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36 CFR Parts 59 and 72

Land and Water Conservation Fund Program of Assistance to States and Urban Park and Recreation Recovery Program; Post-Completion Compliance; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 59 and 72

Land and Water Conservation Fund Program of Assistance to States and Urban Park and Recreation Recovery Program; Post-Completion Compliance

AGENCY: National Park Service (NPS).

ACTION: Final rule.

SUMMARY: This rule serves as a guide to post-completion compliance responsibilities under the Land and Water Conservation Fund (L&WCF) State assistance and the Urban Park and Recreation Recovery (UPARR) grants programs administered by the National Park Service. The rule incorporates existing program requirements pertaining to the conversion of assisted recreation sites and facilities to non-public recreation uses, and incorporates existing requirements regarding residency status of users of assisted sites into the Code of Federal Regulations. This action is necessary in order to assure that recipients of financial assistance under the L&WCF and UPARR programs continue to maintain assisted sites and facilities in public recreation use following project completion and to assure that assisted facilities remain accessible to the general public including non-residents of assisted jurisdictions. The intended effect of this action is to reaffirm and clarify existing post-completion compliance responsibilities associated with the grants so as to assure full compliance on the part of all past and future recipients of assistance.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. D. Thomas Ross or Mr. Michael D. Wilson, U.S. Department of the Interior, National Park Service, Recreation Grants Division (775), Washington, DC 20013–7127 (Telephone: 202/343–3700).

SUPPLEMENTARY INFORMATION: The L&WCF program was established by the L&WCF Act of 1965 (Pub. L. 88–578) to stimulate a nationwide action program to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation. The program provides matching grants to States, and through the States to local units of government, for the acquisition and development of public outdoor recreation sites and facilities. Since the origin of the L&WCF program in 1965, over $2.95 billion has been apportioned to the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa and the Northern Marianas. The income for the L&WCF is provided largely from Outer Continental Shelf mineral receipts, with additional income from the Motorboat Fuels Tax, recreation user fees, and through the sale of Federal surplus property. More than 33,000 L&WCF projects have been approved for the acquisition of park lands, the development of outdoor recreation facilities, and for recreation planning. Federal obligations have been matched by State and local contributions for a total recreation investment of almost $6 billion. Of the total number of projects, more than 8,000 have been for the acquisition of nearly 2.8 million acres of park land while more than 24,500 projects have been for the development of outdoor recreational facilities. Sixty-three percent of the total funds obligated have gone to locally sponsored projects.

The L&WCF program is listed as No. 15.916 in the Catalog of Federal Domestic Assistance. No prior regulations for this program have been codified in the Code of Federal Regulations. The overall administrative policies, procedures, and guidelines applicable to the program are set forth in the L&WCF Grants Manual (NPS–34).

The UPARR program was established by the UPARR Act of 1978 (Pub. L. 95–625) to help distressed urban areas through the rehabilitation of critically needed recreation sites and facilities, and to develop improved recreation programs by encouraging and stimulating local governments to revitalize their park and recreation systems and to make long-term commitments to continuing maintenance of these systems. Emphasis since the program's inception has been placed on the demonstration potential of UPARR projects through assisting local governments in planning for the overall revitalization of community recreation systems, the rehabilitation of existing recreation facilities, and the use of innovative approaches to improve park system management and recreation opportunities. More than 400 cities and urban counties have participated in the UPARR program (through receipt of grants and/or preparation of recreation plans) since its administrative inception in July 1979. To date, about 350 local jurisdictions in 42 States, the District of Columbia, and Puerto Rico have received grant assistance. Since Fiscal 1979, $179 million has been appropriated for these grants. UPARR assistance has been used to fund 395 Rehabilitation grants for the renovation of existing recreation facilities and 110 Innovation grants to demonstrate innovative and cost-effective approaches to the delivery of recreation services and improved management of recreation systems. Congress appropriated no funds for Rehabilitation and Innovation grants in Fiscal Years 1985 and 1986 and no new grant assistance for these purposes is currently available. More than 420 grants have been awarded to assist in the preparation of Recovery Action Program recreation plans. A limited amount of old UPARR funds carried over from earlier grants is available to improve existing plans.

