

ADECA RECREATION PROGRAMS

LAND AND WATER CONSERVATION FUND (LWCF)

SUB-GRANTEE POST-COMPLETION AND STEWARDSHIP RESPONSIBILITIES

A. Purpose

Pursuant to Section 6(f)(3) of the LWCF Act and 36 CFR 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 to 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 the State and the sub-grantee. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map submitted with the subgrantee application and/or as described in other project documentation approved by the National Park Service (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.
6. A posted LWCF acknowledgement sign shall remain displayed at the project site.

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 CFR 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 6(f)(8) 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 (P.L. 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 Section 6(f)(3) Area

A project sponsor may provide for the operation of a Section 6(f)(3) 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.

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 must 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 CFR 59). As such, the document must require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and is operated by a lessee/concessioner as identified in the public information to eliminate the perception the area is private.
3. The lease/agreement document must require all fees charged by the lessee/concessioner to the public must be competitive with similar private facilities.
4. The lease/agreement document must make clear that compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

All lease/agreement documents must be approved by ADECA Recreation Programs before execution.

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 the State pursuant to Section 6(f)(3) of the LWCF Act and these regulations. The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and these guidelines apply to 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. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary 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 entity. Local sponsors must consult early with ADECA Recreation Programs when a conversion is under consideration or has been discovered.

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.
- c. Unallowable indoor facilities are developed within the project area without State 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.

F. Underground Utility Easements and Rights-of-Way

The State may allow underground utility easements within a Section 6(f)(3) 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, the State must 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 Section 6(f)(3) area, a conversion will be triggered.

G. Commercial Signage in Section 6(f)(3) Areas

Commercial signs are only allowable within Section 6(f)(3) boundaries when the advertising is attached to allowable park structures such as benches, fencing, walls, and buildings and are not inconsistent with the park setting and/or the built environment in which it is located (e.g., athletic fields). Signs may face either outside or inside the park. Commercial advertising in the form of a stand-alone structure such as a billboard that creates a footprint in the park, or commercial signage permanently affixed to a natural feature within the 6(f) area, is a conversion regardless of which direction it faces.

H. Proposals to Construct Public Facilities

Public facility requests will only be approved if the public facility clearly results in a net gain in outdoor recreation benefits or enhances the outdoor recreation use of the entire park, and the facility is compatible with and significantly supportive of the outdoor recreation resources and opportunities of the Section 6(f)(3) protected area. The subgrantee shall use the PD/ESF to document its public facility proposal using the following criteria and submit it along with a request for approval. Requests for approval to construct sponsor-funded public facilities will be considered when the following criteria have been met:

1. Uses of the facility will be compatible with and significantly supportive of outdoor recreation resources and uses at the rest of the site and recreation use remains the overall

primary function of the site. The proposed public facility will include a recreation component and will encourage outdoor recreation use of the remaining Section 6(f) area.

2. All design and location alternatives have been adequately considered, documented and rejected on a sound basis.

3. The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool building, which virtually occupies the entire site. Examples of uses which would not ordinarily be approved include, but are not limited to, a community recreation center which takes up all or most of a small park site, clinics, police stations, restaurants catering primarily to the general public, fire stations, professional sports facilities or commercial resort or other facilities which: (1) are not accessible to the general public; or, (2) require memberships; or, (3) which, because of high user fees, have the effect of excluding elements of the public; or, (4) which include office, residential or elaborate lodging facilities.

Restaurant-type establishments with indoor dining/seating that cater primarily to the outdoor recreating public must be reviewed under this public facility policy. Other park food service operations such as snack bars, carry-out food service, and concession stands with outdoor dining including pavilions and protected patios are allowable if the primary purpose is to serve the outdoor recreating public.

4. 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.

5. The proposed facility must be under the control and tenure of the public agency that sponsors and administers the original park area.

6. The proposal has been analyzed pursuant to NEPA, including providing the public an opportunity to review and comment on the proposal if required as part of the NEPA review.

7. All applicable federal requirements for approval are met.

8. The proposal has been adequately reviewed at the state level and has been recommended by the State Liaison Officer (ADECA Director).

I. Requests for Temporary Non-Conforming Uses Within Section 6(f)(3) 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. 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 replacement property pursuant to Section 6(f)(3) of the LWCF Act.

Criteria. The State 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. This means that the site of the temporary activity should be sufficiently small to restrict its impacts on other areas of a Fund-assisted park.
- b. A temporary use shall not result in permanent damage to the park site, and appropriate mitigating measures will be taken to ensure no residual impacts on the site once the temporary use is concluded.
- c. No practical alternatives to the proposed temporary use exist.
- d. All applicable federal requirements for approval are met.
- e. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

J. Sheltering Facilities within Section 6(f)(3) Areas

State approval is required to shelter an existing facility located within a Section 6(f)(3) protected area.

K. Obsolete Facilities

Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, Section 6(f)(3) of the LWCF Act requires project sponsors maintain the entire area within the Section 6(f)(3) boundary in some form of public outdoor recreation use. Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

1. reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;
2. changing recreation needs dictate a change in the type of facilities provided;
3. park operating practices dictate a change in the type of facilities required; or,
4. the recreation area or facility is destroyed by fire, natural disaster, or vandalism.

The State 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 sponsor submits written justification for requesting a determination of

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 by the subgrantee at the current value of the original investment.

L. Significant Change of Use

Section 6(f)(3) of the LWCF Act requires project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. State approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans or intent for the area as described in the original LWCF project(s).

A primary consideration in the review will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan.

M. 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 will be taken into consideration during the inspection of properties that have been developed for public use:

a. Retention and use. Is the Section 6(f)(3) boundary in tact and the property being used for outdoor recreation purposes including those intended through the projects funded with LWCF assistance?

b. Appearance. Is the property attractive and inviting to the public?

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 State and NPS.

2. Applicability. The provisions of this section apply to the Section 6(f)(3) 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 Section 6(f)(3) boundary map are subject to this section.