



United States Department of the Interior

NATIONAL PARK SERVICE

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L32(2225)

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Memorandum

To: State Liaison Officers

From: Chief, State and Local Assistance

Subject: Allowable Uses of Buildings Located on LWCF 6(f)(3) Protected Lands

The purpose of this memo is to clarify existing Land and Water Conservation Fund (LWCF) Act Section 6(f)(3) guidance regarding the use of buildings (indoor structures) located in Section 6(f)(3)-protected outdoor recreation areas that were constructed before the Section 6(f)(3) boundary was established.

Background

The need for this clarification has been prompted by two issues. First, there is the growing need for public park system administrators to find new ways to support the operation and maintenance of outdoor recreation and park areas, many of which are protected under Section 6(f)(3). Second is the concern that many outdoor recreation areas contain buildings and other structures that require maintenance and other upkeep, further straining park operation and maintenance budgets. The National Park Service (NPS) recognizes that buildings, especially historic structures, contribute to the outdoor recreation experience as important park resources. Some buildings are part of the park story and the reason the park exists. Other buildings are important backdrops or anchors that hold special meanings for park visitors and local communities. Restoration and reuse of these buildings offers special opportunities for attracting visitors to a public park area, for keeping them secure and maintained, and for providing new revenue streams, all while conducting operations that support the Section 6(f)(3) outdoor recreation purpose of the site.

The purpose of Section 6(f)(3) is to support the creation and preservation of a nationwide public outdoor recreation estate that serves State and local public outdoor recreation needs. To create and maintain this recreation estate, the Act requires that any area acquired or developed with LWCF grant assistance be protected in perpetuity from casual conversion to other than public outdoor recreation purposes and uses. Section 6(f)(3)'s emphasis is to protect areas for public outdoor recreation purposes, including buildings and indoor structures located thereon.

Further, LWCF State administrators often confuse the policies for what types of development are eligible for LWCF grant funding with the policies for what types of development and uses are allowable on Section 6(f)(3)-protected public outdoor recreation areas. The types of uses (and their supporting development) allowable on Section 6(f)(3) areas are much more extensive than what is eligible for funding, reflecting the wide range of typical development, operations, and amenities needed to administer, manage, and maintain a viable outdoor recreation area for public use and enjoyment and for the protection of park resources. See Chapter 3 of the 2008 LWCF Manual for more information about what is eligible for funding.

A necessary first step for building proposals is to determine if the subject building is included within the Section 6(f)(3) boundary, and if so, whether it was constructed before or after Section 6(f)(3) protection was established. Note that in some instances, the Section 6(f)(3) boundary protects only a portion of an outdoor recreation site, so the subject building could be located on the site but not in the Section 6(f)(3) area. Consult with NPS to confirm the extent of the Section 6(f)(3) boundary, and thus the applicability of these guidelines

Allowable uses of buildings constructed before Section 6(f)(3) establishment where NPS approval is not required

If the State Liaison Officer determines a proposed building use primarily supports the outdoor recreation purpose of the site's Section 6(f)(3) protected area, NPS review is not required. These supporting uses include but are not limited to:

- Site administration, operation and maintenance
- Visitor information, park interpretation, education, historic structure tours
- Park safety and security
- Resource protection and park-related research
- Site visitor amenities including dining and lodging (see next section); gift shops/park stores; and comfort facilities
- Assembly for park/outdoor recreation related meetings and public programs (see next section)

Decisions to allow the use of buildings for the above purpose are the responsibility of the States. NPS should be consulted if any of the above indoor uses will primarily support and serve other non-Section 6(f)(3) outdoor recreation areas at the same site, other non-Section 6(f)(3) protected parks in the system (e.g., system-wide maintenance facilities), and/or the non-park using public.

