

A thick dark blue vertical bar is on the left side of the page. To its right, several thin, light blue curved lines sweep upwards from the bottom left towards the center of the page, resembling blades of grass.

Indiana Land & Water Conservation Fund Handbook 4: Land Acquisition

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The logo for the Indiana Department of Natural Resources, featuring the letters "DNR" in a large, bold, black, sans-serif font.

DNR

Indiana Department
of Natural Resources

Handbook 4: Land and Water Conservation Fund (LWCF) Land Acquisition

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Introduction

Land acquisition under the Land and Water Conservation Fund (LWCF) can be a multi-year process. Actual purchase of the property may not occur until after federal LWCF project approval is completed; otherwise, the purchaser will not be reimbursed. Approval of projects that include land acquisition take longer due to appraisal requirements, increased reviews, encumbrance of deeds, and other factors. Land may only be purchased for outdoor recreation purposes and that will be protected in perpetuity (forever).

Acquisition Policies

All acquisitions must conform to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act) and its implementing regulations found in the Code of Federal Regulations, Part 24 (49 CFR Part 24). [eCFR :: 49 CFR Part 24 -- Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs](#)

The Uniform Act applies to (1) all property acquisition, (2) relocation of persons displaced by the acquisition, and (3) all projects (acquisition and or development) that receive LWCF grant monies. Development projects must prove non-LWCF land acquisition after 1971 followed P.L. 91-646 and did not circumvent the Uniform Act.

Federal law specifies deliberate refusal to follow the proper land acquisition procedures makes all future development projects ineligible for federal assistance.

Delayed Development

Acquired land must be developed for outdoor recreation within three years of acquisition. The project application must clearly state development will be delayed. The project sponsor must include in the application:

- 1) Why immediate acquisition is necessary
- 2) What facilities will be developed and when
- 3) What, if any, non-recreation uses will continue on the property
 - a. When will it terminate
- 4) What public access will be allowed in the interim
- 5) Assurance any income received will be used in accordance with the federal LWCF Financial Assistance Manual Ch. 7, Sec. A.7 "Income from properties acquired or developed with LWCF assistance" (2 CFR § 200.307) (<https://www.ecfr.gov/current/title-2/section-200.307>)
- 6) Assurance the site will be available for public outdoor recreation use and non-recreation will cease within three years of acquisition
- 7) What type of public recreation access will be provided during the interim period
 - a. Minimal accommodation for public use will include parking, signage, and open space
- 8) The acquired land must, at a minimum, be open and available for public outdoor recreational use prior to close out of the project
- 9) The site must be signed, operated, and maintained for public use.

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Non-recreation uses such as agriculture occurring on the property at the time of acquisition may only continue for a short duration which will be determined on a case-by-case basis by the grants staff in conjunction with the National Park Service. The time frame may not exceed three years. *The project sponsor will not receive reimbursement on the acquisition until the non-recreation use is terminated.*

Site Selection

Priority Acquisition

- New park
- Existing park expansion
- Multiple parks if connected by a trail

Potential Acquisition

- Trail for connecting existing parks
- Access points along a river to create a greenbelt park corridor

The Indiana Trail Program (ITP) grant is the preferred funding for trail projects. The President Benjamin Harrison Conservation Trust can also be considered for land acquisition projects.

Pre-selection Considerations

Items to consider before site selection include:

- Neighborhood effects
 - Pros and Cons for current neighbors
- Must not compete unfairly with private sector
- Meeting community master plan and public needs
- Meeting SCORP priorities
- Reasonable for the service area
- Reasonable (proposed) fee structure
- Viability for outdoor recreation in 10, 20, 30 or more years
- The land must remain an outdoor recreation resource in perpetuity

Eligible Acquisition Types

The types of acquisition that are eligible for assistance include, but are not limited to:

1) Water-Oriented Recreation Sites

- a. Areas with frontage on rivers, streams, lakes, estuaries, and reservoirs
- b. Water bodies
- c. Land for creating water impoundments for outdoor recreation
- d. Areas that provide unique recreation opportunities (e.g., boardwalk through fen, ADA equestrian obstacle course)

