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TO: Zoning Board of Appeals
FROM: Angus Jennings AICP, Director of Land Use Management
DATE: September 27, 2010
RE: Summary of research re Jack Walsh Recreation Area

In response to your request, my office has conducted a preliminary review of what steps would be necessary in order for the Town to initiate an RFP process for potential development of a cell tower on the Jack Walsh Recreation Area parcel (Map 7 Parcel 9) co-owned by the Town of Westford and the Recreation Commission.

The parcel was purchased in part through a grant awarded in 1973 by the U.S. Dept. of the Interior, National Park Service Land & Water Conservation Fund (#10-134-xxx). As such, the parcel is subject to significant legal protections in perpetuity including Section 6(f)(3) of the LWCF Act, excerpted as follows:

SEC. 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 conversion only if he finds it to be in accord with the then existing 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.

In other words, in order to use the parcel, or any portion of the parcel, for a use other than public outdoor recreation use, a series of steps would need to be followed including but is not limited to conducting an alternatives analysis; identifying other, comparable land for permanent protection to substitute for the land affected based on a determination, for both properties, of fair market value and outdoor recreational value; and securing approvals from the Massachusetts EOEEA, the Legislature and the National Park Service. Local approvals including votes of the Board of Selectmen, Recreation Commission and Town Meeting would also be needed. These requirements are discussed in more detail in **36 CFR 59.3**, a copy of which is attached. I have also attached a related NPS pamphlet discussing this issue in more detail.

Given these restrictions, I do not plan to invest additional staff time toward this question in the absence of clear policy direction from a public Board or Commission that they would like this site evaluated more thoroughly for potential future use for WCF.

cc: Pat Savage, Recreation Director
Board of Selectmen

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 cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity. For leased sites assisted under L&WCF, compliance with post-completion requirements of the grant ceases following lease expiration unless the grant agreement calls for some other arrangement.

§ 59.2 Information collection.

The information collection requirements contained in § 59.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0047. The information is being collected to determine whether to approve a project sponsor's request to convert an assisted site or facility to other than public outdoor recreation uses. The information will be used to assure that the requirements of section 6(f)(3) of the L&WCF Act would be met should the proposed conversion be implemented. Response is required in order to obtain the benefit of Department of the Interior approval.

§ 59.3 Conversion requirements.

(a) *Background and legal requirements.* Section 6(f)(3) of the L&WCF Act is the cornerstone of Federal compliance efforts to ensure that the Federal investments in L&WCF assistance are being maintained in public outdoor recreation use. This section of the Act assures that once an area has been funded with L&WCF assistance, it is continually maintained in public recreation use unless NPS approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

(b) *Prerequisites for conversion approval.* Requests from the project spon-

sor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional Director in writing. NPS will consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the proposed conversion have been evaluated.

(2) 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 an approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not serve a recreation purpose.

(3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and at the discretion of the Regional Director, 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 State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(i) 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 which 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

which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion regardless of the nature of the property proposed for conversion.

(ii) 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 in another location within the jurisdiction. Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these regulations and the substitution of replacement property.

(iii) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition. The replacement property must constitute or be part of a viable recreation area. Unless *each* of the following additional conditions is met, land currently in public ownership, including that which is owned by another public agency, may not be used as replacement land for land acquired as part of an L&WCF project:

(i) The land was not acquired by the sponsor or selling agency for recreation.

(ii) The land has not been dedicated or managed for recreational purposes while in public ownership.

(iii) No Federal assistance was provided in the original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance.

(iv) Where the project sponsor acquires the land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

In the case of development projects for which the State 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, public land which has not been dedicated or managed for recreation/conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost.

(5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) 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.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action. In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the NPS Regional office is assured that all environmental review requirements related to that other action have been met.

(8) State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project.

(9) The proposed conversion and substitution are in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) and/or equivalent recreation plans.

(c) *Amendments for conversion.* All conversions require amendments to the original project agreements. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out

with NPS. Section 6(f)(3) project boundary maps shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for a conversion. In such cases, an express commitment to satisfy section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion approval, must be received from the State. This commitment will be in the form of an amendment to the grant agreement.

(d) *Obsolete facilities.* Recipients are not required to continue operation of a particular facility beyond its useful life. However, when a facility is declared obsolete, the site must nonetheless be maintained for public outdoor recreation following discontinuance of the assisted facility. Failure to so maintain is considered to be a conversion. Requests regarding changes from a L&WCF funded facility to another otherwise eligible facility at the same site that significantly contravene the original plans for the area must be made in writing to the Regional Director. NPS approval must be obtained prior to the occurrence of the change. NPS approval is not necessarily required, however, for each and every facility use change. Rather, a project area should be viewed in the context of overall use and should be monitored in this context. A change from a baseball field to a football field, for example, would not require NPS approval. 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, however, require NPS review and approval. To assure that facility changes do not significantly contravene the original project agreement, NPS shall be notified by the State of all proposed changes in advance of their occurrence. A primary NPS consideration in the review of requests for changes in use will be the consistency

of the proposal with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with section 6(f)(3) of the L&WCF Act and paragraphs (a) through (c) of this section.

