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# INTRODUCTION

## I. REQUIREMENTS & GUIDELINES

The following is an outline of the key requirements for participation in the Program Open Space grant process through the Department of Natural Resources and Maryland Department of Planning, listed in order of the manual chapters. These requirements are more fully discussed in each chapter of the manual, as referred to in the outline below.

Hereinafter, Program Open Space will be referred to as "POS," the Department of Natural Resources as "DNR" and the Maryland Department of Planning as "MDP." The term "local governing body" refers to the elected governing officials of the local jurisdiction, such as the county commissioners, county council, city or town council of a municipal corporation or the City of Baltimore, or their official designee.

- A. PLANNING** A local governing body shall prepare a *Local Land Preservation and Recreation Plan* and submit it to DNR and to the MDP for joint approval consistent with the criteria and goals set forth in the current *State Land Preservation and Recreation Plan*. A local governing body shall revise its plan at least every five years, concurrent with the MDP's revisions of the *State Land Preservation and Recreation Plan*. These revisions shall also be submitted to DNR and to MDP for joint approval. Prior to approval of a revised local plan, DNR shall provide the legislators from the district within which any part of the local jurisdiction is located the opportunity to review and comment on the revised local plan. The MDP guidelines for preparation of *Local Land Preservation and Recreation Plans* are found in the Appendix. The MDP should be contacted directly for additional interpretation of the local plan guidelines.
- B. ANNUAL PROGRAM** A participating local governing body shall submit an *Annual Program* to DNR and MDP no later than the first day of July each year after obtaining approval of proposed projects by their local governing bodies. Upon review, the *Annual Program* shall become the basis for total allocations to each of the local governing bodies within the limits imposed by the formula developed for the apportionment of the annual appropriations for POS. The local governing body of any municipal corporation may submit an annual program through the local governing body of the county in which it is located. Any *Annual Program* may be revised by the local governing body. A revised program shall be substituted for the original program only after DNR and MDP review it, and DNR approves it. Guidelines and forms for preparation of *Annual Programs* are found in the chapter titled *Annual Programs*.
- C. CONSOLIDATED ANNUAL PROGRAM & GRANT APPLICATION** Each local governing body applying for POS grant assistance *shall have the option* of continuing to submit individual applications for its projects along with the traditional required Annual Program, or to submit *all* of its proposed projects as components of a *Consolidated Annual Program and Grant Application* in order to expedite review by MDP and approval by DNR and the Maryland Board of Public Works. This consolidated application will provide an overview of the local jurisdiction's proposed use of its annual POS allocation and how these projects will fulfill the goals of the local plan. A *Consolidated Annual Program Grant Agreement* will be similar to the Project Agreement used for individual projects. It will include documentation sufficient to allow for review and approval of several component projects under one set of grant terms and contract provisions by DNR and the Board of Public Works. Guidelines for preparing a *Consolidated Annual Program and Grant Application* are found in that titled chapter.
- D. ACQUISITION PROJECTS** Assistance will be granted for the acquisition of land or partial interests in land that is beneficial or necessary for providing general outdoor recreation or open space opportunities for the public. To be eligible for funding, acquisition projects must conform to the county's

Land Preservation and Recreation Plan and the general terms and conditions of each Project Agreement and be included in the Annual Program. POS funds may be used to reimburse local governments up to 100% of costs for local acquisition projects. Counties that have not met the land acquisition goals of either their Local Land Preservation and Recreation Plan or the State's Land Preservation and Recreation Plan, must use at least 50% of their total POS annual allocation exclusively for acquisition projects. Those that have met their goals may request certification to use up to 75% of their allocation received prior to FY2003 and 100% of their allocations, subsequent to their receiving certification, for acquisition or development projects. Guidelines and forms for acquisition projects are provided in the *Acquisition Projects* chapter.

- E. DEVELOPMENT PROJECTS** POS grant assistance will be provided for approved new recreation improvements and support facilities or for major capital rehabilitation projects on land owned or controlled by the applicant when such facilities or improvements are beneficial or necessary and provide general outdoor recreation and open space opportunities to the public. Development and major Capital Renewal projects must conform to the county's Land Preservation and Recreation Plan and be included in the Annual Program. An applicant must have control of the project site property through fee simple title or some other means of conveyance such as a long-term lease, easement or use agreement. Guidelines and forms for development or major capital renewal projects are provided in the Development Projects chapter.
- F. PLANNING GRANTS** A local governing body may use up to \$25,000 annually from its 100% (Acquisition) money to fund planning projects that update the Local Land Preservation and Recreation Plans.
- G. LAND USE CONVERSIONS** Land acquired or developed with POS grant assistance may not be used for any purpose other than public recreation or public open space and will be restricted to such uses by covenants in the deed to the property. Prior approval from the Secretaries of the Departments of Natural Resources, Budget and Management, and State Planning is required before any acquisition or development sites may be converted to any other use. The local governing body of a county or municipal corporation responsible for a proposed conversion of use must immediately contact POS when a conversion is proposed [POS Law, Section 5-906 (e) 7]. DNR shall coordinate the review of all conversion requests following guidelines and procedures found in the chapter on Conversions.
- H. APPENDIX** The Appendix to the Manual includes a section on *Guidelines for Understanding the Seven Visions* of the 1992 Maryland Growth Act and a detailed booklet titled *Achieving "Consistency" Under the Planning Act of 1992*. Also included is a section on *Planning Guidelines for the Local Land Preservation & Recreation Plans*.
- I. GENERAL GUIDELINES** POS legal requirements and policy guidelines include, but are not limited to, the following additional provisions found in the POS law, other environmental or cultural laws of the State, and the General Conditions of each grant agreement.
- 1. Municipal Projects** Any municipal corporation seeking POS grant assistance from DNR shall submit an Annual Program through its local governing body to the local governing body of the county. Upon approval for inclusion in the county's Annual Program, any municipal corporation may then submit a project application to DNR through its local governing body to the local governing body of the county where it is located. Any municipality may submit a copy of its Annual Program and/or application sent through the county directly to DNR.
  - 2. Inspections** Each State POS Regional Administrator and/or Assistant Regional Administrator who is responsible for the review and processing of POS applications is required to inspect each project site and prepare and sign inspection reports (1) prior to approval of each project by the Board of Public Works and (2) prior to final reimbursement on each project. The actual final on-site

visit may be waived on an acquisition project; however, the written report is required explaining cost overruns and under runs and also certifying that the land was acquired in accordance with the approved grant and the rules of the program.

2. **Acknowledgment Signs** All projects assisted under POS must appropriately display a permanent acknowledgment sign. The cost of the sign is an allowable cost for assistance. The acknowledgment sign will include the following:

- The project name
- Department of Natural Resources - Program Open Space  
In cases where the project is funded in whole or in part by the federal Land and Water Conservation Fund, additional information shall be included in the acknowledgment sign:
- Land and Water Conservation Fund, National Park Service, U.S. Department of the Interior.

The sign may also contain any other information the applicant considers appropriate.

4. **Land Donations & Donation Credit** If land is offered as a donation for public recreation or conservation purposes and the local governing body wants to utilize the provisions of the POS Law as described under Section 5-905 (e), the applicant must immediately contact DNR for an outline of the donation procedures. The applicant *must not accept title to the land until the official project period is established*. Premature acceptance of title to donated land may interfere with eligibility for a *donation credit*.

Program Open Space law allows a local government to use up to 75% of the appraised value of land donated to the applicant for recreation or open space use as the local governing body's matching share on a development project. Because the land donation saves acquisition costs, the *donation credit* can come from the county's POS acquisition account.

5. **Compliance with federal, State and local laws** Local governing bodies applying for POS grant assistance must conform to all environmental, cultural and planning laws applicable to the implementation of POS assisted projects. Among these, the following laws should be specifically addressed in the individual and consolidated applications:

- **Disabled Accessibility**. Article 78A, §51 of the Annotated Code of Maryland, facilities for disabled persons, requires structures or improved areas owned or constructed by the State of Maryland or its political subdivisions as public parks and recreation centers to provide facilities for disabled persons. This law specifically concerns toilet facilities, ramps, building entrances, drinking fountains, parking and walks. Such facilities should be suitably marked by a symbol denoting "accessible to the physically disabled."
- **Public Law 101-336, Americans with Disabilities Act** was enacted on July 26, 1990, with most of the ADA requirements becoming effective by January 26, 1992. This powerful legislation is intended to eliminate discrimination against people with disabilities in all areas of life, including a person's recreation and leisure pursuits. *Nondiscrimination by State & Local Government - Title II*, applies to the provision of programs and facilities. This is in addition to other public laws that traditionally have required government agency compliance (i.e., Section 504 of the Rehabilitation Act) to accommodate individuals with disabilities. ADA is more comprehensive. Check with your local governing authority for specific local policy and guidelines.
- **The Forest Conservation Act**. Local POS grant assistance must be consistent with the Forest Conservation Act of 1991 (Natural Resources Article, Sections 5-1601 through 5-1613, Annotated Code of Maryland). This law was enacted to protect the forests of Maryland by making forest conditions and character an integral part of the site planning process. The law is administered by DNR but implemented primarily by local governments. Local POS projects should be reviewed for conformance with the appropriate Forest Conservation Law Programs prior to submission for State review. All POS projects are subject to review of applicability under the Forest Conservation Act.

- Maryland Economic Growth, Resource Protection and Planning Act of 1992. This Act (State Finance and Procurement Article, Title 5, Subtitle 7A, Annotated Code of Maryland) established primary responsibility for managing growth at the local government level. It requires State agencies funding major capital development projects to review such projects for conformance with the seven "visions" of the Act, and with local comprehensive plans. To expedite this review, the project description on the application includes a reference to alignment of the project to the visions of the State's Growth Policy.

The Act states that a local government may not approve or construct a "local construction project involving the use of State funds, grants, loans, loan guaranties, or insurance" unless the project is consistent with the visions. Examples of local projects include local parks developed with State open space funds.

- Historical and Cultural Impacts. Prior to applying for POS assistance for a development or capital rehabilitation project, the applicant should consult with the Maryland Historical Trust, Project Review and Compliance Program Division of Historical and Cultural Programs, Maryland Department of Housing and Community Development, to determine if the proposed capital project or projects will adversely affect any property listed in or eligible for the Maryland Register of Historic Properties. (Article 83B, Title 5, Subtitle 6, Housing and Community Development, Annotated Code of Maryland). Any applications for use of federal or State funds for development are subject to review and approval of the Trust through the MDP State Clearinghouse process. Applicants are encouraged to seek early comments from the Trust on all projects listed in their Annual Program in order to avoid impacts on historic and cultural resources during project approval or implementation.

## II. PROJECT AGREEMENT AND GENERAL CONDITIONS

### A. DEFINITIONS

1. **Terminology** The following terms as used herein mean:
  - a. "**POS**" - an abbreviation for Program Open Space, a State program providing aid for acquisition and development of public recreation and open space pursuant to Title 5, Subtitle 9, of the Natural Resources Article of The Annotated Code of Maryland (1990 Volume and its amendments);
  - b. "**DNR**" - or "**the Department**"-The Maryland Department of Natural Resources
  - c. "**The Secretaries**" - The Secretaries of the Departments of Natural Resources, Budget and Management, and Department of Planning.
  - d. "**Manual**" - The Program Open Space Grants-In-Aid Manual published by DNR
  - e. "**Project**" - Land and improvements acquired, facilities to be constructed, or areas improved with POS funds which are subject to this agreement
  - f. "**Applicant**" - Any county, municipality or political subdivision subject to this agreement
  - g. "**Application and Project Agreement**" - The legal document between DNR and the applicant representing a specific project or amendment thereto, for which POS funding is requested, including all applicable laws, rules and regulations incorporated therein.

### B. PROJECT EXECUTION

1. **Encumbrance of Funds** After funds are encumbered by the Maryland Board of Public Works for the project, DNR will sign the Application and Project Agreement thus agreeing to reimburse the Applicant, upon submission of proof of expenditure, funds approved by the Maryland Board of Public Works.
4. **Project Period** The Applicant shall complete the approved project within the project period. The project period may be amended.
3. **Project Agreement Scope** Where POS assistance is provided for acquisition of land, this Agreement shall apply to said land and the facilities existing or developed thereon. Where assistance from POS is provided for the development of facilities, this Agreement shall apply to said facilities and the land upon which said facilities are developed.

Said land, improvements and/or facilities shall be hereinafter referred to as the "Project".

4. **Acquisition Project Requirements**

- a. The cost of real property shall be based upon two (2) independent appraisals prepared by competent appraisers. Each appraisal submitted to DNR will include original photographs.
- b. The deed to any tract of land purchased under a State grant from POS shall contain the following clause setting forth the following restrictions on use. **Natural Resources Article §5-906(e)(7) states, Land acquired or developed under a State grant from POS may not be converted without written approval of the Secretary of the Department of Natural Resources and the Secretary of the Department of Budget and Management, and the Secretary of the Department of Planning from outdoor public recreation or open space use to any other use. Any conversion in land use may be**

approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value; and (8) (I) For any conversion of land acquired or developed under a State grant from Program Open Space as provided in paragraph (7) of this subsection, the appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land.

**C.** The Applicant shall not convert the use of the Project to any use other than that contemplated and approved when assistance was obtained without the prior written approval of the Department of Natural Resources.

## **5. Development Requirements**

- a.** Any contracts, change orders, bid tabulations, labor and equipment records relevant to a development project will be retained by the grant recipient for three years after final reimbursement for audit purposes.
- b.** Written change orders on construction contracts shall be issued for all necessary changes to the contract, and a copy will be forwarded to DNR with the subsequent reimbursement request.
- c.** During performance of the contract, the contractor must be in compliance with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 (1964) and Article 49B Sections 17 to 20, (Discrimination in Employment) of the Annotated Code of Maryland (1991 replacement Volume and its amendments).
  - (1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - (2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap, or national origin.
- d.** The Applicant shall ensure completion of the work in accordance with the approved construction plans and specifications, and shall ensure compliance with all applicable federal, State, and local laws and regulations.
- e.** The Applicant shall permit periodic site visits by DNR to insure work progress in accordance with the approved project, including a final inspection upon project completion.
- f.** In the event funds should not be available for future stages of the project, the Applicant shall bring the project to a point of usefulness agreed upon by the Applicant and DNR.
- g.** All significant deviations from the project proposal shall be submitted to DNR for prior approval.
- h.** Development plans and specifications shall be available for review by DNR upon request.
- i.** Applicant shall develop and prominently display an acknowledgment sign recognizing that this is a POS assisted project.

## **C. PROJECT COSTS**

Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the individual Chapters of this Manual.

## **D. FINANCIAL RECORDS**

The Applicant shall maintain satisfactory financial accounts, documents, and records, and shall make them available to DNR for auditing at reasonable times. Such accounts, documents and records shall be retained by the Applicant for three (3) years following project termination.

## **E. OPERATION AND MAINTENANCE**

The Applicant shall operate and maintain the project throughout its estimated life, (twenty years for development projects and in perpetuity for acquisition projects), beginning on the first day of the project period as outlined below:

- 1.** The project shall be maintained so as to appear attractive and inviting to the public.
- 2.** Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local health standards.
- 3.** The project shall be reasonably safe for public use.
- 4.** Buildings, roads, trails, and other structures and improvements shall be in reasonable repair throughout their estimated lifetime so as to prevent undue deterioration and to encourage public use.
- 5.** The project shall be open for public use at all reasonable hours and times of the year, according to the type of area and facility.
- 6.** The project shall be open to entry and use by all persons, regardless of race, color, religion, sex, or national origin, and shall be operated in compliance with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 (1964) and its amendments, the Americans with Disabilities Act of 1990, P.L. 101-336 and its amendments, and Article 49B, Sections 14 to 18, (Discrimination in Employment) of the Annotated Code of Maryland (1998 Replacement Volume and its amendments).
- 7.** If the project is rendered unusable for any reason whatsoever, the Applicant shall immediately notify DNR of said conditions. The Applicant, at its own expense, shall repair the project, taking any action necessary to restore use and enjoyment of the project by the public.
- 8.** DNR, its agents and employees shall have the right to inspect the project for compliance with this Agreement.

## **F. COMPLIANCE**

- 1.** The Applicant agrees to protect, indemnify and save harmless DNR, its officers, agents, and employees, from and against any and all claims, demands, causes of action, and liability of any kind arising out of the operation and use of the project.
- 2.** The Applicant agrees that any violation of this Agreement shall render the Applicant liable to DNR to replace the project with land of at least equivalent area, equivalent monetary value, and of equal public recreational value, and to construct on this replacement land, facilities of the same type, size, and quality of construction as those in the project.
- 3.** The Applicant further agrees that in the event of a violation of any provision of this Agreement, the State of Maryland, in addition to pursuing other remedies, may impose the following sanctions until the violation has been corrected to the satisfaction of DNR:
  - a.** withhold approval of any POS project request submitted by the Applicant to DNR;
  - b.** withhold reimbursement from POS funds for the State's share of the cost of the project;
  - c.** withhold reimbursement from POS funds for the State's share of the cost of any or all outstanding projects of the Applicant;
  - d.** maintain, operate, or repair the project, charging the cost of said maintenance, operation, or repair to the Applicant as a debt due and owing DNR.

## **G. CERTIFICATION**

The Applicant further certifies to the following:

- 1.** That the information contained in the Application and Project Agreement is true and correct.
- 2.** That all costs for which POS financial assistance is being requested will be incurred during the project period.
- 3.** That a local program is established to manage and administer recreation and open space lands and facilities on behalf of the Applicant, and that it has sufficient personnel and equipment to operate and maintain the project for which POS assistance is being requested.
- 4.** Funds are available or will be available within 12 months of the date of submission of the Application and Project Agreement to pay the Applicant's share of the project costs.
- 5.** That the Applicant has and shall comply with POS rules and regulations have been complied with.
- 6.** That except for the financial assistance outlined in this Application and Project Agreement, no financial assistance has been given or promised under any other State program or activity with regard to this project.
- 7.** The project conforms to the annual program of the local governing body as provided for in §5-905(b) of the Natural Resources Article of the Annotated Code of Maryland.

## **H. MANUAL**

The Applicant shall comply with the policies and procedures set forth in this Manual. Said Manual is hereby incorporated into and made a part of this agreement.

