

**Subpart F. FINANCIAL AND TECHNICAL ASSISTANCE**

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**CHAPTER 61. LAND AND WATER CONSERVATION FUND—STATEMENT OF POLICY**

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**Source**

The provisions of this Chapter 61 adopted October 28, 1988, effective October 29, 1988, 18 Pa.B. 4871; renumbered from 16 Pa. Code Chapter 5, Subchapter E, June 7, 1996, effective June 8, 1996, 26 Pa.B. 2707, unless otherwise noted. Immediately preceding text appears at serial pages (129586) to (129598).

**OPEN PROJECT SELECTION PROCESS****§ 61.1. Policy objectives.**

(a) The Open Project Selection Process (OPSP) has been designed in accordance with National Parks Service (NPS) requirements in Chapter 660.4 of the Land and Water Conservation Fund (LWCF) Grants Manual, available from the NPS.

(b) The goals of the OPSP are as follows:

(1) To provide for public knowledge of, and participation in, the formulation and application of the project selection process utilized by the Commonwealth and the Department in allocating LWCF funds to the Commonwealth's local governments.

(2) To ensure that potential local applicants are aware of the availability of, and the process for, obtaining LWCF grant funds, and provide opportunities for eligible agencies to submit project applications and have them considered on an equitable basis.

(3) To provide a measurable link, through published selection criteria, to the specific outdoor recreation needs and priorities identified in the Statewide Recreation Plan and the Annual Action Plan programs associated with the Statewide Recreation Plan.

(4) To assure that the distribution of LWCF assistance is accomplished in a nondiscriminatory manner, especially with regard to minority populations, the elderly and handicapped, and to ensure a fair and equitable evaluation of requests for LWCF fund assistance.

**§ 61.2. Division of LWCF apportionment among State agencies.**

(a) The initial step in the open project selection process begins with the allocation of the Commonwealth's annual Land and Water Conservation Fund (LWCF) Program apportionment among the following State agencies responsible for administering the program funds:

- (1) The Department.
- (2) The Fish and Boat Commission.
- (3) The Game Commission.
- (4) The Historical and Museum Commission.

(b) When the amount of the apportionment is made known by the Department of Interior, the staff of the agencies listed in subsection (a) negotiate a split of the funds that is presented to the State Liaison Officer—the Secretary of the Department—for recommendation to the Governor in the form of a Certificate of Approval for Allocation of Federal LWCF funds. Concurrent with this negotiation and recommendation process is the release of the official Certificate of Apportionment to the Governor by the Department of Interior. The signing of the Certificate of Approval by the Governor finalizes the split of the funds between the State agencies and establishes their allocations for the year.

**§ 61.3. Department allocation—funding plan/conditions.***(a) Funding plan.*

(1) When the Department's overall Land and Water Conservation Fund (LWCF) allocation is established, a budget is developed for both the regional and central offices. A central office reservation of up to 20% is taken off the top for State or Department initiatives related to the Statewide Recreation Plan and for the Department's administrative costs. The remaining funds are divided on a 75/25 ratio between the regional and central offices. The portion each regional office receives of the 75% is determined by a formula based upon the following:

(i) Fifty-two percent based on each region's percentage of the State's total population.

(ii) Forty-eight percent equally budgeted to each of the Department regional offices.

(2) LWCF funds secured by the Department through the reapportionment account process may, at the discretion of the Department, be incorporated into the annual allocation and budget of the funding plan if the Department determines the amount of the reapportionment funds and the timing of their receipt to be appropriate for that action.

*(b) Funding conditions.*

(1) Annual allocation amounts will be targeted to fund the following categories of projects:

(i) A minimum of 50% of the annual allocation will be used to fund development/rehabilitation projects.

(ii) A maximum of 50% of the annual allocation may be used to fund acquisition projects.

