

Chapter 32  
SECTION 6(F)

**MDT ENVIRONMENTAL MANUAL**

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## Chapter 32

### SECTION 6(f)

#### 32.1 OVERVIEW

The *Land and Water Conservation Fund Act* (16 USC 4601-4 et seq.) makes Federal funding available for acquisition and development of lands for public outdoor recreation uses. To ensure the public outdoor recreation benefits achieved through the use of these funds are maintained, Section 6(f)(3) of the Act, commonly referred to as “Section 6(f),” provides that:

*...No property acquired or developed with assistance under this section shall, without prior approval of the Secretary [of the Interior], 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.*

Regulations at 36 CFR 59, “Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities” implement the requirements of Section 6(f). As reflected in these regulations, approval authority under Section 6(f) has been delegated to the Regional Directors of the National Park Service (NPS).

Where MDT projects may result in conversion of land acquired or developed with *Land and Water Conservation Fund Act* funding, they must comply with the requirements of Section 6(f) and the implementing regulations at 36 CFR 59. Note that these requirements are applicable to conversion of Section 6(f) land regardless of the type of project causing the conversion and whether or not it involves Federal funding or approvals.

This Chapter provides guidance and procedures for identifying Section 6(f) properties that may be affected by proposed MDT projects, for evaluating alternatives to conversion of these properties and for establishing compliance with Section 6(f) requirements where conversion cannot be avoided.

## 32.2 LAWS, REGULATIONS AND GUIDANCE

### 32.2.1 16 USC 460I-8(f) (3)

This *United States Code* (USC) Section codifies Section 6(f)(3) of the *Land and Water Conservation Fund Act*, which established the requirements applicable to conversion of property acquired or developed with assistance under the Act to other than public outdoor recreation uses.

### 32.2.2 36 CFR 59 “Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities”

This Part of the *Code of Federal Regulations* (CFR) contains provisions for implementing Section 6(f) requirements. Section 59.1 clarifies the extent of applicability of the post-completion compliance responsibilities for each area or facility involving funding assistance under the *Land and Water Conservation Fund Act*. Section 59.3 details the specific prerequisites that must be satisfied for approval to convert property in these areas or facilities to other than public outdoor recreation uses.

### 32.2.3 FHWA Technical Advisory T 6640.8A

Section IX of the October 30, 1987 Technical Advisory addresses “Section 4(f) Evaluations – Format and Content.” This section includes the following guidance pertaining to Section 6(f):

The use of Section 4(f) land may involve concurrent requirements of other Federal agencies. Examples include ...approval of land conversions under Section 6(f) of the *Land and Water Conservation Fund Act*. The mitigation plan for the project should include measures that would satisfy the various requirements. For example, Section 6(f) directs the Department of the Interior (National Park Service) to assure that replacement lands of equal value, location and usefulness are provided as conditions to approval of land conversions. Therefore, where a Section 6(f) land conversion is proposed for a highway project, replacement land will be necessary. Regardless of the mitigation proposed, the draft and final Section 4(f) evaluations should discuss the results of coordination with the public officials having jurisdiction over the Section 4(f) land and document the National Park Service’s position on the Section 6(f) land transfer, respectively.

[For a Final Section 4(f) Evaluation:]

Where Section 6(f) land is involved, the National Park Service’s position on the land transfer should be documented.

### 32.2.4 Land and Water Conservation Fund State Assistance Program, Federal Financial Assistance Manual, Volume 69

This October 1, 2008, *Manual* sets forth the administrative procedures and requirements for Land and Water Conservation Fund (LWCF) Federal assistance. Chapter 8 of the *Manual*

addresses requirements for “Post-Completion and Stewardship” and Section E of Chapter 8 describes the requirements applicable to “Conversions of Use.”

### **32.2.5 Montana Department of Fish, Wildlife and Parks, LWCF Website**

This website is accessible through the Montana Fish, Wildlife and Parks (FWP) home page. It contains useful information on the LWCF Program and includes a link to a listing of Montana LWCF sites by county.

### **32.2.6 Uniform Appraisal Standards for Federal Land Acquisitions**

These standards, which were developed by the Federal Interagency Land Acquisition Conference and published in cooperation with the US Department of Justice, are used to meet the requirement of 36 CFR 59.3 that the fair market value of Section 6(f) property to be converted must be established, and the property proposed for substitution must be of at least equal fair market value as established by an approved appraisal prepared in accordance with Uniform Federal Appraisal Standards.