## **I. AGREEMENT**

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including assigns and successors by way of privity of estate and contract. Nothing in this Agreement, expressed or implied, is intended to confer upon or against any other person, corporation or government unit, any right or remedy under or by reason of this Agreement.

### III. PROJECT DESCRIPTIONS

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**A. CHANGES** With the 1996 revision of the Program Open Space Grants Manual, the grant application forms have been redesigned to combine essential project information primarily on one form. Several of the "attachments" were eliminated.

**B. SELL IT** Please review the following example. They should include all your key selling points that justify the project and show consistency with existing programs and previous projects, long range goals and statewide planning visions. In writing your first few "narratives" we suggest that you use the criteria below as a check list.

**1. What is it?**

- \*Type of area: regional park/neighborhood tot-lot/stream valley park/hiker biker trail/etc.
- \*Is it a new area or an addition to an existing area?
- \*Is it the initial development or additional development?
- \*Note the existing acreage, the project acreage and proposed ultimate acreage

**2. Why is it good? Who will benefit and how?**

- \*List the benefits and who will reap them.
- \*What are the intended uses?
- \*Will it be developed or left in its natural state?
- \*Note nearest town or neighborhood communities that the project intends to serve.
- \*What constituency will this serve?

**3. Is it Consistent?**

- \*Does it build upon earlier POS projects?
- \*Will this project or the planned development of the site result in an increased demand on existing infrastructure (roads/water/sewer)?
- \*If yes, is the existing infrastructure capable of handling the increased use? If not, how will this be addressed?
- \*How is it consistent with the county's Comprehensive Plan, the State Planning Act and the seven planning visions, and the Local Land Preservation & Recreation Plan?
- \*If inconsistent, provide exception justification.

**4. What makes this special or unique?**

- \*How have community or other groups assisted with this proposal?
- \*Any unique natural features?
- \*Any notable social or economic aspects?

### **C. EXAMPLES OF SUITABLE PROJECT DESCRIPTIONS:**

#### **Example #1: Stream Valley Acquisition**

Essex County proposes the purchase of an in holding of 9.96±acres as an addition to Mohawk Branch Stream Valley Park, near the Town of Lake Mohawk, in the Western part of the county. Mohawk Branch runs through the property and roughly half the property is in a flood plain. This acquisition is consistent with the goal of the 1992 Planning Act, specifically Vision #2, by protecting sensitive stream banks and flood plains, preserving a vegetative buffer and adding an important link to this 248± acre greenway. It is also consistent with the Local Plan's intent to protect flood plains referenced on page 214. There are no plans to develop this segment other than a paved hiker-biker trail. By providing needed open space acreage for this growing neighborhood, this project also supports Vision #1.

#### **Example #2: Regional Park Addition**

This project requests \$38,000 to add 82.07 acres to Great Acorn Regional Park. Serving Western Morris County, it also provides bike trail neighborhood access from Oak Hall, Oak Highlands and

Oakeyanokey Communities. This addition brings the park area to 583.62± acres of the envisioned 600 acre plan. As one of the most heavily used facilities in the county, providing extensive athletic fields, multiple playgrounds, picnic areas, and woodland trails, the new acreage and the planned development of horse trails supports the goals of Vision #1 by concentrating development in suitable areas. Planning Vision #5, conservation of resources and reduction in resource consumption, is supported because roads, water and sewer already available at this site are sufficient in size to support this acquisition and future trail development. This project was envisioned years ago and a specific reference to its purchase is in the Local Plan in chapter 14.

### **Example #3: Establishing A New Regional Facility**

The acquisition of 280.15 acres will provide a new site planned to accommodate the growing demand for athletic fields to serve the entire western edge of the county. Roads and water and sewer lines, to serve the later development of this athletic complex, have recently been upgraded by the county to accommodate the neighborhoods south of Slow-pitch City and to support the planned growth area designated in the county's Comprehensive Plan. Supporting the goal of Planning Vision #1, this athletic complex concentrates development in suitable areas, maximizing the provision of team play facilities for this area of the county. Vision #5, minimizing maintenance and development cost and conserving financial and land resources by not peppering several neighborhoods with one field each is also addressed. The need for this type of regional facility development was addressed in the county's Local Plan, page 89.

### **Example #4 Acquisition & Development of Joint School/Recreation Areas**

The purchase of these 30 acres adjacent to the 12 acre planned school construction site for a future elementary school, will be consistent with Planning Vision # 5 by conserving resources and reducing land consumption. As part of this planned growth area west and north of Homesville, development of this Joint Site maximizes limited funding resources (Vision # 7), and concentrates development in a suitable area (Vision #1.) Benefits will include joint funding of shared construction efforts for necessary utility, roadway and water system infrastructure. Joint uses will include the development of ball fields, the expansion of the minimum standard playground facilities for elementary schools and collaboration on nature trails and woodland protection projects. The School/Recreation Site will become a hub of neighborhood activity during and after school hours and could help galvanize this economically diverse community. The intention of combining two or more uses at a single site was explained in depth in the Local Plan, Chapter 7, Recommendations.

### **Example #5: Planning Grants**

As a prerequisite to participation in the POS funding program, State law requires that long range plans be developed and updated by local governing bodies. This project requests the use of \$25,000 to update the county's Local Land Preservation and Recreation Plan (LPRP.) By 1997 all LPRPs will address the planning visions in depth. Funding of the interim/updated plans are key to the implementation of the goals of the 1992 Planning Act.

### **Example #6: Capital Renewal, Redevelopment and Replacement of Existing Park Facilities**

The City of Lilliputt is requesting \$4,500.00 to replace the band shell in the town park. The need for this request for a capital renewal project became evident last month when the Giant inadvertently sat down on it. Although the structure was in good repair prior to this incident, it was more than 20 years old and the Lilliputt City Council had already voted to put matching funds aside for renovation of the band shell in time for the Centennial Celebration three years from now. The town park has received numerous prior POS grants for the park's acquisition and development of pathways, benches, ball fields and the original band shell. This project specifically supports planning vision #5 by conserving resources, land, infrastructure etc., and by maintaining the public's use of a well established park. It is consistent with the Local Plan, Chapter 4, page 34, "Maintaining Community Treasures."

### **Example #7: Acquisition of Railroad Track Right-Of-Ways for Hiking and Biking**

This project proposes the purchase of six miles of railroad Right of Way for open space and recreation east of Ocean View City. This is an effective way to maximize limited land and fiscal resources, visions #5 & #7. To begin in today's real estate market to assemble linear tracts of land for extension of trails would be cost prohibitive. The City hopes to connect with other jurisdictions to the north and south providing an important recreational trail and bike commuter route. Local civic groups and area school children have already begun

fund raising campaigns to help finance the development of the trail park. The existing infrastructure won't be affected by the acquisition, but development of the trail system and planned comfort station will require road widening and connection to the City's existing sewer lines. The need for more linear parks/trails was expressed in the Local Plan, Needs Assessment page 73.

# ANNUAL PROGRAM

## A. PROCEDURES

To qualify to receive POS funding a local governing body *must* have an *Annual Program* reviewed by MDP and reviewed and approved by DNR for the current fiscal year. By July 1 of each year, the participating local governing body (defined as "The Maryland-National Capital Park and Planning Commission, and the governing body of any county, municipality, or Baltimore City") shall submit an *Annual Program* simultaneously to the DNR and the MDP.

Upon review and approval as to consistency with the *Local Land Preservation and Recreation Plan*, the *Annual Program* shall become the basis for total allocations to each of the local governing bodies within the limits imposed by the formula developed for the apportionment of the annual allocation from POS. Municipalities may submit annual programs through their governing bodies.

Each *Annual Program* should be submitted using the standard format, forms, and maps presented below.

An *Annual Program* may be revised at any time by the local governing body using the same format and procedures contained in this document. The revised Program, after review by MDP and review and approval by DNR, shall be substituted for the original Program.

Each governing body shall submit its complete *Annual Program* and revisions to:

Director Program Open Space Department of Natural Resources Tawes State Office Building, E-4 580 Taylor Avenue Annapolis, MD 21401	and	Chief Comprehensive Planning Unit Maryland Department of Planning 301 West Preston Street Baltimore, MD 21201
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## B. PURPOSE AND USE

In addition to providing the basis for allocation of local POS funds, the *Annual Program* submission is important to effective land preservation and recreation planning and implementation, and efficient management of POS for the following reasons:

- 1. Project eligibility** A project must be in a county's *Annual Program* to be eligible for POS funding. The *Annual Program* must be consistent with the *Local Land Preservation and Recreation Plan*. Specifically, each project in the *Annual Program* must contribute to meeting the needs identified in the Plan.
- 2. Showing the connection between the *Local Land Preservation and Recreation Plan* and implementation of the Plan** The *Annual Program* is a logical and timely bridge between the Plans and individual projects, in that it provides the opportunity to show the strategy used to select projects as extensions of the Plan; i.e., as the implementation strategy.
- 3. Early identification of projects** The *Annual Program* provides an opportunity for early identification of issues at a time when they are easier to address, before commitments have been made and time and money have been expended on project development. If basic issues such as project eligibility, consistency with State plans, policies, and programs, or project financing are identified, they can be resolved with less difficulty at this stage.
- 4. Scope and Direction of the County's Plans for the Year** It helps keep State agencies informed of the magnitude and direction of POS applications anticipated in the next year. The *Annual Program* is important to efficient administration of POS and related programs.

**5. Keeping legislators informed** The *Annual Program* provides important and timely information for legislators who may be considering issues affecting program funding and management.

**6. Providing a milepost for local governing bodies** The *Annual Program* assists local governing bodies and agencies in organizing and expediting their development and acquisition program for the following year.

## C. CONTENT AND FORMAT OF SUBMISSIONS

Each *Annual Program* should include three parts:

### Part 1) Introduction

The Introduction should describe the approach used to develop the *Annual Program* as a principal means of implementing the *Local Land Preservation and Recreation Plan*. It should include a description of the process used to select projects that addresses the policies, priorities, and/or needs identified in the county's current Plan.

### Part 2) Acquisition Projects

For each project provide:

- a. **Sponsor** - Name of the county, town, municipality, or special district responsible for the project.
- b. **Project Name** - Official name of the project as it will be shown on the grant application.
- c. **Project Description** - Attach extra sheets for narrative descriptions. Refer to the new format for *Project Descriptions* in the *Requirements and Guidelines* of the Manual Introduction Chapter. **It is understood that not all of the information requested may be known or available this early in the process.** Follow the Description Examples as much as possible and identify specifically how the project addresses the policies, priorities, and/or needs in the local *Land Preservation and Recreation Plan*, and how each is, or is not, consistent with the seven visions contained in the State's 1992 Planning Act. Any information concerning a project's relationship to State or local plans, needs or conditions, resources to be protected, and any relevant information not included in the other items, should be presented here.
- d. **Acreage**
  - (1) **Ultimate Acreage** - The expected total acreage of area when all acquisition is completed.
  - (2) **Existing Acreage** - The acreage previously acquired for the area.
  - (3) **Project Acreage** - The estimated amount to be purchased under this proposed project.
- e. **Source of Funds/breakdown** dollar amounts not percentages
  - (1) **Total** - Total estimated for this fiscal year
  - (2) **Local** - Local revenue or general funds
  - (3) **State** - POS local allocation funds
  - (4) **Federal** - Please footnote specific type of federal funds
- f. **Maps** - All maps should be clear, readable, and reproducible. Sites should be clearly labeled for easy cross-reference to the site list and table.
  - (1). **Countywide Map Showing All Sites** - A countywide map showing the location of all sites. If possible, mount a second copy of this countywide map as a presentation board for use by the Board of Public Works.
  - (2). **Location Map of Each Site** - An 8 $\frac{1}{2}$ " by 11" size showing, as nearly as possible, the location of the site to be acquired in relation to nearby physical and cultural features. ADC maps, USGS Quad sheets, or similar maps may be used. If possible, a tax map showing the specific parcel is also desirable.

### Part 3) Development Projects

For each project provide:

- a. **Sponsor** - Name of the county, town, municipality, or special district responsible for the project.

- b. **Name of Project** - Official name of the project as it will be shown on the grant application.
- c. **Project Description** - Attach extra sheets for narrative descriptions. Refer to the new format for *Project Descriptions* in the *Requirements and Guidelines* Chapter of the Manual. **It is understood that not all of the information requested may be known or available this early in the process.** If this information is available it can be used in the project application process. Follow the description examples as much as possible and identify specifically how the project addresses the policies, priorities, and/or needs in the local *Land Preservation and Recreation Plan*, and how each is, or is not, consistent with the eight visions contained in the State's 1992 Planning Act. Any information concerning a project's relationship to State or local plans, needs or conditions, resources to be protected, and any relevant information not included in the other items, should be presented here.
- d. **Acreage**
  - (1) **Project Acreage** - The estimated amount of new acreage that will be developed, cleared, disturbed, etc. under this proposed project.
- e. **Source of Funds/breakdown** dollar amounts not percentages
  - (1) **Total** - Total estimated for this fiscal year
  - (2) **Local** - Local revenue or general funds
  - (3) **State** - POS local allocation funds
  - (4) **Federal** - Please footnote specific type of federal funds
- f. **Maps** - All maps should be clear, readable, and reproducible. Sites should be clearly labeled for easy cross-reference to the site list and table.
  - (1). **County Wide Map Showing All Sites** - A countywide map showing the location of all sites. If possible, mount a second copy of this countywide map as a presentation board for use by the Board of Public Works.
  - (2). **Location Map of Each Site** - An 8<sup>1</sup>/<sub>2</sub>" by 11" size showing, as nearly as possible, the location of the site to be acquired in relation to nearby physical and cultural features. ADC maps, USGS Quad sheets, or similar maps may be used





# CONSOLIDATED ANNUAL PROGRAM

## A. CHANGE IN LAW

### 1. General

In 1995, the Maryland General Assembly enacted House Bill 1105 and approved the concept of consolidating projects to expedite the review and approval processes. The amended Natural Resources Law follows:

### 2. Section 5-905

(2) (i) "By first of July each year, a participating local governing body shall submit an annual program of proposed acquisition and development projects, together with a list of projects submitted by any municipal corporation to the local governing body and not included in the local governing body's annual program, to the Department of Planning for review and to the Department for approval."

(2) (ii) "A municipal corporation may submit an annual program through its local governing body."

(3) (i) "Upon review by the Department of Planning and approval by the Department and the Board of Public Works, the annual program shall become the basis for a grant agreement for the total allocation to each of the local governing bodies."

(3) (ii) "Prior to approval of a local annual program, or any revision thereof, the Department shall provide the legislators from the district within which any part of the local jurisdiction is located the opportunity to review and comment on the annual program or its revisions."

(4) "Any program may be revised by the local governing body, and the revised program, after the Maryland Department of Planning reviews and the Department approves it, shall be substituted for the original program in the grant agreement."

(5) (i) "In accordance with the Department's regulations, upon receipt of evidence from the local governing body of a county or municipal corporation that funds have been spent on a project that is approved in the grant agreement, the Department shall cause the requested amount of funds from the local governing body's allocation to be reimbursed to the local governing body."

## B. THE INTENT

### 1. Improving the Process

The law was amended with the intent of consolidating the Annual Program with individual project applications into one Grant Agreement which would:

- a. provide more predictability and certainty in the award of POS funds to each local governing body.
- b. allow the State to encumber each local governing body's share of POS local funds earlier in the fiscal year.
- c. streamline the review of local project applications within the State Clearinghouse and under the Economic Growth, Resource Protection and Planning Act.

### 2. Flexibility

The Department will maximize flexibility for local governing bodies to use either the Consolidated Annual Program and Grant Application, or the pre-existing process of submitting its Annual Program first, followed by individual grant applications for Departmental and Board of Public Works approval.

It is recognized that local governing bodies have different legal requirements and procedures for local approval of capital expenditures, including those that may be reimbursed through POS. Some local jurisdictions may not be able to commit funds to park and recreation projects without prior approval from

the Board of Public Works. Others may not be able to provide all the documentation required for the complete review of each POS-assisted project when the Annual Program is due in July.

However, for those local jurisdictions that are able to plan ahead and obtain local matching fund commitments and documentation to support all of their projects for the coming year, the Consolidated Annual Program and Grant Application process is intended to substantially reduce processing time and provide greater certainty of State assistance.

## C. THE PROCESS

### 1. The Consolidated Annual Program

If the local governing body elects to submit a Consolidated Annual Program and Grant Application, it will be substituted for the traditional Annual Program. It will include a description of each project in sufficient detail for review through the Department of Planning's State Clearinghouse and Growth Management review processes, and for approval by DNR and the Board of Public Works. The cost estimates for each acquisition project to be submitted to the Board of Public Works should be supported either by two appraisals or by preliminary estimates of value by a qualified appraiser or local government acquisition staff.

### 2. Board of Public Works - Approval of the Consolidated Annual Program

The Department will seek Board of Public Works approval for the Consolidated Annual Program and Grant Application and the individual component applications. In the event that members of the Board of Public Works question the estimated costs for any of the individual acquisition or development projects listed in the Consolidated Annual Program and Grant Application, the Department may require that the questioned project be removed from the Grant Agreement (allowing the remaining projects to be approved) and resubmitted individually for Board approval upon completion of appraisals or explanation of cost estimates.

## D. PROCEDURE AND REVIEW PROCESS

### 1. Preparation

General information, a summary of component projects, a consolidation of necessary signatures and project parameters makes up the Consolidated Annual Program and Grant Application. There are no traditional "attachments" specifically for this form which acts as a cover sheet for the individual projects or components. Each individual component will have a project application with attachments just like a traditional individual application.

#### a. **Read the Manual**

Review the chapters in the Grants Manual for specific requirements and instructions for acquisition, development/capital renewal or planning applications. The instructions indicate which attachments can be deferred to the reimbursement phase of the project as a provision of the consolidated process.

#### b. **The Cover Sheet**

Complete the local portion of the **Consolidated Grant Application & Project Agreement**, listing the individual components to be covered by the Consolidated Grant. This serves as a cover sheet.

#### c. **The Component Applications**

Next, **complete an individual application for each of the component projects**. Include as much information as is available to date on each project. Prepare the attachments called for in the *General Instructions* for each type application.