(2) The Department reserves the right to retain the funds in the central office and use them for one Statewide competition for funding if, as determined by the Department, the amount of funding received from NPS is insufficient to warrant regional allocations.

(3) The Department reserves the right to set minimum and maximum grant amounts.

(4) The Department reserves the right to negotiate with applicants for a reduction of their requested grant amount, if the reduction will facilitate the selection of their project or other applicants' projects for funding consideration.

**Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests); 17 Pa. Code § 61.6 (relating to regional office selection of candidates for funding); 17 Pa. Code § 61.7 (relating to central office selection of candidates for funding); 17 Pa. Code § 61.8 (relating to substitute selections); and 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.4. Program announcement/open application period.**

Local government requests for Land and Water Conservation Fund Program funds are solicited during an open application period that is annually announced by the Department. The announcement is published in the *Pennsylvania Bulletin* and includes an explanation of the program, instructions for applying, and the deadline for submitting applications. The Department reserves the right to waive announcement of an open application period when its annual allocation is less than \$1 million. Refer to § 61.10 (relating to special conditions).

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.5. Regional office review, rating and ranking of funding requests.**

(a) Local government requests for grant funding received during the established open application period are preliminarily reviewed in the regional offices for completeness and eligibility. The Department may grant a grace period for applicants to complete funding requests that are found to be incomplete. Ineligible and late requests are disqualified for selection consideration and returned to the applicants.

(b) Eligible requests are then initially rated in the regional offices based on the rating criteria and point system set forth in §§ 61.21—61.28. The regional office ratings are checked by central office staff for accuracy and to ensure consistency and uniformity of the ratings on a Statewide basis. The initial ratings of the regional offices are subject to adjustment to ensure this Statewide consistency and uniformity. Final ratings and total point scores are tabulated and ranked from high point score to low point score for each of the two categories of projects—development/rehabilitation and acquisition—identified in the funding conditions set forth in § 61.3(b)(1) (relating to Department allocation—funding plan conditions).

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.6. Regional office selection of candidates for funding.**

(a) Regional offices select candidates for funding from their final ranking tabulation, selecting those projects with the highest point score in each category of project—development/rehabilitation and acquisition. The number of projects selected as candidates for funding will depend on the budget amount established for each region in accordance with the funding plan set forth in § 61.3(a) (relating to Department allocation—funding plan/conditions), and the amount established for each category of projects in accordance with the funding conditions in § 61.3(b)(1). No project with a total rating score below 25 points will be selected in the regional office.

(b) Funding requests not selected by the regional offices, including those with a point score below 25, will be forwarded to the central office to again compete for selection on a Statewide basis from the 25% central office budget reservation. Ties that result in the need to make a decision between two or more projects for funding selection in the regional office will also be forwarded to the central office for determination of which requests will be selected as a candidate for funding.

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.7. Central office selection of candidates for funding.**

Using the final rankings and point score tabulations compiled by the regional offices, the central office makes selections of candidates for funding from the requests that were not selected in the regional offices. The selections are made on a Statewide competitive basis with the highest ranked requests being selected in the two categories of project types—development/rehabilitation and acquisition. The number of central office selections is dependent upon the amount of the central office budget established in accordance with the Funding Plan and the budget amount for each category of projects as outlined in § 61.3 (relating to Department allocation—funding plan/conditions).

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.8. Substitute selections.**

(a) The central office may also select projects as substitute candidates for funding to take the place of selected candidates that elect to drop their funding reservation before final grant approval is received from the National Park Service (NPS), or are unable to comply with the NPS and Department application requirements and procedures to obtain final NPS grant approval in a timely manner. Substitute candidates may be selected for funding consideration from grant funds made available to the Department through the reapportionment account process, if the reapportionment funds are not incorporated into the annual allocation and budget of the funding plan. Refer to § 61.3(a)(2) (relating to Department allocation—funding plan/conditions).

