition and/or development of public outdoor recreation areas and facilities found to be in accord with the SCORP. States are encouraged to share the benefits derived from the LWCF program among all State and local agencies responsible for providing public outdoor recreation opportunities.
2. Project sponsors. Only the designated State lead agency may apply directly to the NPS for LWCF assistance. However, funds may be made available through the State to political subdivisions of the State and other appropriate public agencies. Proposed projects may be sponsored by a State agency or a public agency of a subordinate unit of government. All eligible project sponsors, including those that have other than public outdoor recreation purposes, must be able to commit its resources to the perpetual stewardship of the Fund-assisted public outdoor recreation area pursuant to the LWCF Act at 54 U.S.C. 200305(f)(3).
3. Relation to SCORP. Only project proposals in accordance with the SCORP, reviewed through the OPSP, and recommended by the SLO may be considered. Project proposals may be submitted for approval only during the time in which the State sustains its eligibility for participation in the LWCF program. Projects received during a period of ineligibility will be returned to the State as inactionable. This does not mean that the projects have been disapproved nor prevents them from being resubmitted by the State as soon as eligibility has been regained.
4. Project proposals. The State has the initial prerogative and responsibility for determining the scope and effort involved in a project proposal. A project can be designed as follows: 1) acquisition and/or development work at one site, or 2) acquisition and/or development work, sponsored by a single State agency or local unit of government, at several sites.
5. Types of projects.
  - a. Acquisition. These include the acquisition of land and waters or partial rights to them. There must also be public access, however, access may be controlled, but not prohibited (see Chapter 8.B.).
  - b. Development. These include the development of certain outdoor recreation activities and support facilities needed by the public for recreation use of an area.
  - c. Combination. When it is advantageous to do so, a State may submit projects which combine acquisition and development.
6. Multiple-purpose projects. Multi-purpose projects that involve uses other than outdoor recreation may be eligible for assistance under the Act as long as the resulting LWCF

boundary area can incorporate a viable public outdoor recreation area that includes the Fund-assisted project and the outdoor resource it complements. The State must include a careful and complete justification and explanation with each proposal. Two general types of multiple-purpose projects are eligible for assistance:

- a. Projects in which a specifically designated portion of the multiple-purpose area or facility will be used primarily for outdoor recreation and/or outdoor recreation support, such as picnicking facilities adjacent to a new public reservoir. Fund assistance is limited to the designated outdoor recreation area and/or facility and support facility.
  - b. Projects that will provide identifiable outdoor recreation benefits as a whole, as opposed to specific segments of it. For example, a water impoundment that will be constructed primarily for flood control might also have important recreation benefits. In such a case, assistance would be made available only for the portion of the cost, on a pro rata basis, of the facility that is clearly attributable to outdoor recreation above and beyond the facility's cost for its non-recreation function.
7. Assistance from other agencies. Project proposals submitted to the NPS for LWCF assistance may also be submitted to other public agencies. The State or local matching share of an LWCF project may consist of other federal financial assistance only where the statutory provisions of the subsequent federal grants program explicitly allows recipients to use such assistance to match LWCF funds (see Chapter 5.A.5). The LWCF application to NPS must describe any financial assistance from other federal programs associated with the project, whether serving as a financial match to LWCF funds, or providing support outside of the LWCF project scope.
8. Reserved rights. The project sponsor is responsible for being knowledgeable about all outstanding rights and interests held by others on lands to be included within the LWCF boundary area of a proposed LWCF grant project.

The State will consider proposals to place property with outstanding rights or interests held by others under Section 200305(f)(3) protection only when it is assured that the possibility of the reversionary interest or outstanding rights being exercised is remote and/or the project sponsor is fully aware of its responsibility to replace these lands in accordance with Section 200305(f)(3) should the outstanding rights, if exercised, result in a conversion. States are encouraged to consult with NPS on complex property ownership and control issues.

The sponsor must describe all easements, rights-of-way, leases, subsurface rights (e.g. mineral), reversionary interests, and any other agreements that convey rights to non-public and/or non-recreation interests to access or use the area proposed to be within the LWCF boundary on the A&R Form.

When at the time of project application it is known that outstanding property rights held by others are or will be exercised in the foreseeable future and impact only a portion of the proposed LWCF boundary area, the impacted area and access to it must be clearly excluded on the LWCF boundary map and accompanied by an explanation of why it is not intended to



be subject to the Section 200305(f)(3) provision. The remaining project area must meet all LWCF program criteria for eligibility and be a viable public outdoor recreation area per Chapter 6.B.5.

Copies of the property titles, leases, easements, and other appropriate documents must be on file at the State level and available for federal inspection.

9. Use of existing public land for matching purposes. For development grants, existing government-owned lands not currently used for recreation may be used as a part of the non-federal matching share of a project. For acquisition grants, existing government-owned lands not currently used for outdoor recreation may be used as part of the non-federal matching share. Further, property may be donated between a State and its political subdivisions to serve as a match for grant assistance.

## **B. Criteria for Acquisition**

1. Eligible types of projects. Consistent with the Secretary priorities outlined in Chapter 2.A.4.f, acquisition of lands, wetlands, and waters for public outdoor recreation, including new areas, physical connections, or additions to existing parks, forests, wildlife management areas (including wildlife corridors), beaches, and other similar areas dedicated to outdoor recreation may be eligible for assistance. Areas acquired may serve a wide variety of public outdoor recreation activities including but not limited to: walking and driving for pleasure, sightseeing, swimming and other water sports, fishing, picnicking, nature study, boating, hunting and shooting, camping, horseback riding, bicycling (including e-biking), snowmobiling, skiing, and other outdoor sports and activities.

Natural areas, preserves, and critical habitat for Endangered Species Act (ESA)-listed threatened and endangered species, proposed or candidate species for ESA listing, and species identified of Greatest Conservation Need may be acquired but must be open to the general public for outdoor recreation use to the extent that the natural attributes of the areas will not be seriously impaired or lost due to the recreational use or the development of facilities for recreation use.

Federal surplus property can be purchased with LWCF assistance if consistent with purposes of the program and if the acquisition cost is not less than fair market value. If a State proposes to purchase federal surplus property at not less than fair market value under separate federal authority, for example the Bureau of Land Management's surplus land disposal authority or under the Federal Property Act's Federal Lands to Parks program, LWCF assistance may be used to account for the 50% federal share of the cost of acquisition of the property. Note that the Federal Lands to Parks program usually discounts surplus property to be used as State or local public park and recreation areas up to 100% of the cost, in which case financial assistance under LWCF would not be applicable.

2. Local Support Required. Acquisitions of land, water, or an interest in land or water will not receive assistance without a written expression of support by both the affected governor and the local county or county government-equivalent (e.g., parish, borough).

3. Means of acquisition. Acquisition of lands and waters, or interests therein, may be accomplished through purchase, transfer, or by gift. Eminent domain, or condemnation are not appropriate means of acquisition.
4. Acquisition of existing structures and impoundments. Because of its statutory emphasis on public outdoor recreation, LWCF funding may be used to acquire only structures that support or are necessary to achieve the outdoor recreation goal, such as those to be used as park support facilities. Consultation with the NPS regarding the eligibility of the structure for acquisition assistance is encouraged prior to application submission. The A&R Form must describe all improvements on properties to be acquired and their proposed use.
5. Acquisition of lesser interests. Proposed acquisitions of interests in lands and waters of less than fee simple title, including leasehold interests, are not eligible unless such lesser rights (e.g., permanent recreation use easements or similar devices) will ensure the desired access and use pursuant to Section 200305(f)(3).
6. Acquisition involving compatible resource management practices. Acquisition of land upon which the project sponsor proposes natural resource management practices such as timber management, habitat improvements, and grazing, may be carried out concurrently within the area if they are clearly described in the project proposal, are compatible with the proposed outdoor recreation uses, and are approved by the NPS.
7. Acquisition involving properties with third-party reservations and rights. Acquisition of land with reservations or rights are held by third parties is permissible only if it is determined that the proposed public outdoor recreation purposes would not be affected. The withheld reservations or rights must be described in the A&R Form narrative and environmental resources survey and must address any potential impacts to the human environment including the outdoor recreation by any outstanding rights and interests, including if they are exercised. See Chapter 3.A.8 for further guidance.
8. Acquisition for delayed outdoor recreation development.
  - a. General. LWCF assistance may be available to acquire property for which development of outdoor recreation facilities is planned at a future date.
  - b. Procedures. If planned development for public outdoor recreation will be delayed for up to three years from the date of acquisition, the project sponsor shall include the following information in the project application:
    - (1) Why immediate acquisition of the property is necessary.
    - (2) What facilities will be developed and when such development will occur.
10. Acquisitions that will not be assisted.
  - a. Acquisition of historic sites and structures will not receive LWCF assistance. Exceptions may be made only when it is demonstrated clearly that the acquisition is

primarily for outdoor recreation purposes and the historic aspects are secondary to the primary recreation purposes. This exclusion need not prevent the consideration by States and the NPS of projects calling for acquisition of real property interests contiguous to or near historic sites and structures that meet priority outdoor recreation needs.

- b. Acquisition of museums and sites to be used for museums or primarily for archeological excavations will not receive LWCF assistance.
- c. Acquisition of land to help meet a public school's minimum site size requirement as established by State or local regulations will not receive LWCF assistance.
- d. Acquisition of areas and facilities designed to be used primarily for semi-professional and professional arts and athletics will not receive LWCF assistance.
- e. Acquisition of lands, areas and facilities to be used solely for fish production purposes without a clear benefit to recreational opportunity will not receive LWCF assistance. However, such areas and facilities may be eligible if they will be open to the public for compatible recreation uses and development.
- f. Acquisition of areas to be used mainly for the construction of indoor facilities will not receive LWCF assistance.
- g. Acquisition of railroad "hardware," trestles, stations, yards, and the like will not receive LWCF assistance, if such are to be used for the commercial operation of railroad trains.
- h. Acquisition of sites containing luxury lodges, hotels, motels, restaurants, and similar elaborate facilities that are to be operated by the project sponsor or a concessionaire to provide food and sleeping quarters will not receive LWCF assistance.
- i. Acquisition of agricultural land that will remain in use for agricultural purposes will not receive LWCF assistance unless the agricultural purposes can be carried out concurrently within the area, are clearly described in the project proposal, are compatible with the proposed outdoor recreation uses, and are approved by the NPS.

### **C. Criteria for Development**

- 1. Eligible types of projects. The LWCF Act specifies that development projects may consist of basic outdoor recreation facilities to serve the general public provided the funding of such a project is in the public interest, in accord with the SCORP, and consistent with the Secretary priorities in Chapter 2.A.4.f.
  - a. Definition of eligible project scope. A development project may consist of one improvement or a group of related improvements designed to provide basic facilities for outdoor recreation, including facilities for access, safety, security, health, and protection of the area, as well as those required for the outdoor recreation use of the area. In all

cases, the project must be a logical unit of work to be accomplished within a specific time frame.

Ineligible facilities to be funded through sources other than the LWCF program may be included in the LWCF boundary area so long as they do not constitute a conversion and they qualify as an eligible public facility (see Chapter 8.G).

Funding of development project proposals may cover construction, renovation, site planning, demolition, site preparation, architectural services, and similar activities essential for the proper conduct of the project.

- b. Development project design requirements. Plans for the development of land and/or facilities should be based on the needs of the public, the expected use, and the type and character of the project area. Plans and specifications for improvements and/or facilities should be in accord with established engineering and architectural practices. Emphasis should be given to the health and safety of users, accessibility to the general public, and the protection of the recreation and natural values of the area. All facilities developed with assistance from the Fund must be designed in conformance with the appropriate current design standards for the Architectural Barriers Act of 1968 (ABA) (Public Law 90-480), Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act.
2. Ownership and control of project lands. Facilities may be developed on land and water owned in fee simple by the participating agency or where ownership of less-than-fee interests such as easements provides permanent control of the property commensurate with the proposed development.  
  
No approval will be given for the development of facilities on leased land except for property either:
  - a. Leased from the Federal Government for a term not less than 25 years which is not revocable at will (though some time on the lease may have elapsed); or
  - b. Leased from one public agency to another for 25 years or more, provided that safeguards are included to adequately ensure the perpetual use requirement contained in the LWCF Act. Such safeguards may include joint sponsorship of the proposed project or other agreement whereby the lessor land-owning agency would provide assurances that it would assume compliance responsibility for the SLWCF boundary area in the event of default by the lessee or expiration of the lease, and these assurances are explicitly reflected in the project agreement.
3. Development project selection. The State should make a special effort to eliminate questionable, elaborate, or borderline projects that raise serious questions concerning the project's cost, use, priority, competition with the private sector, or inclusion of ineligible facility types.

- a. Development project criteria. In evaluating development project proposals, the State and the NPS should give special attention to the degree to which the project is in keeping with the original intent of the LWCF Act and Secretary priorities outlined in Chapter 2.A.4.f. The following questions should be used as a general guide in evaluating a questionable, elaborate or borderline proposal in relation to the original intent of the Act. Essentially, to be eligible, one must be able to conclude that LWCF funds are being used "in the public interest" and "in accord with the Statewide Comprehensive Outdoor Recreation Plan" for the development of "basic outdoor recreation facilities to serve the general public."

A development project is considered to be questionable, elaborate, or borderline with respect to the basic intent of the LWCF Act if serious questions arise concerning the following eligibility issues and their interrelationships:

- (1) Project Cost. Does the cost of a facility significantly exceed the comparable price for similar facilities? Is the project's cost comparable to other facilities of its type and justifiable in terms of the quantity and quality of recreation the facility will provide?
  - (2) Population served. Consideration should be given to the degree to which participation is limited by a facility's single purpose, short season, cost of equipment, fee for participation, or its limited accessibility to the general public.
  - (3) SCORP priority. Does the project meet priority recreation needs as defined in the SCORP?
  - (4) Competition with the private sector. Consideration should be given to the degree to which the private sector is already providing similar facilities of the type and quality needed to meet identified recreation demands, and the user fee is low enough to undercut private business, or the income is sufficient to justify private investment, or the facility is located in a tourist market area. Can it be shown that the project does not compete unfairly with the private sector?
  - (5) Fees. Does the project establish a reasonable fee structure that allows for broad public participation perhaps by including free days or reduced rate days if necessary? Is project income to the sponsor being directed to recreational purposes?
  - (6) Applicant's performance history. The past history of the applicant for 1) adequately completing or carrying out previous federally-assisted projects, 2) protecting existing recreation resources, 3) operating and maintaining areas to acceptable standards, and 4) guiding new developments and preserving lands for open space and outdoor recreation purposes.
- b. Boat and fishing access facilities. For boat and fishing access facilities and related support facilities that are eligible for funding under both LWCF and the Dingell-Johnson

(D-J) Act (also known as the Federal Aid in Sport Fish Restoration Act and "Wallop-Breaux"), as amended, LWCF funding will not be provided for facilities also eligible under Dingell-Johnson unless the SLO has undertaken an effort to coordinate all requests for such facilities with the State official designated to administer D-J projects. Any application for LWCF assistance for these facilities must include a statement from the SLO certifying such coordination has taken place. The result of such effort would be that the application would be directed or redirected toward whichever program is deemed more appropriate for assisting the specific project considering cost, availability of funds, other project components and additional factors deemed pertinent. D-J funds may not be used in meeting the State matching share requirement of LWCF.

4. Eligible recreation facilities. Development projects eligible for LWCF assistance may include but are not limited to the following facility types:
  - a. Sports and playfields. LWCF assistance may be available for fields, courts and other outdoor spaces used in competitive and individual sports. This includes fields for baseball, softball, soccer and football, tennis courts, playgrounds and tot lots, golf courses, rifle/pistol ranges, trap/skeet fields, archery ranges, rodeo arenas, inline hockey rinks, skate parks, running tracks, and other similar facilities.
  - b. Picnic facilities. LWCF assistance may be available for tables, fireplaces, shelters, and other facilities related to family or group picnic sites.
  - c. Trails. LWCF assistance may be available for the development and marking of overlooks, turnouts and trails for nature walks, hiking, bicycling, horseback riding, exercising, motorized vehicles and other trail activities within parks, to connect parks with communities or other parks, or as stand-alone recreation features. Trails that enhance physical connectivity between Federal, State, and/or locally-managed lands for recreational opportunities including hunting, hiking, fishing, boating, camping, and wildlife observation are prioritized.
  - d. Swimming facilities. LWCF assistance may be available for swimming beaches, outdoor pools, wave-making pools, wading pools, spray pools, lifeguard towers, bathhouses and other similar facilities.
  - e. Boating facilities. LWCF assistance may be available for most facilities related to motor boating, sailing, canoeing, kayaking, sculling and other boating activities. These facilities include, but are not limited to, docks, berths, floating berths secured by buoys or similar services, launching ramps, breakwaters, mechanical launching devices, boat lifts, boat storage, sewage pump-out facilities, fuel depots, water and sewer hookups, restrooms, showers, electricity and parking areas. Assistance may not be provided for operational equipment such as buoys, ropes, life jackets, or boats. Marinas are also eligible for assistance and are subject to the following provisions regardless of when LWCF assistance was provided:

- (1) An equitable method of allocating berth space shall be used in all marinas. Allocation methods shall include: (a) annual or multi-year lotteries, or (b) posted waiting lists where berth space is filled in the order of receipt of applications, or (c) another method selected by the applicant that responds to local conditions and equitably allocates space among all parties on an annual or multi-year basis. In each instance, adequate public notice shall be provided announcing the availability of berth space and describing application procedures. The project sponsor shall determine the most equitable method under which leaseholders may compete for future berth space vacancies. For new marinas the project narrative shall describe the allocation system to be used.
- (2) Commercial charter fishing or sightseeing boats are permissible marina leaseholders due to their potential for expanding public waterfront access. However, these users should not occupy a significant number of marina berths, so project sponsors should establish reasonable limits on the number of berth spaces provided for such users.

