



# Environmental Handbook

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## Section 6(f) Land and Water Conservation Fund Act Compliance

This handbook provides an overview of the process to comply with Section 6(f) of the Land and Water Conservation Fund Act (LWCF Act).

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## 1.0 Introduction

This Handbook provides an overview of the process to comply with Section 6(f) of the Land and Water Conservation Fund Act (LWCF Act). Section 6(f) provides that 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 the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3).

The National Park Service (NPS) administers the LWCF Act and delegates many of the roles and responsibilities to a department within each state. In Texas, the NPS delegated the statewide administration of the statute to the Texas Parks and Wildlife Department (TPWD); therefore, the TPWD Executive Director serves as the Section 6(f) State Liaison Officer (SLO). However, NPS still has ultimate approval authority over conversions of Section 6(f) properties in Texas.

As explained in more detail below, a “conversion” is any acquisition of any ROW or an easement or any other arrangement that will allow for a non-public outdoor recreation use of a portion of the property protected by Section 6(f). NPS will only approve a conversion if a suitable replacement property is acquired.

## 2.0 References

The Section 6(f) statute, as well as rules promulgated by the NPS to administer Section 6(f), and additional instructions provided by the NPS regarding conversion of Section 6(f) properties are identified below.

### 2.1 Section 6(f) statute

Section 6(f) is codified at 54 USC 200305(f)(3). The text of the statute is provided below:

*“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. Wetlands areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within the same State that is otherwise acceptable to the Secretary, acting through the Director, shall be deemed to be of reasonably equivalent usefulness with the property proposed for conversion.”*

### 2.2 Section 6(f) rules

The NPS’s rules implementing Section 6(f) are codified at 36 CFR Part 59.

### 2.3 The NPS’s Federal Financial Assistance Manual

The NPS also maintains a LWCF Federal Financial Assistance Manual on its [LWCF website](#) (“NPS Manual”). In the version of the NPS Manual dated March 11, 2021, instructions regarding the conversion process are set forth in Chapter 8, Section F., “Conversions of Use.”

This Handbook references various sections of the NPS Manual dated March 11, 2021, and is intended to provide an overview of the Section 6(f) process. If districts determine that a conversion of

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6(f) property is required for the project, or if they have additional questions about Section 6(f) not answered by the overview provided below, they should consult the NPS Manual for additional details regarding the process. Also, it appears that the NPS updates its manual regularly, so districts should make sure that they are referencing the most current the NPS Manual by checking the NPS's [LWCF website](#).

### **3.0 Identifying Section 6(f) Properties (i.e., Properties Acquired or Developed with LWCF Assistance)**

“Section 6(f) property” means any area or facility for which Land and Water Conservation Fund 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 the National Park Service and the State. 36 CFR 59.1.

A list of Section 6(f) properties within each county can be accessed through the [“Map of LWCF” website](#) maintained by the Land and Water Conservation Fund Coalition. However, this database does not show the boundaries of each property protected by Section 6(f). The only way to get the boundaries of a 6(f) property is to contact the Texas Parks and Wildlife Department’s Local Park Grants Coordinator, who typically has to look into TPWD’s archives for this information. Note that the boundary of the property protected under Section 6(f) does not always match the current boundary of the park, refuge, etc.

### **4.0 What counts as a conversion?**

According to the NPS Manual dated March 11, 2021 (Chapter 8, Section F.), 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.
- c. Unallowable indoor facilities are developed within the project area without NPS concurrence, 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.

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. NPS review is required – see the NPS Manual dated March 11, 2021 at Chapter 8, Section G. for more information.
- b. Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within an 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”. The State should consult with the NPS early in the formative stages of developing proposals to construct indoor facilities within an LWCF boundary area.

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- c. Proposals for "temporary non-conforming uses," that is temporary non-recreation activities of less than a six-month duration within an LWCF boundary area, must be reviewed by the NPS.
- d. Proposals to build sheltered facilities or to shelter existing facilities within an LWCF boundary area provided they do not change the overall public outdoor recreation characteristics and otherwise meet sheltering criteria specified in the NPS manual. The NPS review and concurrence of such proposals will not trigger a conversion.
- e. Proposals for changing the overall outdoor recreation use of an LWCF-assisted area from that intended in the original LWCF project agreement. These proposals must be reviewed by the NPS.

### **5.0 Temporary Uses of 6(f) Property**

Temporary uses of 6(f) property for purposes like staging areas, construction easements, or equipment or material storage are rare, as there is usually another 6(f) property that can be used for these purposes. Obviously, if there is any alternative to temporary use of 6(f) property, it should be chosen rather than using the 6(f) property.

However, in certain situations, temporary use of 6(f) property may be necessary due to the spatial relationship between the project area and the 6(f) property. When this happens, there are two compliance paths for temporary uses of 6(f) property depending on whether the use will be six months or less in duration, or greater than six months in duration.

