



**OREGON**  
**LAND & WATER CONSERVATION FUND**  
**Grant Program Manual**  
2023 GRANT CYCLE



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Website: <https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx>

**Please also refer to the National Park Service Federal Financial Assistance Manual, Volume 71, effective March 11, 2021**

<https://www.nps.gov/subjects/lwcf/upload/LWCF-FA-Manual-Vol-71-3-11-2021-final.pdf>

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## Land and Water Conservation Fund Grant Program – Quick Facts

<b>Program Title:</b>	<b>Land and Water Conservation Fund Grant Program (LWCF)</b>
<b>Program Website:</b>	<a href="https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx">https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx</a>
<b>Program Purpose:</b>	The Land and Water Conservation Fund (LWCF) is intended to create and maintain a nationwide legacy of high-quality recreation areas and facilities and to stimulate non-federal investments in the protection and maintenance of recreation resources across the United States.

### **In Perpetuity Requirement:**

LWCF Act requires that the **any park or other outdoor recreation area or facility that has benefitted from assistance from the LWCF, whether for acquisition or development purposes, and regardless of the amount or extent of assistance, may not be converted to other than public outdoor recreation uses** (Section 6(f)(3) of the LWCF Act, now codified at [54 U.S.C. 200305\(f\)\(3\)](#)). The property must be preserved for outdoor recreation uses in perpetuity and cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.

<b>Administration</b>	The LWCF is a federal program administered in the state by the Oregon Parks and Recreation Department. The <a href="#">administrative rules</a> are OAR 736-008-0005 – OAR 736-008-0055.
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<b>Eligible Projects:</b>	Property Acquisition, Development, Major Rehabilitation and/or Renovation, Acquisition & Development (combination)
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<b>Eligible Applicants:</b>	Cities, Counties, Metropolitan Service Districts, Park and Recreation Districts, Port Districts, federally recognized Indian Tribes in Oregon, and Oregon State Agencies: Parks and Recreation Department, Department of Forestry, Department of Fish and Wildlife, and Department of State Lands
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<b>Funding Source:</b>	The income for the LWCF is provided largely from Outer Continental Shelf mineral receipts. Amounts are supplemented by other qualified off-shore revenues pursuant to the Gulf of Mexico Security Act of 2006 (Public Law 109-432)
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<b>Funding Type:</b>	Reimbursement Grants
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<b>Grant Amounts:</b>	Minimum grant: <b>\$50,000 (\$100,000 total project costs)</b> , unless otherwise authorized by Oregon Parks and Recreation Director. No maximum grant amounts.
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<b>Match Requirements:</b>	50% match required
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### **Build America, Buy America Requirements**

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52. The Build America, Buy America Act requires that no later than May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The following Buy America Preference must be included in all subawards, including all contracts and purchase orders for work or products under this program:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Construction materials includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Construction Materials does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit [www.doi.gov/grants/BuyAmerica](http://www.doi.gov/grants/BuyAmerica). Additional information can also be found at the White House Made in America Office website: [www.whitehouse.gov/omb/management/made-in-america/](http://www.whitehouse.gov/omb/management/made-in-america/)

Approved and Active Department of the Interior (DOI):

1. DOI Small Grants Waiver: This general applicability waiver provides approval to waive the Buy America Preference for DOI financial assistance agreements when the total award amount of an



agreement does not exceed the Simplified Acquisition Threshold, currently \$250,000. The small grants waiver was approved on February 21, 2023 and expires February 20, 2028.

2. DOI De Minimus Waiver: This general applicability waiver provides approval to waive the Buy America Preference for otherwise covered infrastructure project purchases totaling up to 5% of the total applicable project costs, up to a maximum of \$1,000,000. The de minimus waiver was approved on February 21, 2023 and expires February 20, 2028.

Refer to the Approved DOI General Applicability Waiver website for more information:

<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

## CHAPTER 1 – The Program

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### 1.1 History of the Program

The Land and Water Conservation Fund State Assistance program was established by the LWCF Act of 1965 (Section 6, Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578; 16 U.S.C 4601-4 et seq.) to stimulate a nationwide action program to assist in preserving, developing, and assuring to all citizens of the United States of present and future generations such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation. The LWCF State Assistance Program provides matching grants to States, and through the States to local governments, for the acquisition and development of public outdoor recreation areas and facilities. Grant funds are also available to the States to assist in the development of Statewide Comprehensive Outdoor Recreation Plans (SCORP).

The LWCF program was administered by the Bureau of Outdoor Recreation (BOR) from its beginning in 1965 to 1978 when the Heritage Conservation and Recreation Service (HCRS) was created. HCRS then administered the program until 1981 when the LWCF was transferred to the Department of Interior, National Park Service.

The LWCF expired on September 30, 2015, but was extended for 3 years in the Consolidated Appropriations Act, 2016, until September 30, 2018.

On March 12, 2019, S .47, the John D. Dingell, Jr. Conservation, Management, and Recreation Act (formerly known as the Natural Resources Management Act) was signed by the President and is now [Public Law 116-9](#). As one of the largest conservation bills in recent history, this law permanently reauthorized the Land and Water Conservation Fund. (Land and Water Conservation Fund, 2020)

On August 4, 2020, the [Great American Outdoors Act](#) fully and permanently funded the Land and Water Conservation Fund. Published as Public Law 116-152, the Great American Outdoors Act provides mandatory allocation at the full authorized level of \$900 million per year to invest in conservation and recreation opportunities across the country. Congress has a final say in the amounts directed to each program or activity supported by LWCF.

#### Source of Funds

- Receipts from oil drilling leases under the Outer Continental Shelf Lands Act.
- Federal tax on motor boat fuels
- Net proceeds from the sale of surplus Federal property
- Gulf of Mexico Energy Security Act, Public Law 109-432 (GOMESA)

The Oregon Parks and Recreation Department, Office of the State Liaison Officer (SLO), is responsible for the distribution of Federal Land and Water Conservation Fund (LWCF) monies to state agencies and local governments. The SLO is also responsible for implementation of an ongoing SCORP planning process; evaluation and selection of projects in accord with an Open Project Selection Process; assuring compliance of projects; preparation and submission of applications and amendments; financial management of apportionments and individual grant awards; inspection of projects to insure proper completion; operations, maintenance,

stewardship of parkland within LWCF boundaries; and other functions necessary for proper program administration and management.

The National Park Service, within the Department of the Interior, manages this federal grant program and reviews and approves all project applications, agreements, and amendments.

## **1.2 Statewide Comprehensive Outdoor Recreation Plan**

To be eligible for LWCF assistance grants, projects must be in accord with Oregon's Statewide Comprehensive Outdoor Recreation Plan (SCORP). Oregon's SCORP provides a clear link between the findings of the SCORP plan and the allocation of funding. Only project proposals in accordance with SCORP and reviewed through the State's Open Project Selection Process (OPSP) will be considered by the National Park Service.

<https://www.oregon.gov/oprd/PRP/Pages/PLA-scorp.aspx>

## **1.3 Oregon Administrative Rules**

Administrative rules for the program are found in Oregon Administrative Rules Chapter 736, Division 8. <https://secure.sos.state.or.us/oard/ruleSearch.action>

## **1.4 Eligible Project Sponsors**

Eligible local government agencies include:

- Cities and towns
- Counties
- Park and Recreation Districts
- Port Districts
- Federally Recognized Indian Tribes in Oregon
- Metropolitan Service Districts

Eligible state agencies include:

- Oregon Parks and Recreation Department (OPRD)
- Oregon Department of Fish and Wildlife (ODFW)
- Oregon Department of Forestry (ODF)
- Oregon Division of State Lands (DSL)

Ineligible agencies include schools, non-profit organizations, service clubs and non-park special service districts, such as irrigation or fire districts. Private individuals or organizations are not eligible for grants under this program.

## **1.5 Eligible Projects**

- Acquisition: acquisition of lands, wetlands, and waters.
- Development or Rehabilitation: development or renovation of public outdoor recreation facilities.
- Acquisition and Development (Combination): both acquisition and development in the same project.

### **A. Acquisition Projects**

1. Acquisition of lands and waters for public outdoor recreation, including new areas or additions to existing parks, forests, wildlife areas, beaches and other similar areas dedicated to outdoor recreation may be eligible for assistance. Areas acquired may serve

a variety of outdoor recreation activities including but not limited to: driving and walking for pleasure, sightseeing, swimming and other water sports, fishing, picnicking, nature study, boating, hunting and shooting, camping, horseback riding, bicycling, snowmobiling, skiing and other outdoor recreation sports and activities.

## **2. Means of Acquisition**

Acquisition of lands and waters, or interests therein, may be accomplished through purchase, transfer, or by gift (donation). Acquisition through the exercise of the right of eminent domain is allowable only with agreement from the property owner (such as actions needed to quiet title or to allow a court to set the value of a property).

## **3. Eligible Acquisition Costs**

The only eligible property costs include:

- Direct costs for the purchase of real property and interests in real property for public outdoor recreation and improvements. LWCF funding may be used to acquire a structure only if it will be used to support or is necessary to achieve the outdoor recreation goal for the site. The National Park Service will determine the eligibility of structures proposed for acquisition.

The only eligible incidental costs include:

- Relocation and relocation administration allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies, Public Law 91-646.
- Cultural resources (survey, excavation, onsite monitoring, data recovery, and other costs).
- National Environmental Policy Act compliance (e.g. hazardous substances review, wetland delineations, biological surveys, etc.)

Incidental and administrative costs relating to acquisition, including appraisal costs, are ineligible.

## **4. Acquisition of Lesser Interests**

Acquisitions of interests in lands and waters of less than fee simple title, including leasehold interests, are not eligible unless such lesser rights (e.g. permanent recreation use easements or similar devices) will insure the desired perpetual public access and user pursuant to LWCF Act.

## **5. Acquisition involving compatible resource management practices**

Acquisition of land upon which the project sponsor proposes compatible natural resource management practices may be allowed as long as the type and extent of the activity is limited to that necessary to support and maintain the intended outdoor recreation activity. Examples include timber management, habitat improvement, grazing, and agricultural uses for wildlife management (not including commercial agriculture). These may be carried out concurrently within the recreation area if they are clearly described in the project proposal, are compatible with and secondary to proposed outdoor recreation use(s), and are approved by the NPS.

## **6. Acquisition for Delayed Outdoor Recreation Development**

Grants may be available to acquire property for future development of outdoor

recreation facilities. In the interim, between acquisition and development, the property should be open for those public recreation purposes that the land is capable of supporting or that can be achieved with minimum public investment.

If planned development for public outdoor recreation will be delayed for up to three years from the date of acquisition, the project sponsor must include the following information in the project application:

- Why immediate acquisition of the property is necessary.
- What facilities will be developed and when such development will occur.
- What, if any, non-recreation uses will continue on the property and when such non-recreation uses will be terminated.
- The type of public outdoor recreation access that will be provided during the interim period.
- Assurance that any income received by the project sponsor for the non-recreation activities will be added to the funds committed to the project and used to further eligible LWCF project objectives at the project site.
- Assurance that the site will be available for public outdoor recreation use and any non-recreation activity will be terminated within 3 years from the date of acquisition.

#### **7. Uniform Relocation and Acquisition (Public Law 91-646)**

All acquisitions with LWCF assistance must be in accordance with the applicable provisions of Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The Uniform Act provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and establishes uniform and equitable land acquisition policies for federal and federally-assisted programs, such as the LWCF. Refer to Chapter 4, section D of the LWCF Federal Financial Assistance Manual: <https://www.nps.gov/subjects/lwcf/upload/LWCF-FA-Manual-Vol-71-3-11-2021-final.pdf>

#### **8. Appraisal Standards**

The Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA), commonly referred to as the “Yellow Book,” must be used to prepare appraisals for acquisitions, donations if used for a federal match, and land exchanges for conversions.

The federal standards (UASFLA) are considered “Supplemental Standards” to the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to bolster the minimum level of documentation and yield compliance with the unique and applicable appraisal methods and procedures that have evolved from federal case law. The UASFLA is available at: <http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf>

OPRD will provide guidance to appraisers on appraisal requirements for federally-assisted acquisitions, for ensuring appraisals are reviewed by state-certified review appraisers pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), and for approving appraisals. OPRD will certify the appraisals meet the federal appraisal standards.

**9. Appraisal value estimate under \$25,000 – Waiver Valuation**

The waiver valuation is not an appraisal. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Uniform Standards of Professional Appraisal Practice relating to appraisals do not apply. A waiver valuation approval by OPRD is not required, but within the Project Sponsor’s organization, there must be a process to assure that the basis for not preparing an appraisal is appropriate and that the waiver valuation amount is used to determine what is believed to be just compensation.

An appraisal is not required if the Project Sponsor determines that the valuation problem is uncomplicated and that the estimated value of the proposed acquisition is less than \$25,000, provided the acquiring agency offers the owner the option to have an appraisal and the owner elects to have the agency prepare a waiver valuation instead.

The basic concept is that the valuation will be prepared by a knowledgeable person who is aware of the general market values in the project area. It is not intended that the person preparing the valuation be an appraiser. The requirement for offering the owner the opportunity to accompany the appraiser does not apply to waiver valuations. This will further streamline the process.

There is no specific requirement for “approval” of the waiver valuation (reviewing either the valuation itself or the decision to use a waiver valuation.)

The decision to perform a waiver valuation as opposed to an appraisal is not made merely on the basis of the anticipated total compensation for the parcel. Other factors, such as tenant-owned improvements, land-locking, proximity damages, familiarity of past acquisition/condemnations trends in the project area, past acquisitions from the same property owners, must be given serious weight and consideration in the valuation format decision. In the event the parcel involves the acquisition of tenant-owned improvements, the Project Sponsor shall prepare an appraisal. Tenant improvements are defined as buildings, structures or other improvements which would be considered to be real estate if owned by the owner of the real property on which they are located. An appraisal shall also be prepared when the acquisition creates a land-locked remainder or uneconomic remnant and proximity damages to a structure.

The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make a waiver valuation.

**10. Conflict of interest**

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency. [See 49 CFR 24.102(n) (2).]

**11. Basis for LWCF matching assistance**

The project sponsor must secure at least one appraisal by a qualified appraiser or document the value using the waiver valuation method for each parcel to be acquired. Generally, the fair market value (FMV) or waiver value will be used as the basic measure of LWCF assistance on acquisitions. LWCF assistance shall be based upon evidence of this value.

**12. Appraisal Review:** Once an appraisal is initiated it should be reviewed by a qualified appraisal reviewer. Arranging the Appraisal and Appraisal Review is the responsibility of the applicant. The Appraiser and Appraisal Reviewer typically work in cooperation so they can confer on methodology and conclusions.

**13. Acquisition by Donation**

An appraisal and appraisal review prepared according to the UASFLA or a waiver valuation is required for all projects involving the donation of real property or interests for determining the federal matching share.

- Partial donations/Acquisition at less than just compensation.  
Only in unusual circumstances (e.g. bargain sales, donations, etc.) will real property be acquired at less than established just compensation as determined by an approved appraisal. For partial donations, documentation must include evidence the owner has been provided with a statement of just compensation. A written statement by the owner that he is making a partial donation is also required.
- To determine the amount eligible for matching a LWCF project, an approved appraisal is necessary.

**14. Acquisition of less-than-fee interests**

In certain instances, the purchase of less than fee title may be permissible. The acquisition of easements, rights-of-way, etc., will be viewed in the same light as full takings. Documentation of value by appraisals will be the same. The project proposal should adequately explain why lesser interests are to be acquired.

**15. Acquisition Projects That Will Not Be Assisted**

The following are not eligible for LWCF funding:

- Acquisition of historic sites and structures.
- Acquisition of museums and sites to be used for museums or primarily for archaeological excavations.
- Acquisition of land to help meet a public school's minimum site size requirement as established by state or local regulations.
- Acquisition of areas and facilities designed to be used primarily for semi-professional and professional arts and athletics;
- Acquisition of areas and facilities to be used solely for game refuges or fish production purposes. However, such areas and facilities may be eligible if they will be open to the public for compatible recreation.
- Acquisition of areas to be used mainly for construction of indoor facilities. Also prohibited are areas where existing indoor recreation facilities, if left in place, will not leave sufficient area at the site for the development of outdoor recreation facilities to justify the cost of the acquisition.
- Acquisition of railroad "hardware", trestles, stations, yards, etc.

- Acquisition of sites containing luxury lodges, hotels, motels, restaurants, and similar elaborate facilities, which are to be operated by the project sponsor or a concessionaire to provide food and/or sleeping quarters.
- Acquisition of agricultural land primarily for preservation in agricultural purposes.
- Acquisition of federal surplus property.

**B. Development and/or Rehabilitation Projects**

Facilities needed for the use and enjoyment of outdoor recreation areas may be assisted. Development projects may consist of basic outdoor recreation facilities to serve the general public provided the funding of such a project is in the public interest and in accord with SCORP.

A development project may consist of one improvement or a group of related improvements designed to provide basic facilities for outdoor recreation, including facilities for access, safety, health, and protection of the area, as well as those required for the outdoor recreation use of the area.

Funding of development projects may cover construction, renovation, site planning, demolition, site preparation, architectural services, and similar activities essential for the project.

**1. Design Criteria**

Plans for the development of land and/or facilities should be based on the needs of the public, the expected use, and the type and character of the project area. Facilities should be attractive for public use and generally be consistent with the environment. Plans and specifications for the improvements and/or facilities should be in accord with established engineering and architectural practices. Emphasis should be given to the health and safety of users, accessibility to the general public, and the protection of the recreation and natural values of the area.

All facilities developed must be designed in conformance with the appropriate current design standards for the Architectural Barriers Act of 1968 (ABA) (Public Law 90-480, Section 504 of the Rehabilitation Act of 1973, as amended, Americans with Disabilities Act, and State Building Codes.

Projects should incorporate the principles of sustainability in their planning and design. Applicants are encouraged to exceed the minimum accessibility standards and use a design principle that maximizes universal accessibility for all. Universal design attempts to meet the needs of all people, and includes those of all ages, physical abilities, sensory abilities and cognitive skills. It includes the use of integrated and mainstream products, environmental features and services, without the need for adaptation or specialized design.

**2. Ownership and Control of Project Lands**

Facilities may be developed on land and water owned in fee simple by the project sponsor or where ownership of less-than-fee interests such as easements provides permanent control of the property commensurate with the proposed development. All less-than-fee interests must be described in the Application & Revision (A&R) Form and indicated in the



LWCF boundary map.

No approval will be given for the development of facilities on leased land except for property either:

- Leased from the Federal Government with no less than 25 years remaining on the lease and is not revocable at will; or
- Leased from one public agency to another for 25 years or more, provided that safeguards are included to adequately ensure the perpetual use requirement contained in the LWCF Act. Such safeguards may include joint sponsorship of the proposed project or other agreement whereby the lessor land-owning agency would provide assurances that it would assume compliance responsibility for the LWCF boundary area in the event of default by the lessee or expiration of the lease, and these assurances are explicitly reflected in the project agreement.

## 1.6 Eligible Recreation Facilities

Development projects may include but are not limited to the following facility types:

### A. Sports and playfields

Fields, courts and other outdoor spaces used in competitive and individual sports. This includes fields for baseball, softball, soccer and football, tennis courts, playgrounds and tot lots, golf courses, rifle/pistol ranges, trap/skeet fields, archery ranges, rodeo arenas, inline hockey rinks, skate parks, running tracks, and other similar facilities.

### B. Picnic Facilities

Tables, fireplaces, shelters, and other facilities related to family or group picnic sites.

### C. Trails

Development of land or water-based trails primarily for outdoor recreation activities such as nature walks, hiking, bicycling, horseback riding, paddling, exercising, and off-road vehicles. The trails can connect parks with communities or other parks, be within parks, or serve as stand-alone recreation features. Trail projects can also include supporting features such as trailheads, overlooks, and turnouts.

### D. Swimming Facilities

Swimming beaches, outdoor pools, wave-making pools, wading pools, splash pads, lifeguard towers, bathhouses, and other similar facilities.

### E. Boating and Fishing Access Facilities

Most facilities related to motor boating, sailing, canoeing, kayaking, sculling and other boating activities. These facilities include, but are not limited to docks, berths, floating berths secured by buoys or similar services, launching ramps, breakwaters, mechanical launching devices, boat lifts, boat storage, sewage pump out facilities, fuel depots, water and sewer hookups, restrooms, showers, electricity and parking areas. Assistance will not be provided for operational equipment such as buoys, ropes, life jackets, or boats.

For boating and fishing access facilities and related support facilities that are eligible for LWCF funding and the Dingell-Johnson (D-J) Act (also known as the Federal Aid in Sport Fish Restoration Act and “Wallop-Breaux”), as amended, LWCF funding will not be provided for facilities also eligible under Dingell-Johnson unless the State Liaison Officer has undertaken an effort to coordinate all requests for such facilities with the state agency designated to administer the D-J projects.

Marinas are also eligible for assistance and are subject to the following provisions regardless

of when LWCF assistance was provided:

- An equitable method of allocating berth space shall be used in all marinas.
- Commercial charter fishing or sightseeing boats are permissible marina leaseholders due to their potential for expanding public waterfront access.
- Berth lease terms shall not be transferable to any other party.
- Berth space for transient boaters shall be provided.
- Marinas located in urban areas shall include specific design provisions for non-boater public access.

**F. Fishing/Hunting Facilities**

Trails, fishing piers, access points, initial clearing and planting of food and cover, stream improvements, wildlife management areas, fish hatcheries and other facilities necessary for public fishing and hunting.

**G. Winter Sports Facilities**

Facilities such as ski trails, jumps, lifts, slopes and permanent snowmaking equipment used in downhill skiing, cross country skiing, tobogganing, sledding, snowmobiling, and other winter sports. Outdoor ice-skating rinks and ice hockey rinks are also eligible.

**H. Camping Facilities**

Tables, fireplaces, restrooms, information stations, snack bars, utility outlets and other facilities needed for camping by tent, trailer, or camper. Cabins, or group camps of simple basic design and accessible to the general public in an equitable manner are eligible. Group camps designed for specific groups or for which specific groups will be given priority access are not eligible.

**I. Exhibit Facilities**

Outdoor exhibit or interpretive facilities that provide opportunities for the observation and interpretation of natural resources located on the recreation site or in its immediate surrounding areas. This includes small demonstration farms, arboretums, outdoor aquariums, outdoor nature exhibits, nature interpretive centers and other similar facilities. Exhibit areas will not be assisted if they function primarily for academic, historic, economic, entertainment or other non-recreational purposes. This restriction includes convention facilities, livestock and produce exhibits, commemorative exhibits, fairgrounds, archeological research sites, and other non-recreational facilities. The development of nature and geological interpretive facilities that go beyond interpreting the project site and its immediate surrounding area are not eligible for assistance.

**J. Spectator Facilities**

Amphitheaters, bandstands, and modest seating areas related to playfields and other eligible facilities, provided the facility is not designed primarily for professional or semiprofessional arts or athletics, or intercollegiate or interscholastic sports. Seating provisions to accommodate persons with disabilities should be provided. Assistance is not available solely to increase seating capacity for a limited number of special events

**K. Community Gardens**

Land preparation, perimeter fencing, storage bins and sheds, irrigation systems, benches, walkways, parking areas and restrooms related to a community garden. To be eligible, community gardening must be clearly identified in the SCORP as a needed outdoor recreation activity and must be accessible to the general public in an equitable manner. However, LWCF assistance is not available for garden supplies such as fertilizer, seeds, tools, or water hoses, nor gardens planned as commercial enterprises.

**L. Renovated Facilities**

Assistance may be available for extensive renovation or redevelopment to bring a facility up

to standards of quality and attractiveness suitable for public use, if the facility or areas has deteriorated to the point where its usefulness is impaired or outmoded, or where it needs to be upgraded to meet public health and safety laws, or requirements. Such renovation is not eligible if the facility's deterioration is due to inadequate maintenance during the reasonable life of the facility.

**M. Professional Facilities**

Areas and facilities designed primarily for semi-professional or professional arts or athletics, such as professional type outdoor theaters, professional rodeo arenas and other similar facilities are not eligible.

**N. Accessible Facilities**

Assistance may be available for the adaptation of new or existing outdoor recreation facilities and support facilities for use by persons with disabilities. Outdoor recreation facilities to be used exclusively by disabled persons are not eligible unless such facilities are available to the general public or are part of an outdoor recreation area that serves the general public.

**O. Mobile Recreation Units**

Mobile recreation units including play mobiles, skate mobiles, swim mobiles, show wagons, puppet wagons and porta-bleachers are not eligible.

**P. Zoo Facilities**

Outdoor display facilities at zoological park are eligible to receive assistance provided they portray a natural environmental setting serving the animal's physical, social, psychological and environmental needs, and are compatible with the activities of the recreationists.

**1.7 Eligible Support Facilities**

**A. Support Facilities**

Support facilities needed by the public for outdoor recreation use of an area, such as roads, parking areas, utilities, sanitation systems, restroom buildings, simple cabins or trail hostels, warming huts, shelters, visitor information centers, kiosks, interpretive centers, bathhouses, permanent spectator seating, walkways, pavilions, snack bar stands, and equipment rental spaces. Support facilities may be sheltered from the elements by providing a simple roof or cover.

**B. Operation and Maintenance Facilities**

Facilities that support the operation and maintenance of the recreation resource on which they are located are eligible such as maintenance buildings, storage areas, administrative offices, dams, erosion control works, fences, sprinkler systems and directional signs. Regional and area wide maintenance facilities are eligible provided the project sponsor agrees to include those park and recreation areas served by the maintenance facility in the scope of the project agreement and under the conversion provisions.

**C. Dams**

LWCF assistance may be available to restore or preserve existing dams and other impoundments if the primary purpose is to provide public outdoor recreation such as swimming, fishing, and boating. Dam removal may also be eligible if used to enhance recreation (such as to open up a river or increase safety for aquatic recreation uses) and there is an associated recreation area that can be put within an LWCF boundary area.

**D. Erosion Control/Shoreline Stabilization**

Within recreation areas, facilities or infrastructure needed to help preserve an existing LWCF-assisted area or recreation improvements from being lost due to erosion may be eligible for assistance. Techniques using plants, natural stone, sand fill, and other organic materials are preferred. Beach nourishment is not eligible. Development proposals must be for the benefit

and enhancement of areas suitable for recreation, with the goal of increasing resiliency to maintain or enhance appropriate recreation opportunities in these areas. The costs of the stabilization will be matchable as part of a development project.

**E. Beautification**

The beautification of an outdoor recreation area is eligible provided it is not part of a regular maintenance program and the site's condition is not due to inadequate maintenance. This includes: landscaping to provide a more attractive environment; the clearing or restoration of areas that have been damaged by natural disasters; the screening, removal, relocation or burial of overhead power lines; and the dredging and restoration of publicly owned recreation lakes or boat basins and measures necessary to mitigate negative environmental impacts.

**F. Indoor Facilities**

Assistance will not be provided for support facilities or portions thereof that contribute primarily to public indoor activities such as meeting rooms, auditoriums, libraries, study areas, restaurants, lodges, motels, luxury cabins, furnishings, food preparation equipment, kitchens, and equipment sales areas. Bathhouses, public restrooms, maintenance sheds, etc., are potentially eligible for LWCF assistance since their basic function is to provide support for outdoor recreation facilities.

**G. Pro Rata Basis**

Support facilities that exclusively serve ineligible facilities are not eligible. If support facilities will service both eligible and ineligible facilities, as may be the case with roads and sewers, assistance may be provided on a pro rata basis for that portion of the support facility that will service the eligible facilities, provided that the eligible facilities are subject to the LWCF Act conversion provisions.

**H. Roads**

Roads constructed outside the boundaries of the recreation area are not eligible unless:

- They are, in fact access roads to a designated park and recreation area and not part of a state, county, or local road system extending beyond or through the boundaries of the area.
- The access corridor is owned or adequately controlled by the agency sponsoring or administering the park or recreation area and included within the projects LWCF boundary area.
- The principal objective is to serve the park and visitors. Any use or service to private parties must clearly be incidental to the primary use of the access road for recreation purposes in which case assistance may be granted on a pro rata basis. Roads designed to serve undesignated recreation areas or federal areas are not eligible.