New marinas receiving LWCF assistance shall also be subject to the following provisions:

- (3) Berth lease terms shall not be transferable to any other party.
  - (4) Berth space for transient boaters shall be provided.
  - (5) Marinas located in urban areas shall include specific design provisions for non-boater public access. To expand water-based recreation opportunities such access may be provided in the form of walkways, observation points, fishing piers and/or related facilities. Limited access to the actual marina berths may be retained.
- f. Fishing/hunting facilities. LWCF assistance may be available for trails, fishing piers and access points, initial clearing and planting of food and cover, stream improvements, wildlife management areas, fish hatcheries, outdoor shooting ranges (including archery, rifle, handgun, skeet, and trap, etc.), and other facilities necessary for public fishing or hunting. In developing and evaluating fish hatchery proposals, only such areas and facilities will be eligible if they will be open to the public for general compatible outdoor recreation. States shall give priority to hatcheries that provide urban fishing opportunities.
- g. Winter sports facilities. LWCF assistance may be available for facilities such as: ski trails; jumps; lifts; slopes; and snowmaking equipment used in downhill skiing, cross country skiing, tobogganing, sledding, snowmobiling, and other winter sports. Outdoor ice skating and ice hockey rinks are also eligible.
- h. Camping facilities. LWCF assistance may be available for tables, fireplaces, restrooms, information stations, snack bars, utility outlets and other facilities needed for camping by tent, trailer or camper. Cabins or group camps of simple basic design and accessible

to the general public in an equitable manner are eligible. Group camps designated for specific groups or for which specific groups will be given priority access are not eligible for LWCF assistance (Chapter 8.B). Lodges, motels and luxury cabins are not eligible for LWCF assistance.

- i. Exhibit facilities. LWCF assistance may be available for outdoor exhibit or interpretive facilities that provide opportunities for the observation or interpretation of natural resources located on the recreation site or in its immediate surrounding areas. This includes small demonstration farms, arboretums, outdoor aquariums, outdoor nature exhibits, nature interpretive centers and other similar facilities. However, exhibit areas will not be assisted if they function primarily for academic, historic, economic, entertainment or other non-recreational purposes. This restriction includes convention facilities, livestock and produce exhibits, commemorative exhibits, fairgrounds, archeological research sites, and other non-recreational facilities. The development of nature and geological interpretive facilities that go beyond interpreting the project site and its immediate surrounding area are not eligible for assistance.
- j. Spectator facilities. LWCF assistance may be available for amphitheaters, bandstands and modest seating areas related to playfields and other eligible facilities, provided the facility is not designed primarily for professional or semiprofessional arts or athletics, or intercollegiate or interscholastic sports. Seating provisions to accommodate persons with disabilities should be provided. Assistance is not available solely to increase seating capacity for a limited number of special events.
- k. Community gardens. LWCF assistance may be available for land preparation, perimeter fencing, storage bins and sheds, irrigation systems, benches, walkways, parking areas and restrooms related to a community garden. In such a project, community gardening must be clearly identified in the SCORP as a needed outdoor recreation activity and must be accessible to the general public in an equitable manner. LWCF assistance is available for fertilizer, seeds, tools, water hoses.
- l. Renovated facilities. LWCF assistance may be available for extensive renovation or redevelopment to bring a facility up to standards of quality and attractiveness suitable for public use, if the facility or area has deteriorated to the point where its usefulness is impaired, or outmoded, or where it needs to be upgraded to meet public health and safety laws or requirements.
- m. Professional facilities. Areas and facilities designed primarily for semi-professional or professional arts or athletics, such as professional type outdoor theaters, professional rodeo arenas and other similar facilities are not eligible for LWCF assistance.
- n. Accessible facilities. LWCF assistance may be available for the adaptation of new or existing outdoor recreation facilities and support facilities for use by persons with disabilities.



- o. Mobile recreation units. Mobile recreation units including playmobiles, skatemobiles, swimmobiles, show wagons, puppet wagons and porta-bleachers are eligible for LWCF assistance.
5. Guidelines for eligible support facilities
- a. Support facilities. LWCF assistance may be available for support facilities needed by the public for outdoor recreation use of an area, such as roads, parking areas, utilities, sanitation systems, restroom buildings, simple cabins or trail hostels, warming huts, shelters, visitor information centers, kiosks, interpretive centers, bathhouses, permanent spectator seating, walkways, pavilions, snack bar stands, and equipment rental spaces. When appropriate, support facilities may be sheltered from the elements by providing a simple roof or cover. Informational materials and leaflets are not eligible.
  - b. Operation and maintenance facilities. Facilities that support the operation and maintenance of the recreation resource on which they are located are eligible, such as maintenance buildings, storage areas, administrative offices, dams, sprinkler systems and directional signs. Regional and area wide maintenance facilities are eligible provided the project sponsor agrees to include those park and recreation areas served by the maintenance facility in the scope of the project agreement and under the conversion provisions of the LWCF Act at 54 U.S.C. 200305(f)(3). Employee residences and furnishings are not eligible.
  - c. Erosion Control/Shoreline Stabilization. Within recreation areas, facilities or infrastructure needed to help preserve a recreation area from being lost due to erosion may be eligible for assistance. Techniques using plants, natural stone, sand fill, and other structural and organic materials to stabilize shorelines, providing benefits including nutrient pollution remediation, fish and migratory bird habitat, and buffering of shorelines from waves and storms may be eligible for assistance. Development proposals must be for the benefit and enhancement of areas suitable for recreation, with the goal of enhancing appropriate recreation opportunities in these areas.
  - d. Wetland Creation. The creation of wetlands to provide habitat for fish, waterfowl, and other wildlife; improve water quality, and reduce the impact of floods and storms to communities may be eligible for assistance if they also provide public outdoor recreation opportunities such as fishing, hunting, photography, wildlife observation, and other appropriate recreational activities.
  - e. Beautification. The beautification of an outdoor recreation area is eligible. This includes: landscaping to provide a more attractive environment; the clearing or restoration of areas that have been damaged by natural disasters; the screening, removal, relocation or burial of overhead power lines; and the dredging and restoration of publicly owned recreation lakes or boat basins and measures necessary to mitigate negative environmental impacts.

- f. Winter range and migration corridor habitat. Improving big-game species winter range and migration habitat on State lands may be eligible for LWCF assistance if they enhance outdoor recreation opportunities. These physical connections can be between Federal, State, and/or locally managed lands. Migration corridors should incorporate habitat and food sources for big-game species as described in SO 3362.
- g. Indoor facilities. LWCF assistance will not be provided for support facilities or portions thereof that contribute primarily to public indoor activities such as: meeting rooms; auditoriums; libraries; study areas; restaurants; lodges; motels; luxury cabins; furnishings; food preparation equipment; kitchens; and equipment sales areas. Bathhouses, public restrooms, maintenance sheds, etc., are potentially eligible for LWCF assistance since their basic function is to provide support for outdoor recreation facilities.
- h. Pro rata basis. Support facilities that exclusively serve ineligible facilities are not eligible. However, if support facilities will serve both eligible and ineligible facilities, as may be the case with roads and sewers, assistance may be provided on a pro rata basis for that portion of the support facility that will serve the eligible facilities, provided that the eligible facilities are subject to the Section 200305(f)(3) conversion provisions.
- i. Roads. Roads constructed outside the boundaries of the recreation area or park are not eligible, unless the principal objective is to serve the park and visitors. Any use or service to private parties must clearly be incidental to the primary use of the access road for recreation purposes in which case assistance may be granted on a pro rata basis.
- j. Equipment. Equipment required to make a recreation facility initially operational, and certain supplies and materials specifically required under State Health Department regulations may be eligible for assistance.
- k. Safety. Projects to increase safety in parks, particularly urban parks, may be eligible for assistance. Facility-related security improvements within or adjacent to public parks and recreation areas can include infrastructure such as entrance kiosks, gates, fencing, phone lines, and lighting.
- l. Must serve viable outdoor recreation area. Development projects in new or previously undeveloped recreation areas may not consist solely of support facilities, unless they are required for proper and safe use of an existing viable outdoor recreation area that does not require additional outdoor recreation facilities (such as construction of restrooms at a public nature study area), or unless necessary outdoor recreation facilities are being developed concurrently with the LWCF assisted support facilities, or unless necessary outdoor recreation facilities will be developed within a reasonable period of time.
- m. Energy conservation elements. The energy conservation elements of an eligible outdoor recreation facility and its support facilities are eligible for LWCF assistance. This includes but is not limited to solar energy systems, earth berms, window shading

devices, energy lock doors, sodium vapor lights, insulation and other energy efficient design methods and materials.

6. Facility location requirements. Development projects may be located on lands and waters owned by (or leased to in accordance with Chapter 3.C.2) the project sponsor that ensures perpetual public use. In certain situations, however, the following conditions also apply:
  - a. Public school grounds. Public outdoor recreation areas and facilities for coordinated use by the general public and by public schools, including colleges and universities, are eligible for LWCF assistance provided such facilities are not part of the normal and usual program and responsibility of the educational institution. Stadiums, stadium-like seating, and portable bleachers are not eligible for LWCF assistance. Facilities needed to solely meet the physical education and athletic program requirements of a school may not receive LWCF assistance. This policy does not preclude exclusive school use of certain facilities such as athletic fields, tennis courts, and swimming pools, at certain times for instruction or competition provided the public outdoor recreation use remains primary, and there is adequate public access at other times.
  - b. Tourist areas. Public outdoor recreation and support facilities may be located in primary or potential tourist market areas, provided their primary purpose is for public outdoor recreation and provided they do not create unfair competition with the private sector.
  - c. Historic sites. Outdoor recreation and support facilities may be located on historic sites or in conjunction with historic structures. This includes picnic areas, walkways and trails on a historic property as well as visitor centers oriented to the outdoor facilities and environment. However, the restoration or preservation of historic structures is not eligible. In all cases, the project must be in accord with the National Historic Preservation Act of 1966 (see Chapter 4.C).
  - d. Utility sites. Assuming grantees possess adequate control and tenure of land and there is specific agreement from the utility company, outdoor recreation and support facilities may be located on utility company lands such as rights-of-way, reservoir lands, etc. unless the recreation resource management plan of the utility's license application filed with the Federal Energy Regulatory Commission indicates the facilities are to be provided at the sole expense of the licensee.
  - e. Agricultural lands. Outdoor recreation and support facilities, such as demonstration farms and wildlife management and hunting areas, may be planned by the project sponsor in conjunction with agricultural activities provided the agricultural purposes can be carried out concurrently within the area, are clearly described in the project proposal, are compatible with the proposed outdoor recreation uses, and are approved by the NPS.
7. Guidelines for eligible sheltered facilities. In accord with the LWCF Act at 54 U.S.C. 200305(e)(3), States meeting cold climate criteria (see paragraph (d) below) may be able to use LWCF assistance to construct shelters of permanent construction to partially or

completely enclose swimming pools or ice skating rinks only, to protect them against cold weather conditions and thereby significantly increase the recreation opportunities provided:

- a. Funding limitation. A qualified State may use up to 10 percent of its annual apportionment for eligible sheltered facilities. The amount to be charged against this allowance will be computed based upon the Fund assistance provided for the entire enclosed facility, rather than the Fund assistance provided only for the shelter.

If a State does not use the entire 10 percent of its fully obligated fiscal year apportionment for sheltered facilities, the remaining balance may be credited to subsequent apportionment allowances. For example, where only 5 percent of a fully obligated fiscal year apportionment has been used, the subsequent fiscal year apportionment allowance would be 10 percent plus the 5 percent balance carried over from the previous fiscal year. A credit may be carried for two subsequent fiscal years.

If a Fund-assisted swimming pool or ice skating rink without a shelter is developed under a project approved after September 28, 1976, and a separate project is later submitted to shelter the pool or rink, the combined amount of Fund assistance provided for both the facility and its shelter will be credited against available allowances. If the Fund-assisted pool or rink was developed under a project approved prior to September 28, 1976, and a separate project is later submitted to shelter the facility, only the Fund assistance provided for the shelter will be credited against available allowances.

Also, Fund assistance may be used to develop a shelter for a swimming pool or ice skating rink that was not constructed with Fund assistance. In this case, only the cost of the shelter will be credited against available allowances.

- b. Use of non-federal funds for the shelter. State or local project sponsors may use their own funds to shelter existing or proposed Fund-assisted swimming pools or ice skating rinks that are consistent with the requirements described below. In such cases, Fund assistance provided to develop the pool or rink will not be credited against available allowances.

Where the State or locally funded shelter is constructed concurrently with the Fund-assisted facility, the total project cost included in the grant agreement will be that cost attributable to the pool or rink facility only. LWCF assistance will only be used to fund outdoor recreation facilities. Fund monies will not be used to cost share in indoor facilities such as recreation centers. Engineering cost estimates and contract specifications must separate the shelter costs from other project development costs.

Project sponsors may, without the use of LWCF monies, construct public indoor facilities on a Fund assisted site when such facilities are compatible with the outdoor recreation use of the site.

- c. Shelter requirements. Any facility assisted from or eligible for assistance from the LWCF and within a LWCF boundary area may be sheltered or enclosed at the expense of the project sponsor. New sheltered facilities may also be constructed at the project

sponsor's expense. To be considered by NPS, a proposal to shelter or enclose a facility must:

- (1) Be transmitted to the NPS by the SLO conveying the State's support of the proposal;
  - (2) Include a completed Compliance & Stewardship Form (C&S Form) (see Chapter 4).
- d. Cold climatic criteria. Sheltered ice skating rinks may be developed in communities where the mean annual total snowfall is at least 24 inches or the normal daily mean temperature for the coldest winter month is 30 degrees or less. Sheltered swimming pools may be developed in communities where the normal daily mean temperature for the month of June is 72 degrees or less. The official references for making these determinations are the average temperature and the snowfall tables found in Comparative Climatic Data for the United States published by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. If climatic data is not published for the community in which the project is located, the project sponsor should contact the NOAA National Centers for Environmental Information (NCEI) to obtain the required data. The NCEI will be able to provide a mean annual total snowfall figure, and figures for the normal daily mean temperature, based on data collected at the closest official weather recording station. A copy of the cold climatic data used to make the determination of eligibility shall be included with all project applications.

## CHAPTER 4 - PROPOSALS, ENVIRONMENTAL REVIEW AND FEDERAL COMPLIANCE

### A. Proposal Development and Screening for Environmental Impacts

States are responsible for ensuring, on behalf of the NPS, proposals submitted to the NPS for federal decision, including new applications and amendments for LWCF previously-approved projects such as conversions, temporary non-conforming uses, and public facility exceptions, are developed in accordance with all applicable federal, State and local laws and regulations. This chapter presents the major federal laws and executive orders that govern the way proposals must be developed for federal review and decision. The General Provisions shall be attached to each LWCF grant agreement and amendment. States are encouraged to consult with NPS during the proposal development process for guidance on the compliance requirements in this chapter.

The federal legislation that coordinates the consideration of the potential for impacts to the human environment as a result of a federal action is the National Environmental Policy Act. As described in the next section, the NEPA process coordinates compliance with applicable related federal, State, and local environmental requirements. To facilitate and document this coordination, States must ensure that the A&R Form (new grants and amendments) or C&S Form (post-grant compliance) is completed and accompanies each LWCF proposal submitted for federal review and decision.

The forms contain a narrative section to identify and provide descriptive information about the proposal to the federal decision-maker.

The Environmental Resources Survey (formerly the environmental screening form) portion of both forms serves as part of the federal administrative record required by NEPA and its implementing regulations. It supports a chosen NEPA “pathway” and must be completed before final action can be taken by the NPS. It is intended that States/project sponsors use the A&R or C&S Form as early as possible in the State/local project planning process. The Environmental Resources Survey will administratively document 1) a Categorical Exclusion recommendation or 2) the necessity of further environmental review through an Environmental Assessment (EA) or Environmental Impact Statement (EIS) as necessary. In the latter case, the EA (or EIS) must accompany the State’s LWCF proposal submission to the NPS. The ESF can also be used to document previously conducted yet still valid environmental analysis.

Upon the State’s submission of the completed proposal with the applicable form and the completed environmental documentation as necessary, NPS will undertake an independent review of the final proposal and supporting documentation, and take action as appropriate.

### B. National Environmental Policy Act

1. Authorities and guidance. The National Environmental Policy Act (NEPA) of 1969, as amended, requires all federal agencies to consider the environmental impacts of proposed projects and alternatives on the human environment. NEPA is a procedural statute; it does

not mandate a substantive result. Rather the goal of NEPA is to ensure public participation and informed decision making. NEPA requires all federal agencies to: 1) analyze the impacts of and alternatives to proposed “major federal actions,” and 2) use such analysis in deciding whether to proceed with the proposed actions; and 3) involve the interested and affected public before any decision affecting the human environment is made.

