

BUREAU OF RECREATION AND CONSERVATION

Title: Conversion of Property Interests Acquired or Developed with Federal Land and Water Conservation Funds (LWCF)		
Issued by: The Bureau of Recreation and Conservation (BRC)	Effective Date: 12/2/2010 Scheduled Review: Annual	Document Number: 2300-002
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Approved By: Tom Ford, Bureau Director	Program Area: All	

AUTHORITY

Act 18 of 1995, Section 306, Community Recreation and Heritage Conservation. The Department shall have the power to administer Federal and State programs for grants and loans to local governments, municipal authorities and nonprofit organizations for community and regional projects involving the planning, acquisition, rehabilitation and development of public park, recreation and conservation areas, facilities, and programs.

SCOPE

Provides directive for administration of the Community Conservation Partnerships Grant Program, specifically the Land and Water Conservation Fund

PURPOSE

The Department of Conservation and Natural Resources (DCNR) acquires real property interest or contributes to the development of property for recreation, conservation and/or educational purposes through the provision of grants to eligible applicants who acquire and/or develop property interests. Properties that are acquired or developed with federal Land and Water Conservation Funds (LWCF) are not permitted to be converted to purposes/uses other than outdoor public recreation. This policy outlines issues and legal mandates covering the conversion of property acquired and/or developed with LWCF grant program funds administered by DCNR. This policy also includes a checklist to be followed by grant recipients when a conversion is not avoidable.

POLICY

The LWCF State Assistance Program was established by the LWCF Act of 1965 (Public Law 88-578) and is enacted as positive law at 54 U.S.C. § 200301 et seq. (LWCF Act). 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. In addition, 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 the Secretary finds it to be in accordance with the then existing State Comprehensive Outdoor Recreation Plan (SCORP) and only upon such conditions as the Secretary deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. Parks or recreation areas acquired or developed with LWCF assistance (in whole or part) are now referred to as “LWCF-assisted areas” and/or “LWCF boundary areas.”

Land and Water Conservation Act Purpose

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

- 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.

Background on LWCF Conversion Requirements

The LWCF 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

This requirement applies to all parks and other sites that have been the subject of Land and Water grants of any type, whether for acquisition of parkland, development or rehabilitation of facilities. In many cases, even a relatively small LWCF grant (e.g., for development of a picnic shelter) in a park of hundreds or even thousands of acres provide protection to the entire park site or by the established LWCF boundary map submitted to NPS.

DCNR is responsible through the State Liaison Officer (SLO) or designated Alternate State Liaison Officer (ASLO) to coordinate and obtain approval of any conversion request with the National Park Service (NPS). Please note, the Commonwealth of Pennsylvania (with DCNR serving as its agent) and NPS must agree on the size of the LWCF boundary area impacted by any non-recreational, non-public use, prior to any appraisal activity to determine the value of the land impacted by a proposed or discovered conversion.

Note: If your site was previously funded with both federal and state funding, additional conversion requirements may apply. DCNR will work with you to address these requirements.

Common Parkland Conversions Include:

- A. Pipelines or other energy development (above ground or below ground)
- B. Exclusive use agreements
- C. Property is sold or transferred to an ineligible entity
- D. Non-recreational development such as hotels, residential areas, restaurants, schools, municipal buildings, recycling/compost facilities, fire stations, etc.
- E. Cell towers not serving as a park safety purpose.
- H. Encroachments by adjacent private property owners include utility sheds, gardens, vehicles, wood piles, etc.
- J. Above ground utilities - such as power lines, phone lines, pumping stations, utility scale wind or solar facilities, etc.
- K. Restricting public access – such as no trespassing signs, locked gates, or denying access based on residency. Reasonable access restrictions for health and safety (no access after dark) are acceptable if applied to everybody. All grant funded sites must be kept open and accessible to all and have a sign acknowledging DCNR grant assistance.

Land and Water Conservation Fund (LWCF) Conversion Process Checklist

Contact DCNR at the following email: RA-NRBRC_CONVERSIONS@pa.gov to be coordinating your conversion of use prior to completing the documents outlined below. The documents outlined below will need to be submitted to DCNR for review and approval as part of the LWCF conversion process. DCNR is responsible to coordinate the conversion of use with the National Park Service for review and approval.

