

SECTION 6(F) PROCESS

1. Purpose

This work instruction describes the process for ensuring that MDT project development activities include appropriate identification of recreational properties acquired or improved with funding assistance under the *Land and Water Conservation Fund Act* (16 USC 4601-4 et seq.) and, where projects may affect such properties, that appropriate steps are taken to comply with the requirements of 16 USC 4601-8(f)(3), commonly known as Section 6(f), and associated implementing regulations at 36 CFR 59, "Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities."

Section 6(f) provides that:

...No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], 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.

2. Scope

The process for identifying properties subject to Section 6(f) and for complying with Section 6(f) conversion requirements is administered by the Project Development Engineers (PDE) of the MDT Environmental Services Bureau (ESB), in coordination with the MDT Preconstruction Project Managers (PM), Design Team (DT), MDT Right-of-Way Bureau (RW), Montana Department of Fish, Wildlife and Parks (FWP) and other entities that own and/or manage properties subject to Section 6(f).

The process begins with the Preliminary Field Review and is completed either with avoidance of any conversion of land from properties subject to Section 6(f) or with any proposed conversion of Section 6(f) property and substitution of replacement land accurately described in the construction plan documents at the Plan-in-Hand Review. Approval of any conversion or substitute Section 6(f) property is obtained from the National Park Service. Coordination of NEPA/Section 6(f)/Section 4(f) processes is continual throughout the completion of project environmental documentation.

3. Process

[Figure 1](#) presents a flowchart that illustrates the MDT process for ensuring compliance with the requirements of Section 6(f). Following the Figure is a description of each process task included within the flowchart.