Lodging, dining, meeting facilities: Section 6(f)(3)-protected outdoor recreation areas consist of many types of visitor amenities, including accommodations for lodging, dining, and meetings as follows:

Overnight accommodations: These types of indoor overnight accommodations are allowable when the primary purpose is serving the Section 6(f)(3) site's outdoor recreating public as the primary market and not the general non-park public:

- Cabins
- Multi-bed hostels
- Multi-unit lodges
- Bed and breakfast operations, inns

Dining: These types of indoor dining accommodations are allowable when the primary purpose is serving the Section 6(f)(3) site's outdoor recreating public as the primary market and not the general non-park public:

- Restaurant-type establishments
- Snack bars
- Carry-out food service
- Concession stands

Meeting facilities: Types of allowable indoor meeting uses include activities, meetings, events, classes and programs for primarily outdoor recreation and park-related purposes

Building improvements or changes: NPS review and approval is not needed for proposed improvements or changes to buildings accommodating the allowable uses described above, including related renovations and support facilities such as parking and storage, as long as the intended use of these improvements is continued support of the primary outdoor recreation purpose of the Section 6(f)(3) site. The State is responsible for ensuring this purpose is maintained, and that the building improvements and enhancements will not dominate the outdoor recreation use of the Section 6(f)(3) area, which could trigger LWCF conversion requirements.

Leasing and concession operations of Section 6(f)(3) protected buildings: Per Chapter 8.D of the 2008 LWCF Manual, any allowable use of a Section 6(f)(3)-protected building may be concessioned or leased to a third party such as a private organization or individual to provide a public outdoor recreation service or carry out a Section 6(f)(3)-allowable use.

As the primary grantee, the State is ultimately accountable for assuring compliance with the applicable Federal requirements. Therefore, the delegation or transfer of certain responsibilities to sub-grantees or lessees does not relieve the State of its compliance obligation.

All lease documents and concession agreements for the operation of LWCF-assisted sites by private organizations or individuals must address the following:

1. In order to protect the public interest, the project sponsor must have the clear ability to periodically review the performance of the lessee/concessioner and to terminate the lease/agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility are not met.
2. The lease/agreement document should clearly indicate that the leased/concessioned area is to be operated by the lessee/concessioner for public outdoor recreation purposes in compliance with provisions of the LWCF Act and implementing regulations (36 CFR 59). As such, the document should require the area be identified as publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising, and is operated by a lessee/concessioner as identified in the public information to eliminate the perception the area is private.
3. The lease/agreement document should make clear that compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act) is required, and compliance will be indicated by signs posted in visible public areas, statements in public information brochures, and other effective ways.

NPS review and approval is not required for these agreements as they address the administration and operation of non-federal property although they remain subject to NPS review. States are encouraged to consult NPS to ensure the agreements adequately address Section 6(f)(3) requirements pursuant to 36 CFR 59. This precaution would greatly eliminate the potential for unauthorized conversions.

When NPS review is required for uses of buildings constructed before 6(f)(3) establishment:

For any building uses that will primarily support and serve areas not protected by Section 6(f)(3), support non-outdoor recreation purposes, and/or support the non-park using public, NPS review is required to determine if the use could trigger a conversion.

Use of buildings constructed after 6(f)(3) establishment

Guidance for uses of buildings to be constructed on Section 6(f)(3) protected lands is provided in the 2008 LWCF Manual. Chapter 3 provides details on types of buildings eligible for LWCF grant assistance. Chapter 8 provides guidance on public facilities/buildings including recreation centers, arenas, auditoriums, meeting/activity rooms, museums and libraries; and conversions caused by newly-constructed buildings. Chapter 8 also provides detailed guidance on non-outdoor recreation uses planned for buildings within Section 6(f)(3) areas. States must consult NPS to determine if the planned uses would fall within the LWCF public facilities policy or trigger a conversion.

Next step

We expect to explore the need for new guidance with respect to using buildings and structures located on Section 6(f)(3) lands for the primary purpose of generating new revenue to support outdoor recreation. We will let you know the outcome of this review as soon as it is available.

In sum, buildings that pre-date the establishment of Section 6(f)(3) areas can be used in a variety of ways to support a public outdoor recreation purpose without the approval of NPS. Early coordination with NPS is encouraged to ensure this purpose and that the project sponsor assumes adequate ownership and control over the building and associated uses so that Section 6(f)(3) protection is not compromised.

We hope this guidance addresses some of the many questions our office receives on a regular basis on what types of uses are allowable within buildings and indoor structures located on Section 6(f)(3) protected areas, and when NPS approval is required. If you have any questions, please contact me.

cc: ASLOs

bcc: NPS Region LWCF Managers