Federal actions are defined as projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those requiring a federal permit, license, or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency. The LWCF is a federal assistance program and thus all NPS LWCF decisions are subject to the provisions of NEPA and associated guidance found in the:

- a. Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, 40 C.F.R. Parts 1500-1508
  - b. NEPA’s Forty Most Asked Questions, CEQ
  - c. Department of the Interior (DOI) policy and procedures for implementing NEPA (Departmental Manual Part 516)
  - d. National Park Service (NPS), LWCF Program Manual, Chapter 4 (this chapter), including the Application & Revisions and Compliance & Stewardship Forms developed from NPS Director’s Order #12 and Handbook, “Conservation Planning, Environmental Impact Analysis, and Decision Making.”
2. Compliance coordination. For LWCF proposals, the NEPA process coordinates compliance with related federal, State, and local environmental requirements as applicable. At a minimum, compliance by the State/project sponsor with the following federal laws and executive orders shall be coordinated during the NEPA process and should be integrated into the NEPA document:
- a. National Historic Preservation Act, Section 106, as amended. Section 106 of NHPA requires federal agencies to consider the effects of their proposals on historic properties, and to provide State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and as necessary, the Advisory Council on Historic Preservation a reasonable opportunity to review and comment on these actions. Section 106 review and NEPA are two separate, distinct processes although the Section 106 review should be completed within the same timeframe as required for completion of NEPA. They can and should occur simultaneously, and documents can be combined, but one is not a substitute for the other. They should, however, be coordinated to avoid duplication of public involvement or other requirements. The information and mitigation gathered as part of the Section 106 review must be included in the NEPA document, and the Section 106 process must be completed by the State/project sponsor before NPS can sign a categorical exclusion, a finding of no significant impact (FONSI) or a record of decision (ROD). See Section C of this chapter for further guidance on the Section 106 process.

- b. Section 7 of the Endangered Species Act (ESA) requires a federal agency consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service on any action that may affect endangered or threatened species or candidate species, or that may result in adverse modification of critical habitat. Thus, the NPS must ensure that any funding authorized for LWCF purposes complies with the Endangered Species Act.
  - c. Floodplain Management and Wetland Protection, Executive Orders 11988 and 11990. Executive Orders 11988 and 11990 direct the federal agency to avoid, to the extent possible, the long- and short-term adverse impacts associated with modifying or occupying floodplains and wetlands. They also require the federal agency to avoid direct or indirect support of floodplain or wetland development whenever there is a practical alternative. For LWCF purposes, the State/project sponsor must comply with this executive order. If implementing the LWCF project would result in an adverse impact to a federal or State regulated floodplain or wetland, a statement of finding must be included in the EA or EIS documenting the State/local sponsors coordination efforts with responsible State and federal authorities, a description of affected floodplain and wetland resources, alternatives considered to developing in the floodplain and/or wetland, and actions to avoid, minimize and/or mitigate impacts.
  - d. Environmental Justice in Minority and Low-Income Populations, Executive Order 12898. Executive Order 12898 directs federal agencies to assess whether their actions have disproportionately high and adverse human health or environmental effects on minority and low-income populations. For LWCF purposes, States/project sponsors must specifically analyze and evaluate the impact of the LWCF proposal on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risks of the decision in the NEPA document. If it does not apply, this should be noted in the "issues dismissed" section of the NEPA document.
  - e. Secretary's Order 3175 and ECM95-2. Secretary's Order 3175 and ECM95-2 require bureaus to explicitly address environmental impacts of their proposed actions on Indian Trust Resources in any environmental document.
  - f. Intergovernmental Review of Federal Programs, Executive Order 12372. For States that have selected to review the LWCF Program under its own Intergovernmental Review Process under Executive Order 12372, States may use this process for State and local government coordination and review of proposed federal financial assistance. States may make efforts to accommodate State and local elected officials concerns and comments that are communicated through the designated single point of contact process. Comments should be considered in a timely manner during the NEPA process and prior to submission to NPS for federal review. Note that the Intergovernmental Review Process does not fulfill the State's/project sponsor's responsibility for providing a public comment period that provides the interested and affected public opportunity to comment on the completed environmental review documents.
3. State responsibility. Using the A&R Form for new applications and amendments or the C&S Form for post-grant actions, the State must submit to NPS adequate environmental



documentation in order for NPS to determine whether a proposed LWCF action is either categorically excluded from further environmental analysis or requires an EA or an EIS. States are responsible for coordinating the environmental review process including the production of EAs, and if necessary, EIS. States are also responsible for ensuring the required public comment periods are offered in accordance with the guidance found in Section 5.b(2) below.

CEQ encourages federal and State agencies to work together to combine efforts to produce only one NEPA document, especially for those State and local agencies that have their own requirements for impact analysis. Early coordination is critical prior to the investment of extensive planning resources and the commitment to a specific alternative. State and local environmental impact analysis requirements may not meet the same needs as NPS LWCF requirements, so States are urged to consult early in the process with NPS.

When a State elects to use a State or local environmental review process to meet the NEPA requirement, they shall provide the environmental review guidance in this chapter, including the A&R or C&S Form, to the agency delegated the responsibility to conduct the environmental review to ensure that the process meets these federal requirements.

Costs associated with conducting environmental reviews are eligible for LWCF assistance, including retroactive costs (see Chapter 5.A.3.b).

4. NPS responsibility. NPS is responsible for determining whether a proposed LWCF action is either categorically excluded from further environmental analysis or requires an EA or an EIS. NPS also is responsible for ensuring the adequacy of any required EA or EIS document and is solely responsible for signing the decision documents. NPS serves as the lead agency in the delegation, preparation and review of any EA or EIS for proposed LWCF actions. As the lead agency, the NPS provides guidance to the States on how to develop adequate environmental documentation according to the type of the State/local proposal for federal assistance.
5. Scope of environmental review. Early in the conceptual development of an LWCF proposal, the State shall encourage LWCF project sponsors to document their planning and analysis process, including all efforts to reach out to the interested and affected public and agencies. The public and agencies should be invited to provide input early in the planning process and before any environmental analysis formally begins so the sponsor can clearly communicate the purpose and need for the project and give the public and agencies an opportunity to provide any information that could be useful for scoping out the LWCF proposal and considering its potential impact on resources. This scoping step in the planning process will yield information for use in defining the scope of the LWCF proposal and possible associated environmental impacts.

The A&R or C&S Form shall be used by all potential LWCF project sponsors and for any LWCF proposal requiring federal action. The forms are designed for use as a tool during project scoping, planning, and proposal development to document environmental information and consider the LWCF proposal's possible environmental impacts at the time

it is discussed, presented, or discovered in the field rather than as a “compliance exercise” after a decision is made and the application for federal assistance is being prepared.

As a result of early project scoping and planning, the State/sponsor develops a final proposal for possible federal assistance or action, including a completed ESF. The scope of the environmental review under NEPA, i.e., the extent of resources that may be affected by the project, depends on the type of LWCF proposal under consideration as follows:

- a. New acquisition projects. The scope of the environmental review shall include the lands to be acquired and the proposed public outdoor recreation uses intended for the property to be completed within three years from the date of acquisition.
- b. Development projects. The scope of the environmental review shall be the proposal to provide or improve facilities for public outdoor recreation use and associated activities resulting from these improvements.
- c. Section 200305(f)(3) Conversions. Pursuant to 36 C.F.R. Part 59.3, the scope of the environmental review for Section 200305(f)(3) conversions is the entire LWCF-assisted park proposed for conversion, including for partial conversions, and lands proposed for replacement including the proposed development for public outdoor recreation use and associated activities. Resources beyond the existing LWCF boundary area are not subject to review unless required by other federal compliance programs.
- d. Other LWCF proposals. To determine the scope of the environmental review for other types of LWCF proposals, consult the NPS Director’s Office.

The scope of the environmental review determines the resources that must be screened for possible environmental impacts resulting from the LWCF proposal.

6. NEPA pathway options. The completed A&R or C&S Forms will guide the State/project sponsor along the appropriate NEPA pathway to produce the level of environmental analysis and documentation required for the proposed undertaking. The Form will document and support the NEPA analysis pathway option chosen for the proposal. States are required to include the completed Form with its formal LWCF proposal submission to the NPS.

The NEPA analysis pathway options available to States are:

- a. Categorical Exclusion for which a record is needed. These Categorical Exclusions (CE) are for federal actions that, under normal circumstances, are not considered major federal actions and have the potential for minor or no measurable impacts on the human environment. Prior to submitting a proposal to the NPS for federal review and decision, it is the State's responsibility to review the LWCF proposal to determine if the project meets the criteria for a CE determination. If the LWCF proposal meets the criteria for a CE, the State provides sufficient documentation on the A&R or C&S Form to support the CE by indicating that all potential impacts will be minor or less, and NPS agrees

with the CE selection, NPS will sign its own CE form signifying the proposal is categorically excluded from further NEPA analysis.

Note in addition to the CE criteria, the State must also consult the list of exceptions to the CE criteria listed in the Form. These exceptions describe additional circumstances that may be relevant for the proposal and could result in adverse impacts on the human environment and, therefore, preparation of an EA or an EIS would be required.

- b. Environmental Assessment (EA) or an Environmental Impact Statement (EIS). An EA or an EIS is required when the proposal or alternatives is a major federal action significantly impacting the quality of the human environment as described by the Council of Environmental Quality regulations at 40 C.F.R. Parts 1500 – 1508. The format and analysis of all EAs or EISs shall be in compliance with those regulations.

### **C. National Historic Preservation Act, Section 106 Process**

1. Purpose. The purpose of this section is to provide overall guidance on the implementation of the National Historic Preservation Act of 1966, as amended, (Public Law 89-665) for LWCF proposals requiring NPS review and decision.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on such undertakings. A historic property is a property listed in or eligible for listing in the National Register of Historic Places. An undertaking is a project, activity, or program in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval, and those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency. Under Section 106, LWCF proposals requiring NPS review and decision are undertakings.

The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties.

It is important to note however, that Section 106 of the NHPA and the NEPA both serve a similar purpose: helping Federal decision-makers understand the potential consequences of their proposed actions to make informed choices. “Like NEPA, ‘[s]ection 106 of NHPA is a stop, look, and listen provision that requires each Federal agency to consider the effects of its programs.’” *Te-Moak Tribe of Western Shoshone of Nevada*, 608 F.3d 592, 607 (9th Cir. 2010) (quoting *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999)). Thus, the resolution of a section 106 process is not mandated under all circumstances if the proper procedures are followed.

2. State responsibility. States shall conduct the Section 106 review process pursuant 36 C.F.R. Part 800. Prior to formal proposal submission to NPS for review and decision and pursuant to 36 C.F.R. Part 800.2(a)(3), the SLO or designee is authorized by NPS to initiate the Section 106 consultation process with the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), and other consulting parties to define the Area of Potential Affect (APE) and to determine whether LWCF proposals have the potential to affect historic properties within the APE. The APE is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE boundary may not be limited to the LWCF boundary area.

States are also responsible for performance by third parties under sub-agreements made by States for accomplishing LWCF program objectives. This responsibility includes compliance with all applicable federal laws, executive orders and regulations, such as Section 106.

By submitting a LWCF proposal for NPS review and decision, the State is making the following assurance and is also requiring this assurance be provided by subgrantees:

*The State shall assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, by (a) consulting with the State Historic Preservation Office and/or the Tribal Historic Preservation Office on the conduct of any necessary investigations to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are within the proposed area of potential effect of the proposed action (see 36 C.F.R. Part 800), to conduct such investigations and to notify the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties. The State further agrees to require this assurance from local project sponsors.*

- a. SHPO and THPO role. The SHPO reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with Section 101(b)(3) of the Act, the SHPO advises and assists federal agencies in carrying out their Section 106 responsibilities and cooperates with such agencies, local governments, and organizations and individuals to ensure historic properties are taken into consideration at all levels of planning and development. For LWCF proposals, the SHPO shall advise and assist the State agency in its efforts to comply with Section 106.

When an Indian tribe has assumed the Section 106 responsibilities of the SHPO on tribal lands pursuant to Section 101(d)(2) of the Act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. See 36 C.F.R. Part 800.3 for details on how to conduct the Section 106 process with a THPO.

- b. Indian tribes and Native Hawaiian organizations. States are responsible for making reasonable and good faith efforts to identify Indian tribes and Native Hawaiian

organizations that shall be consulted in the Section 106 process. Consultation should commence early in the planning process in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties. States should seek assistance from the SHPO, THPOs, Native Hawaiian organizations, tribes, other federal landholders, and any party it deems appropriate to determine if the proposal has the potential to affect tribal and Native Hawaiian resources. States should seek further guidance from their NPS LWCF regional office in cases where the consultation process is complex and assistance is needed to further define these responsibilities and roles.

3. NPS responsibility. NPS provides guidance through this manual and technical assistance to States in complying with the Section 106 process prior to a State's formal submission of a LWCF proposal to NPS.

NPS receives and considers a State's Section 106 recommendations as part of a State's formal LWCF proposal submission and conducts further consultation if needed. It shall be NPS policy to implement the Section 106 process in such a manner as best serves the public interest and is consistent with the provisions of the Land and Water Conservation Fund Act of 1965, as amended.

4. Timing. States are responsible for carrying out its responsibilities under these procedures as early as possible during the formative stages of a proposal and as part of its decision-making process prior to formal submission to NPS for review and decision.
5. Coordination with NEPA. States should ensure that potential effects on historic properties from the proposal are considered as early as possible during the environmental review process pursuant to the NHPA Section 800.8 and the National Environmental Policy Act (NEPA). The Section 106 process and the NEPA environmental review process are two separate, distinct processes. They can and should occur and be completed simultaneously, and documents can be combined, but one is not a substitute for the other. They should, however, be coordinated to avoid duplication of public involvement or other requirements. The Section 106 process shall be documented as part of the LWCF A&R or C&S Form (see next item and also Chapter 4.A). The State should ensure the information and mitigation gathered as part of the 106 review is included in the NEPA document to be submitted for NPS review and decision about the proposal's potential for significant impact on the human environment.

Use of NEPA categorical exclusions does not exempt the proposal from compliance with this section.

6. Applying Section 106 to types of LWCF proposals. A State shall complete an A&R Form or a C&S Form for each proposal to be submitted to NPS for review and decision along with its recommendation for a determination of effect and supporting documentation appropriate for the type of proposal being submitted to NPS:

- a. New projects and amendments to acquire and/or develop park land. Prior to a State's submission of a proposal for financial assistance (acquisition, development or combination projects) and for amendments that involve 1) the acquisition of different acreage from those identified in the original application or 2) a change in the footprint of the development from that originally proposed within the APE, the requirements of this chapter must be addressed.
  - b. New acquisition projects and amendments involving delayed development and interim uses. In some instances, LWCF grants are approved for the acquisition of land on which non-LWCF assisted the development of outdoor recreation facilities is planned at a future date. In the interim, between acquisition and development, the property should be open for those public recreation purposes that the land is capable of supporting or which can be achieved with minimum public investment. Interim uses for such lands acquired for delayed development may also include the temporary continuation of an existing use and non-recreation uses, such as agriculture (see Chapter 3.B.8 for delayed development policy). Any new planned or unplanned development and uses for the newly acquired property during the three year period after acquisition is subject to compliance with this chapter. Failure to protect historic properties constitutes grounds for termination of a LWCF grant.

If appropriate, a special condition shall be placed in the LWCF grant agreement/ amendment that requires further compliance prior to any ground disturbing or demolition activities during this time period. Tracking Section 106 compliance will be the responsibility of the State.
  - c. Section 200305(f)(3) conversions. The Section 106 process must be applied to the LWCF boundary area to be converted as well as the acquisition and development of the replacement park land. For the area to be converted States may consider recently conducted Section 106 reviews for applicability to the new APE resulting from the proposal that will cause the conversion.
  - d. Proposals for temporary non-conforming uses, sheltering, and developing public facilities. These proposals require the approval of the NPS and must be reviewed according to the Section 106 process (see Chapter 8).
7. Cost sharing. Except as noted below, all costs incurred as a result of compliance with this chapter, including pre-agreement costs associated with the identification and evaluation of potential historic properties, are eligible project costs and may be reimbursable.

Costs incurred for mitigation actions or mitigation for resources discovered during LWCF project development may be reimbursable through the LWCF on a matching basis up to 50 percent. The form of mitigation must be an eligible LWCF activity and take place at the project site. Mitigation shall be conducted in a manner consistent with the Secretary of the Interior's Standards for Archeology and Historic Preservation Projects. Since destruction of historic properties constitutes an irreplaceable loss, failure to provide for necessary mitigation constitutes grounds for denial of LWCF assistance.

## 8. Compliance procedures

- a. NPS responsibility. The NPS is ultimately responsible for determining whether a project proposal will affect a property in or eligible for listing in the National Register.
- b. State responsibility. It shall be the responsibility of the State to implement, or cause to be implemented, the provisions of this part on behalf of and with the concurrence of NPS. The Section 106 Process is detailed in 36 C.F.R. Part 800, Subpart B. States shall use 36 C.F.R. Part 800, Subpart B for detailed guidance on the Section 106 compliance procedure and its own SHPO/THPO requirements. The requirement for States to consult with the SHPO/THPO is independent of the State's Intergovernmental Review system (E.O. 12372). In summary, the State shall:
  - (1) Determine scope of historic property identification including the Area of Potential Effect (APE) for the proposed LWCF undertaking.
  - (2) Identify historic properties within the APE.
  - (3) Evaluate any historic properties for National Register eligibility.
  - (4) Recommend a determination of effect.
    - i. No historic properties affected. If the State finds either there are no historic properties present or there are historic properties present, but the LWCF undertaking will have no effect upon them as defined in 36 C.F.R. Part 800.16(i), the State shall provide adequate documentation of this finding to the SHPO/THPO and shall notify all consulting parties they have 30 days to object to the finding. If no objections are made, then the State may recommend a finding of "No Historic Properties Affected" to NPS as part of its formal proposal submission.

If the SHPO/THPO or any consulting party object to the finding, then the State shall follow procedures according to 36 C.F.R. Part 800.4(d)(1)(ii).
    - ii. Historic properties affected. If the State finds there are historic properties that may be affected by the LWCF undertaking, the State shall notify all consulting parties to invite their views on the effects and assess adverse effects, if any, in accordance with 36 C.F.R. Part 800.5.
      - (a) No adverse effects on historic properties. If after the State applies the criteria of adverse effects pursuant to 36 C.F.R. Part 800.5(a)(1) it determines the LWCF undertaking will have no adverse effect on historic properties eligible for or listed on the National Register it shall notify all consulting parties along with the documentation of the finding who have 30 days from receipt to review the finding. If the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party

has objected, the State may recommend a finding of “No Adverse Effect” as part of its formal proposal submission to NPS.