**I. Equipment**

Equipment required to make a recreation facility initially operational, and certain supplies and materials specifically required under State Health Department regulations may be eligible.

**J. Safety**

Projects to increase safety in parks may be eligible for assistance. Facility-related security improvements within or along public parks and recreation areas can include infrastructure such as entrance kiosks, gates, fencing, communication utilities (phone lines, cell towers, etc.), fire suppression, and lighting. This does not include non-fixed safety related equipment such as security cameras.

**K. Must Serve Viable Recreation Area**

Development projects in new or previously undeveloped areas may not consist solely of support facilities, unless they are required for proper and safe use of an existing viable outdoor recreation area that does not require additional outdoor recreation facilities (such as

construction of restroom at a public nature study area), or unless necessary outdoor recreation facilities are being developed concurrently, with the LWCF assisted support facilities, or unless necessary outdoor recreation facilities will be developed within a reasonable period of time. In the latter two cases, the project agreement must include a provision that the non-LWCF assisted outdoor recreation facilities are to be completed within a certain time frame agreeable to the NPS, and if they are not, the LWCF monies will be refunded.

**L. Energy Conservation Elements**

The energy conservation elements of an eligible outdoor recreation facility and its support facilities are eligible. This includes but is not limited to solar energy system, earth berms, window shading devices, energy lock doors, sodium vapor lights, insulation and other energy efficient design methods and materials. Power systems that minimize or eliminate a facility's use of petroleum and natural gas are eligible including, but not limited to, windmills, on-site water power systems, bioconversion systems, and facilities required for the conversion of existing power to coal, wood, or other energy efficient fuels.

**1.8 Facility Location Requirements**

Development projects may be located on lands and waters owned by the project sponsor that ensures perpetual public use. In certain situations, the following conditions also apply:

**A. Public School Grounds**

Public outdoor recreation areas and facilities for coordinated use by the general public and by public schools, including colleges and universities, are eligible, provided that such facilities are not part of the normal and usual program and responsibility of the educational institution. Stadiums, stadium-like seating, and portable bleachers are not eligible for LWCF assistance. Facilities needed to solely meet the physical education and athletic program requirements of a school may not receive LWCF assistance. This policy does not preclude exclusive school use of certain facilities such as athletic fields, tennis courts, and swimming pool, at certain times for instruction or competition provided the public outdoor recreation use remains primary, and there is adequate public access at other times.

A schedule of the time the facility will be available to the public must be included in the grant application. Adequate signs must be installed at the site indicating when the outdoor recreation facilities are available to the general public.

**B. Tourist Areas**

Public outdoor recreation and support facilities may be located in primary or potential tourist market areas, provided their primary purpose is for public outdoor recreation as opposed to entertainment or economic development, and provided they do not create unfair competition with the private sector.

**C. Historic Sites**

Outdoor recreation and support facilities may be located on historic sites or in conjunction with historic structures. This includes picnic areas, walkways and trails on a historic property as well as visitor centers oriented to the outdoor facilities and environment. The restoration or preservation of historic structures is not eligible. In all cases, the project must be in accord with the National Historic Preservation Act of 1966.

**D. Utility Sites**

Assuming project sponsor possess adequate control and tenure of land and specific agreement from the utility company, outdoor recreation and support facilities may be located

on utility company lands such as right-of-way, reservoir lands, etc., unless the recreation management plan of the utility's license application filed with the Federal Energy Regulatory Commission indicates the facilities are to be provided at the sole expense of the licensee.

### **1.9 Guidelines for Sheltered Facilities**

For LWCF assisted swimming pools and ice-skating rinks located in areas which meet the cold climate criteria, shelters of permanent construction may partially or completely enclose these facilities to protect them against cold weather conditions and thereby significantly increase the recreation opportunities provided. Cold climatic criteria are found in the Federal LWCF Financial Assistance Manual, Volume 71 (chapter 3, Section 7.d).

### **1.10 Non-Allowable Expenditures**

- Ceremonial or entertainment expenses
- Expenses for publicity
- Bonus payments of any kind
- Charges for contingency reserves
- Charges in excess of the lowest responsive bid, when competitive bidding is required
- Charges for deficits or overdrafts
- Taxes for which the organization involved would not have been liable to pay
- Interest expenses, except those awarded by the court as part of just compensation or acquisition in eminent domain situations
- Charges incurred contrary to the policies and practices of the organization involved
- Damage judgments whether determined by judicial decision, arbitration or otherwise
- Incidental costs relating to acquisition of real property and of interests in real property, unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601 et seq.).
- Operation and maintenance costs of outdoor recreation areas and facilities
- The value of, or expenditures for, lands acquired from the United States at less than fair market value
- Cost of discounts not taken
- Equipment to be used for the maintenance of outdoor recreation areas and facilities, including automotive equipment, tractors, mowers, other machinery, and tools
- Employee facilities, including residences, appliances, office equipment, furniture, and utensils
- Donations or contributions made by the project sponsor, such as to a charitable organization
- Salaries and expenses of the Office of the Governor, or the chief executive of a political subdivision, or of the State legislature, or other similar local governmental bodies.
- Fines and penalties
- Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements
- Any losses arising from uncollectible accounts and other claims, and related costs
- Legal fees
- Legal and professional fees paid in connection with raising funds
- Payments for lobbying in connection with the awarding, extension, continuation, renewal, amendment, or modification of an individual LWCF grant or the program.
- Overhead
- Staff: Salaries, wages, and the associated personnel costs of existing staff are not eligible for reimbursement. New temporary staff, hired solely to accomplish an LWCF project that could

not be accomplished otherwise, may be eligible for reimbursement. Salaries, wages, and personnel costs for staff, whether existing or temporary, may be eligible as project sponsor's matching share of the project costs.

### **1.11 Matching Requirements**

LWCF provides up to 50 percent funding assistance. The eligible agency match may include local budgeted funds, donated funds, and value of private donated property, equipment, materials, labor or any combination thereof. Salaries, wages, and the associated personnel costs of existing staff are not eligible for reimbursement. New temporary staff, hired solely to accomplish an LWCF project that could not be accomplished otherwise, may be eligible for reimbursement. Salaries, wages, and personnel costs for staff, whether existing or temporary, may be eligible as project sponsor's matching share of the project costs.

The maximum grant request for a single project shall not exceed the total funds available for the grant cycle. The minimum grant request shall be no less than \$50,000 (\$100,000 total project costs), unless otherwise authorized by the Oregon Parks and Recreation Director. If a grant request is authorized to be submitted for less than \$50,000, the grant request should be for projects within an existing LWCF boundary or expanding an existing LWCF boundary.

The LWCF Act at 54 U.S.C. § 200305(f)(1) prohibits the use of other Federal funds to pay the State or local matching share of an LWCF grant. However, in those instances where the statutory provisions of a subsequent Federal grant-in-aid program explicitly allow recipients to use such assistance to match other Federal funds, The LWCF Act at 54 U.S.C. § 200305(f)(1) is superseded and a matching arrangement is permissible.

Existing government-owned lands cannot be used as a part of the non-federal matching share of a project unless such land is to be acquired by the project sponsor from another agency and there is a statutory requirement that the selling agency be reimbursed for the value of the property. Property cannot be "donated" between a State and its political subdivisions to serve as a match.

### **1.12 Legal Protection for Grant-Assisted Recreation Sites - Section 6(f)(3) of the LWCF Act (now codified at 54. U.S.C. § 200305(f)(3))**

Section 6(f)(3) of the LWCF Act and its implementing regulations at 36 C.F.R. Part 59 contains provisions to protect federal investments and the quality of assisted resources. The law recognizes that changes in land use or development may make some assisted areas obsolete over time, particularly in rapidly changing urban areas. At the same time, the law discourages casual "discards" of park and recreation facilities by ensuring that changes or "conversions from recreation use" will bear a cost – a cost that assures taxpayers that investments in the "national recreation estate" will not be squandered. The LWCF Act contains a clear and common-sense provision to protect grant-assisted areas from conversions:

*Section 6(f)(3): No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversions 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.*

This requirement applies to all parks and other sites that have received LWCF grants of any type, whether for acquisition, development or renovation of facilities. In many cases, even a relatively small LWCF grant (e.g. for development of a picnic shelter) in a park of hundreds or even thousands of acres provides protection to the entire park site.

At a minimum, the LWCF boundary area subject to the provisions of the LWCF Act must encompass a viable public outdoor recreation area that is capable of being self-supporting without reliance upon adjoining or additional areas not identified in the scope of the project (such as for access, utilities, park support facilities, etc.). Consistent with the intent of the LWCF Act, the Program expectation is the entirety of the park or recreation area being acquired, developed, or expanded will be included within the LWCF boundary area. Exceptions for boundaries that would apply to a lesser area may be considered only when it can be shown the area is self-supporting (as described above). These requests will be reviewed on a case-by-case basis by the NPS LWCF Washington D.C. Office prior to award of a grant. Early coordination is strongly recommended. For acquisitions, in no case will the LWCF boundary area be less than that acquired with LWCF assistance.

For multiple purpose projects, the LWCF provisions will be applied to the entire viable outdoor recreation area regardless of the prorated basis of federal assistance, to include the whole facility unless a lesser area is approved in accordance with the considerations in the prior paragraph.

Prior to final reimbursement for development and combination projects, the State and NPS may mutually agree to alter the LWCF boundary area to provide for the most satisfactory unit intended to be administered under the provisions of the LWCF Act. For acquisition projects, the LWCF provisions are in effect at the time LWCF reimbursement is provided.

No changes may be made to the LWCF boundary after final reimbursement unless the project is amended as a result of an NPS approved conversion.

To ensure the continued effectiveness of LWCF Section 6(f)(3) protection, several management tools have been developed to monitor and correct changes in assisted sites. The NPS requires on-site inspections of all grant-assisted areas and facilities at least once every five years by OPRD.

### **1.13 School Park Joint Use Facilities**

The joint use of property by schools and parks is encouraged, but there are several special considerations that must be considered before a project can be funded on school property. The proposed facilities cannot be part of the normal and usual program and responsibility of the school district, and cannot be used to meet the physical education and athletic requirements of the school. The land within the project boundary must be owned by or leased to the project sponsor.

Leases from one public agency to another must include provisions, which adequately safeguard the perpetual use requirement of the LWCF Act. School Districts are not eligible project sponsors.

The lease or joint use agreement must include a Schedule of Use, which would allow the school to use the facilities on a scheduled basis. A copy of the lease or agreement must be submitted with the project application. This document should include a schedule of use, with provisions for



unscheduled uses by either of the agencies.

The site of a joint-use facility must be permanently signed to indicate that the primary use of the facility is by the public, with the school having the authority to schedule classes or events at specified times. Off-site signing is also required if such is necessary to direct the public to the recreation facility.

### **1.14 Sustainability**

The overall goal of Sustainable Parks is to promote the use of sustainable practices, maximize the useful life of buildings and park facilities, and enhance the natural environment.

In recent years, the concept of sustainability has been emerging due to significant concerns regarding the unintended social, environmental, and economic consequences of population and economic growth and the consumption of our natural resources. The 1987 United Nations (U.N.) World Commission on Environment and Development's (WCED) report, "Our Common Future", defines sustainability as "meeting the needs of the present without compromising the ability of future generations to meet their own needs."

More recently the U.S. Environmental Protection Agency (EPA) stated that sustainability is based on a simple principle:

*Everything that we need for our survival and well-being depends, either directly or indirectly, on our natural environment. Sustainability creates and maintains the conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic and other requirements of present and future generations.*

Typically, any discussion of the concept of sustainability begins with more traditional ecological concerns and issues. Any comprehensive discussion on sustainability must also include social and economic considerations.

Planning, designing, constructing, and operating Sustainable Parks often includes the following elements:

- Minimizing environmental impacts from the onset through sensitive siting of a park within the landscape and careful consideration of the various uses within the park boundaries
- Protecting and enhancing habitat areas
- Educating the public about the value of natural resource stewardship
- Incorporating rain water reuse, grey water for irrigation, efficient irrigation systems, etc.
- Recycling waste products and striving to limit waste as much as possible
- Minimizing pollution impacts resulting from park features and user activities
- Utilizing Green building techniques (e.g., solar power, natural lighting) to reduce energy costs
- Promoting alternative forms of transportation (e.g., greenways, bike trails, safe routes to schools)
- Reducing maintenance and operations costs
- Involving the public as partners, customers, volunteers, participants, stakeholders, etc.
- Encouraging partnerships with various organizations

## **Sustainability Considerations for OPRD-Administered Grant Programs**

Project applicants are encouraged to address the following sustainability recommendations for Land Acquisition, New Facility Development, and Major Rehabilitation grant project proposals. Since trail projects have unique design considerations, a separate set of sustainability recommendations are included for trail projects.

### **Land Acquisition Considerations**

- Project protects and enhances floodplain functions.
- Land is purchased to prevent or reduce erosion, sedimentation, and/or to improve water quality.
- Land is purchased to protect or restore damaged ecosystems.
- Land is purchased to protect or enhance identified sensitive or endangered species.
- Land is purchased to protect cultural and/or scenic byways.
- Project will involve the removal of non-native invasive species from the site.
- Project will create a diverse set of recreational experiences which are currently unavailable in the local area—addresses an identified unmet need.
- Access to the project site is easily available by foot (1/2 mile), non-motorized vehicles, or public transportation.
- Project will reduce current costs to the public and/or result in an increase in property values.

### **New Facility Development Considerations**

#### Development Projects

- Project protects endangered species, restores habitat, and maximizes open space.
- Careful site selection so that new park sites protect existing ecosystems and sensitive habitat areas and utilize in-fills for new developed park locations.
- Project maintains water features, including shorelines and riparian areas to conserve water and other resources.
- Project uses water efficient landscaping and use of native species.
- Project increases the number of native trees.
- Project increases conversion to renewable energy sources
- Project includes the use of solar energy sources for exterior lighting, parking lots, restrooms, etc.
- Project includes the use of a centrally controlled irrigation system.
- Project utilizes recycled water for landscape irrigation.
- Project provides public recycling containers at all developed park and recreation facilities.
- Project involves the control and management of invasive plants found on the site.
- Project is designed to restore damaged ecosystems.
- Project incorporates passive solar heating, daylighting, and natural cooling.
- Project includes gray water collection for landscaping irrigation.
- Project is designed for storm water retention and/or includes partnering with local flood control entities so that the project is designed to contribute to large-scale flood protection efforts.
- Project includes the use of bioswales to handle storm run-off.
- New buildings are a minimum LEED Silver.
- Project involves an appropriate use of pervious or impervious surfaces.

### Activity Based Projects

- Project will provide new access for the public to recreate in sensitive natural/preserved areas using boardwalks, trails, fishing piers, platforms, etc.
- Project will create a diverse set of recreational experiences which are currently unavailable in the local area—addresses an identified unmet need.
- Project will increase public awareness of the benefits of natural/preserved areas with interpretive signs, educational brochures/posters, etc.
- Project includes a Community Garden for local residents to grow edible food products and interact with other local residents.
- Project includes an edible landscape demonstration garden within site.
- Project is designed to encourage physical fitness and reduce the obesity rate among Oregon residents.
- Project will increase equitable distribution of park and recreation facilities and provide for an unmet need.
- Project will provide recreational opportunities for underserved populations.

### **Major Rehabilitation Considerations**

#### Development Projects

- Project increases conversion to renewable energy sources.
- Project includes the use of solar energy sources for exterior lighting, parking lots, restrooms, etc.
- Project reduces energy demand for the park site.
- Project reduces water use and increases plantings of native species.
- Project includes the use of a centrally controlled irrigation system.
- Project utilizes recycled water for landscape irrigation.
- Project provides public recycling containers at all developed park and recreation facilities.
- Project involves the control and management of invasive plants found on the site.
- Project increases the number of native trees.
- Project is designed to restore damaged ecosystems.
- Project incorporates passive solar heating, daylighting, and natural cooling.
- Project includes gray water collection for landscaping irrigation.
- Project includes the use of bioswales and is designed for storm water retention and/or includes partnering with local flood control entities so that the project is designed to contribute to large-scale flood protection efforts.
- Project includes the use of redeveloped buildings that are a minimum LEED Silver.
- Project involves an appropriate use of pervious or impervious surfaces.

#### Activity Based Projects

- Project will provide new access for the public to recreate in sensitive natural/preserved areas using boardwalks, trails, fishing piers, platforms, etc.
- Project will increase public awareness of the benefits of natural/preserved areas with interpretive signs, educational brochures/posters, etc.
- Project will increase equitable distribution of park and recreation facilities and provide for an unmet need.
- Project provides the opportunity to enhance physical, mental, and social well-being as a result of interaction with nature.

- Project includes development of interactive areas such as a community garden, natural play area, or other such facility, for local residents to grow edible food products and interact with other local residents.
- Project includes edible landscape demonstration gardens within site.
- Project is designed to encourage physical fitness and reduce the obesity rate among Oregon residents.
- Project will create a diverse set of recreational experiences which are currently unavailable in the local area—addresses an identified unmet need.

### **Trail Considerations**

#### Development Projects

- Project involves an appropriate use of pervious or impervious surfaces.
- Trail will require less maintenance through sound construction techniques and using materials designed for long term self-sustaining use and by using on-site materials as much as possible. This may include alignment using natural topography, hydrologic techniques, and proper slope of and around the trail.
- Trail design and alignment to reduce water runoff and water retention on the trail tread.

#### Activity Based Projects

- Trail is designed for alternative transportation including bicycle storage, changing rooms and plug-in facilities for electric vehicles.
- Trail route will improve linkages to and between Federal trail systems, neighborhood, community and regional trails, community parks and other public facilities, scenic overlooks, historical sites, rivers/lakes, local communities and/or promote safe routes to schools.
- Project includes the development of a portion of a regionally significant trail which is part of a larger trail system and has the benefit of increased economic activity through recreational concessions.
- Project will provide new access for the public to recreate in sensitive natural/preserved areas using boardwalks, trails, fishing piers, platforms, etc.
- Project will increase public awareness of the benefits of natural/preserved areas with interpretive signs, educational brochures/posters, etc.
- A trail project that includes the development of multi-use trails. The applicant must identify which of the trail user groups included will be allowed to use the trail.

## CHAPTER 2 – PROPOSALS, ENVIRONMENTAL REVIEW AND FEDERAL COMPLIANCE

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(Refer to Chapter 4 of the [Federal LWCF Financial Assistance Manual, Volume 71](#))

### 2.1 Proposal Development and Screening for Environmental Impacts

States are responsible for ensuring that proposals submitted to the NPS, 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 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 Application & Revision Form (A&R Form; to be used for new grants and amendments) or Compliance & Stewardship Form (C&S Form; to be used for post-grant completion compliance) is completed and accompanies each LWCF proposal submitted for federal review and decision.

The A&R and C&S Forms contain a narrative section to identify and provide descriptive information about the proposal to the federal decision-maker.

The Environmental Resources Survey (ERS) portion of the A&R and C&S Forms 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. It is intended that States/project sponsors use the A&R or C&S forms as early as possible in the State/local project planning process. The ERS helps 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. The EA (or EIS) must accompany the State’s LWCF proposal submission to the NPS if either is necessary. The ERS can also be used to document previously conducted yet still valid environmental analysis.

### 2.2 National Environmental Policy Act

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 C.F.R. Parts 1500-1508;
- b. NEPA's Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, CEQ;
- c. Department of Interior (DOI) NEPA regulations, 43 C.F.R. Part 46;
- d. DOI policy and procedures for implementing NEPA (Departmental Manual 516, Chapter 12);
- e. National Park Service (NPS) Director's Order #12, "Conservation Planning, Environmental Impact Analysis, and Decision Making." And National Park Service NEPA Handbook (2015); and,
- f. NPS, federal LWCF Financial Assistance Manual, Chapter 4, including the A&R and the C&S Forms.

### **2.3 National Historic Preservation Act, Section 106**

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).

### **2.4 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 authorized, funded, or carried out by such agency" 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. Thus, consistent with ESA Section 7(a)(2) the NPS must ensure that any funding authorized for LWCF purposes is not likely to result in jeopardy or adverse modification. Implementing regulations for inter-agency coordination are available at 50 C.F.R. Part 402; the Endangered Species Act Consultation Handbook (1998) (available on the Web) also provides guidance.

The State/project sponsor is responsible for beginning the process and providing associated documentation to the NPS with the grant application package. The USFWS IPaC system can generate an official species and critical habitat list that may be within the "action area," defined in ESA implementing regulations as the "area to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action". This list is considered official correspondence from the USFWS, so if there are no listed species or critical habitat in the action area that list can be used to demonstrate that the action will have no effect on listed species or critical habitat, and compliance with the ESA is complete. However, because IPaC does not

address species for which NMFS has sole jurisdiction, further research may be required.

For projects involving in-water work along the coast (including the Gulf of Mexico and Puget Sound) and in streams or rivers with the potential to affect anadromous fish, the applicant should also check the NMFS's Essential Fish Habitat database to see whether there are specific species or habitat under NMFS's jurisdiction within the project area. When consulting this resource, it is important to note that there are some regions of the country for which an alternate database address is provided and should be used instead.

If there are ESA-listed species and/or critical habitat that may be affected by the project (i.e., within the "action area"), the State/project sponsor should coordinate with the NPS about next steps required for consultation with the USFWS and/or NMFS, including whether adverse effects to the species and/or critical habitat seem likely or not. If an EA or an EIS is required for the project, the EA/EIS may provide sufficient information to serve as the NPS's request to initiate formal consultation pursuant to the ESA implementing regulations at 50 C.F.R. § 402.14(c), provided it is determined that the action "may affect" a listed species and/or critical habitat. If a separate information package is prepared pursuant to 50 C.F.R. § 402.14(c), it must be part of any NEPA document.

## **2.5 Floodplain Management and Wetland Protection**

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.

## **2.6 Environmental Justice in Minority and Low-Income Populations**

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.

## **2.7 Secretary's Order 3175 and ECM 95-2**

Secretary's Order 3175 and ECM 95-2. Secretary's Order 3175 and ECM 95-2 require bureaus to explicitly address environmental impacts of their proposed actions on Indian Trust Resources in any environmental document.

## **2.8 Build America, Buy America Act**

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act, Pub. L. No.

117-58, §§ 70901-52. The Build America, Buy America Act requires that no later than May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. Build America, Buy America requires that the following conditions be met. Documentation of Buy America compliance must be obtained by Project Sponsors and may include heat mill certificates for steel and iron products, letters or statements from manufacturer, or alternate documentation provided by the vendor. Documentation must be retained in the Project Sponsor's grant files, and may be requested by OPRD and/or NPS.

1. All **iron and steel** used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All **manufactured products** used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All **construction materials** are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Construction materials includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Construction Materials does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit [www.doi.gov/grants/BuyAmerica](http://www.doi.gov/grants/BuyAmerica). Additional information can also be found at the White House Made in America Office website: [www.whitehouse.gov/omb/management/made-in-america/](http://www.whitehouse.gov/omb/management/made-in-america/).



Grant applicants should research product availability as part of the scope and budget development process. While standards to document compliance have not been provided to states at the time of publication of this manual, grant applicants should request Buy America documentation from potential vendors and suppliers in line with the requirements described above.

**Approved and Active Department of the Interior (DOI):**

1. **DOI Small Grants Waiver:** This general applicability waiver provides approval to waive the Buy America Preference for DOI financial assistance agreements when the total award amount of an agreement does not exceed the Simplified Acquisition Threshold, currently \$250,000. The small grants waiver was approved on February 21, 2023 and expires February 20, 2028.
2. **DOI De Minimus Waiver:** This general applicability waiver provides approval to waive the Buy America Preference for otherwise covered infrastructure project purchases totaling up to 5% of the total applicable project costs, up to a maximum of \$1,000,000. The de minimus waiver was approved on February 21, 2023 and expires February 20, 2028.

Refer to the [Approved DOI General Applicability Waiver website](#) for more information.

## CHAPTER 3 – THE LWCF GRANT FUND APPLICATION

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**3.1 Online Grant Application** – Applicants apply to the Land and Water Conservation Fund Grant Program by completing an online grant application at [OPRDGrants.org](https://www.oprd.grants.org). For more information on how to access and navigate the online application, see the “**Online Application Instructions**” Manual located under **Applications & Forms** menu on the Land and Water Conservation Fund website: <https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx>

Applicants with an existing account simply need to sign in and select: **New Applications Available** ▾ Then select the desired application: **Development, Rehabilitation, Acquisition, or Acquisition & Development**.

Applicants who do not have an access account should visit [OPRDGrants.org](https://www.oprd.grants.org) and request a user account.

A Pre-Application Worksheet is available on the LWCF website, under the Application and Forms menu. These worksheets contain the questions that will be asked on the online LWCF grant application, and are designed to help applicants prepare answers in advance.

When completing the application, applicants are urged to be brief and to the point. Most questions have a designated word limit.

### **3.2 Application Information (Contacts, Description, Budget, Project Narrative)**

#### **1. Contact Information:**

- a. **Project Contact:** This is the person responsible for the project and who should be contacted regarding application questions. Please be sure to use information that is up-to-date and accurate.
- b. **Reimbursement Contact:** This is the person who will submit and be the main point of contact for reimbursement requests.
- c. **Applicant Unique Entity Identifier (UEI):** These fields are only viewable to and editable by OPRD Staff and are required for all applicants. If a tax ID and UEI number for the applying organization aren't already on file, the LWCF Grant Coordinator will request them.

Effective April 4, 2022, the federal government stopped using DUNS numbers and transitioned to the UEI. The UEI is required for doing business with the federal government, which includes recipients of federal grant funds. Learn more about obtaining a UEI here: <https://sam.gov/content/duns-uei>

#### **2. Project Information:**

- a. **Project Name:** Enter a brief descriptive title of the project. For example, “Example Park Playground Replacement Project”, or “Example Park Expansion Acquisition Project”.
- b. **Brief Project Description:** Briefly describe the project. Summarize the project in 40 words or less. Use the most concise description possible. Do not go into details of the entire project. A more detailed description should be reserved for the Program Narrative section of the application.

- c. **Start Date/End Date:** Provide the estimated start and end dates for the project. The actual start date is dependent on a Notice to Proceed and the end date will be identified in a grant agreement (approximately a two-year term).
  - d. **Project Site/Location:** Enter the name of the park or site where the project will be located, the acreage of the entire park, and latitude and longitude of the site.
  - e. **Site City/Town/Area:** Enter the city or closest city where the project is located.
  - f. **Site Description:** Briefly describe the site where work is to be performed. This is a very high-level description of the site. For example, "Flat area with trees and grass".
3. **Financial Information:** Please **follow the Financial Information Panel instructions in the Online Application Instructions Manual (pages 12-16) to properly enter the information into the online form.** The financial information fields will auto-fill as you add and save worksheet items. **A minimum of 50% match is required for all LWCF grant requests.**

Example budget:

Financial Information ✓

Financial fields are updated once you have filled out your Project Budget Worksheet and clicked the 'Save Application' Button.

Requested Amount *	<input type="text" value="\$75,000.00"/>
Match Amount *	<input type="text" value="\$75,000.00"/>
Total Project Cost *	<input type="text" value="\$150,000.00"/>
Grant %	<input type="text" value="50 %"/>
Match %	<input type="text" value="50 %"/>

Project Budget Worksheet Add Worksheet Item

Project Budget Worksheet	
Playground Equipment	\$100,000.00 <span style="font-size: 0.8em;">✎ ✕</span>
Playground Surfacing	\$50,000.00 <span style="font-size: 0.8em;">✎ ✕</span>
Source of Funding Worksheet	
Budgeted Funds (SDCs)	\$50,000.00 <span style="font-size: 0.8em;">✎ ✕</span>
Playtime Grant (Grant - Playtime for Kids Playtime Equipment Private(approved))	\$20,000.00 <span style="font-size: 0.8em;">✎ ✕</span>
Volunteers (Donated Labor)	\$5,000.00 <span style="font-size: 0.8em;">✎ ✕</span>
Total Project Cost	<input type="text" value="\$150,000.00"/>
Total Match from Sponsor	<input type="text" value="\$75,000.00"/>
Grant Funds Requested	<input type="text" value="\$75,000.00"/>

A properly-entered budget should look similar to the example above. The project elements (such as Playground Equipment and Playground Surfacing in the example above) should be shown under the Project Budget Worksheet section with the full cost for each item. Funding sources should not be displayed in the Project Budget Worksheet section. **The Source of Funding Worksheet section should only show the total match from each funding source. Do not show the match distributed among the various project elements.** The image above displays what a properly-entered budget should look like.

