



**Parks, Recreation  
and Historic Preservation**

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# Handbook on the **Alienation and Conversion of Municipal Parkland**

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# HANDBOOK ON THE ALIENATION AND CONVERSION OF MUNICIPAL PARKLAND IN NEW YORK

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## Introduction

Municipally-owned parkland, including recreational facilities, trails, and passive conservation areas, is a nonrenewable resource that should be protected. Once lost to another use recreational or open space is difficult to recover. For this reason, the New York State Office of Parks, Recreation and Historic Preservation (“State Parks”) strongly endorses the maintenance and expansion of municipal parks, and the recreational opportunities they offer. State Parks encourages a “no net loss of parkland” policy.

While the preservation of municipal parks is the goal, State Parks recognizes that in certain instances a municipality may conclude that a change in parkland use is necessary. When a proposal for such a change is made, State Parks encourages careful evaluation of the change and its impacts. Municipal decision-makers should be aware of, and ensure compliance with, legal requirements applicable to the proposed change.

This *Handbook on the Alienation and Conversion of Municipal Parkland in New York* (“*Handbook*”) has been prepared for use by municipal employees and individuals interested in the process for changing the use of municipal parkland. At the outset, it is important to know that there are two procedures that may be triggered when a municipality wishes to change the way it uses parkland. These two procedures are known as parkland alienation and parkland conversion.

### Parkland Alienation

Parkland alienation occurs when a municipality wishes to convey, sell, or lease municipal parkland or discontinue its use as a park. Parkland alienation applies to every municipal park in the State, whether owned by a city, county, town, or village. In order to convey parkland away, or to use parkland for another purpose, a municipality *must* receive prior authorization from the State in the form of legislation enacted by the New York State Legislature and approved by the Governor. The bill by which the Legislature grants its authorization is commonly referred to as a parkland alienation bill.

### Parkland Conversion

Parkland conversion occurs when a municipality wishes to convey, sell, or lease Federally-funded parkland to another entity, or if a Federally-funded park will cease to be used for public *outdoor* recreation. Conversions are done *only* for those municipal parks that have received Federal funds for acquisition or improvement pursuant to either the Land and Water Conservation Fund or the Urban Park and Recreation Recovery Program. Under most circumstances, Federally-funded municipal parkland is subject to *both* alienation and conversion procedures. The conversion process is a second layer of review; Federal approval of a conversion does *not* replace the need for State parkland alienation legislation, and the State approval must be obtained first. The conversion process is governed by the rules and regulations of the National Park Service (“NPS”) of the United States Department of the Interior.

### The Role of the Office of Parks, Recreation and Historic Preservation

Although it has no statutory role in the municipal alienation process, State Parks is often asked for advice and guidance by municipalities, concerned citizens, the Governor, and the Legislature. State Parks is available to work with the legislative sponsors of alienation bills. In addition, State Parks advises the Governor regarding each alienation bill that is passed by the Legislature. The memorandum provided by State Parks contains information about the proposed alienation and the

Agency's recommendation on whether the bill should be signed into law. This memorandum is eventually filed with the legislative record known as the "bill jacket" if the bill is signed into law.

In cases where State grant money has been invested in municipal parkland, State Parks is more involved in the alienation process because State grant programs place statutory and regulatory requirements on municipal recipients, and State Parks enters the grant on behalf of the State. As a party to the grant contract, State Parks has the authority to approve any changes in use of municipal parkland and to enforce the contract's restrictions on behalf of the State.

In cases where Federal grant money has been invested in municipal parkland, State Parks is the liaison between the municipality and the NPS. State Parks guides the municipality in gathering the required information for the conversion process and, on behalf of the municipality, submits the documentation to the NPS with comments and a recommendation. Because State Parks administers the Federal funding programs on behalf of the NPS, State Parks enforces the contractual restrictions that NPS required of its municipal grant recipients.

### **How to Use This *Handbook***

This *Handbook* was written with a broad audience in mind, from concerned citizens with little knowledge of the law, to municipal employees, attorneys, and legislators who are familiar with statutes and case law. It is not intended as an exhaustive reference. In particular, the alienation restrictions imposed by State and Federal grant contracts are similar to, but not identical to the common law alienation restrictions discussed in this Manual.

To learn more about parkland alienation, start by reading Chapter 1, All About Parkland Alienation. Chapter 2, The Alienation Process, sets forth how an alienation should be accomplished. For parks and recreational facilities that have been Federally-funded, also read Chapter 3, All About Parkland Conversion, and Chapter 4, The Conversion Process.

## Chapter 1. All About Parkland Alienation

Parkland alienation is the process required when a municipality seeks to convey parkland or change its use. The parkland alienation process applies to parkland owned by municipalities, including cities, counties, towns and villages. In general, in order to alienate parkland a municipality must receive authorization from the State in the form of an alienation bill. Such a bill must pass in the Legislature and be signed by the Governor before the municipality may act. Municipal parkland that has been the beneficiary of State or Federal funding via grants may be subject to additional limitations on alienation as conditions of the funding statute and regulations.

### A. The Legal Basis for Parkland Alienation

The basic principles of parkland alienation are grounded in common law, rather than in statute. The parkland alienation process derives from the public trust doctrine, which imposes a duty to hold public land for the benefit of the people and restricts the ability of local governments to sell or convey certain land or change its use, including parks. The public trust doctrine is a judicially developed doctrine that has been evolving for centuries. It provides that certain land should, by its nature, be available for the use and enjoyment of all.

Courts in New York have applied the public trust doctrine to municipal parkland since the late 1800s<sup>1</sup> and have emphasized the importance of parks to a community's health and the happiness of its citizens.<sup>2</sup> In 2001, the highest court in New York State reaffirmed the inclusion of parkland under the public trust doctrine, declaring that "our courts have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring specific legislative approval before it can be alienated or used for an extended period for non-park purposes."<sup>3</sup>

Although municipal parkland is held by the State in trust for the public, it can be sold or conveyed by the Legislature, as the representative of the people.<sup>4</sup> The Legislature may delegate powers to

<sup>1</sup> See e.g., Brooklyn Park Comm'rs v. Armstrong, 45 N.Y. 234 (1871); New York & S.I. Ferry Co.

<sup>2</sup> See e.g., Meriweather v. Garrett, 102 U.S. 472, 501 (1880) (including parks in a list of property held for public uses); Williams v. Gallatin, 128 N.E. 121, 123 (N.Y. 1920) (examining an incidental use of parkland for compatibility with the public good provided by a park – "They facilitate free public means for pleasure, recreations and amusement and thus provide for the welfare of the community"). See also, Aldrich v. City of New York, 145 N.Y.S. 2d 732, 742 (Sup. Ct. 1955) ("Parks play a vital role in the health of a community, which 'has more to do with the general prosperity and welfare of a state than its wealth or its learning or its culture.'") (quoting Adler v. Deegan, 167 N.E. 705 (N.Y. 1929)); Williams v. Hylan, 215 N.Y.S. 101, 110 (Sup. Ct. 1926).

<sup>3</sup> Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050, 1053-54 (N.Y. 2001) (citing Miller v. City of New York, 15 N.Y.2d 34, 37 (1964)); Avella v. City of New York, 2017 N.Y. Slip Op. 04383.

<sup>4</sup> See New York & S.I. Ferry Co., at 78 ("The State, in place of the crown, holds the title, as trustee of a public trust, but the legislature may, as the representative of the people, grant the soil, or confer an exclusive privilege in tide-waters, or authorize a use inconsistent with the public right, subject to the paramount control of congress, through laws passed, in pursuance of the power to regulate commerce, given in the federal Constitution. (Rogers v. Jones, 1 Wend. 261, Gould v. H.R.R.R. Co., 6 N.Y. 522, The People v. Tibbetts, 19 N.Y. 523.)"); Brooklyn Park Comm'rs, at 243 ("It was within the power of the legislature to relieve the city from the trust to hold it for a use only, and to authorize it to sell and convey. (citing Nicoll v. New York & E.R. Co., 12 N.Y. 121, 122 (1854))").

municipalities, but in the absence of a plain and direct grant of authority, the conveyance of parkland, its exclusive use, or use inconsistent with the public's rights is invalid.<sup>5</sup>

New York State has a number of local government institutions empowered by the Legislature.<sup>6</sup> The Legislature delegates to municipal corporations, including counties, towns, cities, and villages, certain powers for the administration of local government.<sup>7</sup> The only local government statute to speak to parkland alienation is New York State's General City Law, which explicitly provides that city-owned parkland is "inalienable" and requires legislative approval to alienate.<sup>8</sup> Given the silence on this subject in the rest of New York State's local government laws, it is clear that there is no plain and direct grant of authority to municipalities to alienate parkland. Without the authority to alienate, municipalities may at most grant revocable licenses.<sup>9</sup>

## **B. Land Subject to Parkland Alienation**

The parkland alienation process applies to any dedicated municipal parkland no matter its size. The parkland dedication and alienation processes do not apply to State-owned parkland, which is governed by the legislative authority granted to State agencies in the Public Lands Law, the Parks, Recreation and Historic Preservation Law, and the Environmental Conservation Law.<sup>10</sup>

The dedication of land to park purposes may be either formal or implied. *Formal* dedication is an official act by the governing body of the municipality, such as the passage or adoption of a formal resolution or local law.<sup>11</sup> Formal dedication is commonly indicated by phrases like "land(s) dedicated for park purposes" and "dedicated parkland." *Implied* dedication is shown by actions or declarations by a local government that are unmistakable in their purpose and decisive in their character as to intent to dedicate land for use as parkland.<sup>12</sup> Examples include a municipality publicly announcing its intention to purchase the land specifically for use as a park, "master planning" for recreational purposes, budgeting for park purposes, "mapping" land as parkland, accepting State or Federal park grant funds, or constructing recreational facilities.<sup>13</sup> Long

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<sup>5</sup> See Potter v. Collis, 10 E.H. Smith 16, 156 N.Y. 16, 50 N.E. 413 (1898) (holding invalid the act of municipal corporation outside the strict or implied terms of its chartered powers); Aldrich v. City of New York, at 741; Gewirtz v. City of Long Beach, 330 N.Y.S.2d 495, 509 (Sup. Ct. 1972).

<sup>6</sup> Statute of Local Governments §10. Grants of powers to local governments.

<sup>7</sup> Meriweather, at 511 ("Municipal corporations are mere instrumentalities of the State for more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers. There is no contract between the State and the public that the charter of a city shall not be at all times subject to legislative control." See also Potter v. Collis. The powers of local government are detailed in New York's County Law, General City Law, General Municipal Law, Town Law and Village Law.

<sup>8</sup> N.Y. Gen. City Law § 20(2).

<sup>9</sup> McNamara v. Wilcox, 73 App. Div. 451, 452, 77 N.Y.S. 294 (1902).

<sup>10</sup> City Club of New York, Inc. v. Hudson River Park Trust, No. 101068/2015 (Sup. Ct. New York County, filed April 7, 2016), *aff'd*, 37 N.Y.S.3d 123, 2016 N.Y. Slip Op. 05954.

<sup>11</sup> 1996 N.Y. Op. Atty. Gen. (Inf.) 1093 (village board may act by resolution or by local law to dedicate a parcel as parkland). New York State Office of the Attorney General, Informal Opinion No. 96-37 can be found at: [http://www.ag.ny.gov/bureaus/appeals\\_opinions/opinions/1996/informal/96\\_37.pdf](http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1996/informal/96_37.pdf)

<sup>12</sup> Glick v. Harvey, 25 N.Y. 3d 1175, 1180 (2015) (reviewing the threshold for implied dedication).

<sup>13</sup> Kenny v. Board of Trustees of Village of Garden City, 735 N.Y.S.2d 606, 607 (App. Div. 2<sup>nd</sup> 2001) (property acquired for recreational purposes and used for recreation was instilled with public trust even though never officially dedicated).

continued and accepted use of land as a park can also constitute dedication through implication.<sup>14</sup> Implied dedication of parkland only exists if the landowner's act or declaration clearly indicates an intention to permanently create parkland, and it does not exist when, for example, property is simply being managed as parkland under temporary or provisional terms.<sup>15</sup>

Recreational facilities are also subject to parkland alienation restrictions. Public facilities like golf courses,<sup>16</sup> marinas,<sup>17</sup> ice rinks, ski trails, and bridle and bicycle paths may constitute public parks.<sup>18</sup>

### C. Actions Constituting an Alienation

Alienation is a substantial intrusion on municipal parkland use for non-park purposes, even if the landowner does not convey title or intends to eventually restore the parkland.<sup>19</sup> Which actions meet this standard and which do not is determined primarily by case law and the precedents established by courts. The following section provides an overview of what is and what is not an alienation.

#### Conveyance or Sale

The classic example of an alienation is the conveyance or sale of municipal parkland without the Legislature's sanction.

- In *Brooklyn Park Commissioners v. Armstrong*<sup>20</sup> the sale of portions of Prospect Park was challenged, but upheld because the sale had been authorized by State legislation.

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<sup>14</sup> *Village of Croton-on-Hudson v. Westchester County*, 331 N.Y.S.2d 883, 884 (App. Div. 2<sup>nd</sup> 1972) (“While the deeds into the county are in fee and contain no restriction of the land to park use and while there does not appear to have been a formal dedication of the land to such use . . . we think the long-continued use of the land for park purposes constitutes a dedication and acceptance by implication.”); *Riverview Partners. v. City of Peekskill*, 710 N.Y.S.2d 601 (App. Div. 1<sup>st</sup> 2000) (implied dedication due to evidence showing property was purchased for park purposes, named “Fort Hill Park” on maps and sign at entrance, and used as a park by the public since it was purchased); *Gewirtz*, at 504 (“The essential elements necessary to establish a dedication are an offer by an owner, either express or implied, to appropriate land or some interest or easement therein to public use and an acceptance of such offer, either express or implied when acceptance is required, by the public.”); *but see Pearlman v. Anderson*, 307 N.Y.S.2d 1014, 1016 (N.Y. Sup. 1970), *affd.* 314 N.Y.S.2d 173 (App Div 2<sup>nd</sup> 1970) (black top walkways, lights and benches, along with shrubs and trees planted to discourage ball playing were insufficient to imply dedication as parkland); *O’Shea v. Hanse*, 147 N.Y.S.2d 792, 798 (Sup. Ct. 1955) (where land never dedicated or used as park and no deed restriction required use as park, Village had authority to sell after finding unsuitable for park).

<sup>15</sup> *Glick* at 1180 (finding no implied dedication of parkland for parcels managed by city parks department under temporary and revocable permits and agreements with the city transportation department).

<sup>16</sup> *Van Cortlandt Park*, at 1055 (temporary disruption of public golf course and driving range required legislative approval).

<sup>17</sup> *Port Chester Yacht Club v. Village of Port Chester*, 507 N.Y.S.2d 465, 467 (App. Div. 2<sup>nd</sup> 1986) (lease that would create an exclusive use of public marina would be invalid without legislative authorization); *Lake George Steamboat Co. v. Blais*, 281 N.E.2d 147, 148-49 (1972) (lease of dock space absent legislative authorization to purely private profit making concern violates public trust).

<sup>18</sup> *Rivet v. Burdick*, 6 N.Y.S.2d 79 (App. Div 4<sup>th</sup> Dept. 1938) (public ski trails, ski practice slopes, toboggan slides, bob runs, bridle paths, and winter sports facilities constituted public parks or playgrounds); Opinion 92-49 N.Y. Office of the State Comptroller (recreational trails constitute public parks) available at <http://www.osc.state.ny.us/legal/1992/legalop/op92-49.htm>.

<sup>19</sup> *Van Cortlandt Park*, at 1054.

<sup>20</sup> *Brooklyn Park Commissioners*, at 243.

- In *Ellington Const. Corp. v. Zoning Bd. Of Appeals of Inc. Village of New Hempstead*<sup>21</sup> the Village zoning board proposed transferring a parcel of dedicated parkland to a developer. The Appellate Division found the suggestion untenable in the absence of special State legislation.

In certain circumstances, parkland may be conveyed without an alienation bill. These circumstances, such as other legislative authorization or a reverter in the deed restrictions, are not common.

- In *Grant v. Koenig*<sup>22</sup> the City of Kingston accepted a gift of land on the condition that it be used as parkland and in the event it no longer be used as parkland it would revert to the grantors' heirs. Conveyance of the property back to the previous owners was upheld, because the reversion was outside the control of the Legislature.
- In *Village Green Realty Corp. v. Glen Cove Community Development Agency*<sup>23</sup> the transfer of parkland by the City of Glen Cove to Glen Cove Community Development Agency, an urban renewal agency, was upheld. The court found that the Legislature had granted authority for the transfer in §503-a of the General Municipal Law.

### Other Public Uses

The use of parkland by a municipality for a non-park purpose is considered an alienation, even if the use has public benefit or purpose. Examples of non-park uses deemed an alienation include:

- Laying out streets and highways,<sup>24</sup>
- Museums,<sup>25</sup>
- Landfills and composting centers,<sup>26</sup>
- Public works facilities and storage space,<sup>27</sup>

<sup>21</sup> *Ellington Const. Corp. v. Zoning Bd. of Appeals of Inc. Vill. of New Hempstead*, 152 A.D.2d 365, 379, 549 N.Y.S.2d 405, 414 (1989) aff'd, 77 N.Y.2d 114, 566 N.E.2d 128 (1990).

<sup>22</sup> *Grant v. Koenig*, 67 Misc. 2d 1028, 1031, 325 N.Y.S.2d 428, 433 (Sup. Ct. 1971) aff'd, 39 A.D.2d 1000, 333 N.Y.S.2d 591 (1972).

<sup>23</sup> *Vill. Green Realty Corp. v. Glen Cove Cmty. Dev. Agency*, 95 A.D.2d 259, 261, 466 N.Y.S.2d 26, 28 (1983). This decision was limited to the authority for the transfer to the urban renewal agency and did not address the use of the parkland once the agency had jurisdiction.

<sup>24</sup> *In re Central Parkway, Schenectady*, 251 N.Y.S. 577, 580 (Sup. Ct. 1931).

<sup>25</sup> *Williams v. Gallatin*, at 122-23 (disallowing the lease of a building in Central Park for use as a museum by the Safety Institute of America, on the basis that its purposes of promotion of safety and advancement of knowledge were not related to the park purposes of pleasure, recreation and amusement). See also *Tuck v. Heckscher*, 65 Misc. 2d 1059, 320 N.Y.S.2d 419, 424-25 (Sup. Ct. 1971), aff'd 37 A.D.2d 558, 323 N.Y.S.2d 659 (1971), aff'd 29 N.Y.2d 288, 277 N.E.2d 402, (1971) (allowing the expansion of the Metropolitan Museum of Art in Central Park within the bounds previously authorized by the legislature for a museum on the parkland, but not beyond).

<sup>26</sup> *Stephenson v. County of Monroe*, 351 N.Y.S.2d 232 (App. Div. 2<sup>nd</sup> 1974) (use of park as landfill required legislative approval); *Raritan Baykeeper, Inc. v. City of New York*, 42 Misc. 3d 1208(A), 984 N.Y.S.2d 634 (Sup. Ct. 2013) (use of parkland for composting center serving community at large required legislative authorization).

<sup>27</sup> *Capruso v. Village of Kings Point*, 912 N.Y.S.2d 244, 245 (App. Div. 2<sup>nd</sup> 2010) (finding a Department of Public Works facility and storage an alienation because it didn't enhance or complement the park experience); see *Bates v. Holbrook*, 64 N.E. 181, 182-83 (N.Y. 1902) (enjoining use of portion of park to store equipment related to subway construction where only temporary use was authorized by the legislature); *Ackerman v. Steisel*, 480 N.Y.S.2d 556,



- Parking for municipal vehicles<sup>28</sup> and
- Housing (public and private).<sup>29</sup>

Incidental uses are, however, permitted without alienation legislation. To determine whether a use is incidental, courts ask whether the purpose is substantially similar or related to park purposes. One early overview of acceptable buildings in municipal parks included public libraries, monuments, zoos, playgrounds and rest houses.<sup>30</sup> Other examples of uses of parkland that are not considered alienation include:

- Parking lots for park patrons,<sup>31</sup>
- Restaurants and snack bars,<sup>32</sup>
- Bike share stations<sup>33</sup> and
- Recreational facilities including batting cages, golf courses, skating rinks, boat launches and marinas, and the associated equipment concessions.<sup>34</sup>

### Leases and Licenses

For non-alienation incidental uses of parkland, municipalities may issue revocable licenses and in some cases leases to outside operators.<sup>35</sup> A revocable license for a park purpose is usually not an alienation of parkland. Leases, on the other hand, are carefully examined to determine the extent to which exclusivity is granted and a public benefit is served.<sup>36</sup>

- In *Ott v. Doyle*,<sup>37</sup> a contract for the operation of a public golf course in a city park was deemed a revocable license and allowed without the need for State alienation

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558 (App. Div. 2<sup>nd</sup> 1984) (“temporary” use of park for sanitation vehicles an alienation requiring legislative approval).