Disagreement with “no adverse effects” finding. If within the 30-day review period any consulting party notifies the State in writing it disagrees with the “no adverse effect” finding and specifies the reasons for the disagreement, the State shall either consult with the party to resolve the disagreement or request NPS seek Council review of the finding pursuant to 36 C.F.R. Part 800.5. The State shall also concurrently notify all consulting parties such a submission has been made and make the submission documentation available to the public.

If within the 30-day review period the Council provides the NPS, and if the Council determines the issue warrants it, the NPS Director, with a written opinion objecting to the finding, NPS shall proceed according to 36 C.F.R. Part 800.5(c)(3)(ii).

- (b) Adverse effects on historic properties. When the potential for an adverse effect is found, the consultation shall continue among the State, NPS, SHPO/THPO and consulting parties to attempt to eliminate or mitigate the effect. The NPS, with the assistance of the State, must follow procedures pursuant to 36 C.F.R. Part 800.6.
- c. Formal submission of State’s proposal to NPS. NPS shall not accept a LWCF proposal from the State for formal review and decision until the Section 106 process has been completed.
- d. Post review discoveries. If historic properties are discovered or unanticipated effects on historic properties found after the NPS has signed off on the Section 106 process, the State or subrecipient shall immediately halt construction activities and notify NPS. In consultation with NPS, the State shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and follow the procedures outlined under 36 C.F.R. Part 800.13(b).
- e. Data recovery. When it is determined the project will have an adverse effect on a property in or eligible for listing in the National Register, all feasible and practicable alternatives to avoid or beneficially incorporate the historic properties into the project should be considered. If NPS, in consultation with the Council and the SHPO/THPO, determines there is no alternative but to recover the scientific, prehistoric, historical or archeological data, such recovery shall be conducted in accordance with 36 C.F.R. Part 800.6 and pursuant to a Memorandum of Agreement and be consistent with the Department of the Interior “Statement of Program Approach” for implementation of Public Law 93-291. In the event that timely funding under Public Law 93-291 is unavailable, such data recovery costs may be assisted in accordance with this section.



- f. Destruction of historic properties prohibited. Destruction of any site or property on or eligible for inclusion on the National Register prior to or in anticipation of applying for LWCF assistance shall constitute grounds for denial of LWCF assistance.

#### **D. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**

1. Purpose. This section provides guidance for the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and its implementing regulations found in Title 49 of the Code of Federal Regulations, Part 24 (49 C.F.R. Part 24) to federally assisted projects through the Land and Water Conservation Fund (LWCF).

The Uniform Act provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and establishes uniform and equitable land acquisition policies for federal and federally-assisted programs, such as the LWCF

- a. Displaced persons. The Uniform Act seeks to ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently, and equitably so such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. In this regard, the provisions of the Uniform Act and its implementing regulations apply to State and local government agencies receiving federal financial assistance for public projects that require the acquisition of real property regardless of funding source. The acquisition itself does not need to be federally funded for the rules to apply. If federal LWCF funds are used in any phase of the project, such as subsequent LWCF-assisted development as described in Section 5 below, States must comply with the rules of the Uniform Act.
  - b. Real property acquisition. The Uniform Act seeks to ensure that owners of real property to be acquired for federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs. See Section 7 below for further guidance on real property acquisitions.
2. State responsibility. The State is responsible for implementing the provisions of the Uniform Act pursuant to 49 C.F.R. Part 24. The SLO must keep participating State agencies and local governments advised on, and assure compliance with, all relocation and acquisition matters as they relate to the Uniform Act and these procedures. For LWCF project approval, this State assurance is incorporated into the general provisions included with every project agreement:

*The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 94 Stat. 1894 (1970)), and the applicable regulations and procedures implementing such Act for all real property acquisitions*

*and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.*

3. State documentation requirements for displaced persons. Except for Items “e” and “g” below, the State is required to keep the following documentation in its own LWCF project files and make it available upon request during program reviews, for audit purposes, and in response to NPS information requests. The State must submit copies of the “Statement of Difference in Value and Waivers” to the NPS prior to project completion.
  - a. An estimate of the number of individuals, families, businesses, and farms being displaced.
  - b. Appraisal documentation including review material and the State’s written approval of the appraisal report.
  - c. Copy of the written offer to purchase including a statement of just compensation.
  - d. Relocation Plan, advisory services program, and appeals procedure where displacement occurred.
  - e. Statement of difference in value if the purchase price is greater than the approved appraisal of fair market value.
  - f. Documentation showing the owner or owner’s designated representative has been given an opportunity to accompany the appraiser during his inspection of the property.
  - g. Evidence that occupants of property acquired were furnished at the time of initiation of negotiations adequate information explaining their eligibility to payments under Title II of the Uniform Act
  - h. Copies of waivers where applicable.
  - i. Appropriate claims forms and supporting documentation.
  - j. Evidence of purchase price and of title.
4. State relocation assistance advisory services. States shall carry out a relocation assistance advisory program that includes, in part, determining the relocation needs of each person to be displaced and providing an explanation of payments and other assistance for which the person may be eligible. All services required by Title II, Section 205 of the Uniform Act must be provided by the State or local sponsor.
5. Relocation benefits to displaced persons. The State must make available relocation benefits to persons displaced from any site that at the time of acquisition with or without LWCF assistance (or at any time thereafter prior to actual displacement) was planned as the site of a federally assisted project as follows:

- a. If the acquisition or displacement occurred within the two years preceding the time the State submits its application for federal financial assistance to the NPS, the State must provide the assurances required by Sections 210 and 305 of Public Law 646, unless the State can provide to the NPS documented evidence that at the time of the acquisition and last displacement, planning activity to obtain the particular federal assistance being applied for had not yet been initiated.
  - b. When the acquisition or displacement occurred more than two (2) years, but less than five (5) years before the State submits an application for federal financial assistance, that same assurance must be provided by the State, unless a written certification is provided as part of the project application by the head of the State or local government agency sponsoring the project. The certification will indicate, under penalty for willful misstatement (18 U.S.C. Section 1001), that the State or local government had not yet initiated planning activities for the application to obtain federal assistance at the time of the acquisition and last known displacement. The intent of this certification is for the State to provide an affirmative demonstration the acquisition was not the first step in a logical or foreseen planning of a project requiring federal financial assistance.
  - c. If the acquisition and last displacement occurred more than five (5) years before the State applies for federal financial assistance, the State need not provide the assurances required by Sections 210 and 305 of the Uniform Act nor the certification discussed above, unless the NPS has evidence to indicate that at the time of the acquisition and last known displacement, the State or local government had initiated planning activity for the application to obtain the particular federal assistance. In such case, Sections 210 and 305 assurances will be required. This is because it is assumed after five (5) years it is unreasonable to assume there was intent to seek financing of a development project at the time of acquisition or an intent to deny relocation benefits.
  - d. The States shall keep relocation certifications and related records in its own LWCF project files and make them available for inspection at the request of NPS.
6. Displaced applicant appeals process. Situations may occur when an applicant for payments under the Uniform Act will be aggrieved by a displacing agency's determination as to the applicant's eligibility for payment or the amount of the payment. Each State shall establish procedures that provide for adequate review by the involved State agency of the concerns of the person aggrieved. The procedures should assure that aggrieved persons may have their applications reviewed by the head of the State agency. The procedures should also provide for an appeals process that can be followed should decisions remain disputed following review by the head of the State agency.
7. Real property acquisition
- a. Methods of acquisition. Acquisition of land and water, or interests therein, may be accomplished through direct voluntary purchase, gift, transfer, or other means. The NPS encourages public policies and procedures for the acquisition of real property that are fair and consistent, and directed toward giving the property owner the full measure of

compensation authorized by law, promptly, with a minimum of inconvenience, and without prolonged negotiation or costly litigation. Federally-assisted acquisitions shall be guided by the policies found in Title III of the Uniform Act.

- (1) The Federal Government will not obtain a legal right or title to any area or facility acquired with LWCF assistance. The State must have on file satisfactory evidence of the purchase price and a description of the character and nature of the title received by the project sponsor before requesting reimbursement from the NPS.
  - (2) Evidence of title, such as a written statement by the State Attorney General, title insurance, or other means considered reasonable and adequate, must also be available to the SLO before requesting reimbursement from the NPS.
  - (3) Requests for payment certified by the SLO will be acceptable evidence of the purchase price and that the State has on file all the required documents, including those required by Public Law 91-646.
  - (4) A survey may be required by the NPS to confirm the exact location and size of the tract being acquired.
- b. State responsibility. The State will have responsibility for providing guidance to appraisers on appraisal requirements for federally-assisted acquisitions, for ensuring appraisals are reviewed by State-certified review appraisers pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), and for approving appraisals. The State must certify the appraisals meet the federal appraisal standards as described in below. A certification statement is included in the A&R and C&S Forms for States to certify appraisals and waiver valuations.

NPS will conduct spot check reviews of appraisals as needed and will review the State's LWCF appraisal review process as part of a State program review to assure compliance with the LWCF requirements and federal appraisal standards. The NPS may request appraisal review assistance from the Department of the Interior's Appraisal Valuations and Services Office (AVSO) as needed. When the appraisal review results in substantive concerns as to the adequacy of an approved appraisal, the SLO will be responsible for providing NPS (or AVSO) with supplemental appraisal documentation or a new appraisal in accordance with the review findings. The value established by the revised or new appraisal will be used as the basis for determining just compensation and matching assistance.

- c. Appraisal standards. The UASFLA, commonly referred to as the "Yellow Book," shall be used by State and local appraisers in the preparation of appraisals for federal LWCF-assisted acquisitions, donations if used for a federal match, and land exchanges for conversions. Because the appraisals for federal government acquisitions purposes, including federally-assisted acquisitions, are bound by federal law relating to the valuation of real estate, it is necessary to apply the UASFLA as warranted by the conditions of the federal appraisal assignment.

The federal standards (i.e., UASFLA) are considered “Supplemental Standards” to the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to bolster the minimum level of documentation and yield compliance with the unique and applicable appraisal methods and procedures that have evolved from federal case law. The UASFLA 2016 edition is available on-line. The USPAP is updated every two years and can be found on the Appraisal Foundation’s website.

- (1) UASFLA and USPAP. Appraisal preparation, documentation and reporting shall be in conformance with the UASFLA, which are generally compatible with standards and practices of both the appraisal industry and the USPAP. However, USPAP compliance alone will not result in UASFLA compliance. The project sponsor must recognize the differences between the UASFLA and USPAP and ensure the appraiser meets the higher standards of the UASFLA, except where noted below.

The UASFLA incorporates, by reference, most of the provisions found in the USPAP, however, UASFLA is a more detailed and rigorous standard. The UASFLA does deviate from the USPAP on certain occasions. Therefore, it may be necessary to invoke USPAP’s “Jurisdictional Exception Rule” when preparing a UASFLA-complying report. This allows USPAP standards to conform to overriding federal law relating to the valuation of real eState for LWCF federally-assisted acquisition and LWCF Act Section 200305(f)(3) conversion purposes. Consult Part D-1 of the UASFLA for a discussion of the minor conflicts between the 2000 edition of the UASFLA and the USPAP in effect as of that same year.

The major difference between the USPAP and the UASFLA is the UASFLA mandated procedure of valuing partial takings by utilizing the “before and after” method of analysis. This method addresses the loss of market value suffered by the large parcel as a result of the loss of the real property rights in question. “Severance damages” and “special benefits” affecting the remaining real property are automatically addressed through this appraisal method. The USPAP provides no specific guidance with respect to this issue. Lacking specific guidance, most USPAP appraisal reports simply address the value of the real property rights acquired by the grantee and not the overall diminution suffered (or, perhaps, enhancement realized) by the property from which it was acquired. Thus, a landowner, under certain circumstances, may end up “short changed” or unjustly enriched as a result of the lack of direction given in the USPAP in an involuntary or condemnation type acquisition. The reason for this UASFLA requirement is fairness to all concerned parties. Except for appraisal problems associated with LWCF-assisted conversion land exchanges, the “before and after” method is required for LWCF appraisals.

Appraisers are obligated to be familiar with the entire UASFLA standard before bidding on an appraisal assignment and/or preparing the appraisal report.

(2) Specific UASFLA policies and guidance for LWCF appraisal problems.

- i. For the purpose of the UASFLA compliance, any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the UASFLA requirements for a self-contained report if it has been prepared in accordance with the UASFLA.

See Section A of the UASFLA for details on data documentation and appraisal reporting standards. All appraisals are to include the required certification statement found in Part A-4. UASFLA contains an *Appraisal Report Documentation Checklist* located in Appendix A and a *Recommended Format for Federal Appraisal Reports* in Appendix B.

- ii. The appraiser's estimate of highest and best use must be an “economic” use. A non-economic highest and best use, such as “conservation,” “natural lands,” “preservation,” or any use which requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Therefore, any appraisal based on such a non-economic highest and best use will not be approved for federal land acquisition purposes.

In this same regard, an appraiser's use of any definition of highest and best use which incorporates non-economic considerations (*e.g.*, value to the public, value to the government, or community development goals) will render the appraisal unacceptable for LWCF purposes. (Section A-14 of the UASFLA)

- iii. For acquisitions not associated with Section 6(f) conversions and replacement land, the “before and after” method of valuation is required if the proposed acquisition is something less than the entire ownership. For example, if the proposed acquisition is a 20-acre parcel and the larger property is a 100-acre property, the required method of analysis is to value the 100-acre property in the “before” condition and then value the 80-acre parcel in the “after” condition. The value of the acquisition is then determined by subtracting the latter value estimate from the former value estimate. Improvements that are unaffected by the partial acquisition, either positively or negatively, need not be valued as long as the appraiser States that to be the case and the property is not to be acquired through condemnation.
- iv. The use to which the grantee will put the property after it has been acquired is, as a general rule, an improper highest and best use. It is the value of the land acquired that is to be estimated, not the value of the land to the government. If it is solely the government's need that creates a market for the land, this special need must be excluded from consideration by the appraiser.” (Section A-14 of the UASFLA).
- v. The UASFLA contains a unique definition of market value (Section A-9 of the UASFLA).

- vi. The UASFLA contains a unique certification statement (Section A-4 of the UASFLA).
- vii. Estimates of “marketing time” and “exposure time” are not appropriate and should not be reported in UASFLA-complying reports. The exclusion of the estimate of “exposure time” may be considered a Jurisdictional Exception to the USPAP. (See Sections D-1 and A-9 of the UASFLA. However, the USPAP version effective July 1, 2006 no longer specifies the reporting of exposure time in Standard 2, “Real Property Appraisal Reporting,” but does refer to the development of an opinion of exposure time in the “Comment” following S.R. 1-2(c)(iv) as well as in SMT-6. “Marketing time” is no longer mandated, to any extent, in the aforementioned edition of the USPAP.)
- viii. Because Section 6(f) conversions are land exchanges, the following policies shall apply:
  - (a) For partial takings, “part taken” appraisals shall be prepared for the subject parcels rather than employing the classic “before and after” appraisal methodology described above. This is necessary to avoid consequential value distortions that would logically occur as a result of appraisement of partial takings within parent parcels of greatly differing sizes. For example, if a park (conversion) property under appraisement is a five-acre tract within a 1,000-acre larger property and the replacement property (non-park property) is a 5-acre tract within an otherwise similar 8-acre larger parcel, an equal value conclusion would be extremely improbable, and such an appraisal procedure might very well result in an “equal value” exchange of a conversion property being several times the size, and perhaps several times the value (if viewed from the perspective of being a stand-alone parcel), of the replacement property.
  - (b) In order to determine the highest and best use of the park property, the appraiser is to ignore the actual zoning of the property if the zoning is a non-economic zoning established to recognize the “open space” characteristics of the park or to foster the preservation of the park. In this situation, the appraiser is to determine the most likely zoning that would have come about under the hypothetical condition the park was never created. In so doing, the appraiser will consider likely property uses based upon all germane factors as well as the actual present zoning of comparable, nearby, privately owned properties. Under this scenario, the cost, risk and time associated with obtaining a zoning change would not be appropriate. This procedure is necessary to avoid penalizing the conversion property because it was taken out of private ownership and dedicated to a non-economic use.
  - (c) The same valuation method shall be used on both the converted parcel and the replacement parcels.

- ix. The owner or the owner's designated representative must be given an opportunity to accompany the appraiser during his or her inspection of the property. (Section D-14 of the UASFLA)
- d. Appraisal value estimate under \$25,000. If the State determines an appraisal is unnecessary because the valuation problem is uncomplicated and the estimated value of the real property is \$10,000 or less based on a review of available data, the State may unilaterally waive the appraisal and instead prepare a waiver valuation per 49 C.F.R. Part 24.102(c)(2)(ii). The State is permitted to raise the waiver valuation cap up to \$25,000 provided the acquiring agency offers the owner the option to have an appraisal, and the owner elects to have the agency prepare a waiver valuation instead. Thus, the State may increase the \$10,000 cap to \$25,000 with the consent of the landowner.

The person preparing the waiver valuation must have sufficient understanding of the local real estate market to be qualified, and shall not have any interest, direct or indirect, in the real property being valued for compensation. Further guidance on waiver valuations can be found on the Federal Highway Administration's Website.

- e. Conflict of interest. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency. [See 49 C.F.R. Part 24.102(n)(2).]
- f. Basis for LWCF matching assistance. The project sponsor must secure at least one appraisal by a qualified appraiser or document the value using the waiver valuation method for each parcel to be acquired. Generally, the fair market value (FMV) or waiver value will be used as the basic measure of LWCF assistance on acquisitions. LWCF assistance shall be based upon evidence of this value.