[51 FR 34184, Sept. 25, 1986, as amended at 52 FR 22747, June 15, 1987]

§ 59.4 Residency requirements.

(a) *Background.* Section 6(f)(8) of the L&WCF Act prohibits discrimination on the basis of residence, including preferential reservation or membership systems, except to the extent that reasonable differences in admission and other fees may be maintained on such basis. This prohibition applies to both regularly scheduled and special events. The general provisions regarding non-discrimination at sites assisted under Interior programs and, thereby, all other recreation facilities managed by a project sponsor, are covered in 43 CFR part 17 which implements the provisions of Title VI of the Civil Rights Act of 1964 for the Department.

(b) *Policy.* There shall be no discrimination for L&WCF assisted programs and services on the basis of residence, except in reasonable fee differentials. Post-completion compliance responsibilities of the recipient should continue to ensure that discrimination on the basis of residency is not occurring.

(c) *Fees.* Fees charged to nonresidents cannot exceed twice that 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. These provisions apply only to the approved 6(f)(3) areas applicable to the recipient. Nonresident



protecting
places that
matter



Understanding the Land and Water Conservation Fund:

stewardship



Protecting Places That Matter

Since 1964, the Land and Water Conservation Fund has been an active partner with states and communities in creating places that really matter: playgrounds alive with kids, well-used baseball diamonds and soccer fields, peaceful picnic areas, safe paths for walking and cycling, fast-paced basketball courts, popular beaches and pools, and scenic state parks.

But America's most productive conservation partnership does even more. The benefits of the Land and Water Conservation Fund extend beyond park and recreation facility construction and open space acquisition. The Fund also plays a major stewardship role, ensuring the integrity and recreational quality of Fund-assisted parks and conservation lands, now and for future generations.

Protecting Our Parklands Forever

Stewardship responsibility for Fund-assisted state and local parks and recreation facilities is shared by the Land and Water Conservation Fund's three partners: the National Park Service, the States and local project sponsors. Local sponsors are responsible for site stewardship, including public access, safety and other basic maintenance. States are responsible for site stewardship at state parks and for conducting periodic site visits and working with local partners to ensure that Land and Water Conservation Fund stewardship goals are met. The National Park Service is charged with overall responsibility for protecting the integrity and recreational value of all state and local parks, lakes, trails, beaches, and conservation lands assisted by the Fund.

The Fund's most important tool for ensuring long-term stewardship is its "conversion protection" requirement. Administered by the National Park Service in cooperation with states, this requirement, Section 6(f)(3) of the Land and Water Conservation Fund Act, strongly discourages casual discards and conversions of state and local park and recreation facilities to other uses.

SEC. 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 conversion only if he finds it to be in accord with the then existing 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.



promoting healthy communities since 1964

The Land and Water Conservation Fund is the premier state and federal partnership for community recreation and open space in the United States. Established by Congress in 1964 "...to strengthen the health and vitality of the citizens of the United States..." (Public Law 88-578), the Fund has successfully conserved several million acres of open space and has helped create state and local park and recreation facilities – approximately 39,000 funded projects – in virtually every county in the nation.



Understanding Conversion Protection

The Fund's conversion protection language is firm. It does recognize, however, that changes in land use or in the public's recreation preferences may render the recreational value of some Fund-assisted parks obsolete, especially in urban areas experiencing rapid change. At the same time, it carefully ensures that any changes or conversions from recreation use will bear an equivalent cost – a cost that guarantees that our nation's past investments in its treasured recreation and open space resources will be honored. Conversion protection is also comprehensive – even a relatively small grant (e.g., for development of a picnic shelter) can confer coverage to the larger park.

Within the context of the entire program, conversions to non-recreation uses are relatively rare. The National Park Service estimates that less than 3% of all projects assisted by the Fund have been submitted for conversion.

In many of the cases where state or local governments consider a possible conversion, the requirement to replace a site with property of "at least equal fair market value and of reasonably equivalent usefulness and location", combined with the required environmental review, serves as a simple and effective deterrent. Here is a typical example:

In the early 1990s, the City of Bellingham (WA) initiated planning for a new public art facility and considered the feasibility of using a portion of its Maritime Heritage Center, a Land and Water Conservation Fund-assisted park, as a potential site. The Maritime Heritage Center offers fishing access to Whatcom Creek, walking paths with interpretive displays on maritime and city history, picnicking areas, and views of Bellingham Bay. However, because of the site's anti-conversion protection, the city was encouraged to explore alternate sites and ultimately decided to build the art center at another downtown location.