2) Natural and Scenic Areas

- a. Natural areas, preserves and outstanding scenic areas
 - i. Includes areas adjacent to scenic highways to preserve the scenic or natural values
 - ii. Areas of physical or biological importance
 - iii. Wildlife areas

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- b. Must be open to the public for outdoor recreation use to the extent that the natural attributes will not be seriously impaired or lost

3) Community Parks

- a. Within cities and towns for
 - i. Day-use picnic areas
 - ii. Neighborhood playgrounds
 - iii. Areas adjacent to school grounds
 - iv. Competitive nonprofessional sports facilities

4) County Parks

- a. Sites in rural areas serving county and regional recreational uses (e.g., camping, hiking, hunting, fishing, picnicking)

5) Linear Parks

- a. Land forming a greenbelt corridor for recreational use
 - I. Examples include:
 - 1. Abandoned railroad line for a multi-purpose trail
 - 2. Series of access points to a river for boating and fishing

6) Existing Recreational Facilities

- a. Privately owned facilities (e.g., swimming pools, golf courses, youth camps) that will no longer be operated by the private sector
- b. Acquisition of an area or facility operated for public recreation is only eligible for LWCF with documentation the facility will be lost to recreation use if not acquired
- c. Real property with recreational improvements may be eligible if it has not been available for public use or if its primary purpose has not been for recreation

7) Structures

- a. Must be listed in the project proposal with improvements, proposed use, or disposal
- b. Only allowed, as part of land acquisition, if the use will be for outdoor recreation or support of outdoor recreation activities, or
- c. The structures have no value and are demolished to enable recreational development to take place.

Ineligible Acquisitions

1) Historic Sites and Structures

- a. Exceptions may be made if it is clearly demonstrated the acquisition is primarily for outdoor recreation purposes and historic aspects are secondary

2) Museums

3) Sites for Archeological Excavation

4) School Sites (or portions thereof)

5) Professional Facilities

- 1) Used primarily for semiprofessional and professional arts and or athletics

6) Fish and Wildlife Sites

- a. Used solely for game refuges or fish production
- b. May be eligible if:
 - i. Open to public for compatible recreation
 - ii. Directly serve priority public outdoor recreation

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7) Indoor Facility Areas

- a. Land acquisition may be eligible if:
 - a. Acres for indoor facilities are minimal and,
 - b. Does not negatively affect outdoor recreation development

8) Railroads / Rail Corridors

9) Lodging Structures

- a. Sites containing elaborate lodging facilities to be operated by the project sponsor or a concessionaire to provide food and sleeping quarters (e.g., luxury lodges, motels, cabins)

10) Farmland

- a. For commercial agricultural use
- b. Exceptions may be made if acquisition supports outdoor recreation (e.g., habitat restoration for hiking, birding, wildlife management, hunting)

The grants manager should be contacted before any negotiations with a landowner begin if the LWCF grant is being considered for funding. The State retains the right to deny funding for land acquisition that is deemed incompatible with the SCORP, local master plans, and or the state and federal guidelines.

Appraisals

Appraisals and appraisal reviews are not reimbursable expenses and may not be used for LWCF match.

The appraisal is a necessary first step to determining the land value. The LWCF application review team relies heavily on the appraisal in determining grant eligibility and award amount.

Appraisals must meet the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and be completed by a licensed UASFLA appraiser. Appraisals meeting Uniform Standards of Professional Appraisal Practice (USPAP) will NOT be accepted!

Land valuation can vary significantly from a UASFLA appraisal to a USPAP appraisal. UASFLA valuation is to be used in negotiating with the landowner.

Appraisal Reviews

UASFLA appraisals must be reviewed by a qualified appraiser or a certified UASFLA appraisal reviewer.

More information regarding UASFLA and Appraisal Reviews is found in the Code of Federal Regulations. [eCFR :: 49 CFR Part 24 -- Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs](#)

Caveats

- For the grant application an appraiser's statement of value can be submitted as placeholder
 - Ensure the statement of value reflects UASFLA valuation
- NPS Program Officers will not forward the application packet for final approval until the completed appraisal and review are submitted by the state
- Due to variation of land within a parcel
 - The submitted appraisal should only include the acres in the LWCF encumbrance
 - Or the portion of the total purchase that is to be encumbered must be valued as a unit. The value may not be calculated from the average value of the total purchase. For

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example: 100 acres total at \$4,000 per acre with 95 acres to be encumbered. Value is NOT: \$400,000 (total) - \$20,000 (withheld) = \$380,000 (encumbered)

- The appraiser must justify the value of the encumbered portion
- In almost all cases of a partial acquisition, the appraisal must include a before and after valuation
- The appraisal must address the current intended use and user

Negotiations between a willing seller and a willing buyer may set a price that is higher than the appraisal. This market value must be considered with the appraised value in establishing the reasonable limits of LWCF assistance.