Properly documented costs of severance damage may be matched. Severance damage is the diminution in value of the remaining land due to the particular land taken and is considered to be an inherent part of just compensation.

Settlement may occur after the LWCF project agreement has been signed by NPS.

- g. Acquisition by donation. An appraisal prepared according to the UASFLA or a waiver valuation is required for all projects involving the donation of real property or interests therein for determining the federal matching share. For guidance on waiver valuations for real property with an estimated value under \$25,000, see Item “d” above.
  - (1) Partial donations/Acquisition at less than just compensation. Only in unusual circumstances (e.g. bargain sales, donations, etc.) will real property be acquired at



less than established just compensation as determined by an approved appraisal. For partial donations, documentation must include evidence the owner has been provided with a statement of just compensation. A written statement by the owner that he is making a partial donation is also required.

(2) To determine the amount eligible for matching a LWCF project, an approved appraisal is still necessary.

- h. When State request for LWCF assistance is different than appraised value. An appraisal should be an acceptable estimate of property value if competently compiled by a qualified appraiser. However, it cannot be assumed to be an absolute statement of value. The approved appraisal value is the basis for establishing the amount of just compensation offered to the owner (seller) at the initiation of negotiations. The negotiation between a willing seller and a willing buyer will often set a price that is higher than the appraisal, and this marketplace value must be considered with the appraised value in establishing the reasonable limits of LWCF assistance.

When the State believes the administrative settlement is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well documented statement on this difference with all pertinent appraisal documents must be submitted before reimbursement is requested. This statement should explain why the appraisal may not reflect the market value and what steps the project sponsor took to establish the value, and include adequate market data to substantiate the value conclusion. If the NPS agrees the administrative settlement represents a reasonable estimate of the property, that amount will be eligible for assistance.

- i. Acquisition of less-than-fee interests. In certain instances, the purchase of less than fee title may be permissible (see Chapter 3). The acquisition of easements, rights-of-way, etc., will be viewed in the same light as fee acquisitions. Documentation of value by appraisals will be the same. The project proposal should adequately explain why lesser interests are to be acquired.
- j. Judicial decisions. When lands are acquired through judicial proceedings, the price determined by the court will be accepted by NPS in lieu of any previous NPS or State approved appraised value.
- k. Responsibility for quieting title or for replacement of properties acquired with defective title. The State is responsible for quieting claims against title and for replacing property found to have defective title with other properties if this occurs after project completion pursuant to the LWCF conversion provisions found in 36 C.F.R. Part 59. If discovery occurs prior to project completion, the LWCF project may be terminated for cause (see Chapter 7).

## **E. Equal Employment Opportunity Contract Compliance**

For all LWCF grants involving federally assisted construction contracts and subcontracts in excess of \$10,000, the recipient must comply with Executive Order 11246, as amended, and with the regulations of the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor at 41 C.F.R. Part 60-4. In determining whether Fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of federal assistance shall apply.

## **F. National Flood Insurance Program**

1. Scope. The Flood Disaster Protection Act of 1973 (Public Law 93-234) requires the purchase of flood insurance as a condition of receiving any federal financial assistance (including LWCF assistance) for acquisition or construction purposes in special flood hazard areas located in any community currently participating in the National Flood Insurance Program authorized by the National Flood Insurance Act of 1968. These special flood hazard areas are identified by the Flood Insurance Administration of the Federal Emergency Management Agency.
2. Improvements eligible for flood insurance coverage
  - a. Definitions. For the purposes of the National Flood Insurance Program, the term "financial assistance for acquisition or construction purposes" means any form of financial assistance that is intended in whole or in part for the acquisition, construction, reconstruction, repair or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. The terms building and mobile home are further defined as any walled and roofed structure that is principally above ground and affixed to a permanent site. Structures and their contents that meet these definitions are referred to as insurable improvements in this section.
  - b. Examples of insurable improvements for which insurance is required include, but are not limited to the following: 1) restroom facilities; 2) administrative buildings; 3) bathhouses; 4) interpretive buildings; 5) maintenance buildings and sheds for landscaping tools or other equipment; 6) sheltered facilities consisting of two or more walled sides and a roof.
  - c. Examples of improvements for which insurance is not required include, but are not limited to the following: 1) open picnic shelters; 2) permanently affixed outdoor play equipment such as swings and slides; 3) sun shades covering outdoor ice skating rinks; 4) outdoor swimming pools.
3. Requirement for flood insurance
  - a. Flood insurance will be required for insurable facilities located within special flood hazard areas for which the Flood Insurance Administration has issued a flood hazard

boundary map or a flood insurance rate map. If the Flood Insurance Administration withdraws the applicable map(s) for a special flood hazard area for any reason, the insurance requirement is suspended for projects located in that special flood hazard area that are approved during the period the map(s) is (are) withdrawn.

- b. Communities identified as having special flood hazard areas must qualify within one year of notification by the Flood Insurance Administration. If an identified community has not qualified for the program by the prescribed date, no financial assistance can be provided for acquisition or development of insurable improvements. Such assistance will remain unavailable until the community has qualified. Financial assistance for non-insurable acquisition or development or for projects outside of the special flood hazard areas is not affected by whether the community is qualified or not qualified for flood insurance.

After a community has qualified for the flood insurance program, financial assistance for acquisition or development of insurable improvements will be predicated upon purchase of flood insurance for those improvements by the project sponsor.

- c. Flood insurance required by Public Law 93-234 must be carried on insurable improvements throughout their useful life.
- d. Flood insurance is not required on any State-owned property that is covered under an adequate State policy of self insurance. A revised list of States to which this exception applies will be published periodically by the Flood Insurance Administration of the Federal Emergency Management Agency.

#### 4. Amount of insurance

- a. The amount of insurance required by Public Law 93-234 is the lesser of (1) the development cost of the insurable improvement or (2) the maximum limit of coverage made available with respect to the particular type of facility under the National Flood Insurance Act of 1968. The amount is based on the total cost of the insurable improvement, not just the federal share.
- b. Whenever flood insurance is available to cover a facility during construction, the project sponsor will obtain such coverage as soon as the facility becomes insurable. Coverage is usually available as soon as construction progresses beyond the excavation phase.

### **G. Civil Rights**

The States, as primary recipients of assistance, are responsible for providing assurance that the applicant and all sub-recipients will comply with all related federal civil rights requirements. This shall be accomplished through:

1. Establishing an open project selection process according to the standards of NPS;

2. Notifying NPS of any inconsistencies with civil rights requirements having arisen from on-site State program reviews and valid complaints registered with the Department, NPS, or the State where impasses have been reached in resolving the compliance issue(s);
3. Cooperating with NPS toward seeking a satisfactory resolution of any inconsistencies found, including efforts toward seeking voluntary compliance, enforcement procedures and follow-up reviews; and,
4. Assuring that each sub-recipient/applicant is provided a copy of Title VI, 504/ADA Title II, ADAAG, LEP, Title IX, and Age non-discrimination requirements.

For details on enforcement of related civil rights requirements, refer to:

- a. Title VI of the Civil Rights Act of 1964 at 43 C.F.R. 17, Subpart A
- b. Section 504 of the Rehabilitation Act of 1973 at 43 C.F.R. 17, Subpart B
- c. Non-Discrimination on the Basis of Age at 43 C.F.R. 17, Subpart C
- d. ADA Title II at 28 C.F.R. Part 35
- e. ADA Accessibility Guidelines at 28 C.F.R. Part 36
- f. Title IX of the Education Amendments of 1972 at 43 C.F.R. Part 41
- g. Limited English Proficiency (E.O. 13166) at 28 C.F.R. Part 42.104(b)(2)

#### **H. Contracting with Minority Business Enterprise and Women Business Enterprise Firms**

It is the Federal Government's policy to award a fair share of contracts to Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) pursuant to Executive Orders 11625, 12138, and 12432. An MBE is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners. Executive Order 11625 designates the following: a. Black American (with origins from Africa); b. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America); c. Native American (American Indian, Eskimo, Aleut, or native Hawaiian).

In accordance with 2 C.F.R. 200.321, affirmative steps must be taken to assure that MBEs/WBEs are utilized when possible as sources of supplies, equipment, construction, and services.

The affirmative steps shall include the following:

1. Including qualified MBEs/WBEs on solicitation lists
2. Assuring that MBEs/WBEs are solicited once they are identified;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
4. Where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
5. Encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U. S. Small Business Administration to identify MBEs/WBEs, as required;
6. If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed above.

## CHAPTER 5 - COST PRINCIPLES

### A. General Cost Principles

1. Basic concept. The regulations at 2 C.F.R. Part 200 will be followed in determining the allowability and allocability of costs. Each project represents a separate transaction for purposes of determining the amount of the LWCF assistance.
2. Relationship of project period to eligible costs. To be eligible for matching assistance, costs must have been incurred within the project period except for certain pre-award project planning costs, which may be approved retroactively. The project period is the span of time stipulated on the agreement during which all work to be accomplished under the terms of the agreement must be completed. The LWCF does not reimburse obligations, regardless of when they are assumed; it reimburses costs incurred during the project period.
  - a. Development projects. Development costs are first incurred at the start of actual physical work on the project site (such as the clearing of ground, the beginning of construction of a building, or the delivery of material to the site), and continue through the period the work is being done. Costs are not incurred at some earlier time when contracts are signed, funds obligated, or purchase orders issued, or at a later time when the ensuing bills are paid. Physical work on the project site shall commence within one year of project approval. When the project start will be delayed beyond the first year, the State shall report the reasons for the delay on the annual consolidated performance report along with a new physical start date. Any problems, conditions, or delays which will impair the sponsor's ability to meet the objectives of the grant award shall be immediately disclosed to the NPS and the project amended or withdrawn as appropriate.
  - b. Acquisition projects. Since the transfer of ownership in real property can be a protracted process which differs under various State laws and procedures, the relationship of acquisition costs to project period is separated into two elements: the date when the acquisition cost is incurred and the date when the cost is eligible for reimbursement.
    - (1) Acquisition costs are incurred on the date when the earliest of any of the following transactions take place:
      - i. The project sponsor accepts deed, lease or other appropriate conveyance;
      - ii. The project sponsor makes full payment for the property;
      - iii. The project sponsor makes first payment in a series of spaced or time payments;
      - iv. The project sponsor makes the first or full payment as stipulated in an option agreement; (The cost of the option, if included as part of the purchase price, is allowed as a retroactive cost).

- v. The project sponsor makes first, partial, or full payment to an escrow agent.
- (2) The transactions in (1) above will be used to determine whether an acquisition cost is incurred within the project period. Eligible acquisition costs (and retroactive option costs as appropriate) will be reimbursed only after the project sponsor has made payment and received satisfactory title to the property.
3. Approval of Retroactive costs. Some costs incurred prior to NPS approval of a project, as described below, are eligible for reimbursement or used as match:
- a. Acquisition and Development costs incurred prior to an approval may be eligible in circumstances where immediate action is necessary and the time needed to process an application would result in a loss of significant opportunity.
    - (1) Acquisition. The State will notify the NPS in writing of the necessity to immediately acquire land prior to taking such action, including a description of the resources to be acquired, the public outdoor recreation uses proposed for the site, and justification for the proposed action. At the time the formal acquisition project is submitted, the State shall include all the necessary documentation required for new acquisitions (see Chapter 6).
    - (2) Development. The State will notify the NPS in writing of the necessity to immediately begin development of an area prior to taking such action, including a description of the planned development, the public outdoor recreation uses proposed for the site, and a justification for the proposed action. Waivers for development projects will not be approved unless accompanied by an A&R Form and the proposal qualifies for a categorical exclusion under NEPA (see Chapter 4).

If NPS approves the actions, the retroactive costs will be eligible for assistance if the agreement is later approved. Approval is only an acknowledgement of the need for immediate action; it does not imply nor assure NPS approval of the project. The retroactive costs are incurred at the applicant's risk.

The project should be submitted for funding as soon as possible after an approval, but no later than one year from the date of the approval.

- b. Pre-award project planning costs. Pre-award project planning costs may be eligible for retroactive approval as described below. These costs must be described in the project application (SF-424C and Budget Narrative), including when they were incurred.

For development projects, the costs of site investigation and selection, site planning, feasibility studies, preliminary design, environmental review and other federal and State compliance, preparation of cost estimates, preparation of construction drawings and specifications, and similar items necessary for project proposal preparation may be eligible for assistance, although incurred prior to project approval. Similar costs may be allowable for acquisition proposals except for incidental costs.

For SCORP-related planning projects, development of the work program and workflow charts, preparation of cost estimates and budgets, and similar items needed to develop a sound planning program project may be allowable costs although incurred prior to project approval.

All such pre-award planning costs will be allowable if incurred within three years prior to project submission to the NPS. Eligible SCORP planning costs incurred beyond three years may be allowable provided the earliest date from which they are incurred is identified in the project agreement. The State must have on file and available for review sufficient information to justify the amounts of such pre-award costs, to indicate the periods during which they were incurred, and to justify their applicability to the project.

- c. Time amendment. While the recommended initial project period for an LWCF grant is three years, the maximum time period for an LWCF grant is five years from the date of approval. If, during the conduct of a project, it becomes apparent that completion will not be possible within the project period (not to exceed five years), the State shall submit a request for an amendment to extend the project period. The amendment should be submitted at least 30 days prior to the grant expiration date. A period of 6 months shall be considered as the minimum time extension of a project period when amending a project. Requests for project period extensions submitted after the expiration date will not normally be approved, and costs incurred after the expiration date will not be eligible for assistance.
4. Cost overruns and amendments of scope. During the execution of a project there may be unforeseen delays, changes in specifications, or rising costs of labor and supplies that cause the cost of the project to be greater than the approved support ceiling. Or, as work progresses, it may be necessary or desirable to alter the scope of the project by adding, deleting, or modifying some of its parts.

Where such changes fall outside the allowed scope flexibility as explained in Chapter 6, the State is required to notify the NPS of such changes and to submit an amendment as soon as possible to cover the modification. All project scope changes and cost increases must be consistent with the State's OPSP (see Chapter 2). It is recognized, however, that it will not always be possible for the Service to act in advance of the change, and any costs thus incurred prior to their approval are done so at the project sponsor's risk.

Proposed amendments to decrease the scope or to add a cost overrun may be considered after the project period, if an earlier submission is not possible, but only those costs incurred within the project period will be eligible. No proposed amendments to add or substitute scope items will be considered after the project period has expired. Amendment requests shall be accompanied by the A&R Form according to the instructions on its coversheet for the type of amendment being requested (see Chapter 4).

5. Federal matching and supplemental programs. The LWCF Act at 54 U.S.C. § 200305(f)(1) prohibits the use of other federal financial assistance in a project assisted with LWCF. However, in those instances where the statutory provisions of a subsequent federal grant-in-



aid program explicitly allows recipients to use such assistance as match for another federal grant, such as in Community Development Block Grants (CDBG), this section of the LWCF Act is superseded and a matching arrangement is permissible.

## **B. Sponsor Financial Obligations**

1. Matching share. LWCF assistance shall not exceed 50 percent of the total eligible costs (except as provided for the Insular Areas) and is provided primarily on a reimbursement basis. In most cases the project sponsor will initially pay in full all costs accrued during the project period. Reimbursement for the federal share is made through the State.

Projects initially funded at less than 50 percent matching share may not be amended to increase the federal share without an increase in project scope and increase in total project cost.

2. Applicability of donations. The Service encourages the donation of cash and in-kind contributions including real property to project sponsors by private parties. The value of the in-kind contributions may be used as all or part of the project sponsor's share of the project cost. The method of valuation and charges for volunteer services, material, and equipment must be documented and approved by the State prior to the donations being applied to reimbursement requests in order for such contributions to be considered as part of the sponsor's matching share. Specific procedures for placing the value on in-kind contributions from private organizations and individuals in accord with 2 C.F.R. Part 200.434, are set forth below:
  - a. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved project. Records of in-kind contributions of personnel shall include time sheets containing the signatures of the person whose time is contributed and of the supervisor verifying that the record is accurate.
    - (1) Rates for volunteer services. Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State. In cases where the kinds of skills required for the federally-assisted activities are not found in the other activities of the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved. The time of a person donating services will be valued at the rate paid as a general laborer unless the person is professionally skilled in the work being performed on the project (i.e., plumber doing work on pipes, mason doing work on a brick building). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the city or cities in the immediate area pay their city employees for performing similar duties.

- (2) Volunteers employed by other organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.
- b. Valuation of materials. Prices assessed to donated materials included in the matching share should be reasonable and should not exceed current market prices at the time they are charged to the project. Records of in-kind contributions of material shall indicate the fair market value by listing the comparable prices and vendors.
- c. Valuation of donated real property. The value of donated real property shall be established by an independent appraiser in accord with the Uniform Appraisal Standards for Federal Land Acquisitions. The State must review and approve donation appraisals. NPS will spot-check (administrative review) appraisal reports for adequacy and consistency (see Chapter 4).
- d. Valuation of donated equipment. The hourly rate for donated equipment used on a project shall not exceed its fair-rental value. Hourly rates in the annual edition of Rental Compilation or Rental Rate Guide or similar publications that provide the national or regional average rates for construction equipment may be used. Such publications are usually available from contractor associations. Records of in-kind contributions of equipment shall include schedules showing the hours and dates of use and the signature of the operator of the equipment.
- e. Valuation of other charges. Other necessary charges such as equipment use charges incurred specifically for an indirect benefit to the project on behalf of the sponsor may be accepted as matching share provided they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.
- f. Documentation. The basis for determining the charges for donated personal services, material, equipment and land must be documented and must be approved by the State prior to the request for payment that includes the value of the donation.
- g. Limits of the valuation. In-kind contributions of real property donations are eligible in a project only to the extent there are additional acquisition and/or development costs to be met by the federal assistance requested for that project that must be fully described and explained in the proposal. Federal assistance may not result in a profit of unexpended cash to the State or local government.