#### 4. Supplemental:

- **Project Narrative:** The project narrative describes all elements of the project and the need for assistance. The program narrative should be clear, concise, and should clearly articulate what is being proposed and why it is needed.
- **SCORP Criteria:** See the Chapter 4 of this manual or refer to Chapter 12 of the [2019-2023 SCORP](#) for guidance on the remaining questions in the supplemental section of the application.
- **Project Land is Controlled By:** Enter the applicable control and tenure documentation for the property where the project will take place. For example, if you have a deed, enter 'Fee Simple'. Documentation is required and described in this manual.

### 3.3 Attachments

Attachments should be in an **electronic format and uploaded with the online grant application**. Forms required as an attachment are available for download within the application. Instructions on how to upload documents are included in the "Online Application Instructions" Manual located under Applications & Forms menu on the Land and Water Conservation Fund website: <https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx>.

It is preferred that attachments are uploaded with the online grant application. **If you are unable to digitize files, you may choose to send required attachments by mail.** Please notify the LWCF Coordinator if you do send documents by mail. If documents are mailed they must meet the following guidelines:

- Attachments must be RECEIVED by OPRD no later than 5:00 pm on the application due date.
- Faxed copies will not be accepted.
- Label attachments.
- Maximum size attachment is 11 x 17. Larger attachments will not be accepted.
- Reference the application number and include contact information for the sponsor's point of contact.
- Submit attachment packet with your contact information and project name to:  
Oregon Parks and Recreation Department  
LWCF Grant Coordinator  
725 Summer Street, NE, Suite C  
Salem, OR 97301

**Attachments List:** Forms required as an attachment are available for download within the application. Please combine files into a single document when appropriate, such as photos. The following Attachments will be required for most applications, depending on project type:

#### A. Application & Revision (A&R) Form

**Please submit this as a Microsoft Word document.** This form is the narrative portion of the federal grant application. The A&R Form must be completed by all potential project sponsors for any new or amended LWCF proposal submitted for federal review and decision. The A&R Form is designed to be used as a tool during project scoping, planning, and proposal development to document environmental information and to consider the 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.

The A&R Form contains a narrative section to identify and provides descriptive information about the proposal to the federal decision-maker.

The Environmental Resources Survey (ERS) portion of the A&R Form serves as part of the federal administrative record required by NEPA and its implementing regulations which supports a chosen NEPA “pathway” and must be completed before final action can be taken by the NPS. It is intended that you use the A&R Form as early as possible in the State/local planning process. The ERS portion helps 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). The ERS can also be used to document previously conducted yet still valid environmental analysis.

**Applicants must complete the A&R Form following the instructions for a New Project Grant Application. OPRD staff will complete the NEPA Pathway Recommendation section.**

#### **B. Environmental Assessment (If Required)**

(For information on the EA Format, refer to the federal LWCF Financial Assistance Manual, Chapter 4 section 6.b)

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 Categorical Exclusion (CE) and is not included in the list of actions that normally require and 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. EAs and EISs produced for LWCF actions shall comply with the format and analysis requirements provided in 40 C.F.R. Parts 1500 – 1508.

**Public Review** - 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 (If Required)**

An EIS is required when the potential for significant impact to the human environment exists is indicated by an EA or through the A&R Form. The State should contact NPS for further guidance as soon as there is an indication that an EIS may be required.

#### **D. Construction Plans and Specifications**

Applications involving enclosed eligible support facilities must include a schematic floor plan. Copies of pertinent floor plans, building elevations, etc., must show sufficient details of the

proposed project. Plans must be scaled drawings showing size, function, and spatial relationships of all building elements. The primary purpose of these drawings is to ensure that the buildings are accessible and to allow committee members and grants staff sufficient detail to review what is being constructed. At a minimum, a detailed Site Plan is required for all projects.

#### **E. Site Plan**

The site plan should identify:

- All proposed future facilities to be constructed, rehabilitated, and/or acquired with LWCF-assistance should be shown and labeled. Proposed facilities should be shown to scale by notes indicating general use area such as “proposed picnic area” or “proposed ballfield”.
- Indicate all of the facilities to be included in the project application, either by appropriate notes or by color-coding.
- Indicate any existing facilities.

#### **F. LWCF Project Boundary Map**

You may have one map that covers all of the requirements however, you may submit the **boundary map** and **site plan** as two different documents. **One of the most important attachments to the project application is the LWCF boundary map.** This map shows the relationship of past, present and future work, and the boundary of the property. This map must clearly delineate the area to be included under the conversion provisions of LWCF Act.

A boundary map is required for all projects and should accurately reflect the proposed project and the existing facilities and uses on the park site. No changes may be made to the LWCF boundary after final reimbursement unless the project is amended as a result of an NPS approved conversion. **All land within the project boundary must be dedicated in perpetuity for public outdoor recreation.**

The LWCF boundary area subject to the provisions of the LWCF Act must encompass a viable public outdoor recreation area that is capable of being self-supporting without reliance upon adjoining or additional areas not identified in the scope of the project (such as for access, utilities, park support facilities, etc.). Consistent with the intent of the LWCF Act, the Program expectation is the entirety of the park or recreation area being acquired, developed, or expanded will be included within the LWCF boundary area. Exceptions for boundaries that would apply to a lesser area may be considered only when it can be shown the area is self-supporting (as described above). These requests will be reviewed on a case-by-case basis by the NPS LWCF Washington D.C. Office prior to award of a grant. Early coordination is strongly recommended. For acquisitions, in no case will the LWCF boundary area be less than that acquired with LWCF assistance.

#### **The requirements for this map are:**

- Official park name/site name, location, and LWCF project number(s).
- Location: show the park in the context of its broader location, giving at least three major roads or place names so that using online mapping resources, the site can be found even if road and park names change in the future.
- Total acreage within the LWCF boundary and subject to the provisions of the LWCF Act.
- North arrow
- Sufficient detail so as to legally identify the lands to be subject to the provisions of the LWCF Act. The following methods of identification are acceptable: deed references; adjoining ownerships; adjoining easements and rights-of-way; public streets; adjoining water bodies or other natural landmarks; metes and bounds; and surveys. Where one or more of the above

methods are not readily suited for identifying the area, measurements from permanent locators may be used. A formal survey is not required.

- All known outstanding rights and interests in the area held by others. Known easements, deed/lease restrictions, reversionary interests, etc. are to be documented, including any area(s) under lease, name(s) of lessor and lessee, and term remaining on the lease(s).

When at the time of project application it is known that outstanding property rights held by others are being or will be exercised in the foreseeable future and impact only a portion of the area to be subject to the provisions of the LWCF Act, the impacted area must be clearly excluded from the LWCF boundary area depicted on the map and accompanied by an explanation. The remaining project area must meet all LWCF program criteria for eligibility and be a viable public outdoor recreation area.

- Signature and date of Authorized Local Official and date map was created
- Avoid use of color as the only means to delineate areas. Use a solid-colored line indicating the LWCF boundary.
- The map must be to scale. If metes and bounds are not provided, include actual distances or a bar scale
- All existing facilities, including utilities, known easements must be shown. The map should be sufficient to identify significant natural features of the park, such as tree lines, water bodies, tributaries, geographic features, floodways and floodplains and wetlands
- If there has been a previous LWCF project within the park boundary, that project number and the area should be shown on the map

#### **G. Vicinity Map**

An area map that shows the location of the park within the town/city or county, used to assist staff in locating the park for inspections. Provide enough information so that the park can be easily found by someone unfamiliar with the area. Include a north arrow, street names, names of water bodies, etc. Include the project title and use a highlighter to mark the park location.

#### **H. Urban Growth Boundary Map**

Required to identify priority projects for the distribution of funds for both close-to-home areas (located within an urban growth boundary (UGB), unincorporated community boundary, or a Tribal Community) and dispersed areas (located outside of these boundaries). A map clearly identifying the project location and UGB or unincorporated community boundary drawn on it must be submitted in order to receive points. The map should also include the following:

1. Project Sponsor and Project Name
2. Clearly label project area either in the UGB or outside the UGB.
3. Map must be current and dated.

#### **I. Property Deed/Lease Agreements**

Facilities may be developed on land and water owned in fee simple by the project sponsor or where ownership of less-than-fee interests such as easements provides permanent control of the property commensurate with the proposed development. Copies of the property deed, easement or lease agreement must be submitted.

Approval will not be given for the development of facilities on leased land except for property either:

- Leased from the federal government with no less than 25 years remaining on the lease and is not revocable at will; or

1. Leased from one public agency to another for 25 years or more, provided that safeguards are included to adequately ensure the perpetual use requirement contained in the LWCF Act. Such safeguards may include joint sponsorship of the proposed project or other agreement whereby the lessor land-owning agency would provide assurances that it would assume compliance responsibilities for the LWCF area in the event of default by the lessee or expiration of the lease, and these assurances are explicitly reflected in the project agreement.

**J. Permits (If Required)**

Upload copies of any required permits (i.e. Division of State Lands, Corps of Engineers, etc.). Proposals involving dredge and fill operations must be reviewed and evaluated by the U.S. Fish and Wildlife Service for the effects on marine and wildlife habitat. A permit from the appropriate Federal agency (Corps of Engineers, Coast Guard, etc.) is required for development proposals involving any of the above activities in navigable waters prior to NPS approval.

**K. Land Use Compatibility Statement (LUCS)**

All project applications must include a completed Land Use Compatibility Statement to ensure that proposed grant funded projects are consistent with local land use requirements. The LUCS must be completed by the local Planning Official.

**L. Appraisal and Appraisal Review (Acquisition Projects)**

Appraisals must be submitted with application. Appraisals must meet the Uniform Appraisals Standards for Federal Land Acquisitions (“Yellow Book”). These federal standards are considered “Supplemental Standards” to the Uniform Standards of Professional Appraisal Practice (USPAP). (Refer to Frequently Asked Questions – Appraisals and the LWCF State Assistance Program located in Appendix A-7).

**M. Proof of Willing Seller or Donor (Acquisition Projects)**

Documentation that there is a willing seller or donor of the property for acquisition projects.

**N. Preliminary Title Report (Acquisition Projects)**

All acquisition projects must include a preliminary title report or lot book report.

**O. Letters of Support**

Letters of support from volunteer organizations, neighborhood associations, community members, business partners, or other resources to demonstrate community support and the need for the project. Submit no more than 3-5 letters. Include only those letters that strongly support your project. Do not use multiple form letters signed by different organizations.

**P. Resolution to Apply**

Attach Resolution from City Council, Board of Commissioners, Metro Council, or Board of Directors to apply for grant funding assistance. Resolution should address match funding and commitment to maintenance. (See Section 3.7 for Sample Resolution)

**Q. Maintenance Documentation**

Documentation to support partnerships with other agencies or volunteer maintenance. Where appropriate documentation such as letters of support from volunteer organizations, cooperative agreements, donations, private sponsorship support letters, or signed memoranda of understanding to demonstrate commitment to maintenance should be provided. Your Resolution to Apply should address long term commitment to maintenance.



## **R. Additional Attachments**

Documents not covered in any other category of attachments. If you choose not to submit 'Additional Attachments', you will need to upload a placeholder document which simply states N/A or Not Applicable. This will allow you to continue with the submission process.

## **S. SHPO Attachments**

If your project has already been reviewed by the State Historic Preservation Office (SHPO), indicate that in your grant application, include the SHPO case number, and upload related documentation in place of the documentation listed below.

- **SHPO Submittal Form:** Upload a completed submittal form. This form is required by the SHPO to assess potential impacts to cultural resources. Submit as a fillable PDF, not a scanned version.
- **SHPO Clearance Form:** Upload a completed clearance form. This form is required by the SHPO to assess potential impacts to historical lands or structures. If the project area could potentially impact lands or structures 50 years or older, attach 3-4 photos of the subject property (see form for more information). Submit as a Microsoft Word document, not a scanned version.
- **SHPO Map:** Maps uploaded for SHPO review must include the project area, construction staging areas, other areas of potential impact, and show built environment features. Two options may be used, although Google Earth is recommended. For more detailed instructions on creating a map, refer to the SHPOS's GoDigital instructions available here.
  - **Google Earth:** Use the polygon or path tools to create a KMZ or KML file to upload to the application.
  - **Topo Map:** Provide a 7.5 minute USGS topographic map showing, township, range, section or a one-square mile map that includes roads and/or geographic features. The map should be zoomed to the appropriate scale that shows the proposed project area.

## **T. Intergovernmental Consultation: State Natural Resource Agency Review**

Submit the required forms and attachments to the list of State Natural Resource Agencies to assure compliance with state and federal laws and that project proposals do not have a significant impact on the environment. Upload copies of any comments from State Natural Resource Agencies.

The following form should be emailed to each state agency whose consultation is required, and other agencies as needed:

1. LWCF Transmittal Memo addressed to individual state agencies.
2. State Agency Review Form addressed to the individual state agencies. Fill out the form with your project information and a brief description of the project. Have the agencies return the form to you, then upload the completed forms to your OPRD grant application.
3. Application and Revision Form (A&R Form) with the Project Description and Section 3.0 Site Information completed. Leave the NEPA Pathway Recommendation blank.
4. Project site plan
5. Project location map.

**Allow the state agencies at least 30 days to respond and return the completed Intergovernmental Consultation Form or alternate documentation.** When the forms are returned, you will need to contact the agency if additional information is needed or if there are any adverse effects or if the agency requires additional information to evaluate your proposal. If an agency has not responded before submitting your grant application, attach to the application a copy of your email to the state agency where their consultation was requested. Keep copies of the requests made and note the date they were sent and when you expect to receive the forms back.

**The State Historic Preservation Office (SHPO) will be contacted by OPRD** after you have submitted your application and before you may receive grant funding to assure that the project proposal complies with state laws regarding archaeology on lands or historic properties.

- Any project element calling for alteration, rehabilitation, renovation, or demolition of a historically, culturally, or architecturally significant property or property contributing to the integrity of a cohesive older neighborhood or historic district needs to be cleared by SHPO.
- Include photographs of properties 45 years or older.
- With limited exception, it is illegal to disturb an historical, cultural, or archaeological site or to remove an archaeological object from public or private lands unless that activity is authorized under a permit issued by OPRD.
- If human remains are found during an excavation, the local State Police office must be contacted to determine if they are Indian or are evidence of a crime scene. If the remains are Indian, contact the Legislative Commission on Indian Affairs (503) 986-1067 for a list of appropriate tribal contacts.
- If other archaeological materials are found during a ground disturbing activity, contact SHPO. The SHPO can check to see if your project area has been surveyed and can give you a list of archaeological consultants. Only professional archaeologists may apply for an archaeological permit. ORS 97.750, 358.905 and OAR 736-051-0080

### 3.4 Sample Transmittal Memo

The fillable Transmittal packet can be downloaded from the online application.

## **TRANSMITTAL MEMO**

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DATE:

TO: (State/Federal Natural Resource Agencies)

FROM:

SUBJECT: **Intergovernmental Review** of Proposed Project for which Federal Assistance is being requested (Land and Water Conservation Fund Program).

---

Attached is a copy of:

- 1) an **Application & Revision (A&R) Form**,
- 2) a **project location map**,
- 3) a **project site plan**, and
- 4) a blank **State / Federal Agency Review form** for the

(Project Name) \_\_\_\_\_ project,

in (City or County) \_\_\_\_\_.

Brief Project Description:

We would appreciate your review of the project and the accompanying documents, as well as completion and return of the enclosed **State / Federal Agency Review form** to our agency. If concerns about this project are noted on the form, we will be in contact with the person signing the form to address those concerns.

Thank you!



INTERGOVERNMENTAL CONSULTATION FORM

STATE AGENCY REVIEW

A REVIEW OF A PROPOSED OUTDOOR RECREATION PROJECT FOR WHICH FEDERAL GRANT ASSISTANCE HAS BEEN REQUESTED.

Project Name:
Applicant Agency:
Requested Return Date: (INSERT DATE NO LESS THAN 30 DAYS FROM SUBMITTAL)

To Agency Addressed: Comment is requested as part of a grant application for a federally funded program. Please reply within 30 days of receipt or notify me if additional time is needed.

STATE AGENCY REVIEW AND COMMENT

We have reviewed the project notice and have reached the following conclusions on its relationship to our plans and programs:

- [ ] It has no effect.
[ ] We have a comment.
[ ] We have no comment.
[ ] Effects, although measurable, would be acceptable.
[ ] It has adverse effects. (Explain in Remarks Section.)
[ ] We are interested, but require more information to evaluate the proposal. (Explain in Remarks Section.)
[ ] Additional comments for project improvement. (Attach if necessary).

REVIEW AGENCY REMARKS:

Agency: \_\_\_\_\_

Reviewed By: \_\_\_\_\_ Title: \_\_\_\_\_

Email address: \_\_\_\_\_ Phone: \_\_\_\_\_

Return to: (INSERT PROJECT SPONSOR NAME AND CONTACT INFORMATION HERE)

### 3.5 State of Oregon Natural Resources Agency Mailing List

For Review of Proposed Federal Actions

**Mandatory Contact List: *Submission to these 4 agencies required.***

DSL       ODF&W       DEQ       SHPO\*

AGENCY	CONTACT	SPECIAL REQUIREMENTS
<input type="checkbox"/> <b>Oregon Department of State Lands (DSL)</b>	<b>Chris Stevenson</b> Jurisdiction Coordinator 775 Summer ST NE STE 100 Salem, OR 97301 503-798-7622 <a href="mailto:christine.stevenson@dsl.state.or.us">christine.stevenson@dsl.state.or.us</a>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Only submit projects with ground alteration</li> <li>• No resubmittals please</li> </ul> <p><u>Please include the following info:</u></p> <ul style="list-style-type: none"> <li>• County</li> <li>• Latitude/Longitude</li> <li>• Township</li> <li>• Accurate Site Map</li> <li>• Range</li> <li>• Tax Lot(s)</li> <li>• Section</li> </ul>
<input type="checkbox"/> <b>Oregon Dept. of Fish &amp; Wildlife (ODF&amp;W)</b>	<b>Nancy Taylor</b> Waterway and Habitat Incentives Coordinator 4034 Fairview Industrial DR SE Salem, OR 97302 503-947-6099 <a href="mailto:nancy.c.taylor@odfw.oregon.gov">nancy.c.taylor@odfw.oregon.gov</a>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Nancy will forward your review request to the appropriate district biologist.</li> </ul>
<input type="checkbox"/> <b>Dept. of Environmental Quality (DEQ)</b>  <b>Northwest Region</b>	<b>Melyssa Graeper</b> 4301 3 <sup>rd</sup> St, Suite 206 Tillamook, OR 97141 503-509-4636 <a href="mailto:melyssa.graeper@deq.state.or.us">melyssa.graeper@deq.state.or.us</a>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Serving Clatsop, Columbia, Tillamook, Clackamas, Multnomah, and Washington Counties.</li> </ul>
<b>Western Region (A)</b>	<b>Mary Camarata</b> 165 E 7 <sup>th</sup> Ave STE 100 Eugene, OR 97401 541-687-7435 <a href="mailto:mary.camarata@deq.state.or.us">mary.camarata@deq.state.or.us</a>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Serving Yamhill, Polk, Marion, Lincoln, Benton, Linn, Lane Counties.</li> </ul>
<b>Western Region (B)</b>	<b>Mary Camarata (Interim)</b> 165 E 7 <sup>th</sup> Ave STE 100 Eugene, OR 97401 541-687-7435 <a href="mailto:mary.camarata@deq.state.or.us">mary.camarata@deq.state.or.us</a>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Serving Coos, Curry, Douglas, Jackson and Josephine Counties.</li> </ul>

<p><b>Eastern Region (A)</b></p>	<p><b>Greg Svelund</b>  475 NE Bellevue DR, #110  Bend, OR 97701  541-633-2008  <a href="mailto:svelund.greg@deg.state.or.us">svelund.greg@deg.state.or.us</a></p>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Serving Crook, Deschutes, Jefferson, Wasco, Hood River, Sherman, Klamath, and Lake Counties.</li> </ul>
<p><b>Eastern Region (B)</b></p>	<p><b>Greg Svelund (Interim)</b>  475 NE Bellevue Dr, #110  Bend, OR 97701  541-633-2008  <a href="mailto:svelund.greg@deg.state.or.us">svelund.greg@deg.state.or.us</a></p>	<ul style="list-style-type: none"> <li>• Submit by email</li> <li>• Allow 4 weeks for review</li> <li>• Serving Baker, Gilliam, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties.</li> </ul>
<p><b>State Historic Preservation Office (SHPO)*</b></p>	<p><b>OPRD will submit your packet to SHPO for review. If your project has already been reviewed by the SHPO, please indicate that in your grant application, include the SHPO case number, and upload related documentation.</b></p>	<p><b>In the Attachments section of the online application (Map for SHPO), please include:</b></p> <ul style="list-style-type: none"> <li>• a 7.5 minute USGS topography map, <u>or</u></li> <li>• a one-square mile map that includes roads or geographical features.</li> <li>• SHPO Submittal Form - Below ground</li> <li>• SHPO Clearance Form – Above ground</li> </ul>

**Potential Contact List:** Submission to these State agencies is **not** required, but may be prudent for certain projects.

<p>Scott Altenhoff  Manager, Urban and Community Forestry Assistance Program  <b>Oregon State Dept. of Forestry</b>  2600 State Street  Salem OR 97310  971-428-7380  <a href="mailto:Scott.r.altenhoff@odf.oregon.gov">Scott.r.altenhoff@odf.oregon.gov</a></p> <ul style="list-style-type: none"> <li>• Contact if your project would involve the Forest Practice rules relating to forest operations, stream protection, etc.</li> </ul>	<p>Janine Belleque  Boating Facilities Manager  <b>Oregon State Marine Board</b>  435 Commercial Street NE  Salem OR 97301  503-877-7580  <a href="mailto:Janine.belleque@boat.oregon.gov">Janine.belleque@boat.oregon.gov</a></p> <ul style="list-style-type: none"> <li>• Contact if your project is near or at an existing boating access site or if the project creates waterway access.</li> </ul>	
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<p>Susan D. White NEPA Program Coordinator <b>Oregon Dept. of Transportation</b> 4040 Fairview Industrial DR SE Salem OR 97302 503-798-1808</p> <p><a href="mailto:susan.white@odot.state.or.us">susan.white@odot.state.or.us</a></p> <ul style="list-style-type: none"> <li>• Contact if your project is near or adjacent to ODOT State and National Highways, ROW, or other ODOT owned property. ODOT will review proposed grant project boundaries to ensure avoidance of future park and property conversions that may result from planned ODOT improvement projects.</li> </ul>	<p>Kim Ogren Planning, Collaboration and Investments Manager <b>Oregon Water Resources Dept.</b> 725 Summer St. NE, Suite A Salem OR 97301 503-986-0873</p> <p><a href="mailto:kim.l.ogren@water.oregon.gov">kim.l.ogren@water.oregon.gov</a></p> <p>Contact if your project:</p> <ul style="list-style-type: none"> <li>• changes or requires new water rights,</li> <li>• impacts groundwater levels, or</li> <li>• impacts an Oregon Scenic Waterway.</li> </ul>	<p>James Johnson, Land Use &amp; Water Planning Coordinator Natural Resources Division <b>Oregon Dept. of Agriculture</b> 635 Capitol Street NE Salem OR 97301-2532 503-986-4706</p> <p><a href="mailto:james.johnson@oda.oregon.gov">james.johnson@oda.oregon.gov</a></p> <ul style="list-style-type: none"> <li>• Contact if your project is located on lands zoned for exclusive farm use or borders other lands involving farm use. Conversion of agricultural lands and compatibility with area farming operations are other reasons to contact.</li> </ul>
<p>Jon Jinings Community Dev. Specialist <b>Oregon Dept. of Land Conservation &amp; Development</b> 1011 SW Emkay STE 108 Bend, OR 97702 541-325-6928</p> <p><a href="mailto:jon.jinings@state.or.us">jon.jinings@state.or.us</a></p> <ul style="list-style-type: none"> <li>• Contact if a dispute arises between the applicant and Planning Official completing the Land Use Compatibility Statement (LUCS)</li> <li>• Jon will forward your packet to the appropriate Regional Rep.</li> </ul>		

**3.6 Government to Government Relations**

[Governor’s Executive Order 96-30](#) – State/Tribal Government to Government Relations

LEGISLATIVE COMMISSION ON INDIAN AFFAIRS

900 Court St. NE, Room 167, Salem, OR 97301

(503) 986-1067

Exec. Director: Patrick Flanagan

[LCIS@oregonlegislature.gov](mailto:LCIS@oregonlegislature.gov)

## ***Oregon's Nine Federally Recognized Tribes***

### **BURNS PAIUTE TRIBE**

HC-71 100 Pasigo Street  
Burns, OR 97720  
PHONE: (541) 573-2088  
FAX: (541) 573-2323  
Website: <https://www.burnspaiute-nsn.gov/>  
Tribal Chairperson: Diane L. Teeman  
Culture & Heritage Director: Diane L. Teeman

### **CONFEDERATED TRIBES OF COOS, LOWER UMPQUA & SIUSLAW**

1245 Fulton Avenue  
Coos Bay, OR 97420  
PHONE: (541) 888-9577  
FAX: (541) 888-2853  
Website: <https://ctclusi.org>  
Tribal Chief: Doc Slyter  
Tribal Chair: Brad Kneaper  
THPO Officer: Courtney Krossman

### **COQUILLE INDIAN TRIBE**

3050 Tremont Street  
North Bend, OR 97459  
PHONE: (541) 756-0904  
FAX: (541) 756-0847  
Website: <https://www.coquilletribe.org>  
Tribal Chair: Brenda Meade  
Tribal Historic Preservation Officer: Bridgett Wheeler

### **COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**

2371 NE Stephens Street Suite 100  
Roseburg, OR 97470  
PHONE: (541) 672-9405  
FAX: (541) 673-0432  
Website: <https://www.cowcreek-nsn.gov>  
Tribal Chair: Carla Keene  
Chief Executive Officer: Michael Rondeau

### **CONFEDERATED TRIBES OF GRAND RONDE**

9615 Grand Ronde Road  
Grand Ronde, OR 97347  
PHONE: (503) 879-5211  
FAX: (503) 879-2025  
Website: <https://www.grandronde.org>  
Tribal Chair: Cheryl A. Kennedy  
THPO: David Harrelson

### **KLAMATH TRIBES**

501 Chiloquin Blvd.  
P.O. BOX 436  
Chiloquin, OR 97624  
PHONE: (541) 783-2219 1-800-524-9787  
FAX: (541) 783-3706  
Website: <http://www.klamathtribes.org>  
Tribal Chair: Clayton Dumont  
Director Culture and Heritage: Les Anderson

### **CONFEDERATED TRIBES OF SILETZ INDIANS**

201 SE Swan Avenue  
P.O. BOX 549  
Siletz, OR 97380  
PHONE: (541) 444-2532  
FAX: (541) 444-2307  
Website: <https://ctsi.nsn.us>  
Tribal Chair: Delores Pigsley  
Director Cultural Resources: Robert Kentta

### **CONFEDERATED TRIBES OF THE UMATILLA RESERVATION**

46411 Timine Way  
Pendleton, OR 97801  
PHONE: (541) 276-3165  
FAX: (541) 276-3095  
Website: <https://ctuir.org>  
Board of Trustees Chair: N. Kathryn Brigham  
THPO Officer: Carey L. Miller

### **CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

1233 Veteran's Street  
P.O. BOX C  
Warm Springs, OR 97761  
PHONE: (541) 553-3257  
FAX: (541) 553-2241  
Web Page: <https://warmsprings-nsn.gov>  
Tribal Chairman: Jonathan W. Smith, Sr.  
THPO Officer: Robert Brunoe



**3.7 Sample Resolution Authorizing Application for Grant**

IN THE (Board of Commissioners, City Council, Board of Directors, etc.) (County Name) COUNTY, OREGON  
) IN THE MATTER OF AUTHORIZING THE  
) (Project Sponsor Name/Department) TO  
) APPLY FOR LAND AND WATER  
) CONSERVATION FUND ASSISTANCE  
FROM ) THE OREGON PARKS AND  
RECREATION ORDER NO. xxxxx ) DEPARTMENT FOR  
(acquisition of, development of, etc) AT (Park Name) ) of, rehabilitation  
DELEGATING AUTHORITY TO THE ) AND  
) TO THE (Authorized Official) TO SIGN  
)THE APPLICATION.