## 32.3 PROCEDURES

### 32.3.1 Information Gathering

The Preliminary Field Review (PFR) is the initial step in identifying and addressing a proposed project's involvement with properties subject to Section 6(f). The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) within the MDT Environmental Services Bureau (ESB), to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE participates in the PFR for Section 6(f) compliance purposes to support the objective of identifying and ensuring consideration of all lands involving use of funds provided under the *Land and Water Conservation Fund Act*. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including Section 6(f) issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief (ESBC).

Following the PFR, the PDE reviews the list of LWCF sites by county, which is maintained by FWP and is available on the FWP website. The PDE uses this information to make a preliminary evaluation of the presence of Section 6(f) properties in the project area.

The PDE then prepares a letter to the LWCF Program Liaison at FWP. The letter includes current information on Section 6(f) properties in the project area (obtained from the list of LWCF sites by county) and requests confirmation from FWP as to whether or not this information reflects all current Section 6(f) properties in the affected area. The letter also requests FWP to provide location and description information for the listed sites and any additional LWCF sites FWP is aware of in the project area, including the extent to which each site is encumbered by the LWCF participation and, thus, subject to Section 6(f) requirements.

If a map or other documentation indicating the extent of LWCF encumbrance for a particular site is not available from FWP, the PDE prepares a letter to the entity or entities responsible for ownership and/or management of the site. The letter requests any information they may have that would address the extent of LWCF encumbrance and the determination of significance for determining Section 4(f) applicability; see [Chapter 15 "Section 4\(f\) Evaluations."](#)

In the absence of specific information confirming the extent of LWCF encumbrance for a particular site, the PDE proceeds under the assumption that the entire site is encumbered and, therefore, subject to Section 6(f).

### 32.3.2 Analysis and Findings

#### 32.3.2.1 **Analysis of Conversion Avoidance and Minimization Alternatives**

The PDE provides the DT written documentation of the location, size, ownership and extent of LWCF encumbrance for each Section 6(f) site in the project area.

As project development proceeds, the PDE coordinates with the DT in identifying and evaluating potential reasonable and feasible alternatives for avoiding or minimizing conversion of Section

6(f) property. To the extent practical, alternatives to avoid or minimize conversion of Section 6(f) land are incorporated in the preliminary alignments and grades established for study purposes. The PDE participates in the Alignment and Grade Review (AGR) to ensure all practical avoidance and minimization alternatives have been evaluated.

After completion of the AGR, the PDE confers with the DT to determine if the project's final alignment and grade can be configured to avoid conversion of Section 6(f) property.

### **32.3.2.2 Section 6(f) Land Conversion Avoided**

If the final alignment and grade avoid conversion of Section 6(f) property, the PDE documents this finding in the project files as part of the environmental commitments for the project, and the DT documents the avoidance finding in subsequent project reports.

### **32.3.2.3 Section 6(f) Land Conversion Not Avoided**

#### **32.3.2.3.1 Minimize Conversion and Begin Information-Gathering for Section 6(f) Compliance**

If the final alignment and grade cannot avoid conversion of Section 6(f) property, the PDE coordinates with the DT to minimize the unavoidable conversion, to the extent practical. Concurrently, the PDE initiates informal consultation with the FWP LWCF Program Liaison and the entity or entities responsible for ownership and/or management of the Section 6(f) property to accomplish the following:

- seek buy-in or input regarding the alternatives to minimize Section 6(f) property conversion,
- determine recreational needs that are being met by the existing facilities on the Section 6(f) property,
- determine the types of outdoor recreation resources and opportunities available on the portion(s) of the Section 6(f) property proposed for conversion,
- evaluate the recreational viability of the unconverted part of the Section 6(f) property, and
- discuss possible options for suitable replacement property.

The PDE documents the results of the informal consultation in the project file and provides a copy to the DT.

#### **32.3.2.3.2 Determine Fair Market Value of Section 6(f) Land Proposed for Conversion**

The PDE coordinates with the Right-of-Way Bureau (RW) to request a determination of the fair market value of the portion of the Section 6(f) property proposed for conversion, with the understanding that the determination must meet the requirements of the *Uniform Appraisal Standards for Federal Land Acquisitions*. The PDE and RW coordinate with the FWP LWCF

Program Liaison and the entity or entities responsible for ownership and/or management of each affected Section 6(f) property in developing the fair market value appraisal. Upon completion of the fair market value appraisal, RW provides the appraisal information to the PDE.