(b) The projects selected as substitute candidates will be the highest ranked requests of the ones remaining after the regional and central office selections have been made. The number of substitute candidates is not fixed, but will vary from year to year depending on the allocation received and the number of requests selected as candidates for funding.

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.9. Notification of OPSP selection decisions.**

An applicant will be notified in writing of the Department's final Open Project Selection Process decisions. Selected and substitute candidates are notified of the grant funds reserved for their projects, and are provided instructions to proceed to the next step in the application process for obtaining final approval of the grant funds from the National Park Service.

**Cross References**

This section cited in 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.10. Special conditions.**

(a) *Amendments.* Amendments to approved grant projects for time extensions, minor scope or grant fund revisions, and the recouping of administrative reimbursement are not subject to the Open Project Selection Process (OPSP) review system. In those cases involving a major scope or grant fund revision, or both, the amendment proposal will be evaluated by the central office in accordance with the rating criteria to establish a new rating score. The central office will be responsible for making a determination of whether an amendment is minor or major in nature.

(1) An amendment not involving a major grant fund increase will be submitted to the National Park Service for approval, if the new rating score is equal to or greater than the rating score of the lowest ranked project funded in the same category—development/rehabilitation or acquisition—for the OPSP period of the original evaluation and funding.

(2) An amendment involving a major grant fund increase will be considered in one of the following manners:

(i) If funds are available for the requested increase, the amendment will be submitted to NPS for approval if the new rating score is equal to or greater than the rating score of the lowest ranked project funded in the same category—development/rehabilitation or acquisition—for the most recent OPSP period.

(ii) If funds are not available for the requested increase, the proposal will be held for rating and ranking under the next OPSP period.

(b) *Staged projects.* A project may be accomplished in stages. Because the funding and approval of subsequent stages is not assured, each stage of the project shall be self-sustaining and without reliance on future stages. Since each stage is considered a separate identifiable project, each stage shall compete for funding through the OPSP being conducted at the time funding assistance is being sought.

(c) *Waiver of regional office involvement in the selection process.* If the Department elects to retain all funds in the central office for a Statewide competition, § 61.6 (relating to regional office selection of candidates for funding) is waived and the central office will make the selection of candidates for funding

under § 61.7 (relating to central office selection of candidates for funding). Refer to § 61.3(b)(2) (relating to Department allocation—funding plan/conditions).

(d) *Waiver of program announcement/open application period.* If the Department's annual allocation is less than \$1 million, the Department reserves the right to waive announcement of the open application period under § 61.4 (relating to program announcement/open application period) and to administer the funds in a more cost beneficial and economically efficient manner. If this waiver right is exercised, §§ 61.3 and 61.5—61.9 are also waived. Under this waiver option, the Department's allocation may be used, at the Department's sole discretion, to fund one or more categories of projects including, but not limited to:

- (1) Selected substitute projects from an OPSP or similar process administered by the Department for other recreation grant programs.
- (2) Selected substitute projects from an OPSP administered by the Department for a prior allocation of Land and Water Conservation Fund (LWCF) Program funds.
- (3) Amendments for increases to LWCF grant amounts for projects approved from an OPSP administered by the Department for a prior allocation of LWCF Program funds.
- (4) Projects that address emergency situations or unique opportunities, or both, are innovative in nature, or help meet special Departmental/Commonwealth priorities subject to the following conditions:
  - (i) LWCF Program funds for this category do not exceed 20% of the Department's allocation.
  - (ii) The projects being funded receive a ranking score of at least 20 total points, excluding the socio-economic criterion in § 61.25 (relating to socio-economic criterion).
- (5) Special projects, initiatives or studies related to the implementation of the Statewide Comprehensive Outdoor Recreation Plan.
- (6) Department administrative costs related to the LWCF Program.
- (7) A combination of the categories of projects in paragraphs (1)—(6).

#### Cross References

This section cited in 17 Pa. Code § 61.4 (relating to program announcement/open application period).