The UPARR program is listed as No. 15.919 in the Catalog of Federal Domestic Assistance. Program regulations were originally codified as 36 CFR Part 1228. These regulations have since been redesignated in the Code of Federal Regulations as 36 CFR Part 72. The overall administrative policies, procedures, and guidelines applicable to the program are set forth in the UPARR Administration Guideline (NPS–37).

In accordance with L&WCF and UPARR program policy, a conversion of use occurs when an assisted site is wholly or in part converted to other than public recreation use. Such conversions require the advance approval of NPS and the provision of suitable replacement land. Conversions at L&WCF and UPARR assisted sites generally occur in the following situations: (1) Property interests are conveyed for non-public or non-recreation uses; (2) Non-eligible recreation facilities are developed within the project area; or, (3) Recreation use of the assisted site is terminated. For L&WCF, the development of a non-outdoor recreation facility or the unauthorized sheltering of an outdoor facility is also a conversion. Authorized sheltering of pools and skating rinks in designated climatic areas in accordance with section 6(e)(2) of the L&WCF Act and approved underground utility easements that do not have significant impacts upon the recreational use of the park or facility are not considered to be conversions.

Examples of L&WCF and UPARR conversions include the construction of through-roads as opposed to recreation area access roads, construction of residential, industrial, and commercial developments, (for L&WCF) unauthorized sheltering of assisted facilities, and other uses not permitted under the applicable program.

Although not included in this rulemaking, recipients of L&WCF and UPARR assistance should be aware that existing laws, regulations, and program policy regarding post-completion compliance with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 remain requirements of these programs and will continue to be fully enforced. Compliance responsibilities of these Acts have been previously codified in the Code of Federal Regulations as 43 CFR Part 17.

All post-completion compliance requirements of the programs will remain in force regardless of the programs' funding and authorization status at any given point. States are responsible for assuring full compliance for both State and locally sponsored L&WCF projects. Local recipients of UPARR assistance are responsible for full compliance with the post-completion requirements of those grants.

Program Information

L&WCF grants are provided to the States, and through the States to local jurisdictions, on a matching basis for up to fifty percent (50%) of the total project related allowable costs. Grants to eligible insular areas (Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands) may be for 100 percent assistance. Appropriations from the L&WCF may be made annually by Congress to the Secretary of the Interior who apportions the funds to the States. Payments for all projects are made to the State organization which is authorized to accept and administer funds paid for approved projects.

Properties acquired or developed with L&WCF assistance are prohibited by section 6(f)(3) of the L&WCF Act from conversion to other than public outdoor recreation use without the approval of the Secretary. This approval is a discretionary action and should not be considered a right of the project sponsor. The authority for approval of conversions has been delegated by the Secretary to the Director of NPS who has redelegated that authority to the NPS Regional Directors. NPS will only consider conversion requests if the State has evaluated all practical alternatives. Where conversions are desired, the State must assure that the conversion is in accord with the required Statewide Comprehensive Outdoor Recreation Plan and must provide for the substitution of other recreation properties determined by NPS to be of at least equal fair market value and of reasonably equivalent usefulness and location.

In accordance with section 6(f)(8) of the L&WCF Act, discrimination in the use of L&WCF assisted sites on the basis of residence is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on such basis.

UPARR Rehabilitation and Innovation grants are provided to eligible urban cities and counties on a matching basis for seventy percent (70%) of the total project related allowable costs. Additional matching funds (for up to eighty-five percent of total cost) are provided for localities whose local matching share is paid wholly or in part by the State. Appropriations for the UPARR program may be made annually by Congress and funds are awarded to eligible cities and counties on a nationally competitive basis. UPARR assistance has been provided for the rehabilitation of existing recreation sites and facilities, for the demonstration of innovative approaches to the delivery of recreation services, and for the development of recreation plans. Current program emphasis is on post-completion responsibilities of grant recipients.

Under section 1010 of the UPARR Act, sites and facilities improved with UPARR assistance may not be converted to other than public recreation uses without the approval of the Secretary (authority redelegated to the NPS Regional Directors). Such conversions will only be approved upon the provision by the recipient of substitute sites or facilities of reasonably equivalent location and usefulness and if all practical alternatives have been explored by the recipient.