Appraisal Waiver

If the estimated value of the real property is \$10,000 or less, the State may waive the appraisal for a waiver valuation per 49 CFR 24.102(c)(2)(ii). The Department of Natural Resources may increase the \$10,000 cap to \$25,000 (with landowner consent) if the acquiring agency offers the landowner the option to complete an appraisal and the owner elects to have the agency prepare a waiver valuation instead.

Methods of Acquisition

Several methods of land acquisition are approved for LWCF assisted purchases. The following steps must be followed to meet LWCF and state criteria, and for grant approval.

Negotiated Purchases

The Uniform Act procedures outlined below must be followed when acquiring land through negotiated purchases involving LWCF assistance.

- 1) Contact the potential seller to check if the land will be for sale. Do Not negotiate price!
- 2) Determine if the owner or tenants will be eligible for relocation assistance
 - a. Provide [Publication FHWA A-HEP-19-010](#) to advise owners and or tenants of their rights
- 3) Have land appraised by Certified UASFLA appraiser
 - a. The landowner must be given the opportunity to accompany the appraiser
- 4) Have certified/qualified appraisal reviewer from a different firm review the appraisal and complete the review report
- 5) Submit the appraisal and appraisal review to the grant coordinator

AFTER the appraisal is submitted and federally approved

- 6) Give the landowner written documentation of the appraised value with an offer to purchase at that price
- 7) Submit *Statement of Just Compensation* and *Written Offer to Purchase* letter to the grant coordinator
 - a. Forms must be signed by property owner and project sponsor authorized agent
 - b. Forms should indicate the appraised value

Grant applications may be submitted at any time during the appraisal process. Appraisals must be approved at the Federal level before an offer to purchase can be made to the landowner. Actual land purchase may not happen until after the federal grant award is issued.

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Purchases Higher than the Appraised Value

When the project sponsor believes that a negotiated price, which is higher than the appraised value, is an adequate indication of market value a detailed and well documented justification statement should be submitted to the grant coordinator. The justification packet must include all pertinent appraisal documents.

The statement should explain why the appraisal may not reflect the true value and what steps the project sponsor took to establish the true value. It should include:

- 1) A history of negotiations documenting discussions of price between the landowner and project sponsor
- 2) The importance of the proposed site as opposed to alternate sites
- 3) Other justification regarding the need to purchase the subject property at a higher amount. ‘

If the NPS agrees the negotiated price represents a reasonable estimate of the property value, the amount can be eligible for assistance if sufficient funds are available in the grant. This statement is to be submitted with the billing for the property.

Parcel Purchase Over Time

Contract sales or “installment payment plans” are not eligible for LWCF projects. A suggested alternative is to subdivide the tract into smaller parcels and fully purchase individual parcels over time. This does not jeopardize investment of public funds and allows the total land acquisition to be spread across multiple grant cycles.

Condemnation

If a project sponsor cannot come to an agreement through the negotiated purchase process, condemnation proceedings may be undertaken. The project sponsor must follow state law for condemnation procedures, and the landowners/tenants must be informed of their rights to relocation benefit.

The value of land acquired through condemnation will be based on a court award. Reimbursement will be based on the court judgment, including interest expenses awarded by the court as part of just compensation, up to the approved amount of the grant. The case must go through all proceedings to a court award.

If the purchase price is negotiated out of court, reimbursement will be based on an appraisal completed in accord with the requirements set forth by The Uniform Act, as amended, unless the NPS approves a higher negotiated price based on justification supplied by the project sponsor.

Land Donations

Land donations are fully accepted by the LWCF program. Donations valued at \$25,000 or more require a formal appraisal and appraisal review that must be approved by NPS. The fair market value of the approved appraisal will be the basis for the land donation value.