- ☐ National Park Service Compliance and Stewardship (C&S) Form
 - a. *The C&S Form provides descriptive information about the proposal to the federal decision-maker; and serves as part of the federal administrative record required by NEPA and its implementing regulations which supports a chosen NEPA “pathway” which must be completed before final action can be taken by the NPS.*
 - b. *The C&S Form 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.*
- ☐ All federal, state, and local jurisdiction agencies have been consulted and the appropriate clearances, permits, and approvals obtained.
- ☐ A location map showing the site to be affected in relation to the LWCF protected area and any proposed replacement land.
 - a. If the conversion is associated with above ground utility infrastructure, please include a site plan showing the planned location of the facilities including, property and setback lines, disturbance area around the installation(s), access roads, substations, ancillary equipment, buildings, and structures.
- ☐ Survey/Engineering Plans of the proposed conversion of use and delineation of existing or proposed easement(s)/ROWs
- ☐ Survey of the replacement land
- ☐ Proposed construction schedule/timeline
- ☐ Copies of any draft agreements, easements, licenses, or right-of-way documents
- ☐ Appraisals/Waiver Valuations for the converted property and the replacement property. Appraisals and Valuations must be completed by a state certified general real estate appraiser, consistent with the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book Appraisal). The appraiser should certify in writing that each appraisal complies with Uniform Appraisal Standards for Federal Land Acquisition.
- ☐ Review Appraisals completed by a state-certified review appraiser confirming that the appraisal was prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions.
- ☐ State Historic Preservation Office (SHPO) Section 106 review for the converted property and the replacement property. Complete the PA’s Historical & Archaeological Resource Exchange (PA-SHARE) Project Review Initial Submission and upload required attachments. **Note:** Include the DCNR staff member you’ve been coordinating with as a contact on the project. NPS should be listed as the primary agency, DCNR listed as the secondary agency. PA-SHARE link: <https://share.phmc.pa.gov/pashare/landing>
- ☐ Comments on the conversion proposal from local, county and regional planning agencies.

Land and Water Conservation Fund (LWCF) Underground Utility Checklist

Please contact DCNR at the following email: RA-NRBRC_CONVERSIONS@pa.gov if your municipality is planning to develop underground utilities within a LWCF protected site. Please contact DCNR before signing any easement or right-of-way agreement. The documents outlined below will need to be submitted to DCNR for review and approval. DCNR is responsible to coordinate with the National Park Service for review and ultimate approval.

- ☐ A description of the underground project proposal, including the purpose of the underground project

Construction – Whether this is a new underground project/corridor through the LWCF recreation area or an expansion within a pre-existing corridor (easement or right-of-way). The details for the LWCF recreation area such as:
 - the extent of disturbance - width, depth, and length of the alignment;
 - the dimensions of the staging area during installation (if needed); and
 - the duration of the surface disturbance (if any).
Restoration plan – The plans to restore the LWCF recreation area to its pre-existing outdoor recreation condition, and whether there would be any permanent changes to and/or restrictions on revegetation above the alignment.

Operation, maintenance, and obsolescence plan including routine maintenance (frequency and duration) and access required for emergency situations.
- ☐ Current condition and recreational uses of the LWCF recreation area above the proposed alignment that would be impacted, including any recreational infrastructure.
- ☐ Future restrictions on uses, development, and other impacts of this underground project on the surface and the public's outdoor recreation experience at the site.
- ☐ A map of the proposed underground project area that shows it in context of the LWCF recreation area.
- ☐ The current or planned holder of the easement or right-of-way, who will own the underground utility or infrastructure, and who would regulate this type of underground project.
- ☐ A description of the rights that need to be conveyed (if any) and a copy of the proposed legal instrument (e.g., easement, lease, license) that would memorialize the agreement.
- ☐ Details of how and why the underground project will not impact the recreational use of the park.
- ☐ Copies of any environmental and/or cultural resources investigations and decisions made to date.

Resource:

[Land and Water Conservation Fund State Assistance Program – Federal Financial Assistance Manual](#)

DISCLAIMER

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DCNR to give the rules in these policies that weight or deference. This document establishes the framework within which DCNR will exercise its administrative discretion in the future.

PAGE LENGTH

5 pages

EFFECTIVE DATE

Immediately. This policy is to be reviewed and updated every year.

EXPIRATION

This policy remains in effect until revised or rescinded.

Tom Ford, Bureau Director

10/24/2022

Name/Title of Bureau or Office Director

Date

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