**WHEREAS**, the Oregon Parks and Recreation Department is accepting applications for the federal Land and Water Conservation Fund Grant Program; and

**WHEREAS**, the (Project Sponsor Name) desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation acquisition, improvements and enhancements; and

**WHEREAS**, (Parks Advisory Committee, Budget Committee, City Council, Board of Commissioners, Board of Directors and staff) have identified \_\_\_\_\_ improvements at (Park Name) as a high priority need in (County, City, Park District, METRO, or Port District Name); and

**WHEREAS**, (Brief Description of What Project Includes); and

**WHEREAS**, the (Project Sponsor Name) has available local matching funds to fulfill its share of obligation related to this grant application should the grant funds be awarded; and

**WHEREAS**, the (Project Sponsor Name) it has been estimated that annual maintenance costs will be \_\_\_\_\_ and we will dedicate adequate funding for on-going operations and maintenance of this park and recreation facility should the grant funds be awarded; and

**NOW, THEREFORE, BE IT RESOLVED BY THE (BOARD OF COMMISSIONERS, CITY COUNCIL, BOARD OF DIRECTORS, ETC.) OF THE (PROJECT SPONSOR NAME) AS FOLLOWS:**

- Section 1: The (Board of Commissioners, City Council, Board of Directors, etc.) demonstrates its support for the submittal of a grant application to the Oregon Park and Recreation Department for (acquisition of, development of, rehabilitation of, etc.) at (Park Name).
- Section 2: This Resolution shall be effective following its adoption by the (Board of Commissioners, City Council, Board of Directors, etc.).

Passed by the (Board of Commissioners, City Council, Board of Directors, etc.) this (Date) of (Month), (Year).

\_\_\_\_\_  
(Authorized Official’s Name and Title)

ATTEST:

\_\_\_\_\_  
(Staff Member’s Name and Title)

**Note: Use this as a sample only. Resolution formats will vary from one agency to another. Use the required format for the Project Sponsor**

## CHAPTER 4 - OPEN PROJECT SELECTION PROCESS

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### 4.1 Open Project Selection Process

OPRD has developed an Open Project Selection Process (OPSP) that provides objective criteria and standards for grant selection that are explicitly based on Oregon's priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP. The OPSP is the connection between SCORP and the use of LWCF grants to assist in meeting high priority outdoor recreation resource needs. The OPSP assures equal opportunity for all eligible sponsors and all sectors of the general public to participate in the benefits of the LWCF State Assistance Program and to affirmatively address and meet priority recreation needs. Oregon has developed a priority rating system for selecting projects that ensures the fair and equitable evaluation of all projects and a project selection process, which evaluates and selects projects on the basis of quality and conformance with its priority rating system.

### 4.2 Oregon Outdoor Recreation Committee (OORC)

The Oregon Outdoor Recreation Committee (OORC) is a nine-member committee appointed by the Oregon Parks and Recreation Department Director. The committee meets annually and at other times upon the call of the Director. The committee will establish the priority list of eligible projects for LWCF assistance or provide other assistance as requested by the Director. The meeting will assure full and open project selection processes that will include an outreach to all citizens of the state.

The committee members serve non-concurrent four-year terms and represent the following interests:

- Counties east of the Cascade Mountains;
- Counties west of the Cascade Mountains;
- Cities under 15,000 populations;
- Cities over 15,000 populations;
- Park and Recreation Districts, Metropolitan Service District or Port Districts
- Oregon Parks and Recreation Department
- People with Disabilities
- Member of a historically underrepresented community; or Representatives from Tribal Governments; and
- Public-at-Large

Selection of committee members shall be from lists supplied by the Oregon Recreation and Park Association's Counties & Outdoor Recreation Section, Association of Oregon Counties, Oregon Recreation and Park Association, League of Oregon Cities, Special Districts Association of Oregon, other appropriate organizations not otherwise listed, and recommendations from the Director.

### 4.3 Presentation before the OORC

All project sponsors must make a presentation before the committee in order to be considered for funding. Presentations are the opportunity to make a final case to the advisory committee for your project. Presentations are limited to 20 minutes, including time to address questions by the committee.

The purpose is not to repeat all information in your application, but to provide an overview, emphasize key points, and provide any additional justification. The committee may ask clarifying questions prior to finalizing their individual project scores. The OORC will recommend projects to the OPRD Director for submission to the Oregon Parks Commission for approval. Grant applications on the priority list are submitted to the National Park Service for qualification and obligation of funds. Grants agreements are not executed until approved by the Commission and after approval by the National Park Service.

PowerPoint presentations or other visuals are not required but are strongly recommended. Presentations must be submitted in advance to OPRD by a date specified to applicants by the LWCF Grant Coordinator. Applicants may have more than one person attend to give the presentation or be available to answer Committee member questions. While applicants may choose to have an elected official present on the project, the Committee may ask questions that require a technical response.

OPRD will send applicants additional information prior to the grant meeting about meeting location, time slots for presentations, a deadline to submit presentation materials, etc.

#### 4.4 LWCF Grant Rating Criteria

Please visit the link provided below to view the full 2019-2023 SCORP for complete details of the LWCF Open Project Selection Process Review and the SCORP Criteria.

<https://www.oregon.gov/oprd/PRP/Documents/SCORP-2019-2023-Final.pdf>

#### 2022 GRANT CYCLE - LWCF GRANT RATING CRITERIA POINT SUMMARY

CRITERIA TYPE	Possible Points
1. Technical Review – OPRD Staff	0
2. SCORP Criteria	
A. Consistency With Statewide Priorities	0-20
B. Consistency With Statewide Issues	0-10
C. Local Needs And Benefits	0-25
D. Physical Activity Benefits	0-5
E. Need For Major Rehabilitation	0-5
F. Accessibility Accommodations	0-5
3. Universal Design / Inclusive Outdoor Recreation Opportunities Criteria	0-5
4. Community Support Criteria	0-5
5. Financial Commitment Criteria	0-10
6. Sustainability Criteria	0-5
7. Diversity, Equity, and Inclusion	0-5
8. Discretionary Committee Criteria	0-15
<b>Total Points Possible</b>	<b>115</b>

#### 4.5 LWCF Open Project Selection Process - Project Review and Scoring

##### Application Technical Review by OPRD and National Park Service

As part of the Land and Water Conservation Fund grant evaluation process, OPRD and

National Park Service (NPS) grant personnel conduct a technical review of all grant applications. Each submitted grant application will need to include all of the materials requested in Chapter 3 of this manual (The LWCF Grant Fund Application). Ineligible or incomplete applications will not qualify to compete for grant funding in the current cycle. Staff will contact the project applicant with an explanation of why their application was not accepted.

### **Project Priority Scoring System**

Projects presented to OPRD for grant funding and that satisfy the requirements of the application technical review will be scored by the Oregon Outdoor Recreation Committee (OORC) members according to the criteria, rating factors, and points shown in the following “Project Priority Scoring System.” A project's final score will be calculated as an average of the sum of all individual committee member scores. The highest possible score for a project will be 115 points. Seventy of the 115 possible points are tied to specific priorities identified in the 2019-2023 Oregon SCORP. The priority rank of a project will depend on its score relative to other projects and in relation to the amount of LWCF grant funds available each year.

### **1. Application Technical Review**

OPRD will support high-quality outdoor recreation grant projects that have a reasonable likelihood of being funded. Project applicants are encouraged to contact OPRD grant staff with questions regarding the LWCF grant application process. Due to the large number of requests for LWCF funds, OPRD staff will review submitted applications to determine if the project applicant and proposed project meets minimum requirements for LWCF grant funding. No scoring points will be awarded for the application technical review. The following are factors that will be considered in the application technical review.

- i. Grant Performance and Compliance.** The successful completion of projects in a timely and efficient manner is an important goal of the LWCF grant program. A project applicant’s past performance in effectively meeting the administrative guidelines of the program is also an important factor in evaluating performance and compliance.
  - a. The project applicant is on schedule with all active OPRD-administered grant projects.
  - b. The project applicant is in compliance with applicable guidelines at previously assisted project sites (e.g., no unresolved conversions, overhead utility lines, maintenance issues or public access restrictions).

**OR**

  - c. The project applicant has never received an OPRD-administered grant.
  
- ii. General Project Suitability/Minimum Program Requirements.** Since LWCF grant funding is limited, OPRD wants to ensure that all proposed projects are a good fit with the intent of the program and meet minimum program requirements.

- a. Is the project a good fit for this particular grant program? If not, is there another grant program that would provide a better fit?
- b. Is the project's budget well researched and complete? Does it anticipate the time needed to navigate the application process and complete the project?
- c. Is the scope of work appropriate and complete? Does it follow "best practices" and incorporate the use of proven materials and products?
- d. Has the applicant demonstrated that they are capable of completing a project of this size and scope?
- e. Has the applicant demonstrated that this project is a priority in their community, that it has strong public support, and that an adequate public process has been followed in selecting it?

**iii. Accessibility Compliance.** The Americans with Disabilities Act (ADA) is a law ensuring equal access to park and recreational facilities and services. In Oregon, there is a need for the retrofitting of existing facilities constructed before current ADA accessibility requirements were in place.

Staff review that the project applicant has provided evidence of a board or city council adopted/approved ADA Transition Plan or an ADA Site Evaluation.

**iv. Readiness to Proceed.** OPRD intends to ensure that available LWCF grant funds are used in a timely manner and appropriate local land use and consistent zoning is applied to the property once funding is awarded to a project applicant.

- a. **Planning / Design Status.** The project applicant has demonstrated, through sufficient documentation:
  - Land use compatibility (by providing a land use compatibility statement).
  - Construction or concept plan completed.
- b. **Acquisition Status (Acquisition or Combo projects only).** The project applicant has demonstrated, through sufficient documentation:
  - Completed appraisal
  - Proof of willing seller or donor
  - Land use compatibility by providing a land use compatibility statement
  - Can the sponsor demonstrate adequate legal ability to ensure the site is managed for public outdoor recreation purposes in perpetuity?

## **2. SCORP Criteria (0-70 Points)**

OORC members will determine a value from 0 to 70 points based on the information provided by the applicant for addressing one or more of the SCORP priorities (A-F), demonstrating that the project satisfies high priority needs identified within their jurisdiction through the SCORP needs assessment or local planning efforts, and demonstrating a commitment to long-term maintenance for the recreation area/facility.

Note: The Tables referenced in the following SCORP Criteria can be found in Chapter 12 of the [2019-2023 SCORP](#).

**A. Consistency With Statewide Priorities (0-20 points).**

The 2019-2023 Oregon SCORP effort included an analysis to identify priority projects using the following two methods. Please identify if the project satisfies needs identified by one or both of these methods.

- Public recreation provider identified need (See Table 12.1). The first method involved a survey of Oregon public recreation providers to identify priority projects for the distribution of LWCF funds for both close-to-home areas and for dispersed areas. A map clearly identifying the project location and UGB or unincorporated community boundary or Tribal community boundary drawn on it must be submitted.
- Oregon resident identified need (See Table 12.2). The second method was a component of the statewide survey of Oregon residents. Residents were asked to rate several items for investment by park and forest agencies for both close-to-home and for dispersed areas. A map clearly identifying the project location and UGB or unincorporated community boundary or Tribal community boundary drawn on it must be submitted.

**B. Consistency with Statewide Issues (0-10 points).**

To what extent does the project address one or more LWCF issue priorities identified in SCORP? The 2019-2023 SCORP identifies four priorities for LWCF grant support:

**a. Outdoor Recreation Needs of an Aging Population.** OPRD would like to encourage the development of opportunities for an aging population in high-priority **young-old** (age 60-74 years) or **middle-old** (age 75-84 years) priority areas. There are two ways to identify high priority areas of the state for these two populations.

- i. Priority Counties and UGB's. See Tables 12.3-12.6 for a listing of high-priority counties and UGBs for the young old and middle old populations. (Note: For projects in dispersed settings, use county priority areas only.)
- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for the demographic choice selected. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas to be considered.

To be considered for scoring points for the young-old criteria, the project must satisfy one or more of the needs identified in Table 12.7. To be considered for scoring points for the middle-old criteria, the project must satisfy one or more of the needs identified in Table 12.8.

**b. Outdoor Recreation Needs of An Increasingly Diverse Population.** OPRD would like to encourage the development of opportunities for an increasingly diverse population in high-priority Latino or Asian priority areas. There are two ways to identify high priority areas of the state.

- i. Priority Counties and UGB's. See Tables 12.9-12.12 for a listing of high-priority counties and UGBs for the Latino and Asian populations. (Note: For projects in dispersed settings, use county priority areas only.)

- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for the demographic choice selected. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas to be considered.

To be considered for scoring points for the Latino criteria, the project must satisfy one or more of the needs identified in Table 12.13. To be considered for scoring points for the Asian criteria, the project must satisfy one or more of the needs identified in Table 12.14.

If the project serves the needs of other under-represented populations (e.g., Tribes, African Americans), please describe how the project addresses the needs of that target population.

**c. Outdoor Recreation Needs of Families with Children.** OPRD would like to encourage the development of opportunities for families with children in high-priority areas. There are two ways to identify high priority areas of the state.

- i. Priority Counties and UGB's. See Tables 12.15-12.16 for a listing of high-priority counties and UGBs for Oregon families with children. (Note: For projects in dispersed settings, use county priority areas only.)
- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for the demographic choice selected. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas to be considered.

To be considered for scoring points for the families with children criteria, the project must satisfy one or more of the needs identified in Table 12.17.

**d. Outdoor Recreation Needs of a Low-Income Population.** OPRD would like to encourage the development of opportunities for low-income residents in high-priority areas. There are two ways to identify high priority areas of the state.

- i. Priority Counties and UGB's. See Tables 12.18-12.19 for a listing of high-priority counties and UGBs for Oregon low-income residents. (Note: For projects in dispersed settings, use county priority areas only.)
- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for the demographic choice selected. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas to be considered.

To be considered for scoring points for the **low-income** criteria, the project must satisfy one or more of the needs identified in Table 12.20.

**C. Local Needs and Benefits (0-25 points).**

Project applicants are strongly encouraged to develop project applications that meet high priority needs of their jurisdiction. Need can be demonstrated through results of the SCORP needs assessments (items a. and b. below), coordinated, long-range planning with

a minimum of a 5-year planning horizon (item c. below), or through a substantive public involvement process (item d. below). If the project isn't identified as a county-level need by the SCORP needs assessment, local need should be demonstrated through the project's inclusion in a current local planning document, or by describing the project's public involvement process.

The project does not have to meet all four categories to receive all of the points. It is within each committee member's discretion to determine how well the project addresses local needs and benefits. In order to receive points, the project must meet at least one of the following categories (a-d). In addition to the following categories, the project applicant may use the parkland mapping website to conduct a ½ mile service area analysis to provide a visual representation of the need for this project.

**a. Public Recreation Provider Identified Need.** The 2019-2023 Oregon SCORP effort included an analysis to identify Public Recreation Provider priority projects. This method involved a survey of Oregon public recreation providers to identify priority projects for the distribution of LWCF funds for both close-to-home areas and for dispersed areas. A map clearly identifying the project location and UGB or unincorporated community boundary or Tribal community boundary drawn on it must be submitted.

Does the project address county-level needs identified by the Public Recreation Provider Survey? (See 2019-2023 SCORP, pages 224-229, Tables 12.21-12.56). If so, which priority or priorities are identified for the project county. Please use either the Close-to-Home Priorities or Dispersed Area Priorities, not both.

**b. Oregon resident identified Need.** The second method is a component of the statewide survey of Oregon residents. Residents were asked to rate several items for investment by park and forest agencies for both close-to-home and for dispersed areas. Please select one of these three community types that best describes your service area. For dispersed projects, priority.

Does the priority project address Statewide-level needs identified in the Oregon Resident Survey? (See 2019-2023 SCORP, page 230, Tables 12.57-12.60). If so, which priority or priorities are identified.

**c. Local Planning.** The extent to which the project will satisfy priority needs, as identified in a current local planning document (park and recreation master plan, city or county comprehensive plan, trails master plan, transportation system plan or a bicycle and pedestrian plan, etc.).

**d. Public Involvement Effort.** If the project is not identified as a county-level need by the SCORP needs assessment and is not included in a current local planning document, describe the public involvement effort that led to the selection of the project including citizen involvement through public workshops, public meetings, surveys, and local citizen advisory committees during the project's planning process.



**D. Physical Activity Benefits (0-5 points).**

The SCORP Oregon resident survey asked participants to rate sixteen (16) potential “in your community” agency actions with respect to increasing the level of physical activity of the respondent or the respondent’s household members. Priority will be given to projects addressing top statewide actions identified in this survey in high priority areas identified in the planning process.

Priority need is demonstrated at the statewide level and for high priority physical activity areas of the state. Highest number of points will be awarded to applicants demonstrating need at both the statewide level and with high-priority areas of the state.

a. Statewide Level. Please identify if the project satisfies one of the four **physical activity** priorities included in Table 12.61.

b. There are two ways to identify high priority physical activity areas in the state.

- i. Priority Counties and UGB’s. See Tables 12.62-12.63 for a listing of high-priority counties and UGBs for resident BMI. (Note: For projects in dispersed settings, use county priority areas only.)
- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for BMI. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas to be considered for this criterion.

If your project is in a high-priority area, please identify if the project satisfies one of the four physical activity priorities included in Table 12.61.

**E. Need for Major Rehabilitation (0-5 points).**

The 2018 Oregon recreation provider survey asked respondents to identify the degree to which 15 funding issues were challenges or concerns for their agency. Both within UGB and dispersed-setting providers reported that obtaining adequate funding for facility rehabilitation/ replacement was the top funding issue. This scoring criteria is meant to prioritize major rehabilitation over other project types, e.g. acquisition projects.

Major rehabilitation projects involve the restoration or partial reconstruction of eligible recreation areas and facilities, which is necessitated by one or more of the following and is not attributed to lack of maintenance:

- The recreation area or facility is beyond its normal life expectancy,
- The recreation area or facility is destroyed by fire, natural disaster or vandalism,
- The recreation area or facility does not meet health and safety codes/requirements,
- The recreation area or facility does not meet accessibility standards,
- The recreation area or facility requires rehabilitation to ensure critical natural resource protection, and
- Changing recreation needs (e.g., changes in demographics within the service area) dictate a change in the type of recreation area or facility provided.

If the rehabilitation need is due to vandalism, please provide evidence that it was not due

to neglect and that the project includes some mechanism, either through design or management, to prevent the new facility from being similarly targeted. If the rehabilitation is due to natural disaster, please describe how the new design will address resiliency going forward.

**F. Accessibility Accommodations (0-5 points).**

OPRD would like to encourage disability accommodations identified through the SCORP Oregon resident survey for target populations in high-priority areas. Specifically, we are looking for accommodation actions that go beyond the scope of ADA requirements.

Priority need is demonstrated at the statewide level and for high priority areas by specific demographic group. Highest number of points will be awarded to applicants demonstrating need at both the statewide level and as a high-priority area identified in the planning process.

a. Statewide Level. Please identify if the project satisfies one or more of the following accessibility accommodation priorities included in Table 12.64.

b. There are two ways to identify high priority target population areas in the state.

- i. Priority Counties and UGB's. The Portland State University Population Research Center has identified high-priority young old (Tables 12.3-12.4), middle old (Tables 12.5-12.6), Latino (Tables 12.9-12.10), Asian (Tables 12.11-12.12), families with children (Tables 12.15-12.16), and low income (Tables 12.18-12.19) counties and UGBs in the state. Consideration will be given for appropriate priority projects for any recreation provider with a proposed project in these counties and UGBs.
- ii. Priority Areas. Use the parkland mapping website to generate a map identifying specific areas of priority for the demographic type. (<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=d15b063126e247979d8c78d8a26adca6>). Your project will need to be located within one of these priority areas in order to be considered for this criteria.

To be considered for scoring points for the accessibility criteria, the project must satisfy one or more of the needs identified in Table 12.65.

**3. Inclusive Outdoor Recreation Opportunities Criteria (0-5 Points)**

OORC committee members will determine a value from 0 to 5 points based on the information provided by the applicant related to use of Universal Design considerations in the project.

Universal design attempts to meet the needs of all people, and includes those of all ages, physical abilities, sensory abilities and cognitive skills. It includes the use of integrated and mainstream products, environmental features and services, without the need for adaptation or specialized design. Please describe how your project goes beyond ADA and strives to incorporate Universal Design concepts and design considerations. Please show evidence that the project design has considered cognitive, vision, hearing, social, and other kinds of disabilities.

For acquisition projects where development of outdoor recreation facilities is planned at a future date, please describe how your project will be planned to go beyond ADA requirements and incorporate Universal Design concepts and design considerations. During the period between acquisition and development, the property should be open for public recreation purposes on a reasonable, limited basis (e.g., appropriate to environmental considerations and achieved with minimum public investment).

#### **4. Community Support Criteria (0-5 Points)**

OORC committee members will determine a value from 0 to 5 points based on information provided by the applicant related to the degree to which the project demonstrates broad community support for the project is in place.

Project applicants should demonstrate broad community support for the project by providing information such as letters of support and/or survey analysis. Examples of how applicants could show broad community support include results or summary documentation of recent community or neighborhood meetings concerning the project, letters of support from park users, neighbors, and a variety of project stakeholders.

#### **5. Financial Commitment Criteria (0-10 Points)**

OORC committee members will determine a value from 0 to 10 points based on information provided by the applicant related to the degree to which the project demonstrates that financing for the project is in place for successful completion.

Project applicants should demonstrate that finances are available for the project by showing agency budget information or other documents demonstrating financial commitment to the project. What is the source of local matching funds? Project applicants are encouraged to develop project applications involving partnerships between the project applicant, other agencies, or non-profit organizations. Project applicants are also encouraged to demonstrate solid financial commitment to providing necessary project maintenance and upkeep. To what extent does the project involve partnerships with other agencies or groups? Is the funding from other agencies or groups guaranteed? To what extent are local matching funds available? What is the local commitment to the project from the local community through donations? To what extent has enough money been budgeted to successfully complete the work?

Note: Donations of land, cash, labor, equipment or materials cannot occur until written authorization to proceed has been received from OPRD.

Keep in mind that having a cost-effective budget is important, but it's appropriate to spend money to achieve the best quality final product. For example, including a solid surface under the entire playground will likely result in more points awarded to the project in the disability category.

#### **6. Sustainability Criteria (0-5 Points)**

Sustainability means using, developing, protecting, and managing resources in a manner that enables people to meet current and future needs from the multiple perspective of environmental, economic and community objectives. For more on sustainability, refer to Chapter 1, Section 1.14 of this manual.

The committee will consider to what extent the project applicant describes intent, strategies, and long-term management plans. Examples may include but are not limited to: sustainable design methods; projects that will have a minimal impact on the surrounding ecosystem; projects that will result in user protection of natural resources such as water quality/conservation, plant conservation, wildlife conservation, energy conservation, pollution control and environmental protection and restoration.

**7. Diversity, Equity, and Inclusion (0-5 Points)**

Diversity, equity, and inclusion strategies direct organizations to address inequity in the communities they serve; ensure diverse representation in the planning and decision-making process, and promote welcoming environments for all visitors, employees, and volunteers. The intent of this criteria is to award points for applicants who demonstrate a strong commitment to diversity, equity, and inclusion in their work.

The committee will consider to what extent the project applicant demonstrates a strong commitment to diversity, equity, and inclusion? The committee will consider if the project applicant is working towards or has an inclusion strategy. The project applicant may also describe, if applicable, how their strategy or work towards a strategy relates to this proposed project.

**8. Discretionary Committee Member Criteria (0-15 Points)**

The OORC membership is representative of state geographic regions, agencies and communities. This assessment allows committee members to bring their knowledge of statewide and local recreation patterns, resources, and needs into consideration. The determination of points awarded is an individual decision, based on informed judgment. OORC committee members will determine a value from 0 to 15 points. Applicants do not need to provide any additional material for this committee member review.

## CHAPTER 5 - PROJECT APPROVAL AND IMPLEMENTATION

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### 5.1 Inspections

#### A. Pre-award Inspections

An on-site pre-award inspection will be performed by the State prior to the award of any acquisition, development, major rehabilitation or combination acquisition/development project. This inspection will summarize the utility of the site for its intended use. Photos will be taken to record the site conditions before an acquisition and prior to the start of development.

#### B. Annual Progress Inspections

Progress inspections for all active development projects that extend one construction season may be completed in conjunction with the annual performance report, due by March 31 of each year. Annual progress inspections will summarize the accomplishments, evaluate the rate of progress and method of execution, assure that the project is being carried out in accordance with the project agreement and discuss any corrective action or amendments to the project agreement. The State, may, at its discretion, inspect projects on a random basis.

#### C. Final Inspections

Final inspections will be performed by the State on all projects. Final inspections will access the completeness and acceptability of the finished work, assure that the work was in accord with the scope of the project agreement and any subsequent amendments, and determine the actual location of the facilities.

#### D. Post-Completion Inspections

In order to determine whether properties acquired or developed with LWCF Assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a state post-completion inspection is to be made within five years after final billing and at least once every five years thereafter.

### 5.2 State/Local Agreements

The State/Local Agreement is a document between the State and project sponsor (eligible local and state agencies) that documents project elements to be completed and limits of reimbursement payment. No work may begin without approval from the Department. After NPS approval, the project sponsor will be notified to proceed with the project. A signed State/Local Agreement by the Department constitutes project authorization and approval. CONSTRUCTION WORK COMPLETED, PROJECT COSTS INCURRED, OR LAND ACQUIRED PRIOR TO STATE APPROVAL AND NATIONAL PARK SERVICE APPROVAL OF THE PROJECT ARE INELIGIBLE FOR REIMBURSEMENT. **No project may begin without a signed agreement from OPRD.**

Project sponsors have 12 months from the date of authorization to begin substantial work (i.e. the award of contracts, or completion of at least 25 percent of the work, if done by force account). Projects not conforming to this schedule will be cancelled.

Projects must complete and billed within two years of project authorization. Requests for time extensions for extenuating circumstances must be requested in writing and approved prior to expiration of the State/Local Agreement. Projects will be inspected and audited by the Department or its designate prior to final grant reimbursement.

See Appendix A-1 for a Sample LWCF Grant Agreement.

### **5.3 Amendments to Project Agreements**

Amendments may be made to the project agreement to delete work items, add time to the project period or to decrease funds allocated to the project. Amendments that increase the local project cost will generally not be allowed. Changes that significantly alter the scope of the project from what was reviewed and approved by the OORC will not be allowed and may jeopardize grant funds. Deletion of scope items will likely reduce federal participation of the project and must be amended prior to final billing. Requests for time extensions must be approved prior to the expiration of the approved project period on the agreement. All requests must be submitted in writing, via email, to the state. Limited exceptions to the amendments policy may be allowed on a case-by-case basis.

### **5.4 Signing of Project Site**

**Permanent Signs** – Federal guidelines require that permanent signs acknowledging LWCF participation be installed at all grant assisted project sites. Project sponsors may design or may use signs furnished by OPRD. The use of the LWCF logo on permanent and temporary signs is required.

The sign may be placed at entrances to outdoor recreation sites, at other appropriate on-site locations, and park literature. The acknowledgement of LWCF assistance will be checked during compliance inspections.

All school-park sites must be signed to designate the times when the public is allowed to use the facility. Also, if necessary, off-site signing should be provided to direct the public to public recreation sites located on school grounds.