Section 6(f) Process

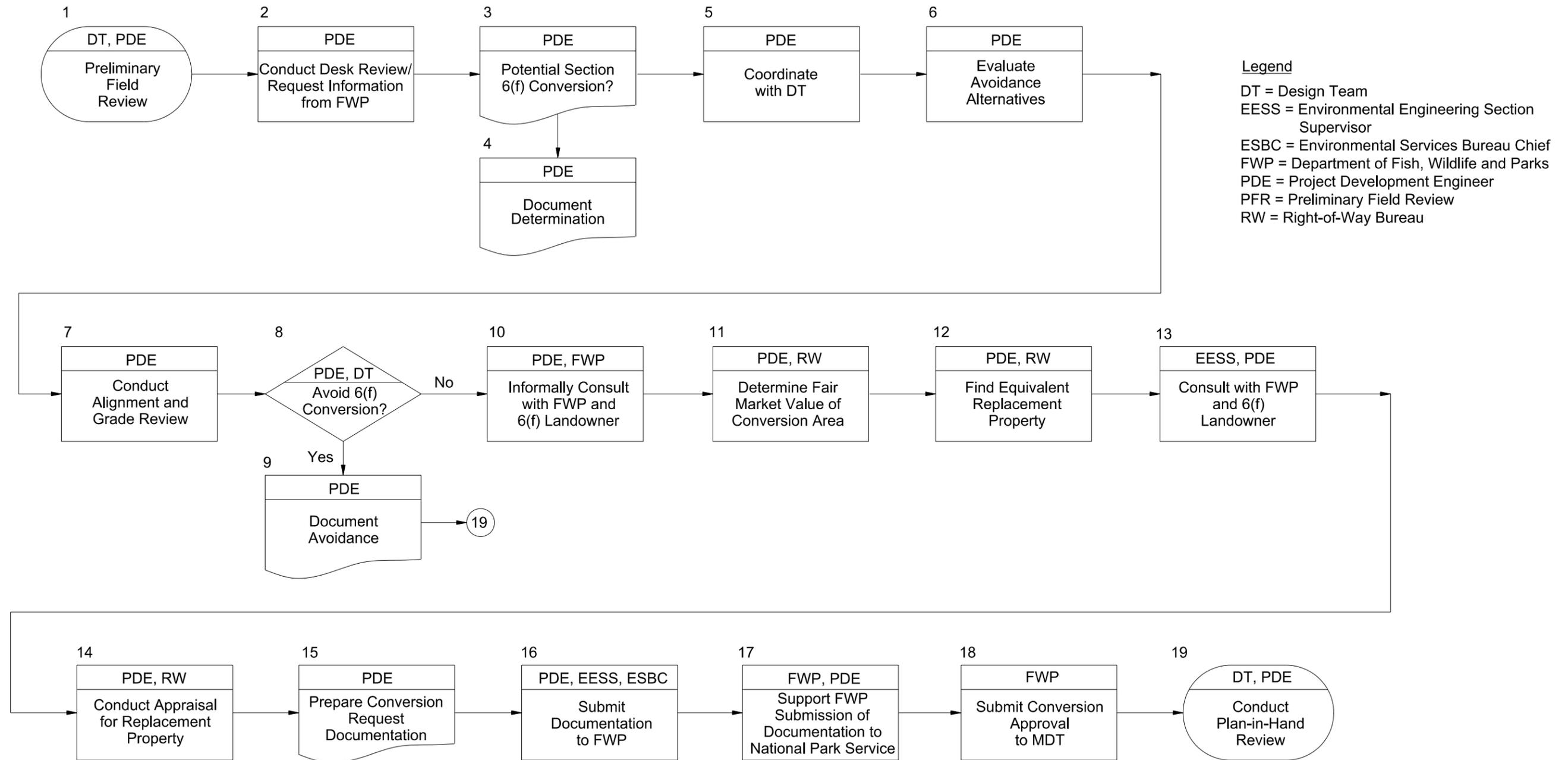


Figure 1 — SECTION 6(F) PROCESS

PROCESS TASK

Task Title: Preliminary Field Review

Task No.: 1

Task Description

The Preliminary Field Review (PFR) is the initial step that begins the Section 6(f) Process for a proposed project. The PFR includes preliminary evaluation of the scope of work and the potential for social, economic and environmental impacts. The Design Team (DT) ensures that the appropriate PDE in ESB and other appropriate MDT personnel are notified and invited to participate in the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance.

Prior to the PFR, the PDE obtains and reviews information (e.g., maps, plats) for the project area to identify parks or other publicly owned lands that could involve use of Land and Water Conservation Fund (LWCF) monies that would make them subject to Section 6(f). The PDE participates in the PFR for Section 6(f) compliance purposes to identify and ensure consideration of all lands purchased or improved with LWCF funds within the project area.

Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the field review, including potential impacts to sites potentially subject to Section 6(f). The DT distributes the final PFR Report for review and comment. Within ESB the PDE serves as the document champion to collect and coordinate comments from the other sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief (ESBC).

Regulations and Guidance

MDT Road Design Manual, Chapter One, "Road Design Process"

PROCESS TASK

Task Title: Conduct Desk Review/Request Information from FWP

Task No.: 2

Task Description

Following the PFR, the PDE reviews the list maintained by the FWP of Section 6(f) sites by county. This list is available on the FWP website. The PDE makes a preliminary evaluation of the presence of Section 6(f) properties in the project area.

The PDE prepares a letter to the LWCF Program Liaison at FWP. The letter includes current information on Section 6(f) sites in the project area obtained from the list of Section 6(f) sites by county. The letter requests confirmation from FWP whether or not this information reflects all current Section 6(f) sites in the affected area and asks FWP to provide location and description information for these and any additional sites. The letter also requests confirmation from FWP on the extent that the site is encumbered by the LWCF participation and subject to Section 6(f) requirements.

If maps or other documentation indicating the extent of LWCF encumbrance for a particular site is not available from FWP, the PDE may prepare a letter to the entity or entities responsible for ownership and/or management of the site to request any available information they may have that would address the extent of LWCF encumbrance for the site.

In the absence of specific information confirming the extent of LWCF encumbrance, the PDE presumes the entire site is encumbered and, therefore, subject to Section 6(f).

PROCESS TASK

Task Title: Potential Section 6(f) Conversion?

Task No.: 3

Task Description

After completion of the desk review and receipt of information in response to the request for information from FWP, the PDE reviews the project to determine the potential for conversion of Section 6(f) properties.

If the project has no potential for any conversion of Section 6(f) properties, the PDE proceeds to [Task 4](#).

If the project has potential for conversion of Section 6(f) properties, the PDE proceeds to [Task 5](#).

Regulations and Guidance

36 CFR 59.1 "Applicability"

PROCESS TASK

Task Title: Document Determination

Task No.: 4

Task Description

If the PDE determines the project has no potential for any conversion of Section 6(f) properties, the PDE documents the basis for this determination in the project files and provides a copy of the documentation to the DT.