Discrimination in the use of UPARR assisted sites on the basis of residence is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on such basis.

Proposals for conversions of use under the L&WCF and UPARR programs should be submitted to the appropriate NPS Regional Director. For L&WCF, requests are to be submitted to NPS by the State Liaison Officer appointed by the Governor. For UPARR, requests are to be submitted to NPS by the recipient's Chief Executive Officer or his/her designee. NPS Regional Offices and States within their L&WCF and UPARR jurisdiction are listed below. Names and addresses of L&WCF State Liaison Officers may be obtained by contacting the appropriate NPS Office.

Alaska Region

2525 Gambell Street, Anchorage, AK 99503, (Alaska).

Mid-Atlantic Region

143 South Third Street, Philadelphia, PA 19106 (Connecticut, District of Columbia, Delaware, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia).

Midwest Region

1709 Jackson Street, Omaha, NE 68102 (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin).

Pacific Northwest Region

83 South King Street, Seattle, WA 98104 (Idaho, Oregon, Washington).

Rocky Mountain Region

P.O. Box 25287, Denver, CO 80225 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming).

Southeast Region

75 Spring Street, SW., Atlanta, GA 30303 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands).

Southwest Region

P.O. Box 728, Santa Fe, NM 87501 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas).

Western Region

P.O. Box 36063, San Francisco, CA 94102 (American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands).

Public Comments

A 30-day comment period on the Proposed Rule published in the June 10, 1986 Federal Register ended on July 10, 1986. A total of 26 letters were received. Of these, seven contained only information requests or commented generally on the L&WCF and UPARR programs without reference to a specific section. The 19 remaining letters specifically addressed the regulations and contained substantial comments. A summary of these comments and the NPS response follows:

Section 59.1 Applicability.

One comment pertained to the statement that post-completion requirements of L&WCF grants cease for leased sites upon expiration of the lease. The commenter questioned the continued applicability of this provision in light of recent policy changes regarding leased property. This section is not impacted by the change in policy restricting leases to only those on Federal lands. The lease provision in § 59.1 remains applicable to all projects involving leasing regardless of whether the project/lease predates or follows the

policy change. The lessor agency has no bearing upon this section. A second commenter objected to the stipulation that post-completion requirements cease ". . . unless the grant agreement calls for some other arrangement." This particular clause merely indicates that, if an approved project involves a leased site, and the grant agreement calls for a specified course of action following lease expiration, then that course of action must be complied with. Where no such provision exists in the grant agreement, compliance requirements cease with lease expiration. Unless an individual project warrants it due to unusual circumstances peculiar to that project, no such provision would normally appear in the project agreement.

Section 59.3(b) Conversion Requirements—Prerequisites for Conversion Approval.

1. In light of subparagraph (3) which refers in the second sentence to the Regional Director's discretion in decisions regarding replacement property, one commenter suggested that a process for settling disagreements between the States and Regional Directors is needed. Such a process currently exists and is outlined in Chapter 675.1.13 of the L&WCF Grants Manual. Local project sponsors may appeal State decisions to the NPS Regional Directors. States, and local sponsors dissatisfied with results of appeals to the Regional Director, may make appeal to the Director. The next line of appeal is the Secretary.

2. One comment pertaining to subparagraph (3)(i) suggested that this criterion for determining equivalent usefulness should be expanded and clarified so as to indicate that recreation *resources* available are evaluated in addition to recreation *opportunities*. We agree that the suggested change clarifies this subparagraph. The first sentence has therefore been modified to read accordingly.

3. One comment regarding subsection (3)(i) indicated that evaluation of properties proposed as replacement land is based on subjective and arbitrary judgment relative to the criteria that such land must meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. We believe that the criteria are both reasonable and appropriate and that, given their basic nature, there is no "scientific" means of drawing conclusions pertaining to these requirements. NPS attempts to apply these criteria as equitably and consistently as possible and is open to consideration of any factors or persuasive arguments which a State or other project sponsor may wish to present regarding a specific conversion request.