<sup>28</sup> *Chatham Green v. Bloomberg*, 765 N.Y.S.2d 446, 453-54 (Sup. Ct. 2003) (deeming use of James Madison Plaza as police vehicle parking lot an alienation.)

<sup>29</sup> *Kenny*, at 607 (private senior housing inconsistent with purpose for which parkland was acquired). See *Grayson v. Town of Huntington*, 618 N.Y.S.2d 407 (2<sup>nd</sup> Dept. 1994) (acknowledging 1990 amendment to New York Public Housing Law requiring municipalities to seek legislative approval to alienate parkland for public housing purposes).

<sup>30</sup> *Williams v. Gallatin*, at 123.

<sup>31</sup> *Blank v. Browne*, 216 N.Y.S. 664 (App. Div. 1<sup>st</sup> 1926) (concession for automobile parking not an alienation).

<sup>32</sup> *795 Fifth Ave. Corp. v. City of New York*, 205 N.E.2d 850, 851 (1965) (legislative approval was not required for construction of a café and restaurant in Central Park); *Union Square Park Comty. Coal. v. NYC Dep’t of Parks and Recreation*, 22 N.Y.3d 648 (N.Y. 2014) (finding a 15 year license for a restaurant in the Union Square pavilion did not require alienation legislation); *Gredinger v. Higgins*, 124 N.Y.S. 22 (App. Div. 1st Dept. 1910) (revocable license to sell refreshments did not raise alienation question).

<sup>33</sup> See *Matter of Application of Friends of Petrosino Square v. Sadik-Khan*, 42 Misc.3d 226 (Sup. Ct. N.Y. Co. 2013).

<sup>34</sup> *Committee to Preserve Brighton Beach & Manhattan Beach, Inc. v. Planning Comm’n*, 259 A.D.2d 26 (1<sup>st</sup> Dept. 1999) (discussing golf driving range, mini golf, in-line skating rink and batting cages); *McNamara*, at 452 (boat rental service); *Niagara Preservation Coalition, Inc. v. NYPA*, 121 A.D.3d 1507 (N.Y. App. Div. 4<sup>th</sup> 2014) (allowing boat storage facility in portion of park without legislative approval). See *Ott v. Doyle*, 654 N.Y.S.2d 975 (Sup. Ct. 1997) (allowing a license to operate a public golf course without alienation legislation).

<sup>35</sup> *Williams v. Hylan*, 215 N.Y.S. 101, 110 (Sup. Ct. 1926).

<sup>36</sup> *Id.* (Finding concessions not necessarily barred because the grantee profits by it, so long as a paramount effect is not for the private gain of the grantee); *Port Chester Yacht Club*, at 467 (remanding for fact-finding to determine whether the use was exclusively private and primarily profit-making).

<sup>37</sup> 654 N.Y.S.2d 975.

legislation. Among the factors the court considered were the termination at will clause; significant city oversight of fees, hours, operating procedure, marketing and hiring, and the non-exclusivity of the rights granted.

- On the other hand, in *Miller v. City of New York*,<sup>38</sup> a contract for the construction and operation of a golf driving range was deemed a lease constituting an alienation. The contract in question lacked a revocable-at-pleasure clause and granted an exclusive possessory interest.
- In *Lake George Steamboat Co. v. Blais*,<sup>39</sup> the exclusive lease of a park's marina space to a private sightseeing company was found to be an alienation.
- In *Johnson v. Town of Brookhaven*,<sup>40</sup> a long-term lease to a private homeowner's association to build a private community within a park was held to be an alienation. The lease fees were supposed to support the remainder of the park, but that was not sufficient to provide a public park purpose to the contract.

### Access Restrictions and Fees

Municipal parks and recreational facilities must be kept open to the public on an equitable basis. Restricting access to local residents when parkland had previously been open to the general public is an alienation.<sup>41</sup> Where availability of public facilities such as ball fields or marina berths is limited, a potential alienation issue can be avoided by providing all users the same opportunity for access through the use of a lottery or first-come, first served policy.

Charging "use fees" is not an alienation as long as they are reasonable and non-discriminatory. Where use fees are charged, whether by a public or private operator, they should not be in excess of those charged for comparable facilities in the area. If it does not violate the restrictions of State or Federal funding, a municipality may charge non-residents a higher fee than residents, within reason.<sup>42</sup>

### Temporary Use

Legislative approval is required even for non-permanent disruptions of parkland where the municipality intends to restore the parkland. While courts allow for the possibility of de minimus exceptions to the public trust doctrine, inconsistent uses as short as two years have been found to be alienations.

- In *Chatham Green v. Bloomberg*<sup>43</sup> the New York City police claimed their use of James Madison Plaza as a parking lot was temporary because it would end when their prior garage space was re-opened. The court found the use to be an alienation, saying the use had gone on for nearly two years and noting that the re-opening of the garage was fully in the power of the police department.

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<sup>38</sup> *Miller v. City of New York*, at 37-38.

<sup>39</sup> *Lake George Steamboat Co.*, at 149.

<sup>40</sup> *Johnson v. Town of Brookhaven*, 646 N.Y.S.2d 180, 181-82 (App. Div. 2<sup>nd</sup> 1996).

<sup>41</sup> *Gewirtz*, at 512 (striking down a city law restricting formerly open park beach access to local residents only).

<sup>42</sup> *See id.* at 512-13 (city imposed different rates for residents and non-residents for beach access; suggests two-times the resident fee is reasonable).

<sup>43</sup> 765 N.Y.S.2d 446.

- In *Bates v. Holbrook*<sup>44</sup> three-year use of parkland for subway construction equipment storage was found to be an alienation, even though legislative authority existed for temporary use or occupancy of public parks to support the construction. The court held that “as to this contract and the completion of the work thereunder,” the storage structures were permanent.
- In *Friends of Van Cortlandt Park v. City of New York*<sup>45</sup> the City of New York’s plans for constructing an underground water treatment plant beneath Van Cortlandt Park were found to be an alienation because of the disruption of five and a half years of construction called for in a portion of the park.<sup>46</sup>

The cases discussed above are not an exhaustive or exclusive list of actions constituting parkland alienation. In addition to case law, both the New York State Attorney General and Comptroller issue opinions on parkland alienation. For example, the Attorney General has recommended alienation legislation for timber harvesting and other agricultural uses of municipal parkland.<sup>47</sup> Out of an abundance of caution the Attorney General has also advised alienation legislation for inter-municipality transfers of parkland even when the park use continues after transfer.<sup>48</sup>

The body of parkland alienation case law is continually growing. In the absence of an on-point legal precedent, municipalities should be aware that neither State Parks nor the New York State Attorney General could confidently conclude that alienation legislation would not be required.

## D. Other Alienation Issues

### State Funding

Land acquired or improved with State Parks grant funding, whether owned by a municipality or not-for-profit entity, is subject to restrictions on use and conveyance. These restrictions are specified in the terms of funding contracts with the State. Although the restrictions are like the restrictions the common-law parkland alienation doctrine imposes, certain uses permitted under parkland alienation doctrine are impermissible on land funded by a State Parks grant. Municipalities and not-for-profits that have accepted State funding for lands used as parks should consult with State Parks’ Grants Bureau. Below is a list of State programs through which a municipality or not-for-profit entity may have obtained funding, and the restrictions imposed by those programs.

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<sup>44</sup> *Bates v. Holbrook*, at 182-83.

<sup>45</sup> 750 N.E.2d 1050.

<sup>46</sup> The court’s decision reached only the question of the construction disruption, and declined to rule on whether an underground installation that in no way intrudes upon park uses would require legislative approval. An overturned lower court decision had focused on this aspect of the city’s plans and not found the underground water treatment plant to be an alienation.

<sup>47</sup> 1995 N.Y. Op. Atty. Gen. (Inf.) 52, available at [http://www.ag.ny.gov/bureaus/appeals\\_opinions/opinions/1995/informal/95\\_52.pdf](http://www.ag.ny.gov/bureaus/appeals_opinions/opinions/1995/informal/95_52.pdf) (non-park uses such as timber harvesting inconsistent with park use and require legislative approval); 1963 N.Y. Op. Atty. Gen. (Inf.) 250 (park property cannot be leased for agricultural purposes without the express authority of an act of the Legislature).

<sup>48</sup> 2008 N.Y. Op. Atty. Gen. (Inf.) 11 New York State Office of the Attorney General, available at: <https://ag.ny.gov/sites/default/files/opinion/I%202008-11%20pw.pdf>.

	Restricted alienation	Replacement parkland required	Approval of State Comptroller and Attorney General
<b>State Program:</b>			
Park and Recreation Land Acquisition Bond Acts of 1960 and 1965 <sup>49</sup>	•		
Outdoor Recreation Development Bond Act of 1965 <sup>50</sup>	•		
Environmental Quality Bond Act of 1986 <sup>51</sup>	•	•	•
Environmental Protection Act of 1993 <sup>52 53</sup>	•	•	
Clean Water/Clean Air Bond Act of 1996 <sup>54 55</sup>	•	•	•

### Department of Transportation Projects

Generally, the New York State Department of Transportation (“DOT”) acquires land for highway purposes according to the Eminent Domain Procedure Law.<sup>56</sup> Any Federally-funded highway project must comply with section 4(f) of the Federal Department of Transportation Act of 1966,<sup>57</sup> Section 4(f) prohibits highway projects that would require the use of any land in a public park, recreation area, wildlife or waterfowl refuge, or historic property unless there is no prudent or feasible alternative. Section 4(f) further requires the design to such projects to minimize harm to affected resources.<sup>58</sup>

<sup>49</sup> N.Y. Parks, Rec. & Hist. Preserv. Law § 15.09. *See also* 1995 N.Y. Op. Atty. Gen. (Inf.) 52 (non-park uses such as timber harvesting, establishment of a town hall, chamber of commerce or granting of an easement on land purchased with funds issued through the Park and Recreation Acquisition Bond Act of 1960 are prohibited absent legislative authorization).

<sup>50</sup> N.Y. Parks, Rec. & Hist. Preserv. Law § 17.09.

N.Y. Env'tl. Conserv. Law § 52-0907.

<sup>52</sup> N.Y. Env'tl. Conserv. Law § 54-0909(1).

<sup>53</sup> The Environmental Protection Act of 1993 also contains a restriction against alienation for park projects undertaken by not-for-profits. N.Y. Env'tl. Conserv. Law § 54-0909(2). Section 54-0907(2) requires that the not-for-profit enter into a contract with the commissioner that places other restrictions on use of the land.

<sup>54</sup> N.Y. Env'tl. Conserv. Law § 56-0309(12).

<sup>55</sup> The Clean Water/Clean Air Bond Act of 1996 also contains a provision for projects by not-for-profits. N.Y. Env'tl. Conserv. Law § 56-0309(13). Section 56-0309(11) requires that the not-for-profit enter into a contract with the commissioner placing certain restrictions on the land.

<sup>56</sup> *See, generally*, N.Y. Em. Dom. Proc. Law.

<sup>57</sup> Section 4(f) is entitled “Preservation of Parklands” and is codified at 23 U.S.C.A. § 13. The implementing regulations for this section of law can be found at 23 C.F.R. 771.135. *See also* the Federal Highway Administration’s website at <http://environment.fhwa.dot.gov/4f/index.asp>.

<sup>58</sup> Section 4(f) provides:

After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so

### **E. Enforcement of the Public Trust Doctrine and Alienation Principles**

State Parks has no legal authority to regulate municipal parkland alienation or police a local government's compliance with the public trust doctrine if the municipality has not received State or Federal grant funds. In contrast, if a municipality has accepted State funding for the park pursuant to the grant programs mentioned in Chapter 1.D or Federal funding pursuant to the grant programs discussed in Chapter 3, State Parks plays a role in enforcing alienation principles. As a party to a grant contract that includes alienation restrictions that benefit the public in return for State and Federal funding, State Parks has a contractual basis for enforcement. State Parks also holds an enforcement right pursuant to the statute governing the grant. If State Parks is not successful in working with grantees to resolve an alienation issue it could refer the matter to the Office of the Attorney General.

The New York State Comptroller has the authority to conduct audits related to alienation and did so in 2015.<sup>59</sup> The Comptroller's audit tracked municipal compliance with the terms of alienation legislation signed into law.

In addition to enforcement and monitoring action by the State, citizens may bring lawsuits against municipalities to enforce parkland alienation principles. Parkland alienation lawsuits are usually brought in the New York State Supreme Court in the form of a "declaratory judgment" proceeding.<sup>60</sup> While declaratory judgment proceedings are often restricted by a statute of limitations that requires that an action be commenced within a certain period of time after the injury or its discovery, there is no statute of limitations for claims seeking injunctive relief.<sup>61</sup> An ongoing violation of the public trust doctrine brought about by a municipality's alienation of parkland without alienation legislation is considered a continuing wrong that a municipality has the ability to control and abate.<sup>62</sup> In practical terms, this means that a municipality may be required to undo an alienation long after the transaction occurred or obtain legislative authority validating the alienation.<sup>63</sup>

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determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

23 U.S.C.A. § 13. See also Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 411 ("This language is a plain and explicit bar to the use of federal funds for construction of highways through parks - - only the most unusual situations are exempted.").

<sup>59</sup> The audit report is available at <http://www.osc.state.ny.us/localgov/audits/swr/2015/parkland/global.pdf>.

<sup>60</sup> N.Y. Civ. Prac. L. & R. 3001

<sup>61</sup> Jensen v. General Electric Co., 82 N.Y.2d 77, 90 (1993) (injunctive relief for nuisance or trespass continues to accrue irrespective of statute of limitations for money damages).

<sup>62</sup> Capruso, at 245.

<sup>63</sup> See Chapter 232 of the Laws of 2016, retroactively authorizing the action from Capruso v. Village of Kings Point.

## Chapter 2. The Alienation Process

Obtaining a parkland alienation bill can be complex and time consuming. A municipality should begin work on an alienation proposal as early as possible, long before the State legislative session starts. When both State alienation and Federal conversion apply to the same parcel, it is recommended that the procedures be reviewed and take place in a coordinated fashion. State Parks is available to review a proposal for the alienation of municipal parkland, whether or not legislation has been introduced.

### A. General Advice for Alienations

Chapter 1 of this *Handbook* is intended to assist municipalities in determining if a proposed change in use or ownership fits the definition of an alienation requiring State legislation. State Parks strongly encourages exploration of alternatives prior to the sale, conveyance, or lease of parkland or change in its use. A municipality that chooses to forgo the alienation legislation process, may find itself defending an expensive, avoidable lawsuit.

Municipalities considering alienation should refer to the *Checklist for Municipalities Considering Parkland Alienation* found in Appendix 1 which contains a list of questions designed to fully consider the alienation, its alternatives and its consequences. Having the answers to these questions on hand will assist in obtaining alienation legislation, in completing the State Environmental Quality Review Act process (“SEQR”)<sup>64</sup> and in answering any public inquiries or challenges that may arise.

Involving the public early is highly recommended. Public involvement is encouraged and often required when implementing SEQR,<sup>65</sup> and accomplishing this early in the process is encouraged.

Municipalities are also encouraged to contact State Parks early for information and guidance.

### B. Steps in the Alienation Process

#### **Determine if State or Federal Funding Has Been Allocated to the Park**

State or Federal funding provided for acquisition or development—at any time in the park’s history—may have created a legal obligation to obtain an alienation bill, provide substitute parkland or obtain approval from the State Comptroller and Attorney General. The presence of Federal funding may also require the parkland conversion process.

#### **Complete the Parkland Alienation Municipal Information Form**

The *Parkland Alienation Municipal Information Form* found in Appendix 2 helps municipalities think through the specifics of the parcel to be alienated and the requirements of the alienation bill. Completed forms should be provided to State Parks and to the Members of the Legislature who will be sponsoring the alienation bill. Among other things, it asks about:

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<sup>64</sup> See the section entitled “Conduct a Review Pursuant to the State Environmental Quality Review Act” in this Chapter.

<sup>65</sup> N.Y. Env’tl. Conserv. Law § 8-0103(2)(“Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.”)

- The history of the park, its size, and the proposed use of the land being alienated;
- The location of the park, its present use and condition, and the presence of natural, historic and archeological resources; and
- Whether or not any State or Federal grants were used towards the acquisition or development of the park.

### **Contact Your Local State Legislative Sponsors and Draft Legislation**

A municipality seeking an alienation bill needs to contact its local State legislative representatives. A legislative sponsor drafts the legislation on behalf of the municipality and introduces it in the Legislature. Sponsors are needed in *both* the Senate and the Assembly to pass the bill. While the primary bill drafter is the legislative sponsor, State Parks' Counsel's Office is available to work with municipal officials and legislative staff to ensure the bill includes necessary provisions.

The following discussion addresses the requirements for alienation bills but does not necessarily apply to all alienation bills and represents State Parks' best practices. Example bills are provided in the Appendices to this *Handbook*. These examples are for guidance only; the assistance of a legislator should be sought during bill drafting.

#### *Substitute Land*

Substitute land is required if the parkland to be alienated received State funding under the grant programs discussed in Chapter 1.D, or if it received Federal funding under the grant programs discussed in Chapter 3. State Parks *cannot* waive a statutory substitution of parkland requirement imposed by the terms of a State or Federal grant program. State Parks recommends that the municipality contact State Parks' Grants Bureau in Albany as early as possible to discuss these requirements and ensure that proper replacement land is identified and inserted in the alienation bill.

The proposed legislation should identify both the land being discontinued and the substitute land using metes and bounds descriptions. If it is not possible to identify the substitute land at the time the alienation legislation is introduced, State Parks recommends inserting a paragraph in the legislation that clearly states that adequate substitute land must be identified and that the legislation will not become effective until the substitute provision is satisfied. In cases where there is no State or Federal funding but the municipality intends to replace the lost parkland with as yet unidentified land, the legislation typically requires the municipality to set aside for the purchase of additional parkland an amount equal to the appraised fair market value of the parkland being discontinued. Such bills have also included language to the effect that if the land purchased as substitute land is lower in fair market value than the land being alienated, the municipality should dedicate the difference to capital improvements for existing park facilities.

State Parks supports a "no net loss of parkland" policy and strongly encourages municipalities to include provisions for substitute parkland in all alienation bills. However, State Parks recognizes that in rare instances there may be valid reasons to alienate parkland when the substitution of other land is not possible or appropriate. In such cases, if substitution is not mandatory due to State or Federal grant funding requirements, State Parks recommends providing for the net proceeds of the sale of parkland to be used for acquisition of additional parkland if it can be found, or in the alternative, used for capital improvements to existing municipal park facilities.

### *Conversion Requirements*

If the parkland to be alienated has received Federal funding pursuant to the Land and Water Conservation Fund or the Urban Park and Recreation Recovery Program the bill should set forth a requirement to follow the Federal conversion process before any transfer or discontinuance. Sample language is contained in section 3 of the sample legislation at Appendix 7

If a municipality is uncertain whether the park has received funding from those sources, State Parks recommends including the language as a precaution. If it turns out that the park is not the recipient of the Federal funding, there would be no requirement to fulfill the conversion process.

### *Utility Easements*

Alienation legislation for an easement over parkland for utility purposes should require the fair market value of the easement be determined and dedicated toward the acquisition of additional parkland and/or the capital improvements of existing park facilities within the municipality. Where the alienation legislation authorizes easements for the installation of utility facilities beneath public parkland, the bill should require the surface of the land to be restored and to continue to be used for park purposes.