*Example:* Land valued at \$10,000 is donated to the project sponsor, who proceeds to develop the property for recreational use. Development costs total \$6,000. The actual total project cost is \$16,000. But because only \$6,000 was actually spent, and since a grant in excess of that would constitute a profit to the sponsor, the federal share is reduced accordingly.

Sponsor's share (amount of the \$10,000 donation applied to the project):	\$ 6,000
LWCF Assistance:	<u>\$ 6,000</u>
Total:	\$12,000

The amount of donation that is matchable is the value of the donation or the amount of cash spent by the sponsor for additional acquisition or development, whichever is less.

- h. Multi-site land donations. To be eligible for matching assistance, in-kind contributions shall be applicable to a single project site. However, a multi-site project involving land donations may be considered to the extent that such is logical, reasonable, and more advantageous than the application of the donation to a single site.

### C. Allowable Costs

1. Determining amount of costs.
  - a. General. Subject to the guidelines given in this section and in 2 C.F.R. Part 200, the rates, practices, rules, and policies of the project sponsor, as consistently applied, shall generally determine the amount of costs of each item charged to a project. In instances where the sponsor has no such basis, that of the State shall apply.
  - b. Ceiling on amount of cost items. The amount of each item of cost that may be matched from the LWCF shall not exceed the sponsor's actual cash outlay for that item, or the fair market value of the item, whichever is less. An exception could be land acquired at a price in excess of appraised value and supported by an adequate statement on difference of value.
  - c. Ceiling on total matching share from the fund. The total matching amount made available for an approved project shall not exceed the approved support ceiling.
2. Guidelines for determining allowable costs. The basic statement regarding the principles and standards for determining costs applicable to this grants program is found in 2 C.F.R. Part 200, Subpart E.
3. Costs of purchase of real property and of interests in real property. Federal assistance may be used to pay a share of the fair market value of real properties and of interests in real property purchased by the project sponsor when determined by the NPS to be capital costs. Incidental costs related to acquisition may not be matched. However, interest expenses awarded by the court as part of just compensation for acquisition in eminent domain situations may be matched. Also, costs allowed under Section 211 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91-646), may be matched.

The value of such properties or interests should be proposed by the State. Steps shall be taken to assure actions in identifying property for acquisition do not cause inflation of property values, and thereby increase the cost of the project.

Although a project sponsor may pay a greater amount, LWCF assistance will generally be computed on the fair market value as determined by an acceptable appraisal. However, when a State feels the amount paid in excess of the fair market value is justifiable, it should prepare, and submit to the NPS, a detailed and well documented statement, including comparable sales and other market data as necessary justifying the difference. If the statement is found adequate, LWCF assistance may be computed on the full purchase price.

Capital expenditures for acquisition of eligible leases, easements, and other rights and interests in real property are eligible for LWCF assistance.

4. Cost of real property purchased from other public agencies. The actual cost to the project sponsor of land purchased from another public agency may be eligible for matching assistance, subject to the following conditions:
  - a. The land was not originally acquired by the other agency for recreation.
  - b. The land has not been managed for recreational purposes while in public ownership.
  - c. 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 an eligible supplemental program, such as HUD's CDBG.
  - d. The requirement of appraisal, history of conveyances, and evidence of title are the same as normal purchases.
  - e. If the selling agency is federal, fair market value is paid.
5. Real property acquired by donation. The value of real property donated to the project sponsor by private organizations, individuals, or other public agencies will be eligible for matching as determined by an appraisal. Donations required by law or regulation are ineligible as the project sponsor's matching share. The land acquired cannot be subject to any restrictions that might limit its intended public recreation use. The value of real property donated between a State and its subdivisions will be eligible for matching under the same conditions as if the property was being purchased. The value of the real property will be determined by an appraisal.
6. Master planning. Master planning of a recreation area in whole or in part will be matchable as part of a development project if the project includes actual development of at least equal cost to that of the master plan.

7. Miscellaneous allowable costs

- a. Payment of premiums on hazard and liability insurance to cover personnel and property directly connected with the project is allowable.
- b. Costs to the project sponsor for work performed by another public department or agency are allowable. This includes the costs of services provided by central service type agencies to the sponsor's departments and need not be supported by a transfer of funds between the departments involved.
- c. Costs of printing and distributing the SCORP, including a popular summary version and other project related printing or reproduction costs are allowable.
- d. The costs of space in privately owned buildings used for the benefit of the project is allowable subject to the conditions Stated in 2 C.F.R. Part 200.306 and 200.434. Also, project sponsors may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation.

8. Non-allowable expenditures. These expenditures shall not be included in the total budget for determining financial assistance:

- a. Ceremonial or entertainment expenses.
- b. Expenses for publicity.
- c. Bonus payments of any kind.
- d. Charges for contingency reserves or other similar reserves.
- e. Charges in excess of the lowest responsive bid, when competitive bidding is required by the Service or the sponsor, unless the Service agrees in advance to the higher cost.
- f. Charges for deficits or overdrafts.
- g. Taxes for which the organization involved would not have been liable to pay.
- h. Interest expenses, except those awarded by the court as part of just compensation for acquisition in eminent domain situations.
- i. Charges incurred contrary to the policies and practices of the organization involved.
- j. Consequential damage judgments arising out of acquisition, construction, or equipping of a facility, whether determined by judicial decision, arbitration, or otherwise. Consequential damages are damages, to adjoining property owned by other persons, which are caused by noise, lights, vibration etc.

- k. Incidental costs relating to acquisition of real property and of interests in real property, unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, Public Law 91-646.
- l. Operation and maintenance costs of outdoor recreation areas and facilities.
- m. The value of, or expenditures for, lands acquired from the United States at less than fair market value.
- n. Cost of discounts not taken.
- o. Equipment to be used for the maintenance of outdoor recreation areas and facilities, including, but not limited to, automotive equipment, tractors, mowers, other machinery, and tools.
- p. Employee facilities, including residences, appliances, office equipment, furniture, and utensils.
- q. Donations or contributions made by the sponsor, such as to a charitable organization.
- r. Salaries and expenses of the Office of the Governor, or of the chief executive of a political subdivision, or of the State legislature, or of other similar local governmental bodies.
- s. Fines and penalties.
- t. Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements.
- u. Any losses arising from uncollectible accounts and other claims, and related costs.
- v. Legal and professional fees paid in connection with raising funds.
- w. Payments for lobbying in connection with the awarding, extension, continuation, renewal, amendment, or modification of an individual LWCF grant or the program.

## **CHAPTER 6 - APPLICATION AND EVALUATION PROCEDURES**

### **A. Prerequisites for Applying**

Prior to submitting an application to NPS for LWCF acquisition and/or development assistance, the following conditions must be met:

1. The State's SCORP and the OPSP must meet the eligibility requirements of the LWCF Act and this manual.
2. The State's apportionment and reapportionment balances from NPS must be adequate to cover the proposed project to be activated.
3. The sponsoring agency must have developed the plans for its proposed project to the point where the project scope can be described and reasonable estimates of cost can be made.

### **B. Application Process**

The State prioritizes and selects eligible projects for LWCF assistance through the Secretary priorities and its OPSP (see Chapter 2) and is responsible for ensuring the development of the project proposal and completion of the federal grant application according to federal requirements. States shall provide guidance to subrecipients to ensure all application requirements are met.

Project applications should be submitted to the NPS at least 60 days in advance of the target date for acquisition or the beginning of construction except in accordance with the retroactivity provisions (see Chapter 5.A.3), to allow sufficient time for federal review of the proposal to determine its eligibility and compliance with federal requirements. The NPS will post Notices of Funding Opportunity during each fiscal year to receive applications.

For project proposals and grant applications that are complex in nature and/or have eligibility concerns, States are encouraged to consult with NPS prior to formal project submission.

At the completion of proposal development, the State prepares the required federal application documentation as described in Item 2 below and submits the application package to the appropriate NPS regional office requesting federal LWCF approval for the subject project.

All significant information must be disclosed in the application and its supporting documents. Failure by the State to consider information that might have a significant bearing on the eligibility of a proposal might be cause for refusal, cancellation, or recovery of federal assistance.

The following documents comprise the federal application for LWCF grant assistance and shall be coordinated by the State and submitted to the NPS:

1. Application & Revisions (A&R) Form. *One signed copy*. The A&R Form (see Chapter 4) provides step-by-step guidance for applicants to follow and complete while developing the grant proposal for federal LWCF assistance.
2. Federal Standard Form 424, Application for Federal Assistance. *One signed copy*, including supplemental SF-424 forms as required by type of proposal:
  - SF-424A, Budget Information for Non-construction Programs and SF-424B, Statement of Assurances for Non-construction Programs; or
  - SF-424C, Budget Information Construction Programs and SF-424D, Statement of Assurances for Construction Programs
3. Description and Notification Form. *One copy*. The DNF will be used to provide data input for the NPS LWCF database system. The State shall submit a DNF for each project.
5. LWCF boundary map. *One copy, signed and dated*. The LWCF boundary map shall clearly delineate the area to be included under the LWCF Act conversion provisions at 54 U.S.C. § 200305(f)(3). An acceptable LWCF boundary map is required for all development and combination projects prior to NPS approval, and for acquisition projects, prior to reimbursement. NPS will contact the State about any needed changes to the map.

Prior to the date of final reimbursement for development and combination projects, the State and NPS may mutually agree to alter the LWCF boundary area to provide for the most satisfactory unit intended to be administered under the provisions of 54 U.S.C. § 200305(f)(3). For acquisition projects, Section 200305(f)(3) protection is afforded at the time LWCF reimbursement is provided.

No changes may be made to the LWCF boundary after final reimbursement unless the project is amended as a result of an NPS approved conversion.

The LWCF boundary area to be subject to Section 200305(f)(3) protection must encompass a viable public outdoor recreation area that is capable of being self-sustaining without reliance upon adjoining or additional areas not identified in the scope of the project (such as for access, utilities, park support facilities, etc.). For most projects this is presumed to be the park or other recreation area being developed or expanded as whole. Exceptions for boundaries that would apply to a lesser area may be considered when it can be shown the area is a self-sustaining outdoor recreation resource. For example, parks comprised of non-contiguous units, or larger parks with logical management units existing therein, which result in smaller viable public outdoor recreation areas. The NPS and state must agree that the proposed LWCF boundary is a viable public outdoor recreation area. For acquisitions, in no case will the LWCF boundary area be less than that acquired with LWCF assistance.

For multiple purpose projects (see Chapter 3.A.6), Section 200305(f)(3) protection will be applied to the entire viable outdoor recreation area regardless of the prorated basis of federal



assistance, to include the whole facility unless a lesser area is approved in accord with the considerations in the prior paragraph.

The LWCF boundary area map and/or attachments as appropriate shall depict the following:

- a. Official park/site name, location, and LWCF project number
- b. Sufficient detail so as to legally identify the lands to be afforded protection under Section 200305(f)(3) of the LWCF Act. The following methods of identification are acceptable: deed references; adjoining ownerships; adjoining easements and rights-of-way; public streets; adjoining water bodies or other natural landmarks; metes and bounds; and surveys. Where one or more of the above methods are not readily suited for identifying the area, measurements from permanent locators may be used. A formal survey is not required.
- c. All known outstanding rights and interests in the area held by others. Known easements, deed/lease restrictions, reversionary interests, etc. are to be documented, including any area(s) under lease, name(s) of lessor and lessee, and term remaining on the lease(s).

When at the time of project application it is known that outstanding property rights held by others are being or will be exercised in the foreseeable future and impact only a portion of the area to be protected under Section 200305(f)(3), the impacted area must be clearly excluded from the LWCF boundary area depicted on the map and accompanied by an explanation of why it is not intended to be subject to the Section 200305(f)(3) provision. The remaining project area must meet all LWCF program criteria for eligibility and be a viable public outdoor recreation area. See Chapter 3 regarding outstanding rights and interests.

- d. Approximate total acreage of the LWCF boundary area.
  - e. North arrow.
  - f. Signature of the SLO or alternate unless otherwise delegated to a member of his/her staff. A delegation of signature authority for LWCF boundary maps must be on file with NPS. Also, date of signature.
  - g. Maps of up to 11 inch x 17 inch format are highly preferred for future administrative use such as copying and scanning. Avoid use of color as the only means to delineate areas.
6. Location map. *One copy*. This map shall clearly depict the location of and entrance to the site/outdoor recreation/park area.
  7. Pre-award on-site inspection report. *One copy*. The inspection shall be conducted in accord with the on-site inspection agreement between the State and NPS.
  8. Other information that has a significant bearing on the project.

### C. NPS Review Process

Upon receipt of the new grant application package, the NPS will assign an official LWCF project number to the project (see Section F below) and conduct an initial cursory review to determine if all required items are included in the grant application package.

If items are missing or incomplete, NPS will return the application package to the State for completion. If the new grant application package is complete, will conduct a detailed independent review of the proposal and required documentation to determine if the proposal is eligible for LWCF assistance, if the proposal has been developed in accordance with applicable laws and Executive Orders as outlined in Chapter 4, and meets the administrative requirements contained in this manual. If needed, NPS will consult with the State for additional information to better understand the proposal and to fulfill compliance with all requirements.

The NPS will conduct an independent review of the proposed project for federal assistance to determine how well it accomplishes the purpose of the LWCF Act and meets program requirements. This evaluation includes a consideration of the project's eligibility for assistance, its technical adequacy, and its financial soundness. All projects submitted to the NPS are evaluated to the extent information is made available in the application. The extent of the NPS review will depend on the type of application submitted and any certifications made by the SLO. As part of this review, the NPS will determine whether:

1. the proposal is in accord with the SCORP and the OPSP (see Chapter 2);
2. the proposal has been adequately reviewed according to the Section 106 process of the National Historic Preservation Act and the National Environmental Policy Act so the NPS can make a decision about the potential for significant impacts to the human environment as a result of providing federal assistance for the project (see Chapter 4); and
3. the project area is adequately depicted and described in the signed and dated LWCF boundary area map and represents an acceptable area to be covered by the provisions of Section 200305(f)(3).

Once a grant application package is considered actionable, the NPS will direct the State to submit the final version via Grants.gov, which will forward the application to DOI's electronic grant management system of record (currently, GrantSolutions). This will log in the application and allow processing of it to an award. As of January 2020, upon NPS approval of the project, a notice of grant agreement and associated terms and conditions is electronically generated and SLO or alternate (depending on who has the Authorized Official role in GrantSolutions) will receive an email from the system alerting them the award has been released. The award notice and terms establish the framework for the State and subrecipient (if applicable) to accomplish the project.

Award agreements are no longer signed. Acceptance of the award instead demonstrated by actions such as beginning the work of the project or drawing funds. The notice and grant terms:

- a. Bind the Federal Government and the State to certain obligations through its acceptance of federal assistance, including the rules and regulations applicable to the conduct of a project under the LWCF Act, 2 C.F.R. Part 200, and terms and conditions applied to the project by the DOI and the NPS. When the project sponsor is a local unit of government or an Indian Tribe, the SLO will make such arrangements with the sponsor as necessary for the successful completion of the project and the enforcement of federal laws and regulations.
- b. Obligate the United States to provide grants up to a designated amount for eligible costs incurred on the project on the basis of information and cost estimates contained in the proposal. This amount is the "support ceiling" and may vary as a percentage of total eligible costs, but in no event will it exceed 50 percent of the total cost indicated on the agreement forms or 50 percent of the final cost of the project, whichever is less.
- c. Set forth methods of costing, accounting, incurrence of costs, and similar matters.
- d. Set the period of performance for the project. The start and expiration dates are based on the state application, unless the NPS provided prior approval for retroactive costs, in which case the start date is the date the NPS approved the incurrence of such costs. The expiration date is the date by which the project must be completed.
- e. Describe the scope of the project including what is to be done and how it will be accomplished. For acquisition projects the number of acres to be acquired and the type of conveyance will be specified. For development projects, the project scope will be defined by each primary facility group shown in the DNF (see below). Facilities listed under each primary facility group are included in the project scope by definition.

#### **D. Amending Existing Projects**

As of January 2020, requests to modify or amend a grant are submitted to DOI's electronic grant system of record. A new notice of grant award is required to document the modification or amendment. When the notice is released by the NPS, it becomes part of the agreement and supersedes it in the specified matters. Amendments are required in the following situations:

##### **1. Situations requiring amendment**

- a. To increase the total LWCF assistance for a project.
- b. To add a co-sponsor or change project sponsors.
- c. To modify the project's scope and/or budget.
- d. To increase or decrease the acreage to be acquired by more than 10 acres or 20 percent, whichever is greater. Any change in the location of the project site to be acquired or developed shall require an amendment or submission of a new project.

- e. To extend the project period. Projects may not be extended for less than six months.
  - f. To amend the LWCF boundary area due to a Section 200305(f)(3) conversion.
2. Amendment documentation. Documentation needed to support an amendment vary by type of action (and are outlined in GrantSolutions). They may comprise:
- a. Standard Form 424. *One signed copy*, indicating the type(s) of amendment and including supplemental SF-424 forms as required by type of project:
    - SF-424A Budget Information for Non-construction Programs or
    - SF-424C Budget Information for Construction Programs
  - c. SLO transmittal letter. The letter must explain the changed conditions and how they affect the project to justify the need for the amendment or modification.
  - d. A&R Form. *One signed copy*. The revision narrative section must be completed for the type(s) of amendment.
  - e. Revised LWCF boundary area maps for conversion amendments and where the amended project scope provides Fund assistance to areas not previously covered under Section 6(f).
  - f. Description and Notification Form.

## **E. Withdrawal or Changes in Project Application**

Prior to approval, an application or amendment may be changed or withdrawn by a letter from the SLO to the NPS. New application documents may be required if the change is significant.