## **2. Local Review & Approval**

### **a. Planning and Infrastructure**

Have your local Planning Authority **review and approve the application for consistency with existing approved local plans and existing or planned infrastructure.**

### **b. County Apportionment Approval**

Have your **County Liaison Officer review the project and approve the use of POS Funds.**

## **3. State Review & Approval**

### **a. Program Open Space Review**

**Contact your POS Regional Administrator or Assistant to meet and review the application and components. Submit one original Consolidated Annual Program to DNR for review, with 12 copies for State Clearinghouse Review.**

### **b. Maryland Department of Planning Review**

**Submit one copy of the Consolidated Annual Program directly to the Department of Planning.**

### **c. State Clearinghouse Review**

While MDP and DNR are reviewing the *Consolidated Annual Program*, DNR will submit 12 copies of the Consolidated Annual Program with applicable forms and information to the Department of Planning to initiate the State Clearinghouse and State Growth Management Consistency reviews.

The Department will assist in addressing or resolving any issues raised in the course of these reviews in cooperation with the Department of Planning, the applicant, or any other appropriate parties.

### **d. Encumbrance of Funds - The Board of Public Works**

After completion of the State Clearinghouse and Growth Management Consistency review processes or expiration of the review period, DNR will submit the Consolidated Annual Program to the Board of Public Works. In the event that State Clearinghouse comments are received on a project (or projects) as part of the Consolidated Grant indicating that insufficient information is available about a project to determine environmental or cultural impact, DNR, in cooperation with the applicant and MDP, may:

- 1) withdraw the particular project from the Consolidated Grant application until further information is provided to the reviewing agency, or
- 2) submit the project to the Board of Public Works, but require further consultation with the reviewing agency with additional information prior to reimbursement of the project costs.

After Board of Public Works approval, the Consolidated Annual Program will form the basis for a Consolidated Grant Agreement.

## **4. Reimbursement**

### **a. Approved Costs**

The Department will reimburse the applicant for the approved project costs when proper documentation is provided with the reimbursement request for individual component projects. Reimbursement for actual project costs of any component will at no time exceed the original estimate that was approved. The Department will reimburse the applicant for project costs in accord with established procedures. Refer to the instructions on the Request for Reimbursement Forms included in this Manual.

**b. Overruns**

In the event that the actual costs for the acquisition or development exceed the estimated amount, the local government may:

- 1)** apply through DNR to the Board of Public Works for approval of the additional cost, based on completed appraisals or actual costs;
- 2)** pay for the additional costs with non-POS funds, or
- 3)** defer the project application until the following fiscal year.

# General Instructions

## Consolidated Annual Program and Grant Application

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1. Use the **Program Open Space Grants Manual** to review information concerning project eligibility and application requirements.
2. **Assemble the component** projects. Complete individual project applications for each component and prepare the attachments before completing the Consolidated Annual Program Application and Project Agreement (Cover Sheet).
3. Once component applications and their attachments are assembled, **complete the Consolidated Annual Program Grant Application and Project Agreement**. This serves as a "Cover Sheet" for collecting the necessary review approval and authorization signatures on one form. The project is next reviewed and approved by the local Planning Authority for consistency with existing plans and existing or planned infrastructures that would be affected by the project(s). Next, the County Liaison Officer will review and sign for authorization of certain allocated POS Funds. Guidance to assist planning and infrastructure review is contained in the Grants Manual's Appendix.
4. **Contact your POS Program Administrator** to begin review of the Consolidated Annual Program Grant Application, its components and their required attachments and to schedule inspections of the component sites.

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**The Consolidated Annual Program Grant Application** process is intended to shorten the review time prior to the Board of Public Works commitment of POS funds and to allow local governments greater flexibility.

**The information required** for consolidated or individual grant applications remains the same. Some of the required attachments may now be submitted as part of the reimbursement process instead of with the initial application. Applicants are proceeding at their own risk prior to State approval of all required documentation.

**For acquisition components**, these attachments may be submitted with the reimbursement request: #3 - the Two Independent Appraisals, #4 - the Deed, and #5 - the Retention of Rights Statement.

**For development components**, these attachments may be submitted with the reimbursement request: #3 - the Floor Plan, #4 - the Deed or Lease, #5 - the Retention of Rights explanation, and #8 - the Reforestation Site Plan.

**Refer to the *General Instructions for Acquisition, Development, and Planning Applications*** for specific information requested as attachments and the number of copies needed.





# ACQUISITION PROJECTS

## A. PROJECTS WHICH MAY BE ASSISTED

- 1. General Requirements** Acquisition assistance will be granted for land or interests in land that are beneficial and necessary for providing general outdoor recreation and/or open space opportunities for the public. Projects must conform to the county's Land Preservation and Recreation Plan and be included in the Annual Program for that county. Acquisition must be by fee simple title, or by whatever lesser rights will insure the desired public use.
- 2. Activities Covered** Areas acquired may serve to preserve the natural and cultural features of the property for resource preservation, public education, or may provide for a wide variety of recreation activities including, but not limited to, driving and walking for pleasure; sightseeing; swimming and other water sports; fishing; picnicking; nature study; historical interpretation; performing arts; playgrounds; skateboarding; boating; hunting and shooting; camping; horseback riding; bicycling; hiking; skiing, or as a greenway connecting other parks and open spaces.
- 3. Methods of Acquisition** Acquisition of land, or interests therein, may be accomplished through several methods. To be reimbursable under POS, the rights acquired **must be perpetual** therefore the costs of a long-term lease are not eligible.

Generally there are three methods of land acquisition that may be eligible for POS assistance:

- a. Fee Simple Purchase** - All of the property rights are purchased. This is the most common form of land acquisition.
  - b. Conservation or Public Access Easement Purchase** - Only certain property rights are purchased. This method can be used when fee simple ownership is not necessary to meet the public need.
  - c. Donation of Fee Simple or Easement Rights** - Reimbursement may be available for incidental costs associated with the acceptance of donated land or easements. For the purposes of this program, a donation is a gift given by the donor without the expectation of consideration and not a dedication of land required by subdivision ordinance or other government regulation. For information on credit available toward the development of donated land, see the Development Chapter of this manual for more details.
- 4. Acquisition of Structures** Acquisition projects may include improvements which are to be used primarily for outdoor recreation or as support facilities for recreation or natural resource conservation activities, or are a part of the area to be acquired, but are to be removed or demolished. Project proposals must list all improvements and their proposed disposition. Structures which contribute primarily to indoor recreation, when warranted by public need and supported by the local governing body, may be considered as special exceptions for acquisition assistance.
  - 5. Land Acquisition for Delayed Development and Interim/ Compatible Uses** All acquisition projects must conform to the adopted local, regional and State land preservation and recreation plans. The intended purpose for the acquisition should be clearly stated, such as future recreation development, natural resource protection, park school site, or historic preservation. Proposed interim uses or management techniques involving property acquired with POS assistance such as rentals and leases must have prior approval by DNR. Some interim uses may be acceptable if compatible with the area. All revenues generated from such approved interim uses or management should be reinvested in the project. Examples are: agricultural leases, building rentals, timber management sales and grazing leases.

**6. Acquisition Adjacent to School Grounds** Where open space and/or outdoor recreation land is being acquired adjacent to the site for a school, program assistance will generally be limited to the acquisition of land in excess of the minimum local standards for school sites. The minimum standards will be those provided for under the rules and regulations approved by the Board of Public Works for the Interagency Committee for State Public School Construction. Where open space and/or outdoor recreation land is being acquired adjacent to the site of an existing school, the applicant must explain in the application why a site smaller than the minimum standards was initially acquired and why the site is to be expanded. In every case where open space and/or outdoor recreation land is being acquired adjacent to a school site (new or existing), the application must include the following:

- a. A statement that the land being acquired is for general community or neighborhood benefit and use and will be open to the general public.
- b. A Joint Use Agreement between the school agency and the park/recreation agency indicating that it is their intent to maximize the multiple-use capability of all school open space areas and that the design and operational planning of the respective agencies incorporate this concept.

**7. Acquisition of Lands Purchased from Other Public Agencies** Surplus real property purchased from other public agencies may be eligible for assistance from POS subject to the following conditions:

- a. The land was not originally acquired by the other agency for recreation, nor has it been so managed while in public ownership.
- b. No State assistance was involved in the original acquisition by the other agency.
- c. The selling agency is required by law to receive payment for land transferred to another public agency. Examples would be public school land that can be used for non-school purposes only through payment to the school agency, excess federal lands that can be transferred to local government use only on a purchase basis, or lands purchased by governmental units for highway or utility purposes and are now surplus. The support ceiling will be based on the price paid by the applicant for the property or the fair market value, whichever is less.
- d. The requirement of appraisal, history of conveyances, and evidence of title are the same as normal purchases.

**8. Reservation of Rights not Acquired** All reservations of rights held by others are permissible only if it is determined that recreation purposes and natural resources would not be adversely affected. Such reservations must be described in the application and the applicant's means of protecting the recreation, natural and cultural interests in the land must be explained under Attachment 5. When the surface and mineral rights are separated, the applicant makes all reasonable efforts to acquire all rights when program assistance is requested. If the applicant is unable to obtain both surface and mineral rights, the application must justify the grantor's retention of these rights.

## **B. AMOUNT OF ASSISTANCE TO APPLY FOR**

- 1. **General** Acquisition projects are eligible for assistance of up to 100% of the allowable project costs. The percentage of assistance may be determined by the amount of POS funds available to the applicant.
- 2. **Federal Assistance** If the applicant is to receive federal funding assistance on a project, the amount of POS assistance will be reduced by the dollar amount of the federal assistance approved. The combined amount of federal and POS assistance cannot exceed the normal amount of POS assistance available on any one project.

- 3. Other State Assistance** If the applicant is to receive funding assistance from any other State grant program on a project, the amount of POS assistance will be reduced by the dollar amount of the other State assistance approved. The combined amount of State assistance cannot exceed the normal amount of POS assistance available on any one project.

## C. ALLOWABLE PROJECT COSTS

- 1. Basic Concept** Project costs will be matched project by project. Each project represents a separate transaction for purposes of determining the amount of the State's share of the costs. The project period is the span of time stipulated on the application during which all work to be accomplished under the terms of the project agreement must be completed. The beginning date is the date that an official Letter of Acknowledgment or Letter of Concurrence is sent to the applicant from POS. The ending date is chosen by the applicant with POS approval, and must provide sufficient time to complete the project.

### a. Project Period

To be eligible for reimbursement, costs must have been incurred within the project period. The Program does not reimburse costs which are incurred outside of the project period. Acquisition costs are incurred when the deed is signed or other appropriate conveyance is taken by the applicant to settle the property.

### b. Classification of Costs:

**(1) Direct Costs** For land acquisition projects, the direct cost is the amount of the land cost to be requested from POS. The amount of land cost eligible for assistance is the fair market value determined by the average of two real estate appraisals or the amount actually paid for the land, whichever is less. If the value established by the higher appraisal is more than 20% above the value established by the lower appraisal, contact the Regional or Assistant Regional Administrator assigned to your county, as a third appraisal may be necessary.

**(2) Incidental Costs** Incidental costs relating to the acquisition of real property and interests in real property, such as the costs of surveys, appraisals, title search, and legal fees, are eligible for reimbursement on approved land acquisition projects. Program Open Space projects are exempt from the provisions of Real Property Article, §12-204 and therefore, relocation payments are not required and will not be reimbursed.

**(3) Acquisition Planning Costs** It is recognized that some costs may need to be incurred before a project application can be submitted to POS with the required descriptive information and costs data. Therefore, the costs of real estate appraisals, property surveys, or an option to purchase are legitimate pre-submission costs, if the amount paid for the option is part of the total purchase price of the property. The project application must specifically list these items, including their estimated or actual costs and the dates incurred.

### c. Retroactivity

The intent of POS is to assist work not yet undertaken, rather than to help pay for work already begun or completed. This policy applies to entire projects and to each stage of a multi-stage project. Retroactive costs are not allowable. These would include costs incurred on the project *prior* to the date that an official Letter of Acknowledgment or Letter of Concurrence is issued by POS. Costs incurred for subsequent stages before those stages are approved would be considered retroactive and not allowable.

If during the conduct of a project, it becomes apparent that completion will not be possible within the project period, the applicant must submit a request to extend the project period. Requests to extend the project period should be submitted at least 90 days prior to the expiration date. Requests for project period extensions submitted after the expiration date may not be considered.

- d. Concurrence** When immediate action is necessary and the time needed to compile and submit an application would result in a significant opportunity being lost, the applicant may request, in writing, that

POS grant concurrence on a project. The applicant must explain the proposed project and give justification for the immediate action.

If POS grants concurrence and the project qualifies for assistance at a later date, the beginning of the project period will be the date of the Letter of Concurrence and costs incurred after that date will be eligible for reimbursement. Granting concurrence only acknowledges the need for immediate action and does not imply a qualitative approval of the project. Costs are incurred at the applicant's risk and granting concurrence does not in any way insure approval of the project.

A project application must be submitted within 90 days of the date of the Letter of Concurrence or the concurrence is void and costs incurred prior to the submission of the application may not be reimbursed.

### **e. Phasing a Project**

When the acquisition of a particular property involves more funds than currently available in the applicant's POS account, reimbursement for that property may be accomplished in several phases over several fiscal years. The applicant should propose the schedule by which they will request reimbursement in the application. It should be understood that future allocations are not guaranteed and that each phase is approved based on available funds.

### **f. Cost Overruns and Amendments of Scope**

During the execution of a project, there may be unforeseen changes which cause the cost of the phase or project to be greater than the approved support ceiling. In other cases, it may be necessary or desirable to alter the scope of the project by adding, deleting or modifying some of its parts. The applicant is required to notify POS when such changes are anticipated and to submit an amendment as soon as possible to cover the modification. It is recognized, however, that it will not always be possible for POS to act in advance of the change, and any costs thus incurred prior to their approval are done at the applicant's risk.

In those cases where an approved acquisition project overruns the project cost committed by the Board of Public Works, the applicant may submit a request to POS for additional assistance. The applicant's request for an amendment for a cost overrun must include the following items:

- (1) The applicant's letter transmitting the request and giving a justification for the overrun.
- (2) A revised Funding Authorization, signed by the County Liaison Officer, for the additional amount requested.

Proposed amendments decreasing the scope or requesting a cost overrun will be considered after the project period, if an earlier submission is not possible, but only those costs incurred within the project period will be eligible. Proposed amendments to increase the scope may not be considered after the project period ends.

## **2. Applicant's Financial Obligation**

### **a. Applicant's Matching Share:**

In most cases the applicant will initially pay all costs incurred during the project period. The applicant, upon presentation of a reimbursement request to POS, will be reimbursed for the State's share of the eligible costs documented. The applicant's matching share will be determined by the percent of assistance that the county is eligible to receive and the amount of funds available to the applicant.

### **b. Applicant's Ability to Pay:**

Each applicant shall certify that funds are available or will be available, within 12 months of the date of submission of the application, to pay the local share of the project cost.

### 3. Assistance Ceilings

#### a. **Assistance Ceiling on Cost Items**

The amount of each cost item that may be matched by POS shall not exceed the applicant's actual cash expended for that item.

#### b. **Assistance Ceiling on Total Project**

The total matching amount made available for an approved project shall not exceed the approved support ceiling.

## D. **APPLYING FOR ACQUISITION ASSISTANCE**

**1. Completing the Acquisition Application and Project Agreement** The following are step-by-step instructions for compiling the required attachments and completing the acquisition Application and Project Agreement needed to request POS assistance. Should questions arise during this process, do not hesitate to contact the POS Assistant Regional Administrator assigned to your county.

**1. Attachments to the Application** There are attachments which are required as part of the POS application, depending on the type of project proposed. Due to the lead time needed to obtain some of these attachments, it is recommended that they be compiled before the application form is completed.

**Attachment #1 - County or City Road Map** Provide a road map with the project location indicated with a red circle. The road map must be detailed enough that someone unfamiliar with the area can find the project.

**Attachment #2 - Acquisition Line Map** Show the location of the property to be acquired outlined in red.

**Attachment #3 - Two (2) independent appraisal reports** For each parcel to be acquired under a project, supply one (1) copy of each report. Appraisal must include original photographs.

**Attachment #4 - Deed or Lease** If not included in one of the appraisal reports, provide a copy of the current deed. A new deed when recorded that shows the applicant as the new title-holder must be sent in with the reimbursement request.

**Attachment #5 - Retention of Rights Explanation**

This attachment is needed only if a third party holds rights to the land which is being acquired under this application such as mineral rights, timber rights, water rights, etc. The applicant should explain these rights so that the effect on the proposed project can be evaluated.

