



## NEPA Section 6(f) Guidance

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### Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for Section 6(f) and defines the process for identifying Section 6(f) property to determine the appropriate level of coordination that is required.

Section 6(f) of the Land & Water Conservation Fund (LAWCON) Act (16 U.S.C. 4601-4 et seq. and the implementing regulations at 36 CFR Part 59) protects certain recreation lands that received LAWCON funding from being converted into a non-recreational use. The Maine Department of Agriculture, Conservation, and Forestry (DACF) oversees this program for the State of Maine to assist in the preservation and development of outdoor recreation resources. MaineDOT coordinates all 6(f) processes with DACF. All properties established and/or enhanced through this program are subject to the requirements of Section 6(f).

MaineDOT Historic Coordinators are responsible for assessing and ensuring compliance with Section 6(f) under NEPA Assignment. Section 6(f) information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

### 1.0 Section 6(f) Initial Project Questions and Documentation

The following question is required to be answered by the MaineDOT Historic Coordinator (HC):

1. Are Section 6(f) properties present within the project area?

The MaineDOT HC will review the MaineDOT Property Realty Management System and the [Maine Department of Agriculture, Conservation and Forestry \(DACF\) LAWCON database](#) to determine if public properties are located on the project (LAWCON funds are only used on public properties).

A Yes response to Question 1 requires a review of property acquisitions on LAWCON property (go to 2.0). A No response concludes the LAWCON assessment. All actions will be processed and documented in MaineDOT's ProjEx database in Permits, Assessments, and Assessment Details.

Section 6(f) properties will also be subject to Section 4(f) regulations if the project is receiving federal-aid transportation funds or requires federal approval. However, **it is important to note that Section 6(f) will always apply to a property that received the LAWCON funds, regardless of the funding source secured for the project.**



## NEPA Section 6(f) Guidance

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### 2.0 Section 6(f) Project Questions, Identifying Impacts, and Documentation

After identifying Section 6(f) properties, the HC is required to answer the following question:

2. Are property acquisitions required on Section 6(f) properties?

A Yes response to Question 2 requires the HC to review the LAWCON database and if necessary contact DACF in order to obtain the boundaries of the Section 6(f) property(ies) and to identify Section 6(f) items that received the allotted funds. The HC and Team Leader will work with the Project Manager to avoid permanent acquisitions of the 6(f) property. Once these items have been identified, the HC will start the documentation as outlined in Section 3.0.

A No response concludes the LAWCON assessment as this resource will not be converted to non-recreational use. All actions will be processed and documented in MaineDOT's ProjEx database in Permits, Assessments, and Assessment Details, and MaineDOT's Environmental CPD e-file.

### 3.0 LAWCON Coordination Process

If there are permanent acquisitions of Section 6(f) property, the action results in a conversion of land to a non-recreational use.

The HC will work with DACF to ensure all requirements under 36 CFR § 59.3 Conversion requirements are met. The HC will draft documents and provide them to DACF. DACF will coordinate with

(a) Background and legal requirements. Section 6(f)(3) of the LAWCON Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in LAWCON assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with LAWCON 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 LAWCON-assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the [State Liaison Officer \(DACF\)](#) 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



## NEPA Section 6(f) Guidance

---

consider [State](#) (DACF) 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. 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.

(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 the satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for LAWCON-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 a LAWCON 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 LAWCON 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.



## NEPA Section 6(f) Guidance

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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.

DACF will receive approval to the conversion and acceptability of the replacement property in writing from the NPS Regional Director. DACF will provide the approval to MaineDOT HC.

All documentation will be placed in MaineDOT's ProjEx database Permits, Assessments and Assessment Details and MaineDOT's Environmental CPD e-file.

### 4.0 Links

Land and Water Conservation Fund Act:

<https://www.nps.gov/ncrc/programs/lwcf/protect.html>

Maine Department of Agriculture, Conservation and Forestry web page

[Land and Water Conservation Fund: Bureau of Parks and Lands: Maine DACF](#)