#### **5.1 Temporary uses of six months or less**

As explained in the NPS Manual dated March 11, 2021 (Chapter 8, Section K.), all requests for temporary uses for purposes that do not conform to the public outdoor recreation requirement of less than six months must be reviewed by TPWD and the NPS to determine whether or not the use qualifies as a "conversion" requiring a replacement property.

For temporary uses of six months or less, the TxDOT district should work with the owner of the 6(f) property to prepare a written request regarding the temporary use. The NPS Manual specifies the documentation that must be included in the written request (see Chapter 8, Section K.). There are three components, two of which are written statements by the "state liaison officer," which is TPWD in Texas. Therefore, the written request prepared by TxDOT and the owner of the 6(f) property consists mainly of a "C&S Form" with various required information.

The owner of the 6(f) property should submit the written request to TPWD. TPWD, in turn, will submit a formal request to NPS describing the temporary non-conforming use proposal. The NPS Manual (Chapter 8, Section K.) specifies that the NPS will use the following four criteria in evaluating any request for a temporary use of six months or less:

- a. The size of the LWCF-assisted area affected by any temporary non-recreation use shall not result in a significant impact on public outdoor recreation use. This means that the site of the temporary activity should be sufficiently small to restrict its impacts on other areas of a LWCF-assisted area.
- b. A temporary use shall not result in permanent damage to the LWCF-assisted area, and appropriate measures will be taken to ensure the outdoor recreation area is restored for public recreation use and there are no residual impacts on the site once the temporary use is concluded.

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- c. No practical alternatives to the proposed temporary use exist.
- d. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

If the NPS agrees that the temporary use of six months or less is not a conversion, then no further compliance actions are needed.

### **5.2 Temporary uses of more than six months**

As explained in the NPS Manual dated March 11, 2021 (Chapter 8, Section K.), continued use beyond six months will not be considered temporary, but will result in a conversion of use and will require the project sponsor to provide a new replacement recreation area.

## **6.0 Identifying a New Replacement Recreation Area**

As soon as it is determined that a project may involve a conversion of a Section 6(f) property, the TxDOT district should work with the owner of the Section 6(f) property (oftentimes this is a city or county) to identify a suitable replacement recreation area to be owned and operated by the owner of the Section 6(f) property impacted by the project.

The NPS Manual dated March 11, 2021 (Chapter 8, Section F.) sets forth a number of criteria for selecting a suitable replacement property (see “Prerequisites to the NPS consideration of conversions”). The most fundamental requirements are that the replacement property must be **(1)** of at least equal fair market value and **(2)** of reasonably equivalent usefulness and location as compared to the portion of the Section 6(f) property to be converted.

Regarding the first of these two fundamental requirements, equal fair market value, an appraisal must be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (i.e., a “yellow book appraisal”), excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility. UASFLA (“yellow book”) appraisals can be much more expensive than a regular real property appraisal. It may be possible for TxDOT and the owner of the Section 6(f) property to hold-off on expending resources on a formal UASFLA (“yellow book”) appraisal until TPWD and NPS have informally approved the acceptability of the proposed replacement property as explained below. However, this will only work if it’s possible to do a ballpark estimate of the value of the properties or a non-UASFLA (“yellow book”) appraisal (both the portion of Section 6(f) property that will be converted and the replacement property) to know whether the proposed replacement property is likely to be ultimately approved by NPS.

Regarding the second of these two fundamental requirements, “reasonably equivalent usefulness and location,” 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. According the NPS Manual, generally, the replacement property should be administered by the same political jurisdiction as the converted property; however, NPS may be willing to approve a change in ownership (i.e., the impacted Section 6(f) property is a county park, but the replacement property will be a city park). Additionally, the replacement property need not necessarily be directly adjacent to or close by the converted site. See the NPS Manual at Chapter 8, Section F. for more details about the suitability of a replacement property.

As soon as a proposed replacement property is identified, TxDOT and the owner of the Section 6(f) property should informally consult with TPWD and NPS. It is recommended that TxDOT work with the owner of the Section (f) property to compile a brief, informal report or memo with maps, drawings, and photos (as appropriate) explaining the proposed impact to the Section 6(f) property, including details such

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as the recreational needs that are being fulfilled by the property and the size and boundaries of the area that will be impacted by the project, as well as the location, size, boundaries, and recreational needs that will be fulfilled by the proposed replacement property. Once these informal materials are prepared, the owner of the Section 6(f) property should reach out to TPWD and request a meeting with TPWD and NPS to informally discuss whether the proposed replacement property is viable.