### *Cellular Towers*

Municipalities often seek alienation legislation to convey easements for the installation of cellular towers in municipal parkland, however, it is not necessary to convey an easement or fee title for this use. A better alternative for the municipality is to enter into a long term lease to ensure the parcel continues to be owned by the municipality and returned to parkland after the useful life of the cellular facility. To protect the public's ownership of the parkland affected by the alienation bill for a long-term lease, it is recommended that the lease include the following provisions:

- The fair market value of the lease shall be dedicated to capital improvements to existing park facilities and/or toward the purchase of additional parkland in that municipality.
- The term of the lease shall be specified and usually should not exceed 25 years.
- If the leased land ceases to be used for cellular tower purposes, the cellular tower infrastructure shall be removed, the surface of the land restored, and the land shall revert to the municipality for park purposes.

### *Leases of Public Facilities to Private Operators*

In a case where a municipality intends to lease a municipal park, including a recreational facility, to a private operator, the alienation bill and the lease should contain the following provisions:

- The facility shall be operated for public park or recreational purposes.
- The lease shall terminate should the public park or recreational purpose cease.
- The net proceeds from the lease shall be used by the municipality for the acquisition of park facilities, or for capital improvements to other municipal parks, and not allocated to the municipality's general fund.
- The parkland shall be available to the general public on an equitable basis. If the facilities are heavily used, the lease should call for an equitable system to ensure fair



access by the general public. For example, the system may be “first-come, first-served,” or a lottery system as discussed in Chapter 1.

The Legislature has in the past required a significant investment in the public facility by the party leasing the parkland, and has limited the duration of the lease.

### *Language to avoid*

State Parks strongly recommends that language to the effect of “notwithstanding any law to the contrary” not be included in parkland alienation bills. Such language is unnecessarily broad and could have the effect of nullifying important statutory protections of the State’s investment in municipal parks. If a contrary law must be addressed in an alienation bill, only that specific law should be addressed.

### **Conduct a Review Pursuant to the State Environmental Quality Review Act**

The State Environmental Quality Review (“SEQR”) Act<sup>66</sup> requires municipalities and State agencies to consider, in advance, the potential significant adverse environmental impacts of their actions; to weigh alternatives to their actions; and minimize or mitigate any environmental damage potentially caused by those actions. The New York State Department of Environmental Conservation (DEC) considers a municipal resolution requesting parkland alienation legislation an action under SEQR. The initial decision to sell, lease, convey or change the use of parkland is also part of the action subject to SEQR.

SEQR analysis should be commenced as early as possible in the decision-making process.<sup>67</sup> State Parks suggests that a municipality vote on the SEQR resolutions prior to voting on the alienation resolution request and on the resolution for the Municipal Home Rule Request.

SEQR provides that actions “occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space” may be Type I.<sup>68</sup> Type I actions are those that are more likely to have a significant adverse impact on the environment and more likely to require an *Environmental Impact Statement* (EIS).<sup>69</sup> Performing the SEQR early on ensures that citizens are afforded multiple opportunities to express their views in writing or at a public meeting or hearing.

The DEC website is an excellent source of information regarding SEQR.<sup>70</sup> There, you will find an easy to understand introductory guide known as the *SEQR Cookbook*,<sup>71</sup> and the more detailed *SEQR Handbook*.<sup>72</sup>

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<sup>66</sup> N.Y. Envtl. Conserv. Law §§ 8-0101 through 8-0117.

<sup>67</sup> 6 N.Y.C.R.R. § 617.1(c) (“The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision making processes of the state, regional and local government agencies at the earliest possible time.”)

<sup>68</sup> 6 N.Y.C.R.R. 617.4(b)(10).

<sup>69</sup> 6 N.Y.C.R.R. 617.4(a).

<sup>70</sup> <http://www.dec.ny.gov/>

<sup>71</sup> [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cookbook1.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf)

<sup>72</sup> [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/seqrhandbook.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf)

### **Pass a Municipal Home Rule Request**

Under the rules of the Senate and the Assembly, a parkland alienation bill cannot be sent to the floor for a vote until the Municipal Home Rule Request is received.<sup>73</sup> A Municipal Home Rule Request is a formal request for enactment of a bill made by the local municipal legislative body. A sample is provided in Appendix 11 . At least two-thirds of the local legislative body must vote for the request or, alternatively, a majority of the body must vote for it and the chief executive officer of the municipality must concur.<sup>74</sup> If the alienation bill is amended during the State legislative session, a new Municipal Home Rule Request will be required. For additional information on the legislative process for these bills, contact your Senator or Assembly Member.

Questions concerning the Municipal Home Rule Request and the State legislative process should be directed to the office of the Member who is the legislative sponsor for the alienation bill.

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<sup>73</sup> See Rules of the New York State Senate, Rule VII, § 5(c) (“Where a ‘home rule’ request is required as provided in any section of Article IX of the [New York State] Constitution, such request, certificate or message must be filed with the Journal Clerk of the Senate before final passage of such bill.”) The Rules of the Senate are available on the Senate’s website: <http://www.senate.state.ny.us/>. See, also, Rules of the New York State Assembly, Rule IV, § 6(I) (“Where a ‘home rule request . . . is required as provided in any section of Article IX . . . of the [New York State] Constitution, such . . . message must be filed with the Office of Journal Operations before such bill can be reported by a committee.”) The Rules of the Assembly are available on the Assembly’s website: <http://assembly.state.ny.us/rules>.

<sup>74</sup> *Id.*

### Chapter 3. All About Parkland Conversion

A municipality's proposed conveyance of parkland or proposed change in its use from outdoor recreational use requires compliance with parkland conversion process if it received Federal funding from the Land and Water Conservation Fund ("LWCF") or the Urban Park and Recreation Recovery ("UPARR") program for the parcel. If the municipal park in question has not received this type of Federal funding, this chapter does *not* apply. The conversion approval process is administered by the National Park Service and State Parks. A conversion requires an amendment to the original project agreement and the maps associated with that agreement.<sup>75</sup> Almost all changes in use that result in a conversion also trigger the alienation process in New York State.<sup>76</sup> Therefore, in most cases, a municipality must receive approval from the Legislature for the alienation *prior to* obtaining conversion approval.

#### A. Legal Basis for Parkland Conversion

Since 1965, over \$215 million in federal funds have been awarded to municipalities in New York State for the acquisition of land to be used for public parks, and for the development of outdoor park and recreational facilities. This money was made available by the Department of the Interior, through the NPS, under the Land and Water Conservation Fund Act of 1965 ("LWCF Act")<sup>77</sup> and the Urban Park and Recreation Recovery Act of 1978 ("UPARR Act").<sup>78</sup>

State Parks has been designated by the Legislature to serve as the liaison with the Federal government for purposes of administering the LWCF and UPARR programs.<sup>79</sup> These administrative responsibilities include distributing funds and monitoring compliance with Federal requirements.<sup>80</sup>

One of the pillars of these programs is the prohibition against "conversion" of property acquired or developed with LWCF or UPARR assistance.<sup>81</sup> The LWCF Act provides:

No property acquired or developed with assistance under this section shall, without the 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.<sup>82</sup>

And the UPARR Act provides:

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<sup>75</sup> 36 C.F.R. § 59.3(c).

<sup>76</sup> One example of a conversion that may not be an alienation is when a municipality wishes to construct an indoor recreational facility in a park. This triggers the conversion process, but will most likely *not* trigger the alienation process. State Parks' Regional Grant Administrators are available to discuss different scenarios and assist in determining if a proposed action is an alienation, a conversion, or both.

<sup>77</sup> Land and Water Conservation Fund, 54 U.S.C. §§200301-200310.

<sup>78</sup> 16 U.S.C. §2501*et. Seq.*

<sup>79</sup> N.Y. Parks, Rec. & Hist. Preserv. Law § 13.23.

<sup>80</sup> N.Y. Parks, Rec. & Hist. Preserv. Law § 13.23(b), 36 C.F.R. § 59.1, and 9 N.Y.C.R.R. § 437.2.

<sup>81</sup> 54 U.S.C. §200305(f)(3).

<sup>82</sup> *Id.*

No property improved or developed with assistance under this title shall, without the approval of the Secretary, [of the Interior] be converted to other than public recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the current local park and recreation recovery action program and only upon such conditions as he deems necessary to assure the provision of adequate recreation properties and opportunities of reasonable equivalent location and usefulness.<sup>83</sup>

## **B. Land Subject to Parkland Conversion**

When federal funding is obtained by a municipality, the recreational facility or park that received the funding is mapped. These maps are often referred to by the section of the LWCF Act and UPARR Act that refers to conversion – for the LWCF Act this is Section 6(f), and for the UPARR Act it is Section 1010. This Handbook uses the generic term “boundary map” to refer to these maps.

Boundary maps are created by grantees and mutually agreed upon with State Parks.<sup>84</sup> The boundary map is kept on file with State Parks and the NPS, and all parkland and recreation facilities included in the boundaries of the map are subject to conversion restrictions.<sup>85</sup>

Map boundaries often exceed the area that benefitted from the funding and may encompass entire parks or recreation facilities.<sup>86</sup> This is often done “to assure the protection of a viable recreation entity.”<sup>87</sup> No property shown as a park or recreation facility on a boundary map on file with State Parks and the NPS may be conveyed or used for purposes other than outdoor recreation without the approval of the NPS.<sup>88</sup>

## **C. Conversion Process Triggers**

The rules and regulations for conversions are set forth by the NPS. State Parks relies on the *Federal Land and Water Conservation Fund State Assistance Program: Federal Financial Assistance Manual, Volume 69* (often referred to as the “LWCF Manual”) to determine which potential municipal actions affecting parkland are conversions.<sup>89</sup>

The following scenarios are identified in the *LWCF Manual* as triggering the conversion process:

- The property interests are conveyed for non-public outdoor recreation uses.<sup>90</sup>
- The project area (or a portion of it) is used for a public or private function that does not provide outdoor recreation.<sup>91</sup> Examples include: use as a commuter parking lot or composting facility.

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<sup>83</sup> 16 USC § 2509.

<sup>84</sup> 36 C.F.R. § 59.1

<sup>85</sup> *Id.*

<sup>86</sup> 36 C.F.R. § 59.1

<sup>87</sup> *Id.*

<sup>88</sup> 36 C.F.R. § 59.3(c) and 54 U.S.C. §200305(f)(3).

<sup>89</sup> The *Land and Water Conservation Fund State Assistance Program: Federal Financial Assistance Manual, Volume 69* can be found on the National Park Service’s website at: <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>

<sup>90</sup> *LWCF Manual*, Ch. 8(E)(1)(a) at page 8-4.

<sup>91</sup> *LWCF Manual*, Ch. 8(E)(1)(b) at page 8-4.

- Non-eligible *indoor* recreation facilities are developed within the project area without NPS approval.<sup>92</sup> Examples include: indoor tennis courts or skating rinks, meeting rooms, auditoriums, libraries, restaurants, lodges, motels, luxury cabins, kitchens, and equipment sales areas.<sup>93</sup>
- Public outdoor recreational uses of the property are terminated.<sup>94</sup>

The following scenarios are discussed in the *LCWF Manual* as possibly triggering the conversion process, depending on specific circumstances:

- The granting of underground utility easements that do not significantly impact the recreational utility of the project site.<sup>95</sup>
- The construction of public facilities, or the sheltering or enclosure of LWCF-funded facilities, where it can be shown that an increase in public recreation will occur.<sup>96</sup> These projects require review by the NPS.<sup>97</sup>
- Discontinuing the operation of a particular recreation area or facility when it has fulfilled its useful life, that is, when it is determined to be “obsolete.”<sup>98</sup> These areas must continue to be used for public outdoor recreation. State Parks and the NPS must approve all such changes in the recreational use of a facility.

The NPS regulations also impose operation and maintenance standards on LWCF and UPARR funded projects. Failure to follow the NPS’ rules, or obtain required approvals from the NPS, may result in the NPS asserting that a conversion is taking place. Examples include:

- Restricting use to local residents or giving preferential treatment to residents for reservations,<sup>99</sup> including imposing a fee structure that charges non-residents more than twice the amount charged to residents.<sup>100</sup>
- Inadequate maintenance and repair of structures and physical improvements.<sup>101</sup>
- Significant changes to the use of a project, resulting in increased or decreased use by the public.<sup>102</sup>

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<sup>92</sup> *LWCF Manual*, Ch. 8(E)(1)(c) at page 8-4.

<sup>93</sup> *LWCF Manual*, Ch. 3(B)(9)(h) at page 3-6.

<sup>94</sup> *LWCF Manual*, Ch. 8(E)(1)(d) at page 8-4

<sup>95</sup> *LWCF Manual*, Ch. 8(E)(2)(a) at page 8-4. In addition to the *LWCF Manual*’s discussion of underground utility easements and rights-of-way, the National Park Service issued a process update memo to State Liaison Officers dated January 3, 2017 requiring that all proposals involving the installation of any type of underground infrastructure under LWCF property under an easement or right-of-way for evaluation by the National Park Service. In State Parks’ recent experience, the National Park Service is differentiating utility easements from easements for energy transmission projects and subjecting the latter to the conversion process if a permanent easement as opposed to a license is being conveyed to the energy transmission company.

<sup>96</sup> *LWCF Manual*, Ch. 8(E)(2)(b) at page 8-4 and 8(E)(2)(d) at page 8-5 Ch 3(C)(7) at page 3-16 .

<sup>97</sup> The NPS sets forth certain restrictions on the construction of public facilities and enclosure. See *LWCF Manual*, Ch. 8(H) at page 8-12 and Ch. 3(C)(7) at page 3-16.

<sup>98</sup> *LWCF Manual*, Ch. 8(K) at page 8-15.

<sup>99</sup> 54 U.S.C. §200305(f)(8), 36 C.F.R. § 59.4(b), and *LWCF Manual*, Ch. 8(C) at pages 8-1 and 8-2.

<sup>100</sup> 54 U.S.C. §200305(f)(8), 36 C.F.R. § 59.4(c), and *LWCF Manual*, Ch. Ch. 8(C)(2) at page 8-2.

<sup>101</sup> *LWCF Manual*, Ch. 8 (B) at page 8-1 and (K) at page 8-15.

<sup>102</sup> *LWCF Manual*, Ch. 8(L) at page 8-15.

- Inadequate availability of the facility, such as a failure to open park facilities to the general public during reasonable hours or times of the year.<sup>103</sup>

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<sup>103</sup> *LWCF Manual*, Ch. 8(B)(5) at page 8-1.

## Chapter 4. The Conversion Process

When a municipality in New York State is considering the conversion of Federally-mapped parkland, it must work through State Parks, which directs such requests in writing to the NPS Regional Director.<sup>104</sup> The conversion process requires extensive documentation from the municipality and a detailed review by both State Parks and the NPS, therefore, it is complex and time-consuming. State Parks guides the municipality by providing information to assist it in creating a complete package detailing the municipality's proposed action. Once the package is created, State Parks reviews it to ensure that it meets the NPS criteria. State Parks, on behalf of the municipality, then submits the package with comments and a recommendation to the NPS for final approval.

Below is a list of issues that the municipality must address before a conversion package is deemed complete. In addition, municipalities are encouraged to review the *LWCF Manual* for further assistance in creating a conversion package. Certain conversions may meet the criteria for "small conversions", which are subject to an abbreviated conversion process and review. State Parks can provide a municipality with additional guidance on small conversions if appropriate.<sup>105</sup>

### A. Steps in the Conversion Process

The following is a list of the items that will need to be completed for a conversion. Following this list, each item will be discussed in more detail.

1. Complete environmental review documentation pursuant to the National Environmental Policy Act.
2. Determine the effect of the conversion on historic resources pursuant to the National Historic Preservation Act.
3. Select replacement land and submit appraisals.
4. Ensure that replacement land and remaining land meet eligibility requirements.
5. Coordinate review with other Federal agencies.
6. Prepare survey maps.
7. Submit package to the National Park Service.

#### Complete a Review Pursuant to the *National Environmental Policy Act*

The National Park Service will not consider a conversion unless "[a]ll practical alternatives to the proposed conversion have been evaluated."<sup>106</sup> Part of meeting this requirement is demonstrating that the municipality has completed an adequate environmental review.<sup>107</sup> Because the LWCF and UPARR programs are Federal programs, the environmental review must be completed pursuant to the National Environmental Policy Act (NEPA).<sup>108</sup>

Municipalities must submit environmental information on *both* the property to be converted and the replacement parcel (discussed later). Pursuant to NEPA, an Environmental Assessment or a

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<sup>104</sup> 36 C.F.R. § 59.3(b).

<sup>105</sup> *LWCF Manual* Ch. 8(E)(9) on small conversions has been updated pursuant to the Policy Update Memo issued by the National Park Service to State Liaison Officers on January 3, 2017.

<sup>106</sup> 36 C.F.R. § 59.3(b)(1). Also, *LWCF Manual* Chapter 8(E)(3)(a) at page 8-5.

<sup>107</sup> 36 C.F.R. § 59.3(b)(7). Also, *LWCF Manual* Chapter 8(E)(3)(g) at page 8-7.

<sup>108</sup> 42 U.S.C. §§ 4321 through 4370(f).

more detailed Environmental Impact Statement for both properties must be submitted with the conversion package. Within the NEPA documentation, municipalities should be prepared to provide:

- **A complete project description:** This section must include a complete description of the proposal. This includes the purpose and need for the project, a description of what the project is designed to accomplish, and who is proposing the project.
- **A discussion of alternatives:** The package must include a discussion of alternatives, including a statement demonstrating that alternatives to the conversion were evaluated and rejected on a rational basis.<sup>109</sup> It is important to note that a range of alternatives must be considered, and a description of the pros and cons of each alternative should be defined and included. Ultimately, the basis for the choice between the alternatives must be set forth. The amount of information must be sufficient to allow the NPS to identify the alternative that minimizes or avoids adverse environmental impacts to the maximum extent practicable and still meets the project's objectives.
- **A discussion of environmental setting:** This section must include a description of the existing environmental setting, condition and use of both the parcel to be converted and the replacement property. At a minimum, the municipality should include a map which shows the entire park, the boundaries of the parcel to be converted, and the location of the replacement parcel. The section should also include a description of the replacement property and its environmental value relative to the conversion parcel.
- **Environmental impacts and mitigation:** This section addresses the environmental impacts, including impacts to historic and archeological resources, which are anticipated as a result of implementing the proposed conversion and acquiring or establishing the replacement. This submission should discuss the potential impacts on both the parcel proposed for conversion and the replacement parcel and their environmental settings. A discussion of the beneficial and adverse impacts of the project on the parkland remaining after the conversion should also be included. Cumulative impacts, future phases, or other related actions should also be discussed. Any mitigation measures designed to minimize environmental harm, such as erosion controls or energy conservation, should also be described in this section.
- **Public consultation and coordination:** A section that provides a list of agencies and persons consulted should be attached. Information on public outreach and public comments and concerns should be included.

The *LWCF Manual* sets forth a much more detailed description for municipalities of what must be completed to satisfy the NEPA review.<sup>110</sup> A framework for completing this review and the required Project Description and Environmental Screening Form can be found in Appendix 3 of this Handbook.

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<sup>109</sup> 36 C.F.R. § 59.3(b)(1). Also, *LWCF Manual*, Ch. 8(E)(3)(a) at page 8-5.

<sup>110</sup> *LWCF Manual*, Ch. 4.



### **Complete a Review Pursuant to the National Historic Preservation Act**

Pursuant to the National Historic Preservation Act, Federal agencies must evaluate, minimize and mitigate the effects of their actions on historic and archeological resources.<sup>111</sup> Municipalities that have received Federal funding through the LWCF program must, therefore, assist the NPS in considering how its approval of the conversion would affect historic properties. This is referred to as an “historic preservation” review, or a “Section 106” review.<sup>112</sup> The Section 106 process requires Federal agencies and project sponsors to explore prudent and feasible alternatives that would avoid or reduce the conversion’s impacts on historic resources. The review encompasses potential effects on historic resources on both the parcel to be converted and the proposed replacement parcel which together comprise the “project area.” The municipality will be expected to coordinate with the State Historic Preservation Office (SHPO) within OPRHP to complete this review, and to obtain a “determination.”<sup>113</sup> A determination is a written statement from the SHPO that details potential effects on historic resources, if any, and how to minimize those impacts. Where adverse effects cannot be avoided by relocating or redesigning the project, the municipality must work with the SHPO to develop a “Memorandum of Agreement” (MOA) incorporating measures to mitigate those effects.