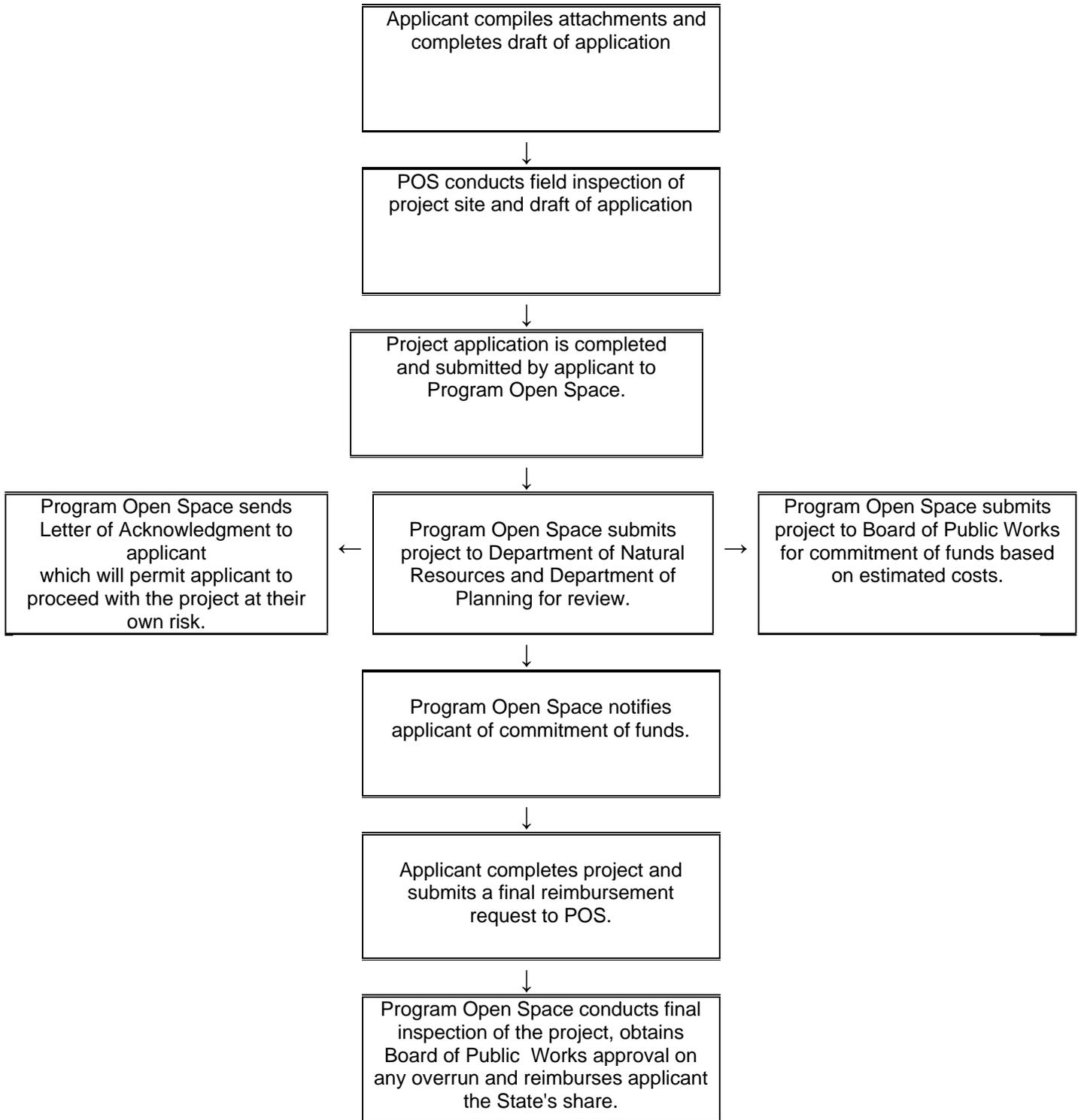
**Attachment #6 - Funding Authorization**

This attachment will indicate the amount of POS assistance being authorized for the proposed project by the County Liaison Officer. A pre-printed form is provided in the application packet for this purpose.

**Attachment #7 - Local Planning Agency Approval and Infrastructure Review**

This attachment will consist of a letter from the local planning agency (county or city) stating that they have reviewed the proposed project and that it does not conflict with the local master plan.

### 3. Application Processing Flow Chart



## E. PROJECT COST REIMBURSEMENT

### 1. Reimbursement Requirements

- a. **General** - Payment to applicants will generally be made on a reimbursable basis. The applicant must pay for the acquisition and then submit a request for allowable reimbursement costs to POS.
- b. **Advance Payments** - If an applicant lacks the resources to finance an approved project initially with local funds, it may request an advance of POS funds to cover a portion of the anticipated allowable costs.
- c. **Frequency and Timing of Reimbursement Requests** - The applicant may submit partial reimbursement requests as often as once a month or may choose to wait until the project is complete and submit only one, final reimbursement request.
- d. **Request Must Represent Cash Expenditure** - The amount of each item which may be eligible for reimbursement shall not exceed the applicant's actual cash outlay for that item or the fair market value of that item, whichever is less.
- e. **Documentation** - Each expenditure submitted for reimbursement consideration must be supported by invoice, canceled check, settlement sheet, or similar documentation which verifies expenditures.

### 2. Reimbursement Process

- a. **Form** - The applicant will submit all reimbursement requests on the pre-printed "Request for Reimbursement" form available from POS. The applicant shall include copies of all required documentation with each request. The request will be reviewed by POS staff for applicability to the approved project and for accuracy.
- b. **Payment** - Program Open Space, after approval of the State's share of the allowable project costs, will submit a transmittal list to the Comptroller of the Treasury for a check made payable to the applicant. The applicant will be notified by POS of this action and the check will be mailed directly from the Comptroller's office.

### 3. Acknowledgment Sign An Acknowledgment sign recognizing that this project site is POS-assisted must be permanently installed prior to final reimbursement.

### 4. Final Inspection After the applicant has completed the project and submitted a final reimbursement request, POS must conduct a final inspection to ensure that the applicant has completed the project as described in the project proposal as officially approved and amended. The final inspection must precede the final reimbursement by the State.

## F. PROJECT COMPLETION RESPONSIBILITIES

1. **Applicability** The rules given in this section apply to each area or facility for which assistance is obtained from POS, regardless of the extent of participation of the Program in that area or facility.
2. **Applicant Responsibility** Responsibility for enforcement of the provisions of this section rests with the applicant. Program Open Space will inspect assisted areas and facilities from time to time to assure compliance with these provisions or will request the applicant to conduct a post completion inspection periodically.

- 3. Penalties** Failure to comply with the provisions of this section shall be cause for POS to take one or more of the following actions to rectify the situation and bring the project back into compliance:
- a. Withhold approval**  
DNR may withhold approval of any grant request submitted by the applicant to POS.
  - b. Withhold reimbursement**  
Program Open Space funds for the State's share of the costs of any or all outstanding approved projects of the applicant may be withheld until the project is brought into compliance.
  - c. Maintain, operate, or repair**  
DNR may find it necessary to take on the responsibility to maintain, operate or repair the project to protect it from further damage and then charge the cost to the applicant as a debt due the State.
- 4. Retention and Use** Property acquired or developed with assistance from the Program shall be retained and used for public outdoor recreation or open space. Any property so acquired or developed shall not be wholly or partly converted to other uses without the written approval of the Secretary of the Department of Natural Resources, the Secretary of the Department of Budget and Management and the Secretary of the Maryland Department of Planning as defined in the conversion section.
- 5. Operation and Maintenance** Property acquired or developed with assistance from the Program shall be operated and maintained as follows:
- a. The property shall be maintained**  
By accepting State financial assistance for a project, the local governing body agrees to maintain the project properly to appear attractive and inviting to the public.
  - b. Sanitation and sanitary facilities shall be maintained**  
Sanitation facilities will be maintained in accordance with applicable health standards.
  - c. Properties shall be kept reasonably safe for public use**  
Fire prevention, life guarding, and similar supervisory activities shall be maintained to minimize user injuries.
  - d. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair**  
Facilities and infrastructure shall be maintained in good repair by the applicant throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
  - e. The facilities shall be kept open for public use**  
Project areas will be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
  - f. Services and facilities shall comply with the Americans with Disabilities Act of 1990 (ADA)** Public Law 101-336, Americans with Disabilities Act was enacted on July 26, 1990, with most of the ADA requirements becoming effective by January 26, 1992. This powerful legislation is intended to eliminate discrimination against people with disabilities in all areas of life, including a person's recreation and leisure pursuits. *Nondiscrimination by State & Local Government - Title II*, applies to the provision of programs and facilities. This is in addition to other public laws that traditionally have required government agency compliance (i.e., Section 504 of the Rehabilitation Act) to accommodate individuals with disabilities. ADA is more comprehensive. Check with your local governing authority for specific local policy and guidelines.

- 6. Nondiscrimination** Property acquired or developed with assistance from the Program shall be open to entry and use by all persons regardless of race, color, religion, sex, age, or national origin, who are otherwise eligible according to reasonable published rules applicable to the property involved.
- 7. Reasonable Use Limitations** Applicants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Program assistance when such a limitation is necessary for safety, maintenance, or preservation. All limitations shall be in accord with the applicable grant and amendments.
- 8. Inspection** Properties and facilities acquired or developed with Program assistance shall be available for inspection by POS representatives at reasonable times.

## **G. APPRAISAL FORMAT**

### **1. Requirements of the Appraisal Report**

- a.** The total land cost of an acquisition project is determined by the sum total of the fair market value of each parcel of land to be acquired. The fair market value for each parcel must be substantiated by two ORIGINAL APPRAISAL REPORTS. If the project contains one or more parcels whose individual value is \$25,000.00 or more, then the following format for the FORMAL APPRAISAL must be followed. However, if the individual parcel value is less than \$25,000.00, the appraiser should follow the ABBREVIATED APPRAISAL REPORT guidelines that follow.
- b.** The Appraisal Report must be prepared by a qualified appraiser and be an analytical narrative report following current professional appraisal practices involving the application of standard techniques, such as comparative or market value, cost less depreciation, and income approaches to value.  
  
The Appraisal Report must have been dated within the twelve (12) month period prior to the project's submission to DNR.
- c.** The Applicant will supply two independent appraisal reports. Each report must be an original copy with original photographs. If the appraisals vary by more than 20%, POS may require a third appraisal.
- d.** The incidental cost relating to appraisal fees will be eligible for reimbursement under POS.

### **2. Formal Appraisal Report Requirements** The following outlines the format which the FORMAL APPRAISAL must follow. Acquisition costing \$25,000 or more must cover all items which have been designated by an asterisk (\*). It is important that each appraiser be given a copy of the following format:

- a. Qualifications\*** Statement of qualifications of all appraisers and/or technicians contributing to the report.
- b. Statement of Limiting Conditions\*** The appraiser should state that he assumes the title to be marketable, that he assumes no responsibility for legal matters, that all data furnished him by others are presumed to be correct, and that any other assumptions he has made are correct.
- c. Purpose of the Appraisal\*** This shall include a definition of all values required and appraised.
- d. Identification of Property\***
- e. City and Area Data\*** This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the property being appraised.

## **f. Property Data\***

- (1) Site** Describe soil, topography, mineral deposits, easements, etc. If there is an indication that mineral deposits have more than a nominal commercial value, this fact shall be clearly stated. Identify the number of acres that are wooded, agricultural, flood plain, in the critical area and non-tidal wetlands.
- (2) Improvements** This shall be by narrative description including dimensions of principal buildings and/or improvements.
- (3) Equipment** This shall be by narrative description, including the condition.
- (4) Condition** The current physical condition and relative use and obsolescence shall be stated for each item or group appraised and, whenever applicable, the repair or replacement requirements to bring the property to useable condition.
- (5) Assessed Value and Annual Tax Load** Include the current assessment and dollar amount of real estate taxes. If the property is not taxed, the appraiser shall estimate the tax.
- (6) Utilities** Availability of water, sewer, electricity, etc.
- (7) Zoning** Describe the zoning for subject and comparable properties, and if re-zoning is imminent, discuss under Item (g).

**g. Analysis of Highest and Best Use\*** The report shall state the highest and best market use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use. There can be **only one** highest and best use. Determine the development potential, the number of lots and the value of those lots.

**h. Land Value\*** The appraiser's opinion of the value of the land shall be based upon its highest and best use, regardless of any existing structures, and shall be supported by confirmed current factual data (sales and offerings) of comparable, or nearly comparable, lands having like optimum uses. Differences shall be weighed and explained to show how they influence the value of the land being appraised.

**i. Value Estimates by Cost Approach** (Optional) This section shall be in the form of data arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, with real and potential for which only a salvage or scrap value is estimated.

**i. Value Estimate by Income Approach** (Optional) This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross rent or income; (b) allowance for vacancy and credit losses; and an itemized estimate of total expenses, including reserves for replacements. Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method, and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

**k. Value Estimate by Comparative (Market Approach)\*** All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

**I. Interpretation and Correlation of Estimates\*** The appraisal shall interpret the foregoing estimate and shall state the reasons why one or more of the conclusions reached in items i, j and k are indicative of the market value.

**m. Tabulation of History of Conveyance (Property sales and transfers)\***

A history of transactions is required for each project. The history shall include the following items for the prior 5-year period.

- Parties to the transactions.
- Dates of purchase.
- The amounts of consideration

This tabulation may be submitted separately or incorporated by the appraiser in his report. The State would prefer the tabulation as a part of the appraiser's report. Similar information for sales between the date of appraisal and the acquisition date shall be ascertained by the Applicant.

**n. Certification of Appraiser, to wit\***

- Has personally inspected the property.
- Has no present or contemplated interest in the property.
- That in his/her opinion the market value of the taking as of:

\_\_\_\_\_ is \_\_\_\_\_  
(Valuation Date)

\_\_\_\_\_  
(Date report submitted)

- Is licensed in the State of Maryland.

**3. The Abbreviated Appraisal Report Requirements** An abbreviated appraisal report compiled by a qualified appraiser and adequately related to comparable sales, is acceptable for parcels with a value estimate up to \$25,000. The abbreviated report must include all six items listed below:

- a.** An adequate description of the real property and a plat.
- b.** The date the value estimate applies.
- c.** Supporting data, including three comparable real property sales, a brief analysis of those sales, and a map showing their location relative to the land appraised.
- d.** An analysis and statement of the property's highest and best use.
- e.** A statement of the appraiser's experience and qualifications.
- f.** The appraiser's license and signature.

# General Instructions

## Acquisition Application and Project Agreement

1. Refer to the *Program Open Space Grants Manual*, Acquisition Chapter, for detailed information concerning project eligibility and application requirements.
2. Prepare and assemble the different elements described below as attachments before completing the Acquisition Application and Project Agreement.
3. Complete the Application and Project Agreement based on the information in the attachments. \*See Project Description instructions below.
4. Contact your POS Program Administrator for an inspection of the project site and review of the Application and Program Agreement with its required attachments.

Elements	Original plus # of copies below	Description	Comments
Application	14	Page one and page two	Don't copy General Conditions or Instructions
attachment # 1	14	City/County Road Map	8½" X 11" with project location outlined in red
attachment # 2	14	Acquisition Line map	8 ½" X 11" maps with parcels outlined in red on all copies.
attachment # 3		Two independent appraisal reports	One copy of each, including original photographs.
attachment # 4		Copy of deed	Showing current owner.
attachment # 5		Retention of Rights Explanation	If applicable, when less than fee simple transfer.
attachment # 6		Funding Authorization	Signed by County Liaison Officer (CLO). Appendix E.
attachment # 7	14	Local or Regional Planning Agency Approval, and Infrastructure Review	Certifies consistency with existing plans See Manual Appendix for guidance.
attachment #8		Display Map (larger than 11" x 17")	Used for presentations before the Board of Public Works to identify adjacent park properties and/or multiple purchases.

\*\*Additionally, submit 1 full set of the application to your regional office.

When submitting an Acquisition Application as a *component* of a **Consolidated Annual Program Grant Application**, the following attachments *may be submitted* with the reimbursement request rather than up front as they are with the initial submission of an individual acquisition project: #3 the appraisals, #4 the deed, and #5 retention of rights explanation.

### \*The Project Description:

On page 1 of the Acquisition Application, item #6 is an empty box for you to provide a detailed project description.

#### What is it?

- \*Type of area: regional park/neighborhood tot-lot/stream valley park/hiker biker trail/etc.
- \*Is it a new area or an addition to an existing area?
- \*Is it the initial development or additional development?
- \*Note the existing acreage, the project acreage and proposed ultimate acreage

#### Why is it good? Who will benefit and how?

- \*List the benefits and who will reap them.
- \*What are the intended uses?
- \*Will it be developed or left in its natural state?

\*Note nearest town or neighborhood communities that the project intends to serve.

\*What constituency will this serve?

**Is it Consistent?**

\*Does it build upon earlier POS projects?

\*Will this project or the planned development of the site result in an increased demand on existing infrastructure (roads/water/sewer)?

\*If yes, is the existing infrastructure capable of handling the increased use? If not, how will this be addressed?

\*How is it consistent with the county's Comprehensive Plan, the State Planning Act and the seven planning visions, and the Local Land Preservation & Recreation Plan? Refer to respective sections or pages if known from plans.

\*If inconsistent, provide exception justification.

**What makes this special or unique?**

\*How have community or other groups assisted, participated or driven this request?

\*Any unique natural features?

\*Any notable social or economic aspects?

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See the Manual *Appendix* for more information on the visions and the *Introduction Chapter* for examples of project descriptions.

Maryland Department of Natural Resources  
Land & Water Conservation Service  
Program Open Space

**Acquisition Application and Project Agreement**

1. POS PROJECT # \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_ Individual Project  or part of a Consolidated Project   
(County / Municipality)

4. LEGISLATIVE DISTRICT \_\_\_\_\_ Last POS Grant issued at site # \_\_\_\_\_ Amount \$ \_\_\_\_\_

5. PROJECT LOCATION: Street Address: \_\_\_\_\_  
City, Town, or Community: \_\_\_\_\_

County Tax Map # \_\_\_\_\_ Grid \_\_\_\_\_ Parcel \_\_\_\_\_ ADC Road Map Edition \_\_\_\_\_ Map # \_\_\_\_\_ Grid Ltr \_\_\_\_\_ Grid # \_\_\_\_\_

6. PROJECT DESCRIPTION: (this is the information that gets written into the agenda item that is presented to the Maryland Board of Public Works for approval. Be specific, explain the proposed acquisition, why is it being done and how it relates to local recreation needs. Is it a new acquisition or does it build upon an existing facility? Provide all of the information that you feel is necessary to explain and justify the project and to convince the approving agencies that it is a worthwhile acquisition.) Attach additional 8 1/2" x 11" paper if necessary.