4. Nine comments were received which objected to the provision specified in subparagraph (3)(ii) that States are responsible for securing replacement land for conversions at locally sponsored project sites should the local sponsor fail to do so. One commenter described this as being "unfair" and two described it as being "new." *The State is the primary recipient of all L&WCF assistance* regardless of the project sponsor and assumes a contractual relationship with the Federal government. Local sponsors are sub-recipients of funding and must enter into agreements with the State in order to partake of grant funding. The grant agreements signed by NPS are never with local sponsors but are always with the State. This is in accordance with Section 6 of the L&WCF Act which explicitly stipulates that the financial assistance available is for apportionment among the States and that payments are for the States. The provision regarding State liability is not new and has not been changed. This provision is explicitly stated in the General Provisions which are part of every grant agreement between NPS and the States. Part II A of the General Provisions indicates that "The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that *failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement*" (emphasis added). State liability regarding locally sponsored projects has been included in the general provisions of every grant agreement since program inception in 1965. One comment suggested that the Federal government should fund this compliance requirement. We disagree given that, as made clear above, the State assumes *full* responsibility for grant compliance when it signs the grant agreement, regardless of whether the sponsor is a local sub-recipient.

5. One commenter pointed out that subparagraph (4) singled out the restrictions on replacement land applicable where such land is proposed to be acquired by one public agency from another public agency. This section has been revised to clarify that certain restrictions also exist for proposed replacement land already owned by the project sponsor.

6. One commenter expressed concern regarding the requirement in subsection (c)(9) that the proposed conversion and substitution be "in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans." Section 6(f)(3) of the Act stipulates that "The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan . . . ." At such time as financial assistance under the L&WCF program is no longer authorized, it is presumed that States will continue to maintain some form of recreation plan; either as mandated by a new Federal program or as part of the State's own comprehensive planning efforts. In referring to "equivalent recreation plans" we refer to whatever planning effort exists after program funding ends which most closely compares with that of the SCORP and which the State would maintain at the impetus of State law or for some other appropriate reason. States are reminded that, at the present time, SCORP requirements of the L&WCF program remain in *full* force.

Section 59.3(c) Amendments for Conversion.

Three comments were received pertaining to amendments for conversions. One commenter pointed out that, occasionally, the details and terms of conversions/replacements change from the time they are submitted to NPS for consideration to the time they are approved. In such instances, therefore, additional time and effort would be involved in preparing the amendment request for submission with the conversion request and later resubmitting a revised amendment request subsequent to negotiations on the terms of the conversion. We agree that this provision could, in some instances, create an additional burden on the project sponsor. Therefore, this subparagraph has been revised to allow for either concurrent submission of the amendment with the initial conversion request or submission of the amendment request once all details of the conversion have been worked out. Directly related to this issue are the concerns of another commenter who objected to the requirement in this subpart that amendment requests fo

conversions must be accompanied by revised Section 6(f)(3) boundary maps due to the expense involved in preparing suitable maps; particularly those which offer the more detailed "metes and bounds" descriptions. The commenter would prefer submission of a less detailed (and thereby less expensive) "property sketch" at the time of submission of the conversion request in lieu of a detailed map which, if deemed necessary by NPS, would be submitted after agreement is reached on the revised project area. We agree that a detailed map (prepared in accordance with Chapter 660.2.6 of the L&WCF Manual) could be submitted (along with the amendment request) either concurrently with the conversion request or once all details of the conversion have been worked out with NPS. A map sufficient to identify the basic area under consideration *must* be submitted with the initial conversion request, however, in order to provide NPS with adequate review documentation. NPS must have a *detailed* map prior to final approval of a conversion. The third comment pointed out that the L&WCF Grants Manual (Chapter 675.9.4) seems to imply that there may be situations when an amendment would not be required in conversion actions. The regulations make it clear that *all* conversions require project amendments. The Manual will be revised to make the same point.

Section 59.3(d) Obsolete Facilities.