**Temporary Signs** – Acquisition and/or development projects totaling \$500,000 or more the project sponsor is required to place temporary signage on or near the affected site, so as to indicate the action taken is a product of funding derived from Outer Continental Shelf receipts made available through the LWCF. The sign should include the percentage and dollar amounts of all federal, state, and/or local funds.

Signing of acquisitions should be delayed until the acquisition of all parcels is completed and all relocations have occurred. The display of dollar amounts for acquisition projects is optional where such display may be detrimental to the project for future acquisitions.

For development and combination projects, temporary signs shall be placed at the initiation of construction and remain until the project is completed.

Unless precluded by local sign ordinances, temporary signs shall be no less than 2 feet by

3 feet. The size of lettering should be based on the amount of information placed on the sign. The selection of colors will be at the discretion of the project sponsor, however, there should be sufficient contrast between the background and the lettering to make the sign readily visible without being intrusive. The sign should include the source, percent and the dollar amount of all Federal, State and/or local funds. The second line on the temporary sign will indicate whether the project is acquisition, development, or both. In addition to the National Park Service, the administrative acknowledgement may include the State agency responsible for the LWCF program. Although optional, symbols for the LWCF and/or the project sponsor may be used. Here is a suggested format:

The CITY OF XXXXXXXXXX  
 Public Outdoor Recreation Site Development  
 Aided by the Federal  
 LAND AND WATER CONSERVATION FUND  
 Administered by the National Park Service  
 U.S. Department of the Interior  
 and the Oregon Parks and Recreation Department

	Funding	
LWCF	50%	\$250,000.00
City of XXXXX	50%	<u>\$250,000.00</u>
Total Project		\$500,000.00

Source of funding includes monies derived  
 from Outer Continental Shelf Federal Receipts

**5.5 Notice of Grant**

OPRD requires that a Notice of Grant is recorded on the title to the property ensuring that that property is used for recreation purposes in perpetuity. The Notice of Grant must be recorded upon project completion.

**Sample Notice of Grant:**

PROJECT SPONSOR

Notice of Grant

The PROJECT SPONSOR is the owner in fee simple of the real property described in Exhibit A (the "Property").

The PROJECT SPONSOR improved the property with Land and Water Conservation Fund grant funds pursuant to a Grant Agreement between the United States Department of Interior and the STATE, dated \_\_\_\_\_, Agreement Number: 41-XXXXX; OPXXX, a copy of which is kept on file at the offices of the Oregon Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem, OR 97301-1279.

PROJECT SPONSOR hereby acknowledges and agrees that it is bound by the terms of the Grant Agreement, and that these terms include that this Property shall be managed for public outdoor recreation purposes and consistent with the purposes for which it was entered into, and shall not be converted to other uses, and that PROJECT SPONSOR shall not dispose of, exchange, encumber its title or other interests in, or convert the use of this Property without the approval of OPRD or its successor agencies. Responsibilities cited in Title 36, Part 59 in the U.S. Code of Federal Regulations apply to the Property.

Dated this \_\_\_\_ day of \_\_\_\_\_.

The PROJECT SPONSOR, by and through

\_\_\_\_\_

By: \_\_\_\_\_



## CHAPTER 6 – GENERAL COST PRINCIPLES, REIMBURSEMENTS AND AUDITS

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### 6.1 Relationship of Project Period to Eligible Costs

To be eligible for matching assistance, costs must have been incurred within the project period except for pre-award project planning costs. The project period is the span of time stipulated on the agreement during which all work to be accomplished under the terms of the agreement must be completed.

- A. Development costs are first incurred at the start of actual physical work on the project site (such as the clearing of ground, the beginning of construction of a building, or the delivery of material to the site), and continue through the period the work is being done. Costs are not incurred at some earlier time when contracts are signed, funds obligated, or purchase orders issued, or at a later time when the ensuing bills are paid. Physical work on the project site shall commence within one year of project approval.
- B. Acquisition projects – Since the transfer of ownership in real property can be a protracted process which differs under various State laws and procedures, the relationship of acquisition costs to project period is separated into two elements: the date when the acquisition cost is incurred and the date when the cost is eligible for reimbursement.
  - (1) Acquisition costs are incurred on the date with the earliest of any of the following transactions takes place:
    - a. The project sponsor accepts deed, lease or other appropriate conveyance;
    - b. The project sponsor makes full payment for the property;
    - c. The project sponsor makes first payment in a series of spaced or time payments.
    - d. The project sponsor makes the first or full payment as stipulated in an option agreement; (The cost of the option, if included as part of the purchase price is allowed as a retroactive cost.)
    - e. The project sponsor makes first partial or full payment to an escrow agent.
  - (2) The transactions will be used to determine whether an acquisition cost is incurred within the project period. Eligible acquisition costs (and retroactive option costs) will be reimbursed only after the project sponsor has made payment and received satisfactory title to the property.

### 6.2 Retroactive Costs

Costs incurred prior to NPS or State approval of a project, with the specific exceptions stated below in Section 6.3, are not eligible for matching funds. LWCF assistance shall only be awarded to assist work not yet undertaken, rather than to help pay for work already begun or completed.

### 6.3 Waiver of Retroactivity

Retroactive costs will not be matched under ordinary circumstances. Waivers will be made only when immediate action is necessary and the time needed to process and application would result in a loss of a significant opportunity.

- (1) Acquisition – The State will notify NPS in writing of the necessity to immediately acquire land prior to taking such action, including a description of the resources to be acquired, the public outdoor recreation uses proposed for the site, and justification for the proposed action. At the time the formal acquisition project is submitted, the State shall include all the necessary documentation required for a new acquisition.
- (2) Development – The State will notify NPS in writing of the necessity to immediately develop an area prior to taking such action, including a description of the planned development, the public outdoor recreation uses proposed for the site, and a justification for the proposed action. Waivers for development will not be approved unless accompanied by an A&R Form and the proposal qualifies for a categorical exclusion under NEPA.

If NPS grants a waiver, the retroactive costs will be eligible for assistance if the agreement is later approved. Granting a waiver is only an acknowledgement of the need for immediate action; it does not imply nor assure NPS approval of the project. The retroactive costs are incurred at the applicant's risk.

Project proposals should be submitted for funding as soon as possible after the granting of a waiver of retroactivity. Projects for which a waiver is granted will be submitted within one fiscal year following the fiscal year in which the waiver was granted.

#### **6.4 Pre-Award Project Planning Costs**

Pre-approved pre-award costs may be eligible for use as part of the project sponsor's matching share of the project costs.

For development projects, the costs of site investigation and selection, site planning, feasibility studies, preliminary design, environmental review and other federal and State compliance, preparation of cost estimates, preparation of construction drawings and specifications, and similar items necessary for project proposal preparation may be eligible for assistance, although incurred prior to project approval. Similar costs may be allowable for acquisition proposals except those relating to appraisals, surveys, and other incidental costs to the purchaser that are precluded by the LWCF Act.

All such pre-award planning costs will be allowable if incurred within three years prior to application submission to the NPS. These costs must be included and described in the project application. Costs not directly attributable to physical development/rehabilitation activities, supplies, equipment, or cost of land are limited to 15% of the total project costs.

#### **6.5 Equal Employment Opportunity Contract Compliance**

For all LWCF grants involving federally assisted construction contracts and subcontracts in excess of \$10,000, the recipient must comply with Executive Order 11246, as amended, and with the regulations of the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor at 41 CFR 60-4. In determining whether Fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of federal assistance shall apply.

## 6.6 Accounting Instructions

### ACCOUNTING INSTRUCTIONS FOR LOCAL GOVERNMENTS PARTICIPATING IN THE NATIONAL PARK SERVICE'S LAND AND WATER CONSERVATION FUND PROGRAM

In any program where reimbursement is requested for a portion of project costs, adequate records are essential. There should be definite supporting evidence for each item of cost claimed -- estimates are not sufficient.

In order to promote a better understanding of the records required and to avoid the possibility of having costs disallowed at the time of audit, the following accounting procedures are suggested for all NPS (LWCF) projects.

A separate account should be established for each approved project. The ledger sheet, IBM card or tape should include the project number and name. It should be maintained in such a manner (e.g., separate columns on a ledger sheet) that payment for salaries, contracts, equipment rental, supplies and other items listed on the Agency Billing Form can be accumulated separately.

Each entry in the account must be cross-referenced to a voucher, payroll invoice or other supporting document. Each payment must be supported by a cancelled check or warrant.

#### **Salaries and Wages**

An authorized official should sign Payrolls and time and attendance records should support wages paid for each employee. Special care should be taken to distinguish between difference phases of development (i.e., separate projects in the same area, and between different locations developed at the same time and/or with similar construction).

Any fringe benefit rates used should be developed using actual historical costs, and individual components should be identified.

Salaries, wages, and the associated personnel costs of existing staff are not eligible for reimbursement. New temporary staff, hired solely to accomplish an LWCF project that could not be accomplished otherwise, may be eligible for reimbursement. Salaries, wages, and personnel costs for staff, whether existing or temporary, may be eligible as project sponsor's matching share of the project costs.

#### **Budget Contingencies**

The grant application may not include contingencies as specific line items in the budget.

#### **Cash and In-Kind Contributions**

The value of in-kind contributions may be used as all or part of the project sponsor's matching share of the project costs.

#### **Contract Payments**

Payments made by the project sponsor should be supported by a statement or invoice from the contractor or the project architect or engineer. The document must identify the project and the service performed. NPS construction contracts that exceed \$10,000.00 must be advertised for bid. Documentation for the bidding procedure will be required at

the time of audits (i.e., advertisement for bid, bid tabulation, original bid proposal, change orders, and a copy of the final contract.)

**Consultant Services**

Payments made by a project sponsor should be supported by a statement or invoice from the consultant. The project sponsor should enter into a contract and/or include the estimated costs in the original application for assistance. Payments made by the project sponsor may be for per diem, salary, fee for service and may include payment for the travel or other services. A cost-plus-a-percentage of costs payment is not allowable under federal regulations. Proper consultant selection procedures must be followed and proper documentation maintained for audit.

**Equipment Rental (Owned)**

Equipment rental cost (for owned equipment) should be supported by time records and by a schedule of hourly rates developed from actual historical costs, or in the event no previous cost data exists, from reasonable estimates of such factors as useful life, annual hours of use, tire replacement schedule, insurance premiums, etc. These estimated rates must be adjusted each year based on the previous year's actual costs.

**Equipment Rental (Outside)**

Payments made by the project sponsor for equipment rented for specific project are generally allowed under federal regulations. A statement must support payments made by the project sponsor or invoice from the vendor that indicates the time period the equipment was rented.

**Grant Administration and Reporting**

Time spent preparing the grant application, completing progress reports and reimbursement requests required by the grant program is not eligible as match or for reimbursement, as these activities are not directly attributed to project implementation.

**Materials and Supplies**

Supplies and materials charged to the project should be supported by purchase orders and supplier's invoices, if purchased for a specific project, or by approved requisitions or similar documents, if issued from stock; unit prices for stock issues should be traceable to actual invoices and/or other historical cost data.

**Value of Approved Donations (Non-Cash)**

The method and evaluation and charges for volunteer services, material, and equipment must be documented and approved by the State prior to donations being applied to reimbursement requests in order for such contributions to be considered as part of the sponsor's matching share. Donations must be included in the project application and approved in advance by the Oregon Parks and Recreation Department.

**Allowable Costs**

The principles and standards for determine costs applicable to this grants program are found in OMB Circular A-87. Allowable costs include personal services, fringe benefits, consultant services, equipment, supplies and materials, information and interpretation

costs, construction, administrative and supporting expenses, costs of purchase of real property and of interests in real property, cost of real property purchased from other public agencies, costs of real property acquired through exchanges, real property acquired by donation, master planning (actual development costs must be of at least equal cost to the master plan), and other miscellaneous costs.

#### **Unallowable Costs**

Unallowable costs include, but are not limited to: Ceremonial or entertainment expenses, publicity, bonus payments, contingency reserves, charges in excess of lowest bid, deficits or overdrafts, interest expense, operation and maintenance costs of outdoor recreation areas and facilities, maintenance equipment, employee facilities, donations to charitable organizations, fines and penalties, legal fees, overhead, lobbying and legal and professional fees paid in connection with fund raising activities.

An audit may be made after completion of the project to verify your billing. Please attach all documentation to support your billing request. A State Auditor may contact you several days in advance to arrange a convenient time for an on-site audit or will complete a desk review of the documentation submitted. To expedite the on-site audit, please have all supporting documents available.

#### **6.7 Force Account**

Force account refers to the use of Project Sponsor's staff, equipment, and/or materials. All or part of the Project Sponsor's matching share may be provided through force account. Documentation must be verifiable from Project Sponsors record, and must be reasonable and necessary for proper and efficient completion of the project.

#### **6.8 Donations**

Donations of land, labor, equipment rental or materials may be used as all or a portion of the sponsor's matching share of an LWCF project. The method of valuation and charges for volunteer services, material, equipment must be documented and approved by the State prior to the donations being applied to reimbursement requests in order for such contributions to be considered as part of the sponsor's matching share. The value of eligible donations cannot exceed the actual expenditures of the project.

#### **Donated Real Property**

A donation of land may be partial or total; a partial donation is known as a "bargain sale" and must be handled the same as a total donation. The value of donated real property shall be established by an independent appraiser in accord with commonly accepted appraisal standards (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646). The appraisal will be reviewed by the Parks Department and then forwarded to NPS for their review and approval. After NPS approval, the sponsor can accept or acquire land involved in a total or partial donation.

In-kind donations of real property donations are eligible in a project only to the extent there are additional acquisition and/or development costs to be met by the federal assistance requested for that project that must be fully described and explained in the proposal.

Example: Land valued at \$100,000 is donated to the project sponsor who proceeds to develop the property for recreational use. Development costs total \$60,000. The actual total project cost is \$160,000. But because only \$60,000 was actually spent, and since a grant in excess of that would constitute a profit to the sponsor, the federal share is reduced accordingly.

Sponsor's share (amount of the \$100,000 donation applied to the project) .....	\$60,000.00
LWCF Assistance .....	<u>\$60,000.00</u>
Total .....	\$120,000.00

**The amount of donation that is matchable is the value of the donation or the amount of cost spent by the sponsor for additional acquisition of development, whichever is less.**

**Labor, Materials and Equipment:**

**Labor:** Project sponsors should consider the source of the donation, the estimated hours, the rate or rates at which the labor will be credited to the project and the source of the rates (i.e. federal minimum wage rate, prevailing wage rate). Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved project. Records of in-kind contributions of personnel shall include time sheets containing the signature of the person whose time is contributed and of the supervisor verifying that the record is accurate.

**Rates for volunteers** should be consistent with those regular rates paid for similar work in other activities of the State. In cases where the kinds of skills required for the project are not found in the other activities of the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved. The time of a person donating services will be valued at the rate paid as a general laborer unless the person is professionally skilled in the work being performed on the project (i.e., plumber doing work on pipes, mason doing work on a brick building). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the city or cities in the immediate area pay their city employees for performing similar duties. The rates for labor are the "bare" rates -- **no payroll additives or overhead costs may be included, since the sponsor is paying none.**

**Materials** - Prices assessed to donated materials included in the matching share should be reasonable and should not exceed current market prices at the time they are charged to the project. Records of in-kind contributions of material shall indicate the fair market value by listing the comparable prices and vendors.

**Equipment** - The hourly rate for donated equipment used on a project shall not exceed its fair-rental value. Hourly rates in the annual edition of Rental Compilation or Rental Rate Guide or similar publications, which provide the national or regional average rates for construction equipment, may be used. Such publications are usually available from

contractor associations. Records of in-kind contributions of equipment shall include schedules showing the hours and dates of use and the signature of the operator of the equipment. The rental rates must be without operator; the operator must be shown separately as donated labor.

**Documentation**

The basis for determining the charges for donated personal services, material, equipment and land must be documented and must be approved by OPRD prior to the request for reimbursement that includes the value of the donation.

**6.9 Match Used for Other Grants**

Matching funds or other match contributions must not be included as match for any other federal award or OPRD-administered grant. When in-kind contributions, volunteer labor, or other donations are used as match for more than one federal award or OPRD-administered grant, the match can be split out proportionally between grant sources.

## CHAPTER 7 – REQUESTING A REIMBURSEMENT AND SUBMITTING PROGRESS REPORTS

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### 7.1 General

These guidelines are for government agencies participating in the federal Land and Water Conservation Fund grant program. In any program where reimbursement is requested for a portion of the project costs, adequate documentation and records are essential. Financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years after final payment on a project.

It is extremely important that reimbursement requests clearly define the work, their costs, and are supported by relevant documentation. The document must be included with the reimbursement request.

*Note: Project costs initiated or completed prior to project authorization (signed grant agreement) will not be reimbursed. **For acquisition projects, do not take title to proposed acquisition until project has been approved by NPS and the State.***

#### A. Partial Billings

A partial reimbursement request may be submitted at any time after a significant portion of the work has been completed on the project along with supporting documentation. Submit a copy of the “Request for Grant Reimbursement Form” and “Progress Report” that includes the status of the work completed. The State will reimburse up to 75% of the grant amount and the remaining 25% after the project has been completed.

#### B. Fiscal Year-end Reimbursement

All project sponsors are required to submit a Fiscal Year-End Request for Reimbursement for all project costs incurred through June 30 of each state fiscal year. The state fiscal year begins July 1 and ends June 30. The Fiscal Year-End Request must be submitted by the date specified by the LWCF Coordinator. Expenses incurred after June 30 must be submitted on a separate request.

A fiscal year-end request for Reimbursement does not need to be submitted if:

- No project costs have been incurred by June 30, or
- The remaining grant balance is held as retainage and the project has not been completed, or
- Not enough match has been incurred to maintain the cumulative match requirement for payments to date.

#### C. Final Billings

Submit a final “Request for Reimbursement Form” and final “Progress Report” (see Section 7.3), digital photos, supporting documentation and Completed Site Plan, also



known as an “As-built” map, indicating the type and location of Fund-assisted facilities and/or acquired properties along with the official park or site name. For acquisitions, a copy of the deed must be submitted. A final inspection of the project will be completed by OPRD grants staff to assure that the project has been completed successfully.

## **7.2 How to Fill Out the Reimbursement Form**

The Online Grant Reimbursement and Reporting Instructions are located on the LWCF webpage at: <https://www.oregon.gov/oprd/GRA/Documents/GRA-OPRD-Online-Grant-Reimbursement-Reporting-Instructions.pdf>

A separate accounting record should be established for each approved project in such a manner that all project costs can be tracked according to the categories on the reimbursement form.

### **A. Salaries and Wages**

Show on the form any salaries or wages incurred during the project period and project costs to date. For audit purposes you must submit payroll records. Include under salaries and wages, labor costs for the use of any equipment, except for donated labor, that should be included in donations.

### **B. Contract Payments**

Show on the form any costs incurred by contracts. For audit purposes, payments made by your agency should be supported by a statement or invoice from the contractor or the project architect or engineer. You should retain documentation of the bidding procedure and a copy of the final contract.

### **C. Equipment, Materials and Supplies**

Equipment rental costs for owned equipment should be supported by your agency’s schedule of hourly rates. Rented equipment payments must be supported by a statement or invoice showing costs and the time period equipment was rented.

### **D. Program Administration, Design and Engineering**

Costs for program administration, design and engineering, plans and specifications, land use and building permits from another agency, should not exceed 15% of the total project costs.

### **E. Value of Donations**

See Chapter 6.7 of this manual.

## **7.3 Progress Reporting**

All progress reports must be submitted in the OPRD grants website.

- A.** Progress Report: The progress report should describe the work completed in the reporting period.
- B.** Final Progress Report: The Sponsor should mark the report as final. The final report serves as notice that the Sponsor has completed the project, deliverables, as

described in the grant agreement, in compliance with applicable regulations, and should include:

- Description of all deliverables completed as included in the grant agreement scope and any amendments;
- Indication that the project is complete, accessible, and open to the public;
- A completed site plan indicating the type and location of Fund assisted facilities and/or acquired properties along with the official park or site name unless previously submitted or evident on the signed and dated LWCF map;
- A signed and dated LWCF project boundary map if more accurate than the current one in the NPS file including the delineation of any newly added parcels as a result of the project;
- Digital images of completed project; and
- Any other requirements identified in the grant agreement.

## CHAPTER 8 - POST COMPLETION AND STEWARDSHIP

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### 8.1 Purpose

Pursuant to LWCF Act at 54 U.S.C. § 200301 et seq., 36 C.F.R. Part 59, and 2 C.F.R. § 200.316, the following requirements are for maintaining LWCF assisted sites and facilities in public outdoor recreation use following project completion and to assure that LWCF assisted areas remain accessible to the general public including non-residents of assisted jurisdictions. These post completion responsibilities apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State of Oregon. Responsibility for compliance and enforcement of these requirements rests with the State for both state and locally sponsored projects. The responsibilities are applicable to the area depicted or otherwise described on the LWCF boundary map and/or as described in other project documentation approved by the NPS (36 C.F.R. § 59.1).

### 8.2 Operation and Maintenance

Property acquired or developed with LWCF assistance shall be operated and maintained as follows:

1. The property shall be maintained so as to appear attractive and inviting to the public.
2. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.
3. Any outdoor recreation facilities should comply with all State and Federal legislation (e.g., 42 U.S.C. § 6901 et. seq. and the National Institute for Occupational Safety and Health (NIOSH) as required and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.
4. Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for property public safety.
5. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
6. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
7. A posted LWCF acknowledgement sign shall remain displayed at the project site.

### 8.3 Availability to Users

1. Discrimination on the basis of race, color, national origin, religion, or sex. Under Title VI of the 1964 Civil Rights Act property acquired or developed with LWCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. Title 43, Part 17 (43 CFR 17), effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from federal assistance and to any other recreation areas administered by the state agency or local agency receiving the assistance. Discrimination is also prohibited on the basis of religion or sex.

2. Discrimination on the basis of residence. The Prohibition of Discrimination section of

the LWCF Act (54 U.S.C. § 200305(i)) provides that, with respect to property acquired and/or developed with LWCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent reasonable differences in admission and other fees may be maintained on the basis of residence. This prohibition applies to both regularly scheduled and special events (36 C.F.R. § 59.4(a)).

Fees charged to nonresidents cannot exceed twice the amount charged to residents. Where there is no charge for residents, but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. Recipients are prohibited from providing residents the option of purchasing annual or daily permits while at the same time restricting nonresidents to the purchase of annual permits only (36 C.F.R. § 59.4(c)).

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements (36 C.F.R. § 59.4(c)).

3. Discrimination on the basis of disability. Section 504 of the Rehabilitation Act of 1973 requires no qualified person shall, on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. The Americans with Disabilities Act of 1990 (P.L. 100-336) simply references and reinforces these requirements for federally-assisted programs.

4. Reasonable use limitations. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired and/or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.

#### **8.4 Post Completion Inspections**

Post-completion inspections are required on all projects to determine whether properties acquired or developed are being retained and used for outdoor recreation purposes in accordance with the project agreement and other program requirements. A state post – completion inspection is to be made within five (5) years after final payment is made and then at five-year intervals afterward.

On site post completion inspections should include the following points:

- a. Retention and Use. Is the LWCF boundary intact and the property being used for outdoor recreation purposes including those intended through the projects funded with LWCF assistance?
- b. Appearance. Is the property attractive and inviting to the public?
- c. Maintenance. Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or

- construction? Is vandalism a problem? Is the area being maintained?
- d. Management. Does staffing and servicing of facilities appear adequate?
  - e. Availability. Is there evidence of discrimination (including based on residence)? Is the property readily accessible and open to the public during reasonable hours and times of the year?
  - f. Signing. Is the area properly signed to allow for user information and safety, and proper acknowledgement of the Land and Water Conservation Fund?
  - g. Interim Use. Where lands have been acquired but not yet developed, the inspection should determine whether the interim uses of the property are in accordance with agreement with the State and NPS.
  - h. Accessibility. Is the area or facility accessible by handicapped or disabled persons?

### 8.5 Conversion, Change of Use of Property

Property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to the LWCF Act (54 U.S.C. § 200305(f)(3)) and conversion requirements outlined in regulations (36 C.F.R. § 59.3). The conversion provisions of the LWCF Act, regulations, and these guidelines apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State.

Responsibility for compliance and enforcement of these provisions rests with the State for both state and locally sponsored projects. The responsibilities are applicable to the area depicted or otherwise described on the LWCF boundary map and/or described in other project documentation approved by DOI. This mutually agreed to area normally exceed that actually receiving LWCF assistance so as to assure the protection of a viable recreation area.

Local sponsors must consult early with the State LWCF manager when a conversion is under consideration or has been discovered. States must consult with NPS as early as possible in the conversion process for guidance and to sort out and discuss the 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 LWCF-assisted area (or LWCF-assisted property) 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 LWCF boundary area.

If the NPS is alerted or otherwise becomes aware of an ongoing conversion activity that has not been approved, NPS shall request the State Liaison Officer (SLO) to advise the project sponsor of the necessary prerequisites for approval of a conversion. If the conversion activity continues, NPS shall formally notify the State it must take appropriate action to preclude the project sponsor from proceeding further with the conversion, use, and occupancy of the area pending NPS independent review and decision of a formal conversion proposal.

The NPS has the authority to disapprove conversion requests and/or to reject proposed property substitutions if it is not in accordance with the provisions of the LWCF Act. This

approval should not be considered a right of the project sponsor. The Regional Offices will coordinate closely with the Washington Office on any conversions that may be precedent setting and/or from which litigation is likely.

Refer to the federal LWCF Financial Assistance Manual for further details on the situations below.

1. Situations that trigger a conversion include:
  - a. Property interests are conveyed for private use or non-public outdoor recreation uses.
  - b. Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof, including those occurring on pre-existing rights-of-way and easements, or by a lessor.
  - c. Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
  - d. Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.
2. Situations that may not trigger a conversion if NPS determines that certain criteria are met include:
  - a. Underground utility easements that do not impact the recreational use of the park and is restored to its original surface condition.
  - b. Proposals to construct public facilities, such as recreation centers and indoor pool buildings, within a LWCF boundary area where it can be shown there is a gain or increased benefit to the public outdoor recreational opportunity. These proposals must be reviewed by the NPS as a “public facility request”. The State should consult with the NPS early in the formative stages of developing proposals to construct indoor facilities on LWCF protected land.
  - c. Proposals for "temporary non-conforming uses," that is temporary non-recreation activities of less than a six-month duration within a LWCF boundary area, must be reviewed by the NPS.
  - d. Proposals to build sheltered facilities or to shelter existing facilities within a LWCF boundary area provided they do not change the overall public outdoor recreation characteristics and otherwise meet the sheltering criteria in Chapter 3 of the federal LWCF Financial Assistance Manual, Vol. 71. The NPS review and concurrence of such proposals will not trigger a conversion.
  - e. Proposals for changing the overall outdoor recreation use of a LWCF-assisted area from that intended in the original LWCF project agreement. These proposals must be reviewed by the NPS.
3. Prerequisites to the NPS consideration of conversions. Formal requests from the project sponsor for permission to convert LWCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to NPS in writing and conform to the prerequisites set forth in 36 C.F.R. § 59.3(b). OPRD will consult with NPS when conversions are proposed or discovered and prior to making the formal request to NPS. OPRD and project sponsor shall use the Compliance & Stewardship (C&S) Form to prepare its conversion proposal.

The C&S Form guides the development of the conversion proposal, including the

incorporation of the following prerequisites that must be met before NPS will consider the formal conversion request:

- a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
- b. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal (see Chapter 4 of the federal LWCF Financial Assistance Manual, vol. 71 for appraisal guidance) excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility.
- c. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Depending on the situation, and at the discretion of the NPS, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider OPRD requests to change the project sponsor for any replacement property when it is determined a different political jurisdiction can meet the criteria for replacement properties. Equivalent usefulness and location will be determined based on the following criteria:

- (1) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs that are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property. Wetland areas and interests therein shall be considered to be of reasonably equivalent usefulness as compared to the recreational usefulness of the property proposed for conversion if they have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan (SCORP) in accordance with 54 U.S.C. § 200305(f)(3) of the LWCF Act and conversion requirements (36 C.F.R. § 59.3).
- (2) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area at another location within the jurisdiction.
- (3) Should a local project sponsor be unable to replace converted property, the OPRD would be responsible, as the primary recipient of federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.