PROCESS TASK

Task Title: Coordinate with Design Team

Task No.: 5

Task Description

After receiving responses to the letters sent in [Task 2](#), the PDE communicates in writing to the DT the location, size, ownership and extent of LWCF encumbrance for each Section 6(f) site in the project area.

The information in the memorandum prepared for the DT may be incorporated into the environmental documentation if there are no 6(f) impacts.

PROCESS TASK

Task Title: Evaluate Avoidance Alternatives

Task No.: 6

Task Description

As the project proceeds, the PDE coordinates with the DT in identifying and evaluating potential reasonable and feasible alternatives for avoiding or minimizing conversion of Section 6(f) sites. To the extent practical, avoidance and minimization alternatives for the Section 6(f) properties are incorporated into the preliminary alignments and grades established for study purposes.

PROCESS TASK

Task Title: Conduct Alignment and Grade Review

Task No.: 7

Task Description

When the DT completes preparation of preliminary plans for the proposed project, the DT coordinates with appropriate MDT personnel to schedule an Alignment and Grade Review (AGR). The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance.

The AGR involves establishing the horizontal and vertical alignments. The AGR should address key design issues, including means to minimize harm to Section 6(f) properties. The AGR process entails extensive coordination among the DT, including the PDE.

After incorporating changes from the AGR in the design, the DT prepares the AGR Report documenting the issues discussed during the field review, including Section 6(f) aspects, as applicable, and incorporates any necessary changes into the design. The DT distributes the final AGR Report for review and comment. Within ESB the PDE serves as the document champion to collect and coordinate comments from the other sections. The PDE compiles the comments into an AGR review memorandum for signature by the ESBC.

Regulations and Guidance

MDT Road Design Manual, Chapter One, "Road Design Process"
36 CFR 59.3 "Conversion Requirements"

PROCESS TASK

Task Title: Avoid Section 6(f) Conversion?

Task No.: 8

Task Description

After completion of the AGR, the PDE confers with the DT to determine if the alignment and grade for the project can be configured to avoid conversion of Section 6(f) property.

If Section 6(f) property is avoided, the PDE proceeds to [Task 9](#).

If the alignment and grade cannot avoid conversion of Section 6(f) property, the PDE coordinates with the DT to minimize the unavoidable conversion to the extent practical and proceeds to [Task 10](#).

PROCESS TASK

Task Title: Document Avoidance

Task No.: 9

Task Description

The PDE documents, in the project files as part of the environmental commitments for the project, that conversion of Section 6(f) property has been avoided. The DT documents avoidance in subsequent project reports. The PDE proceeds to [Task 19](#).

PROCESS TASK

Task Title: Informally Consult with FWP and 6(f) Landowner

Task No.: 10

Task Description

The PDE initiates informal consultation with the FWP LWCF Program Liaison and the entity or entities responsible for ownership and/or management of the Section 6(f) property. The purpose of the consultation is to:

- seek buy-in and/or input regarding the alternatives to minimize conversion,
- determine recreational needs that are being fulfilled by the existing facilities,
- determine the types of recreation resources and opportunities available on the portion of the Section 6(f) property proposed for conversion,
- evaluate the recreational viability of the unconverted Section 6(f) property, and
- discuss possible replacement property.

The PDE documents, for the file, the information received during this informal consultation and communicates the necessary information in writing to the DT.

Regulations and Guidance

36 CFR 59.3 “Conversion Requirements”

PROCESS TASK

Task Title: Determine Fair Market Value of Conversion Area

Task No.: 11

Task Description

After informally consulting with the FWP and the owner(s) and/or manager(s) of the Section 6(f) property, the PDE coordinates with RW to request a determination of the fair market value of the portion of Section 6(f) property proposed for conversion. This fair market value determination must meet the requirements of the *Uniform Appraisal Standards for Federal Land Acquisitions*. The determination of the fair market value requires coordination between RW, the PDE, the FWP LWCF Program Liaison and the entities responsible for ownership and/or management.

Upon completion of the fair market value appraisal for the Section 6(f) property proposed for conversion, RW provides the appraisal information to the PDE.