1. Thirteen comments were received which indicate that the statement appearing in the second sentence is inconsistent with current policy on obsolete facilities and is contrary to the intent behind such a provision. The Proposed Rule states that "discontinuance of a facility requires either the substitution of another approved L&WCF eligible facility at the same site or NPS approval of a conversion." This section has been revised to bring it in line with the existing policy on obsolete facilities by removing the proposed requirement that an obsolete facility must be either replaced by another facility or declared a conversion. The revised language reverts to the original policy which merely required that the site be maintained for public outdoor recreation with no stipulation that the facility actually be replaced once declared obsolete. One of the commenters indicated that the regulations should more explicitly state the circumstances under which a project sponsor should seek NPS approval of facility changes when the project sponsor chooses to replace an assisted facility which becomes functionally obsolete with another which is also an L&WCF-eligible facility. This section has been revised so as to require that NPS be notified of *all* such changes. NPS will notify the State if it appears that the change from one eligible facility to another requires formal review. Construction of other than public outdoor recreation facilities, even at sites where a funded facility was declared obsolete, continues to be considered a conversion.

2. One comment pertained to the use of the SCORP and/or equivalent recreation plans in the review of requests to designate funded facilities as obsolete. The status of use of such plans in the review of obsolete facilities is compatible with a similar point raised in the comments under subsection (c)(9) regarding the consistency of conversion proposals with SCORP and equivalent plans. Please refer to comments under that subsection.

Section 59.4(c) Residency Requirements—Fees.

Three comments were received regarding this section. One commenter pointed out that under Title VI of the Civil Rights Act of 1964, discrimination anywhere within the jurisdiction's park system is prohibited. Consequently, an act of non-compliance with Title VI, even if at a site that has not received L&WCF assistance, is construed as an act of systemwide non-compliance which impacts L&WCF assisted sites. This point is correct and Title VI requirements, as pointed out in the Supplementary Information section of this preamble, must be complied with by project sponsors which have received L&WCF assistance. Title VI requirements as implemented by the Department of the Interior are detailed in 43 CFR Part 17. Because § 59.4(c) is consistent with Title VI to the extent that it expresses program policy relating to discrimination based on residency status, and because these regulations express only those requirements that pertain specifically and exclusively to L&WCF sites and facilities, we find no basis on which to substantially modify this subparagraph. We have, however, added a sentence to subparagraph (a) which references Title VI. A similar addition has been made in § 72.73(a) pertaining to the UPARR program. Another comment suggested that § 59.4(c) on fees be strengthened by prohibiting recipient jurisdictions from requiring non-residents to purchase annual rather than daily permits while providing only residents the opportunity to purchase lower cost daily permits. We agree that such action on the part of a jurisdiction could be construed as being discriminatory and have added language which prohibits this practice. A similar addition has been made in § 72.73(c). The third comment suggested that the sentence indicating that the provisions on fees apply only to the recreation areas described in the project agreement requires clarification. More specifically, it was suggested that "designated 6(f)(3) area" be substituted for "recreation area." We agree that such wording more accurately reflects the intent of this statement and have changed the sentence accordingly. A corresponding change has been made in § 72.73(c).

Section 72.72(b) Conversion Requirements—Prerequisites for Conversion Approval.

One commenter indicated that the first sentence of subparagraph (3) suggests that conversions are *necessary* to assure the provision of adequate recreation. We agree that the wording might be misleading to some in that it is the *proposal* which must assure the provision of adequate recreation. The wording has been revised to express this criterion with greater clarity.

Section 72.72(d) Obsolete Facilities.

Two commenters pointed out the inconsistencies of this subsection with the existing UPARR policy on obsolete facilities and with the basic intent behind that policy. Therefore, changes have been made which are in line with those made in § 59.3(d). Refer to comments under that section for rationale which is also applicable here.

General Comments

Of the comments which were general in nature and failed to address a specific section of the proposed rule, one expressed an opinion that compliance with the rule should be limited to a period of no more than 5, 10, or 15 years. No legal provision exists within the L&WCF Act for establishing such a limitation as the Act's intent is that Section 6 requirements regarding conversions be in force in perpetuity. The other general comments did not focus on a specific issue. Typical among these were letters which expressed support for the general concept of codifying compliance requirements of the L&WCF and UPARR programs. One comment expressed concern that administrative flexibility might be reduced by codification of program regulations. Others asked for general program information or merely indicated

appreciation for the opportunity to provide comments.

Additional Determinations

1. Compliance with the National Environmental Policy Act (NEPA): This action does not constitute a major Federal action significantly affecting the quality of the human environment. As a regulation of an administrative nature, this action is categorically excluded from the NEPA process. Therefore, no environmental assessment or impact statement is required.

