



Environmental Handbook

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

This handbook describes procedures developed by TxDOT to help practitioners comply with Section 6(f) Land and Water Conservation Fund (LWCF) Act.

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1.0 Introduction

This handbook describes the procedures developed by the Texas Department of Transportation (TxDOT) to help practitioners determine if Section 6(f) Land and Water Conservation Fund Act (LWCF Act) protected properties – parks and recreation areas improved by LWCF funds – are present in the project area and to consult with the TxDOT Environmental Affairs Division (ENV) to determine the necessary documentation and compliance activities. Ultimate decision-making responsibility and approval of Section 6(f) compliance lies with the National Park Service (NPS). NPS administers the LWCF Act; however, the NPS delegates many of the roles and responsibilities to a department within each state. In Texas, the NPS delegated the statewide administration of the act to the Texas Parks and Wildlife Department (TPWD); therefore, the TPWD Executive Director serves as the State Liaison Officer (SLO).

1.1 TxDOT Policy

It is TxDOT policy to adhere to the provisions of the LWCF Act as codified in [36 CFR 59.3](#), the [LWCF State Assistance Program Manual](#) released by the NPS. TxDOT places particular emphasis on avoidance, minimization, and compensation for uses of land acquired or enhanced by the LWCF Act.

1.2 Applicable Project Types

Section 6(f) applies to all transportation projects, regardless of funding source or approval authority, which propose to use land from a Section 6(f) property.

2.0 Compliance Requirements

The Land and Water Conservation Fund Act (LWCF Act) of 1965 established a funding source assisting states and federal agencies to meet present and future outdoor recreation demands and needs. Section 6(f)(3), as codified in [36 CFR 59.3](#), is the cornerstone of federal efforts to ensure that the federal investments in LWCF assistance are being maintained for public outdoor recreation use. Federal assistance from the LWCF is allocated to a state for the planning, acquisition, and or development of needed land and water public outdoor recreation projects.

Once land has been purchased or developed, partially or entirely, with LWCF assistance, it is considered a Section 6(f) property, and no Section 6(f) property shall be wholly or partly converted to a use other than public outdoor recreation uses without the approval of the NPS. In other words, Section 6(f) properties must be used for public recreation, unless the NPS approves the substitution of a replacement property, which must be substituted at a 1:1 ratio in terms of fair market value (36 CFR 59.3(b)(1)) and usefulness in comparison to the converted/used land (36 CFR 59.3 (b)(3)). Approval to convert a Section 6(f) property to a non-recreational use is rarely granted, and it requires extensive compliance activities and documentation. For additional information concerning the required compliance activities and documentation, consult the ENV.

Two Paths to Compliance

Section 6(f) prohibits certain types of decisions even if all the appropriate compliance activities are conducted correctly and all required documentation is prepared correctly. This type of law is known as a substantive requirement because it focuses on the substance of an agency's decision and includes an obligation to make a specific finding or determination. Substantive laws can block an agency from taking action, regardless of how thoroughly the action has been studied or vetted with resource agencies and the public. There are two possible paths to substantive compliance with Section 6(f) for a transportation project. The following compliance paths are ordered from the level of least to most adverse impact.

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- **No Use Determination** – While a Section 6(f) property is located in the project area, the proposed activity is outside the official Section 6(f) boundary.
- **Conversion of Use and Replacement of Section 6(f) Property** – If a Section 6(f) property must be used to meet the purpose and need of a project and there is no feasible and prudent avoidance alternative, the NPS can approve a conversion of the use of a Section 6(f) property and replacement property of equal fair market value and usefulness, although approval is rarely granted.

3.0 Procedural Requirements

The procedural requirements outlined below were developed by TxDOT to help practitioners determine if Section 6(f) properties are present in the project area and to consult TxDOT about the necessary documentation and compliance activities. Proceed step by step through the process as indicated. However, not every step will be required for every project; for example, if there are no Section 6(f) properties present, then only Step One is necessary.

Step One – Determine if any Section 6(f) properties are in the project area. If there are no Section 6(f) properties in the project area, the compliance process is complete.

Step Two – Consult the ENV to determine what compliance activities are required or if a conversion of use is likely to be approved.

Step Three – Complete the compliance activities and appropriate documentation as advised by ENV. The compliance process is complete.

