

Land and Water Conservation Fund Summary of Conversion Protections and Requirements

(summarized by DFM; 9-2021)

1. LWCF Act – Public Law 88-578

54 U.S.C. § 200301 – 200310

§ 200305. Financial assistance to States

Paragraph (f)(3) (in part):

CONVERSION TO OTHER THAN PUBLIC OUTDOOR RECREATION USE. – “No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation use. The Secretary shall approve a conversion only if the Secretary finds it to be in accordance with the then-existing comprehensive statewide outdoor recreation plan and only on such conditions as the Secretary considers necessary *to ensure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.*”

[commonly known as the Section 6(f)(3) conversion protection]

2. LWCF Regulations

36 CFR Section 59 – LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Section 59.3 Conversion requirements

59.3(a) *Background and legal requirements*

“... This section of the Act assures that once an area has been funded with LWCF assistance, it is continually maintained in public recreation use unless NPS approves *substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.*”

59.3(b) *Prerequisites for conversion approval* (in part)

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) 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 an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.

(3) The property proposed for replacement is *of reasonably equivalent usefulness and location as that being converted.* Dependent upon the situation and at the discretion of the Regional Director, 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 when it is determined that a different political jurisdiction

can better carry out the objectives of the original project agreement. *Equivalent usefulness and location will be determined based on the following criteria:*

(i) 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 which 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....

(ii) 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....

(iii) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for LWCF assisted acquisition. The replacement property *must constitute or be part of a viable recreation area*. Unless *each of the following additional conditions* is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an LWCF project:

(i) The *land was not acquired* by the sponsor or selling agency *for recreation*.

(ii) The land *has not been dedicated or managed for recreational* purposes while in public ownership.

(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

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