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A Waiver Valuation may be acceptable when (1) the land has a value less than \$25,000, (2) the appraisal problem is uncomplicated, and (3) the landowner consents to this method of valuation.

A *Donation Without Appraisal* or a *Donation with Appraisal* form must be completed and submitted to the grant coordinator, as applicable.

[Publication FHWA-HEP-19-010](#) must be provided to the owners or tenants to advise them of their rights to relocation assistance and just compensation.

Land donations are not reimbursed; the value is credited to the grant account as matching funds. After receiving title to the parcel, the project sponsor must submit the property deed with LWCF encumbrance language to the grant coordinator. The coordinator will provide documentation acknowledging the local match has been credited to the grant.

If the land donation value is equal to or greater than the required sponsor match, the development costs will be reimbursed at 100%.

Example Reimbursement Chart with Land Donation

Project Land Value	\$250,000
Project Development Cost	\$250,000
Total Project Cost	\$500,000
LWCF grant award	\$250,000
Land Value Match/Credit	\$250,000
Sponsor Cash Match	\$ 0
Reimbursement Total	\$250,000

Bargain Sale

A combination land donation and purchase for less than appraised value (bargain sale) is excepted for LWCF projects. The difference between the sale price and appraised fair market value is the donated land value. The donated value is used as a credit to the sponsor match. The credit may be a portion of or all the required sponsor match.

All appraisal requirements apply. The Uniform Act requires the project sponsor to offer full appraised value. When a lesser sale is negotiated the owner must sign a *Waiver of Right to Just Compensation* letter.

A waiver of entitlements under The Uniform Act by property owners or displaced persons will be approved only in fully documented cases where the reasons for the waiver are explained. This includes purchase price and or relocation expenses. The waiver must include the following information:

- 1) Landowner signature
- 2) The owner has been fully informed of his or her rights and benefits under 42 U.S.C. 4601 et seq.
- 3) The acquiring agency has provided a written *Statement of Just Compensation and Offer to Purchase* for the appraised property value (state the amount)
- 4) The owner is satisfied with the negotiated price, although it is less than the appraised fair market value

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- 5) The owner elected to waive entitlement to the relocation benefits (including the dollar amount by category of moving expenses, payments for replacement housing, incidental expenses, etc.)
- 6) A statement fully explaining the reasons for accepting a lesser amount than the appraised value or for waiving relocation benefits.

Land Purchased from Another Public Agency

Land may be purchased from another public agency. The cost to the project sponsor of land purchased from another public agency may be eligible for matching funds, subject to the following conditions.

- 1) The land was not originally acquired by the other agency for recreation, nor has it been so managed while in public ownership.
- 2) No federal assistance was involved in the original acquisition by the other agency, except Community Development or Revenue Sharing Funds.
- 3) The selling agency is required by law to receive payment for land transferred to another public agency (e.g., public school land that can be used for non-school purposes only through payment to the school agency, excess State prison lands that can be transferred to local government use only on a purchase basis).
 - a. The support ceiling will be based on the price paid by the project sponsor for the property or the fair market value, whichever is less.
 - b. The selling agency may be permitted a choice between various state laws which would set the selling price at different levels depending upon which law is chosen by the agency. For example, various laws may apply which would allow the agency to transfer the real property to another public agency
 - i. For fair market value,
 - ii. Reimbursement of paid taxes
 - iii. As a donation,
 - iv. Other consideration
 - c. LWCF assistance will be limited to the minimum amount for which the property could be transferred legally and only in those instances for which there is an attorney general's opinion or established case law.
- 4) The requirement of appraisal, history of conveyances, and evidence of title are the same as other purchases
- 5) If the selling agency is Federal, fair market value must be paid.

Exchange of Real Property

Land owned and administered by the project sponsor may be traded for more valuable land administered by another public agency or land owned by a private party. The amount of LWCF assistance will be based on the amount of cash, if any, that must be paid by the project sponsor in addition to the land conveyed, subject to appraisal requirements. Both parcels must be adequately appraised.

For example, the project sponsor exchanges a property appraised at \$10,000 for a privately owned property appraised at \$12,000 and pays the difference of \$2,000 cash. The amount to be reimbursed is 50% of \$2,000 (i.e., \$1,000).