2. Executive Order 12291 and the Regulatory Flexibility Act: The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This will not have an annual gross effect on the economy of $100 million or more. This document will not result in adverse effects on competition, employment, investment, productivity, or innovation, and does not pertain to U.S. or foreign-based enterprises in domestic or export markets. The rulemaking will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This document is not a major rule and is therefore exempt from preparation of a Regulatory Impact Analysis.

3. Paperwork Reduction Act: The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C 3501 *et seq.*). These collection requirements have been approved through May 31, 1989 (OMB approval No. 1024–0047 for L&WCF and No. 1024–0048 for UPARR).

Authorship Statement

The primary author of these regulations was Mr. Michael D. Wilson of the National Park Service, 202/343–3700.

List of Subjects

36 CFR Part 59

Grant programs; Recreation; Outdoor Recreation Acquisition, Development, and Planning.

36 CFR Part 72

Grant programs; Recreation; Urban Parks.

In consideration of the foregoing, 36 CFR Chapter I is amended by adding Part 59 as follows:

PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

Sec.

Authority: Sec. 6, L&WCF Act of 1965 as amended; Pub. L. 88–576; 78 Stat. 897; 16 U.S.C. 4601–4 *et seq.*

§ 59.1 Applicability.

These post-completion responsibilities apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractural agreement between NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State and locally sponsored projects. 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. In many instances, this mutually agreed to area exceeds that actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under L&WCF, compliance with post-completion requirements of the grant ceases following lease expiration unless the grant agreement calls for some other arrangement.

§ 59.2 Information collection.

The information collection requirements contained in § 59.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0047. The information is being collected to determine whether to approve a project sponsor's request to convert an assisted site or facility to other than public outdoor recreation uses. The information will be used to assure that the requirements of Section 6(f)(3) of the L&WCF Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

§ 59.3 Conversion requirements.

(a) *Background and legal requirements.* Section 6(f)(3) of the L&WCF Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in L&WCF assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with L&WCF 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.

(b) *Prerequisites for conversion approval.* Requests from the project sponsor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional Director in writing. NPS will consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.

(3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in

magnitude and impact to the user community as the converted site.

(ii) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction. Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these regulations and the substitution of replacement property.

(iii) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Unless *each* of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an L&WCF project:

(i) The land was not acquired by the sponsor or selling agency for recreation.

(ii) The land has not been dedicated or managed for recreational purposes while in public ownership.

(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

(5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) All necessary coordination with other Federal agencies has been satisfactorily accomplished including, for example, compliance with Section 4(f) of the Department of Transportation Act of 1966.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the NPS Regional office is assured that all environmental review requirements related to that other action have been met.

(8) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project.

(9) The proposed conversion and substitution are in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans.

(c) *Amendments for conversion.* All conversions require amendments to the original project agreements. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Section 6(f)(3) project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment will be in the form of an amendment to the grant agreement.

(d) *Obsolete facilities.* Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained for public outdoor recreation following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a L&WCF funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from a baseball field to a football field, for example, would not require NPS approval. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the State of *all* proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

§ 59.4 Residency requirements.

(a) *Background.* Section 6(f)(8) of the L&WCF Act prohibits discrimination on the basis of residence, including preferential reservation or membership systems, except to the extent that reasonable differences in admission and other fees may be maintained on such basis. This prohibition applies to both regularly scheduled and special events. The general provisions regarding non-discrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by a project sponsor, are covered in 43 CFR Part 17 which implements the provisions of Title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy.* There shall be no discrimination for L&WCF assisted programs and services on the basis of residence, except in reasonable fee

differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees.* Fees charged to nonresidents cannot exceed twice that 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. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only. These provisions apply only to the approved 6(f)(3) areas applicable to the recipient. Nonresident fishing and hunting license fees are excluded from these requirements.

§ 59.5 [Reserved]

§ 59.6 [Reserved]

PART 72—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

36 CFR Part 72 is amended as follows:

1. The authority citation for Part 72 continues to read as follows:

Authority: Title X, National Parks and Recreation Act of 1978; Pub. L. 95–625; 16 U.S.C. 2501–2514; Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

2. Subpart E is added to read as follows:

Subpart E—Post-Completion Compliance Responsibilities

Sec.