- (4) The acquisition of one parcel of land may be used in satisfaction of several approved conversions and vice versa.
- d. The property proposed for replacement meets the eligibility requirements for LWCF assisted acquisition (see Chapter 3 of federal LWCF Financial Assistance Manual). The replacement property must constitute or be part of a viable recreation area. Viability and recreational usefulness is dependent upon the proposed outdoor recreation development plan and timetable for the development of the replacement parks. If full development of the replacement site(s) will be delayed beyond three years from the date of conversion approval, the conversion proposal shall explain why this is necessary.

For proposed replacement property with a history of contamination, proposals must address the nature of the contamination, how the contaminated area has been or will be remediated, how the area will be developed into a safe, public outdoor recreation area, and how provisions will be put in place to monitor the new replacement parkland to ensure public health and safety in perpetuity. Certain contaminated areas may not meet the equal or greater recreational usefulness prerequisite for replacement land. Early coordination with NPS for conversion proposals involving contaminated replacement land, even if remediated, is required.

Unless each of the following additional conditions (also see Chapter 3 of federal LWCF Financial Assistance Manual) is met, land currently owned by another public agency may not be used as replacement land for land acquired as part of an LWCF project:

- (1) The replacement land was not originally acquired by the sponsor or selling agency for recreation.
  - (2) The replacement land has not been previously dedicated or managed for recreational purposes while in public ownership.
  - (3) No federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement LWCF assistance.
  - (4) Where the project sponsor acquires replacement land from another public agency, the selling agency must be required by law to receive payment for the land so acquired. An exception may be made to this condition only in the case of development projects for which the project sponsor's match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself. In this case, public land that has not been previously dedicated or managed for recreation/conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost.
- e. In the case of LWCF-assisted areas that are partially rather than wholly converted, the impact of the converted portion on the remaining area shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.



- f. All necessary coordination with other federal agencies has been satisfactorily accomplished including, for example, compliance with Section 4(f) of the Department of Transportation Act of 1966.
- g. The guidelines for environmental review under NEPA have been satisfactorily completed and considered by NPS during its review of the proposed LWCF conversion action. In cases where the proposed conversion arises from another federal action, NPS final review of the proposal shall not occur until the NPS is assured all environmental review requirements for the other federal action have been met, e.g., Army Corps of Engineers permits.

The purpose and scope of the environmental review process must analyze not only the significant impacts to the LWCF-assisted area that will be lost, but also the development of the new replacement recreation area. The scope of the environmental review should not include impacts of the action precipitating the conversion on resources beyond the LWCF boundary area, such as impacts of a new housing development or a school on a neighborhood.

The environmental analysis must be conducted in a neutral and factual manner and result in statements that reflect this same neutrality so the interested and affected public can focus on and understand the details of the proposed federal action of an LWCF-assisted area being lost and providing the new replacement recreation area according to 36 C.F.R. § 59.3. The environmental analysis documents should not include statements that promote or justify the action precipitating the conversion, such as proclaiming that the lost LWCF-assisted area is the best location for a new fire station.

- h. Adherence to State intergovernmental review procedures as appropriate.
  - i. The proposed conversion and substitution are in accord with the SCORP.
4. State preparation of conversion proposal for NPS review: To avoid any unnecessary delays, duplication of effort, and mid-course corrections, the States shall consult with NPS early when conversions are proposed or discovered to ensure:
- a. the extent of impact from the conversion activity on LWCF boundary area is mutually agreed upon; and
  - b. the acceptability of proposed replacement parkland has been explored prior to State/local sponsor expenditure of resources on appraisals and the required environmental review process to be undertaken in accordance with NEPA.

The State shall coordinate the development of the conversion proposal including ensuring the project sponsor complies with applicable federal, state and local laws, regulations and permit requirements. As the proposal is developed, the State may enlist the assistance of NPS to provide technical guidance as needed, especially for complex and controversial conversions. A State's submission of a formal conversion request to NPS is a State's endorsement of the conversion. If a State does not concur or endorse the conversion, then the proposal should not be forwarded to NPS for formal review and decision.

5. NPS review of the State conversion proposal. NPS will conduct an independent review of the proposal using the conversion prerequisites and any other critical factors that may have arisen during proposal development. If the State has adequately addressed the prerequisites, and NPS finds no other reason to deny the request, the NPS

administrative record will be documented as such and an amendment will be signed approving the conversion.

6. Banking excess fair market value of replacement land for future conversions. The acquisition of one parcel of replacement land may be used in satisfaction of several approved conversions.

Excess fair market value (FMV) of a replacement property can be “banked” for a period not to exceed five years from the date of the initial conversion amendment. During this time period, the same project sponsor may use the remaining value to make up the FMV difference in cases where the subsequent proposed replacement property satisfies the equal usefulness criterion but its appraised FMV falls short of the equal fair market value requirement.

The initial replacement property with the excess fair market value may not be used to satisfy the equal usefulness criterion for subsequent conversions unless additional conversions are anticipated by the sponsor at the time of the original conversion request and the accompanying documentation clearly addresses how the replacement property would satisfy the equal usefulness criteria for the original conversion as well as those that are anticipated.

7. Conversions on leased land. Should a conversion occur on leased land during the term of the lease, the State must comply with the conversion requirements of LWCF (54 U.S.C. § 200305(f)(3)) including the provision of replacement land. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time that is not less than the time remaining on the original lease, and, which fulfills the recreation commitment agreed to in the original lease agreement.

For existing projects that involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period unless the grant agreement calls for some other arrangement. Lease agreements containing a renewal clause that can be exercised by the lessee must be reviewed to ensure that LWCF compliance will continue throughout the duration of the next lease period.

8. Conversion proposal documentation. A conversion requires an amendment to the original project agreement. The amendment should be submitted concurrently with the formal conversion request or at such time as all details of the conversion have been worked out with NPS (36 C.F.R. § 59.3(c)).

Once the conversion has been approved by NPS, replacement property should be immediately acquired and developed according to the replacement proposal timetable. If development will be delayed beyond three years from the date of NPS conversion approval, then a request for delayed development beyond three years with a justification for the delay must be made to NPS.

9. Small conversions. Small conversions are partial conversions in which no more than ten percent (10%) of the whole LWCF-assisted area will be removed from having to comply with LWCF recreation area provisions. Whether a conversion can qualify for the policy should be established during the early consultation stage with the NPS and prior to developing the small conversion proposal.

To qualify, the replacement property must be contiguous with the current site, or another existing park or recreation area, and otherwise meets the eligibility requirements for an acquisition grant (as outlined in Chapter 3.B. of the federal LWCF Financial Assistance Manual). The existing park does not need to be currently administered as part of the LWCF recreation estate, but it will become subject to LWCF recreation area provisions going forward just as it would in the case of an acquisition grant as an expansion of an existing park. The replacement property must be made available to the public per the conversion regulations at 36 C.F.R. § 59.3.

In addition, small conversions must qualify as a categorical exclusion under the NEPA. Small conversions by definition do not have the potential for significant environmental impacts to recreation resources; however, NPS requires documentation from the State to demonstrate that there are no significant environmental impacts on:

- The recreation resources being removed from the LWCF recreation area;
- The viability of the remaining land still subject to LWCF recreation area provisions and its surrounding environment; or
- The new replacement parkland.

Because small conversion proposals are less complex, NPS review and decision can be facilitated when:

- a. Minor or no environmental impacts would occur on resources being removed from LWCF-assisted area, on the remaining LWCF-assisted area, and on the contiguous new replacement recreation area that will become subject to the provisions of LWCF per the environmental resources survey. This includes consideration of impacts to historic resources per the Section 106 process of the National Historic Preservation Act. The entire conversion proposal is categorically excluded from further environmental review under NEPA.
  - b. The proposed conversion is not controversial.
10. Discovering unauthorized conversions. When it is discovered that an LWCF-assisted area has been converted without NPS approval, a conversion proposal must be submitted to and reviewed by NPS approval. The NPS shall notify the State it is in violation of the grant contract, program regulations, and law, and an immediate resolution of the unapproved conversion must be expedited. The project sponsor shall be put on notice by the State it is ineligible for future grants until satisfactory steps have been taken towards resolution as determined by NPS. The federal action and undertaking will review the remaining actions required to meet the conditions of the Act (54 U.S.C. § 200305(f)(3)) and requirements of the conversion regulations (36 C.F.R. § 59.3). Typically, this entails review of the replacement property and development of recreation equivalency for public outdoor recreation.

If it is discovered that an unauthorized conversion is in progress, the State must notify the project sponsor to cease immediately until the conversion process pursuant to 36 CFR 59.3 has been satisfactorily completed.

Resolution of the conversion will require State and NPS review of the conversion proposal including the provision of suitable replacement property.

If the sponsor has already provided replacement property without NPS approval, the eligibility of the replacement land must meet the same LWCF requirements as if it had not yet been acquired. It is incumbent upon the State to make the case that the replacement land fully meets these requirements.

11. Conversions with delayed parkland replacement. Exceptions to the immediate replacement requirement will be allowed only when it is not possible for replacement property to be identified prior to the State's request for the conversion. An express commitment must be received from the State to satisfy LWCF substitution requirements within a specified period normally not to exceed one year following conversion approval.

## **8.6 Underground Utility Easements and Rights-of-Way**

Originally, this policy was written to apply only to utilities serving the park or local needs, such as water for agricultural irrigation, or distribution of gas or electricity to the park or local homes and businesses in communities adjacent to the park. The narrow right of way needed meant the impacts to existing public outdoor recreation were typically not significant.

Currently, many of the proposed underground "utility" projects involve installation of what is actually transportation infrastructure, both in their purpose and regulation, to facilitate efficient movement of goods and services. Often the alignments for these underground utility projects extend for miles beyond the LWCF recreation area, cross multiple jurisdictions including state lines, require land owners to surrender or give up a property right through an executed legal instrument (easement), and maintain standardized rights of way widths of 50 to 200 feet instead of the 20 to 30 feet more typical of local utility lines. Many of these do not meet the policy.

The State may allow installation of underground utilities within an LWCF boundary area as long as the ground above the alignment can be and is restored to its pre-existing condition to ensure the continuation of public outdoor recreational use of the area within 12 months after the ground is disturbed. Unless there is a pre-existing easement, the legal arrangement providing the rights for the utility must be a license or other limited use agreement. Arrangements that require granting property rights such as an easement will constitute a conversion.

If the recreation use is not restored within the 12-month period, or the utility installation results in permanent above-ground changes, the NPS shall be consulted to determine if the changes will trigger a conversion.

States are to consult with the NPS for all proposals involving the installation of any type of underground infrastructure (from fiber optic lines to pipelines) under LWCF-assisted areas throughout the State, where an entity is either:

1. exercising rights under a pre-existing easement or right-of-way to install new or expand capacity; or
2. requesting a new right-of-way where there is no pre-existing alignment.

If present or future outdoor recreation opportunities will be impacted in the easement area or in the remainder of the LWCF boundary area, a conversion will be triggered.

## **8.7 Commercial Signage in LWCF Boundary Areas**

Commercial signs are only allowable within LWCF boundary areas when the advertising is attached to allowable park structures such as benches, fencing, walls, and buildings and are not inconsistent with the park setting and/or the built environment in which it is located (e.g., athletic fields). Signs may face either outside or inside the park. Commercial advertising in the form of a stand-alone structure such as a billboard that creates a footprint in the park, or commercial signage permanently affixed to a natural feature within the LWCF-assisted area, is a conversion regardless of which direction it faces.

## **8.8 Proposals to Construct Public Facilities**

Public facility requests will only be concurred with if the public facility clearly enhances or benefits outdoor recreation use of the entire park, and the facility is compatible with and supportive of the outdoor recreation resources and opportunities of the LWCF-assisted area. The State shall use the C&S Form to document its public facility proposal using the following criteria and submit it along with a project amendment agreement and a recommendation for federal concurrence that a conversion is not triggered.

The NPS will consider requests to construct sponsor-funded public facilities when the following criteria have been met:

1. Uses of the facility will be compatible with and significantly supportive of outdoor recreation resources and uses at the rest of the site and recreation use remains the overall primary function of the site. The proposed public facility includes a recreation component and will encourage outdoor recreation use of the remaining LWCF boundary area.
2. All design and location alternatives have been adequately considered, documented and rejected on a sound basis.
3. The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool building, which virtually occupies the entire site.

Examples of uses which would not ordinarily be approved include, but are not limited to, a community recreation center which takes up all or most of a small park site, clinics, police stations, restaurants catering primarily to the general public, fire stations, professional sports facilities or commercial resort or other facilities which: (1) are not accessible to the general public; or, (2) require memberships; or, (3) which, because of high user fees, have the effect of excluding elements of the public; or, (4) which include office, residential or elaborate lodging facilities. Restaurant-type establishments with indoor dining/seating that cater primarily to the outdoor recreating public must be reviewed under this public facility policy. Other park food service operations such as snack bars, carry-out food service, and concession stands with outdoor dining including pavilions and protected patios are allowable without further NPS if the primary purpose is to serve the outdoor recreating public.

4. Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.

5. The proposed facility must be under the control and tenure of the public agency that sponsors and administers the original park area.
6. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

### **8.9 Requests for Temporary Non-Conforming Uses Within LWCF Boundary Areas**

All requests for temporary uses for purposes that do not conform to the public outdoor recreation requirement must be submitted to and reviewed by the State. The State, in turn, will submit a formal request to NPS describing the temporary non-conforming use proposal.

Continued use beyond six-months will not be considered temporary, but will result in a conversion of use and will require the State/project sponsor to provide replacement recreation area(s) pursuant to 54 U.S.C. § 200305(f)(3) of the LWCF Act.

1. Criteria. NPS will use the following criteria to evaluate each request:
  - a. The size of the parkland area affected by any temporary non-recreation use shall not result in a significant impact on public outdoor recreation use. This means that the site of the temporary activity should be sufficiently small to restrict its impacts on other areas of a Fund-assisted park.
  - b. A temporary use shall not result in permanent damage to the LWCF-assisted area, and appropriate mitigating measures will be taken to ensure no residual impacts on the site once the temporary use is concluded.
  - c. No practical alternatives to the proposed temporary use exist.
  - d. All applicable federal requirements for approval are met.
  - e. The proposal has been adequately reviewed at the state level and has been recommended by the SLO.

### **8.10 Sheltering Facilities within LWCF-assisted Areas**

NPS approval is required to shelter an existing facility located within an LWCF-assisted area.

### **8.11 Obsolete Facilities**

Recipients are not required to continue operation of a particular recreation area or assisted facility beyond its useful life (36 C.F.R. § 59.3(d)). However, 54 U.S.C. § 200305(f)(3) of the LWCF Act and 36 C.F.R. § 59.1 of the regulations require project sponsors to continue to maintain the entire area within the LWCF boundary area in some form of public outdoor recreation use. The LWCF Act obligations cannot be discharged by declaring a facility obsolete.

Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

- A. reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;
- B. changing recreation needs dictate a change in the type of facilities provided;
- C. park operating practices dictate a change in the type of facilities required; or,
- D. the recreation area or facility is destroyed by fire, natural disaster, or vandalism.

States may determine a facility is obsolete and permit its use to be discontinued or allow a particular type of recreation use of the LWCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement for determining obsolescence and the State concurs in the change. However, NPS approval must be obtained prior to any change from one LWCF allowable use to another when the proposed use would significantly contravene the original plans for the area.

If, in the judgment of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

LWCF assistance may be provided to renovate outdoor recreation facilities that have previously received LWCF assistance if the State determines the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

#### **8.12 Significant Change of Use**

The LWCF Act requires project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. 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 as described in the original LWCF project(s).

NPS approval is not required, however, for each and every facility use change. Uses within a LWCF-assisted area should be viewed in the context of overall use and should be monitored in this context. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, for example, require NPS approval and approval (36 C.F.R. § 59.3(d)).

The State shall notify the NPS in writing of a proposal to significantly change the use of LWCF-assisted area in advance of this occurrence. The NPS will expedite a determination of whether a formal review and approval process will be required. A primary NPS consideration in the review will be the consistency of the proposal with the SCORP.

If the change in use proposal requires a formal review and approval by NPS, the State shall complete the C&S Form.

Changes to other than public outdoor recreation use constitute a conversion and will require NPS approval and the substitution of replacement land in accordance with the LWCF Act.

## CHAPTER 9 - GLOSSARY

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**ACQUISITION** - The gaining of property rights, including but not limited to fee title, or easements for public use by donation, or purchase.

**ACT** - The Act of Congress, approved September 3, 1964, entitled "Land and Water Conservation Fund Act of 1965" (78 Stat. 897), as amended.

**ADA - Americans with Disabilities Act of 1990** prohibits discrimination based on disability--both in the private and public sector.

**ADAAG** - Americans with Disabilities Act Accessibility Guidelines.

**AGREEMENT (STATE/LOCAL)** - The written document between the state and project sponsor, which authorizes the project to begin and under which the project sponsor does certain stipulated work and the state makes payment to the sponsor.

**AGREEMENT (STATE/NPS)** - A contract between the State and the National Park Service under which certain stipulated work is done and payment is made by NPS to the State, and setting forth mutual obligations with regard to all or part of a specific project.

**APPORTIONMENT**- The amount annually reserved for a State by the Secretary of the Interior from Congressional appropriations for financially assisting projects under provisions of the Act.

**AMENDMENT** - A change in the cost, project period, or work items included in an agreement.

**ANSI** - American National Standards Institute, Inc.

**APPLICANT** - The ultimate recipient of the grant funds and the agency responsible for implementation of the project and the operation and maintenance of the site.

**APPLICATION** - A complete document with all of the forms and attachments required for project approval.

**APPROPRIATION** - The amount of funds which the Congress makes available yearly from the Land and Water Conservation Fund for purposes of the Act.

**APPROVAL** - The signing by the National Park Service Director or designated official of a project agreement resulting in the obligation of a specified amount of Federal funds for a specific purpose.

**AS-BUILT MAP** (also known as a Completed Site Plan) – Map accurately reflecting the project and facilities and improvements that were completed with the project.

**ASSISTANT STATE LIAISON OFFICER (ASLO)** – Designated by the Governor to represent and act for the State as the Assistant State Liaison Officer in dealing with the National Park Service for purposes of the LWCF program.



**COMMITTED FUNDS** - Funds that are assigned by the State for use on a specific project not yet approved by NPS.

**CONVERSION** - Property acquired, developed, or both with LWCF assistance that has been wholly or partly converted to other than public outdoor recreation uses.

**CURRENT PARK MASTER PLAN** - A site-specific resource-based plan guiding park acquisition, development, protection, and management of park areas and facilities.

**DEPARTMENT** - The Oregon Parks and Recreation Department (OPRD).

**DESK AUDIT** - An audit of project records made by a state auditor of records sent to the state by the project sponsor.

**DEVELOPMENT** - The construction, rehabilitation, or expansion of facilities necessary for the use and enjoyment of public outdoor recreation resources.

**DIRECTOR** - The Director of the Oregon Parks and Recreation Department.

**DONATION** - Receipt of land, labor, materials, or use of equipment without payment for same by the project sponsor.

**ELIGIBLE PROJECT** - An acquisition, development or major rehabilitation undertaking, which satisfies the requirements of the federal Land & Water Conservation Fund Program.

**ENVIRONMENTAL ASSESSMENT** - A document written from the point of view of what effect the project will have on the environment, both inside and outside the park boundary.

**FEDERAL FISCAL YEAR** - A period of time which begins October 1 and ends on the following September 30.

**FIELD AUDIT** - An audit of project records made in the office of the project sponsor by a state auditor.

**FLOODPLAIN** - The lowland and relatively flat areas of adjoining inland and coastal waters, including flood-prone areas of offshore islands, subject to a 1% or greater chance of flooding in any given year (a 100-year flood).

**FORCE ACCOUNT** - The performance of work on a development project with the forces and resources of the project sponsor, including personal services, equipment, and materials, as opposed to development by contract with an outside organization or individual.

**IMPLEMENTATION PROGRAM** - A requirement of SCORP which identifies salient recreation issues to be addressed over a two-year period.

**IN-KIND CONTRIBUTIONS** - Represents the value of noncash contributions provided by (1) the grantee; (2) other public agencies and institutions; and (3) private organizations and

individuals. In-kind contributions may consist of the value of services directly benefiting and specifically identifiable to the project.

**LAND AND WATER CONSERVATION FUND (LWCF)** - Funds made available to the states through the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

**LOCAL COMPREHENSIVE PLAN** - The comprehensive land use plan prepared by each local jurisdiction within the state, as required by OAR Chapter 197.

**MAJOR REHABILITATION** - The repair, restoration, or construction of eligible facilities, which is necessitated by obsolescence, building code changes, accessibility standards, or normal wear and tear, not attributed to the lack of maintenance.

**NPS** - The National Park Service, Department of Interior. (Formerly HCRS-Heritage Conservation and Recreation Service.) (Prior to HCRS, formerly BOR-Bureau of Outdoor Recreation).

**OBLIGATED FUNDS** - Funds assigned to a project which has been approved by NPS.

**OREGON APPLICATION PROCEDURES MANUAL** - A manual prepared by the Department containing state and federal policies, procedures and instructions to assist local government agencies wishing to participate in LWCF assistance program.

**OREGON OUTDOOR RECREATION COMMITTEE (OORC)** - A committee appointed by the OPRD Director to prioritize LWCF project applications.

**PROJECT AUTHORIZATION** - State/Local agreements, which authorize the project, as signed by both the Department and project sponsor.

**PROJECT BOUNDARY** - The boundary of the land subject to the conversion restrictions of the LWCF Act. May or may not be the same as the park property lines.

**PROJECT SCOPE** - A list of the work items to be accomplished on the project such as: "Acquire two parcels of land" or "construct parking lot, restrooms, and two tennis courts."

**PROJECT SPONSOR** - The recipient of the grant funds and the agency responsible for implementation of the project and the maintenance and operation of the site.

**REAPPORTIONMENT ACCOUNT** - Those monies derived from project underruns, cancellations and reduction in project scope. Separate accounts will be kept for both state and local sponsors.

**STATEWIDE COMPREHENSIVE OUTDOOR RECREATION PLAN (SCORP)** - Otherwise known as SCORP, the document used to identify and access Oregon outdoor recreation needs.

**SECTION 504** - Refers to Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination based on disability in federally assisted and federally conducted programs.

**SECTION 6(f)(3)** - The section in the LWCF Act which requires replacement of any recreation land converted to non-recreation uses.

**SITE PLAN** - Map that accurately reflects the proposed project and the existing facilities and uses on the park site. It should indicate how and where the site is to be developed. Proposed facilities and/or improvements should be labeled in addition to existing facilities.

**STATE HISTORIC PRESERVATION OFFICE (SHPO)** - The office responsible for operation and management of the Historic Preservation Act in Oregon. Located within the Oregon Parks and Recreation Department.

**STATE LIAISON OFFICER (SLO)** - Designated by the Governor, the OPRD Director has the authority to accept and administer funds for purposes of the LWCF Program and the authority to represent and act for the State as the State Liaison Officer in dealing with the National Park Service for purposes of the LWCF program in Oregon.

**UFAS** - Uniform Federal Accessibility Standards.

**VICINITY MAP** - An area map showing the location of the park within the town or county, used to assist the state project officer in locating the park for inspections.

**WETLANDS** - Those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats and natural ponds.

## APPENDIX

**A-1 SAMPLE LWCF Grant Agreement**

Oregon Parks and Recreation Department  
**Land and Water Conservation Fund Grant Agreement**

THIS AGREEMENT (“Agreement”) is made and entered into by and between the State of Oregon, acting by and through its Oregon Parks and Recreation Department, hereinafter referred to as “OPRD” or the “State” and [Grantee], hereinafter referred to as the “Grantee”. The State and Grantee are each a party and together, the parties.

OPRD Grant Number: [Fed grant #] / [State grant #]  
Project Title: [Project title]  
Project Type (purpose): [Development, Rehabilitation, Acquisition, or Combination]  
Project Description: [Project description]

Grant Funds /  
Maximum Reimbursement: \$XXX.XX (XX.XX%)  
Grantee Match Participation: \$XXX.XX (XX.XX %)  
Total Project Cost: \$XXX.XX

**Grant Payments / Reimbursements:** Grant funds are awarded by the State and paid on a reimbursement basis up to and not in excess of the maximum reimbursement amount of \$XXX.XX for expenses incurred in performing the project in the Project Description (the project). The Grant Funds shall be used solely for expenses included in the Project Budget in Attachment B in furtherance of performance of the project and shall not be used for any other purpose.

To request disbursement of grant funds, Grantee will submit a request for reimbursement which must include documentation sufficient, as determined by OPRD, to demonstrate project expenses incurred at the time of the request for which reimbursement is sought. This will include, as applicable, project invoices paid by Grantee. Grantee may request reimbursement as often as quarterly for expenses incurred to date. OPRD shall approve a request for reimbursement and disperse grant funds in compliance with the terms and conditions of this Agreement upon determining that Grantee is in compliance with all terms and conditions of this Agreement at the time of submission of the request for reimbursement and upon determining that Grantee has actually incurred the expenses for which reimbursement is sought and upon OPRD the National Park Service (NPS) first approving and releasing the relevant funds to OPRD.

The source of the Grant funds is the United States Department of the Interior, NPS. To request reimbursement, Grantee shall use OPRD’s online grant management system accessible at oprdgrants.org. The request for reimbursement shall include documentation of all project expenses plus documentation confirming project invoices have been paid by Grantee. Grantee may request reimbursement as often as quarterly for costs accrued to date.

Grantee may begin work upon receipt of a Notice to Proceed from the State and shall have one year from the date of the Notice to Proceed to commence substantial work on the project (i.e., to award contracts for work or show at least 25% of the project is complete). Failure to comply with, and provide documentation of compliance with, this requirement may result termination of this Agreement by OPRD, in which case no expenses incurred by Grantee will be eligible for reimbursement. No Grant Funds will be disbursed for any changes to the project unless such changes are approved by State by amendment pursuant to the terms of this Agreement.

**State Fiscal Year-End Request for Reimbursement:** Grantee must submit a Progress Report and a Reimbursement Request to OPRD for all Project expenses, if any, accrued up to **June 30**, of each fiscal year. The State Fiscal Year-End Reimbursement Request must be submitted to OPRD by **July 31**.

**Reimbursement Terms:** Based on the estimated Project Cost of \$ XXX.XX, and the Grantee's Match participation rate of XX.XX%, the reimbursement rate will be XX.XX%. Upon successful completion of the Project, and of the requirements set forth in the "Retention" and "Final Report and Request for Reimbursement" sections below, and receipt by OPRD of the final reimbursement request, the State will pay Grantee the remaining Grant Funds balance, or XX.XX% of the total cost of the Project, whichever is less, in accordance with the terms and conditions of this Agreement.

**Matching Funds:** The Grantee shall contribute matching funds or the equivalent in labor, materials, or services, which are shown as eligible match in the rules, policies and guidelines for the Land and Water Conservation Fund Grant Program, available at <https://www.oregon.gov/oprd/GRA/Pages/GRA-lwcf.aspx>, which are incorporated into this Agreement by this reference. As applicable, volunteer labor used as a match requires a log with the name of volunteer, dates volunteered, hours worked, work location and the rate used for match, to be eligible.

**Duplicate Payment.** Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

**Progress Reports:** After OPRD issues the Notice to Proceed, Grantee shall report to OPRD regarding the status and progress of the project on a quarterly basis, as follows:

For the period beginning January 1, ending March 31:	report is due April 30
For the period beginning April 1, ending June 30:	report is due July 31
For the period beginning July 1, ending September 30:	report is due October 31
For the period beginning October 1, ending December 31:	report is due January 31

Progress Reports must be submitted using OPRD's online grant management system accessible at [oprdrgrants.org](http://oprdrgrants.org).