If the other party is a public agency, conditions for Land Purchase from Another Public Agency apply.

Acquisition Exceptions: Pre-Award Acquisition

There are options for acquiring land prior to federal grant approval. The caveat is there is no guarantee the project will receive state and federal approval.

Three options to “hold the land” until grant approval are (1) a third party acquires and holds title to the land, (2) placing the title in escrow, and (3) securing an option to purchase at a later date. A third party could be an individual, private business, separate public agency, not-for-profit organization, or other similar private entity.

NOTE: land acquisition projects can easily take 12 – 24 months from application submission (to state) until final federal award due to documentation requirements, appraisals, appraisal reviews, and multiple levels of approval.

Options to Purchase

Consult with grant staff prior to exercising this option. Failure to do so may result in ineligibility for reimbursement.

To prevent the land from being sold, the project sponsor may execute an option to purchase. The option to purchase could include special terms such as contingent on receiving funds or financing. If an option is exercised before LWCF project approval, the option **MUST** specify acceptance is contingent upon the availability of Land and Water Conservation Fund money. Therefore, the date of the project approval would be the option exercise date.

Options signed before the application deadline should extend, at minimum, one year with provisions to extend a second year at no cost.

Purchase price may be negotiated after the property has been appraised, reviewed, and fair market value offered to the landowner. ***The appraisal must meet the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) standards.*** One payment of no more than 10% of the approved appraised value may be made at the time the option is transacted. The payment should be applied to the purchase price of the property.

Escrow Agreements

If a landowner needs to transfer title to the property and the project sponsor is not able to accept the title, the warranty deed can be held “in escrow” by a third party. Examples include a bank, foundation, or not-for-profit organization. An escrow agreement may state that acceptance of title by the project sponsor is contingent upon federal approval of the LWCF project or may indicate a date after which title may be transferred to the project sponsor if federal funds are not received. To be eligible for reimbursement the title must not be transferred until the LWCF project is federally approved.

Waiver of Retroactivity

This method is only exercised when land must be purchased immediately and one of the above options cannot be utilized. A Waiver of Retroactivity (1) requires federal approval and (2) does not ensure the project will be accepted by LWCF.

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To request a waiver, the project sponsor must first consult with the grant manager. If the grant manager approves, the sponsor may submit a request for waiver of retroactivity to the grant coordinator. The submission must include:

- 1) Justification for early acquisition
- 2) Location and Site maps
- 3) Environmental and historical information for the property

The grant coordinator will work with NPS and the requestor for any additional requirements or information.

Land may not be acquired before a waiver is approved. The applicant must follow all federal land acquisition requirements (The Uniform Act) and submit required documentation (i.e., Statement of Just Compensation, Waiver of Just Compensation, Donation without Appraisal and Donation with Appraisal).

- The LWCF project application must be submitted within one year of the waiver.
- A Waiver of Retroactivity does not ensure the LWCF project will be approved.
- If not approved, the land purchase costs will not be reimbursed.

Relocation Assistance

The Uniform Act ensures Federal and federally-assisted projects provide for relocation assistance to those displaced by the project to prevent undue personal hardship. The assistance applies to owners as well as tenants.

Relocation Benefits

Relocation costs are to be paid for:

- 1) Moving expenses
- 2) Replacement of business or housing
- 3) Search, closing, and other costs incurred while moving into a different dwelling or relocating a business
- 4) Certain incidental expenses incurred in title conveyance, such as
 - a. Recording fees, transfer taxes, revenue stamps, etc.
 - b. Penalty for prepayment of pre-existing mortgages, to convey a clear title
 - c. Pro rata portion of real property taxes that apply to (whichever is earlier):
 - i. After the title vests in the government, or
 - ii. The effective date of possession

Landowners must be informed of relocation benefits and must receive payment unless benefits are voluntarily waived.

Relocation Assistance Reimbursement

Costs are based on maximum and minimum schedules specified by law and are often paid by the project sponsor when the land is acquired.

Relocation assistance benefit expenses are reimbursable on a 50% basis. Documentation must be submitted with the reimbursement billing.