4.0 Identify Section 6(f) Properties

Section 6(f) applies only to properties acquired or developed, partially or wholly, with Land and Water Conservation Fund (LWCF) assistance, and these Section 6(f) properties are easy to identify using the LWCF [Project List by County and Summary Reports](#) webpage, which is maintained by the National Park Service. There are instructions and several lists on the webpage, but the [Detailed Listing of Grants – With County Totals](#) at the bottom of the page lists all the Section 6(f) properties in Texas by county. It is highly recommended that project sponsors contact the Texas Parks and Wildlife Department (TPWD) Director of Recreation Grants directly for the most recent list of Section 6(f) properties. Section 6(f) properties must be identified as early as practicable in the planning and development stages of a project to allow complete avoidance of the protected resources to receive full and fair consideration.

5.0 Consult the Environmental Affairs Division (ENV)

Because the Section 6(f) compliance process is complex and rarely conducted and the compliance activities required by Section 4(f), Chapter 26, and Section 6(f) – which all protect parks and recreation areas – are similar and overlap to some degree, consult ENV immediately after a Section 6(f) property is identified in the project area to determine which compliance activities and documentation are appropriate for a project. The overlapping activities only need to be conducted once and the appropriate documentation of those activities can be referenced to demonstrate compliance for each act. Therefore, determining which project-specific requirements apply to a project and completing the required compliance activities in an order that does not cause scheduling-related delays in the project delivery process can greatly streamline the project delivery process.

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6.0 Official with Jurisdiction

Working closely with the official with jurisdiction (OWJ) is critical to success in complying with Section 6(f). The OWJ for this process is the entity that administers the park or recreational property and is the party responsible for maintaining the Section 6(f) property for recreational use in perpetuity. After consulting the ENV to determine the required compliance activities and documentation, it is mandatory that the project sponsor consults with the OWJ immediately if a conversion is being considered. This consultation provides the OWJ sufficient information to begin consultation with the TPWD. Failure to coordinate early with OWJ may cause significant time delays, and, in worst case scenarios, may cause the NPS not to approve a conversion request.

The OWJ over the Section 6(f) property is the only entity that has authority to prepare the materials to be submitted and coordinate the conversion request for approval. As shown in Figure 1, the OWJ is responsible for conducting environmental studies and appraisals, conducting coordination, and the preparation of any required forms and applications.

**Figure 1
Responsibilities**

Responsibilities	Official with Jurisdiction	Project Sponsor	Department Delegate
Prepare constraints map and project scope	X	X	X
Consult with TPWD to determine the official Section 6(f) property boundary	X		
Conduct all practical alternatives analysis to avoid use of Section 6(f) property	X	X	
Inform TPWD of pending project and coordination with NPS.	X		
Establish fair market value of Section 6(f) property and prepare the appraisal package.	X		
Identify replacement property, conduct appraisal, and prepare conversion request.	X		
Prepare a draft Section 4(f) evaluation including the selection of least overall harm alternative.		X	
Prepare the appropriate forms, assess the environmental impact of converting the Section 6(f) property use, and prepare the appropriate NEPA document	X	X	
Conduct an appraisal, assess the environmental impact of converting the replacement property to a recreational use, and prepare the appropriate NEPA document	X	X*	
Coordinate the appropriate forms and conversion request with TPWD	X		
Coordinate Section 4(f) documentation and Section 6(f) conversion request and approval with the USDOT agency with jurisdiction over the project.			X

* The project sponsor may assist the OWJ as determined during project scoping.

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To fulfill the responsibility of preparing materials used for coordination and preparing the required forms, the OWJ often requests the project sponsor's assistance, during scoping. This should be completed after consulting ENV in an effort to determine the appropriate compliance activities and documentation.

7.0 Public Involvement

Section 6(f) regulations do not require public participation; however, they do require adherence to all other state and federal laws prior to any approvals, which includes the requirements from Chapter 26 of Texas Parks and Wildlife Code (TPWC). Chapter 26 requires public participation for a use or take of public park land or recreation land, regardless of whether the project is federally or state funded.

Chapter 26 requires that a notification be issued and public hearing be held to solicit local preferences regarding the use of Chapter 26 protected property. It is recommended that the hearing occur once a Section 6(f) replacement property has been located and granted preliminary approval by TPWC. For more information regarding Chapter 26 requirements, refer to the TxDOT Chapter 26 Toolkit.

8.0 Documentation

Project specific documentation requirements are varied and will be determined through consultation with the ENV immediately after a Section 6(f) property is identified in the project area. Section 6(f) requires the preparation of a number of documents as part of the consultative process with the TPWD, NPS, and USDOT agency with jurisdiction over the project. A majority of the documents are prepared by the OWJ often with assistance from the project sponsor or department delegate. These responsibilities will be determined during the scoping process and ENV consultation efforts.

Once the appropriate documentation requirements for the outcome of Section 6(f) compliance activities of a project are determined, this documentation must be summarized in the National Environmental Policy Act (NEPA) document or the documentation supporting a categorical exclusion (CE) or in the state project development process.