If identified at this stage, RW completes the appraisal of both the conversion property and replacement property.

Regulations and Guidance

Montana Right-of-Way Operations Manual
Uniform Appraisal Standards for Federal Land Acquisitions
36 CFR 59.3 "Conversion Requirements"

PROCESS TASK

Task Title: Find Equivalent Replacement Property

Task No.: 12

Task Description

Upon receipt of the fair market value information for Section 6(f) property proposed for conversion, the PDE coordinates with RW to identify replacement property that satisfies the provisions of 36 CFR 59.3 "Conversion Requirements," including the possibility of using the MDT Section 6(f) bank.

In accordance with Part 59.3, property proposed for replacement of the Section 6(f) land to be converted must meet the following criteria:

- The property proposed for substitution must be of at least equal fair market value as established by an approved appraisal prepared in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions*.*
- The property proposed for substitution must be of reasonably equivalent usefulness and location as that to be converted.
- The property proposed for substitution must meet the eligibility requirements for LWCF substitution; i.e., the replacement property must constitute or be part of a viable recreation area.

* *RW typically will not perform formal appraisals as a part of the preliminary identification of potential replacement properties. Formal appraisals generally are performed after informal consultation has been carried out with FWP and the Section 6(f) property owner(s)/manager(s) to obtain their views on the suitability of the potential replacement properties identified by MDT, other potential replacement properties they may recommend and the effects of the proposed conversion on the remaining, unconverted portions of the affected Section 6(f) properties; see [Task 13](#).*

Regulations and Guidance

36 CFR 59.3 "Conversion Requirements"

PROCESS TASK

Task Title: Consult with FWP and 6(f) Landowner

Task No.: 13

Task Description

After the PDE and RW have identified potentially suitable replacement properties for Section 6(f) land to be converted, the PDE, through the Environmental Engineering Section Supervisor (EESS), continues consultation with the FWP LWCF Program Liaison and owner(s) and/or manager(s) of the Section 6(f) property proposed for conversion. The purpose of the consultation is to:

- determine if the mitigation proposal is consistent with the existing Statewide Comprehensive Outdoor Recreation Plan;
- determine if the proposed replacement property meets the requirements of 36 CFR 59.3;
- determine if there is a need to adhere to State intergovernmental clearinghouse procedures for the proposed conversion and substitution, in accordance with 36 CFR 59.3(b)(8);
- identify alternative potential replacement properties they would recommend that would satisfy the requirements of 36 CFR 59.3, if the proposed replacement property is not acceptable; and
- review with FWP the proposed list of deliverables for the conversion request documentation in an effort to ensure the initial submittal contains the required information.

In addition to input obtained through the consultation, the proposed Section 6(f) property conversion and potential replacement property aspects may be included in public involvement activities for the proposed project to afford interested and affected parties opportunity to provide their input. The PDE documents and considers those comments in subsequent Section 6(f) compliance actions.

Regulations and Guidance

36 CFR 59.3 "Conversion Requirements"

Land and Water Conservation Fund State Assistance Program, Federal Financial Assistance Manual, Volume 69, October 1, 2008

PROCESS TASK

Task Title: Conduct Appraisal for Replacement Property

Task No.: 14

Task Description

After completion of the consultation process and identification of the preferred replacement property for proposed Section 6(f) land conversion, the PDE provides information to RW identifying the property and requests RW to establish the fair market value of the property by an approved appraisal that meets the requirements of the *Uniform Appraisal Standards for Federal Land Acquisitions*.

Upon completion of the appraisal, RW provides the PDE an approved Appraisal Report that indicates the fair market value of the proposed replacement property.

Regulations and Guidance

Montana Right-of-Way Operations Manual

PROCESS TASK

Task Title: Prepare Conversion Request Documentation

Task No.: 15

Task Description

The PDE prepares the necessary documentation for submittal to the FWP LWCF Program Liaison to request conversion of Section 6(f) property. The documentation includes information on the following items:

- the analysis of alternatives to avoid and minimize the proposed conversion;
- the fair market value of the property proposed to be converted and the fair market value of the property proposed for substitution (i.e., Determination of Value Document);
- the location of the property to be converted and the property proposed for substitution;
- the recreation needs being fulfilled by the facilities that exist and the types of recreation resources and opportunities available on the property to be converted;
- the magnitude and impact to the user community of recreation needs that will be met by the property proposed for substitution;
- verification that the property proposed for substitution meets the requirements of 36 CFR 59.3(b)(4) concerning eligibility for LWCF assisted acquisition, constituting or being part of a viable recreation area, and criteria for allowable use of publicly owned land for substitution purposes;
- for properties that will be partially converted, information on the effect of the proposed conversion on the remaining portions of the property;
- verification that all necessary coordination with other Federal agencies has been satisfactorily completed (e.g., compliance with Section 4(f)); and
- other information requested by FWP.