#### 32.3.2.3.3 Identify and Evaluate Potential Replacement Property

In accordance with 36 CFR 59.3, replacement property for converted Section 6(f) land must:

- be of at least equal fair market value, as established by an approved appraisal prepared in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions*; \*
- be of reasonably equivalent usefulness and location as the property to be converted; and
- meet the eligibility requirements for LWCF-assisted acquisition and constitute or be part of a viable recreation area.

\* *RW typically will not perform formal appraisals as a part of the preliminary identification of potential replacement properties. RW generally performs formal appraisals after informal consultation with FWP and the Section 6(f) property owner/manager to obtain their views on:*

- + *suitability of the potential replacement properties identified by MDT;*
- + *other potential replacement properties they may recommend; and*
- + *effects of the proposed conversion on the remaining, unconverted portions of the affected Section 6(f) properties.*

36 CFR 59.3 provides that, dependent upon the situation and at the discretion of the NPS, replacement property need not provide identical recreation experiences or be located at the same site (i.e., directly adjacent to or close by the Section 6(f) site proposed for conversion), provided it is in a reasonably equivalent location. This policy provides administrative flexibility to determine a replacement location recognizing the property should meet existing public outdoor recreational needs. Generally, this involves selection of a site serving the same community or area as the converted site, although there may be exceptions. For example, if property to be converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation facilities, then another, more suitable location within the jurisdiction may be evaluated for providing the replacement property. 36 CFR 59.3 also provides that the acquisition of one parcel of land may be used to address more than one approved Section 6(f) land conversion.

Upon receipt of the fair market value information for the Section 6(f) property proposed for conversion, the PDE coordinates with RW and the FWP LWCF Program Liaison to determine if the replacement property can come from the MDT Section 6(f) bank. If the FWP LWCF Program Liaison agrees with providing the replacement property from the Section 6(f) bank, the PDE coordinates with RW to determine the fair market value of the replacement property in accordance with [Section 32.3.2.3.4](#).

If the FWP LWCF Program Liaison does not agree that the replacement property may be provided from the MDT Section 6(f) bank, the PDE coordinates with RW and the FWP LWCF Program Liaison to identify replacement property that satisfies the requirements of 36 CFR 59.3.

After the PDE and RW have completed the work necessary to identify suitable potential replacement properties, the PDE, through the Environmental Engineering Section Supervisor (EESS), continues consultation with the FWP LWCF Program Liaison and owner(s) and/or manager(s) of the Section 6(f) property proposed for conversion to accomplish the following objectives:

- determine if the proposed Section 6(f) land conversion and replacement property are consistent with the existing Statewide Comprehensive Outdoor Recreation Plan;
- determine if the proposed replacement property meets the requirements of 36 CFR 59.3;
- determine if the proposed Section 6(f) land conversion and replacement land constitute substantial changes to the original LWCF project, thereby requiring adherence to State intergovernmental clearinghouse review procedures, in accordance with 36 CFR 59.3(b)(8);
- identify any alternative potential replacement properties they would recommend that would meet the requirements of 36 CFR 59.3, if the proposed replacement property is not acceptable; and
- review with FWP the proposed list of deliverables for the conversion request documentation to support the intent of providing all the required information in the initial conversion request submittal.

In addition to the input obtained through the consultation with FWP and the Section 6(f) property owner(s) and/or manager(s), information regarding the proposed Section 6(f) land conversion and potential replacement property may be included in public involvement activities for the proposed project to afford other interested and affected parties the opportunity to provide their input. The PDE documents and considers all input received in proceeding with further Section 6(f) compliance actions.

#### 32.3.2.3.4 Obtain Formal Fair Market Value Appraisal for Replacement Property

After completion of the consultation process and identification of a preferred replacement property for the proposed Section 6(f) land conversion, the PDE provides information to RW identifying the property and requests RW to establish its fair market value by an approved appraisal in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

Upon completion of the appraisal, RW provides the PDE an approved appraisal report that indicates the fair market value of the proposed replacement property.