Balancing Community Needs

Clearly, change is inevitable and sometimes – when all other alternatives have been carefully reviewed – conversions are deemed both necessary and desirable. Common factors contributing to a conversion are: mandated improvements to transportation (e.g., highway widenings) and water treatment facilities, changing demographics leading to obsolete recreation facilities, and negative impacts from adjacent land use. In addition, there are certain exceptions to the conversion restriction, such as the installation of an underground utility, where the change does not impact recreation use. Another possible exception (subject to concurrence by the National Park Service and the State) is the addition of a public facility which enhances and supports the site’s primary outdoor recreation use.

When conversions are approved, the goal is always a “win-win” solution, balancing the needs of recreation and open space with other community needs. However, like any local or regional issue involving a change to public facilities, conversions occasionally attract controversy. The conversion process (which is set forth in Title 36, Part 59.3 of the Code of Federal Regulations) includes a comprehensive review of key issues relating to recreation access and use, land valuation, and an assessment of its impact on the environment. The process takes time – from six months to more than a year depending on the complexity of the conversion and the replacement site – and is subject to concurrence by the State and the National Park Service. Approval is not automatic. However, successful conversions can be found in every State. Here are four representative examples:

South Main Park, Springfield, Tennessee

The City of Springfield wanted to convert three small urban parks and replace them with a single larger park that would better serve the recreation needs of the community. The parks – Indian Hills, 15th Avenue and Sleepy Hollow – were receiving limited use due to changing demographics in the areas they once served. The replacement site – South Main Park – provided a great opportunity to enhance recreation facilities. South Main Park – provided a great opportunity to enhance recreation facilities. South Main Park is not only larger and more conveniently located, it also has expansion potential.

Initially, city representatives expressed concern about the extensive review required by the conversion process. However, once they understood the principles underlying the Land and Water Conservation Fund's conversion protection, they engaged fully in the process, in cooperation with the State of Tennessee and the National Park Service.



Riverfront Park, Evansville, Indiana

Riverfront Park languished when an economic slump in the early 1990s significantly reduced commercial activity in downtown Evansville. In 1995 the City reached an agreement with a private corporation for use of half of Riverfront Park's 4 acres as the docking site for a casino boat and support facilities. With the City retaining ownership of the entire park, the private developer committed \$3.5 million to enhance public recreation facilities on the unaffected 2 acres, plus \$1 million annually for use of the park property. Park improvements include an amphitheater, boardwalks, river overlooks, and fishing access to the Ohio River.

The City also received 55 acres located in three growing neighborhoods that had long been sought as desirable additions to the park system. These replacement properties included an urban wetland, a greenspace located along the city's recreation trail, and new soccer fields.

Sand Creek Golf Course, Idaho Falls, Idaho

In the 1990's, population growth in the City of Idaho Falls exerted pressure for new housing in the neighborhood adjacent to the Sand Creek Golf Course, originally developed with an LWCF grant in 1972. A small portion of the park property adjacent to the golf course and protected by section 6(f) was needed before residential development could occur. The City proposed trading that parcel for two parcels owned by the private developer, one to be developed into a neighborhood park and the other for a pedestrian/bicycle path connecting to a major bike path network.

The golf course remains a viable recreation area large enough to sustain all previous activities, the city gained land for a new park and bike path in an area deficient of recreation opportunities, and new housing became available to residents of Idaho Falls. The solution was satisfactory to all interests.



Lone Pine Wildlife Area, Larimer County, Colorado

In 1978, the Lone Pine Wildlife Area was acquired with Land and Water Conservation Funding as critical wildlife habitat on the rapidly developing foothills of the Colorado Rocky Mountains. In 2000, a unique opportunity arose for the Colorado Division of Wildlife to acquire a private ranch which joined Lone Pine and a nearby wildlife area. In exchange for 320 acres within the Lone Pine Wildlife Area, the Division of Wildlife received title to a 720-acre ranch.

This land exchange resulted in the consolidation of over 15,700 acres of contiguous wildlife area, which contains Mountain Mahogany scrubland and riparian foothill habitats. The area provides wintering range for elk, deer, and bighorn sheep as well as critical habitat for the endangered Prebel's Meadow Jumping Mouse.

For more information about the Land and Water Conservation Fund or if you have specific concerns about threats to a park area that may be under the stewardship of the Land and Water Conservation Fund, please contact the state agency representative listed at www.nps.gov/lwcf. The states can help determine if federal or similar state protections apply. Additional information on the Land and Water Conservation Fund can be obtained from the National Park Service offices listed on this website.

The National Park Service also manages two other assistance programs with similar stewardship responsibilities and protections: the Federal Lands to Parks surplus property and Urban Park and Recreation recovery grant programs. Information on these and other recreation assistance programs can be found at www.nps.gov/ncrc.

The Land and Water Conservation Fund: an Active Partner with States and

communities



original logo



updated logo

A New Look: Land and Water Conservation Fund support is usually acknowledged by a sign displayed at the site, often accompanied by the Fund's old logo. In 2002, the logo was updated to celebrate the Fund's enduring federal, state and local partnership.