

Retention Requirement

The National Park Service (NPS) is the federal agency responsible for the Land and Water Conservation Fund (LWCF). Land developed, improved, or acquired with Land and Water Conservation Fund (LWCF) and/or state assistance must be retained and used for public outdoor recreation. Congress intended this investment of public funds to be permanent. The retention requirement is the cornerstone of the LWCF Act. Section 6(f) of the Act requires all funded lands to be retained and used solely for outdoor recreation in perpetuity.

When LWCF lands are turned into non-outdoor recreation facilities or uses, you must go through what is called a conversion. Section 6(f) of the Act states:

SEC. 6(f)(3) 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 uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

Responsibilities cited in Title 36, Part 59 in the U.S. Code of Federal Regulations (CFR) apply to the area described on the 6(f)(3) boundary map and/or as described in other project documentation. The Department of Natural Resources (DNR), Division of Parks and Trails, is responsible for compliance and enforcement of these provisions for both state and locally sponsored projects.

Local sponsors must consult early with the DNR [Grants Manager](#) when a conversion is under consideration or has been discovered. Any previous project agreements and actions must be identified and understood to determine the actual boundary subject to the grant agreement. The DNR has the authority to approve or reject the state conversion requests and proposed property replacements. The NPS Regional Director has the authority to do this for federal projects. .

Situations that Trigger a Conversion

- 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.

- c. Unallowable indoor facilities are developed within the project area without approval, such as unauthorized public facilities and sheltering of an outdoor facility.
- d. Public outdoor recreation use of property acquired or developed with assistance is terminated.

Pre-Requisites to Considerations of Conversions

We will only consider conversion requests if the following pre-requisites have been met:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- b. The State and Local sponsor agree on the size of the Section 6(f) parkland impacted by any non-recreation, non-public use, especially prior to any appraisal activity. The area required for the conversion could include the entire park depending on the impact of the proposed facility and/or could include a minimum of all impacted land, buffer areas, any facility access, land cut off from the remaining park area and possible visual and/or noise impacts.
- c. The replacement land is identified and is an addition to an existing park area or, if a new park, constitute a viable, self-supporting unit of outdoor recreation. The property proposed for replacement must be of equal or greater appraised value and reasonably equivalent usefulness and location as that being converted. The grants manager must approve the extent of the conversion and the suitability of the replacement lands before continuing with the conversion process.
- d. All necessary coordination with other Federal or State agencies has been satisfactorily accomplished.
- f. The guidelines for environmental review have been satisfactorily completed and considered by NPS or the State during their review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal or State action, final review of the proposal shall not occur until NPS or the State is assured that all environmental review requirements related to that other action have been met.
- g. The proposed conversion and substitution are in accord with the State Comprehensive Outdoor Recreation Plan (SCORP).
- h. Staff consideration of the above points reveals no reason for disapproval and the project files are so documented.

The Conversion Process

A step-by-step process designed to assure compliance with DNR and NPS guidelines. It includes a narrative and a summary with a typical timetable.

1. Consider the Alternatives

Submit a narrative description of the proposal that identifies all practical alternatives, how they were evaluated and the reason they were not pursued. The “do nothing” alternative must be considered. Minnesota typically processes only a couple of conversions each year, usually for road improvements undertaken to improve safety. Proposals to construct non-recreation facilities such as cell phone towers or to convey an interest in the property to a private party generally do not qualify, as there are usually practical alternatives available. Do not continue with the conversion process until this step has been approved by the State.

2. Agree on the Size of the Conversion

If approved to move forward with the conversion process, a critical first step is for the State and Local sponsor to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity. The area required for the conversion could include the entire park depending on the impact of the proposed facility and/or could include a minimum of all impacted land, buffer areas, any facility access, land cut off from the remaining park area and possible visual and/or noise impacts.

3. Identify and Agree on Replacement Land

The next step is to identify proposed replacement land to be acquired. The replacement land must be an addition to an existing park or, if a new park, constitute a viable, self-supporting unit of outdoor recreation. The property proposed for replacement must be of equal or greater appraised value and reasonably equivalent usefulness and location as that being converted. The grants manager must approve the extent of the conversion and the suitability of the replacement lands before continuing with the conversion process.

4. Submit Boundary Maps

Boundary and site maps for both the land to be converted and the proposed replacement land must be submitted. These maps must include references to known landmarks, a north arrow, acreages, a graphic scale, the date of preparation, and the signature of the Local Sponsor. The map of the replacement land should also indicate planned recreation development and a proposed timeline for that development.