Subpart E—Post-Completion Compliance Responsibilities

§ 72.70 Applicability.

These post-completion responsibilities apply to each area or facility for which Urban Park and Recreation Recovery (UPARR) program assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility. Responsibility for compliance with these provisions rests with the grant recipient. The responsibilities cited herein are applicable to the 1010 area depicted or otherwise described in the 1010 boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this area exceeds that actually receiving UPARR assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under UPARR, compliance with post-completion requirements of the grant following lease expiration is dictated by the terms of the project agreement.

§ 72.71 Information collection.

The information collection requirements contained in § 72.72 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0048. The information is being collected to determine whether to approve a grant recipient's request to convert an assisted site or facility to other than public recreation uses. The information will be used to assure that the requirements of section 1010 of the UPARR Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

§ 72.72 Conversion requirements.

(a) *Background and legal requirements.* The UPARR program has made funds available for the renovation and rehabilitation of numerous urban parks and recreation facilities. In many cases, the UPARR funds were used only in a portion of a site or facility or were only a small percentage of the funds required to renovate or rehabilitate a property. Nevertheless, all recipients of funds for renovation and rehabilitation projects are obligated by the terms of the grant agreement to continually maintain the site or facility for public recreation use regardless of the percent of UPARR funds expended relative to the project and the facility as a whole. This provision is contained in the UPARR Program Administration Guideline (NPS–37) and is also referenced in § 72.36. In accordance with section 1010 of the UPARR Act, no property improved or developed with UPARR assistance shall, without the approval of NPS, be converted to other than public recreation uses. A conversion will only be approved if it is found to be in accord with the current local park and recreation Recovery Action Program and/or equivalent recreation plans and only upon such conditions as deemed necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness. Section 1010 is designed to ensure that areas or facilities receiving UPARR grant assistance are continually maintained in recreation use and available to the general public.

(b) *Prerequisites for conversion approval.* Requests for permission to convert UPARR assisted properties in whole or in part to other than public recreation uses must be submitted by the recipient to the appropriate NPS Regional Director in writing. NPS will only consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) The proposed conversion and substitution are in accord with the current Recovery Action Program and/or equivalent recreation plans.

(3) The proposal assures the provision of adequate recreation properties and opportunities of reasonably equivalent usefulness and location. Dependent upon the situation and at the discretion of 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. It must, however, be administered by the same political jurisdiction as the converted property. Equivalent usefulness and location will be determined based on the following criteria:

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site.

(ii) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for recreation facilities, then the project sponsor should seek to locate the substitute area in another location within the jurisdiction.

(4) In the case of assisted sites which are partially rather than wholly

converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(5) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 1010 action. In cases where the proposed conversion arises from another Federal action, final review of the proposal shall not occur until NPS is assured that all environmental review requirements related to that other action have been met.

(6) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original grant.

(c) *Amendments for conversion.* All conversions require amendments to the original grant agreement. Amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Section 1010 project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the request for the conversion. It will, however, be NPS policy to avoid such a situation if at all possible and to agree only if warranted by exceptional circumstances. In such cases, express commitment to satisfy section 1010 substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the local government agency in the form of a grant amendment.

(d) *Obsolete facilities.* Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained in public recreation use following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a UPARR funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from UPARR-developed tennis courts to basketball courts, for example, would not require NPS approval. A change from a swimming pool to a less intense area of limited development such as picnic facilities, or vice versa, would, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the recipient of *all* proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Recovery Action Program and/or equivalent recreation plans. Changes to other than public recreation use require NPS approval and the substitution of replacement land in accordance with section 1010 of the UPARR Act and paragraphs (a) through (c) of this section.

§ 72.73 Residency requirements.

(a) *Background.* UPARR policy prohibits discrimination on the basis of residence (refer to § 72.65(b)) including preferential reservation or membership systems on properties improved with UPARR assistance. This prohibition applies to both regularly scheduled and special events. The general provisions regarding non-discrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by the recipient, are covered in 43 CFR Part 17 which implements the provisions of Title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy.* There shall be no discrimination for UPARR assisted programs or services on the basis of residence, except in reasonable fee differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees.* For parks or recreation properties or programs funded with UPARR assistance, fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged to nonresidents, the nonresident fees cannot exceed fees charged at comparable State or local public facilities having fee systems. These fee provisions apply only to the approved 1010 areas applicable to the recipient. 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. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only.