7. DESCRIPTION OF LAND TO BE ACQUIRED:

- a. Acres to be acquired with this acquisition \_\_\_\_\_ Ac. Existing park acreage: \_\_\_\_\_ Planned ultimate acreage: \_\_\_\_\_
- b. This is a new area  Or, an addition to an existing area  c. Nearest town or community served \_\_\_\_\_
- d. Number of residents currently served: \_\_\_\_\_ e. Number of residents projected to be served \_\_\_\_\_
- f. Existing annual attendance: \_\_\_\_\_ Visits / Yr. g. Projected annual attendance: \_\_\_\_\_ Visits / Yr.
- h. This property is Unimproved  or Improved  If improved, list all current improvements; identify size, condition, and future use of each improvement if known:

i. How many acres are: Wooded \_\_\_\_\_ Ac. Agricultural \_\_\_\_\_ Ac. Flood Plain \_\_\_\_\_ Ac.  
(Note: Total could exceed number of acres being acquired) In the Critical Area \_\_\_\_\_ Ac. (describe) \_\_\_\_\_  
Non-Tidal Wetlands \_\_\_\_\_ Ac. (describe) \_\_\_\_\_

- j. The topography is flat, steep, sloping, or other (describe) \_\_\_\_\_
- k. Subdivided? No  Yes  If yes, # of \_\_\_\_\_ Average size of lots \_\_\_\_\_
- l. Explain Zoning: \_\_\_\_\_
- m. Current Land Use: \_\_\_\_\_
- n. Highest & Best \_\_\_\_\_ Developable potential, # of lots \_\_\_\_\_
- o. Is the property currently being utilized at its highest and best use? Yes  No
- p. Utilities available: Water  Sewer  Electric  Gas  Phone
- q. Road Frontage: \_\_\_\_\_ ft. Paved  Unpaved
- r. Environmental Hazards: Yes  No  If there are any hazards list them and identify how they will be addressed:

8. **POTENTIAL CONFLICTS:** Describe how you will address any potential conflicting uses or any possible "incompatible" uses being planned within the next five to ten years, adjacent to or in the immediate vicinity of the property which might require a Land Use Conversion, e.g., road widening, etc. (See "Land Use Conversions" in the Manual)

9. **BENEFITS DERIVED FROM THIS ACQUISITION:**

10. **INFRASTRUCTURE:** Will the development planned for this site result in an increased demand on existing infrastructure (roads, utilities)? Yes  No  If yes, how will this be addressed?

11. **HOW IS THIS PROJECT CONSISTENT?**

12. **WHAT MAKES THIS PROJECT UNIQUE?**

13. **LAND VALUES:**  or Estimated

	\$	\$	
(Appraiser)	(Value)	(Value)	/Acre
			(Date of Appraisal)
	\$	\$	
(Appraiser)	(Value)	(Value)	/Acre
			(Date of Appraisal)

14. **APPRAISAL EVALUATION:**

- a. Spread between appraisals \_\_\_\_\_ % (If the spread is greater than 20% please explain);
- b. Average of appraisals \$\_\_\_\_\_ (Is the cost for land and improvements equal to the average of the appraisals?)  
 Yes      No      (If no, please explain):
- c. Appraisals are reasonable  , High  , Low  for the area. (if high or low please explain);
- 
- d. Are appraisals more than 12 months old? Yes  No  (if yes please explain);
-

	Total Costs	POS Assistance
15. LAND COST	\$ _____	\$ _____
16. COST OF IMPROVEMENTS	\$ _____	\$ _____
17. INCIDENTAL COSTS Itemize (appraisals, title work, surveys, etc.)		
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
_____	\$ _____	
Total Incidental Costs	\$ _____	\$ _____

<b>18. PROJECT TOTAL</b>	<b>\$ _____</b>	<b>POS Funding Requested \$ _____</b>
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19. SELLER'S NAME: \_\_\_\_\_ Owned since \_\_\_\_\_

20. TITLE WILL BE \_\_\_\_\_ (In Fee Simple?) Yes  No  If not, describe:  
*(Name of County/City, Department)*

21. LOCAL PROJECT COORDINATOR:

\_\_\_\_\_ (Name and Title) \_\_\_\_\_ (Telephone Number)

\_\_\_\_\_ (Address) \_\_\_\_\_ (City) \_\_\_\_\_ (Fax Number)

\_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code)

22. PROJECT PERIOD: From: \_\_\_\_\_ (Date of Letter of Acknowledgement/Concurrence)

\_\_\_\_\_ (When project will be completed)

(Month/Day/Year)

23. LOCAL GOVERNMENT AUTHORIZATION

As the authorized representative of this Political Subdivision, I have read the terms of the "Project Agreement and General Conditions" of the Program Open Space (POS) Grants Manual and I agree to perform all work in accordance with the Manual, POS Law and Regulations, and with the attachments included herewith and made a part hereof.

\_\_\_\_\_  
 (Signature) (Print Name) (Print Title) (Date)

24. STATE CLEARINGHOUSE REVIEW	DATE _____	Number _____
25. ON-SITE INSPECTION	DATE _____	BY _____
26. POS FUND SOURCE ASSIGNED _____	AMOUNT \$ _____	
27. DEPARTMENT OF NATURAL RESOURCES – PROGRAM OPEN SPACE APPROVAL:		
_____ (Director's Signature)	_____ (BPW Approval Date)	_____ (Agenda Item No.)

# Request for Reimbursement Acquisition Projects

PROJECT # \_\_\_\_\_ REIMBURSEMENT # \_\_\_\_\_ Final? Yes  No

PROJECT TITLE \_\_\_\_\_

CHECK MADE PAYABLE TO \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_ Federal I.D. # \_\_\_\_\_

PROJECT COORDINATOR \_\_\_\_\_

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

## Acquisition Documentation Required:

- A. Supply **one (1) copy** of each item:
  - 0. Deed to each parcel acquired. Deed must contain the conversion protection restrictive clause required by §5-906(e) (7) (8) of the Natural Resources Article.
  - 0. Evidence of title for each parcel acquired. (Letter from County or City Legal Officer, or certificate from the Title Guaranty Company).
  - 3. Settlement sheet for each parcel acquired.
  - 4. Invoice for any incidental costs which are not reflected on the settlement sheet (i.e., appraisals, surveys, etc.).
  - 5. Canceled checks for land purchases and incidental costs.
- A. Breakdown for each parcel acquired. Attach supplemental pages if needed.

## Section I. Land Cost:

Parcel Number	Acres Acquired	Date Acquisition Costs Incurred	Actual Total Land Costs	Amount of Reimbursement Requested
#1				\$
#2				\$
#3				\$
<b>Section I. Totals</b>				<b>\$</b>

**Section II. Incidental Costs:**

<b>Parcel #1</b>	<b>Actual Cost</b>	<b>Amount Requested</b>
Appraisal Fees		
Title Search		
Surveys		
Legal Fees		
Settlement Fees		
Recording Costs		
Other – Describe		
<b>Totals</b>	\$	\$

<b>Parcel #2</b>	<b>Actual Cost</b>	<b>Amount Requested</b>
Appraisal Fees		
Title Search		
Surveys		
Legal Fees		
Settlement Fees		
Recording Costs		
Other – Describe		
<b>Totals</b>	\$	\$

<b>Parcel #3</b>	<b>Actual Cost</b>	<b>Amount Requested</b>
Appraisal Fees		
Title Search		
Surveys		
Legal Fees		
Settlement Fees		
Recording Costs		
Other – Describe		
<b>Totals</b>	\$	\$

<b>Section II. Total Incidentals All Parcels:</b>	\$	\$
---	----	----

**Combined State Reimbursement Requested:**

**Section I.** Total Land Costs \$ \_\_\_\_\_  
**Section II.** Total Incidental Costs \$ \_\_\_\_\_  
 Total Reimbursement Requested \$ \_\_\_\_\_

**Local Project Coordinator Certification:** I certify the costs submitted for reimbursement to be just and correct and in accord with the "Program Open Space Grant Application and Project Agreement."

\_\_\_\_\_  
 Local Project Coordinator

\_\_\_\_\_  
 Date

Allow one (1) month from date of receipt by the State for processing of this Reimbursement Request.  
 Forward Reimbursement Request to:

Annapolis Office

Eastern Shore Office

Western Maryland Office

**Program Administrator**  
**Program Open Space**  
**Department of Natural Resources**  
**Tawes State Office Bldg. (E4)**  
**580 Taylor Avenue**  
**Annapolis, Maryland 21401**

**Chief State & Local Programs**  
**Program Open Space**  
**Department of Natural Resources**  
**201 Baptist Street**  
**Suite 22**  
**Salisbury, MD 21801-4969**

**Program Administrator**  
**Program Open Space**  
**Department of Natural Resources**  
**3 Pershing Street, Suite 104**  
**Cumberland, MD 21502**

Program Administrator Approval \_\_\_\_\_

Name

Date

Chief, Administration & Fiscal Management Approval \_\_\_\_\_

Name

Date

# DEVELOPMENT PROJECTS

## A. PROJECTS WHICH MAY BE ASSISTED

- 1. General Requirements** Development/capital renewal assistance will be granted for recreation and support facilities on land owned or controlled by the applicant that are beneficial and necessary for providing general outdoor recreation and open space opportunities. Projects must conform to the **County's Land Preservation and Recreation Plan** and be included in the **annual program** for that county.
- 2. Development of Leased Property** Assistance may be given to develop real property under lease, provided that control of such property is commensurate with the proposed investment. For the purpose of this program, the term of the lease should be at least 20 years and the lease cannot be revocable at will by the lessor.
- 3. Development with a Joint-Use Agreement** A Joint-Use Agreement is required for a project which is proposed to be developed on land which is not owned or leased by the applicant. This agreement assures protection of the public investment in the project. Should an applicant anticipate using a Joint-Use Agreement on a development project, please contact the POS Regional Administrator for information on the correct form and content. All Joint-Use Agreements must be reviewed and approved by DNR prior to becoming a part of a POS grant application.

## B. AMOUNT OF ASSISTANCE TO APPLY FOR ON A PROJECT

- 1. Counties That Have Not Met Their Land Acquisition Goals** For Counties still trying to reach their land acquisition goals as stated in the current **Local Land Preservation and Recreation Plans**, development/capital renewal projects are eligible for up to 75% assistance (25% local match). The percentage of assistance may be determined by the amount of POS funds available to the applicant.
- 2. Counties Which Have Met Their Land Acquisition Goals** In counties that have successfully met their land acquisition goals as stated in the current **Local Land Preservation and Recreation Plans**, development/capital renewal projects are eligible for up to 90% assistance (10% local match). The percentage of assistance may be determined by the amount of POS funds available to the applicant.
- 3. Development Credit for Donated Land** Program Open Space law allows a local government to use up to 75% of the appraised value of land donated to the applicant for recreation or open space use as the local governing body's matching share on a development project. Because the land donation saves acquisition costs, the donation credit can come from the county's POS acquisition account.

**Example:** A local government accepts a donation of land for recreation or open space use and wishes to take advantage of the donation credit to develop the land for public recreational use. The local government obtains an appraisal which values the property at \$40,000. A donation credit of \$30,000 (75% of appraised value) would be available from their POS acquisition funds to serve as the local match on the development project. Depending on the cost of the development project and the amount of POS funds available, the local government could apply for 100% assistance by combining the donation credit and development funds.

Should a donation of land be offered for public recreation and the local governing body wants to utilize the provisions of POS law which address land donations, the Assistant Regional Administrator assigned to that county should be contacted for direction.

**4. Federal Assistance** If the applicant is to receive federal funding assistance on a project, the amount of POS assistance will be reduced by the dollar amount of the federal assistance approved. The combined amount of federal and POS assistance cannot exceed the normal amount of POS assistance available on any one project.

**5. Other State Assistance** If the applicant is to receive funding assistance from any other State grant program on a project, the amount of POS assistance will be reduced by the dollar amount of the other State assistance approved. The combined amount of State assistance cannot exceed the normal amount of POS assistance available on any one project.

## C. ALLOWABLE PROJECT COSTS

**1. Basic Concept** Project costs will be matched project by project. Each project represents a separate transaction for purposes of determining the amount of the State share of the costs. The project period is the span of time stipulated on the application during which all work to be accomplished under the terms of the project agreement must be completed. The beginning date is the date that an official Letter of Acknowledgment or Letter of Concurrence is forwarded to the applicant from POS. Funding of local POS projects is subject to the approval of The Board of Public Works. The ending date is chosen by the applicant, with POS approval, and must provide sufficient time to complete the project.

**a. Project Period** The intent of POS is to assist work not yet undertaken, rather than to help pay for work already begun or completed. To be eligible for reimbursement, costs must have been incurred within the project period, except for allowable project planning costs. The Program does not reimburse costs which are incurred outside of the project period. Development costs are first incurred at the start of actual physical work on the project site (such as the clearing of ground, the beginning of construction of a building, or the receipt of material for the project), and continue through the time it takes to complete the project. Costs are not incurred at some earlier time when contracts are signed, funds obligated, or purchase orders issued; nor at a later time when the ensuing bills are paid.

If, during the conduct of a project, it becomes apparent that completion will not be possible within the project period, the applicant must submit a request to extend the project period. Requests for project period extensions should be submitted at least 90 days prior to the expiration date. Requests for project period extensions submitted after the expiration date may not be considered.

**(1) Concurrence** - When immediate action is necessary and the time needed to compile and submit an application would result in a significant opportunity being lost, the applicant may request, in writing, that POS grant concurrence on a project. The applicant must explain the proposed project and give justification for the immediate action.

If POS grants concurrence and the project qualifies for assistance at a later date, the beginning of the project period will be the date of the Letter of Concurrence and costs incurred after that date will be eligible for reimbursement. Granting concurrence only acknowledges the need for immediate action and does not imply a qualitative approval of the project. Costs are incurred at the applicants risk and granting of concurrence does not in any way ensure approval of the project.

A project application must be submitted within 90 days of the date of the Letter of Concurrence or the concurrence is void and costs incurred prior to the submission of the application will not be reimbursed.

**(2) Project Planning Costs** - It is recognized that some costs may need to be incurred before a

proposed project can be submitted to POS with the required descriptive and cost data. Therefore, for development projects, the costs of site investigation, site planning, feasibility studies, preliminary design, preparation of cost estimates, construction drawings and specifications, and similar items necessary for project application preparation will be eligible for assistance although incurred prior to application submission. The project application must specifically list these items, including their estimated or actual costs and the dates incurred.

- b. Staging a Project** When a project is staged, each stage will be treated as a separate project and must be approved before costs are incurred. Any costs incurred prior to approval will be ineligible.
- c. Cost Overruns and Amendments of Scope** During the execution of a project there may be unforeseen delays, changes in specifications, or rising costs of labor and supplies which cause the cost of the project to be greater than the approved amount. Or, as work progresses, it may be necessary or desirable to alter the scope of the project by adding, deleting, or modifying certain parts. The applicant is required to notify Program Open Space when cost overruns or changes in scope occur and to submit an amendment as soon as possible to cover the modification. It should be understood that it will not always be possible for Program Open Space to act in advance of the changes and any costs thus incurred prior to their approval are done so at the applicant's risk.

## **2. Applicant's Financial Obligation**

### **a. Applicant's Matching Share**

In most cases the applicant will initially pay all costs incurred during the project period. The applicant, upon presentation of a billing to POS, will be reimbursed for the State's share of the eligible costs represented by that billing. The applicant's matching share will be determined by the percent of assistance that county is eligible to receive and the amount of funds available to the applicant.

- b. Applicant's Ability to Pay** Each applicant shall certify that funds are available or will be available within 12 months of the date of submission of the application to pay the local share of the project cost.

## **3. Assistance Ceilings**

### **a. Assistance Ceiling on Cost Items**

The amount of each cost item that may be matched from the Program shall not exceed the applicant's actual cash outlay for that item.

### **b. Assistance Ceiling on Total Project**

The total matching amount made available for an approved project shall not exceed the approved support ceiling.

## **4. Outdoor Recreation Facility Development and Capital Renewal Costs**

### **a. Preliminary Site Planning**

Preliminary site planning of a park or outdoor recreation area, in whole or in part, may be assisted according to the percentage of assistance available on a given development project, subject to the following conditions:

- (1) Single stage project** Must include actual development of at least equal cost to that of the preliminary site plan.
- (2) Dual or multi-stage project** Where the preliminary site planning occurs in the first stage:

- (a) **The first stage** must also include an amount of development at least equal to the amount of the preliminary site plan, or;
- (b) **If the applicant intends the development to begin in the second stage**, the project description must stipulate that an amount of development at least equal in cost to the preliminary site plan will be undertaken in the second stage and that it will be submitted for funding within 2 years of the date of approval.

(1) **No consultant fee** No consultant fees may be paid to any federal, State or applicant's employees unless such payment is specifically approved by POS.

## b. Construction

Allowable construction costs cover all necessary construction activities from site preparation (including demolition, excavation, grading, etc.) to the completion of a structure. Construction may be carried out in the following ways:

- (1) **Contract** with a private firm for all or part of the proposed development, or;
- (2) **Force Account** with the applicant's own personnel, equipment, supplies, and materials.

(a) **Personnel Costs** for Force Account Development Assistance may be provided for the personal service of those employees directly engaged in the execution of a project. Assistance will be provided according to the proportion of time spent on a project. The cost of such compensation is allowable to the extent it is:

- \*reasonable for the services rendered;*
- \*determined and supported by generally accepted payroll practices, time, attendance or equivalent records.*

(b) **Fringe Benefits Costs** for Force Account Personnel  
The costs of fringe benefits which are regularly provided to employees by the applicant are legitimate personal service costs and are eligible for assistance. Fringe benefit costs to a project should be computed in proportion to the time spent on a project.

## c. Equipment for Development

Subject to determination on a case by case basis, assistance will be made available for:

(1) **Equipment Used in the Conduct of a Project**

- (a) **Equipment owned by the applicant** may be charged against the project on an approved use allowance or depreciation basis.
- (b) **Costs of leasing or renting equipment** utilized in the execution of a project are allowable when it is determined that such an arrangement is the most efficient and economical.

(2) **Purchase Cost of Equipment Required to Make a Facility Initially Operational.** The cost of equipment that is necessary to provide for the recreation uses for which the project is approved are generally eligible for assistance. Equipment to be used for maintenance is not eligible for assistance.

## d. Materials and Supplies for Development

Materials and supplies may be purchased for a specific project or may be drawn from a central stock. Regardless of their origin, these items should be charged at the actual cost to the applicant and properly documented.

**b. Information and Interpretations Costs** Program assistance will be available for the costs of informational and interpretive items related to a project. These may include information and directional signs at the entrance of the project area, display boards, dioramas, interpretive facilities for the explanation of items of interest, and other facilities required to explain the area or bring it to public attention.

**5. Amendments for Cost Overruns** In those cases where the development costs of an approved project exceed the amount approved by the Board of Public Works, the applicant may submit a request to POS for additional assistance. The applicant's request for an amendment for a cost overrun must include the following items:

**a. Revised cost estimate**

Include an item-by-item list of approved and proposed development items.