5. Conduct Appraisals or Minimum Damage Assessment Memo

After the property to be converted and proposed replaced land is tentatively approved by the Grants Manager, appraisals and appraisal reviews can be completed. Appraisals and reviews for a federal conversion request must be prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and be reviewed by a qualified review appraiser. Appraisals for a state conversion request must be prepared in conformance with the Uniform Standards for Professional Appraisal Practice (USPAP). The grants manager will be able to give you guidance on making the appraisal assignments. If the value of the conversion is \$10,000 or less or \$25,000 or less with landowner approval, a minimum damage assessment memo may be done instead of an appraisal. This memo should be prepared by someone familiar with property values in the area (not necessarily an appraiser), should state the highest and best use, show computation of value, and not call itself an appraisal.

6. Get Approval from Grants Staff

When the two appraisals and reviews are complete, they must be submitted to the Grants Manager for review. If, after appraised, it is determined that the proposed replacement land is of equal or greater appraised value than the land to be converted, the conversion process may proceed. If the proposed replacement land is not of equal or greater value than the land to be converted, another site must be selected.

7. Complete Section 106 or State Environmental Review

Section 106 and or state environmental review for both the property to be converted and the proposed replacement land must be completed. The Grants Manager will provide additional detail and requirements depending on the source of the grant funds. The following two environmental components need to be completed.

a. Environmental Review

An environment resources survey must be completed for each property. Based on the responses from the survey, conversion size and location of the replacement land, an Environmental Assessment (EA) may be required. All conversions will require an EA except for small conversions. Small conversions impact less than 10 percent of the boundary AND replacement land must be contiguous to an existing recreation area. Additional information and forms will be provided by the Grants Manager.

b. Historical / Archeological Review and Coordination

The [State Historic Preservation Office \(SHPO\)](#) must be afforded a chance to comment on the conversion proposal pursuant to Section 106 of the

National Historic Preservation Act of 1966 and/or Minnesota statutes. The Local sponsor will be required to provide the DNR with all necessary information to contact the SHPO for review of the proposal. It may be necessary for you to hire an archeologist and/or historian to obtain the necessary information. If the SHPO recommends a survey(s) of the properties, you must contract with a qualified firm to complete it and coordinate with the DNR/SHPO on any actions that must be taken to protect archeological and/or historical resources on the property. For federal projects, NPS will initiate tribal review.

c. Public Participation

The general public and especially those homeowners and businesses near the project must have an opportunity to review and comment on the initial proposal including the need for the conversion, alternatives explored, environmental and historical impacts and proposed replacement land. You may do this through public meetings, announcement in the newspaper, letters or flyers, newsletters, an announcement on your website, emails, or face-to-face meetings. Information detailing your public participation process and comments received are required with your request. Additional public review will be required for an EA.

Once these steps are complete and all information has been received, the proposed conversion can be reviewed by the DNR and, if necessary, the NPS. Although the Grants Manager can recommend approval, we cannot guarantee it, and it is possible that your request could be denied.

Final Steps

1. If the conversion proposal is approved by the DNR and/or the NPS, the Grants Manager will prepare a formal amendment to the original project agreement. This amendment provides the legal basis for parkland conversion and replacement.
2. After the amendment is fully executed, the agency initiating the conversion is then authorized to convey the land to be converted and purchase the replacement land.
3. Once the replacement land is purchased, a copy of the warranty deed with the recorded deed restriction in place, must be submitted.

When all of the items are satisfactorily provided, the conversion is officially completed.

SUMMARY WITH TYPICAL TIMETABLE

1. 2-4 weeks Examine alternatives to converting parkland.
2. 2-4 weeks Identification of replacement land.
3. 1-2 weeks State evaluation and inspection of the proposed replacement land.
4. 1-3 months Conduct appraisals and appraisal reviews for both properties
5. Concurrent with appraisal preparation and review Engage in public participation and develop boundary and site maps on the proposed conversion and replacement property.
6. 2-4 months Complete environmental resource survey for both properties and draft EA, if applicable. The EA must be posted for review and comments for 30 days
7. Concurrent with environmental preparation and review Compile data and submit to DNR archeological and historical information for both properties. DNR Review and submission to SHPO (SHPO review is a minimum of 30 days). If required, NPS will begin Tribal review.
8. 1-3 months If required, completion of archeological survey(s) and/or historical structures, SHPO review (30 days)
9. 2-3 months Submit conversion request to the State and/or the National Park Service for review and approval.
10. 2-4 weeks Prepare formal project amendment to legally authorize the conversion.
11. 1-2 months Conduct conveyance of the land to be converted and purchase replacement land. Document purchase of replacement land with recorded restrictions.
12. 8-18 months Total length of conversion process.