The municipality should provide the SHPO with a United States Geological Survey (USGS) map<sup>114</sup> of the project location, as well as photographs of any buildings, sites, or structures 50 years or older within, or adjacent to, the project area and any archeological sites.<sup>115</sup> If the SHPO determines that any of the buildings, sites, or structures are listed on, or eligible for listing on, the National Register of Historic Places, the municipality will have to provide the SHPO with plans and specifications and the impacts will be evaluated. Ultimately, the package to be submitted to the NPS must include review determinations, including an MOA, if required, from the SHPO.

### **Select Appropriate and Eligible Substitute Lands**

Replacement parkland is *always* required in a conversion.<sup>116</sup> The replacement property must be at least equal to the land being converted. “Equality” is based upon the specific standards below:

- The fair market value of the replacement land must be of equal or greater value than the land being converted.

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<sup>111</sup> 54 U.S.C. 306108

<sup>112</sup> *Id.* For a detailed description of the National Historic Preservation Act and the Section 106 process, please visit the Advisory Council on Historic Preservation’s website at: <http://www.achp.gov/work106.html>

<sup>113</sup> In New York State, the State Historic Preservation Officer is the State Parks Commissioner and the State Historic Preservation Office is part of OPRHP. The State Historic Preservation Office can be reached by calling (518) 237-8643. Detailed information can be found on the web at <http://nysparks.com/shpo/> Written correspondence regarding the Section 106 review process should be directed to:

Bureau Director, Field Services Bureau  
Office of Parks, Recreation and Historic Preservation  
Pebbles Island State Park, Box 189  
Waterford, NY 12188

<sup>114</sup> The preparation of a USGS map is required for all conversions as discussed the section entitled *Prepare survey maps* in this Chapter. For information on United States Geological Survey maps, see their website at: <http://www.usgs.gov/>

<sup>115</sup> Municipalities are encouraged to make use of the State Historic Preservation Office’s Cultural Resource Information System (CRIS), which is available at <https://cris.parks.ny.gov/>.

<sup>116</sup> 54 U.S.C. § 200305(f)(3).

- The recreational usefulness of the replacement land must be reasonably equivalent to the land being converted.
- The location of the replacement land must be comparable to the land being converted.<sup>117</sup>

Thus, the fair market value of *both* the proposed replacement land *and* the land to be converted must be determined and submitted. In determining fair market value, the National Park Service requires that strict Federal appraisal rules be followed, specifically, the *Uniform Appraisal Standards for Federal Land Acquisitions*.<sup>118</sup> It is important to note that a fair market value appraisal determination for an *alienation* by the Legislature may not meet the requirements of an LWCF conversion. Therefore, if a municipality is seeking to both *alienate* and *convert* parkland, the municipality should apply the *Uniform Appraisal Standards for Federal Land Acquisitions* at the beginning of the process when obtaining State alienation legislation.

The municipality must submit a statement demonstrating that the replacement property is of equivalent recreational usefulness and location. However, it is important to note that replacement property need *not* be the same size, nor located adjacent or close to the converted site.<sup>119</sup> Similarly, it is not necessary for the replacement property to provide the *identical* recreational experience or resources.<sup>120</sup> However, the recreational resources it does provide must meet public outdoor recreation needs as indicated in the *Statewide Comprehensive Outdoor Recreation Plan* (“SCORP”).<sup>121</sup>

Additionally, the replacement land becomes part of an amended grant agreement and, as a result, becomes part of the new boundary map for that project.<sup>122</sup>

### *Wetlands*

Wetlands can be used, and are often accepted by the NPS, as possible replacement land.<sup>123</sup> The regulations provide: “Wetland areas and interests therein which have been identified in the wetlands provisions of the *SCORP* 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.”<sup>124</sup> The statement submitted by the municipality demonstrating that the proposed

<sup>117</sup> *Id.*

<sup>118</sup> 36 C.F.R. § 59.3(b)(2). The *Uniform Appraisal Standards for Federal Land Acquisitions* can be found on the United States Department of Justice’s website: <http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf>.

<sup>119</sup> 36 C.F.R. § 59.3(b)(3)(ii). The implementing regulations provide that alternate sites that are not adjacent to close to the converted property allows for “administrative flexibility to determine the location recognizing that the property should meet existing public outdoor recreation needs.” *Id.* The regulations encourage that the alternate site be located within the same community, but recognize there may be some circumstances where that may not be possible. *Id.* Also *LWCF Manual* Ch. 8 (E) (3) (c)

<sup>120</sup> 36 C.F.R. § 59.3(b)(3).

<sup>121</sup> 36 C.F.R. § 59.3(b)(9). The Statewide Comprehensive Outdoor Recreation Plan, commonly referred to as “SCORP,” is prepared periodically by New York Office of State Parks, Recreation and Historic Preservation to provide statewide policy direction and to fulfill State Parks’ mandate to provide for recreation and preservation. Originally created to satisfy eligibility requirements for LWCF funding for New York State, it has evolved well beyond that original purpose. The New York State SCORP can be found on State Parks’ website: <http://nysparks.com/inside-our-agency/master-plans.aspx>.

<sup>122</sup> 36 C.F.R. § 59.3(c).

<sup>123</sup> 36 C.F.R. § 59.3(b)(3)(i). Also, *LWCF Manual* Ch. 8 (E) (3) (c) (1).

<sup>124</sup> *Id.*

replacement land is of equivalent recreational usefulness and location should specify if any of the proposed replacement land consists of wetlands.

### *Land in Public Ownership*

In addition to the fair market value and recreational usefulness criteria, there are additional factors that must be considered when a municipality selects replacement land that is already in public ownership. The following criteria are designed to avoid a net loss of parkland within a community.

- The land must *not* have been acquired by the municipality for recreational purposes.<sup>125</sup>
- The land must not have been dedicated or managed for recreational purposes while in public ownership.<sup>126</sup>
- The land must not have been acquired with Federal funds unless it was through a program authorized to match or supplement LWCF assistance.<sup>127</sup>

The municipality submitting the conversion package must ensure that the replacement property meets the eligibility requirements for LWCF assistance.<sup>128</sup> As part of the package submitted to the National Park Service, the municipality must submit a statement that sets forth evidence that the replacement parcel constitutes, or will be a part of, a “viable recreation area,” and will have legal public access.<sup>129</sup> In other words, the replacement land must provide outdoor recreational opportunities. In addition, the statement must explain how the public will be able to access the new parkland safely and legally through a right-of-way or through publicly held land.

It is important to note that if the proposal will convert only a *portion* of the original LWCF or UPARR project land, the remaining land must also meet the LWCF or UPARR requirements for providing outdoor recreational opportunities for the public. The municipality’s statement must include evidence that the remaining unconverted land will remain a viable recreational resource.<sup>130</sup> If the remaining parcel does not remain a viable recreational resource, it must be replaced as well as part of the conversion.<sup>131</sup>

### **Coordinate Review with Other Federal Agencies**

The municipality must coordinate the conversion with any other Federal agencies that may be involved. The NPS also expects a statement that demonstrates that such coordination with other Federal agencies has been satisfactorily accomplished.<sup>132</sup> A municipality may have to coordinate with:

- The United States Department of Transportation (USDOT)  
If the conversion proposal involves a USDOT project, the NPS will require

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<sup>125</sup> 36 C.F.R. § 59.3(b)(4)(i). Also *LWCF Manual*, Ch. 8 (E) (3) (d) (1).

<sup>126</sup> 36 C.F.R. § 59.3(b)(4)(ii). Also *LWCF Manual*, Ch. 8 (E) (3) (d) (2).

<sup>127</sup> 36 C.F.R. § 59.3(b)(4)(iii). Also *LWCF Manual*, Ch. 8 (E) (3) (d) (3).

<sup>128</sup> 36 C.F.R. § 59.3(b)(4). See, generally, the *LWCF Manual*, Ch. 3.

<sup>129</sup> 36 C.F.R. § 59.3(b)(4). Also *LWCF Manual*, Ch. 8 (E) (3) (d).

<sup>130</sup> 36 C.F.R. § 59.3(b)(5). Also *LWCF Manual*, Ch. 8 (E) (3) (e).

<sup>131</sup> *Id.*

<sup>132</sup> 36 C.F.R. § 59.3(b)(6). Also *LWCF Manual*, Ch. 8 (E) (3) (f).

documentation of compliance with section 4(f) of the *Federal Department of Transportation Act of 1966*.<sup>133</sup>

- The United States Fish and Wildlife Service  
If the conversion proposal may affect endangered species, wildlife management areas, or watershed projects, the NPS will require documentation that the Fish and Wildlife Service has been involved in the review.<sup>134</sup>

### **Prepare Survey Maps**

The municipality must prepare and submit clearly marked survey maps stamped and signed by a land surveyor and signed and dated by a municipal official indicating:

- The original LWCF or UPARR area.
- The area to be converted.
- The area remaining, if any.
- The substitute lands.

### **Submit the Package to the National Park Service**

State Parks will provide guidance to a municipality in preparing all the documentation needed for review by the National Park Service. Once the package is completed, State Parks, acting on behalf of the municipality, will submit the package to the NPS. The NPS will then review the documentation, and make a decision regarding the conversion. The NPS will notify State Parks about the decision, and State Parks will pass this information on to the municipality.

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<sup>133</sup> Section 4(f) was discussed in Chapter 1 in the section *Other alienation issues*. Section 4(f) is entitled “Preservation of Parklands” and is codified at 23 U.S.C.A. § 13. The implementing regulations can be found at 23 C.F.R. 771.135. See also the Federal Highway Administration’s website at <http://environment.fhwa.dot.gov/4f/index.asp>.

<sup>134</sup> For more information about the United States Fish and Wildlife Service, visit their website at: <http://www.fws.gov/>.

## Chapter 5. Conclusion

Municipal parkland is a valued community asset. The importance of preserving parkland and open space in New York has been repeatedly confirmed by courts and by the Legislature. This *Handbook* was prepared to help municipalities and other interested parties understand the processes required when conveying or changing the use of municipal parkland in New York State. It provides an overview of alienation and conversion, but should not be considered exhaustive. The *Handbook* is only one source of information and should be used for guidance only.

Footnotes throughout the *Handbook* provide additional detail or citations to references and further reading. If you are unfamiliar with the citations but wish to learn more about a particular concept, you can bring the *Handbook* to any law library, and a reference person should be able to guide you. New York State law provides that each county have a court law library that is open to the general public. The New York Unified Court system lists these libraries by county on their website at: <http://www.courts.state.ny.us/lawlibraries/publicaccess.shtml>. You can also reach the Unified Court system by calling (800) COURTNY / (800) 268-7869.

State Parks updates this *Handbook* from time to time. Should you see an error, wish to have an issue included in future versions, or see case law that you believe is relevant, please contact Petra Larsen, Associate Attorney, via email at the following address: [Petra.Larsen@parks.ny.gov](mailto:Petra.Larsen@parks.ny.gov).

## Appendix 1 Checklist for Municipalities Considering Parkland Alienation

1. What are the existing uses of the property being considered for alienation?
  - a. What is the character of the land? What types of natural or manmade resources are present on or adjacent to the parcel? For example: lakes, streams, forests, wetlands, scenic vistas, historic structures such as buildings or bridges, and archeological resources.
  - b. What kind of recreational opportunities exist on the parcel? For example: ball fields, picnic benches, pavilions, swimming pools, boat launches and docks, etc.
2. What are the current uses of the parkland? How much is the public relying on the parkland for recreational activities?
3. Are there adequate recreational opportunities within the municipality currently? If the parkland in question is alienated?
4. Is replacement land being proposed if the parkland in question is diverted to another use?
  - a. If so, what is the location of the substitute parcel?
  - b. Will it accommodate the current users of the parkland being alienated?

5. Is this parkland alienation being considered as part of a larger plan on a local, regional, or statewide level?
  
6. What are the factors that led to the municipality considering the alienation of parkland?
  
7. What is the proposed use of the parkland being considered for alienation?
  - a. Will this proposed use increase demand for recreational activities in the area? For example, will the proposed use result in an increase in the population of the area adding more individuals who would then seek recreational opportunities?
  
8. Are there other locations that could accommodate that proposed use?
  
9. Have the residents of the community had an opportunity to voice their opinion regarding the decision to alienate the parkland?
  
10. What is the appraised value of the parkland being considered for alienation? The replacement parcel?
  - a. If the parkland has received Federal funding, do the appraisals meet the Federal *Uniform Appraisal Standards for Federal Land Acquisitions*?

Name of Municipality: \_\_\_\_\_

Name of Park: \_\_\_\_\_

## **Appendix 2 Parkland Alienation Form: Municipality Information**

Revised 2017

The following form should be completed by the Municipality that is seeking to alienate parkland. Copies should be provided to the Members of the Senate and Assembly who will be sponsoring the legislation authorizing the alienation and to the Regional Grants Representative of the Office of Parks, Recreation and Historic Preservation.

### **MUNICIPAL INFORMATION FORM**

#### **Lands Being Alienated or Discontinued**

1. Has the proposed alienation been analyzed under the State Environmental Quality Review Act and applicable local laws?
  - a. If so, and if the review documents provide the answers to the following questions, you may substitute the review documents for this questionnaire.
  
2. How did the Municipality acquire the parkland being alienated?
  
3. When was the parkland acquired?
  
4. What is, in acres, the size of the park in which the land being alienated is located?



5. What is its name (if not given above)? Has the park ever been called something else?
  
  
  
  
  
  
  
  
  
  
6. What is the size, in acres, of the specific parcel being alienated?
  
  
  
  
  
  
  
  
  
  
7. Were State or Federal funds used in the acquisition or development of any portion of the park in which the land being alienated is located? If the answer is "Yes" please provide some details about the amount of the grant, its source, date of award and for what purpose it was used.
  
  
  
  
  
  
  
  
  
  
8. How is the land to be alienated currently used?
  
  
  
  
  
  
  
  
  
  
9. Are there any structures 50 years old or older on the property? Are any of the structures listed in the State or National Register of Historic Places? Does the property contain archeological resources?
  
  
  
  
  
  
  
  
  
  
10. Does the property contain wetlands, streams, significant habitats, or other similar features?

11. What is the reason the land is being alienated?

12. Describe any alternatives which would make the alienation unnecessary and why they were rejected.

13. How will any remaining parkland be affected by the alienation?

14. What impacts, including aesthetic, historic, environmental, social, cultural and recreational impacts, will the alienation of this parkland have on the surrounding neighborhood?

15. What public facility will provide residents of the community with park or recreational facilities to take the place of those being alienated?

16. Will other land be dedicated for park purposes to replace the land being alienated? If so, please answer the questions on the next page.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

—

Title: \_\_\_\_\_

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**Please provide a survey map of the property being alienated and a map, such as a tax map or street map, showing its general location in the community.**

In addition, you are invited to include with this questionnaire any photos or other documents which will better enable us to understand this proposal. Kindly send this information to

- the Office of Parks, Recreation and Historic Preservation's Regional Grant Representative for your area;
- Counsel's Office, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12238; and
- Members of the Senate and the Assembly who will sponsor the parkland alienation legislation.

**Lands Proposed As Replacement  
(if applicable)**

1. Describe the location and setting of the land proposed as replacement in relation to the land being alienated.
  
2. Give its approximate size.
  
3. How is are the replacement land currently used? Who owns the land? Describe any facilities located on the land.
  
4. Has the land ever been used for park and/or recreational purposes?
  
5. What facilities and/or uses does the Municipality plan for the replacement land?
  
6. Describe any natural or cultural resources on the replacement land (streams, wetlands, significant habitats, historic or archeological resources).
  
7. As a best guess, is the land approximately equivalent in fair market value and potential for recreational usefulness to the land being alienated or converted?

### **Appendix 3 Format and Outline of NEPA Environmental Assessment for Conversion Project**

Conversion proposals must be reviewed and approved by the National Park Service in accordance with Section 6(f) of the Land and Water Conservation Fund Act (LWCF) and 36 CFR Part 59. The national policy concerning the assessment of environmental impacts of federal and federally-funded actions is contained in the National Environmental Policy Act of 1969 (NEPA). Environmental review documents must address both the conversion and replacement (substitute) properties. These documents are required in order for NPS to complete their review under NEPA. At a minimum, preparation of an Environmental Assessment is required for all conversion projects.

The attached documents contain information from the National Park Service.

1. LWCF Proposal Description and Environmental Screening Form
2. Relevant excerpt from the LWCF Manual



## PROPOSAL DESCRIPTION AND ENVIRONMENTAL SCREENING FORM

### Land and Water Conservation Fund



The purpose of this Proposal Description and Environmental Screening Form (PD/ESF) is to provide descriptive and environmental information about a variety of Land and Water Conservation Fund (LWCF) state assistance proposals submitted for National Park Service (NPS) review and decision. The completed PD/ESF becomes part of the “federal administrative record” in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations. The PD portion of the form captures administrative and descriptive details enabling the NPS to understand the proposal. The ESF portion is designed for States and/or project sponsors to use while the LWCF proposal is under development. Upon completion, the ESF will indicate the resources that could be impacted by the proposal enabling States and/or project sponsors to more accurately follow an appropriate pathway for NEPA analysis: 1) a recommendation for a Categorical Exclusion (CE), 2) production of an Environmental Assessment (EA), or 3) production of an Environmental Impact Statement (EIS). The ESF should also be used to document any previously conducted yet still viable environmental analysis if used for this federal proposal. The completed PD/ESF must be submitted as part of the State’s LWCF proposal to NPS.

**Except for the proposals listed below**, the PD/ESF **must** be completed, including the appropriate NEPA document, signed by the State, and submitted with each new federal application for LWCF assistance and amendments for: scope changes that alter or add facilities and/or acres; conversions; public facility exceptions; sheltering outdoor facilities; and changing the original intended use of an area from that which was approved in an earlier LWCF agreement. Consult the LWCF Program Manual ([www.nps.gov/lwcf](http://www.nps.gov/lwcf)) for detailed guidance for your type of proposal and on how to comply with NEPA.

**For the following types of proposals only this Cover Page is required** because these types of proposals are administrative in nature and are categorically excluded from further NEPA environmental analysis. NPS will complete the NEPA CE Form. Simply check the applicable box below, and complete and submit only this **Cover Page** to NPS along with the other items required for your type of proposal as instructed in the LWCF Program Manual.

- SCORP planning proposal
- Time extension with no change in project scope or with a reduction in project scope
- To delete work and no other work is added back into the project scope
- To change project cost with no change in project scope or with a reduction in project scope
- To make an administrative change that does not change project scope

<b>Name of LWCF Proposal:</b>		<b>Date Submitted to NPS:</b>	
<b>LWCF Project Number:</b>	<b>Prior LWCF Project Number(s) and Park Name(s) Associated with the Assisted Site(s):</b>		
<b>Local or State Project Sponsoring Agency</b> <i>(recipient, or sub-recipient in case of pass-through grants)</i>			
<b>Name of Local or State Sponsor Contact:</b>		<b>Title</b>	
<b>Address</b>		<b>City</b>	<b>State</b>
<b>Phone</b>	<b>Fax</b>	<b>Email Address</b>	

Using a separate sheet for narrative descriptions and explanations, address each item and question in the order it is presented, and identify each response with its item number such as Step 1-A1, A2; Step 3-B1; Step 6-A1, A29; etc.