### FUNDING REQUEST RATING CRITERIA

#### § 61.21. General recreation needs.

- (a) Points: 0, 1, 3, 5, 7, 9.
- (b) The funding request will be evaluated on how it meets the general recreation needs of a neighborhood, community or region. Factors that will be analyzed include:

- (1) Consistency of the proposed project with priorities identified in local, regional, State or Federal published plans or feasibility studies, or both.
- (2) Statistics documenting the need for the proposed project based on surveys, petitions, public hearings, State or national standards and the like.
- (3) Number, size, condition and location of existing park and recreation areas and facilities with the service area of the proposed project, and how the proposed project will complement, supplement or duplicate the existing areas and facilities.
- (4) Impact of project on addressing the recreation needs of age groups not adequately being served.
- (5) Emphasis on projects that maximize utilization of existing park and recreation areas and facilities.
- (6) Accessibility and proximity of proposed project to densely populated or rapid growth area of the neighborhood, community or region.

#### Cross References

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

### § 61.22. Special recreation needs.

- (a) Points: 0, 1, 3, 5, 7.
- (b) The funding request will be evaluated on how it meets special recreation needs of a neighborhood, community or region. The primary factor to be analyzed will be how the project meets the recreation needs of special population groups, such as minority, low income, elderly and handicapped/disabled.
- (c) Other factors that will be considered are:
  - (1) How the project will help to alleviate existing liability, safety and health hazards.
  - (2) Projects which demonstrate or introduce an innovative concept, technique, approach or method.
  - (3) Projects that will enhance river-based recreation opportunities by providing direct public access to rivers through the acquisition, rehabilitation or development of areas and facilities for active and passive recreation use along the Commonwealth's major water arteries.
  - (4) Projects that will support or enhance local efforts or initiatives to preserve wetland areas.

#### Cross References

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

### § 61.23. Community conservation.

- (a) Points: 0, 1, 4, 7.



(b) The funding request will be evaluated on how it will contribute to the community conservation efforts within a neighborhood, community or region. Greater value will be placed on those projects that protect unique natural areas or support or complement facilities and sites of significant historical, heritage or cultural value at the local, State or Federal level. Factors that will be analyzed include:

(1) How the project will preserve or protect environmentally sensitive areas of special interest, such as wetlands, floodplains, greenways, natural landmarks and the like, and areas that support endangered species of plant or animal life.

(2) How the project will support or complement facilities and sites of significant historical value. Actual restoration or preservation of historic structures is not eligible for Land and Water Conservation Fund (LWCF) funding, but outdoor recreation and support facilities may be located on historic sites or in conjunction with historic structures.

(3) How the project will help to promote the concept of heritage parks by supporting or complementing the overall efforts of a community to preserve the unique heritage, character and features of the community, and to establish a sense of community pride, image and awareness through interpretation, education and promotion of the unique heritage aspect.

(4) How the project will promote or enhance the cultural environment of a neighborhood, community or region by providing general public recreation areas or facilities that will also create special recreation opportunities or pursuits for ethnic groups.

(5) How the project will promote or enhance the cultural environment of a neighborhood, community or region by providing general public recreation areas or facilities that will also provide special recreation opportunities for participation in the arts. Areas and facilities designed primarily for semi-professional or professional arts are not eligible for LWCF funding.

(6) What impact the project will have on improving the quality of life within a neighborhood, community or region.

#### Cross References

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

#### § 61.24. Community economic revitalization.

(a) Points: 0, 1, 4, 7.

(b) The funding request will be evaluated on how it contributes to the enhancement or stimulation of comprehensive economic revitalization efforts of a neighborhood, community or region. Factors to be analyzed will include:

(1) Number of employment opportunities, both temporary and permanent, that will be created by the proposed project.