**Responsibility for Grant Funds:** Any Grantee of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that Grantee's breach of the conditions of this Agreement, and shall, upon Grantee's breach of conditions that requires State to return funds to the federal government, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Grantee of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

**Agreement Period:** The effective date of this Agreement is the date on which it is fully executed by both parties. Unless otherwise terminated or extended, the Project shall be completed by [End date] (Project Completion Date). If project is completed before the designated completion date, this Agreement shall expire on the date final reimbursement payment is made by OPRD to Grantee. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for project expenses incurred on or before the Project Completion Date. No Grant Funds are available for any expenditures after the Project Completion Date.

**Retention:** OPRD shall disburse up to 75 percent of the Grant Funds to Grantee on an expense reimbursement basis upon approval of requests for reimbursement submitted to OPRD. OPRD will disburse the final 25 percent of the Grant Funds upon approval by OPRD of the Final Report and the completed Project. Grantee must submit its final request for reimbursement following completion of the Project and no later than 45 days after the Project Completion Date. If Grantee fails to submit the final request for reimbursement within 45 days after the Project Completion Date, OPRD may elect not to disburse the final 25 percent of Grant Funds. Final payment will be made in accordance with the terms and conditions of this Agreement and upon satisfactory completion, as determined by OPRD, of the Project. Eligible costs are the reasonable and necessary expenses incurred by Grantee in performance of the Project and that are not excluded from reimbursement by OPRD, either by this Agreement or by exclusion as a result of financial review or audit.

**Final Report and Request for Reimbursement:** Grantee must schedule a Final Inspection, submit a Final Progress Report, Final Reimbursement Request, Final LWCF Project Boundary Map, and an As-Built Site Plan of the completed project to OPRD within 45 days of the Project Completion Date. OPRD will conduct a final inspection of the Project within 90 days of the Project Completion Date. Grantee shall assist OPRD and cooperate fully to the satisfaction of OPRD with all inspections that OPRD conducts.

Within 90 days of the earlier of the Project Completion Date or the Project Expiration Date, administrative and financial closeout of the Grant must occur. During this 90-day period, Grantee shall provide the following documents to OPRD:

- i. a final report attesting to the completion of the project in accordance with the approved project agreement and any amendments;
- ii. a final on-site inspection report for development projects;
- iii. a completed site plan (up to 14 inches x 17 inches in size) indicating the type and location of Fund-assisted facilities and/or acquired properties along with the official park or site name unless previously submitted or evident on the signed and dated LWCF map;
- iv. a signed and dated LWCF project boundary map if more accurate than the current one in the NPS file including the delineation of any newly added parcels as a result of the project;
- v. if applicable, a completed certification by the State Liaison Officer that the State has reviewed each appraisal associated with this project per federal requirements;
- vi. other required documentation not previously submitted; and
- vii. Digital images of completed project.

**Publicity and Project Sign:** Grantee shall make every effort to acknowledge and publicize OPRD's participation and assistance with the project. When the project is completed, Grantee shall post a permanent acknowledgement sign supplied by the State, or of their own design, as long as the LWCF logo is used, in a conspicuous location at the project site, acknowledging grant funding and the State's participation in the Project. Grantee also agrees to maintain the signs throughout the life of the project. State may withhold final reimbursement payment until signage has been placed.

**Agreement Documents:** Included as part of this Agreement are:

- Attachment A: Standard Terms and Conditions
- Attachment B: Project Scope of Work and Budget
- Attachment C: Federal Grant Agreement
- Attachment D: Inadvertent Discovery Plan for Cultural Resources
- Any other documents explicitly incorporated by reference.

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents is as follows, listed from highest precedence to lowest precedence: this Agreement without Attachments; Attachment A; Attachment C, Attachment D, Attachment B, and other documents explicitly incorporated by reference.

**Contractor or Sub-Recipient Determination:** In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, OPRD's determination is that:

[ ] Recipient is a sub-recipient; OR [ ] Recipient is a contractor.

**Federal Award Identification information required by 2 CFR § 200.332(a)(1)**

- (i) Subrecipient name: [Grantee]
- (ii) Subrecipient's UEI number: [UEI]
- (iii) Federal Award Identification Number (FAIN): [FAIN]
- (iv) Federal Award Date: [Fed award date]
- (v) Sub-award Period of Performance Start and End Date: Date of execution to [End date of this agreement]

- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$[Total fed award]
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: \$[Total passed down to grantee]
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$[Total passed down to grantee]
- (ix) Federal award project description: [Fed award description]
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of Federal awarding agency: National Park Service, Department of the Interior
  - (b) Name of pass-through entity: Oregon Parks and Recreation Department
  - (c) Contact information for awarding official of the pass-through entity: Lisa Sumption, State Liaison Officer (503) 986-0660
- (xi) CFDA Number and Name: 15.916 Outdoor Recreation Acquisition, Development and Planning
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 0%

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW



**[PLACEHOLDER – Agency]**

By \_\_\_\_\_  
(Legally designated representative)

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required in local process)

By \_\_\_\_\_  
Grantee’s Legal Counsel

Date \_\_\_\_\_

**Grantee Contact:**

Name  
Agency  
Address  
City, State, Zip Code  
Phone  
Email

**State Contact:**

Name  
Title  
Address  
City, State, Zip Code  
Phone  
Email

**STATE OF OREGON**, by and through its  
Department of Parks and Recreation

By \_\_\_\_\_  
[Name and Title]

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
[Name and Title]

Date \_\_\_\_\_

By \_\_\_\_\_  
[Name and Title]

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(For funding over \$150,000)

By:

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**Attachment A – Standard Terms and Conditions**

**Oregon Parks and Recreation Department  
Land and Water Conservation Fund Program Agreement**

- 1. Compliance with Law; Remedies:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the Project, including without limitation OAR chapter 736, Division 8 (the Land and Water Conservation Fund (LWCF) administrative rules) and laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, family status, marital status, sexual orientation, age, and source of income or mental or physical disability in the performance of this Agreement. Without limiting the generality of the forgoing, Grantee shall comply with the Federal Project Agreement, attached hereto as Attachment C as though the term “State” as used in Attachment C means “Grantee” except where the intent of the terms means only the State of Oregon. The benefit to be derived from full compliance by the Grantee with the terms of this Agreement is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the State of Oregon and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money and other assistance furnished under the terms of this Agreement, Grantee agrees that payment by the Grantee to State of an amount equal to the value of any assistance extended under this Agreement would be inadequate compensation to State for any breach by the Grantee of this Agreement.
- 2. Compliance with Workers Compensation Laws:** Grantee shall ensure that each of its sub-grantees, contractors and subcontractors that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Liability insurance with coverage limits of not less than \$500,000 must be included. Should Grantee employ subject workers who work under this Agreement, Grantee shall provide workers' compensation coverage as required by Tribal law.
- 3. Amendments:** This Agreement may be amended only by a written amendment to the Agreement, executed by the parties. Notwithstanding any other provision to the contrary, if Grantee seeks any changes in either the Project Scope or the Project Budget (a “Project Change”) Grantee must obtain prior approval of State as specified below. The Grantee shall be fully responsible for all costs that occur outside the established Project Scope, schedule or budget and prior to State's approval of a Project Change. State may in its sole discretion, approve or disapprove of any proposed Project Change in Project Scope or Project Budget. In the event State approves Project Change, such Change must be reduced to writing and implemented as an amendment to this Agreement. The following Project Changes must be approved by State to be eligible for funding under this Agreement:

  - a. Any significant change or reduction in the Scope of Work described in the Project Description of Attachment B (Project Application, including the Project description and project budget).
  - b. Any deviation from the original Project Budget set forth in Attachment B. Any budget change request must explain in detail what change is requested, the reason for the requested change, and any efforts that Grantor has made or will make to mitigate the effect of the proposed budget change.

**4. Records Maintenance and Access; Audit:** Grantee shall document, maintain and submit records to OPRD for all Project expenses in accordance with generally accepted accounting principles, and in sufficient detail to permit OPRD to verify how Grant Funds were expended. Grantee shall ensure that each of its subgrantees and subcontractors complies with these requirements.

a. **Access to Records and Facilities.** OPRD, the Secretary of State of the State of Oregon (Secretary), the United States Department of the Interior, or their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, OPRD, the Secretary, the United States Department of the Interior and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of OPRD, the Secretary, or their designees to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Grantee as part of the Project, and any transportation services rendered by Grantee.

b. **Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following expiration or termination of this Agreement. If there are unresolved audit questions at the end of the six-year period, Grantee shall retain the records until the questions are resolved.

**c. Audit Requirements.**

i. Grantees receiving federal funds in excess of \$750,000 in a fiscal year are subject to audit conducted in accordance with 2 CFR Part 200, Subpart F. If subject to this requirement, Grantee shall, at Grantee's own expense, submit to State, a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement.

ii. Grantee shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Grantee acknowledges and agrees that any audit costs incurred by Grantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Grantee and either State or State of Oregon.

**5. Use of Project Property:** Grantee agrees that the land within the LWCF Project boundary map described in the Project Scope (which is attached and incorporated into Attachment B) shall be dedicated and used in perpetuity for public outdoor recreation following the completion of the Project. Grantee agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written approval by OPRD, National Park Service (NPS), and the Federal Department of the Interior. Further, Section 6(f)(3) of the LWCF Act requires that no property acquired or developed with LWCF

assistance shall be converted to other than public outdoor recreation uses without the approval of the Secretary of the Department of the Interior, If the Project is located on land leased from the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed and safeguards shall be included to adequately ensure the perpetual use requirement contained in the LWCF Act. Property within the Project boundary acquired or developed with LWCF assistance shall be dedicated, by an instrument recorded in the county records, for recreational use in perpetuity, unless NPS and OPRD, or a successor agency, consents to removal of the dedication.

6. **Conversion of Property:** Grantee agrees that if the Grantee converts lands within the Project boundary to a use other than public outdoor recreation use or property interests are conveyed for private use or non-public outdoor recreation uses (“Converted Land”), the Grantee must provide replacement land acceptable to OPRD and NPS within 24 months of the date of the conversion or disposal or, if the conversion or disposal is not discovered by OPRD until a later date, within 24 months after the discovery of the conversion or disposal. Grantees must consult early with the OPRD when a conversion is under consideration or has been discovered.
7. **Public Access to the Project:** Grantee shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary residence.
8. **Independent Contractor.** Grantee shall perform the Project as an independent contractor and not as an agent or employee of OPRD. Grantee has no right or authority to incur or create any obligation for or legally bind OPRD in any way. OPRD cannot and will not control the means or manner by which Grantee performs the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of performing the Project. Grantee acknowledges and agrees that Grantee is not an “officer”, “employee”, or “agent” of OPRD, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
9. **Continued Operation:** Upon completion of the Project, Grantee shall be responsible for the operation and maintenance of said facility for public outdoor recreation in the manner and according to the standards set forth in the Department of the Interior Manual, which is incorporated herein by this reference.

**10. Contribution; Subcontractor Indemnity and Insurance:**

Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys’ fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to Grantee, its officers, employees, or agents in connection with this Agreement or the Project, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by the federal government, the Oregon Bureau of Labor and Industries and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Project, arising from the Project or the actions or omissions of Grantee.

Grantee shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused,

in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

**11. Condition for Disbursement:** Disbursement of grant funds by OPRD is contingent upon the following:

- a. OPRD having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to make the disbursement;
- b. Grantee's compliance with the terms of this Agreement, including all Attachments; and
- c. Grantee's representations and warranties set forth in Section 13 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

**12. No Third Party Beneficiaries.** OPRD and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person. Grantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Grantee, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

**13. Representations and Warranties of Grantee.** Grantee represents and warrants to State as follows:

**a. Organization and Authority.** Grantee is a duly organized and validly existing County under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

**b. Binding Obligation.** This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance

with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally

**c. No Solicitation.** Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**d. No Debarment.** Neither Grantee nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal . Grantee agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement, including all Attachments, or implied by law.

- 14. Repayment:** In the event that the Grantee spends Grant Funds in any way prohibited by state or federal law, or for any purpose other than the completion of the Project, the Grantee shall reimburse the State for all such unlawfully or improperly expended funds. Such payment shall be made within 15 days of demand by the State. Any funds disbursed to Grantee under this Agreement that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Grantee shall return all such unexpended funds to State within 14 days after the earlier of expiration or termination of this agreement.
- 15. Termination:** This Agreement may be terminated by mutual consent of both parties, or by either party upon a 30-day notice in writing, delivered by certified mail or in person to the other party's contact identified in the Agreement. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for Project costs incurred prior to date of termination. Full credit shall be allowed for reimbursable expenses and the non-cancelable obligations properly incurred up to the effective date of the termination.
- 16. Governing Law:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

- 17. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties agree the Oregon Parks and Recreation Department Director will make the final decision to resolve any dispute arising out of this Agreement.
- 18. Entire Agreement:** This Agreement, including all Attachments, constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. The Grantee, by signature of its authorized representative on the Agreement, acknowledges that the Grantee has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- 19. Notices:** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Grantee contact or State contact at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereinafter indicate. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received, or five days after mailing.
- 20. Counterparts:** This agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 21. Severability:** If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- 22. DISALLOWANCE OF COSTS:**
- 22.1 Agency Not Responsible for Disallowed Costs.** Agency neither is responsible for nor shall it pay for any expenses disallowed either upon request for reimbursement or as a result of any audit, review, or site visit or other disallowance action by Agency except for costs incurred by Grantee solely due to the negligence of Agency, its employees, officers, or agents. If an expense is disallowed by Agency after reimbursement has occurred, Grantee shall, within thirty (30) days of notice of disallowance or such other date as may be required by Agency, either demonstrate to the satisfaction of Agency that such disallowance is in error or make repayment of such expense.

**22.2 Recovery of Disallowed Costs.** If Grantee is a county, such disallowed expenses may be recovered by Agency only through repayment or withholding to the extent permitted by the Oregon Constitution, and particularly Article XI, Section 10. If Grantee is other than a county, Agency may recover such disallowed costs through repayment, withholding, offset or other means permitted under this Agreement, by law or otherwise. Grantee may, at its option, satisfy its obligation to return such expenses under this Section by paying to Agency the amount of the costs or permitting Agency to recover the amount of the funds from future payments to Grantee from Agency. If Grantee fails to return the amount of the expenses within fifteen (15) days after the earlier of written demand from Agency, Grantee shall be deemed to have elected the deduction option and Agency may deduct the amount demanded from any future payment from Agency to Grantee, including but not limited to: (i) any payment to Grantee from Agency under this Agreement, (ii) any payment to Grantee from Agency under any other contract or agreement, present or future, between Agency and Grantee, and (iii) any payment to Grantee from the State of Oregon under any other contract, present or future, unless prohibited by state or federal law. Agency shall notify Grantee in writing of its intent to recover funds and identify the program from which the deduction will be made. Grantee shall have the right to, not later than fourteen (14) calendar days from the date of Agency's notice, request the deduction be made from a future payment(s) identified by Grantee. To the extent that Agency's recovery of funds from the future payment(s) suggested by Grantee is feasible, Agency shall comply with Grantee's request. In no case without the prior consent of Grantee, shall the amount of recovery deducted from any one obligation owing to Grantee exceed twenty-five percent (25%) of the amount from which the deduction was taken. Agency may seek recovery from as many future payments as necessary to fully recover the amount of funds. Agency's right to recover funds from Grantee under this subsection is not subject to or conditioned on Grantee's recovery of money from any subcontractor or sub-recipient. The terms of this section shall survive the termination of this agreement.

**22.3 Grantee Cooperation.** Grantee shall cooperate with Agency and all appropriate investigative agencies and shall assist in recovering invalid payments.

**23. Build America, Buy America Act Requirements:** As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all contracts, subcontracts and purchase orders for work or products under this program. Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the



manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Sample Agreement

## A-2 Land and Water Conservation Fund Act

### Land and Water Conservation Fund Act of 1965, Public Law 88-578 Title 16, United States Code Selected Relevant Parts – State Assistance Program

for full code section:

<https://www.govinfo.gov/content/pkg/USCODE-2016-title54/pdf/USCODE-2016-title54-subtitleII-chap2003.pdf>

#### *§ 460I–4. Land and water conservation provisions; statement of purposes*

The purposes of this part are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by

(1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and

(2) providing funds for the Federal acquisition and development of certain lands and other areas.

#### *§ 460I–5. Land and water conservation fund; establishment; covering certain revenues and collections into fund*

During the period ending September 30, 2015, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the “fund”, the following revenues and collections:

##### (a) Surplus property sales

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 572 (a) or 574 (a)–(c) of title 40 or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended, notwithstanding and provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this part shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

##### (b) Motorboat fuels tax

The amounts provided for in section 460I–11 of this title.

##### (c) Other revenues

(1) In addition to the sum of the revenues and collections estimated by the Secretary of the Interior to be covered into the fund pursuant to this section, as amended, there are authorized to be appropriated annually to the fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the fund not less than \$300,000,000 for fiscal year 1977, and \$900,000,000 for fiscal year 1978 and for each fiscal year thereafter through September 30, 2015.

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.): Provided, That notwithstanding the provisions of section 460I–6 of this title, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this part.

*§ 460I–7. Allocation of land and water conservation fund for State and Federal purposes*

There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the fund. Not less than 40 per centum of such appropriations shall be available for Federal purposes. Those appropriations from the fund up to and including \$600,000,000 in fiscal year 1978 and up to and including \$750,000,000 in fiscal year 1979 shall continue to be allocated in accordance with this section. There shall be credited to a special account within the fund \$300,000,000 in fiscal year 1978 and \$150,000,000 in fiscal year 1979 from the amounts authorized by section 460I–5 of this title. Amounts credited to this account shall remain in the account until appropriated. Appropriations from the special account shall be available only with respect to areas existing and authorizations enacted prior to the convening of the Ninety-fifth Congress, for acquisition of lands, waters, or interests in lands or waters within the exterior boundaries, as aforesaid, of—

- (1) the national park system;
- (2) national scenic trails;
- (3) the national wilderness preservation system;
- (4) federally administered components of the National Wild and Scenic Rivers System; and
- (5) national recreation areas administered by the Secretary of Agriculture.

*§ 460I–8 [Sec 6]. Financial assistance to States*

**(a) Authority of Secretary of the Interior; payments to carry out purposes of land and water conservation provisions**

The Secretary of the Interior (hereinafter referred to as the “Secretary”) is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this part, for outdoor recreation:

- (1) planning,
- (2) acquisition of land, waters, or interests in land or waters, or
- (3) development.

**(b) Apportionment among States; finality of administrative determination; formula; notification; reapportionment of unobligated amounts; definition of State**

Sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

- (1) Forty per centum of the first \$225,000,000; thirty per centum of the next \$275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and
- (2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this part. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.
- (3) The total allocation to an individual State under paragraphs (1) and (2) of this subsection shall not exceed 10 per centum of the total amount allocated to the several States in any one year.
- (4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisition, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter shall be reapportioned by the Secretary in accordance with

paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

(5) For the purposes of paragraph (1) of this subsection, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status) shall be treated collectively as one State, and shall receive shares of such apportionment in proportion to their populations. The above listed areas shall be treated as States for all other purposes of this title.

**(c) Matching requirements**

Payments to any State shall cover not more than 50 per centum of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary. No payment may be made to any State for or on account of any cost or obligation incurred or any service rendered prior to September 3, 1964.

**(d) Comprehensive State plan; necessity; adequacy; contents; correlation with other plans; factors for formulation of Housing and Home Finance Agency financed plans; planning projects; wetlands consideration; wetlands priority plan**

A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of this part: Provided, that no plan shall be approved unless the Governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the Governor. The plan shall contain—

- (1) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of this part;
- (2) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;
- (3) a program for the implementation of the plan; and
- (4) other necessary information, as may be determined by the Secretary.

The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of this part shall be based upon the same population, growth, and other pertinent factors as are used in formulating the Housing and Home Finance Agency financed plans.

The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan. For fiscal year 1988 and thereafter each comprehensive statewide outdoor recreation plan shall specifically address wetlands within that State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director of the National Park Service, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a wetlands priority plan developed in consultation with the State agency with responsibility for fish and wildlife resources and consistent with the national wetlands priority conservation plan developed under section 3921 of this title or, if such national plan has not been completed, consistent with the provisions of that section.

**(e) Projects for land and water acquisition; development**

In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the following types of projects or combinations thereof if they are in accordance with the State comprehensive plan:

- (1) For the acquisition of land, waters, or interests in land or waters, or wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan (other than land, waters, or interests in land or

waters acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition.

Whenever a State provides that the owner of a single-family residence may, at his option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of title 42 and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601 (6) of title 42.

(2) For development of basic outdoor recreation facilities to serve the general public, including the development of Federal lands under lease to States for terms of twenty-five years or more: Provided, That no assistance shall be available under this part to enclose or shelter facilities normally used for outdoor recreation activities, but the Secretary may permit local funding, and after September 28, 1976, not to exceed 10 per centum of the total amount allocated to a State in any one year to be used for sheltered facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use thereby made possible justifies the construction of such facilities.

**(f) Requirements for project approval; conditions; progress payments; payments to Governors or State officials or agencies; State transfer of funds to public agencies; conversion of property to other uses; reports to Secretary; accounting; records; audit; discrimination prohibited**

(1) Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under this part. The Secretary may make payments from time to time in keeping with the rate of progress toward the satisfactory completion of individual projects: Provided, That the approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of the particular project, and to operate and maintain by acceptable standards, at State expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

(2) Payments for all projects shall be made by the Secretary to the Governor of the State or to a State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, 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.: Provided, That wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within that same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion.

(4) No payment shall be made to any State until the State has agreed to (1) provide such reports to the Secretary, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under this part, and (2) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State under this part.

(5) Each recipient of assistance under this part shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) The Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(7) Repealed. Pub. L. 104–333, div. I, title VIII, § 814(d)(1)(H), Nov. 12, 1996, 110 Stat. 4196.

(8) With respect to property acquired or developed with assistance from the fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

**(g) Coordination with Federal agencies**

In order to assure consistency in policies and actions under this part with other related Federal programs and activities (including those conducted pursuant to title VII of the Housing Act of 1961 [42 U.S.C. 1500 et seq.] and section 701 of the Housing Act of 1954) and to assure coordination of the planning, acquisition, and development assistance to States under this section with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable and such assistance may be provided only in accordance with such regulations.

**(h) Capital improvement and other projects to reduce crime**

**(1) Availability of funds**

In addition to assistance for planning projects, and in addition to the projects identified in subsection (e) of this section, and from amounts appropriated out of the Violent Crime Reduction Trust Fund, the Secretary may provide financial assistance to States, not to exceed \$15,000,000 for projects or combinations thereof for the purpose of making capital improvements and other measures to increase safety in urban parks and recreation area, including funds to-

(A) increase lighting within or adjacent to public parks and recreation areas;

(B) provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

(C) increase security personnel within or adjacent to public parks and recreation areas; and

(D) fund any other project intended to increase the security and safety of public parks and recreation areas.

**(2) Eligibility**

In addition to the requirements for project approval imposed by this section, eligibility for assistance under this subsection shall be dependent upon a showing of need. In providing funds under this subsection, the Secretary shall give priority to projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

**(3) Federal Share**

Notwithstanding subsection (c) of this section, the Secretary may provide 70 percent improvement grants for projects undertaken by any State for the purposes described in this subsection, and the remaining share of the cost shall be borne by the State.

*§ 460I–10. Availability of land and water conservation fund for publicity purposes; standardized temporary signing; standards and guidelines*

Moneys derived from the sources listed in section 460I-5 of this title shall not be available for publicity purposes: Provided, however, That in each case where significant acquisition or development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicated the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by Federal and non-Federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application.

## A-3 Civil Rights Requirements

1. **Age Discrimination Act of 1975** prohibits discrimination based on age in program participation and excludes from coverage most employment practices except for programs funded under the public services employment title of the Job Partnership Training Act.

2. **Americans with Disabilities Act of 1990** provides for a clear and comprehensive prohibition of discrimination on the basis of disability in employment, state and local services – including transportation, public accommodations and services – including transportation and telecommunications. All projects must comply with the Uniform Federal Accessibility Standards and the ADA Accessibility Guidelines.

3. **Architectural Barriers Act of 1968 (P.L. 90-480)** All facilities constructed within the project boundary of any NPS funded project must be accessible to the physically handicapped and must comply with the UFAS and the ADA accessibility guidelines. Projects that do not conform to these specifications will be returned for modifications.

Includes structural accessibility of buildings and facilities, newly constructed, added to, or altered. Provides for standards in effect at design stage.

4. **Section 504, the Rehabilitation Act of 1973 (P.L. 93-112, as amended in 1978).**

Prohibits discrimination on the basis of handicap in program participation, services and activities provided by federal financial assistance or by any federal agency. The law requires that programs and facilities be, to the highest degree feasible, readily accessible to and usable by all persons who have a disability, including mobility, visual, hearing, or mental impairments.

Program accessibility, both structural and non-structural, is required for qualified handicapped participants and employees.

Programs must be offered in the most integrated setting possible and provide opportunities for equal achievement and not otherwise limit qualified handicapped persons in any right, privilege, advantage, or opportunity enjoyed by able bodied.

A Section 504 Self Evaluation is the process that is required, whereby each sponsor, in consultation with handicapped individuals and organizations within their community, examine policies, practices, programs, services, activities and facilities to determine whether they are in compliance to Section 504 of the Rehabilitation Act and that they are accessible to all individuals.

The transition plan is the document detailing plans for achieving compliance with Section 504 when structural changes to existing facilities are required and identified through the self-evaluation process. The plan identifies physical obstacles; describes the methodology for providing accessibility; specifies the schedule for achieving program accessibility and indicates the person responsible for implementing the plan on a scheduled basis.

Establishes a set of structural standards to use.

Exception if such participation alters the fundamental nature of the program, and/or reasonable accommodation cannot be made for the participant or employee without doing so or creating a financial burden.

Provides for viewing programs in their entirety, which allows for offering non-accessible and accessible programs within the same service area. However, all "unique" structural and non-structural programs must be accessible without regard to location.

5. **Executive Order 11246, Equal Employment Opportunity and Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. Sects. 2000d to 2000d-4)** Title VI prohibits discrimination based on race, color or national origin in program participation and employment, where (1) the primary purpose of the grant is to provide employment, or (2) discriminatory employment practices will result in unequal treatment of person, who are or should be benefiting from the grant. The provisions of Title VI of the Civil Rights Act of 1964 and Executive Order 11246 implementing the Act must be followed.
- a. An assurance of compliance (Form DI-1350) must accompany each application for both acquisition and development projects. This form must be signed by the head of the governing body of the sponsoring agency or by the individual designated by the governing body.
  - b. All construction contracts exceeding \$10,000 total cost must be awarded through a process of competitive bidding involving formal advertising, with adequate purchase description, sealed bids, and public openings. Copies of all advertisements, bids, and a copy of the contract shall be retained for inspection. In determining whether fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of federal assistance shall apply.
  - c. All advertisements for bids for projects expected to cost more than \$10,000 total cost must include in the notice to prospective bidders that federal funds are being used on the project. A typical notice would be:  
*"All prospective bidders are hereby notified that federal funds provided under the Land and Water Conservation Fund Act of 1965 will be used to finance a portion of the project. Affirmative action to conform to the provisions of Executive Order 11246 which implements Civil Rights Act of 1964 will be required of the successful bidder".*
  - d. All contracts let in hometown or imposed plan areas must be in conformance with the requirements of the area plan. In Oregon, only Clackamas, Multnomah and Washington counties are in a plan area. Certification of compliance with the plan will be required from all contractors of these counties. The EEO rules are available through the Oregon State Parks and Recreation Department office.
  - e. All proposed contracts exceeding \$1,000,000 in total cost must receive approval from the State prior to the awarding of the contract.