<b>Step 1. Type of LWCF Proposal</b>
<b>New Project Application</b> <input type="checkbox"/> <b>Acquisition</b> Go to Step 2A <input type="checkbox"/> <b>Development</b> Go to Step 2B <input type="checkbox"/> <b>Combination (Acquisition &amp; Development)</b> Go to Step 2C
<b>Project Amendment</b> <input type="checkbox"/> <b>Increase in scope or change in scope from original agreement.</b> Complete Steps 3A, and 5 through 7. <input type="checkbox"/> <b>6(f) conversion proposal.</b> Complete Steps 3B, and 5 through 7. <input type="checkbox"/> <b>Request for a public facility in a Section 6(f) area.</b> Complete Steps 3C, and 5 through 7.
<b>Request for temporary non-conforming use in a Section 6(f) area.</b> Complete Steps 4A, and 5 through 7.
<b>Request for significant change in use/intent of original LWCF application.</b> Complete Steps 4B, and 5 through 7.
<b>Request to shelter existing/new facility within a Section 6(f) area regardless of funding source.</b> Complete Steps 4C, and 5 through 7.
<b>Step 2. New Project Application</b> (See LWCF Manual for guidance)
<b>A. For an Acquisition Project</b> 1. Provide a brief narrative about the proposal that provides the reasons for the acquisition, the number of acres to be acquired with LWCF assistance, and a description of the property. Describe and quantify the types of existing resources and features on the site (for example, 50 acres wetland, 2,000 feet beachfront, 200 acres forest, scenic views, 100 acres riparian, vacant lot, special habitat, any unique or special features, recreation amenities, historic/cultural resources, hazardous materials/contamination history, restrictions, institutional controls, easements, rights-of-way, above ground/underground utilities, including wires, towers, etc.). 2. How and when will the site be made open and accessible for public outdoor recreation use (signage, entries, parking, site improvements, allowable activities, etc.)? 3. Describe development plans for the proposal for the site(s) for public outdoor recreation use within the next three (3) years. 4. SLO must complete the State Appraisal/Waiver Valuation Review form in Step 7 certifying that the appraisal(s) has been reviewed and meets the "Uniform Appraisal Standards for Federal Land Acquisitions" or a waiver valuation was approved per 49 CFR 24.102(c)(2)(ii). State should retain copies of the appraisals and make them available if needed. 5. Address each item in "D" below.
<b>B. For a Development Project</b> 1. Describe the physical improvements and/or facilities that will be developed with federal LWCF assistance, including a site sketch depicting improvements, where and how the public will access the site, parking, etc. Indicate entrances on 6(f) map. Indicate to what extent the project involves new development, rehabilitation, and/or replacement of existing facilities. 2. When will the project be completed and open for public outdoor recreation use? 3. Address each item in "D" below.
<b>C. For a Combination Project</b> 1. For the acquisition part of the proposal: a. Provide a brief narrative about the proposal that provides the reasons for the acquisition, number of acres to be acquired with LWCF assistance, and describes the property. Describe and quantify the types of existing resources and features on the site (for example, 50 acres wetland, 2,000 feet beachfront, 200 acres forest, scenic views, 100 acres riparian, vacant lot, special habitat, any unique or special features, recreation amenities, historic/cultural resources, hazardous materials/contamination history, restrictions, institutional controls, easements, rights-of-way, above ground/underground utilities, including wires, towers, etc.) b. How and when will the site be made open and accessible for public outdoor recreation use (signage, entries, parking, site improvements, allowable activities, etc.)? c. Describe development plans for the proposed for the site(s) for public outdoor recreation use within the next three (3) years. SLO must complete the State Appraisal/Waiver Valuation Review form in Step 7 certifying that the appraisal(s) has been reviewed and meets the "Uniform Appraisal Standards for Federal Land Acquisitions" or a waiver valuation was approved per 49 CFR 24.102(c)(2)(ii). State should retain copies of the appraisals and make them available if needed. d. reviewed and meets the "Uniform Appraisal Standards for Federal Land Acquisitions" or a waiver valuation was approved per 49 CFR 24.102(c)(2)(ii). State should retain copies of the appraisals and make them available if needed. 2. For the development part of the proposal:

- a. Describe the physical improvements and/or facilities that will be developed with federal LWCF assistance, including a site sketch depicting improvements, where and how the public will access the site, parking, etc. Indicate entrances on 6(f) map. Indicate to what extent the project involves new development, rehabilitation, and/or replacement of existing facilities.
- b. When will the project be completed and open for public outdoor recreation use?

3. Address each item in "D" below.

**D. Additional items for new projects and amendments**

- 1. Will this proposal create a new public park/recreation area where none previously existed and is not an addition to an existing public park/recreation area? Yes  (go to #3) No  (go to #2)
- 2.
  - a. What is the name of the pre-existing public area that this new site will be added to?
  - b. Is the pre-existing public park/recreation area already protected under Section 6(f)? Yes  No   
If no, will it now be included in the 6(f) boundary? Yes  No
- 3. What will be the name of this new public park/recreation area?
- 4.
  - a. Who will hold title to the property assisted by LWCF? Who will manage and operate the site(s)?
  - b. What is the sponsor's type of ownership and control of the property?  
 Fee simple ownership  
 Less than fee simple. Explain:  
 Lease. Describe lease terms including renewable clauses, # of years remaining on lease, etc.  
 Who will lease area? Submit copy of lease with this PD/ESF. (See LWCF Manual for **program restrictions** for leases and further guidance)
- 5. Describe the nature of any rights-of-way, easements, reversionary interests, etc. to the Section 6(f) park area? Indicate the location on 6(f) map. Do parties understand that a Section 6(f) conversion may occur if private or non-recreation activities occur on any pre-existing right-of-way, easement, leased area?
- 6. Are overhead utility lines present, and if so, explain how they will be treated per LWCF Manual.
- 7. As a result of this project, describe **new** types of outdoor recreation opportunities and capacities, and short and long term public benefits.
- 8. Explain any existing non-recreation and non-public uses that will continue on the site(s) and/or proposed for the future within the 6(f) boundary.
- 9. Describe the planning process that led to the development of this proposal. Your narrative should address:
  - a. How was the interested and affected public notified and provided opportunity to be involved in planning for and developing your LWCF proposal? Who was involved and how were they able to review the **completed** proposal, including any state, local, federal agency professionals, subject matter experts, members of the public and Indian Tribes. Describe any public meetings held and/or formal public comment periods, including dates and length of time provided for the public to participate in the planning process and/or to provide comments on the completed proposal.
  - b. What information was made available to the public for review and comment? Did the sponsor provide written responses addressing the comments? If so, include responses with this PD/ESF submission.
- 10. How does this proposal implement statewide outdoor recreation goals as presented in the Statewide Comprehensive Outdoor Recreation Plan (SCORP) (include references), and explain why this proposal was selected using the State's Open Project Selection Process (OPSP).
- 11. List all source(s) and amounts of financial match to the LWCF federal share of the project. The value of the match can consist of cash, donation, and in-kind contributions. The federal LWCF share and financial matches must result in a viable outdoor recreation area and not rely on other funding not mentioned here. Other federal resources may be used as a match if specifically authorized by law.

Source	Type of Match	Amount

- 12. Is this LWCF project scope part of a larger effort not reflected on the SF-424 (Application for Federal Assistance) and grant agreement? If so, briefly describe the larger effort, funding amount(s) and source(s). This will capture information about partnerships and how LWCF plays a role in leveraging funding for projects beyond the scope of this federal grant.
- 13. List all required federal, state, and local permits/approvals needed for the proposal and explain their purpose and status.

**Proceed to Steps 5 through 7**



**Step 3. Project Amendment** (See LWCF Manual for guidance)

**A. Increase/Change in Project Scope**

1. **For Acquisition Projects:** To acquire additional property that was not described in the original project proposal and NEPA documentation, follow Step 2A-Acquisition Project and 2D.
2. **For Development Projects:** To change the project scope for a development project that alters work from the original project scope by adding elements or enlarging facilities, follow Step 2B-Development Project and 2D.
3. **For Combination Projects:** Follow Step 2C as appropriate.

**B. Section 6(f)(3) Conversion Proposal**

Prior to developing your Section 6(f)(3) conversion proposal, you must consult the LWCF Manual and 36 CFR 59.3 for complete guidance on conversions. Local sponsors must consult early with the State LWCF manager when a conversion is under consideration or has been discovered. States must consult with their NPS-LWCF manager as early as possible in the conversion process for guidance and to sort out and discuss details of the conversion proposal to avoid mid-course corrections and unnecessary delays. **A critical first step is for the State and NPS to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity.** Any previous LWCF project agreements and actions must be identified and understood to determine the actual Section 6(f) boundary.

The Section 6(f)(3) conversion proposal including the required NEPA environmental review documents (CE recommendation or an EA document) must focus on the loss of public outdoor recreation park land and recreational usefulness, and its replacement per 36 CFR 59, and not the activities precipitating the conversion or benefits thereof, such as the impacts of constructing a new school to relieve overcrowding or constructing a hotel/restaurant facility to stimulate the local economy. Rather, the environmental review must: 1) focus on "resource impacts" as indicated on the ESF (Step 6), including the loss of public park land and recreation opportunities (ESF A-15), and 2) the impacts of creating new replacement park land and replacement recreation opportunities. A separate ESF must be generated for the converted park area and each replacement site. Section 6(f)(3) conversions always have more than minor impacts to outdoor recreation (ESF A-15) as a result of loss of parkland requiring an EA, except for "small" conversions as defined in the LWCF Manual Chapter 8.

For NPS review and decision, the following elements are required to be included in the State's completed conversion proposal to be submitted to NPS:

1. A letter of transmittal from the SLO recommending the proposal.
2. A detailed explanation of the sponsor's need to convert the Section 6(f) parkland including all efforts to consider other practical alternatives to this conversion, how they were evaluated, and the reasons they were not pursued.
3. An explanation of how the conversion is in accord with the State Comprehensive Outdoor Recreation Plan (SCORP).
4. Completed "State Appraisal/Waiver Valuation Review form in Step 7 for each of the converted and replacement parcels certifying that the appraisals meet the "Uniform Appraisal Standards for Federal Land Acquisitions." States must retain copies of the appraisals/waiver valuations and make them available for review upon request.
5. For the park land proposed for conversion, a detailed description including the following:
  - a. Specific geographic location on a map, 9-digit zip code, and name of park or recreation area proposed for conversion.
  - b. Description of the area proposed for the conversion including the acreage to be converted and any acreage remaining. For determining the size of the conversion, consider not only the physical footprint of the activity precipitating the conversion, but how the precipitating activity will impact the entire 6(f) park area. **In many cases the size of the converted area is larger than the physical footprint.** Include a description of the recreation resources, facilities, and recreation opportunities that will be impacted, displaced or lost by the proposed conversion. For proposals to partially convert a Section 6(f) park area, the remaining 6(f) park land must remain recreationally viable and not be impacted by the activities that are precipitating the conversion. If it is anticipated that the precipitating activities impact the remaining Section 6(f) area, the proposed area for the conversion should be expanded to encompass all impacted park land.
  - c. Description of the community and population served by the park, including users of the park and uses.
  - d. For partial conversions, a revised 6(f) map clearly indicating both the portion that is being converted and the portion remaining intact under Section 6(f).
6. For each proposed replacement site:
  - a. Specific geographic location on a map, 9-digit zip code, and geographical relationship of converted and replacement sites. If site will be added to an existing public park/outdoor recreation area, indicate on map.
  - b. Description of the site's physical characteristics and resource attributes with number and types of resources and features on the site, for example, 15 acres wetland, 2,000 feet beachfront, 50 acres forest, scenic views, 75 acres riparian, vacant lot, special habitat, any unique or special features, structures, recreation amenities, historic/cultural resources, hazardous materials/contamination history, restrictions, institutional controls, easements, rights-of-way, overhead/underground utilities including overhead wires, towers, etc.
  - c. Identification of the owner of the replacement site and its recent history of use/function up to the present.

- d. Detailed explanation of how the proposed replacement site is of reasonably equivalent usefulness and location as the property being converted, including a description of the recreation needs that will be met by the new replacement parks, populations to be served, and new outdoor recreation resources, facilities, and opportunities to be provided.
  - e. Identification of owner and manager of the new replacement park?
  - f. Name of the new replacement park. If the replacement park is added to an existing public park area, will the existing area be included within the 6(f) boundary? What is the name of the existing public park area?
  - g. Timeframe for completing the new outdoor recreation area(s) to replace the recreation opportunity lost per the terms of conversion approval and the date replacement park(s) will be open to the public.
  - h. New Section 6(f) map for the new replacement park.
7. NEPA environmental review, including NHPA Section 106 review, for both the converted and replacement sites in the same document to analyze how the converted park land and recreational usefulness will be replaced. Except for "small" conversions (see LWCF Manual Chapter 8), conversions usually require an EA.

**Proceed to Steps 5 through 7** 

**C. Proposal for a Public Facility in a Section 6(f) Area**

Prior to developing this proposal, you must consult the LWCF Manual for complete guidance. In summary, NPS must review and decide on requests to construct a public indoor and/or non-recreation facility within a Section 6(f) area. In certain cases NPS may approve the construction of public facilities within a Section 6(f) area where it can be shown that there will be a net gain in **outdoor recreation** benefits and enhancements for the entire park. In most cases, development of a non-recreation public facility within a Section 6(f) area constitutes a conversion. For NPS review, the State/sponsor must submit a proposal to NPS under a letter of transmittal from the SLO that:

- 1. Describes the purpose and all proposed uses of the public facility such as types of programming, recreation activities, and special events including intended users of the new facility and any agency, organization, or other party to occupy the facility. Describe the interior and exterior of the facility, such as office space, meeting rooms, food/beverage area, residential/lodging area, classrooms, gyms, etc. Explain how the facility will be compatible with the outdoor recreation area. Explain how the facility and associated uses will significantly support and enhance existing and planned outdoor recreation resources and uses of the site, and how outdoor recreation use will remain the primary function of the site. (The public's outdoor recreation use must continue to be greater than that expected for any indoor use, unless the site is a single facility, such as a swimming pool, which virtually occupies the entire site.)
- 2. Indicates the exact location of the proposed public facility and associated activities on the site's Section 6(f) map. Explain the design and location alternatives considered for the public facility and why they were not pursued.
- 3. Explains who will own and/or operate and maintain the facility? Attach any 3<sup>rd</sup> party leases and operation and management agreements. When will the facility be open to the public? Will the facility ever be used for private functions and closed to the public? Explain any user or other fees that will be instituted, including the fee structure.
- 4. Includes required documents as a result of a completed NEPA process (Steps 5 – 7).

**Proceed to Steps 5 through 7** 

**Step 4. Proposals for Temporary Non-Conforming Use, Significant Change in Use, and Sheltering Facilities**  
(See LWCF Manual for guidance)

**A. Proposal for Temporary Non-Conforming Use**

Prior to developing this proposal, you must consult the LWCF Manual for complete guidance. NPS must review and decided on requests for temporary uses that do not meet the requirements of allowable activities within a Section 6(f) area. A temporary non-conforming use is limited to a period of six months (180 days) or less. Continued use beyond six-months will not be considered temporary, and may result in a Section 6(f)(3) conversion of use requiring the replacement of converted parkland. For NPS review, describe the temporary non-conforming use (activities other than public outdoor recreation) in detail including the following information:


- 1. A letter of transmittal from the SLO recommending the proposal.
- 2. Describe in detail the proposed temporary non-conforming use and all associated activities, why it is needed, and alternative locations that were considered and why they were not pursued.
- 3. Explain length of time needed for the temporary non-conforming use and why.
- 4. Describe the size of the Section 6(f) area affected by the temporary non-conforming use activities and expected impacts to public outdoor recreation areas, facilities and opportunities. Explain efforts to keep the size of the area impacted to a minimum. Indicate the location of the non-conforming use on the site's 6(f) map.
- 5. Describe any anticipated temporary/permanent impacts to the Section 6(f) area and how the sponsor will mitigate them during and after the non-conforming use ceases.
- 6. Consult the LWCF Manual for additional requirements and guidelines before developing the proposal.

**Proceed to Steps 5 through 7** 

**B. Proposal for Significant Change in Use**

Prior to developing the proposal, you must consult the LWCF Manual for complete guidance. NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans or intent for the area outlined in the original LWCF application for federal assistance. Consult with NPS for early determination on the need for a formal review. NPS approval is only required for proposals that will significantly change the use of a LWCF-assisted site (e.g., from passive to active recreation). The proposal must include and address the following items:

1. A letter of transmittal from the SLO recommending the proposal.
2. Description of the proposed changes and how they significantly contravene the original plans or intent of LWCF agreements.
3. Explanation of the need for change in use and how the change is consistent with local plans and the SCORP.
4. Consult the LWCF Manual for additional requirements and guidelines before developing the proposal.

**Proceed to Steps 5 through 7** 

**C. Proposal for Sheltering Facilities**

Prior to developing this proposal, you must consult the LWCF Manual for complete guidance. NPS must review and decide on all proposals to shelter an existing outdoor recreation facility or construct a new sheltered recreation facility within a Section 6(f) area regardless of funding source. The proposal must demonstrate that there is an increased benefit to public recreation opportunity. Describe the sheltering proposal in detail, including the following:

1. A letter of transmittal from the SLO recommending the proposal.
2. Describe the proposed sheltered facility, how it would operate, how the sheltered facility will include recreation uses that could typically occur outdoors, and how the primary purpose of the sheltered facility is recreation.
3. Explain how the sheltered facility would not substantially diminish the outdoor recreation values of the site including how the sheltered facility will be compatible and significantly supportive of the outdoor recreation resources present and/or planned.
4. Explain how the sheltered facility will benefit the total park's outdoor recreation use.
5. Describe efforts provided to the public to review the proposal to shelter the facility and has local support.
6. Document that the sheltered facility will be under the control and tenure of the public agency which sponsors and administers the original park area.
7. Consult the LWCF Manual for additional requirements and guidelines before developing the proposal.

**Proceed to Steps 5 through 7** 

**Step 5. Summary of Previous Environmental Review** (including E.O. 12372 - Intergovernmental Review)

To avoid duplication of effort and unnecessary delays, describe any prior environmental review undertaken at any time and still viable for this proposal or related efforts that could be useful for understanding potential environmental impacts. Consider previous local, state, federal (e.g. HUD, EPA, USFWS, FHWA, DOT) and any other environmental reviews. At a minimum, address the following:

1. Date of environmental review(s), purpose for the environmental review(s) and for whom they were conducted.
2. Description of the proposed action and alternatives.
3. Who was involved in identifying resource impact issues and developing the proposal including the interested and affected public, government agencies, and Indian tribes?
4. Environmental resources analyzed and determination of impacts for proposed actions and alternatives.
5. Any mitigation measures to be part of the proposed action.
6. Intergovernmental Review Process (Executive Order 12372):  
Does the State have an Intergovernmental Review Process? Yes  No . If "Yes", has the LWCF Program been selected for review under the State Intergovernmental Review Process? Yes  No . If "Yes", was this proposal reviewed by the appropriate State, metropolitan, regional and local agencies, and if so, attach any information and comments received about this proposal. If proposal was not reviewed, explain why not.
7. Public comment periods (how long, when in the process, who was invited to comment) and agency response.
8. Any formal decision and supporting reasons regarding degree of potential impacts to the human environment.
9. Was this proposed LWCF federal action and/or any other federal actions analyzed/reviewed in any of the previous environmental reviews? If so, what was analyzed and what impacts were identified? Provide specific environmental review document references.

Use resource impact information generated during previous environmental reviews described above and from recently conducted site inspections to complete the Environmental Screening Form (ESF) portion of this PD/ESF under Step 6. Your ESF responses should indicate your proposal's potential for impacting each resource as determined in the previous environmental review(s), and include a reference to where the analysis can be found in an earlier environmental review document. If the previous environmental review documents contain proposed actions to mitigate impacts, briefly summarize the mitigation for each resource as appropriate. The appropriate references for previous environmental review document(s) must be documented on the ESF, and the actual document(s)

along with this PD/ESF must be included in the submission for NPS review.

**Proceed to Steps 6 through 7** 

### Step 6. Environmental Screening Form (ESF)

This portion of the PD/ESF is a working tool used to identify the level of environmental documentation which must accompany the proposal submission to the NPS. By completing the ESF, the project sponsor is providing support for its recommendation in Step 7 that the proposal either:

1. meets criteria to be categorically excluded (CE) from further NEPA review and no additional environmental documentation is necessary; or
2. requires further analysis through an environmental assessment (EA) or an environmental impact statement (EIS).