An approved project can be withdrawn unilaterally by the State at any time before the first payment on the project is made. If the project is withdrawn due to performance issues (or non-performance) by the project sponsor the State may be required to report the circumstances to the Federal Government's system of record for such issues (e.g., FAPIIS).

## **F. Project Numbering System**

NPS will assign a separate official project number to each new project whether or not it is ultimately approved. A project number shall be used only once and shall be the official method of identifying each project and related project documentation.

1. Assigning numbers to new projects: Each new project will be assigned the 7-digit project identification number consisting of the 2-digit State number, followed by and separated by a dash, the 5-digit project number. The electronic grant management system will also generate a federal award identification number. NPS shall permanently affix these numbers to the case file to serve as a permanent reference numbers. Agreements, amendments, and all other

documentation relating to a given project, including letters and memorandum, shall contain this number. A seven digit system shall be applied as follows:

First two digits: State Identification Number as follows:

01 Alabama	18 Indiana	32 Nevada	47 Tennessee
02 Alaska	19 Iowa	33 New Hampshire	48 Texas
04 Arizona	20 Kansas	34 New Jersey	49 Utah
05 Arkansas	21 Kentucky	35 New Mexico	50 Vermont
06 California	22 Louisiana	36 New York	51 Virginia
08 Colorado	23 Maine	37 North Carolina	53 Washington
09 Connecticut	24 Maryland	38 North Dakota	54 West Virginia
10 Delaware	25 Massachusetts	39 Ohio	55 Wisconsin
11 Dist. of Columbia	26 Michigan	40 Oklahoma	56 Wyoming
12 Florida	27 Minnesota	41 Oregon	60 American Samoa
13 Georgia	28 Mississippi	42 Pennsylvania	66 Guam
15 Hawaii	29 Missouri	44 Rhode Island	69 Northern Mariana Islands
16 Idaho	30 Montana	45 South Carolina	72 Puerto Rico
17 Illinois	31 Nebraska	46 South Dakota	

Next five digits. The Project Number is serially assigned in chronological order as follows:

08-00004 State of Colorado (fourth project proposal received from Colorado)

2. Assigning numbers to project amendments. Amendment numbers shall be added immediately following the project number by using a decimal point and appropriate number (beginning with 1) in serial order. Whenever the original project agreement is altered, the amendment number assigned to the executed amendatory document shall be serially increased as follows:

08-00004.1 (first amendment for project 08-00004)

## CHAPTER 7 - PROJECT ADMINISTRATION AND FINANCIAL MANAGEMENT

### A. General Administrative Requirements

1. General responsibility. It is the prerogative and responsibility of the State, and the project sponsor to which the State delegates responsibilities, to execute a project under the general guidelines and rules established by the State, governed in general by the concepts, rules, and guidelines set forth herein and in 2 C.F.R. Part 200. The primary role of the NPS in project administration is to be concerned with results, leaving to the States the determination of means to achieve these results. Thus, the rules established in this Part are minimal, being limited to those considered necessary for the NPS to fulfill its obligations.
2. Arrangements with sponsors. It is the responsibility of the State to make suitable and adequate arrangements with other public agencies to insure the successful performance of projects and the continued operation and maintenance of aided facilities and properties for public outdoor recreational use. The State shall be held responsible for all the actions of project sponsors relating to the execution of projects and associated post-completion responsibilities pursuant to the LWCF Act at 54 U.S.C. § 200305(f)(3) (see Chapter 8).
4. Duration of project. A project will continue in force until all work under a grant is completed or until the project period of the approved project agreement and all amendments thereto have expired, whichever comes first.
5. Execution of project work. The State shall be responsible for insuring all projects receiving financial assistance pursuant to the LWCF Act are carried through to stages of completion acceptable to the NPS with reasonable promptness. Failure to maintain satisfactory progress or failure to complete the project to the satisfaction of the NPS may be cause for the NPS to withhold further payments on any or all projects of a State or qualification of new projects until the project provisions are satisfactorily met. LWCF assistance may be terminated upon determination by the NPS that satisfactory progress has not been maintained.

In the event that LWCF assistance should be terminated, the State shall be required to bring the project to a State of usefulness so funds invested shall not be lost. If the State cannot complete the project with its own funds, it should submit a plan to the NPS for bringing the incomplete project to a point where it is useful. The NPS will not require all parts of a project be completed in such a case if a stage of reasonable usefulness can be achieved short of completion.

6. On-site inspections by the State
  - a. Responsibilities. It is the responsibility of the State to administer a regular and continuing program of on-site inspections of projects. The scope, timing and selectivity of these inspections will be covered in an agreement to be negotiated by the NPS and the State. This agreement will provide the basis for the conduct of pre-award, progress and final on-site inspections as well as the associated reporting formats.

Properties and facilities acquired or developed with LWCF assistance shall be available for inspection by the NPS at such intervals as the Director shall require. Generally, the NPS inspections will be conducted on a spot check basis in conjunction with the State Program Review.

- b. Reports. On-site inspection reports will be prepared for all inspections conducted and will be included in the official project files maintained by the State. The State is responsible for the preparation of these reports except when joint inspections are conducted with the NPS in which case the NPS will prepare the report and provide a copy to the State.

Submission of inspection reports to the NPS will be made on the following basis:

- (1) States are encouraged to use the pre-award on-site inspection to generate information for use in preparing the LWCF A&R Form. The pre-award site inspection shall be conducted by individuals knowledgeable about the resources of the site.
- (2) Progress inspection reports may be combined with the annual performance report or submitted to the Service at the same time as the electronic fund transfer.
- (3) Final inspection reports must be submitted to NPS within 90 days after the date of completing a project and prior to final reimbursement and administrative closeout.
- (4) Post-completion site inspections must be conducted within five years after the final project reimbursement and every five years thereafter. Post-completion reports should be retained in the State file, except for those inspections that discover post-completion compliance problems such as park closures and non-recreation or private uses occurring within the LWCF boundary area. The State shall report to the NPS the project numbers of all sites inspected soon after the inspection is conducted and forward to NPS only the inspection reports for LWCF sites with problems as described above.

7. Income from properties acquired or developed with LWCF assistance.

- a. During project period. In accord with 2 C.F.R. Part 200.307, income earned by the project sponsor during the project period from sources other than the intended recreational use of the project shall be dispersed in one of the following ways:
  - (1) Added to the funds committed to the project and used to further eligible LWCF program objectives at the project site. In this case a plan for the use of such monies shall be forwarded to NPS for concurrence prior to grant approval. This plan shall detail the sources(s) of the income and include the timeframe in which any non-recreational use(s) shall cease. In no instance shall any non-recreational use continue beyond three years (see Chapter 3).

- (2) Deducted from the total project cost for the purpose of determining the net cost on which the federal share of the cost will be based. In this instance, requests for payments must include identification of accrued amounts as credits to the project. Examples of income that shall be dispersed in the above manners include the rental of structures, the sale of timber and the lease or rental of land

Income earned by the project sponsor during the project period from the intended recreational use of the project, such as entrance or user fees and concessionaire operations may be disposed of at the sponsor's discretion. The sponsor, however, is encouraged to use such income to further recreation objectives related to the sponsor's public outdoor recreation program.

- b. After the project period. Income earned by the project sponsors after the project period, including from recreational use and land management practices, may be disposed of at the sponsor's discretion. However, the sponsor is encouraged to use such income to further recreation objectives related to the facility when State and local laws allow. Exceptions include those identified under paragraphs [d] and [e] below.
- c. Land management practices. Land management practices such as the rental of structures, the sale of timber and the lease or rental of land occurring during or after the project period must be compatible with the outdoor recreational use of the areas as described to the Service. Any practice that alters the outdoor recreation use or purpose of the area is prohibited. Income from such land management practices must be dispersed in accord with paragraphs [a] and [b] above.
- d. Sale of improvements or structures. Income derived from the sale of improvements or structures acquired with LWCF assistance shall be used to reduce the cost of other LWCF-assisted projects of the project sponsor regardless of whether the sale occurs during or after the project period. If the sponsor has no plans for further LWCF-assisted facilities, then the income must be used to further outdoor recreation development or acquisition at the site, at another LWCF-assisted site, or at another outdoor recreation site operated by the project sponsor. In this case, a letter indicating the intended use of the funds shall be sent to the Service for approval.
- e. Non-destructive mineral extraction. Extraction of oil and gas from LWCF-assisted projects involving the purchase of subsurface rights is allowable and will not constitute a conversion under Section 200305(f)(3) of the LWCF Act.
8. Title to properties acquired or developed with LWCF assistance. Pursuant to 2 C.F.R. Part 200 the Federal Government will not obtain a legal right or title to any area or facility acquired or developed with financial assistance received under the provisions of the Act.
9. Safety and accident prevention. In the performance of each project the State and other participating organizations shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation. The State and other participating organizations shall be responsible for assuring all reasonable safeguards, safety devices, and protective



equipment are provided, and will take other needed actions reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of work on the project.

10. Issuance of rules and instructions. NPS may issue additional or modified rules, instructions, interpretations, and guidelines from time to time as is necessary for the effective conduct of assistance activities. Such changes will apply to all projects for which agreements and amendments are signed after the effective date of the changes. Whenever possible, sufficient lead time will be given between the announcement and the effective date to avoid application to projects already in process at the time of the announcement.
11. Failure to comply with federal laws and regulations. When the NPS determines a State has violated or failed to comply with applicable federal law, or the regulations governing this program with respect to a project, he/she may withhold payment to the State of federal funds on account of such project, withhold funds for other projects of the State, withhold approval of further projects of the State, and take such other action deemed appropriate under the circumstances until compliance or remedial action has been accomplished by the State to the satisfaction of NPS.
12. Appeals. Disagreements with any decision or action concerning comprehensive plans, project proposals, valuations of properties and personal services, and audit exceptions, which have not been resolved to the satisfaction of the project sponsor may be appealed in the following sequence:
  - a. Local project sponsors. Disagreements between local project sponsors and the SLO or State agreements not represented by the SLO may be appealed to the State's NPS Region and if not resolved to the satisfaction of the sponsor, may be appealed to the Director and ultimately to the Secretary, if necessary.
  - b. State Liaison Officer. Disagreements between the SLO and the State's NPS Region may be appealed to the Director of NPS and, if not resolved satisfactorily at that level, may be appealed to the Secretary of the Interior.
13. Non-procurement debarment and suspension. In accordance with 2 C.F.R. Part 200.214 no grant or contract may be awarded by a grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. List of debarred or suspended entities can be found on the Internet.

## **B. Performance/Financial Management and Reporting**

1. Purpose. This section generally covers accounting, records, and reporting requirements. The State shall require all project sponsors to adopt the standards herein.
2. Financial responsibility. The State shall be responsible for the financial management of approved projects. Appropriate internal controls must, therefore, be adopted and installed to insure that the project is accomplished in the most efficient and economical manner.

3. Standards for grantee financial management systems. State and local government systems for the financial management of LWCF assisted activities shall be in accordance with 2 C.F.R. 200.302.
4. Monitoring and reporting of financial and program performance. States are responsible for monitoring the progress of grant project. Financial and performance reporting is required at least annually. Reporting requirements are outlined in the grant award terms and conditions and 2 C.F.R. Section 200.328 and .329.
5. Retention and custodial requirements for records. Retention of records shall be maintained in accordance with 2 C.F.R. 200.334-338.

### **C. Payments**

1. General. Grant payments will be made to States in a manner that minimizes the time elapsing between the disbursement by the State and the transfer of funds from the U.S. Treasury, whether such disbursement occurs prior to or subsequent to the transfer of funds. Grant payments are made through electronic fund transfer (EFT).
2. Monitoring electronic payments. Electronic Fund Transfer (currently the Automated Standard Application for Payments or ASAP) is the required method of payment for States. Upon completion of an electronic payment on a given date, the State must concurrently (within 24 hours) submit a completed “LWCF Record of Electronic Payment” form to the NPS Washington Office and the applicable NPS Region Office. Failure to adhere to this requirement will result in the State being placed on a “request for reimbursement” process through the NPS.

### **D. Audits**

1. Purpose. Recipients must comply with the audit provisions of the Single Audit Act of 1984 (Public Law 98-502), and 2 C.F.R. 200, Subpart F. In accordance with 2 C.F.R. Part 200, required audits shall be submitted to the federal audit clearinghouse within the earlier of 30 days after receipt of the auditor’s report or no later than nine months following the end of the State’s fiscal year.
2. Exceptions. An audit exception is a determination by an appropriate authority that an item questioned by the auditor is not properly chargeable to the project agreement and should be disallowed. The NPS will be responsible for the review of audit reports received from cognizant federal agencies and/or the Office of the Inspector General (OIG), Department of the Interior pertaining to LWCF grants. NPS will be responsible for advising the States of the audit findings, together with recommendations and suggestions for overcoming the deficiencies disclosed by the audit, and also advise the State of the disallowance of any items.

The Departmental Manual [360 DM 1 and 361 DM 1] requires the State must formally respond to the OIG, through the Director of NPS, concerning audit exceptions within 90 days of the issuance of the audit report. This initial response should include:

- a. whether there is agreement with the audit findings and recommendations. If there is non-concurrence, the specific reasons must be Stated, and
- b. recommendations or support documentation for corrective action (resolution) of the audit exceptions.

All audit exceptions must be fully resolved within six (6) months of the issuance of the audit report. If resolution of an audit exception indicates the need for reimbursement of the federal share, then such reimbursement must be made within 60 days after such resolution. After the six (6) month period from the date of issuance of the audit report, unresolved audit exceptions will be disallowed and reimbursement of the federal share must be made within sixty (60) days. Reimbursement of the federal share may be accomplished by electronic fund transfer.

## **E. Project Termination/Grant Closeout**

This section prescribes project closeout procedures in accordance with 2 C.F.R. Part 200.338 through .343.

1. Termination. The termination of a project means the cancellation of federal assistance, in whole or in part, under a project at any time prior to the date of completion.
  - a. Termination by the State. The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement of the State and the NPS.
  - b. Termination for cause. The NPS may terminate any project in whole, or in part, at any time before the date of completion, whenever it is determined the grantee has failed to comply with the conditions of the grant. The NPS will promptly notify the State in writing of the determination and the reasons for termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
  - c. Termination for convenience. The NPS or State may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The project sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the federal share of the non-cancelable obligations, properly incurred by the project

sponsor prior to termination. An amendment to the project agreement is required for all terminations for convenience.

2. Suspension. The suspension of a grant is an action by the Service that temporarily suspends federal assistance under the project pending corrective action by the project sponsor or pending a decision to terminate the grant by the Service.
3. Grant closeout. The State must ensure all agreed-upon work as described in the project agreement is completed by the expiration date in the grant award document. The closeout of a grant is the process by which the NPS determines that all required work of a project and all applicable administrative actions, including financial, have been accomplished.

The following are minimum requirements of the closeout procedures:

- a. During the active phase of the project, the NPS will make prompt payments to the State for allowable reimbursable costs until the project is administratively closed out.
- b. Final payment will not occur until all required final reports and documents have been approved by the NPS to assure all aspects of the grant contract have been met.
- c. Within 90 days after the date of completing the project or the grant expiration date, whichever comes first, both administrative and financial closeout of the grant must occur. During this 90 day period, the following documents are due to NPS before it can approve and process final payment:
  - (1) a final letter or report attesting to the completion of the project in accordance with the approved project agreement/amendment;
  - (2) a final on-site inspection report for development projects in accordance with the State's Inspection Agreement with NPS;
  - (3) a completed [Description and Notification Form](#) (DNF). This is only needed for projects where a change has occurred since the submission of the original DNF. If there was a change in scope not included in the grant agreement, then an amendment and revised DNF are required;
  - (4) a completed site plan (up to 14 inches x 17 inches in size) indicating the type and location of Fund-assisted facilities and/or acquired properties along with the official park or site name unless previously submitted or evident on the signed and dated LWCF boundary area map;
  - (5) a signed and dated LWCF boundary area map if more accurate than the current one in the NPS file including the delineation of any newly added parcels as a result of the project;

- (6) if applicable, a completed certification by the SLO (on the A&R or C&S Form) that the State has reviewed each appraisal associated with this project per federal requirements;
  - (7) in consultation with NPS, other required documentation not previously submitted; and
  - (8) Digital images of completed project (optional). Best images are those of people enjoying the new outdoor recreation resource.
- b. The NPS shall make a settlement for any upward or downward adjustments to the federal share of costs after these reports are received. The project agreement, as signed by the State and the NPS, establishes a total cost and support ceiling for the project that is based upon the project sponsor's best estimate of acquisition and development costs as foreseen at the outset of the project. As the project proceeds, adjustments are sometimes required in accord with changing processes, unforeseen problems or other conditions. When an upward adjustment is required, an amendment must be executed. When actual project costs are less than originally estimated, no amendment is necessary.
  - c. The NPS retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the subsequent final audit.

## CHAPTER 8 - POST-COMPLETION AND STEWARDSHIP

### A. Purpose

Pursuant to the LWCF Act at 54 U.S.C. § 200305(f)(3) and 36 C.F.R. 59.3, this chapter contains the requirements for maintaining LWCF assisted sites and facilities in public outdoor recreation use following project completion and to assure that LWCF-assisted areas remain accessible to the general public including non-residents of assisted jurisdictions. These post-completion responsibilities apply within the LWCF boundaries of each area or facility for which LWCF assistance is obtained consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these requirements rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the LWCF boundary map and/or as described in other project documentation approved by the NPS.

### B. Operation and Maintenance

Property acquired or developed with LWCF assistance shall be operated and maintained as follows:

1. The property shall be maintained so as to appear attractive and inviting to the public.
2. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.
3. Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
4. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
5. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

### C. Availability to Users

1. Discrimination on the basis of race, color, national origin, religion, or sex. Under Title VI of the 1964 Civil Rights Act property acquired or developed with LWCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. Title 43, Part 17 (43 C.F.R. Part 17), effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from federal assistance and to any other recreation areas administered by the State agency or local

agency receiving the assistance. Discrimination is also prohibited on the basis of religion or sex.