**b. Revised site plan**

If the proposed amendment involves any change to the approved site plan submit a revised plan.

**c. Revised Funding Authorization**

The signature of the County Liaison Officer is required for the additional amount requested.

**d. Cover letter**

The applicant will send a cover letter transmitting the above items and explaining in detail the reasons for the overrun and justifying why POS funding should assist in paying those costs.

**6. Non-Allowable Costs** The following expenses, costs or charges shall not be included in the base for determining financial assistance:

**a. Ceremonial or entertainment**

**b. Publicity**

**c. Bonus payment of any kind**

**d. Contingency reserves or similar reserves**

e. Deficits or overdrafts

**f. Taxes**

Taxes which the organization involved would not have been liable to pay, cannot be billed to the State.

**g. Interest**

**h. Damage judgments**

Any damage arising out of constructing or equipping of a facility, whether determined by judicial decision, arbitration or otherwise, are not eligible.

- i. Operation and maintenance costs**  
Normal maintenance and operation expenses for outdoor recreation areas and facilities unless specified as eligible under a Capital Development Grant.
- j. The value of personal services or materials**  
Contributed services or donated materials for a project obtained without cost to the applicant are not billable.
- k. Cost of discounts not taken**
- l. Equipment to be used for maintenance**  
Maintenance equipment for outdoor recreation areas and facilities is not an allowable expense.
- m. Fines and penalties**
- n. The purchase of equipment**  
Equipment used for the development of an assisted project.

## **D. APPLYING FOR DEVELOPMENT or CAPITAL RENEWAL ASSISTANCE**

### **1. Completing the Development Application and Project Agreement**

The step-by-step instructions for compiling the attachments and completing the Development Application and Project Agreement are listed in the Appendix as **General Instructions and Project Agreement for Development Applications**. Should questions arise during this process, do not hesitate to contact the POS Regional Administrator or Assistant assigned to your county.

### **2. Attachments to the Application** There are several attachments which are required as part of the POS Application, depending on the type of project proposed. Due to the lead time needed to obtain some of these attachments, it is recommended that they be compiled before the application form is completed. A summary list of attachments can be found in the Manual Appendix for the **General Instructions**.

***Attachment #1 - County or City Road Map***

This attachment should be a legible copy of the appropriate road map with the project location indicated with a red circle. The map must be detailed enough that someone unfamiliar with the area can find the project.

***Attachment #2 - Project Site Plan***

The site plan of the entire area. Outline in red on each copy major items to be developed under this application. Label all facilities as either EXISTING at the time of application or PROPOSED for development in this project or future development.

***Attachment #3 - Floor Plans***

Provide a floor plan for each enclosed building proposed for development under this project .

***Attachment #4 - Deed, Lease, or Joint-Use Agreement***

A copy of the applicant's fee simple deed, a lease for a minimum of 20 years to the property to be developed under the proposed project, or the DNR Joint-Use Agreement submitted for State review and approval of terms and legal sufficiencies.

***Attachment #5 - Retention of Rights Explanation***

This attachment is needed only if a second party holds rights to the land to be developed under this application such as mineral rights, timber rights, water rights, etc. The applicant should explain these rights so that the effect on the proposed project can be evaluated.

***Attachment #6 - Funding Authorization***

This attachment will indicate the amount of POS assistance being authorized for the proposed project by the County Liaison Officer (CLO). A pre-printed form is provided for this purpose.

***Attachment #7 - Local or Regional Planning Agency Approval and Infrastructure Review***

Certifies consistency with existing plans and addresses relationship of project with water, sewer, storm water, roads, school, or other facilities or plans for facilities. See the Appendix for guidance. This approval letter from the local planning agency (county or city) should state that the agency has reviewed the proposed project and that it does not conflict with the county's Comprehensive Plan, the Local Land Preservation & Recreation Plan, and should further identify how the project supports the Visions of the 1992 Growth and Resource Planning and Protection Act.

***Attachment #8 - Compliance with Forest Conservation Law and Site Specific Plan***

If the scope of the planned disturbance requires it, provide documentation that the project is in compliance and that a forest stand delineation and forest conservation plan has been prepared. This attachment is required if the proposed project involves a site of 40,000 square feet or greater and requires subdivision, grading or sediment control permits. It will consist of a written review of the project by a representative of the Maryland Forest Service or local planning and zoning authority. To obtain a review of the project, the applicant must submit a Forest Stand Delineation and Forest Conservation Plan to the appropriate agency prior to subdivision, grading or sediment control permit submission.

***Attachment #9 - Compliance with Maryland Roadside Tree Law***

If the scope of planned disturbance requires it, provide documentation that the project is in compliance and that a permit has been obtained. This attachment is required if the proposed activity involves the planting, maintenance or removal of trees within the right-of-way of a public road. It will consist of a written review of the project by a representative of the Maryland Forest Service. To obtain a review of the project, the applicant must contact the Regional Forester for that area of the State at least one (1) month prior to commencing work.

***Attachment #10 - Capital Renewal***

If requesting Capital Renewal eligibility, explain briefly the necessity to ensure the physical integrity of;

- 1) *A facility,*
- 2) *Fixed equipment, or*
- 3) *An existing physical improvement.*

### 3. Application Processing Flow Chart

*Applicant compiles attachments and completes draft of application*

*POS conducts field inspection of project site and draft of application*

*Project application is completed and submitted by applicant to POS*

*POS sends Letter of Acknowledgment to applicant which will permit applicant to proceed with the project at their own risk.*

*POS submits project to Department of Natural Resources and MDP for review.*

*POS submits project to Board of Public Works for commitment of funds based on estimated costs.*

*POS notifies applicant of commitment of funds.*

*Applicant completes project and submits a final reimbursement request to POS.*

*POS conducts final inspection of the project, obtains Board of Public Works approval on any overrun and reimburses applicant the State's share.*

## **E. PROJECT COST REIMBURSEMENT**

### **1. Reimbursement Requirements**

#### **a. General**

Payment to applicants will generally be made on a reimbursable basis. In order to secure reimbursement on approved allowable project costs, the applicant must pay for the development and then submit a request for reimbursement for the costs incurred to POS.

#### **b. Advance Payments**

If an applicant lacks the resources to finance an approved project initially with local funds, it may request an advance of Program funds to cover a portion of the anticipated allowable costs.

#### **c. Frequency and Timing of Reimbursement Requests**

The applicant may submit partial reimbursement requests as often as once a month or may choose to wait until the project is complete and submit only one, final reimbursement request.

#### **d. Request Must Represent Cash Expenditure**

The amount of each item which may be eligible for reimbursement shall not exceed the applicant's actual cash outlay for that item. Only expenditures for contract and force account items are eligible for reimbursement on development projects.

#### **e. Request for Reimbursement Must be Documented**

Each expenditure submitted for reimbursement consideration must be supported by invoice and canceled check, force account work schedules, or similar documentation which verifies expenditures.

#### **f. Force Account**

Work which has been accomplished using in-house labor and/or equipment.

### **2. Reimbursement Process**

#### **a. Forms**

The applicant will submit all reimbursement requests on the pre-printed "Request for Reimbursement" form available from POS. The applicant shall include copies of all required documentation with each request. The request will be reviewed by POS staff for applicability to the approved project and for accuracy.

#### **b. Payment**

Program Open Space, after approval of the State's share of the allowable project costs, will submit a transmittal list to the Comptroller of the Treasury for a check made payable to the applicant. The applicant will be notified by POS of this action and the check will be mailed directly from the Comptroller's office.

- 3. Acknowledgment Sign** An acknowledgment sign recognizing that this project site is POS assisted must be permanently installed prior to final reimbursement. Design of the sign is up to the applicant and may reflect that of other park signage.

- 4. Final Inspection** After the applicant has completed the project, installed a permanent acknowledgment and submitted a final reimbursement request, POS must conduct a final inspection. This

inspection is to ensure that the applicant has completed the project as described in the project proposal as officially approved and amended. The final inspection must precede the final reimbursement by the State.

## F. POST COMPLETION RESPONSIBILITIES

1. **Applicability** The rules given in this section apply to each area or facility for which assistance is obtained from POS, regardless of the extent of participation of the Program in that area or facility.
2. **Applicant Responsibility** Responsibility for enforcement of the provisions of this section rests with the applicant. Program Open Space will inspect assisted areas and facilities from time to time to assure compliance with these provisions or will request the applicant to conduct a post completion inspection periodically.
3. **Penalties** Failure to comply with the provisions of this section shall be cause for POS to take one or more of the following actions to rectify the situation and bring the project back into compliance:
  - a. **Withhold approval**  
DNR may withhold approval of any grant request submitted by the applicant to POS.
  - b. **Withhold reimbursement**  
Program Open Space funds for the State's share of the costs of any or all outstanding approved projects of the applicant may be withheld until the project is brought into compliance.
  - c. **Maintain, operate, or repair**  
DNR may find it necessary to take on the responsibility to maintain, operate or repair the project to protect it from further damage and then charge the cost to the applicant as a debt due the State.
4. **Retention and Use** Property acquired or developed with assistance from the Program shall be retained and used for public outdoor recreation or open space. Any property so acquired or developed shall not be wholly or partly converted to other uses without the written approval of the Secretary of DNR, the Secretary of the Department of Budget and Management and the Secretary of the Maryland Department of Planning as defined in the chapter on Land Use Conversions.
5. **Operation and Maintenance** Property acquired or developed with assistance from POS shall be operated and maintained as follows:
  - a. **The property shall be maintained**  
By accepting State financial assistance for a project, the local governing body agrees to maintain the project so as to appear attractive and inviting to the public.
  - b. **Sanitation and sanitary facilities shall be maintained**  
Sanitation facilities will be maintained in accordance with applicable health standards.
  - c. **Properties shall be kept reasonably safe for public use**  
Fire prevention, life guarding, and similar supervisory activities shall be maintained to minimize user injuries.
  - d. **Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair**  
Facilities and infrastructure shall be maintained in good repair by the applicant throughout their estimated

lifetime to prevent undue deterioration and to encourage public use.

**e. The facilities shall be kept open for public use**

Project areas will be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

**f. Services and facilities shall comply with the Americans with Disabilities Act guidelines**

**5. Nondiscrimination** Property acquired or developed with assistance from the Program shall be open to entry and use by all persons regardless of race, color, religion, sex, age, or national origin, who are otherwise eligible according to reasonable published rules applicable to the property involved.

**5. Reasonable Use Limitations** Applicants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Program assistance when such a limitation is necessary for safety, maintenance, or preservation. All limitations shall be in accord with the applicable grant and amendments.

**8. Inspection** Properties and facilities acquired or developed with POS assistance shall be available for inspection by POS representatives at reasonable times.

# General Instructions Development or Capital Renewal Application and Project Agreement

1. **Refer to the Program Open Space Grants Manual**, for detailed information concerning project eligibility and application requirements.
2. **Prepare and assemble the different elements described below as attachments** before completing the Development/Capital Renewal Application and Project Agreement.
3. **Complete the Application and Project Agreement** based on the information in the attachments. \*see Project Description Instructions on next page
4. **Contact your POS Program Administrator** for an inspection of the project site and review of the Development Application and Project Agreement with its required attachments.

Elements	Original plus # of copies below	Description	Comments
Application	14	Page one and page two	Don't copy General Conditions or Instructions
attachment #1	14	City/County Road Map	8 1/2" x 11" Map with location marked in red.
attachment #2	14	Site Plan	The site plan of the entire area. Outline in red on each copy major items to be developed under this application. Label all facilities as either EXISTING at the time of application or PROPOSED for development in this project or future development.
attachment #3		Floor Plan	One (1) copy of a floor plan of each enclosed building being proposed under this project.
attachment #4		Deed, Lease, or Joint Use Agreement	Fee simple title, 20 year lease, or Joint-Use Agreement Appendix D.
attachment #5		Retention of Rights Explanation	If applicable, when not owned in fee simple.
attachment #6		Funding Authorization	Signed by County Liaison Officer (CLO). Appendix E.
attachment #7	14	Local or Regional Planning Agency Approval and Infrastructure Review	Certifies consistency with existing plans and addresses relationship of project with water, sewer, storm water, roads, school, or other facilities or plans for facilities. See Appendix for guidance.
attachment #8	14	Compliance with Reforestation Law and Site specific plan	If the scope of the planned disturbance requires it. Refer to the Development chapter for guidance.
attachment #9	14	Capital Renewal	If requesting "Capital Renewal" eligibility, explain briefly the necessity to ensure the physical integrity of; 1) A Facility, 2) Fixed Equipment, or 3) An Existing Physical Improvement.

\*\*Additionally, submit 1 full set of the application to your regional office.

When submitting a **Development/Capital Renewal Application as a component** of a **Consolidated Annual Program Grant Application** the attachments listed below may be submitted in the reimbursement stage of the process rather than up front as they are with the initial submission of an individual development project: #3 the Floor Plan, #4 the Deed or Lease, #5 the Retention of Rights Statement, and #8 Reforestation Site Plan.

**\*The Project Description:** On page one of the Development Application, Item #6 is an empty box for you to provide a detailed project description.

**What is it?**

- \*Type of area: regional park/neighborhood tot-lot/stream valley park/hiker biker trail/etc.
- \*Is it a new area or an addition to an existing area?
- \*Is it the initial development or additional development?
- \*Note the existing acreage, the project acreage and proposed ultimate acreage

**Why is it good? Who will benefit and how?**

- \*List the benefits and who will reap them.
- \*What are the intended uses?
- \*Will it be developed or left in its natural state?
- \*Note nearest town or neighborhood communities that the project intends to serve.
- \*What constituency will this serve?

**Is it Consistent?**

- \*Does it build upon earlier POS projects?
- \*Will this project or the planned development of the site result in an increased demand on existing infrastructure (roads/water/sewer)?
- \*If yes, is the existing infrastructure capable of handling the increased use? If not, how will this be addressed?
- \*How is it consistent with the county's Comprehensive Plan, the State Planning Act and the eight planning visions, and the Local Land Preservation & Recreation Plan? Refer to respective sections or pages if known from plans.
- \*If inconsistent, provide exception justification.

**What makes this special or unique?**

- \*How have community or other groups assisted, participated or driven this request?
- \*Any unique natural features?
- \*Any notable social or economic aspects?

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See Manual Appendix for more information on the visions and the Acquisition Chapter for examples of project descriptions.

Shaded areas for state use only

Maryland Department of Natural Resources  
Capital Grants and Loans Administration  
Program Open Space

**Development & Capital Renewal Application  
and Project Agreement**

1. APPLICANT'S NAME \_\_\_\_\_ POS # \_\_\_\_\_

2. PROJECT TITLE \_\_\_\_\_

3. \_\_\_\_\_ Individual Project  or part of a Consolidated Project   
(County/Municipality)

4. LEGISLATIVE DISTRICT \_\_\_\_\_ Last POS Grant Issued # \_\_\_\_\_ Amount \$ \_\_\_\_\_  
(on this site)

5. PROJECT LOCATION Street Address: \_\_\_\_\_  
City, Town, or Community: \_\_\_\_\_

County Tax Map # \_\_\_\_\_ Grid \_\_\_\_\_ Parcel # \_\_\_\_\_ ADC Road Map Edition # \_\_\_\_\_ Map # \_\_\_\_\_ Grid Ltr \_\_\_\_\_ Grid # \_\_\_\_\_

a. Number of residents currently served: \_\_\_\_\_ b. Existing annual attendance: \_\_\_\_\_ Visits/Yr.  
c. Number of residents projected to be served: \_\_\_\_\_ d. Projected annual attendance: \_\_\_\_\_ Visits/Yr.

6. PROJECT DESCRIPTION: (this is the information that gets written into the agenda item that is presented to the Maryland Board of Public Works for approval. Be specific, explain the proposed project, why is it being done, how does it relate to local recreation needs, is it new development or does it build upon an existing facility? Provide all of the information that you feel is necessary to explain and justify the project and to convince the approving agencies that it is a worthwhile project). Attach additional 8 1/2" x 11" paper if necessary.

This park consists of \_\_\_\_\_ acres.

7. TOTAL DEVELOPMENT COST	\$ _____	100.00	%	
a. LOCAL FUNDING	\$ _____	_____	%	
b. OTHER FUNDING	\$ _____	_____	%	
c. L&WCF FUNDING	\$ _____	_____	%	
<b>d. AMOUNT REQUESTED</b>	<b>\$ _____</b>	<b>_____</b>	<b>%</b>	<b>Total State Funding Requested</b>
e. GRAND TOTAL	\$ _____	100.00	%	

8. LOCAL PROJECT COORDINATOR:  
\_\_\_\_\_  
(Print Name) (Print Title) (Telephone Number)

9. PROJECT PERIOD: From: \_\_\_\_\_ (Date of Letter of Acknowledgement/Concurrence)  
To: \_\_\_\_\_ (When project will be completed)  
(Address) (City) (State) (Zip) (Fax Number)

10. DETAILED COST ESTIMATE: (Round all estimates to nearest even dollar)

Item No.	Item	Contract Cost	Force Account Costs	Total Estimated Costs
1.	Program Open Space Acknowledgement Sign			
<b>Total Development Costs</b>				

11. LOCAL GOVERNMENT AUTHORIZATION

As the authorized representative of this Political Subdivision, I have read the terms of the "Project Agreement and General Conditions" of the Program Open Space (POS) Grant Manual and I agree to perform all work in accordance with the Manual, POS Law and Regulations, and with the attachments included herewith and made a part hereof.

(Signature)

(Print Name)

(Print Title)

(Date)

12. STATE CLEARINGHOUSE REVIEW

DATE \_\_\_\_\_

Number \_\_\_\_\_

13. ON-SITE INSPECTION

DATE \_\_\_\_\_

BY \_\_\_\_\_

14. POS FUND SOURCE ASSIGNED \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

15. DEPARTMENT OF NATURAL RESOURCES – PROGRAM OPEN SPACE APPROVAL

(Director's Signature)

(BPW Approval Date)

(Agenda Item No.)