An ESF alone does not constitute adequate environmental documentation unless a CE is recommended. If an EA is required, the EA process and resulting documents must be included in the proposal submission to the NPS. If an EIS may be required, the State must request NPS guidance on how to proceed.

The scope of the required environmental analysis will vary according to the type of LWCF proposal. For example, the scope for a new LWCF project will differ from the scope for a conversion. Consult the LWCF Manual for guidance on defining the scope or extent of environmental analysis needed for your LWCF proposal. As early as possible in your planning process, consider how your proposal/project may have direct, indirect and cumulative impacts on the human environment for your type of LWCF action so planners have an opportunity to design alternatives to lessen impacts on resources, if appropriate. When used as a planning tool in this way, the ESF responses may change as the proposal is revised until it is ready for submission for federal review. Initiating or completing environmental analysis after a decision has been made is contrary to both the spirit and letter of the law of the NEPA.

The ESF should be completed with input from resource experts and in consultation with relevant local, state, tribal and federal governments, as applicable. The interested and affected public should be notified of the proposal and be invited to participate in scoping out the proposal (see LWCF Manual Chapter 4). At a minimum, a site inspection of the affected area must be conducted by individuals who are familiar with the type of affected resources, possess the ability to identify potential resource impacts, and to know when to seek additional data when needed.

At the time of proposal submission to NPS for federal review, the completed ESF must justify the NEPA pathway that was followed: CE recommendation, production of an EA, or production of an EIS. The resource topics and issues identified on the ESF for this proposal must be presented and analyzed in an attached EA/EIS. Consult the LWCF Manual for further guidance on LWCF and NEPA. The ESF contains two parts that must be completed:

#### Part A. Environmental Resources

#### Part B. Mandatory Criteria

**Part A:** For each environmental resource topic, choose an impact estimate level (none, negligible, minor, exceeds minor) that describes the degree of potential negative impact for each listed resource that may occur directly, indirectly and cumulatively as a result of federal approval of your proposal. For each impacted resource provide a brief explanation of how the resource might be affected, how the impact level was determined, and why the chosen impact level is appropriate. If an environmental review has already been conducted on your proposal and is still viable, include the citation including any planned mitigation for each applicable resource, and choose an impact level as mitigated. If the resource does not apply to your proposal, mark NA in the first column. Add any relevant resources (see A.24 on the ESF) if not included in the list.

**Use a separate sheet to briefly clarify how each resource could be adversely impacted; any direct, indirect, and cumulative impacts that may occur; and any additional data that still needs to be determined. Also explain any planned mitigation already addressed in previous environmental reviews.**

**Part B:** This is a list of mandatory impact criteria that preclude the use of categorical exclusions. If you answer “yes” or “maybe” for any of the mandatory criteria, you must develop an EA or EIS regardless of your answers in Part A. Explain all “yes” and “maybe” answers on a separate sheet.

<b>A. ENVIRONMENTAL RESOURCES</b> Indicate potential for adverse impacts. Use a separate sheet to clarify responses per instructions for Part A on page 9.	<b>Not Applicable -</b> Resource does not exist	<b>No/Negligible Impacts -</b> Exists but no or negligible impacts	<b>Minor Impacts</b>	<b>Impacts Exceed Minor</b> EA/EIS required	<b>More Data Needed to Determine Degree of Impact</b> EA/EIS required
1. Geological resources: soils, bedrock, slopes, streambeds, landforms, etc.					
2. Air quality					
3. Sound (noise impacts)					
4. Water quality/quantity					
5. Stream flow characteristics					
6. Marine/estuarine					
7. Floodplains/wetlands					
8. Land use/ownership patterns; property values; community livability					
9. Circulation, transportation					
10. Plant/animal/fish species of special concern and habitat; state/federal listed or proposed for listing					
11. Unique ecosystems, such as biosphere reserves, World Heritage sites, old growth forests, etc.					
12. Unique or important wildlife/ wildlife habitat					
13. Unique or important fish/habitat					
14. Introduce or promote invasive species (plant or animal)					
15. Recreation resources, land, parks, open space, conservation areas, rec. trails, facilities, services, opportunities, public access, etc. <i>Most conversions exceed minor impacts. See Step 3.B</i>					
16. Accessibility for populations with disabilities					
17. Overall aesthetics, special characteristics/ features					
18. Historical/cultural resources, including landscapes, ethnographic, archeological, structures, etc. Attach SHPO/THPO determination.					
19. Socioeconomics, including employment, occupation, income changes, tax base, infrastructure					
20. Minority and low-income populations					
21. Energy resources (geothermal, fossil fuels, etc.)					
22. Other agency or tribal land use plans or policies					
23. Land/structures with history of contamination/hazardous materials even if remediated					
24. Other important environmental resources to address.					

<b>B. Mandatory Criterial</b> <i>If your LWCF proposal is approved, would it...</i>	<b>Yes</b>	<b>No</b>	<b>To Be Determined</b>
1. Have significant impacts on public health or safety?			
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands, wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); and other ecologically significant or critical areas.			
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)]?			
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?			
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?			
6. Have a direct relationship to other actions with individually insignificant, but cumulatively significant, environmental effects?			
7. Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places, as determined by either the bureau or office. (Attach SHPO/THPO Comments)			
8. Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.			
9. Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment?			
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?			
11. Limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?			
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or actions that may promote the introduction, growth, or expansion of the range of			

**Environmental Reviewers**

The following individual(s) provided input in the completion of the environmental screening form. List all reviewers including name, title, agency, field of expertise. Keep all environmental review records and data on this proposal in state compliance file for any future program review and/or audit. The ESF may be completed as part of a LWCF pre-award site inspection if conducted in time to contribute to the environmental review process for the proposal.

- 1.
- 2.
- 3.

**The following individuals conducted a site inspection to verify field conditions.**

*List name of inspector(s), title, agency, and date(s) of inspection.*

- 1.
- 2.
- 3.

**State may require signature of**

**LWCF sub-recipient applicant here:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Step 7. Recommended NEPA Pathway and State Appraisal/Waiver Valuation**

First, consult the NPS list of Categorical Exclusions (CEs). If you find your action in the CE list and you have determined in Step 6A that impacts will be minor or less for each applicable environmental resource on the ESF and you answered "no" to all of the "Mandatory Criteria" questions in Step 6B, the proposal qualifies for a CE. Complete the following "State LWCF Environmental Recommendations" box indicating the CE recommendation.

If you find your action in the CE list and you have determined in Step 6A that impacts will be greater than minor or that more data is needed for any of the resources and you answered "no" to all of the "Mandatory Criteria" questions, your environmental review team may choose to do additional analysis to determine the context, duration, and intensity of the impacts of your project or may wish to revise the proposal to minimize impacts to meet the CE criteria. If impacts remain at the greater than minor level, the State/sponsor must prepare an EA for the proposal. Complete the following "State Environmental Recommendations" box indicating the need for an EA.



## NOTICES

### Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), please note the following. This information collection is authorized by the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 2003 et seq.). Your response is required to obtain or retain a benefit. We use this information to obtain descriptive and environmental information about the proposal. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number. OMB has assigned control number 1024-0031 to this collection.

### Estimated Burden Statement

Completion times vary widely depending on the use of the form, from approximately 30 minutes to complete the cover page only to 500 hours for a difficult conversion of use. We estimate that the average completion time for this form is 8 hours for an application, 2 hours for an amendment, and 112 hours for a conversion of use, including the time necessary to review instructions gather data and review the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information Collection Officer, National Park Service, 12201 Sunrise Valley Drive, MS-242 Rm. 2C114, Reston, VA 20192. Please do not send your completed form to this address; but rather to the address at the top of the form.



## CHAPTER 4 - PROPOSALS, ENVIRONMENTAL REVIEW/FEDERAL COMPLIANCE

### A. Proposal Development and Screening for Environmental Impacts

States are responsible for ensuring, on behalf of the NPS, proposals submitted to the NPS for federal decision, including new applications and amendments for LWCF previously-approved projects such as conversions, temporary non-conforming uses, and public facility exceptions, are developed in accordance with all applicable federal, state and local laws and regulations. This chapter presents the major federal laws and executive orders that govern the way proposals must be developed for federal review and decision. The General Provisions shall be attached to each LWCF grant agreement and amendment. States are encouraged to consult with NPS during the proposal development process for guidance on the compliance requirements in this chapter.

The federal legislation that coordinates the consideration of the potential for impacts to the human environment as a result of a federal action is the National Environmental Policy Act. As described in the next section, the NEPA process coordinates compliance with applicable related federal, state, and local environmental requirements. To facilitate and document this coordination, States must ensure that the LWCF Proposal Description and Environmental Screening Form (PD/ESF) is completed and accompanies each LWCF proposal submitted for federal review and decision.

The PD (proposal description) portion of the PD/ESF identifies and provides descriptive information about the proposal to the federal decision-maker.

The ESF (environmental screening form) portion of the PD/ESF serves as part of the federal administrative record required by NEPA and its implementing regulations which supports a chosen NEPA “pathway” which must be completed before final action can be taken by the NPS. It is intended that States/project sponsors use the PD/ESF as early as possible in the state/local project planning process. The ESF portion of the PD/ESF will administratively document 1) a Categorical Exclusion recommendation or 2) the necessity of further environmental review through an Environmental Assessment (EA) or Environmental Impact Statement (EIS) as necessary. In the latter case, the EA (or EIS) must accompany the State’s LWCF proposal submission to the NPS. The ESF can also be used to document previously conducted yet still valid environmental analysis.

Upon the State’s submission of the completed proposal with the PD/ESF and the completed environmental documentation as necessary, NPS will undertake an independent review of the final proposal and supporting documentation, and take action as appropriate.

### B. National Environmental Policy Act

1. Authorities and guidance. The National Environmental Policy Act (NEPA) of 1969, as amended, is landmark environmental protection legislation establishing as a goal for federal decision-making a balance between use and preservation of natural and cultural resources.

NEPA requires all federal agencies to: 1) prepare in-depth studies of the impacts of and alternatives to proposed “major federal actions,” and 2) use the information contained in such studies in deciding whether to proceed with the actions; and 3) diligently attempt to involve the interested and affected public before any decision affecting the environment is made.

Federal actions are defined as projects, activities, or programs funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license, or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. The LWCF is a federal assistance program and thus all NPS LWCF decisions are subject to the provisions of NEPA and associated guidance found in the:

- a. Council on Environmental Quality (CEQ) Regulations for Implementing NEPA, 40 CFR 1500-1508
  - b. NEPA’s Forty Most Asked Questions, CEQ
  - c. Department of Interior (DOI) policy and procedures for implementing NEPA (Departmental Manual 516 DM 1-6)
  - d. National Park Service (NPS), LWCF Program Manual, Chapter 4 (this chapter), including the Proposal Description and Environmental Screen Form (PD/ESF) developed from NPS Director’s Order #12 and Handbook, “Conservation Planning, Environmental Impact Analysis, and Decision Making.”
2. Compliance coordination. For LWCF proposals, the NEPA process coordinates compliance with related federal, state, and local environmental requirements as applicable. At a minimum, compliance by the State/project sponsor with the following federal laws and executive orders shall be coordinated during the NEPA process and should be integrated into the NEPA document:
- a. National Historic Preservation Act, Section 106, as amended. Section 106 of NHPA requires federal agencies to consider the effects of their proposals on historic properties, and to provide State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and as necessary, the Advisory Council on Historic Preservation a reasonable opportunity to review and comment on these actions. Section 106 review and NEPA are two separate, distinct processes. They can and should occur simultaneously, and documents can be combined, but one is not a substitute for the other. They should, however, be coordinated to avoid duplication of public involvement or other requirements. The information and mitigation gathered as part of the Section 106 review must be included in the NEPA document, and the Section 106 process must be completed by the State/project sponsor before NPS can sign a categorical exclusion, a finding of no significant impact (FONSI) or a record of decision (ROD). See Section C of this chapter for further guidance on the Section 106 process.

- b. Endangered Species Act, Section 7. Section 7 of the Endangered Species Act (ESA) requires a federal agency consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service on any action that may affect endangered or threatened species or candidate species, or that may result in adverse modification of critical habitat. For LWCF purposes the State/project sponsor must carry out this consultation and document that it has occurred. An EA or an EIS may provide sufficient information to serve as a “biological assessment” for Section 7 purposes. If a separate “biological assessment” is prepared, it must be part of any NEPA document.
- c. Floodplain Management and Wetland Protection, Executive Orders 11988 and 11990. Executive Orders 11988 and 11990 direct the federal agency to avoid, to the extent possible, the long and short term adverse impacts associated with modifying or occupying floodplains and wetlands. They also require the federal agency to avoid direct or indirect support of floodplain or wetland development whenever there is a practical alternative. For LWCF purposes, the State/project sponsor must comply with this executive order. If implementing the LWCF project would result in an adverse impact to a federal or state regulated floodplain or wetland, a statement of finding must be included in the EA or EIS documenting the State/local sponsors coordination efforts with responsible state and federal authorities, a description of affected floodplain and wetland resources, alternatives considered to developing in the floodplain and/or wetland, and actions to avoid, minimize and/or mitigate impacts.
- d. Environmental Justice in Minority and Low-Income Populations, Executive Order 12898. Executive Order 12898 directs federal agencies to assess whether their actions have disproportionately high and adverse human health or environmental effects on minority and low-income populations. For LWCF purposes, States/project sponsors must specifically analyze and evaluate the impact of the LWCF proposal on minority and low-income populations and communities, as well as the equity of the distribution of the benefits and risks of the decision in the NEPA document. If it does not apply, this should be noted in the "issues dismissed" section of the NEPA document. See Department of Interior Environmental Compliance Memoranda (ECM) 95-3.
- e. Department of the Interior Environmental Compliance Memorandum (ECM) 95-2: ECM95-2 requires bureaus to explicitly address environmental impacts of their proposed actions on Indian Trust Resources in any environmental document.
- f. Intergovernmental Review of Federal Programs, Executive Order 12372. For States that have selected to review the LWCF Program under its own Intergovernmental Review Process under Executive Order 12372, States may use this process for state and local government coordination and review of proposed federal financial assistance. States may make efforts to accommodate state and local elected officials concerns and comments that are communicated through the designated single point of contact process. Comments should be considered in a timely manner during the NEPA process and prior to submission to NPS for federal review. The Intergovernmental Review Process does not fulfill the State’s/project sponsor’s responsibility for providing a public comment

period (see Section 5.b(2) below) that provides the interested and affected public opportunity to comment on the completed environmental review documents.

3. State responsibility. Using the PD/ESF for new applications and certain amendments, the State must submit to NPS adequate environmental documentation in order for NPS to determine whether a proposed LWCF action is either categorically excluded from further environmental analysis or requires an EA or an EIS. States are responsible for coordinating the environmental review process including the production of environmental assessments, and if necessary, environmental impact statements. States are also responsible for ensuring the required public comment periods are offered in accordance with the guidance found in Section 5.b(2) below.

CEQ encourages federal and state agencies to work together to combine efforts to produce only one NEPA document, especially for those state and local agencies that have their own requirements for impact analysis. Early coordination is critical prior to the investment of extensive planning resources and the commitment to a specific alternative. State and local environmental impact analysis requirements may not meet the same needs as NPS LWCF requirements, so States are urged to consult early in the process with NPS.

When a State elects to use a state or local environmental review process to meet the NEPA requirement, States shall provide the environmental review guidance in this chapter, including the PD/ESF, to the agency delegated the responsibility to conduct the environmental review to ensure that the process meets these federal requirements.

Costs associated with conducting environmental reviews may be eligible for LWCF assistance (see Chapter 5.A.3.b).

4. NPS responsibility. NPS is responsible for determining whether a proposed LWCF action is either categorically excluded from further environmental analysis or requires an environmental assessment (EA) or an environmental impact statement (EIS). NPS also is responsible for ensuring the adequacy of any required EA or EIS documents, and is solely responsible for signing the decision documents. NPS serves as the lead agency in the delegation, preparation and review of any EA or EIS for proposed LWCF actions. As the lead agency, the NPS provides guidance to the States on how to develop adequate environmental documentation according to the type of the state/local proposal for federal assistance.
5. Scope of environmental review. Early in the conceptual development of an LWCF proposal, the State shall encourage LWCF project sponsors to document their planning and analysis process, including all efforts to reach out to the interested and affected public and agencies. The public and agencies should be invited to provide input early in the planning process and before any environmental analysis formally begins so the sponsor can clearly communicate the purpose and need for the project and give the public and agencies an opportunity to provide any information that could be useful for scoping out the LWCF proposal and considering its potential impact on resources. This scoping step in the

planning process will yield information for use in defining the scope of the LWCF proposal and possible associated environmental impacts.

The LWCF PD/ESF shall be used by all potential LWCF project sponsors and for any LWCF proposal requiring federal action. The PD/ESF is designed for use as a tool during project scoping, planning, and proposal development to document environmental information and consider the LWCF proposal's possible environmental impacts at the time it is discussed, presented, or discovered in the field rather than as a "compliance exercise" after a decision is made and the application for federal assistance is being prepared.

As a result of early project scoping and planning, the State/sponsor develops a final proposal for possible federal assistance or action, including a completed ESF. The scope of the environmental review under NEPA, i.e., the extent of resources that may be affected by the project, depends on the type of LWCF proposal under consideration as follows:

- a. New acquisition projects. The scope of the environmental review shall include the lands to be acquired and the proposed public outdoor recreation uses intended for the property to be completed within three years from the date of acquisition.
- b. Development projects. The scope of the environmental review shall be the proposal to provide or improve facilities for public outdoor recreation use and associated activities resulting from these improvements.
- c. Section 6(f)(3) Conversions. Pursuant to 36 CFR 59.3, the scope of the environmental review for Section 6(f)(3) conversions is the entire Section 6(f)(3) park proposed for conversion, including for partial conversions, and lands proposed for replacement including the proposed development for public outdoor recreation use and associated activities. Resources beyond the existing Section 6(f)(3) area are not subject to review unless required by other federal compliance programs.
- d. Other LWCF proposals. To determine the scope of the environmental review for other types of LWCF proposals, consult your NPS Regional Office LWCF Program Manager.

The scope of the environmental review determines the resources that must be screened for possible environmental impacts resulting from the LWCF proposal.

6. NEPA pathway options. The completed PD/ESF will guide the state/project sponsor along the appropriate NEPA pathway to produce the level of environmental analysis and documentation required for the proposed undertaking. The PD/ESF will document and support the NEPA analysis pathway option chosen for the proposal. States are required to include the completed PD/ESF with its formal LWCF proposal submission to the NPS.

The NEPA analysis pathway options available to States are:

- a. Categorical Exclusion for which a record is needed. These Categorical Exclusions (CE) are for federal actions that, under normal circumstances, are not considered major

federal actions and have the potential for minor or no measurable impacts on the human environment. Prior to submitting a proposal to the NPS for federal review and decision, it is the State's responsibility to review the LWCF proposal to determine if the project meets the criteria for a CE determination. If the LWCF proposal meets the criteria for a CE, the State provides sufficient documentation on the PD/ESF to support the CE by indicating that all potential impacts will be minor or less, and NPS agrees with the CE selection, NPS will sign its own CE form signifying the proposal is categorically excluded from further NEPA analysis.

A CE is not applicable if the ESF indicates that the proposal may result in more than minor impacts on resources.

Note in addition to the CE criteria, the State must also consult the list of exceptions to the CE criteria listed in the PD/ESF. These exceptions describe additional circumstances that may be relevant for the proposal and could result in adverse impacts on the human environment and, therefore, preparation of an EA would be required.

- b. Environmental Assessment. An Environmental Assessment (EA) is required when 1) the significance of impacts on any resource is unknown, or 2) the proposed action does not meet the criteria for CE and is not included in the list of actions that normally require an EIS, or 3) the proposed action needs several CE categories to fully describe the action, would involve one or more CE criteria exceptions, or would involve unresolved conflicts concerning the use of resources.

All Section 6(f)(3) conversions require an EA except for the “small conversions” that qualify as a categorical exclusion as specifically defined in Chapter 8.