2. Discrimination on the basis of residence. Section 200305(i) of the LWCF Act provides, with respect to property acquired and/or developed with LWCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent reasonable differences in admission and other fees may be maintained on the basis of residence.

Fees charged to nonresidents cannot exceed twice the amount charged to residents. Where there is no charge for residents, but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

3. Discrimination on the basis of disability. Section 504 of the Rehabilitation Act of 1973 requires no qualified person shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. The Americans with Disabilities Act of 1990 (Public Law 100-336) simply references and reinforces these requirements for federally-assisted programs.
4. Reasonable use limitations. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired and/or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.

#### **D. Leasing and Concession Operations Within a LWCF Boundary Area**

A project sponsor may provide for the operation of a LWCF boundary area by leasing the area/facility to a private organization or individual or by entering into a concession agreement with an operator to provide a public outdoor recreation opportunity at the Fund-assisted site.

As the principal grantee, the State is ultimately accountable for assuring compliance with the applicable federal requirements, and, therefore, the delegation or transfer of certain responsibilities to subrecipients or lessees does not relieve the State of its compliance burden. As the grant recipient, the State has agreed to provide suitable replacement property should the public use of the leased or concessioned area/facility be restricted or the outdoor recreation resource be compromised.

All lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

1. In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee/concessioner and terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility, are not met.
2. The lease/agreement document should clearly indicate that the leased/concessioned area is to be operated by the lessee/concessioner for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines (36 C.F.R. Part 59).
3. The lease/agreement document should make clear compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

#### **E. Conversions of Use**

Property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation. 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 200305(f)(3) of the LWCF Act and these regulations. The Secretary's discretion, delegated to the NPS, will be used to make sure State or local governments attain the maximum benefit from previous LWCF grant assistance. The conversion provisions of Section 200305(f)(3), 36 C.F.R. Part 59, and these guidelines apply within the boundary of each area or facility for which LWCF assistance is 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.

Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the LWCF boundary area map and/or as described in other project documentation approved by the Department of the Interior. This mutually agreed to area normally exceeds that actually receiving LWCF assistance so as to assure the protection of a viable recreation area.

If the NPS is alerted or otherwise becomes aware of an ongoing conversion activity that has not been approved, NPS shall request the SLO to advise the project sponsor of the necessary prerequisites for approval of a conversion. If the conversion activity continues, NPS shall formally notify the State it must take appropriate action to preclude the project sponsor from proceeding further with the conversion, use, and occupancy of the area pending NPS independent review and decision of a formal conversion proposal.



NPS has the authority to disapprove conversion requests and/or to reject proposed property substitutions. This approval is a discretionary action and should not be considered a right of the project sponsor. The Region, however, is expected to work closely with the Washington Office on any conversions that may be precedent setting and/or from which litigation is likely.

1. Situations that trigger a conversion include:
  - a. Property interests are conveyed for private use or non-public outdoor recreation uses.
  - b. 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, which alters the outdoor recreation use.
  - c. Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
  - d. Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.
2. Situations that may not trigger a conversion if NPS determines that certain criteria are met include:
  - a. Underground utility easements that do not impact the recreational use of the park and is restored to its original surface condition (see Section F below).
  - b. Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within a LWCF boundary 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” (see Section G below). The State should consult with the NPS early in the formative stages of developing proposals to construct indoor facilities on LWCF-assisted land (see Section G below).
  - c. Proposals for "temporary non-conforming uses," that is temporary non-recreation activities within a LWCF boundary area, must be reviewed by the NPS (see Section H below).
  - d. Proposals to build sheltered facilities or to shelter existing facilities within a LWCF boundary area provided they do not change the overall public outdoor recreation characteristics and otherwise meet the sheltering criteria in Chapter 3. The NPS review and approval of such proposals will not trigger a conversion (see Section I below).
3. Prerequisites to the NPS consideration of conversions. Formal requests from the project sponsor for permission to convert LWCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the SLO to NPS in writing and conform to the prerequisites set forth in 36 C.F.R. 59.

States shall consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS. States shall use the C&S Form to prepare its conversion proposal (see Chapter 4). The Form guides the development of the conversion proposal, including the incorporation of the following prerequisites that must be met before NPS will consider the formal conversion request:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- b. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a State approved appraisal (see Chapter 4 for appraisal guidance) excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility.
- c. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Depending on the situation, and at the discretion of the NPS, 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, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor for any replacement property when it is determined a different political jurisdiction can meet the criteria for replacement properties. Equivalent usefulness and location will be determined based on the following criteria:
  - (1) 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.

Wetland areas and interests therein shall be considered to be of reasonably equivalent usefulness as compared to the recreational usefulness of the property proposed for conversion if they have been identified in the wetlands provisions of the SCORP in accordance with Section 200305(f)(3) of the LWCF Act..

- (2) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for

outdoor recreation, then the project sponsor should seek to locate the substitute area at another location within the jurisdiction.

- (3) Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.
  - (4) The acquisition of one parcel of land may be used in satisfaction of several approved conversions (see Section 6 below) and vice versa.
- d. The property proposed for replacement meets the eligibility requirements for LWCF assisted acquisition (see Chapter 3). The replacement property 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 (see Chapter 3.B.8).

For proposed replacement property with a history of contamination, proposals must address the nature of the contamination, how the contaminated area has been or will be remediated, how the area will be developed into a safe, public outdoor recreation area, and how provisions will be put in place to monitor the new replacement parkland to ensure public health and safety in perpetuity. Certain contaminated areas may not meet the equal or greater recreational usefulness prerequisite for replacement land. Early coordination with NPS for conversion proposals involving contaminated replacement land, even if remediated, is required (see 3.4 below).

Unless each of the following additional conditions (also see Chapter 3) is met, land currently owned by another public agency may not be used as replacement land for land acquired as part of an LWCF project:

- (1) The replacement land was not originally acquired by the sponsor or selling agency for recreation.
  - (2) The replacement land has not been previously dedicated or managed for recreational purposes while in public ownership.
  - (3) No federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance.
- e. In the case of LWCF boundary 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 replaced as well.

- f. 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.
- g. The guidelines for environmental review under NEPA have been satisfactorily completed and considered by NPS during its review of the proposed Section 200305(f)(3) action. In cases where the proposed conversion arises from another federal action, NPS final review of the State's proposal shall not occur until the NPS is assured all environmental review requirements for the other federal action have been met, e.g., Army Corps of Engineer permits.

The environmental review process must analyze not only the LWCF boundary area proposed for conversion, but also the development of the replacement parkland. The purpose and scope of the environmental review must focus on the impacts on the “human environment” resulting from the loss of the LWCF-assisted parkland, impacts on any remaining parkland for partial conversions, and the development of new replacement park(s). The scope of the environmental review should not include impacts of the action precipitating the conversion on resources beyond the LWCF boundary area, such as impacts of a new housing development or a school on a neighborhood.

The environmental analysis must be conducted in a neutral and factual manner and result in statements that reflect this same neutrality so the interested and affected public can focus on and understand the details of the proposed federal action of converting parkland including the replacement of new parkland according to 36 C.F.R. 59. The environmental analysis documents should not include statements that promote or justify the action precipitating the conversion, such as proclaiming that the subject parkland is the best location for a new fire station.

For detailed guidance on NEPA and how to conduct environmental reviews for LWCF conversions, consult Chapter 4 of this manual, and the NPS.

- h. Adherence to State intergovernmental review procedures as appropriate (see Chapter 4).
4. State preparation of conversion proposal for NPS review: To avoid any unnecessary delays, duplication of effort, and mid-course corrections, the States shall consult with NPS early when conversions are proposed or discovered to ensure:
- a. the extent of impact from the conversion activity on LWCF boundary area is mutually agreed upon; and

- b. the acceptability of proposed replacement parkland has been explored prior to State/local sponsor expenditure of resources on appraisals and the required environmental review process to be undertaken in accordance with NEPA.

The State shall coordinate the development of the conversion proposal including ensuring the project sponsor complies with applicable federal, State and local laws, regulations and permit requirements. As the proposal is developed, the State may enlist the assistance of NPS to provide technical guidance as needed, especially for complex and controversial conversions. A State's submission of a formal conversion request to NPS is a State's endorsement of the conversion. If a State does not concur or endorse the conversion, then the proposal should not be forwarded to NPS for formal review and decision.

5. NPS review of the State conversion proposal. NPS will conduct an independent review of the proposal using the conversion prerequisites and any other critical factors that may have arisen during proposal development. If the State has adequately addressed the prerequisites, and NPS finds no other reason to deny the request, the NPS administrative record will be documented as such and an amendment will be signed approving the conversion.
6. Banking excess fair market value of replacement land for future conversions. The acquisition of one parcel of replacement land may be used in satisfaction of several approved conversions.

Excess fair market value (FMV) of a replacement property can be "banked" for a period not to exceed five years from the date of the initial conversion amendment. During this time period, the same project sponsor may use the remaining value to make up the FMV difference in cases where the subsequent proposed replacement property satisfies the equal usefulness criterion but its appraised FMV falls short of the equal fair market value requirement.

The initial replacement property with the excess fair market value may not be used to satisfy the equal usefulness criterion for subsequent conversions unless additional conversions are anticipated by the sponsor at the time of the original conversion request and the accompanying documentation clearly addresses how the replacement property would satisfy the equal usefulness criteria for the original conversion as well as those that are anticipated.

7. Conversions on leased land. Should a conversion occur on leased land during the term of the lease, the State must comply with the conversion requirements of Section 200305(f)(3) including the provision of replacement land. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time that is not less than the time remaining on the original lease, and, which fulfills the recreation commitment agreed to in the original lease agreement.

For existing projects that involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period unless the grant agreement calls for some other arrangement. Lease agreements containing a renewal clause that can be exercised by

the lessee must be reviewed to ensure that Section 200305(f)(3) compliance will continue throughout the duration of the next lease period.

8. Conversion proposal documentation. A conversion requires an amendment to the original project agreement. Therefore, the amendment should be submitted concurrently with the formal conversion request or at such time as all details of the conversion have been worked out with NPS.

The formal conversion proposal submission to NPS must include the following items:

- a. A transmittal letter briefly describing the conversion proposal and requesting NPS review and approval
- b. Standard Form 424 for amendments (see Chapter 7)
- c. C&S Form including the environmental resources survey, and an EA document analyzing the entire conversion proposal (the converted parkland and the replacement parkland in one document).
- d. LWCF project amendment form identifying changes to the original LWCF boundary area caused by the conversion and to establish a new LWCF boundary around the replacement site(s)
- e. Signed and dated LWCF boundary area map for any remaining parkland resulting from a partial conversion, and for the replacement site(s)
- f. Description and Notification Form (DNF)

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.8).

9. Small conversions. Small conversions are composed of small portions of LWCF boundary areas that amount to no more than 10 percent of the area or five acres, whichever is less. States should consult with NPS prior to developing the small conversion proposal.

Because small conversion proposals are less complex, NPS review and decision can be facilitated when:

- a. Minor or no environmental impacts would occur on resources being removed from Section 200305(f)(3) protection, on the remaining LWCF boundary area, and on the contiguous new replacement parkland by placing it under Section 200305(f)(3) protection per the environmental resources survey. This includes consideration of

impacts to historic resources per the Section 106 process of the National Historic Preservation Act. The entire conversion proposal is categorically excluded from further environmental review under NEPA (see Chapter 4).

- b. The proposed conversion is not controversial.
- c. The replacement property is contiguous to the original LWCF boundary area.

The State's proposal must include:

- d. Transmittal letter describing the entire small conversion proposal.
  - e. Standard Form 424
  - f. C&S Form with the portion for conversions completed indicating that a categorical exclusion is justified.
  - g. LWCF project amendment form.
  - h. Description and Notification Form (DNF)
  - i. Revised LWCF boundary area map indicating the deletion of the small converted area and the addition of the replacement property.
10. Discovering unauthorized conversions. When it is discovered that a LWCF-assisted area has been converted without NPS approval, a conversion proposal must be submitted and reviewed by NPS for retroactive action. The NPS shall notify the State it is in violation of the grant contract, program regulations, and law, and an immediate resolution of the unapproved conversion must be expedited. The project sponsor shall be put on notice by the State it is ineligible for future grants until satisfactory steps have been taken towards resolution as determined by NPS.

Resolution of the conversion will require State and NPS review of the conversion proposal as previously set forth in Section E.4 above including the provision of suitable replacement property.

If the sponsor has already provided replacement property, the eligibility of the replacement land must meet the same Section 200305(f)(3) requirements as if it had not yet been acquired. It is incumbent upon the State to make the case that the replacement land fully meets these requirements.

11. Conversions with delayed parkland replacement. Exceptions to the immediate replacement requirement (see Section 8 above) 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.

#### **F. Underground Utility Easements and Rights-of-Way**

The State may allow underground utility easements within a LWCF boundary area as long as the easement site is restored to its pre-existing condition to ensure the continuation of public outdoor recreational use of the easement area within 12 months after the ground within the easement area is disturbed. If restoration exceeds the 12-month period, or the easement activities result in permanent above-ground changes, NPS shall be consulted to determine if the changes will trigger a conversion. If present or future outdoor recreation opportunities will be impacted in the easement area or in the remainder of the LWCF boundary area, a conversion will be triggered.

#### **G. Proposals to Construct Public Facilities**

Public facility requests will only be approved if the public facility clearly enhances or benefits outdoor recreation use of the entire park, and the facility is compatible with and supportive to the outdoor recreation resources and opportunities of the LWCF boundary area. The State shall use the C&S Form to document its public facility proposal using the following criteria and submit it along with a project amendment and a recommendation for federal approval for NPS review and decision.

The NPS will consider requests to construct sponsor-funded public facilities when the following criteria have been met:

1. Use of the facility will be compatible with and supportive of outdoor recreation at the rest of the site and recreation use remains the overall primary function of the site. The public facility includes a recreation component and encourages the outdoor recreation use of the remaining LWCF boundary area.
2. Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.

#### **H. Requests for Temporary Non-Conforming Uses within LWCF Boundary Areas**

All requests for temporary uses for purposes that do not conform to the public outdoor recreation requirement must be submitted to and reviewed by the State. The State, in turn, will submit a formal request to NPS describing the temporary non-conforming use proposal.

1. Criteria. NPS will use the following criteria to evaluate each request:



- a. The size of the parkland area affected by any temporary non-recreation use shall not result in a significant impact on public outdoor recreation use.
  - b. A temporary use shall not result in permanent damage to the park site.
  - c. No practical alternatives to the proposed temporary use exist.
  - d. All applicable federal requirements for approval are met.
2. Required proposal documentation. The State's formal proposal to NPS shall include:
- a. SLO recommendation
  - b. C&S Form providing a complete description of the proposed temporary use

### **I. Sheltering Facilities within LWCF Boundary Areas**

NPS approval is required to shelter an existing facility located within a LWCF boundary area. See Section 3.C.7 for further guidance.

### **J. Obsolete Facilities**

States may determine a facility is obsolete and permit its use to be discontinued or allow a particular type of recreation use of the LWCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement for determining obsolescence and the State concurs in the change.

If, in the judgment of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

LWCF assistance may be provided to renovate outdoor recreation facilities that have previously received LWCF assistance if the State determines the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

### **K. Post-Completion Inspections**

1. Purpose. In order to determine whether properties acquired or developed with LWCF assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a State post-completion inspection is to be made within five years after final billing and at least once every five years thereafter.

The following points should be taken into consideration during the inspection of properties that have been developed for public use:

- a. Retention and use. Is the LWCF boundary area intact and the property being used for outdoor recreation purposes including those intended through the projects funded with LWCF assistance?
  - c. Maintenance. Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or construction? Is vandalism a problem? Is the area being maintained?
  - d. Management. Does staffing and servicing of facilities appear adequate?
  - e. Availability. Is there evidence of discrimination? Is the property readily accessible and open to the public during reasonable hours and times of the year?
  - f. Signing. Is the area properly signed to allow for user information and safety, and proper acknowledgement of the federal Land and Water Conservation Fund?
  - g. Interim use. Where lands have been acquired but not yet developed, the inspection should determine whether the interim uses of the property are in accordance with agreements with the NPS.
2. Reporting. Within 90 days of completion of an on-site inspection, States shall submit to NPS a post-completion inspection report for only those projects which have compliance problems. The report should include the date of inspection, description of the finding, and a summary report of corrective actions taken or to be taken.

For all other sites inspected with no compliance problems, the State shall only report to NPS the project number and date of inspection, and shall retain the actual inspection report with the State LWCF project file. States shall submit a report of all LWCF project sites inspected at least annually and by September 30.

3. Applicability. The provisions of this section apply to the park or other recreation area encompassing the area or facility assisted by the LWCF, regardless of the extent of LWCF assistance in that area or facility. That is, in cases where assistance is provided only for an acquisition, the entire park or recreational area involved, including developments on the lands so acquired, are subject to the provisions of this section. Where development assistance is given, the lands of the park or recreation area identified on the LWCF boundary area map are subject to this section.
4. State responsibility. Responsibility for enforcement of the provisions of this section rests with the State. The NPS will inspect LWCF assisted areas and facilities from time to time, but it shall conduct such visits in concert or through consultation with the State agency or SLO.
5. Costs. The costs of making post-completion inspections by the State are allowable overhead charges for LWCF assistance and are allowable costs covered by the indirect cost rate.

6. Penalties. Failure to comply with the provisions of this section shall be considered cause for NPS to withhold future payments to the State on any or all current projects until the situation involved is corrected.