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Relocation Plan

A relocation plan must be developed (1) during the project planning phase and (2) prior to beginning land acquisition negotiations if the proposed project includes displacement of persons from their dwellings, business, or farm operations.

The plan must be submitted with the project application.

The plan should determine prior to displacement if decent, safe, and sanitary replacement housing will be available within a reasonable time frame. The project cannot proceed if this caveat is not met. The persons being relocated should receive informational brochures and cost documenting/claiming forms.

The relocation plan must include:

- 1) Number of individuals, families, businesses, farms, and non-profit organizations to be relocated
- 2) Availability of decent, safe, and sanitary replacement housing within the financial means of individuals and families being relocated
- 3) Estimated total cost of payments to displaced persons for all benefits under 42 U.S.C. 4601 et seq. for replacement housing
- 4) Estimated administrative costs of the relocation(s)

The relocation plan may be coordinated with the Department of Housing and Urban Development and other agencies performing relocation in the area. A project sponsor may contract with a city relocation agency, such as the Community Development Department, or a private firm to handle relocation services.

Appeals

The project sponsor will be responsible for all negotiations with landowners or tenants concerning relocation benefits. Relocated persons have the right to appeal the determination of the amounts they are eligible to receive and must be informed in writing of their right to appeal.

Formal appeals may be submitted by relocated individuals to the Department of Natural Resources. Department staff will review all data concerning the calculation of relocation payments. If the person is still dissatisfied, a hearing will be scheduled. The applicant shall be given a full opportunity to be heard at the appeal hearing. After the hearing, the result may still be appealed through the judicial review of the Indiana Court System. Appeals will not be heard by the Department of the Interior

Waiver of Relocation Benefits

Tenants and landowners may waive their rights to relocation benefits. Appropriate documentation must be (1) signed by the person waiving the benefits and (2) submitted to the grant coordinator for inclusion in the project packet.

Land Acquisition Costs

Not all expenditures associated with land acquisition are eligible for reimbursement.

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Date of Expenditure Eligibility

Acquisition costs must be incurred within the project period (i.e., date of federal approval to project expiration date, as per the Notice of Award).

Transfer of Title

According to Indiana statutes, land is considered as transferred on the date when the warranty deed is accepted by the previous landowner and the project sponsor. For reimbursement eligibility this date must be within the project period and after federal appraisal approval.

Date Costs are Incurred

Costs are incurred on the date when the earliest of any of the following transactions take place:

- 1) Project Sponsor
 - a. Accepts deed or other appropriate conveyance
 - b. Makes full payment for property
 - c. Makes first or full payment
 - i. In a series of spaced or timed payments
 - ii. As stipulated in an option agreement
 - iii. To an escrow agent

Project sponsors should not accept title until after the UASFLA appraisal has been federally approved!

The appraised value must be approved to avoid discrepancies between reimbursable amount and price paid.

Eligible Expenditures

- 1) Purchase of real property through negotiated purchase or condemnation
- 2) Real property acquired by donation from a private individual/organization, with the appraised value credited as project sponsor match
- 3) Incidental and relocation expenses only as allowed by the *Uniform Relocation Assistance and Real Property Acquisition Policies Act*
- 4) Acquisition from another public agency at lowest cost allowed by law
- 5) The difference in value between property exchanged for a tract of land having greater value
- 6) The cost of an option if included as part of the purchase price

Ineligible Expenditures

- 1) Boundary surveys, appraisals, appraisal reviews, title search(es), legal fees, fines, and penalties paid by the project sponsor
- 2) The value of real property donations required by law or ordinance (mandatory dedication)
- 3) Incidental costs relating to real property acquisition and interests in real property unless allowable under the Uniform Act
- 4) Taxes for which the project sponsor would not have been liable to pay.
- 5) Damage judgments arising out of acquisition whether determined by judicial decision, arbitration, or otherwise
- 6) The value of, or expenditure for, lands acquired from the United States at less than fair market value

Property Rights, Control, and Tenure

The most common method of acquiring property is by fee simple title. This is the preferred method of acquisition; it gives the holder an absolute right to the property within limitations imposed by state or federal law.

Title to land may be conveyed by warranty or quit claim deed to the project sponsor. The project sponsor must submit a description of the character and nature of the title received before requesting reimbursement. This evidence of title must include the property deed and either a written opinion from the project sponsor's attorney on the adequacy of title or a title insurance policy.