- (1) EA format: The following basic format for a LWCF EA is recommended. The content of each chapter will vary depending on the type of LWCF proposal under analysis such as new acquisition and development projects, Section 6(f)(3) conversions, and other LWCF proposals described in the PD/ESF. In cases where the State/local sponsor chooses to combine environmental review efforts to meet state and federal requirements (see Section 2 above), the following information must be included in the document in a way that allows the LWCF proposal to be readily discernable, such as in a separate section in the larger, more comprehensive document. The EA must be factual and written in an objective manner and with a neutral tone. The EA should not promote a particular alternative or make a case for the approval of the proposal. The information must be presented without technical jargon and so it can be understood by the interested and affected public.

*Chapter 1 – Purpose, Need, Background.* This chapter describes the purpose of the EA so that the interested and affected public, including other agencies and decision-makers, understand the type and nature of the proposal that needs a federal LWCF decision. This chapter needs to explain the EA will provide a framework for the NPS to evaluate the environmental consequences of the proposed action on the human environment, and must also include any information to help the interested

and affected public and decision-makers understand the context for the proposed action, including a clear explanation of the role of the LWCF Act Section 6(f)(3) in the proposal and the scope of the environmental review (see Item 5 above).

*Chapter 2 - Description of Alternatives.* This chapter must provide enough information for the interested and affected public and decision-makers to understand the proposed alternative (federal approval of the LWCF proposal) and the no action alternative. This chapter should lead off with an evaluation of all alternatives considered and the reasons for selecting the proposed alternative and rejecting the other alternatives.

At a minimum, the proposed alternative should be described in detail along with the public outdoor recreation resources and opportunities provided by the proposal including maps clearly depicting the creation of or changes in the LWCF Section 6(f) boundary. New and/or existing Section 6(f) parkland must be described in detail. This chapter must include an explanation and status of any other approvals, permits or other factors needed to implement the proposal.

For Section 6(f)(3) conversions, this chapter must include:

- a description of the Section 6(f)(3) parkland proposed for whole or partial conversion, including associated outdoor recreation facilities and opportunities;
- any Section 6(f)(3) parkland remaining from partial conversions and remaining outdoor recreation facilities and opportunities; and
- a description of the replacement parkland, including a description of the planned development for public outdoor recreation use and new outdoor recreation opportunities to be provided and timetable for completion.

*Chapter 3 - Affected Environment.* The affected environment is a detailed description of the current state of resources expected to experience environmental impacts. Using the resource impact information documented on the environmental screening form (ESF) and other means of collecting information about affected resources, delineate an analysis area boundary for each resource and describe its existing status (location, nature, condition, scope, size, etc.). The existing status of these resources will serve as baseline information upon which impacts will be compared in the next EA chapter.

This includes detailed description of any existing public outdoor recreation resources and opportunities at the affected site(s) including a clear depiction any existing Section 6(f) boundary.

This chapter must also describe the park/recreation area's population service area and demographics, including information about minority and low income populations pursuant to Executive Order 12898, Environmental Justice in Minority and Low-Income Populations.

Also, this chapter must include a description of any existing easements, right-of-ways, leases, and any other agreements about use of the Section 6(f)(3) area. If the proposal includes land with a history of contamination, this chapter should describe the contamination and current condition/remediation status.

For Section 6(f)(3) conversions, this chapter must include a description of the existing resources associated with the Section 6(f)(3) parkland proposed for whole or partial conversion, including associated outdoor recreation facilities and opportunities and a description of the existing resources at the replacement site(s). The description must include a detailed description of existing outdoor recreation resources, facilities and opportunities for all affected areas as well as the existing population served by the converted park and the existing population to be served by the new replacement parks.

For conversions, resources beyond the existing and proposed Section 6(f)(3) areas are not subject to review unless required by other federal compliance programs.

Any resources and issues to be dismissed from further analysis must be described in this chapter.

*Chapter 4 - Environmental Impacts.* This chapter analyzes the degree to which the resources described in Chapter 3 (above) will be impacted by the proposal. The analysis should be presented for the interested and affected public, agencies, and decision-makers to understand the potential for impacts, both beneficial and adverse, and should include qualitative and quantitative data that considers the context, intensity, duration, and timing of the potential impacts. The presentation of data must be presented objectively, accurately, and factually. Resource impacts within the proposed Section 6(f)(3) boundary must be described including any future easements, right of ways, leases and agreements about the use of the Section 6(f)(3) area.

This chapter must also include a detailed discussion of the proposed impacts, both beneficial and adverse, on the provision of public outdoor recreation for the populations served by the proposal including impacts to minority and low income populations pursuant to Executive Order 12898, Environmental Justice in Minority and Low-Income Populations, and a clear depiction of any Section 6(f) boundary changes, especially for expansion of existing Section 6(f) areas and conversions, including a description of any easements, rights-of-way, leases, and any other agreements about the use of the Section 6(f)(3) area as a result of the proposal. If Chapter 3 (above) includes information that any of the land resources in the proposal has a history of contamination, this chapter must include information on the impacts



of the proposal on this land considering its status including the land's suitability to support healthy and safe public outdoor recreation activities in perpetuity.

For Section 6(f)(3) conversions, an analysis of impacts to the affected resources described in Chapter 4 must be presented in this chapter. Resources beyond the existing and proposed Section 6(f)(3) areas are not subject to review unless required by other federal compliance programs.

*Chapter 5 - Coordination and Consultation.* This chapter must list persons, organizations and agencies contacted for information and for identifying important issues, developing alternatives, or analyzing impacts. Any scoping or other public involvement efforts should also be detailed. A list of preparers and their qualifications should be included as well.

- (2) Opportunity for public review and comment. At a minimum, States are required to ensure the interested and affected public has had an opportunity to review and provide written comments on completed environmental assessments for LWCF proposals. This public comment period shall be no less than 30 days. The notice an EA is available for review shall be published in the local newspapers and community notices, posted on the sponsoring agency's web site, and made broadly known to the public in such a way that the interested and affected public has ample notice of the public comment period. The State/project sponsor is responsible for reviewing the public comments. These comments and the responses that address all substantive comments are to be included in the proposal's submission to NPS.

If the proposal is revised in response to substantive public comments or for any other reason, States should consult with NPS to determine if the public needs another opportunity to review the revised EA.

- c. Environmental Impact Statement. An Environmental Impact State (EIS) is required when the potential for significant impact to the human environment exists is indicated by an EA or through the PD/ESF. The State should contact NPS for further guidance as soon as there is an indication that an EIS may be required.

## **C. National Historic Preservation Act, Section 106 Process**

1. Purpose. The purpose of this section is to provide overall guidance on the implementation of the National Historic Preservation Act of 1966, as amended, (P.L. 89-665) for LWCF proposals requiring NPS review and decision.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on such undertakings. A historic property is a property listed in or eligible for listing in the National Register of Historic Places. An undertaking is a project, activity, or program in whole or in part under the direct or indirect jurisdiction of a federal agency, including those

## Appendix 4 Sample Legislation: Provision for Substitute Parkland

### LAWS OF NEW YORK, 2010 CHAPTER 86

AN ACT in relation to the alienation of certain parklands in the town of Kent in the county of Putnam.

Became a law May 18, 2010, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act, the county of Putnam, acting by and through its county legislature, is hereby authorized to discontinue as parklands and alienate, the lands described in section three of this act, for the purpose of constructing a senior citizen center in the town of Kent.

§ 2. The authorization contained in section one of this act shall take effect only upon the condition that the county of Putnam shall dedicate the lands of equal or greater fair market value described in section four of this act as additional parklands of the county.

§ 3. The lands authorized by section one of this act to be discontinued as parklands are as follows:

All that tract or parcel of land situate in the town of Kent, Putnam county, New York state and being bounded and described as follows:

Beginning at a point on the westerly side of Ludingtonville Road at the southeasterly corner of the parcel herein described and which point is distant N 10-30-00 W 193. 38 from a point on the westerly side of Ludingtonville Road where the same is intersected by the southeasterly corner of lands now or formerly Jackson, et al. as described in Liber 774 cp 542 and the southerly line of lands now or formerly Midhills Land Corp. as established by a boundary line agreement as recorded in Liber 255 cp 371; thence from said point of beginning through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 on a curve to the right (Radial Bearing N 61-07-47 W) having a radius of 52. 40, a central angle of 49-00-53 and a length of 44. 83 to a point on a curve of the right; thence along said curve to the right (Radial Bearing N 12-58-04 E) having a radius of 105. 00, a central angle of 46-07-46 and a length of 84. 54 to a point; thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 N 30-54-10 W 39. 80, N 32-53-26 W 9. 23 and N 9-02-14 E 16. 80 to a point on a curve to the left; thence along said curve to the left having a radius of 43. 00, a central angle of 42-46-56 and a length of 32. 11 to a point; thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 N 74-05-48 W 5. 76, N 55-29-01 W 57. 12 and N 16-37-55 W 21. 66 to a point on a non tangent curve to the right; thence along said non-tangent curve to the right (Radial Bearing N 9-28-12 E) having a radius of 14. 58, a central angle of 94-55-31 and a length of 24. 16 to a point, thence N 21-37-26 W 15. 20 and N 82-5-09 W 11. 53 to a point on a non-tangent curve to the right; thence along said non-tangent curve to the right (Radial Bearing N 21-33-58 E) having a radius of 87. 90, a central angle of 17-46-55 and a length of 27. 28 to a point: thence continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 S 81-14-09 W 7. 44, N-57-18-13 W 15. 38, N 27-58-42 E 24. 76, N 33-21-18 E 46. 23, N 33-21-50 E 295. 39 and S 54-42-41 E 44. 67 to a point on a non tangent curve to the left; thence along said non-tangent curve to the left ( Radial Bearing N 59-27-18 E) having a radius of 249. 73, a central angle of 20-38-25 and a length of 89. 96 to a point; thence still continuing through lands now or formerly Jackson, et al. as described in Liber 774 cp 542 S 0-06-42 W 34. 40 S 22-46-11 W 71. 18 and S 43-54-34 E 5. 48 to a point on the westerly side of Ludingtonville Road; thence along the westerly side of Ludingtonville Road on a curve to the left (Radial Bearing S 67-15-43 E) having a radius of 418. 10, a central angle of 33-14-18 and a length of 242. 55 to a point; thence continuing along the westerly side of Ludingtonville Road S 10-30-00 E 94. 26 to the point and place of beginning. Containing within said bounds 1. 884 acres more or less.

§ 4. Prior to the discontinuance and alienation of the parkland described in section three of this act, the county of Putnam, acting through its county legislature, shall dedicate replacement lands for use as parkland for public park purposes, with such replacement lands, being of equal or greater fair market value, as follows: All that tract or parcel of land situate in the town of Patterson, Putnam County, New York State and being bounded and described as follows:

Beginning at a point on the northerly side of N. Y. Route 311 and the southwest corner of now or formally Merritt C. Ryder thence South 82 degrees 23' 29" West 102. 44 feet to the easterly side of Interstate 503 (NY 84); running thence along said easterly side of Interstate 503 the following course and distance; North 28 degrees 41' 39" West 508. 26 feet, thence through the lands of now or formerly Douglas Holly North 64 degrees 51' 05" East 149. 30 feet to the

lands of now or formally Matthews and Doris Ann Kutch, thence South 35 degrees 30' 45" East 192. 20 feet to a point in the line now or formerly of Edward and Gertrude Wolf; running thence along said lands South 64 degrees 51' 05" West 25. 28, South 42 degrees 48' 14" East 160. 00 feet and North 64 Degrees 39' 23" East 86. 00 feet to a point in the line of lands now or formerly of Warren and Gloria Weigel; running thence along said lands South 42 degrees 56' 55" East 111. 20 feet to a point in the line of lands now or formerly of William and Patrick Kelley; running thence along said lands South 45 degrees 08' 48" East 110. 00 feet, North 64 degrees 52' 33" East 152. 03 feet to a point in the line of lands now or formerly of Gustav Werner; running thence along said lands South 39 degrees 05'34" East 89. 66 feet to a point in the line of lands now or formerly of Merritt C. Ryder, running thence along said lands South 66 degrees 21' 44" West 357. 64 feet and South 14 degrees 02' 41" East 96. 47 feet to the point and place of beginning containing within said bounds 3. 564 acres more or less.

§ 5. In the event that the parklands to be dedicated by the county of Putnam pursuant to this act are not equal to or greater than the fair market value of the parkland to be discontinued, the county of Putnam shall dedicate the difference of the fair market value of the lands to be alienated and the lands to be dedicated for the acquisition of additional parklands and/or for capital improvements to existing park and recreational facilities.

§ 6. In the event that the county of Putnam received any funding support or assistance from the federal government for the purchase, maintenance or improvement of the parklands set forth in section three of this act, the discontinuance and alienation of such parkland authorized by the provisions of section three of this act shall not occur until the county of Putnam has complied with any federal requirements pertaining to the alienation or conversion of such parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market and usefulness to the lands being alienated or converted.

§ 7. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## Appendix 5 Sample Legislation: Allocation of Sum Equal to Fair Market Value

### LAWS OF NEW YORK, 2008 CHAPTER 85

AN ACT to authorize the county of Erie, to discontinue use of certain lands as parklands and sell such lands, and dedicate certain other lands as parklands.

Became a law May 21, 2008, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county of Erie is hereby authorized to discontinue use of certain parklands within Como Lake Park more particularly described in section three of this act, and sell and convey in fee simple for its fair market value and upon such terms and conditions as it deems appropriate such lands which are no longer useful for park and recreation purposes.

§ 2. The authorization provided for in section one of this act shall be subject to the requirement that upon the alienation of the lands more particularly described in section three of this act, the county of Erie shall dedicate all proceeds from the sale of such lands for the acquisition of land of equal or greater fair market value that shall be dedicated as parkland. In the alternative, if an appropriate parcel cannot be identified after a diligent search, the county of Erie shall use all the proceeds for capital improvements to existing park facilities in the county of Erie.

§ 3. The lands authorized by section one of this act to be discontinued as parklands, and to be sold and conveyed are as follows:

ALL that tract or parcel of land, situate in the Village and Town of Lancaster, County of Erie and State of New York, being part of Lot 11, Section 7, Township 11, Range 6 of the Holland Land Company's Survey and being further bounded and described as follows:

COMMENCING at a point in the easterly line of Lombardy Street (60.0 feet wide) at a distance of 516.25 feet southerly from the intersection of the easterly line of Lombardy Street and the southerly line of Pardee Avenue (60.0 feet wide) formerly Union Avenue; thence southerly along the easterly line of Lombardy Street 29.46 feet to the Point of Beginning; thence continuing southerly along the easterly line of Lombardy Street a distance of 97.92 feet to a point; thence southeasterly at an interior angle of 117° 12' 00", a distance of 137.11 feet to a point; thence northwesterly at an interior angle of 25° 35' 16", a distance of 201.64 feet to the point or place of beginning. Containing 0.137 acres of land more or less.

§ 4. The discontinuance and conveyance of park land authorized by the provisions of this act shall not occur until the county of Erie has complied with any federal requirements pertaining to the alienation or conversion of park lands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## Appendix 6 Sample Legislation: Net Proceeds Set Aside for Acquisition of Replacement Parkland

### LAWS OF NEW YORK, 2008 CHAPTER 85

AN ACT to authorize the village of North Syracuse in the county of Onondaga, to discontinue use of certain lands as parklands and convert such lands for senior housing.

Became a law August 5, 2008, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act but notwithstanding any provision of law to the contrary,<sup>135</sup> the village of North Syracuse, county of Onondaga, is hereby authorized, acting by and through the village board of trustees and upon such terms and conditions as determined by such board, to discontinue the use of the municipally owned parkland commonly known as Toll Road Park, and more particularly described in section four of this act, which is no longer needed for park purposes, and to utilize said parklands for senior housing purposes.

§ 2. The authorization contained in section one of this act shall take effect only upon the condition that the village of North Syracuse dedicate additional parkland of equal or greater fair market value than the value of the property being alienated by this act.

§ 3. In the event that the replacement parklands to be dedicated by the village of North Syracuse pursuant to this act are not equal to or greater than the fair market value of the parklands to be discontinued, the village of North Syracuse shall dedicate the difference of the fair market value of the lands to be alienated and the lands dedicated for the acquisition of additional parklands and/or for capital improvements to its existing park and recreational facilities.

§ 4. The lands referred to in section one of this act are located, bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of North Syracuse, County of Onondaga, State of New York, being parts of Farm Lot 79 in the Town of Clay and Farm Lot 80 in the Town of Cicero, being part of the Single Tract as shown on a map, filed 8-17-1927 in the Onondaga County Clerk's Office, more particularly described as follows: Beginning at a point in the center line of the Brewerton Plank Road, known as RTE. 11, at the intersection of the northerly line of Singleton Ave. as shown on map, thence S. 18~ 36' W. 50. 88' along center of Brewerton Plank Road to the point of intersection of the southerly line of Singleton Ave. with the centerline of the Brewerton Plank Road, thence westerly 272. 72' along the southerly line of Singleton Ave. to the northwest corner of Lot No. 43 as shown on map, thence southerly along the westerly line of Lot No. 43, 147. 39' to the southwest corner of Lot No. 43 thence westerly along the southerly line of Lot No. 44, approx. 12' to a point, said point being in the northwest corner of premises conveyed by Howard Rulison et al to Leon D. Strobeck and Lila G. Strobeck, his wife, by Deed recorded in the Onondaga County Clerk's Office on October 16, 1928, in Book of Deeds No. 599 at page 118&c. ; thence southerly along the west line of premises conveyed to said Strobeck by said Deed to the northwest corner of premises conveyed by Herman Single and Elizabeth L. Single his wife to Fred Renk by Deed recorded in the Onondaga County Clerk's Office on September 10, 1926, in Book of Deeds No. 554 page 416; thence southerly along the west line of said Fred Rank 100± feet to a point; thence S 4~ 21' W 15. 84' to a point thence N 74~ 05' W 159. 39' to a point; thence S 4~ 13' W 291. 39' to a point in the center line of Chestnut St, thence westerly along the center line of Chestnut St. 4' to a point, thence N 4~ 01' E 207. 32' to a point, thence N 85~ 12' W 161. 0' to the Westerly line of Single Tract and the Easterly line of the Cerio Tract, as shown as per map file No. 3223, filed 12-6-1950; thence in a northerly direction 123. 78 feet to a point, said point being the southeast corner of a parcel of land designated, "reserved" as shown on the aforementioned map; thence N 81~ 45' 0" W along the southerly line of said "reserved" parcel a distance of 264. 0" to a point in the easterly line of Lot No. 25, said point also being the southwest corner of a parcel of land designated "reserved" as shown on the above mentioned map; thence northeasterly on a line along the easterly line of Lots 19 through 25 for a distance of 440. 24' to the southwesterly corner of Lot No. 14;

<sup>135</sup> Please note that this language is not preferred because it is too general. If a specific law needs to be excepted, it should be listed.

thence easterly along the southerly line of Lots 14 through 17 of the above mentioned filed map to a point in the easterly line of the Cerio Tract and the westerly line of the Single Tract; thence in a northerly direction along the easterly line of said Cerio Tract and the westerly line of said Single Tract a distance of 41. 46' to the northwest corner of Lot No. 39 as shown as per above Single Tract map, thence southeasterly 553. 92' along the northerly line of the following lots: 39, 38, 37, 36, 35, 34, 33, 32, 31 and part of 28 as shown on Single Tract map to a point 41. 42' easterly from the north east corner of lot No. 31, thence southwesterly 147. 39 to a point on the northerly line of Singleton Ave. , which is 69. 26' easterly from the southeast corner of lot 31, thence easterly along the northerly line of Singleton Av. , 130. 74' to a point where the northerly line of Singleton Ave. intersects the center line of the Brewerton Plank Road to the point and place of beginning. Toll Road Park, as described pursuant to this section, contains approximately eight acres.

