ATTACHMENT

2.D.1.B. FHWA 1/15/82 GUIDANCE DOCUMENT ON COMPLIANCE WITH SECTION 6(F) FOR HIGHWAY PROJECTS
Section 6(f) Guidance

Purpose

The purpose of this directive is to outline guidance that should be followed by the Division in assessing and processing Section 6(f) situations.

Effective Date

Upon receipt. This supersedes RD 170-2 dated June 16, 1980.

Discussion

Revenues for the Land and Water Conservation Fund Act (LWCFA) are derived from the sale of Federal surplus real property, the Federal motorboat fuels tax, and Outer Continental Shelf mineral receipts. The funds are divided into "sides." The "Federal side," about 40% of the total fund, provides money for the acquisition of national recreation lands. Acquisition programs must be approved by Congress. The "State side," about 60% of the total fund, provides grants to States, and through States to their subdivisions for acquisition and development of public outdoor recreation areas and facilities. Projects on the "State side" must be matched by, or through, the State. State project grants must be in accord with the State Comprehensive Outdoor Recreation Plan and meet identified high priority recreation needs. The development of such a plan is required by the LWCFA in order for the State to be eligible for 6(f) funding.

Application procedures and a Land and Water Conservation Fund Outdoor Recreation Grant-in-Aid Manual have been developed by the National Park Service (NPS). The applicant must formally agree to permanently dedicate projects to public outdoor recreation use and assume responsibility for continuing operation and maintenance. Since the enactment of the LWCFA, which is a continuing program, many hundreds of millions have been allocated to the States.

In the event that Section 6(f) funds have been used in the development of a recreational area that is required for highway use, the transfer of this land to the State highway agency cannot be approved unless the conversion is consistent with the Comprehensive Statewide Outdoor Recreation Plan. The transfer of a portion of this recreational land for a public highway right of way requires the NPS approval. The highway agency must agree to provide property or substitution for the lands to be taken. The property proposed for substitution must be equal to current market value of the property to be converted. It also must be of reasonable equivalent usefulness as that being converted.
Procedures

The following suggestions are given for Section 6(f) guidance:

1. Obtain a copy of the original application submitted by the State or the municipality to the State Liaison Officer (SLO). The 6(f) application will provide by description and/or map the limits of the property involved in the application. If the 6(f) application is unclear as to the boundaries of the 6(f) involvement in regard to the highway taking, then the provisions of the LWCF are usually found to be applicable by NPS. However, if the description in the 6(f) application clearly and explicitly shows the highway taking to be outside the 6(f) area, the provisions of the LWCF may not apply. Questions concerning applicability should be discussed with the NPS.

2. If you have concluded that there is a Section 6(f) situation, NPS will require that all practical alternatives must be evaluated with valid reasons for rejecting other than the selected alternative.

3. The development of an early dialogue with the SLO and NPS is encouraged when there is Section 6(f) involvement. This includes proper documentation of the consultation process.

4. The replacement property does not have to provide identical recreational experiences or be located at the same site, provided it is in a reasonably equivalent location and will meet the recreation needs identified in the State Comprehensive Outdoor Recreation Plan.

5. Improvements on the substituted property are not considered part of the fair market value unless they directly contribute to, and enhance, the recreation utility of the property.

6. The Division should develop a periodic, but continuing liaison with NPS and the SLO to avoid conflicts with facilities funded by the LWCF. Opportunities may present themselves within the liaison process to reserve lands for highway purposes, if appropriate, to avoid Section 6(f) situations.

7. To the best of our knowledge, a 4(f) Statement is always required when there is a Section 6(f) involvement. The Section 4(f) Statement should include evidence of consultation and coordination with the NPS office. There should be an indication from NPS that an exchange of land can be reasonably expected. DOI has held that under these circumstances, approval of the 6(f) is time-consuming and need not be completed prior to submission of a Section 4(f) determination to the Secretary of Transportation.

Frederick H. Downs, Director
Office of Environmental Programs