§§ 72.74 and 72.75 [Reserved]

Dated: August 19, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-20867 Filed 9-24-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 59

Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This amendment to 36 CFR Part 59 modifies Land and Water Conservation Fund (L&WCF) requirements by permitting wetlands proposed as replacement property to be considered as reasonably equivalent in usefulness with assisted land proposed for conversion to other than public outdoor recreation use. The amendment is necessary in order to implement section 303 of the Emergency Wetlands Resources Act of 1986 which amends section 6 of the L&WCF Act of 1965. The intended effect of this action is the promotion of the conservation of wetlands.

EFFECTIVE DATE: June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Wilson, U.S. Department of the Interior, National Park Service, Recreation Grants Division, Washington, DC 20013-7127 (Telephone: 202/343-3700).

SUPPLEMENTARY INFORMATION: Section 6(f)(3) of the L&WCF Act of 1965 stipulates that changes in use to other than public outdoor recreation at assisted sites may only be made with the prior approval of the Secretary of the Interior and that converted properties must be replaced by substitute properties of at least equal fair market value and of reasonably equivalent location and usefulness. On September 25, 1986, the National Park Service (NPS) published a Final Rule describing the post-completion compliance responsibilities of the program. Conversion requirements are outlined in § 59.3 of the Final Rule. Clarification of the equivalent usefulness criterion appears as § 59.3(b)(3)(i) and is currently applicable to *all* conversion situations. The gist of that section is that replacement property must meet recreation needs which are similar in magnitude and impact as those needs met at the assisted site.

As a result of the passage of the Emergency Wetlands Resources Act of 1986 (Pub. L. 99-645), wetlands are now considered to be of reasonably equivalent usefulness with the property proposed for conversion. All other criteria appropriate in conversion proposals are unaffected by this action. This amendment implements only that change in L&WCF conversion policy explicitly required by section 303 of the Wetlands Act as passed by Congress and signed into law by the President on November 10, 1986. The amendment merely reiterates what has already been made law and is the only practicable means of implementation of the statutory provision. Therefore, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), no public comment period is necessary and the amendment is effective immediately on June 15, 1987.

Additional Determinations

1. Compliance with the National Environmental Policy Act (NEPA)

This action does not constitute a major Federal action significantly affecting the quality of the human environment and has been determined to be categorically excluded from the NEPA process. This is a regulation of an administrative nature which responds directly to legislative action (Pub. L. 99-645), the Emergency Wetlands Resources Act of 1986), the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process on a case-by-case basis. Therefore, no environmental assessment or impact statement is required.

2. Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This will not have an annual gross effect on the economy of $100 million or more. This document will not result in adverse effects on competition, employment, investment, productivity, or innovation, and does not pertain to U.S. or foreign-based enterprises in domestic or export markets. The rulemaking will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This document is not a major rule and is therefore exempt from the preparation of a Regulatory Impact Analysis.

3. Paperwork Reduction Act

The information collection requirements of 36 CFR Part 59 have been approved through May 31, 1989 (OMB No. 1024-0047). This amendment does not impact the information collection and recordkeeping requirements of Part 59.

List of Subjects in 36 CFR Part 59

Grant programs, Recreation, Outdoor Recreation acquisition, development, and planning.

In consideration of the foregoing, 36 CFR Part 59 is amended as follows:

PART 59—LAND AND WATER CONSERVATION FUND PROGRAM OF ASSISTANCE TO STATES; POST-COMPLETION COMPLIANCE RESPONSIBILITIES

1. The authority citation for Part 59 continues to read as follows:

Authority: Sec. 6, L&WCF Act of 1965, as amended; Pub. L. 88-578; 78 Stat. 897; 16 U.S.C. 4601-4 *et seq.*

2. Section 59.3 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 59.3 Conversion requirements.

* * * * *

(b) * * *

(3) * * *

(i) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property. Wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

Dated: May 18, 1987.

* * * * *

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-13601 Filed 6-12-87; 8:45 am]

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