Regulations and Guidance

36 CFR 59.3 "Conversion Requirements"

PROCESS TASK

Task Title: Submit Documentation to FWP

Task No.: 16

Task Description

The PDE prepares a cover letter for the conversion request documentation. Generally, the EESS reviews the packet before submittal to the ESBC for approval and signature. The cover letter transmits the Section 6(f) property conversion request documentation to the FWP LWCF Program Liaison. The cover letter includes a request for submittal of the documentation to the Director of the Intermountain Region of the National Park Service (NPS) offices in Denver, Colorado and a formal request for NPS approval of the proposed Section 6(f) land conversion.

PROCESS TASK

Task Title: Support FWP Submission of Documentation to National Park Service

Task No.: 17

Task Description

The PDE coordinates with FWP to accomplish edits or addition of information to ensure the completeness and accuracy of the conversion request documents.

The PDE provides information to enable the FWP to verify that State intergovernmental clearinghouse review procedures have been adhered to if the proposed conversion and substitution constitute substantial changes to the original Section 6(f) project. The PDE also provides information to enable the FWP to verify that the proposed conversion and substitution are in accordance with the Statewide Comprehensive Outdoor Recreation Plan and/or equivalent recreation plans. The PDE assists the FWP in completing and documenting an environmental evaluation for the proposed Section 6(f) land conversion and substitution.

When the FWP LWCF Program Liaison determines that the conversion request documentation package is complete and accurate, the environmental evaluation is complete and needed verifications have been made, the FWP LWCF Program Liaison submits the information in writing to the Director of the Intermountain Region of the NPS along with the conversion approval request from MDT. The PDE maintains contact with the FWP LWCF Program Liaison to monitor progress on processing of the conversion request, assist in resolving issues that may arise and confirm completion of key steps in the process.

PROCESS TASK

Task Title: Submit Conversion Approval to MDT

Task No.: 18

Task Description

During the conversion approval process (see below), the PDE continues coordination with FWP and provides additional support documentation, as necessary.

When the approval process is complete, the ESBC passes the NPS approval documentation through the EESS to the PDE. The PDE provides a copy of the NPS approval documentation to the DT and RW along with a copy of the final conversion approval request documentation package.

Conversion Approval Process

The NPS Intermountain Regional Office conducts its review of the conversion approval request submittal to ensure that the proposed Section 6(f) land conversion and substitution land comply with all requirements of 36 CFR 59.3. NPS Regional Office staff may coordinate with the FWP LWCF Program Liaison to address any questions or need for additional information during its review.

When satisfied that the proposed conversion and substitution comply with the requirements of 36 CFR 59.3, the NPS Regional Director provides written approval of the proposed conversion and substitution land to the FWP LWCF Program Liaison.

The FWP LWCF Program Liaison transmits the NPS approval documentation to the ESBC.

PROCESS TASK

Task Title: Conduct Plan-in-Hand Review

Task No.: 19

Task Description

After all design changes are incorporated to the extent practicable, the DT prepares the preliminary detailed design plans for the project. The DT distributes the preliminary detailed design plan package and invites participation in a Plan-in-Hand (PIH) Review of the project. The PDE either participates in or provides written comments for the PIH Review to ensure that Section 6(f) properties are avoided and/or that conditions of the approved conversion request are satisfied. The DT documents the findings and all other comments received during the PIH review in the PIH Report and distributes the final PIH Report to participants for review and comment. Within ESB the PDE serves as the document champion to collect and coordinate comments from the other sections. The PDE compiles the comments into a PIH review memorandum for signature by the ESBC. The DT uses the recommendations contained in the PIH Report to revise the plans, special provisions and cost estimate.