## Request for Reimbursement Development and Capital Renewal Projects

PROJECT # \_\_\_\_\_ REIMBURSEMENT# \_\_\_\_\_ Is this a final reimbursement? Yes  No   
 If this is a final reimbursement request, when was the project completed? \_\_\_\_\_  
 and shall POS revert the remaining funds? Yes  No

PROJECT TITLE \_\_\_\_\_  
 CHECK MADE PAYABLE TO \_\_\_\_\_ FEDERAL ID # \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 PROJECT COORDINATOR \_\_\_\_\_

**SECTION I – Contract Costs and Direct Purchases**

Please submit **one (1) copy** of the following documentation and complete the cost summary below:

- 3. **Invoice or contractor’s “Requisition for Payment”** for supplies, materials, services rendered, or equipment rental.
  
- 3. **Copy of Canceled Checks** (Optional) for all items under #1 above. **Attach copies of the canceled checks to the invoice or “Requisition for Payment”**. If check amounts are greater than the invoice(s) please write the amount applicable on the check copy and circle the amount. If Local Jurisdiction elects to submit copies of canceled checks to support their “Requisition for Payment” then only the Project Coordinator must sign the “Payment Certification” on page 3. If the Local Jurisdiction elects not to submit copies of the canceled checks, the “Payment Certification” must then be signed, in lieu of the Project Coordinator, by an individual with fiscal authority who can certify that the payments have been made.

**3. Cost Summary:**

POS GRANT APPLICATION ITEM #	VENDOR OR CONTRACTOR	INVOICE NUMBER	AMOUNT
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$

List additional charges on next page



**SECTION II – Force Account/In-Kind Services/In-House Labor and Equipment:**

If work has been accomplished using in-house labor and equipment, submit the following documentation and fill in totals below:

- 0. A list or computer printout of individuals working on this project to include; job function, dates and hours each individual worked, hourly rate and total paid.
- 0. A list or computer printout of equipment used, dates and hours operated on this project. Usage rates should be based on current schedules within the county or town, or the current State Highway Administration rate schedule. Indicate the source for rates used.

Total Labor Cost	\$ _____
Total Equipment Cost	\$ _____
<b>Section II. Total</b>	<b>\$ _____</b>

**Summary of Costs**

<b>Total Section I. plus Section II.</b>	<b>\$ _____</b>
State Percentage Approved	_____ %
<b>Total Reimbursement Requested</b>	<b>\$ _____</b>

**Note:** Any support documents for costs submitted on this project, such as contracts, change orders, bid tabulations, labor and equipment records, will be retained by the grant recipient for three years after final reimbursement.

**Payment Certification:** I hereby certify that the costs submitted for reimbursement are true and correct, and that all payments have been made to all persons, vendors and contractors engaged in this project in accordance with local government procurement procedures and the "Program Open Space Grant Application and Project Agreement."

<b>(Signature of Local Government Fiscal Authority or of Local Project Coordinator, see Section 1,1.)</b>	(Typed or Printed Name)	(Title)	(Date)
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Reimbursement Processing Time: Allow one (1) month from date of receipt by the State for processing of this reimbursement request. Forward request to the appropriate POS office below:

**Annapolis Office**

Program Administrator  
 Program Open Space  
 Department of Natural Resources  
 Tawes State Office Bldg. (E4)  
 580 Taylor Avenue  
 Annapolis, Maryland 21401

**Eastern Shore Office**

Chief State, Federal & Local Programs  
 Program Open Space  
 Department of Natural Resources  
 201 Baptist Street  
 Suite 22  
 Salisbury, MD 21801

**Western Maryland Office**

Program Administrator  
 Program Open Space  
 Department of Natural Resources  
 3 Pershing Street,  
 Suite 104  
 Cumberland, MD 21502

Program Administrator Approval

Chief, Administration & Fiscal Management Approval

(Signature)

(Date)

revised 7/05

# PLANNING GRANTS

## A. **PROJECTS WHICH MAY BE ASSISTED**

*The law allows for a local governing body to use a portion of the 100% money from their Acquisition Allocation for Periodic updating of **Local Land Preservation and Recreation Plans**. Grants may not exceed \$25,000 per fiscal year for updates or elements of Local Plans.*

## B. **PROJECTS NOT ASSISTED AS PLANNING GRANTS**

*Other types of planning projects such as feasibility studies, park master planning, and preliminary planning, engineering and site design may be eligible expenses as up front costs as part of a Development Grant. See the Development Chapter for further information.*

## C. **COMPLETING THE PLANNING APPLICATION AND PROJECT AGREEMENT**

*The application is self-explanatory. The required attachments are listed below. Please provide an extra full set of the application to your regional office. Should questions arise during this process, do not hesitate to contact the POS Assistant Regional Administrator (ARA) assigned to your county.*

**Attachment #1 – Project description** *What will be accomplished with the planning grant. Indicate how this planning effort will be consistent with the “visions” of the Growth Planning Act.*

**Attachment #2 – Cost Estimate Backup Documentation**

**Attachment #3 – Funding Authorization – Appendix E**

*This attachment will indicate the amount of POS assistance being authorized for the proposed project by the county Liaison Officer. A pre-printed form is provided in the application packet for this purpose.*

**Attachment #4 – Local Planning Agency Approval & Infrastructure Review**

*This attachment will consist of a letter from the local planning agency (county or city) stating that they have reviewed the proposed project and that it is consistent with the local master plan*

Maryland Department of Natural Resources  
Capital Grants and Loans Administration  
Program Open Space  
**Planning Grant Application**

1. POS #  Last POS Planning Grant \_\_\_\_\_ Federal ID # \_\_\_\_\_

2. Project Title \_\_\_\_\_  
Indicate: Land Preservation and Recreation Plan Year or Plan Element

3. Applicant \_\_\_\_\_  
Municipality or County

4. Address \_\_\_\_\_  
Street or P.O. Box  
\_\_\_\_\_  
City State Zip Code

5. Contact Person \_\_\_\_\_  
Name Telephone Fax

6. Project Description: Discuss the objective(s) of the proposed plan or study and the ultimate goals expected to be achieved. Attach additional sheet if needed.

7. Project Location/Geographical Area the Planning will cover  
Town/County or a portion? \_\_\_\_\_  
State Tax Map # and Grids \_\_\_\_\_  
ADC Map # and Grids \_\_\_\_\_  
State Legislative District(s) \_\_\_\_\_

8. Project Period  
From:  Date of Letter of Acknowledgment or Letter of Concurrence  
To: \_\_\_\_\_ (When project will be completed)  
Month Day Year

9. Are There Other State Grants Assisting with this Proposed Plan? Yes  No

If "Yes": Name of Program \_\_\_\_\_

Administering State Agency \_\_\_\_\_

10. A. <b>Program Open Space Assistance Requested</b>	_____	_____	%
B. Other State or Federal Sources	_____	_____	%
C. Applicant's Contribution	_____	_____	%
D. Total Cost of Project	_____	100.00	%

11. Local Government Authorization:

As the authorized representative of this Political Subdivision, I have read the terms of the "Project Agreement and General Conditions" of the Program Open Space (POS) Grants Manual and I agree to perform all work in accordance with the Manual, POS Law and Regulations, and with the attachments included herewith and made a part hereof.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

12. STATE CLEARINGHOUSE REVIEW DATE \_\_\_\_\_ Number \_\_\_\_\_

13. ON-SITE INSPECTION DATE \_\_\_\_\_ BY \_\_\_\_\_

14. POS FUND SOURCE ASSIGNED \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

15. DEPARTMENT OF NATURAL RESOURCES – PROGRAM OPEN SPACE APPROVAL:

\_\_\_\_\_  
(Director's Signature)

\_\_\_\_\_  
(BPW Approval Date)

\_\_\_\_\_  
(Agenda Item No.)

# LAND USE CONVERSIONS

## I. POLICY

### A. State and Federal Protection Laws

- 1. The Program Open Space (POS) Law** The Annotated Code provides that ...Land acquired or developed under a State grant from Program Open Space may not be converted without written approval of the Secretary of the Department of Natural Resources and the Secretary of the Department of Budget and Management and the Secretary of the Department of Planning from outdoor public recreation or open space use to any other use. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value, and for any conversion of land acquired or developed under a State grant from Program Open Space ...the appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land. Natural Resources Article §5-906(e)(7) and (8).
- 2. What is 6 (f)?** Section 6(f)(3) of the Land and Water Conservation Fund (L&WCF) Act of 1965, as amended (78 Stat. 897) requires that no property acquired or developed with L&WCF assistance shall be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior and the substitution, in accord with the comprehensive statewide outdoor recreation plan (SCORP), of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.
- 3. Other Laws** In addition to these laws protecting POS and L&WCF funded projects, there are other parallel laws that may provide additional protection. Whenever federal funds are being used in a highway or transportation construction project through the State Highway Administration or county transportation authorities, **Section 4(f) of the Department of Transportation Act of 1966** provides an additional layer of review and when appropriate required avoidance of park and recreation sites, regardless of their fund sources.

### B. Request for a Conversion of Use

The intent of the POS Law is to provide adequate open space and recreational areas for the present and future citizens and visitors of Maryland. Years of study, planning and negotiations by county, municipal and State agencies were invested in the selection of each POS site. Conversions defeat the purpose of the program<sup>1</sup>. Should a change from the original use be requested, that change must first be consistent with the State and local Land Preservation and Recreation Plans and the County's Comprehensive Plan, and The Economic Growth Resource Protection and Planning Act of 1992.

### C. What Is Considered a Conversion of Use

A conversion of use occurs when all or a part of an area or facility acquired or developed with POS or L&WCF assistance is put to a use which precludes its use as originally intended as a public recreation or open space area.

## D. General Policies Governing Conversions of State POS and L&WCF Funded Parks and Open Spaces

- 1. The only alternative** If another public need takes priority over a planned recreation or open space use, and a conversion is **determined by the local government to be the only alternative**, the jurisdiction must contact the POS Regional Administrator or Assistant and request a preliminary review of the conversion proposal.
- 2. Demonstrate the Public Benefit** All conversions of State-funded parks and open space must demonstrate a net positive benefit to the public. **Proposals that do not improve the existing facility or regional open space resources may not be considered for review.** The applicant should demonstrate that the site or the jurisdiction's open space resources will significantly benefit from the proposed conversion.
- 3. Eligibility Requirements** The property proposed for substitution must meet the eligibility requirements for POS acquisition as outlined in the POS Manual. Existing public land may not be used for substitution unless it meets these requirements. The replacement property must, after acquisition, constitute or be part of a viable recreation or open space area. It must be new land to the park system, that is, land not already owned or in the process of being acquired for recreation or open space purposes. Thus, if the land proposed for substitution is already in public ownership, the land must have been originally designated for some purpose other than recreation or open space.
- 4. One parcel of land may be substituted for several.** Acreage for several original project sites may be combined and replaced by one parcel of equal or higher acreage. There will be no net loss to acreage in the public trust.
- 5. The substitute land shall be of equal or higher monetary worth.** The appraised monetary value of the land proposed for acquisition (replacement) shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land. Also, it should be in the same relative geographic area, and must be administered by the same political jurisdiction as the converted property. State funds will not be utilized in purchasing substitute property or making a new site equivalent in value. POS funds will not be used for the application fee.
- 6. Consistency with Local Plans** The proposed new use of the POS assisted project, and the recreational and open space use of the replacement should be consistent with the jurisdiction's Land Preservation and Recreation Plan, the local Comprehensive Plan and the visions of the Economic Growth Resource Protection and Planning Act, and other laws applicable to the site.
- 7. Rezoning** If the POS funded property must be rezoned before it can be utilized for the proposed new use, it is appropriate that the new zoning be factored in to the Appraiser's opinion of the site's highest and best use as identified when fair market value is calculated. The law now states, **"...the appraised monetary value of the land proposed for acquisition shall be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land..."** Conversions of POS funded properties should not result in windfall monetary gains to the applicant as a result of the new use<sup>2</sup>.

8. **Any proposal based solely on the argument that alternatives to taking park land are too costly will be denied.** DNR will not consider conversions of parks or open spaces for reasons that they are the least costly or easiest option for meeting other government and private needs for available land.
9. **Any proposal based solely on a critical time element which would rule out a thorough study of alternatives will be denied.** In cases where imminent risks to public health and safety exist, approval will be considered with appropriate specifications and conditions detailed in the approval letter.

## E. Enforcement

The local jurisdiction and the County Liaison Officer (CLO) will be notified by registered mail of any violation of law or POS policy, as stated herein or in the General Conditions of the Project Agreement, that are found by DNR.

The Department may take one or more of the following actions to obtain compliance with the POS law and policies for conversions:

1. **Freeze Allocations** Freeze all current and/or future allocations of POS funds,
2. **Freeze Encumbered Funds** Freeze encumbered funds and/or pending reimbursements,
3. **Legal Action** Take any legal action necessary to obtain compliance or to transfer ownership of the property to DNR as provided for in the Project Agreement or deed restrictions.

## II. PROCEDURES

### A. Early Contact & Preliminary Reviews

Six to twelve months are often required to review a conversion request. Local governments should contact DNR as soon as a project is proposed which may cause a conversion. The Assistant Regional Administrator (ARA) will review all preliminary proposals for conversion with the Director of POS and report to the applicant as to whether it appears to meet the requirements for a legal conversion and if they should proceed with a formal application.

### B. Appeals for Denial of a Review

Should a preliminary review of the proposed conversion be considered ineligible for approval under the law by the Director of POS, the applicant may appeal to the Assistant Secretary of the Capital Grants and Loans Administration of DNR, for permission to initiate a formal review of the proposed conversion, through the Director of POS.

A letter of appeal should be addressed to the Director of POS, Maryland Department of Natural Resources, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401. The letter of appeal should discuss the proposed conversion with any details not included in the preliminary application in response to the Director's findings and considering the general policies for conversions listed herein. List the specific ways in which the replacement site qualifies as a

replacement site and the ways in which the jurisdiction and the general public will realize no loss of benefits. Any alternatives to the proposed conversion evaluated by the applicant, including reasons why the proposed conversion is the only reasonable or prudent alternative available, should be discussed.

Letters of appeal will certify that the applicant knows of and agrees to provide, at applicant's own expense, the information required for a thorough review, if a formal review is granted.

## C. Formal Application Procedures And Documentation

**1. Program Open Space Project Conversions** Upon permission by the Director of POS, or by the Assistant Secretary of the Capital Grants and Loans Administration on appeal, a formal application for conversion will be made. The applicant shall assume all responsibility for preparing the following documentation using the forms and instructions provided by POS. The formal review process will not begin until the POS staff determines that the application is complete.

- a. **Fee** A conversion review fee may be charged to defray administrative costs.
- b. **Description** A detailed description of the alternatives considered, with a thorough explanation why each was unacceptable.
- c. **Appraisal** At least one appraisal for the area proposed to be converted and one for the area proposed as replacement property by qualified appraisers, with a written comparison of the "conversion" and "replacement" areas based on these appraisals. The appraisal of the area proposed to be converted shall use its highest and best use under existing zoning, or any rezoning necessary to accommodate the new planned use<sup>3</sup>.
- d. **Comparison** Compare the substitute site as compared with the conversion site and demonstrate that the replacement site is:
  - (1) of equal or greater recreation and open space value<sup>4</sup>,
  - (2) of equal or greater size,
  - (3) of equal or greater appraised monetary value, and
  - (4) in the same general location.
- e. **Local Review** Evidence that the proposal has been reviewed and coordinated with all affected municipal or county governmental agencies.
- f. **Compliance** Certification that the replacement property is consistent with:
  - (1) The County's Comprehensive Plan,
  - (2) The Local Land Preservation and Recreation Plan,
  - (3) The State Land Preservation and Recreation Plan,
  - (4) The "Eight Visions" addressed in the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 (Subtitle 7A of Title 5 of the State Finance and Procurement Article.
- g. **Public Input** Evidence that one or more meetings were held to answer the community's questions regarding the taking of POS funded property and the suitability of the replacement site.

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- h. **Environmental Assessment** An environmental assessment done by qualified personnel or a qualified private consultant.
- i. **Maps** Location and parcel acquisition line maps to show changes to the original project site and to establish the location and extent of the substitute property.
- j. **Wetlands Delineation** Wetlands delineation maps for each site or, alternatively, certification that no wetlands exist. The name and credentials of the inspector must be included.
- k. **Application** A new POS Application and Project Agreement describing the replacement site as a new POS project.
- l. **Deed Restrictions** Acknowledgment that the deed to any approved substitute land will include the standard POS restrictive clauses regarding conversion and the POS fund source as stated in the Annotated Code Natural Resource Articles §5-906(e)(7)(8).<sup>5</sup>
- m. **Mitigation** Explanation of any mitigation measures that would add additional value to either site or would add in a significant way to the enjoyment or protection of the resource.

**2. Land and Water Conservation Fund (L&WCF) Project Conversions** In addition to the above requirements and procedures, lands acquired and facilities funded by the federal L&WCF are subject to additional review by the National Park Service (NPS), an agency of the U.S. Department of the Interior. These conversions will be processed only after POS finds that federal legal requirements and general policies are met. Additional documentation will generally be required for NPS review of L&WCF conversions. For guidance and forms refer to Exhibits A and B for this chapter.

**Exhibit A** Post-Completion Responsibilities from the L&WCF Grants Manual, Chapter 675-9.

**Exhibit B** L&WCF Section 6(f) Conversion Checklist.

## D. Land Banks

**1. Conversions based on State-approved "Land Banks"** The Department, working with DBFP and MDP, will consider a jurisdiction's plans to set up a "land bank" for providing open space to offset conversions of State-funded parks and open space.

Land banks for timely provision of replacement acreage required for conversions will be considered when a local jurisdiction anticipates and plans for a major countywide or multi-jurisdictional public project that would involve the conversion of several POS funded properties, and there are no feasible or practical alternatives for avoiding such properties. Acquisition of land for a land bank should take place prior to the anticipated individual projects.

Parkland and open space proposed for such purposes should meet all of the legal requirements and general policies for replacement of conversion lands, including compliance with the Local Land Preservation and Recreation Plan and approval by the Secretaries of DNR and DBFP, and the Secretary of the MDP.

Parkland to be used as a "land bank" for replacement acreage for conversions cannot be acquired with funds from POS or other State or federal funds.