**FOR MORE INFORMATION CONTACT:**

For technical assistance on the design requirements of the ADA as they apply in new construction and alterations, contact:

**United States Access Board**

1331 F Street NW, Suite 1000

Washington, DC 20004-1111

(202) 272-0080 (v) (202) 272-0082 (TTY) (202) 272-0081 (fax)

(800) 872-2253 (v) (800) 993-2822 (TTY)

Website: <http://www.access-board.gov/ada/>

e-mail: [ta@access-board.gov](mailto:ta@access-board.gov)



For assistance on other topics related to the ADA standards or regulations, including effective dates and requirements for existing facilities, contact:

**U.S. Department of Justice**

[www.ada.gov](http://www.ada.gov)

(800) 514-0301 (voice)

(800) 514-0383 (TTY)

<http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>

**U.S. Equal Employment Opportunity Commission**

1801 L Street NW, Washington DC 20507

1-800-669-3362 (voice) 1-800-800-3302 (TDD)

**Federal Communications Commission**

1919 M Street NW, Washington DC 20554

(202) 632-7260 (voice), (202) 632-6999 (TDD)

**U.S. Department of Justice**

Civil Rights Division, Office of the Americans with Disabilities Act

PO Box 66738, Washington DC 20035-6738

(202) 514-0301 (voice) (202) 514-0383 (TDD)

**U.S. Department of Transportation**

400 Seventh Street SW, Washington D.C. 20590

(202) 366-1656 (voice), (202) 366-2979 (TDD)



**A-4 Volunteer or Donated Labor Timesheet**

Project Title: \_\_\_\_\_ Project #: \_\_\_\_\_

Volunteer Name: \_\_\_\_\_ Phone # \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Professional and technical personnel, consultants, and other skilled and unskilled labor may furnish volunteer services. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved project.

Records of in-kind contributions of personnel shall include time sheets containing the signature of the person whose time is contributed and of the supervisor verifying that the record is accurate.

Rates for volunteer should be consistent with those regular rates paid for similar work in other activities of the State. In cases where the kinds of skills required for the project are not found in other activities by the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved. The time of a person donating services will be valued at the rate of pay as a general laborer unless the person is professionally skilled in the work being performed on the project (mason doing work on a retaining wall). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. The rate cannot exceed prevailing wage charges determined by the Department of Labor. A list can be found at <http://www.access.gpo.gov/davisbacon/or.html>

Date	Hourly Rate	Hours Worked (From – To)	Description of Work	Initials

\_\_\_\_\_  
Signature of Person Volunteering or Donating Time Date

\_\_\_\_\_  
Project Supervisor Signature Date

Total Hours Worked \_\_\_\_\_ X \_\_\_\_\_ = \_\_\_\_\_  
Rate of Pay Total Value of Hours This Sheet



## A-6 Donated Equipment Record



Project Title: \_\_\_\_\_ Project #: \_\_\_\_\_

Donor: \_\_\_\_\_ Phone # \_\_\_\_\_

Address: \_\_\_\_\_

The hourly rate for donated equipment used on a project shall not exceed its fair-rental value. Records of in-kind contributions of equipment shall include schedules showing the hours and dates of use and the signature of the operator of the equipment.

Date	Description of Equipment Used	Hourly Rate of Donated Equipment	Number of Hours Used

\_\_\_\_\_  
Signature of Person Donating Equipment Date

\_\_\_\_\_  
Project Supervisor Signature Date

Total Value of Donation This Sheet \$ \_\_\_\_\_

## A-7 Frequently Asked Questions – Appraisals and the LWCF State Assistance Program

Updated May 2021

### 1. Why do I need an appraisal?

An appraisal determines the basis for LWCF federal grant assistance involving the acquisition of real property, establishes fair compensation for the land owner as required by law, and establishes the equivalent fair market value requirement for both converted and replacement property pursuant to Section 200305(f)(3) of the LWCF Act as amended.

### 2. When must an appraisal be conducted?

Before the initiation of negotiations with the property owner, an appraisal must be conducted unless the State determines that an appraisal is unnecessary pursuant to Title 49 Part 24.102 of the Code of Federal Regulations and a waiver valuation is prepared (see Question #23 regarding waiver valuations).

### 3. Where do I go to find information about appraisals and appraisal requirements?

Because the LWCF is a federal assistance program, the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) are the dominant standards for appraisals. These federal standards are used in conjunction with the Uniform Standards of Professional Appraisal Practice (USPAP).

The UASFLA can be found at [http://www.justice.gov/enrd/ENRD\\_Assets/Uniform-Appraisal-Standards.pdf](http://www.justice.gov/enrd/ENRD_Assets/Uniform-Appraisal-Standards.pdf). The USPAP is revised biannually and is available on-line at <https://www.appraisalfoundation.org/imis/TAF/Store/TAF/Products.aspx?hkey=73d01054-6418-4dff-86c3-f08e92a04e4c>.

Also, Title 49 of the Code of Federal Regulations, Part 24 (the Uniform Relocation Act), specifically addresses the applicability of acquisition requirements to federal acquisitions or federal assistance programs. Realty and land acquisition offices within state and local offices of the Federal Highway Administration may be able to provide additional information with respect to land acquisitions and associated appraisal requirements.

### 4. What is the “Yellow Book”?

Because of its yellow cover, the UASFLA publication is commonly referred to as the “Yellow Book.”

### 5. What is USPAP?

USPAP (the Uniform Standards of Professional Appraisal Practice) are national standards for professional appraisal practice the USA and are published by The Appraisal Foundation, which is authorized by the US Congress. All licensed appraisers must comply with these standards.

### 6. Must each appraisal be reviewed for every LWCF acquisition and every conversion and what type of review is required?

Yes. Except for “waiver valuations,” appraisals conducted for LWCF purposes must be reviewed by a qualified review appraiser pursuant to the UASFLA, Section C, “Standards for the Review of Appraisals.”

The UASFLA and 49 CFR Part 24.104 require that a “technical review” must be conducted by a review appraiser of each appraisal prepared for LWCF purposes. See UASFLA Section C-1 for further guidance on technical reviews.

**7. Who is responsible for the appraisal?**

The State, as the LWCF grant recipient, is ultimately responsible for ensuring that appraisals for this program are obtained. This responsibility and associated costs are often passed on to local sub recipients.

**8. Is the cost of an appraisal eligible for reimbursement under my LWCF grant?**

Because “incidental costs” such as for appraisals are precluded by law, such costs cannot be recouped through a LWCF grant as either a direct or indirect cost.

**9. Who is responsible for the appraisal review?**

OPRD currently exercises the option to delegate responsibility for obtaining the appraisal review to the sub recipient.

**10. Can the State delegate its responsibility for obtaining the appraisal review for a locally sponsored project?**

If the State opts, as part of its appraisal review process, to allow its LWCF sub recipients to contract for appraisal reviews, it is the State’s responsibility to ensure that the sub recipient’s review process is in conformance with the UASFLA standards for appraisal review. Only the State may certify this compliance to the NPS.

**11. Who pays for the appraisal review?**

As with appraisals, the cost of an appraisal review is the responsibility of the sub recipient and is not an eligible direct or indirect cost under the LWCF program.

**12. Does the National Park Service approve the appraisal?**

NPS does not review and approve individual appraisals. It will conduct spot checks of appraisals as needed and will review the State’s LWCF appraisal review process. The NPS includes the Office of Valuation Services (OVS) as part of its compliance oversight.

**13. What kinds of qualifications are acceptable for appraisers? Do we require specific certifications? Some of the other federal agencies have a list of appraisers they accept. Does LWCF have anything similar?**

LWCF-related appraisals may be prepared by only “certified general” appraisers licensed in the state where the property is located. No list of acceptable appraisers or appraisal firms is maintained by the LWCF program, but OVS may be able to refer the grantee to local appraisers with UASFLA experience.

**14. How many appraisals must I obtain for each property?**

At least one appraisal is required for each property to be acquired with LWCF assistance and for each of the converted and replacement parcel(s) involved in a conversion.

**15. What does “highest and best use” mean?**

“Highest and best use” is the determinant of market value, i.e., the highest and most profitable use for which the property is adaptable and needed or likely to be needed in the

reasonably near future. See Section B-3 of the UASFLA for a more thorough explanation.

**16. Can the highest and best use be the use for which the government entity is acquiring the property?**

Since the government entity is using federal assistance to acquire property for a public park (a non-economic use) or is acquiring property to satisfy the replacement requirement for public park land (a similar non-economic consideration), future public park use is not a valid use upon which to estimate market value. See Section B-3 of the UASFLA for additional guidance.

**17. How should highest and best use be determined when the zoning for the parcel in question is different than the surrounding area (this comes up with conversions)?**

In order to determine the highest and best use of 6(f)-protected land to be converted, the appraiser is to ignore the actual zoning of the property if the zoning is a non-economic zoning established to recognize or preserve the open space characteristic of a LWCF assisted site. In this case, the appraiser shall determine the likely zoning that would have been established under the hypothetical condition that the park, or preserve, was never created. In so doing, the appraiser will evaluate local economic characteristics, factors, and trends as well as the physical characteristics of the property.

**18. What is the definition of market value?**

“Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal” (UASFLA).

**19. Are the existing improvements to the property factored into the appraisal?**

Yes, when the value of the improvements contributes to the highest and best use of the real property. The only exceptions are structures and facilities on replacement property that will not serve a recreation purpose for the new replacement sites.

**20. Must I pay the landowner the full fair market value?**

Yes, in most cases. However, a landowner may find it advantageous to make a full or partial donation of the property. An approved appraisal is still necessary to determine the amount eligible for matching a LWCF grant, as is documentation from the property seller documenting their willingness to donate a portion of the property’s value. Alternatively, negotiations might result in an administrative settlement higher than the appraised value. If the NPS agrees that the administrative settlement is reasonable, the higher amount is eligible for assistance.

**21. Does a court settlement in a condemnation acquisition supersede the appraisal?**

When lands are acquired through judicial proceedings the price determined by the court will be accepted by NPS in lieu of any previously approved appraised value. However, if a court settlement postdates project approval, there is no obligation for NPS to match an amount higher than what was originally approved.

**22. How long before an appraisal is outdated, i.e., how old can an appraisal be and still be considered useful for LWCF situations?**

For acquisitions, any appraisal older than one year should be updated by the original appraiser to reflect any changes in the market. For conversions, the lapse of time between the effective date of the appraisals for the converted and replacement properties is critical since the fair market values are being compared. To facilitate this, the converted and replacement properties should be appraised with the same effective date. First, the property to be converted should be appraised and then the replacement property(s) should be appraised with the same effective date as the appraisal for the converted parcel.

**23. What is a waiver valuation?**

When the estimated value of real property is less than \$10,000 (up to \$25,000 with the owner's concurrence), a waiver valuation may be prepared in lieu of an appraisal (see [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/property\\_valuation/appraisal\\_waiver/appwaiv01.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/property_valuation/appraisal_waiver/appwaiv01.cfm)).

**24. We already own the land we propose to utilize as replacement for a conversion. Must we appraise this land?**

Yes. An appraisal is necessary not to ensure fair compensation in this case, but to determine the fair market value of the parkland so that replacement land of at least equal fair market value can be obtained as required by Section 200305(f)(3) of the LWCF Act as amended and 36 CFR Part 59.3.

**25. Is it true that the Section 200305(f)(3) encumbrance allows us to appraise the parkland to be converted under the park, recreation, and conservation highest and best use category?**

No. Highest and best economic use is to be considered disregarding the existing 200305(f)(3) encumbrance since that encumbrance will be removed as part of the conversion.

**26. Can my LWCF application be approved before the appraisal is completed?**

Yes, however an acceptable appraisal must be completed and the acquisition finalized prior to the first reimbursement. If the appraisal is greater than the original LWCF cost estimate, then the project should be amended.

**27. Are appraisals prepared for LWCF purposes subject to the Freedom of Information Act?**

Yes, NPS will respond to each FOIA request through a FOIA officer, who will make a determination whether certain information in appraisals will be redacted.



## A-8 Recommended Format for Federal Appraisal Reports

### Part I—Introduction

- A-1. Title page
- A-2. Letter of transmittal
- A-3. Table of contents
- A-4. Appraiser's certification
- A-5. Summary of salient facts and conclusions
- A-6. Photographs of subject property
- A-7. Statement of assumptions and limiting conditions
- A-8. Scope of the appraisal
- A-9. Purpose of the appraisal
- A-10. Summary of appraisal problems

### Part II—Factual Data— Before Acquisition

- A-11. Legal description
- A-12. Area, city and neighborhood data
- A-13. Property data:
  - a. Site
  - b. Improvements
  - c. Fixtures
  - d. Use history
  - e. Sales history
  - f. Rental history
  - g. Assessed value and annual tax load
  - h. Zoning and other land use regulations

### Part III—Data Analysis and Conclusions—Before Acquisition

- A-14. Analysis of highest and best use
- A-15. Land valuation
- A-16. Value estimate by cost approach
- A-17. Value estimate by sales comparison approach
- A-18. Value estimate by income capitalization approach
- A-19. Correlation and final value estimate

### Part IV—Factual Data— After Acquisition

- A-20. Legal description
- A-21. Neighborhood factors
- A-22. Property data
  - a. Site
  - b. Improvements

- c. Fixtures
- d. History
- e. Assessed value and annual tax load
- f. Zoning and other land use regulations

### Part V—Data Analysis and Conclusions—After Acquisition

- A-23. Analysis of highest and best use
- A-24. Land valuation
- A-25. Value estimate by cost approach
- A-26. Value estimate by sales comparison approach
- A-27. Value estimate by income capitalization approach
- A-28. Correlation and final value estimate

### Part VI—Acquisition Analysis

- A-29. Recapitulation
- A-30. Allocation and explanation of damages
- A-31. Explanation of special benefits

### Part VII—Exhibits and Addenda

- A-32. Location map
- A-33. Comparable data maps
- A-34. Detail of comparative data
- A-35. Plot plan
- A-36. Floor plan
- A-37. Title evidence report
- A-38. Other pertinent exhibits
- A-39. Qualifications of appraiser

## A-9 Appraisal Report Documentation Checklist

### Title Page

- |  |  |
|--|--|
| <input type="checkbox"/> Agency Name         | <input type="checkbox"/> Property Address        |
| <input type="checkbox"/> Agency Tract No.    | <input type="checkbox"/> Appraiser's Name(s)     |
| <input type="checkbox"/> Appraiser's Address | <input type="checkbox"/> Effective Date of Value |

### Letter of Transmittal

- |   |   |
|---|---|
| <input type="checkbox"/> Date of Letter           | <input type="checkbox"/> Identification of Property |
| <input type="checkbox"/> Prop. Rights Appraised   | <input type="checkbox"/> Effective Date of Value    |
| <input type="checkbox"/> Special Assumptions      | <input type="checkbox"/> Special Instructions       |
| <input type="checkbox"/> Estimate of Before Value |   |
| <input type="checkbox"/> Estimate of After Value  |   |
| <input type="checkbox"/> Appraiser Signature      |   |

### Table of Contents

- Omitted       Adequate       Inadequate

### Appraiser's Certification

- |  |  |
|--|--|
| <input type="checkbox"/> Facts True & Correct        | <input type="checkbox"/> Limited Only by Assump.   |
| <input type="checkbox"/> No Interest in Property     | <input type="checkbox"/> No Contingent Fee         |
| <input type="checkbox"/> Conforms to USPAP Standards | <input type="checkbox"/> Conforms to Fed Standards |
| <input type="checkbox"/> Property Inspection         | <input type="checkbox"/> Offered Owner Accompl.    |
| <input type="checkbox"/> Professional Assistance     | <input type="checkbox"/> Before Value              |
| <input type="checkbox"/> After Value                 | <input type="checkbox"/> Effective Date of Value   |

### Summary of Salient Facts and Conclusions

- |   |   |
|---|---|
| <input type="checkbox"/> Ident. of Property               | <input type="checkbox"/> Effective Date of Value        |
| <input type="checkbox"/> H & B Use—Before                 | <input type="checkbox"/> H & B Use—After                |
| <input type="checkbox"/> Description Before Value Before: | <input type="checkbox"/> Description After Value After: |
| <input type="checkbox"/> Cost                             | <input type="checkbox"/> Cost                           |
| <input type="checkbox"/> Market                           | <input type="checkbox"/> Market                         |
| <input type="checkbox"/> Income                           | <input type="checkbox"/> Income                         |
| <input type="checkbox"/> Final Est.                       | <input type="checkbox"/> Final Est.                     |

### Photographs of Subject

- Omitted       Adequate       Inadequate

### Assumptions & Limiting Conditions

- |   |   |
|---|---|
| <input type="checkbox"/> Appropriate            | <input type="checkbox"/> Suitable for Trial |
| <input type="checkbox"/> Extraneous Assumptions | <input type="checkbox"/> Limited Appraisal  |

### Scope of Appraisal

- Omitted       Adequate       Inadequate

### Purpose of Appraisal

- |   |  |
|---|--|
| <input type="checkbox"/> Defin. of Market Value | <input type="checkbox"/> Defin. of Property Rights |
|---|--|

### Sum. of Appraisal Prob.

- Omitted       Adequate       Inadequate

### Legal Desc.—Before

- Omitted       Adequate       Inadequate

### Area Data—Before

- Omitted       Adequate       Inadequate

### Site Data—Before

- (Overall)
- |                                      |                                     |
|--------------------------------------|-------------------------------------|
| <input type="checkbox"/> Adequate    | <input type="checkbox"/> Inadequate |
| <input type="checkbox"/> Present use | <input type="checkbox"/> Access     |
| <input type="checkbox"/> Topog.      | <input type="checkbox"/> Soils      |
| <input type="checkbox"/> Vegetation  | <input type="checkbox"/> Land Area  |
| <input type="checkbox"/> Land Shape  | <input type="checkbox"/> Utilities  |
| <input type="checkbox"/> Minerals    | <input type="checkbox"/> Easements  |
| <input type="checkbox"/> Hazards     |                                     |

### Improvement Data—Before

- (Overall)
- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/> Adequate   | <input type="checkbox"/> Inadequate    |
| <input type="checkbox"/> Type       | <input type="checkbox"/> Size          |
| <input type="checkbox"/> Actual Age | <input type="checkbox"/> Effective Age |
| <input type="checkbox"/> Condition  | <input type="checkbox"/> Quality       |
| <input type="checkbox"/> Occupancy  | <input type="checkbox"/> On-site Imp.  |

### Fixtures—Before

- Omitted       Adequate       Inadequate

### History—Before

- |        |                                  |                                   |                                     |
|--------|----------------------------------|-----------------------------------|-------------------------------------|
| Use    | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Sales  | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Rental | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |

### Assessed Value & Tax Load—Before

- |                |                                  |                                   |                                     |
|----------------|----------------------------------|-----------------------------------|-------------------------------------|
| Assessed Value | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Tax Load       | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |

### Zoning & Land Use Regulations—Before

- |                    |                                  |                                   |                                     |
|--------------------|----------------------------------|-----------------------------------|-------------------------------------|
| Description        | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Rezone Probability | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Land Use Regs.     | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |

### Highest and Best Use—Before

- |                       |                                  |                                   |                                     |
|-----------------------|----------------------------------|-----------------------------------|-------------------------------------|
| Vacant                | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Improved              | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| L.P. Considered       | <input type="checkbox"/> Omitted | <input type="checkbox"/> Adequate | <input type="checkbox"/> Inadequate |
| Reasonable Conclusion | <input type="checkbox"/> Yes     | <input type="checkbox"/> No       |                                     |

**Land Valuation—Before**

Comparables:

Description

Adequate  Inadequate

Photos

Omitted  Adequate  Inadequate

Analysis

Omitted  Adequate  Inadequate

Suitable for Trial

Yes  No

Final Value Analysis

Adequate  Inadequate

**Cost Approach—Before**

Justified Omission

Yes  No  N/A

Reproduction Cost

Adequate  Inadequate

Depreciation:

Market Supported

Yes  No

Analysis

Omitted  Adequate  Inadequate

Final Estimate

Adequate  Inadequate

**Sales Comparison Approach—Before**

Comparables:

Description

Adequate  Inadequate

Photos

Omitted  Adequate  Inadequate

Analysis

Omitted  Adequate  Inadequate

Suitable for Trial

Yes  No

Final Value Analysis

Adequate  Inadequate

**Income Capitalization Approach—Before**

Justified Omission

Yes  No  N/A

Gross Income Estimate

Adequate  Inadequate

Vacancy

Omitted  Adequate  Inadequate

Expenses:

Fixed

Omitted  Adequate  Inadequate

Operating

Omitted  Adequate  Inadequate

Reserves

Omitted  Adequate  Inadequate

Capitalization Rate:

Market Supported

Yes  No

Selection Method

Adequate  Inadequate

Suitable for Trial

Yes  No

**Final Value Estimate—Before**

Reasoned Analysis

Omitted  Adequate  Inadequate

Avoided Summation Appraisal

Yes  No

Suitable for Trial

Yes  No

**Legal Description—After (or Description of Acquisition)**

Omitted  Adequate  Inadequate

**Neighborhood Factors—After**

Project Desc.

Omitted  Adequate  Inadequate

Project Impact

Omitted  Adequate  Inadequate

**Site Data**

Shape  Utilities

Size  Access

Easements

Relationship to Project

Adequate  Inadequate

**Improvements—After**

Description

Omitted  Adequate  Inadequate

**Fixtures—After**

Omitted  Adequate  Inadequate

**History—After**

Use/Rental Since Take

Omitted  Adequate  Inadequate

**Assessed Value—Tax Load—After**

Estimated A.V.

Omitted  Adequate  Inadequate

Estimated Tax Load

Omitted  Adequate  Inadequate

**Zoning & Land Use Regulations—After**

Rezone Considered

Omitted  Adequate  Inadequate

Appendix A

**Highest & Best Use—After**

Change Considered

- Omitted       Adequate       Inadequate
- Intensity Considered
- Omitted       Adequate       Inadequate
- Restoration Considered
- Yes       No       N/A
- Effects of TCEs
- Yes       No       N/A

**Reasonable Conclusion**

- Yes       No

**Non-conformity**

- Omitted       Adequate       Inadequate

**Land Valuation—After**

**Comparables:**

Same Comparables as Before

- Adequate       Inadequate

**Depreciation:**

Market Supported

- Yes       No

**Analysis**

- Omitted       Adequate       Inadequate

**Final Value Analysis**

- Adequate       Inadequate

**Sales Comparison Approach—After**

**Comparables:**

Same Comparables as Before

- Yes       No

**Description**

- Adequate       Inadequate

**Photos**

- Omitted       Adequate       Inadequate

**Analysis**

- Omitted       Adequate       Inadequate

**Suitable for Trial**

- Yes       No

**Final Value Analysis**

- Adequate       Inadequate

**Income Capitalization Approach—After**

**Justified Omission**

- Yes       No       N/A

**Gross Income Estimate**

- Adequate       Inadequate

**Vacancy**

- Omitted       Adequate       Inadequate

**Expenses:**

**Fixed**

- Omitted       Adequate       Inadequate

**Operating**

- Omitted       Adequate       Inadequate

**Reserves**

- Omitted       Adequate       Inadequate

**Capitalization Rate:**

Market Supported

- Yes       No

**Description**

- Adequate       Inadequate

**Photos**

- Omitted       Adequate       Inadequate

**Analysis**

- Omitted       Adequate       Inadequate

**Suitable for Trial**

- Yes       No

**Final Value Analysis**

- Adequate       Inadequate

**Cost Approach—After**

**Justified Omission**

- Yes       No       N/A

**Reproduction Cost**

- Omitted       Adequate       Inadequate

**Selection Method**

- Adequate       Inadequate

**Suitable for Trial**

- Yes       No

**Final Value Estimate—After**

**Reasoned Analysis**

- Omitted       Adequate       Inadequate

**Avoided Summation Appraisal**

- Yes       No

**Suitable for Trial**

- Yes       No

**Acquisition Analysis**

**Avoided Valuing Take**

- Yes       No

**Shown in Proper Form**

- Yes       No

**Allocation & Explanation of Damages**

**Value of Take/Damages Properly Allocated**

- Yes       No

**Damage Explanation**

- Omitted       Adequate       Inadequate

**Noted Accounting Tabulation**

- Yes       No

**Cost to Cure Damage Estimated**

- Yes       No

**Cost Justified**

- Omitted       Adequate       Inadequate

**Profit**

- Omitted       Adequate       Inadequate

**Cost v. Diminution in Market Value Considered**

- Omitted       Adequate       Inadequate

**Special Benefits**

Adequately Explained

Yes       No       N/A

**Location Map**

Omitted       Adequate       Inadequate

**Comparable Data Maps**

All Comps on Map

Yes       No

Subject Shown on Map

Yes       No

**Title Report**

Omitted       Adequate       Inadequate

**Other Exhibits**

Adequate       Inadequate       N/A

**Qualifications**

Omitted       Adequate       Inadequate

**Comparable Data Sheets**

Confirmed

Yes       No

Terms Reported

Yes       No

Buyer/Seller

Yes       No

Date of Sale

Yes       No

Recording Info

Yes       No

Location

Yes       No

Present Use

Yes       No

H&B Use

Yes       No

Zoning

Yes       No

Legal

Yes       No

Physical Description

Adequate       Inadequate

**Plot Plan**

Property Boundaries Shown

Yes       No

Dimensions Before

Yes       No

Dimensions After

Yes       No

Street Frontage Before

Yes       No

Street Frontage After

Yes       No

Photo Locations

Yes       No

Improvement Locations

Yes       No

**Floor Plan**

Adequate       Inadequate       N/A

## **A-10 Documentation Required for Final Billing of an Acquisition**

One copy of each of the following documents (if applicable) must be submitted with the billing for each parcel of land acquired.

1. First contact with owner. If verbal, not date and subjects, owner's reaction to sponsor's interest in the acquisition.
2. Ten-year history of conveyance. This is frequently included in the appraisal report.
3. Invitation to the owner from the appraiser or sponsor to accompany the appraiser while he is viewing the property for the purpose of making the appraisal.
4. Written offer of purchase at not less than the review appraisal amount.
5. Properly documented waiver of just compensation, if required.
6. If purchase price exceeded the fair market value, is there adequate justification.
7. A copy of the deed to the purchasing agency.
8. A copy of the check or voucher (both sides) used to make the payment
9. A copy of the title insurance policy.
10. A copy of the vesting deed. This is the deed or deeds under which the seller acquired the property.
11. One copy each of any easements that affect the property, and a statement as to the effect of each easement on the proposed recreation use of the property.
12. One copy each of any deeds referred to in the deed to the purchaser, the vesting deed or in the easements. These are called reference deeds.
13. A statement of unrecorded interests is required for each parcel. Unrecorded interests include such items as unrecorded sales contracts, leases, or easements, which are not part of the public record. The title insurance policy includes all of the recorded instruments, and therefore, is not necessary to repeat. Also, a statement of the effect on recreation utility of any unrecorded interests discovered must be made.
14. A statement on any liens by public agencies that is not included in the title reports.
15. One copy each (if applicable) of an assessor's map of the property, any official plats, county or private land surveys or documents pertaining to the vacation of platted streets or roadways.
16. A statement of payments made to the seller for relocation and other allowable costs in conformance with P.L. 91-646.

If any of these documents have been previously submitted, they need not be resubmitted, but such prior submittal should be mentioned in the letter of transmittal.

## **A-11 Documentation Required for Final Billings of Development & Rehab Projects**

Note: Depending on the project, some items may not be required. For example: Items 2, 3, 4 and 6 would not apply to a project completed entirely by your own employees.

Please attach copies of required documentation to final billings.

1. Project ledger sheet or other detailed listing of expenditures.
2. Affidavit of publication. Supplied by the newspaper when you advertise for bids.
3. Minutes of any meeting at which action is taken on bids received. Should be dated and signed by responsible official.
4. Contractor invoices (or final progress payment, if countersigned by contractor acknowledging payment of all prior charges, and if the costs of each major work item is shown).
5. All other invoices. Not monthly statements.
6. Cancelled checks to contractor. (Copy both sides).
7. All other cancelled checks. (Copy both sides).
8. Employee time records.
9. Individual earnings records for the calendar year or payroll journals. Should show gross wages, withholdings and net pay for each pay period.
10. Equipment rental time records.
11. Detailed schedule showing how you computed owned-equipment rental rates. For donated equipment time, you may use hourly rates published in rental compilation or rental rate guide, or other publications which provide national or regional average rates.
12. Detailed schedule showing how you computed rates for payroll additives (fringe benefits)