- (2) Potential for the generation of revenue producing facilities by the proposed project.
- (3) Enhancement of tourism opportunities created by the proposed project.
- (4) Enhancement or creation of public/private partnerships through the proposed project.
- (5) Impact of the proposed project on central business district and downtown revitalization efforts.
- (6) Coordination of proposed project with other State or Federally funded plans or projects for economic revitalization—for example, the Department's Enterprise Zone Program, Main Street Program and the like.
- (7) Impact the project will have on small business activity of either the local area or the Commonwealth.
- (8) Impact the project will have on enhancing the livability of a community or region to retain and attract business and industry.

**Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

**§ 61.25. Socio-economic criterion.**

- (a) Points: 1, 3, 5.
- (b) The per capita income and population density of the applicant will be determined by the Department on the basis of published Statewide statistics. An applicant having a lower per capita income and higher population density will receive a higher rating. A high (5 points), medium (3 points) or low (1 point) rating will be assigned to each applicant's combined total per capita income and population density relative to other eligible applicants.

**Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests); and 17 Pa. Code § 61.10 (relating to special conditions).

**§ 61.26. Administrative capability.**

- (a) Points: 0, 1, 3, 5.
- (b) The capability of an applicant to efficiently complete a project and then to adequately maintain and program its park and recreation system will be analyzed on a below average (1 point), average (3 points) or above average (5 points) basis. Factors which will be considered in this analysis are:
  - (1) The quality of maintenance of the applicant's park system.
  - (2) The quality and quantity of programming.
  - (3) The overall administration of park and recreation services, including organization, financing and staffing.
  - (4) Past administrative performance on previously funded projects using Federal or State assistance.

(c) The Department reserves the right to assign a ranking of 0 points in this criterion, or eliminate the applicant from funding consideration altogether, based on the following factors:

- (1) An applicant's poor administrative performance on current grant projects.
- (2) Unresolved post-completion site inspection problems.
- (3) Poor maintenance of previously-funded facilities and areas.
- (4) Unresolved conversions or use problems related to previously-funded recreation and park facilities and areas.

(d) If the applicant is to be eliminated from funding consideration based upon the factors in subsection (c), a notification of the potential for elimination shall have been recorded with the applicant in writing by the Department prior to the program announcement/open application period. Once a decision is made not to fund an applicant in a given year or funding cycle, the Department will reconsider the applicant's eligibility for funding in the next funding cycle, if the applicant in question documents and demonstrates an organized, concerted effort to correct the problems which led to the denial of funding.

#### **Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

### **§ 61.27. Intergovernmental cooperation.**

(a) Points: 0, 1, 2, 3.

(b) A funding request which involves a formally documented intergovernmental cooperative effort to provide park and recreation facilities and programs will receive 1 to 3 points, depending on the level of the cooperative effort involved. Documentation verifying the cooperation will include the identification of the participating municipalities or school districts, or both; copies of written cooperative agreements executed between the participating municipalities/school districts; and evidence confirming commitments of money to the effort by the participating municipalities/school districts, including financial support for ongoing operation, maintenance, programming and administration. A funding request involving no intergovernmental cooperation will receive 0 points.

#### **Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

### **§ 61.28. Private support to project.**

(a) Points: 0, 1, 2, 3.

(b) A funding request which includes a firm written commitment of private financial support to the project will receive 1 to 3 points depending on the level of the commitment in accordance with the following parameters:

- (1) If the private commitment is at least 1%, but less than 6% of the total project cost = 1 point.
- (2) If the private commitment is at least 6%, but less than 11% of the total project cost = 2 points.
- (3) If the private commitment is 11% or greater of the total project cost = 3 points.
- (c) A funding request involving less than 1% of private support to the total project will receive 0 points.

**Cross References**

This section cited in 17 Pa. Code § 61.5 (relating to regional office review, rating and ranking of funding requests).

**§ 61.29. Zero rating.**

If information and documentation provided for a criterion is determined to be nonapplicable, incorrect or inadequate, a zero rating may be assigned to that criterion.