§ 5. The discontinuance of parkland authorized by the provisions of this act shall not occur until the village of North Syracuse has complied with any federal requirement pertaining to the alienation or conversion of parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 6. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## APPROVAL MEMORANDUM - NO. 24 CHAPTER 460

MEMORANDUM filed with Senate Bill Number 7546-A, entitled:

"AN ACT to authorize the village of North Syracuse in the county of Onondaga, to discontinue use of certain lands as parklands and convert such lands for senior housing"

## APPROVED

This bill is intended to authorize the Village of North Syracuse Village) to: (1) discontinue using an eight-acre park known as "Toll Road Park" as municipal parkland; and (2) sell the park property to enable senior citizen housing to be constructed on the property. The authorization takes effect only upon the condition that the Village dedicate other lands of equal or greater fair market value for use as replacement parkland. In the event that the fair market value of the replacement land is less than the value of the parkland that is alienated, the bill requires the Village to dedicate money in an amount equal to the difference in value for the acquisition of additional parkland and/or capital improvements to existing parkland or recreational facilities.

Generally, once a municipality dedicates land to serve as municipal parkland, the parkland becomes subject to the "public trust doctrine," meaning that the parkland may not be alienated without the Legislature's authorization. This requirement reflects the fact that municipal parkland is a valuable public asset deserving of special protection. This fact is also why alienation bills typically not only condition the authority to alienate parkland on the dedication of appropriate replacement lands, but also contain a legal description of the replacement lands that will be dedicated as parkland. This approach also allows the public to scrutinize proposed replacement lands before an alienation bill is passed.

Unfortunately, while this bill conditions the Legislature's authorization for the alienation on, among other things, the dedication by the Village of replacement lands of equal or greater fair market value, it does not identify the replacement lands. While I am signing this bill, I urge the Legislature to structure future legislation authorizing the alienation of other than insignificant amounts of municipal parkland to include a description of the replacement lands that will be dedicated as parkland.

The bill is approved.

## **Appendix 7 Sample Legislation: Parkland Funded by Urban Park and Recreation Recovery Program Monies**

### LAWS OF NEW YORK, 1998 CHAPTER 412

AN ACT to authorize the city of Utica, in the county of Oneida, to sell certain parklands

Became a law July 22, 1998, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding the provisions of any general, special or local law to the contrary, the city of Utica, in the county of Oneida is hereby authorized and empowered acting by and through its city council and upon such terms and conditions as determined by such council, to discontinue the use of parklands and to sell and convey at fair market value the lands described in section two of this act, which are no longer needed for park purposes to Bull Brothers, Inc. or its successors in interest. All proceeds and consideration received from the sale of the lands described in section two of this act shall be used for the acquisition of additional parklands of equal or greater fair market value, and/or capital improvements to existing parklands and recreational purposes within such city.

§ 2. The lands authorized to be discontinued, sold and conveyed pursuant to section one of this act are more particularly described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate in the city of Utica, in the county of Oneida, and the State of New York, bounded and described as follows:

Beginning at a point where the northerly boundary line of Oriskany Street west intersects with the westerly boundary line of Platt Street, thence N. 68-59' W. along said northerly boundary line of Oriskany Street West a distance of 776. 85+/- lineal feet to a point, thence N. 27-59' E. a distance of 249. 11 +/- lineal feet to a point, thence S. 76-11' E. along the southerly boundary line of lands now or owned by the New York Central and Hudson River Railroad company a distance of 179. 28+/- lineal feet to a point: thence S 76-08' 30" E. along the southerly boundary line of lands now or owned by the New York Central and Hudson River Railroad Company a distance of 444. 14+/- lineal feet to a point; thence S 76-11' E along the southerly boundary line of lands now or formally owned by the New York Central and Hudson Railroad Company, a distance of 120. 63+/- lineal feet to a point, said point also being located on the westerly street boundary line of Platt Street; thence S 19-40' W along the westerly street boundary line of Platt Street a distance of 340. 10 +/- lineal feet to the point of beginning. Said parcel containing 221,823 square feet, or 5. 09 acres. Excepting and reserving that portion of land to be retained by the City of Utica, said portion of land described as follows; beginning at a point located on the westerly street boundary line of Platt Street, said point being located 275 lineal feet northerly of the intersection of the westerly street boundary line of Platt street and the northerly street boundary line of Oriskany Street West; thence N 70-20' W. a distance of 10 lineal feet to a point; thence N 19-40' E. a distance of 47 lineal feet to a point; thence S 70-20' E. a distance of 10 lineal feet to a point, said point also being located on the westerly street boundary line of Platt street; thence S 19-40' W. along the westerly street boundary line of Platt Street, a distance of 47 lineal feet to the point of beginning. Said parcel containing 470 square feet or 0. 01 acres.

§ 3. The discontinuance of parkland authorized by this act shall not occur until the city of Utica has complied with any federal requirements pertaining to the alienation or conversion of the parklands, including satisfying the Secretary of the Interior that the conversion complies with all conditions which the Secretary of the Interior deems necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.



## Appendix 8 Sample Legislation: Utility Easements

### LAWS OF NEW YORK, 2010 CHAPTER 287

AN ACT to authorize the county of Nassau to convey to the Manhasset-Lakeville water district, a special district of the town of North Hempstead, an easement through land located in the county's Leeds Pond Preserve to be used to install an underground water main, to extend and improve the existing public water supply system.

Became a law July 30, 2010, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county of Nassau, acting by and through its county legislature, is hereby authorized to convey by appropriate instruments to the board of commissioners of the Manhasset-Lakeville water district, an easement in Leeds Pond Preserve described in section three of this act, for the purpose of enabling such water district to construct, and repair when necessary, a transmission main which will extend the existing public water supply system. Upon completion of construction, the county of Nassau shall restore the surface of the lands and the lands shall continue to be used for park purposes.

§ 2. The authorization provided in section one of this act shall be effective only upon the condition that the county of Nassau dedicate an amount equal to or greater than the fair market value of the easement interest being alienated pursuant to section one of this act to the acquisition of new parklands and/or capital improvements to existing park and recreational facilities.

§ 3. The easement to be conveyed by the county of Nassau pursuant to the provisions of this act is described as follows:

All that certain plot, piece or parcel of land with buildings and improvements thereon erected, situate, lying and being located at Manhasset, Town of North Hempstead, County of Nassau and State of New York being more particularly bounded and described as follows:

Beginning at a point on the widened Easterly side of Plandome Road, said point being the Southwest corner of Lot 151 as shown on the Map of Plandome Wood, Section 1, filed August 1, 1956 as case number 6728. Said point of beginning being South 01 Degrees 50 Minutes 30 Seconds West, 297. 70 feet from the intersection of the Easterly side of Plandome Road with the Southerly side of Elm Sea Lane. Thence partly along the southerly line of the Map of Plandome Wood Section 1, South 74 Degrees 24 Minutes 22 Seconds East a distance of 339. 63 feet; Thence along the Southerly line of the Map of Plandome Wood Section 1 and the Map of Plandome Wood Section 2, North 70 Degrees 54 Minutes 13 Seconds East a distance of 1140. 27 feet to the Westerly line of the Map of Manhasset Estates; Thence along the Westerly line of Manhasset Estates, South 19 Degrees 03 Minutes 57 Seconds East a distance of 161. 94 feet to the Northerly line of the Map of Plandome Mill Amended Map Number 2; Thence along the Northerly line of the Map of Plandome Mill, Amended Map Number 2, South 63 Degrees 30 Minutes 53 Seconds West a distance of 15. 13 feet; Thence North 19 Degrees 03 Minutes 57 Seconds West a distance of 148. 88 feet; Thence South 70 Degrees 54 Minutes 13 Seconds West a distance of 1129. 95 feet; Thence North 74 Degrees 24 Minutes 22 Seconds West a distance of 368. 45 feet to the Southerly line of Plandome Road; Thence North 15 Degrees 35 Minutes 38 Seconds East, 15. 00 feet; Thence South 74 Degrees 24 Minutes 22 Seconds East a distance of 24. 14 feet to the point or place of BEGINNING. The described property having an area of 24,849. 46 square feet or 0. 57 acres.

§ 4. The conveyance of the easement authorized by the provisions of this act shall not occur until the county of Nassau has complied with any federal requirements pertaining to the alienation or conversion of parklands, including satisfying the secretary of the interior that the alienation or conversion complies with all conditions which the secretary of the interior deems necessary to assure that the substitution of other lands be equivalent in fair market value and recreational usefulness to the lands being alienated or converted.

§ 5. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## Appendix 9 Sample Legislation: Cellular Towers

### LAWS OF NEW YORK, 2009 CHAPTER 444

AN ACT in relation to authorizing the town of Smithtown in the county of Suffolk, to discontinue the use of certain park land and lease such land for use of a wireless communications facility

Became a law September 16, 2009, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. a. The town of Smithtown, located in the county of Suffolk, is hereby authorized, acting by and through its town board and upon such terms and conditions as determined by such board, to discontinue the use of certain municipally owned park land, and to lease at fair market value to Site Tech Wireless, LLC, for a term not to exceed twenty-five years, said park land as described in section two of this act for the purpose of erecting, maintaining and operating a wireless communications facility.

b. All proceeds from such lease shall be used for the acquisition of additional park lands and/or for capital improvements to existing park and recreation facilities.

§ 2. The park lands authorized by section one of this act are more particularly described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN SMITHTOWN IN THE TOWN OF SMITHTOWN, COUNTY OF SUFFOLK AND THE STATE OF NEW YORK KNOWN AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS. BEGINNING AT A POINT BEING THE FOLLOWING (1) COURSE AND DISTANCE FROM THE NORTH WESTERLY CORNER OF SAID PROPERTY RUNNING SOUTH 74 DEGREES 06 MINUTES 47 SECONDS EAST 1,716. 80' TO THE POINT OR PLACE OF BEGINNING AT THE NORTH WESTERLY CORNER OF LEASE AREA RUNNING THENCE NORTH 85 DEGREES 49 MINUTES 15 SECONDS EAST 55. 00 FEET RUNNING THENCE SOUTH 04 DEGREES 10 MINUTES 45 SECONDS EAST 55. 00 FEET RUNNING THENCE SOUTH 85 DEGREES 49 MINUTES 15 SECONDS WEST 55. 00 FEET RUNNING THENCE NORTH 04 DEGREES 10 MINUTES 45 SECONDS WEST 55. 00 FEET TO THE POINT OR PLACE OF BEGINNING

CONTAINING 0. 069 acres (3,025 square feet) of land.

§ 3. Should the leased lands described in section two of this act cease to be used for the purposes described in section one of this act, the lease shall terminate and those lands shall revert to the town of Smithtown for public park and recreational purposes. At the time of such reversion, the removal of such wireless communications facility shall take place and the property shall be returned to its previous state, consistent with parks and recreational purposes.

§ 4. This act shall take effect immediately.

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## Appendix 10 Sample Legislation: Lease for Recreational Purposes

### LAWS OF NEW YORK, 2009 CHAPTER 67

AN ACT to authorize the city of Watertown, county of Jefferson, to lease certain parklands

Became a law June 9, 2009, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subject to the provisions of this act but notwithstanding chapter 308 of the laws of 1998, the city of Watertown, county of Jefferson, is hereby authorized, acting by and through its city council, to lease to the Watertown Family YMCA, Inc. for a term not to exceed twenty-five years, the municipally owned parkland more particularly described in section three of this act, consisting of a public indoor sports facility with indoor athletic fields, exercise/weight training areas, concession facilities and related facilities.

§ 2. The authorization provided in section one of this act shall be effective only upon the condition that the city of Watertown, county of Jefferson, dedicate an amount equal to the fair market value of those interests being transferred by this act, for the acquisition of additional parklands and/or for capital improvements to existing park and recreational facilities.

§ 3. The lands referred to in section one of this act are located, bounded and described as follows:

BEGINNING at a 3/4" iron pipe found in the westerly margin of Rand Drive, said iron pipe also marking the most northeasterly corner of P. N. 829103, said iron pipe being situate N 34°-50'-00" E a direct tie distance of 414. 00± feet from the northerly margin of Coffeen Street; THENCE N 54°-47'-00" W along the northerly property line of P. N. 829103 passing through a 3/4" iron pipe found at 450. 00± feet and continuing on the same bearing a total distance of 516. 00± feet to a 3/4" iron pipe set in the easterly property line of P. N. 829101. 2; THENCE N 34°-50'-00" E along the easterly property line of P. N. 829101. 2 a distance of 205. 67± feet to a railroad spike set at the point of intersection of the easterly property line of P. N. 829101. 2 and the easterly property line of the Western Outfall Trunk Sewer (W. O. T. S. ) P. N. 829102; THENCE N 42°-01'-24" E along the easterly property line of the W. O. T. S. P. N. 829102 a distance of 224. 41± feet to a railroad spike set; THENCE S 54°47'-00" E along the newly created lease dividing line a distance of 487. 91± feet to a 3/4" iron pipe set; THENCE S 34°-50'-00" W along a prolongation line of the westerly margin line of Rand Drive, passing through a 3/4" iron pipe found at 123. 41± feet and continuing on the same bearing along the actual westerly margin line of Rand Drive, a total distance of 428. 50± feet to the point and place of beginning. CONTAINING 217,971. 71± square feet (5. 00 acres) of land more or less. SUBJECT to and including any and all rights or restrictions of record.

§ 4. Should the interests described in section three of this act cease to be operated as a public indoor sports facility, such interests shall revert to the city of Watertown, county of Jefferson, for public park and recreational purposes. Such public indoor sports facility shall be made available to the general public on an equitable basis. Where availability of public facilities are limited, the use of such facilities must be determined by a reservation policy which provides priority use to the general public.

§ 5. If the parkland that is the subject of this act has received funding pursuant to the federal land and water conservation fund, the discontinuance of parkland authorized by the provisions of this act shall not occur until the municipality has complied with the federal requirements pertaining to the conversion of parklands, including satisfying the secretary of the interior that the discontinuance will include all conditions which the secretary of the interior deems necessary to assure the substitution of other lands shall be equivalent in fair market value and recreational usefulness to the lands being discontinued.

§ 6. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

## Appendix 11 Sample Municipal Home Rule Request

Intro No. <u>23</u> Date <u>1/19/06</u> Reviewed by Co. Attorney <u>[Signature]</u> Date <u>12/23/05</u>	<b>RESOLUTION</b> <b>BROOME COUNTY LEGISLATURE</b> BINGHAMTON, NEW YORK	Permanent No. <u>06-23</u> Date Adopted <u>1/19/06</u> Effective Date <u>1/23/06</u>
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INTRODUCED BY: Education, Culture and Recreation and Finance Committees

SECONDED BY: Hon. Brian Brunza

**RESOLUTION REQUESTING THE NEW YORK STATE LEGISLATURE FOR THE AUTHORITY TO EXCHANGE A PORTION OF HAWKINS POND NATURE AREA LAND FOR AN ADJOINING PARCEL OF LAND IN THE TOWN OF WINDSOR**

WHEREAS, the Commissioner of Parks and Recreation and the Director of Real Property Tax Service request authorization to exchange a parcel of land in the Town of Windsor adjoining the Hawkins Pond Nature Area for an equally sized portion of park land as illustrated in the attached Exhibit "A", and

WHEREAS, the portion of said park to be exchanged contains a dwelling for which the Department of Parks and Recreation has no further use, and

WHEREAS, the parcel of property owned by the County is vacant land more suitable for use as park land, and

WHEREAS, once the exchange is made, the Commissioner of Parks and Recreation and the Director of Real Property Tax Services can dispose of the property and dwelling in conformity with the procedures established by this County Legislature and in accordance with all applicable laws, and

WHEREAS, such an exchange requires parkland alienation legislation by the New York State Legislature, compliance with the state Environmental Quality Review Act, and appraisals and surveys of both parcels, now, therefore, be it

RESOLVED, this County Legislature requests that New York State Legislature adopt legislation authorizing the exchange of a portion of Hawkins Pond Nature Area land with an adjoining equally sized parcel of land in the Town of Windsor as illustrated in the attached Exhibit "A", and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution, and be it

FURTHER RESOLVED, that the Clerk of this Legislature in conjunction with the Commissioner of Planning and Economic Development and the Commissioner of Parks and Recreation is hereby directed to send a copy of this Resolution and all supporting documentation to the New York State Senate and Assembly home rule offices, Senator Thomas W. Libous, Assemblywoman Donna Lupardo, Assemblyman Clifford W. Crouch and Assemblyman Gary D. Finch.

COUNTY OF BROOME } ss.:  
STATE OF NEW YORK }

I, the undersigned, Clerk of the Legislature of the County of Broome, DO HEREBY CERTIFY that the above is an original resolution of such Legislature duly adopted on the 19th day of January, 20 06, by a majority of the members elected to the Legislature of said County at a regular meeting of said Legislature.

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of nineteen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 20th day of January, 20 06

Date sent to County Executive January 20, 2006

Approved [Signature]  
County Executive

Date 1/23, 2006

[Signature]  
Clerk, County Legislature  
County of Broome

## Appendix 12 State Parks Regional Grants Administrators

<b>RGA</b>	<b>Contact Information</b>	<b>OPRHP Region/Counties</b>	<b>REDC Region/Counties</b>
<b>Danielle Dwyer</b>	Saratoga Spa State Park 19 Roosevelt Drive Saratoga Springs, NY 12866 Phone: (518) 584-2000 Fax: (518) 584-5694	<b>Saratoga/Capital Region</b> Counties: Albany, Fulton, Greene, Essex, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	<b>Capital Region</b> Counties: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington
<b>Jean Egenhofer</b>	Clark Reservation State Park 6105 East Seneca Turnpike Jamesville, NY 13078 Phone: (315) 492-1756 Fax: (315) 492-3277	<b>Central Region</b> Counties: Broome, Chenango, Cortland, Delaware, Herkimer, Madison, Oneida, Onondaga, Oswego, Otsego	<b>Central Region</b> Counties: Cayuga, Cortland, Madison, Onondaga, Oswego  <b>Mohawk Valley Region</b> Counties: Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie
<b>Kathleen Mclsaac</b>	2221 Taughannock Park Road Trumansburg, NY 14886 Phone: (607) 387-7041 Fax: (607) 387-3390	<b>Finger Lakes Region</b> Counties: Cayuga, Chemung, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins  <b>Allegheny Region</b> Counties: Allegheny, Cattaraugus, Chautauqua  <b>Genesee Region</b> Counties: Wyoming, Livingston	<b>Finger Lakes Region</b> Counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming & Yates  <b>Southern Tier Region</b> Counties: Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins
<b>Traci Christian</b>	Belmont Lake State Park PO Box 247 Babylon, NY 11702 Phone: (631) 321-3543 Fax: (631) 321-3721	<b>Long Island Region</b> Counties: Nassau, Suffolk	<b>Long Island Region</b> Counties: Nassau, Suffolk
<b>Erin Drost</b>	NYS OPRHP Taconic Regional Office 9 Old Post Road Staatsburg, NY 12580 Phone: (845) 889-3866 Fax: (845) 889-8321	<b>Palisades Region</b> Counties: Orange, Rockland, Sullivan, Ulster  <b>Taconic Region</b> Counties: Columbia, Dutchess, Putnam, Westchester	<b>Mid-Hudson Region</b> Counties: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester
<b>Merrill Hesch</b>	NYS OPRHP Adam Clayton Powell, Jr. State Office Building 163 West 125th Street, 17th Floor New York, New York 10027 Phone: (212) 866-2599 Fax: (212) 866-3186	<b>New York City Region</b> Counties: Bronx, Kings, New York, Queens, Richmond	<b>New York City Region</b> Counties: Bronx, Kings, New York, Queens, Richmond
<b>Sunshine Jenkins</b>	Keewaydin State Park Alexandria Bay, NY 13607 Phone: (315) 482-2593 Fax: (315) 482-9413	<b>Thousand Islands Region</b> Counties: Clinton, Franklin, Hamilton, Jefferson, Lewis, St. Lawrence	<b>North Country Region</b> Counties: Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, St. Lawrence
<b>Vacant</b>	Beaver Island State Park 2136 West Oakfield Grand Island, NY 14072 Phone: (716) 773-5292 Fax: (716) 773-4150	<b>Niagara Region</b> Counties: Erie, Niagara  <b>Genesee Region</b> Counties: Genesee, Monroe, Orleans	<b>Western New York Region</b> Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Niagara