A survey may be required when there is reasonable doubt about the exact location of the boundary or size of the tract being acquired.

The project sponsor is responsible for quieting claims against title and for replacing property found to have defective title with other properties of equivalent value, usefulness, and location, as approved by the Department of the Interior.

Reservations, Adverse Rights, and Deed Restrictions

Oil, gas, mineral, or other reservations and rights are permissible only if it is determined that recreation purposes and the environment would not be adversely affected. Such reservations and adverse rights (1) must be described in the narrative of the project proposal and also (2) how they will be dealt with to avoid impacting recreation and the environment.

Outstanding property rights may affect the value of land. Examples include mineral rights, transportation rights-of-way, utility easements, and other deed restrictions. An appraiser should consider:

- 1) The legal description of the property
- 2) Reservations, rights, and restrictions
- 3) The effect of the loss of these rights on property value

Deed restrictions can severely limit the highest and best use of land, and negatively affect its value. For donations, "park only" restrictions should be removed prior to appraisal because the land will be dedicated for outdoor recreational use in perpetuity by the LWCF Act

If the rights to subsurface reservations or other deed restrictions adversely affect recreation use of the land or facilities in the future, the project sponsor will be responsible for acquiring property of equivalent usefulness, location, and value.

If a deed restriction for park purposes indicates the grantor's intent and does not provide for reversion of title upon failure to comply with the grantor's wishes, the condition may be acceptable. In certain situations, a landowner may retain a life estate, under which he or she retains while living.

Project Ineligibility

Land which has a reversionary clause in the deed whereby the landowner could repossess the property if it ceased to be used solely for the purpose specified in the deed may make the project ineligible, because the LWCF Act requires that the land must be held in outdoor recreational use in perpetuity.

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If a reversionary clause in the deed specifies that the land must be developed for a specific purpose, even though the project includes that type of development, the project may be ineligible.

A development project to construct a facility on land with a reversionary clause in the deed may also be ineligible, even though the land may have been acquired without federal funds.

Federal approval is required to acquire or develop land with reversionary clauses or outstanding interests in the property deeds. The grants manager should be consulted prior to submitting a project application involving deed clauses and restrictions.

Land Development

There are a myriad of outdoor recreation activities that are approved and supported by LWCF. The types of recreation may change over time. Project sponsors are highly encouraged to focus on long term goals and plan for the changing needs of the community so additions, renovations, replacements, etc. do not adversely affect outdoor recreation use or lead to a 6(f) land conversion.

Compatible Uses

Non–recreation uses that are compatible with and secondary to recreation such as water conservation, timber management, grazing, and other natural resource uses may be carried out within a project area. Such uses must be clearly described in project proposals.

Some types of recreation facilities that are not eligible for LWCF assistance may be built with local monies on LWCF project sites if, prior to construction, they are approved by the State and National Park Service. Such facilities should not cause a 6(f) conversion.

Facility Development

Certain regulations for the development of facilities must be followed on lands acquired with LWCF assistance. All facilities must:

- 1) Be accessible for users of all abilities, especially persons with disabilities
- 2) Not compete with those provided by the private sector
- 3) Meet Build America, Buy America requirements.

Caveat

Land acquired with LWCF assistance must be developed and used for outdoor recreation in perpetuity. Development does not have to utilize LWCF assistance. Unassisted development does not require state or federal approvals; however, the development must be in accordance with the purposes of the acquisition.

Conversions

The intent of the Land and Water Fund Act and grant opportunity is to protect and provide outdoor recreation resources for current and future Americans and visitors. The LWCF deed encumbrance is in perpetuity (i.e., stipulating the land remain in outdoor recreation use forever). Project sponsors cannot foresee all circumstances that affect land, communities, people, and projects. In the event land acquired

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and or developed with LWCF assistance must be removed from the outdoor recreation inventory and use, the property owner must contact the grants manager to initiate a conversion.

Conversions are a final effort and not to be taken lightly. In essence, the land and facilities must be replaced with land of equal value (at the current appraised value) and like (use) facilities. All aspects of Land Acquisition apply to the land being removed from inventory as well as the replacement land.