### 7.0 Informal Consultation with TPWD and NPS to Confirm Acceptability of Proposed Replacement Property

The owner of the Section 6(f) property cannot submit a *formal* conversion proposal to TPWD/NPS until after the NEPA review of the transportation project is complete, and all federal environmental permits for the transportation project have been secured. Therefore, it is important to work with TPWD and NPS early in the process to find out if the proposed replacement property is acceptable. The NPS Manual dated March 11, 2021 discusses this at Chapter 8, Section F:

*“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 the LWCF boundary area is mutually agreed upon; and*
- b. The acceptability of proposed new replacement recreation area has been explored prior to State/local sponsor expenditure of resource on appraisals and the required environmental review process to be undertaken in accordance with NEPA.”*

Once TPWD and NPS informally agree to the acceptability of the proposed replacement property, it should be discussed in the Section 6(f) section of the EA or EIS being prepared for the transportation project. Be sure to include an analysis of any environmental impacts associated with the conversion including the impact on the remaining part of the Section 6(f) property and the acquisition of the replacement property by the owner of the Section 6(f) property, as a NEPA review of the conversion and replacement are required prior to the NPS's formal approval of the conversion. It is advisable to confirm with the NPS that inclusion of the conversion and replacement in the EA or EIS being prepared for the overall transportation project is acceptable. Also, if an EA is being prepared then NPS should be added to the list of entities with whom the draft EA is coordinated, and if an EIS is being prepared then NPS should be added to the list of cooperating agencies. If a CE is being prepared for the transportation project, it is recommended that the TxDOT district discuss with TPWD and NPS how to proceed, as the NPS Manual (at Chapter 8, Section F) assumes that an EA document will be prepared for the conversion and does not address the situation in which the project is eligible for a CE under another federal agency's (FHWA's) regulations.

### 8.0 Preparation of Draft Formal Conversion Proposal

As soon as NPS has given a preliminary approval of the acceptability of the proposed replacement property, it is recommended that TxDOT work with the owner of the Section 6(f) property to start preparing a draft of the formal conversion proposal. If a formal UASFLA appraisal of the impacted part of the Section 6(f) property and the replacement property has not been previously done, it may be advisable to have it done at this stage in the process. TxDOT and/or the owner of the Section 6(f) property should discuss the timing of the formal UASFLA appraisal with TPWD and NPS.

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The owner of the Section 6(f) property will be the entity that ultimately submits the conversion proposal, but TxDOT can assist the owner in preparing the documentation needed for the conversion proposal. The NPS Manual dated March 11, 2021 (at Chapter 8, Section F) explains the required content for the formal submittal as follows:

- a. A recommendation letter briefly describing the conversion proposal and requesting NPS review and approval
- b. Standard Form 424 for amendments
- c. C&S Form including the environmental resources survey, and an EA document analyzing the entire conversion proposal (the lost LWCF-assisted area, the remaining LWCF-assisted area for partial conversions, and the new replacement recreation area 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 new replacement recreation area(s)
- e. Signed and dated LWCF boundary area map for any remaining LWCF-assisted area resulting from a partial conversion, and for the new replacement recreation area(s)
- f. Description and Notification Form (DNF)

Ideally, preparation of this draft formal conversion proposal will still be early in the environmental review process for the transportation project, prior to NEPA clearance. The proposal will not be formally submitted by the owner of the Section 6(f) property until after the transportation project is NEPA cleared and all federal authorizations for the transportation project are obtained; however, it is recommended that the owner of the Section 6(f) property request that TPWD and NPS informally reviews the draft as soon as possible to identify any deficiencies and avoid any unforeseen issues with the conversion. The NPS Manual (at Chapter 8, Section F) encourages this type of early coordination:

*“States shall consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS.”*

*“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.”*

### **9.0 Formal Submittal of Conversion Proposal and NPS Approval**

Formal submittal of the conversion proposal and request for NPS approval cannot occur until after NEPA clearance of the transportation project (i.e., CE, FONSI, or ROD), and all environmental review requirements for the transportation project have been satisfied. See the NPS Manual dated March 11, 2021 at Chapter 8, Section F. The NPS Manual has a detailed list of prerequisites that must be met prior to formal submittal of the conversion proposal. See Chapter 8, Section F. If a formal UASFLA appraisal of the impacted part of the Section 6(f) property and the replacement property has not been previously done, it must be done prior to formal submittal of conversion proposal to TPWD and NPS.

The owner of the Section 6(f) property will be the entity that submits the formal conversion proposal and request for NPS approval to TPWD, who will in turn submit it to the NPS. If the NPS approves, it will sign an amendment to the original project agreement that established the Section 6(f) property. Once the conversion has been approved by NPS, the replacement property should be immediately acquired and developed according to the replacement proposal timetable. If development will be delayed beyond three



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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.

Neither the NPS's rules nor the NPS manual are specific regarding whether acquisition/conversion of the Section 6(f) property can occur after the conversion approval is approved by NPS, or if acquisition/conversion of the Section 6(f) property must wait until after the replacement property is acquired. It is recommended that TxDOT discuss this timing issue with TPWD and NPS as part of the consultation process leading up to formal submittal of the conversion proposal.

**Appendix A**

The following table shows the revision history for this guidance document.

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
March 2022	Version 2 was released. Comprehensive re-write to more closely track the information in the National Park Service's Land and Water Conservation Fund Federal Financial Assistance Manual dated March 11, 2021.
April 2014	Version 1 was released.