#### 32.3.2.3.5 Prepare and Process Conversion Request Documentation

The PDE prepares documentation of the following items to be submitted to the FWP LWCF Program Liaison with the Section 6(f) property conversion request:

- analysis of all practical alternatives for avoiding and minimizing the Section 6(f) land conversion;
- fair market value of the property proposed for conversion and the property proposed for replacement (i.e., Determination of Value Document);
- location of the property to be converted and location of the proposed replacement property;
- recreation needs being fulfilled by the facilities on the property proposed for conversion and the types of outdoor recreation resources and opportunities available;
- determination of the extent to which the proposed replacement property will meet recreation needs that are at least like in magnitude and impact to the user community as the property to be converted;
- verification that the proposed replacement property meets the requirements of 36 CFR 59.3(b)(4) regarding eligibility for LWCF assisted acquisition, constituting or being a part of a viable recreation area and the criteria for allowable use of publicly-owned land for replacement purposes;
- for properties that will be partially converted, the effect of the proposed conversion on the remaining portions of the property;
- verification that all necessary coordination with other Federal agencies has been satisfactorily completed (e.g., compliance with Section 4(f)); and
- other information, as requested by FWP.

The PDE prepares a cover letter to submit the conversion request documentation to the FWP LWCF Program Liaison. The cover letter includes a request for submittal of the documentation to the Director of the National Park Service (NPS) Intermountain Region in Denver, Colorado, and a formal request for NPS approval of the proposed Section 6(f) land conversion. Generally, the EESS reviews the conversion request submittal before transmitting it to the ESBC for approval and signature.

After the ESBC signs the conversion request submittal and transmits it to FWP, the PDE coordinates with the FWP to accomplish any needed changes or addition of information to ensure completeness and accuracy of the conversion request documentation. If the proposed conversion and replacement constitute substantial changes to the original Section 6(f) project, the PDE provides information to enable FWP to verify that State intergovernmental clearinghouse review procedures have been adhered to. The PDE also provides information to enable FWP to verify that the proposed conversion and substitution are consistent with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans and assists FWP in completing and documenting an environmental evaluation for the proposed Section 6(f) land conversion and replacement property.

When the FWP LWCF Program Liaison determines the conversion request documentation package is accurate and complete, the environmental evaluation is complete and all needed verifications have been made, the Liaison submits the information in writing to the Director of

the NPS Intermountain Region, along with MDT's conversion approval request. The PDE maintains contact with the FWP LWCF Program Liaison to monitor the processing of the conversion request, assist in resolving issues that may arise and confirm completion of key steps in the process.

#### 32.3.2.3.6 Receive Section 6(f) Land Conversion Approval

The NPS Intermountain Region Office conducts its review of the conversion approval request documentation to ensure the proposed Section 6(f) land conversion and land proposed for substitution comply with all requirements of 36 CFR 59.3. During its review, NPS Regional Office staff coordinates with the FWP LWCF Program Liaison to address any questions or need for additional information. As a part of this process, the PDE continues to coordinate with the FWP and provides additional support documentation, as necessary.

When satisfied that the proposed Section 6(f) property conversion and replacement land comply with all requirements of 36 CFR 59.3, the NPS Regional Director provides written approval of the proposed conversion and replacement to the FWP LWCF Program Liaison. The FWP LWCF Program Liaison should transmit the NPS approval documentation to the ESBC. The PDE may need to maintain communication with FWP to ensure this transmittal occurs.

The ESBC passes the NPS approval documentation to the EESS and the PDE. The PDE provides a copy of the approval documentation to the DT and RW, along with a copy of the final conversion approval request documentation package.

The PDE ensures the information on the Section 6(f) land conversion and replacement property is appropriately reflected in the project environmental documentation and, as applicable, Section 4(f) documentation; see [Chapters 11 “Preparing Environmental Documentation,” 13 “Environmental Assessment/FONSI,” 14 “Environmental Impact Statement/ROD” and 15 “Section 4\(f\) Evaluations.”](#) The necessary information includes the results of coordination with FWP and the official(s) responsible for the site and documentation of NPS approval of the conversion and replacement property.

### 32.3.3 **Mitigation and Commitments**

The PDE and DT ensure the project plans accurately reflect the Section 6(f) land conversion and replacement property as approved by NPS. Depending on site-specific conditions, the PDE works with the DT to ensure the Section 6(f) site impact avoidance areas and authorized impact areas are depicted on the plans. To the extent possible, the PDE and DT should prepare the contract documents using the *MDT Standard Specifications* to minimize the need for special provisions to address Section 6(f) impacts or other commitments.

The District Environmental Engineering Specialist monitors project implementation to ensure that all commitments regarding the Section 6(f) land conversion and replacement property are fulfilled in accordance with the approved project plans.