9.0 Review and Approval Process

Compliance with Section 6(f) requires two approvals. First the conversion of Section 6(f) property must be approved. Second, the transportation project must be approved through the NEPA or state project development process.

9.1 Conversion Approval

If it is determined that a Section 6(f) property has to be converted to a non-recreational use in whole or in part for the project design to meet the project's purpose and need, approval only can be granted by the NPS at the request of the LWCF State Liaison Officer (SLO). In Texas, the NPS delegated the responsibilities of the LWCF SLO to the TPWD. If the LWCF SLO at TPWD believes the request is justified and meets the appropriate criteria, the SLO submits the conversion request to the appropriate regional director at NPS. The NPS has the authority to disapprove a conversion request and or to reject any proposed replacement property substitutions. Approval to convert recreational lands protected by Section 6(f) to a transportation use is not automatic; this approval is a discretionary action and should not be considered a right of the OWJ or project sponsor.

9.2 Environmental Approval

In addition to an approval of the conversion, the USDOT agency with jurisdiction over the project will not approve a Section 4(f) action unless the environmental review documentation states that the NPS or its designee agreed to the conversion request to replace Section 6(f) property with an appropriate replacement property. Therefore, Section 6(f) compliance activities should be completed prior to the submittal of Section 4(f) documents for review and approval from the USDOT agency with jurisdiction over the project. Section 4(f) approvals are pursued concurrently with the NEPA or state transportation project approval process. For additional information concerning Section 4(f) compliance activities and sequencing, refer to the TxDOT Section 4(f) Toolkit.

10.0 Glossary

Conversion of Section 6(f) Property – A conversion is a use of Section 6(f) property, and, for the purposes of Section 6(f) a use is called a conversion because the use requires the conversion of the recreational use of the Section 6(f) property to a non-outdoor recreation use. The only type of use recognized by Section 6(f) is a permanent incorporation. It is important to note that, unlike a Section 4(f) use, temporary incorporations and constructive uses do not trigger Section 6(f) protection. Therefore, any transportation related permanent incorporation of Section 6(f) property is considered a conversion of the property's use, regardless of the amount of land used even if that amount is inconsequential. Typically, the incorporation of Section 6(f) property for project purposes would be considered an actual conversion or change in use. However, if the incorporation is necessary as part of a project that would directly enhance the recreational use of Section 6(f) property, like providing improved access for visitors or emergency personnel, then the incorporation of land may not require a conversion, as the incorporation does not change or diminish the recreational use of the property.

Department Delegate – The department delegate is a TxDOT district, office, or division responsible for approving state environmental review documents and other aspects of the state environmental process conducted under [43 TAC 2.8](#). Under the code, the department delegate is responsible for certifying that environmental documentation and environmental review documents for Federal Highway Administration (FHWA) projects are suitable for transmission to the FHWA for review and approval. The department delegate also is responsible for approving local government requests to be designated as project sponsors.

Official(s) with Jurisdiction – The official with jurisdiction (OWJ) is typically the agency that owns or administers the property in question. It is the responsibility of the OWJ to prepare conversion packets including, land appraisals, environmental studies, and replacement proposals. The OWJ is also responsible for conducting coordination with the State Liaison Officer. As agreed to and defined in the Project Scope, the district may assist the OWJ in any of the tasks associated with Section 6(f) compliance.

Project Sponsor – As defined by the [Texas Administrative Code](#), the project sponsor accepts the responsibility for preparing the environmental review document or CE documentation and performing any related tasks. A TxDOT district, division, office, region or a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation may be a project sponsor. Private entities and other types of local government entities may not serve as project sponsors.

State Liaison Officer – The Liaison Officer is the statewide administrator of the Land and Water Conservation Fund Act. In Texas, the statewide administration of the act has been delegated by the National Parks Service (NPS) to the Texas Parks and Wildlife Department. It is the responsibility of the State Liaison Officer to make recommendations and coordinate conversion proposals with the NPS.

11.0 Abbreviations and Acronyms

CFR	Code of Federal Regulations
EPDM	Environmental Project Development Manual
FHWA	Federal Highway Administration
LWCF	Land and Water Conservation Fund
NEPA	National Environmental Policy Act
NPS	National Park Service
OWJ	Officials with Jurisdiction
SLO	State Liaison Officer
TAC	Texas Administrative Code
TPWC	Texas Parks and Wildlife Code
TPWD	Texas Parks and Wildlife Department
TxDOT	Texas Department of Transportation
USC	United States Code
USDOT	U.S. Department of Transportation

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Appendix A

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

Revision History	
Effective Date Month, Year	Reason for and Description of Change