Land banks for conversion of POS funded parks for private economic development projects will be discouraged, unless a substantial enhancement to the jurisdiction's overall open space resources results.

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**Endnotes**

1. *No request for a conversion of use will be considered for a period of 5 years from the date of approval for POS funding, except in extraordinary circumstances. Any major road improvements or planned capital improvements for this area should have been thoroughly investigated during the original application drafting and review process, as indicated on the project application.*
2. *It is a basic principle of the law of eminent domain that "if as of the date of the taking, there is a reasonable probability of a change in the zoning ordinance in the near future, the influence of that circumstance upon the market value as of that date may be shown." Institute of Real Estate Appraisers, Condemnation practice 41-45 (19861); State Roads Commission v. Warriner, 211 Md. 480 (1957); United States v. Certain Land, 209 F. Supp. 50 Md. 1962).*
3. *Equal recreational and open space value does not necessarily mean that there must be identical recreation facilities.*
4. *When the conversion is finalized, the applicant will submit a copy of the recorded deed to the Director of POS for documentation.*

## Land & Water Conservation Fund

# Post-completion Responsibilities

### A. Operation and Maintenance

Property acquired or developed with L&WCF assistance shall be operated and maintained as follows:

1. **The property shall be maintained so as to appear attractive and inviting to the public.**
2. **Sanitation and sanitary facilities shall be maintained** in accordance with applicable health standards.
3. Properties shall be **kept reasonably safe for public use**. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.
4. Buildings, roads, trails, and other **structures and improvements shall be kept in reasonable repair** throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
5. The facility shall be **kept open for public use at reasonable hours and times of the year**, according to the type of area or facility.

### B. Availability to Users

1. **Discrimination on the Basis of Race, Color, National Origin, Religion, or Sex.** Under Title VI of the 1964 Civil Rights Act property acquired or developed with L&WCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. The code of federal Regulations, Title 43, Part 17, effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from federal assistance and to any other recreation areas administered by the State agency or local agency receiving the assistance. (see Chapter 650.9) Discrimination is also prohibited on the basis of religion or sex.
2. **Discrimination on the Basis of Residence.** Section 6(f)(8) of the L&WCF Act and 36 CFR 59.4 provide that with respect to property acquired or developed with L&WCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

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.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

3. **Discrimination on the Basis of Handicap.** Section 504 of the Rehabilitation Act of 1973 requires that no qualified person shall on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal

financial assistance. The Americans with Disabilities Act of 1990 (P.L.100-336) simply references and reinforces these requirements for federally assisted programs.

4. **Reasonable Use Limitations.** Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.

## C. Conversion

Property acquired or developed with L&WCF assistance shall be retained and used for public outdoor recreation. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of the NPS Regional Director pursuant to Section 6(f)(3) of the L&WCF Act and 36 CFR Part 59. The Director has authority to disapprove conversion requests and/or to reject proposed property substitutions.

The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and the Manual apply to each area or facility for which L&WCF assistance is obtained, regardless of the extent of participation of the program in the assisted area 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.

1. **Conversion applicability.** Conversions generally occur in the following four situations:
  - a. Property interests are conveyed for nonpublic outdoor recreation uses.
  - b. Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof.
  - c. Non-eligible indoor recreation facilities are developed within the project area without NPS approval.
  - d. Public outdoor recreation use of property acquired or developed with L&WCF assistance is terminated.
  - e. Exceptions.
    - (1) Underground utility easements that do not have significant impacts upon the recreational utility of the park will not constitute a conversion.
    - (2) Proposals to construct public facilities or to shelter or enclose Fund assisted or non-assisted outdoor recreation facilities without L&WCF assistance, where it can be shown that there is a gain or increased benefit to public recreational opportunity, will not constitute a conversion. Final review and approval of such cases shall be made on a case by case basis by the responsible NPS office and in accordance with Section 640.3.9 and 675.9.3D-E.
2. **Prerequisites to Consideration of Conversions.** Requests from the project sponsor 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:
  - a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis.
  - b. 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 a State approved appraisal (prepared in

accordance with uniform federal appraisal standards) excluding the value of structures or facilities that will not directly enhance its outdoor recreation utility.

Generally, this will necessitate a review of appraisals prepared in accord with Chapter 675.2 for both the property proposed to be converted and that recommended for substitution. However, at the discretion of the Regional Director, a State certification that appraisals of both properties are acceptable and reveal that the replacement property is of at least equal fair market value as that of the property to be converted can be accepted. Exercising this authority should be consistent with the State's review responsibilities with respect to donation appraisals. (see 675.2.6E).

- c. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and 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:
  - (1) 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.

In accordance with Section 6(f)(3) of the L&WCF Act as amended by Section 303 of the Emergency Wetlands Resources Act of 1986, 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.
  - (2) 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 need. 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 at another location within the jurisdiction.
  - (3) 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 requirements and for the substitution of replacement property.
  - (4) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.
- d. The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition (see Part 640.2.1). The replacement property must constitute or be part of a viable recreation area. Unless each of the following additional conditions (also see 670.3.4K) are met, land currently owned by another public agency may not be used as replacement land for land acquired as part of a L&WCF project:
  - (1) The replacement land was not originally acquired by the sponsor or selling agency for recreation.

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

(3) No federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance as described in 670.1.5.

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

An exception may be made to condition (4)(d) only 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. In this case, public land that has not been previously dedicated or managed for recreation conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost. Because of the L&WCF Act's emphasis on preventing any subtractions to the net acreage added to the national recreation estate by grants under the program, this exception can never be applied to L&WCF acquisition projects, nor to combination projects where the costs of development were matched through the value of land donated or otherwise brought under the protection of Sec. 6(f)(3) for the purpose of development.

- e. 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.
- f. All necessary coordination with other federal agencies has been satisfactorily accomplished.
- g. The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action (see Chapter 650.2). In cases where the proposed conversion arises from another federal action, final review of the State's proposal shall not occur until the Region is assured that all environmental review requirements related to that other action have been met.
- h. Intergovernmental Review System (E.O. 12372) review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project. (see Chapter 650.8).
- i. The proposed conversion and substitution are in accord with the SCORP.
- j. Staff consideration of the above points reveals no reason for disapproval and the project files are so documented.
- k. It should also be noted that the acquisition of one parcel of land may be used in satisfaction of several approved conversions. However, previously acquired property can not be used to satisfy substitution requirements except in the case of development projects in 675.9.3B(4) noted above.
- l. The restrictive leasing policy (640.3.4) does not relieve the sponsor of an existing project for the acquisition and/or development of a leasehold interest from fulfilling the conversion requirements of Section 6(f)(3) of the Act, including the provision of replacement land in the event a conversion is proposed or takes place during the term of the lease. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time which is not less than the time remaining on the original lease, and which fulfills the recreation commitment agreed to in the original lease agreement.

Generally, for existing projects which involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period. However, those lease agreements containing a

renewal clause which can be exercised by the lessee must be reviewed to determine if and when the Service's compliance responsibility ceases.

- 3. Amendments for Conversion.** All conversions require amendments to the original project agreement. 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. Signed and dated section 6(f)(3) project boundary maps (see section 660.2.6) 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 the conversion. It is, however, the Service's policy to avoid such situations if at all possible and to agree only if warranted by exceptional circumstances. 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 will be in the form of an amendment to the project agreement.
- 4. Prerequisites to and criteria for consideration of project amendments** for the construction of public facilities on L&WCF assisted sites. The Service will only consider requests to construct sponsor-funded public facilities if the following prerequisites and criteria have been met:

  - a. All design and location alternatives have been adequately considered, documented and rejected on a sound basis.
  - b. The proposal has been adequately reviewed at the State level and has been recommended by the SLO.
  - c. Use of the facility will be compatible with outdoor recreation and will increase outdoor recreation use; and, recreation use remains the overall primary function of the site.
  - d. The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool, which virtually occupies the entire site. Examples of uses which would not ordinarily be approved include, but are not limited to, community recreation center which takes up all or most of a small park site, police stations, fire stations, professional sports facilities or commercial resort or other facilities which 1) are not accessible to the general public, or 2) require memberships, or 3) which, because of high user fees, have the effect of excluding elements of the public, or 4) which include office, residential or elaborate lodging facilities.
  - e. Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.
  - f. The proposed facility must be under the control and tenure of the public agency which sponsors and administers the original park area.
  - g. The proposal has been subjected to specific public review; public comment providing evidence of public support must accompany the proposal.
  - h. All applicable federal requirements for approval and operations are met in accordance with Section 650.1.
- 5. Procedures for Approval of Construction of a Public Facility or the Sheltering of an Existing Facility.** Considerations of proposals for the construction of State or locally funded public facilities on a fund-assisted site or the sheltering of recreation activities, without federal funds, on a fund-assisted site are subject to the following process:

- a. The project sponsor, following public review, shall submit the proposal to the SLO for review.
- b. The SLO, upon affirmative completion of the review, will submit the proposal in the form of a project amendment to the appropriate NPS Regional Office along with all supporting documentation and recommendations.
- c. The Regional Office will review the proposal and forward the proposal along with its recommendation to NPS WAS for final action.

(See also Section 640.3.9.C for sheltering requirements.)

## D. Obsolete Facilities, Changes of Use

Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, Section 6(f)(3) of the L&WCF Act requires that project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. NPS approval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans for the area. NPS approval is not necessarily required, however, for each and every facility use change. A project area should be viewed in the context of overall use and should be monitored in this context. 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, for example, require NPS approval. NPS approval must also be obtained for any underground utility installations for which an exception to conversion is requested under Part 675.9.3.A5.)

1. **Notification of Obsolescence.** To assure that facility changes (including granting of underground utility easements when they have no above ground impacts) do not significantly contravene the original project agreement, the NPS Regional Director shall be notified in writing by the State of all proposed changes in advance of their occurrence. NPS will then expedite a determination of whether a formal review and approval process will be required. 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. 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, 36 CFR Part 59, and Chapter 675.9.3 of the federal manual.
2. **Determination That a Facility is Obsolete.** Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:
  - a. reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;
  - b. changing recreation needs dictate a change in the type of facilities provided;
  - c. park operating practices dictate a change in the type of facilities required; or
  - d. the recreation area or facility is destroyed by fire, natural disaster, or vandalism.
3. **State Responsibilities.** Project sponsors may permit the use of a facility to be discontinued or allow a particular type of recreation use of the L&WCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement that the State concurs in the change, and that the procedures required in D.1. above are adhered to. If in the judgment of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

4. **Additional L&WCF Assistance.** L&WCF assistance may be provided to renovate outdoor recreation facilities which have previously received L&WCF assistance if the State determines that the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

## E. Post Completion Inspections

In order to determine whether properties acquired or developed with L&WCF assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a State compliance inspection is to be made within 5 years after final billing and at least once every 5 years thereafter.

The following points should be taken into consideration during the inspection of properties that have been developed for public use:

1. **Retention and Use.** Is the property being used for the purposes intended?
2. **Appearance.** Is the property attractive and inviting to the public?
3. **Maintenance.** Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or construction? Is vandalism a problem?
4. **Management.** Does staffing and servicing of facilities appear adequate?
5. **Availability.** Is there evidence of discrimination? Is the property readily accessible and open to the public during reasonable hours and times of the year?
6. **Environment.** Is the quality of the area being maintained?
7. **Signing.** Is the area properly signed to allow for user information and safety and proper acknowledgment of the Land and Water Conservation Fund.
8. **Interim Use.** Where lands have been acquired but not yet developed, the inspection should determine whether the interim use being made of the property, if any, is as agreed to by the Service.

## F. Post Completion Inspection Reports

Within 90 days of completion of an on-site inspection, states shall submit to the appropriate Regional Office a post-completion inspection report for all projects which have compliance problems. The report should include the date of inspection, description of discrepancy, and corrective actions taken or to be taken. (see Section 675.1.6)

A performance report shall be provided on an annual basis where no compliance issues have been identified. This report will be due by March 31 of each year and will include identification of the projects inspected by project name and number and the date the on-site inspection occurred. (see Sections 675.5.5 and 675.1.6).

Post-completion inspection reports shall also be completed for those projects in which the facilities have been deemed obsolete. The report should include certification by the State Liaison Officer that the facility is obsolete and that such obsolescence is not a result of neglect or inadequate maintenance on the part of the project sponsor. (see Section 675.9.4).

## G. Applicability

The rules given in this chapter apply to each area or facility for which L&WCF assistance is obtained, regardless of the extent of L&WCF assistance in that area or facility. That is, in cases where assistance is provided only for an acquisition, the entire park or recreational area involved, including developments on the lands so acquired, are subject to the provisions of this chapter. Where development assistance is given, the lands of the park or recreation area identified on the project boundary map are subject to this chapter.

## H. State Responsibility

Responsibility for enforcement of the provisions of this chapter rests with the State. The Service will inspect L&WCF assisted areas and facilities from time to time, but it shall conduct such visits in concert or through consultation with the State agency or State Liaison Officer.

## I. Costs

The costs of making post-completion inspections by the State are allowable overhead costs for L&WCF assistance.

## J. Penalties

Failure to comply with the provisions of this chapter shall be considered cause for the Director, at his/her election, to:

1. **Withhold future payments being made to the State on current projects of the project sponsor** who is responsible for the infraction in question; or
2. **Withhold future payments to the State on any or all current projects** until the situation involved is corrected; or
3. **Withhold action on all pending projects of the State and/or project sponsor** who is responsible for the infraction in question; or
4. **Withhold current or future reimbursements due to the State** in the amount of assistance previously paid out for the project or projects involved.

## K. Service Inspection

Properties acquired or developed with L&WCF assistance shall be available for inspection by the Director or other NPS representative.

## L&WCF SECTION 6(f) CONVERSION CHECKLIST

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Project Number and Name: \_\_\_\_\_

- \_\_\_\_\_ (A) Finding of no conversion (Stop)
- \_\_\_\_\_ (B) Finding of conversion (Continue)
- \_\_\_\_\_ (1) All practical alternatives to the conversion have been evaluated and rejected on sound basis.
- \_\_\_\_\_ (2) Letter from SLO to Regional Director requesting conversion. Includes a statement from State regarding whether replacement land is of equivalent recreation usefulness and location.
- \_\_\_\_\_ (3) Submitted appraisals for converted and replacement land with replacement of equal or greater Fair Market Value.
- \_\_\_\_\_ (4) Property proposed for replacement meets an eligibility requirement for L&WCF assistance. Must constitute or be part of a viable recreation unit and comply with 670.3.4/K.
- \_\_\_\_\_ (5) Partial Conversions - will the remaining area stay recreationally viable or should it be replaced as well?
- \_\_\_\_\_ (6) Coordination with other federal agencies has been satisfactorily accomplished; i.e., 4f etc.
- \_\_\_\_\_ (7) Environmental evaluations have been completed for both conversion and replacement properties.
- \_\_\_\_\_ (8) Intergovernmental Review System (EO12372) review procedures have been adhered to for both conversion and replacement properties.
- \_\_\_\_\_ (9) The proposed conversion and replacement properties are in accord with the SCORP.
- \_\_\_\_\_ (10) An amendment has been submitted to identify conversion and replacement areas.
- \_\_\_\_\_ (11) 6(f) maps of remaining L&WCF area (conversion) and replacement property have been submitted.

\_\_\_\_\_ (Program Manager/Reviewer)

# Land and Water Conservation Fund

## Section 6(f) Conversion Process

- A. Upon first identifying a potential conversion or actual conversion, send a letter to NPS giving a general description of the conversion proposed conversion; i.e., reason for conversion, what individual or organization is involved, alternative site(s) considered, a Section 6(f) map to show the location of the conversion relative to the Section 6(f) boundary and whether any replacement land has been identified at this early stage, and if so, the details involved.
- B. The next important step is to determine if there are any alternatives to prevent the conversion or reduce the taking to a minimum. This is important because possibly a conversion can be avoided which would then alleviate the need to prepare any further documentation and more importantly, keep the parkland intact.

If the conversion cannot be avoided, it will be important to discuss what alternatives were considered and why it was concluded that a conversion is necessary. Keep in mind that NPS can reject a conversion. It is also important to identify a potential replacement site early in the process because NPS must concur with the selection.

- C. Once the potential conversion has been identified as an actual conversion and the replacement land has been identified, it is then important to prepare the conversion pack; i.e.:
  - 1. Provide evaluation and rejection of alternatives to conversion.
  - 2. Send information to the Clearinghouse under the Intergovernmental Review System (E.O. 12372) for both the conversion and replacement land.
  - 3. Prepare an Environmental Assessment Statement (EAS)
  - 4. Prepare the SCORP reference statement indicating how the replacement land is in accord with the SCORP by relating the policy(s) that it is in accord with and how it concurs.
  - 5. Coordinate with other federal agencies when other federal funds are involved (i.e., FHWA fund, etc.) or when other federal laws and regulations are involved (i.e., Corps of Engineer permits or Fish and Wildlife wetlands permits are required, etc.).
  - 6. Identify how the remaining Section 6(f) area might be affected by the conversion (i.e., if only a small portion of land is left or the remaining land is adversely affected then maybe the total area should be converted). Land appraisals need to be prepared for both the converted and replacement lands. This should be done as a last step in the preparation of the conversion package after NPS has had a chance during the submission of initial information under Step 1 and 2 to determine if the conversion and replacement proposals are tentatively acceptable.

**Note:** Two important issues:

When appraising the replacement property, improvements such as buildings, etc., should not be appraised as part of the Fair Market Value unless the improvements are private recreation facilities and the highest and best use would be for continued recreational use of such facilities.

If the original L&WCF project which covers the Section 6(f) area was a development project then public land not dedicated to park and recreation purposes or zoned parkland, recreation or conservation may be used for replacement land. Properties acquired with L&WCF monies can use public non-park and recreation land as replacement only if it meets criteria under L&WCF Manual Section 670.3.4(K)

- 7. Prepare Section 6(f) maps for the replacement land and any remaining area of the conversion project.

- D. When the entire Section 6(f) package under item three above has been prepared, submit it for final NPS approval. Include an amendment to show identification of area converted and replacement property, 424 and DNF. Use the names of properties and acreage.
- E. The total package should be submitted via transmittal letter from the SLO with a statement regarding his/her approval or disapproval of the conversion and how the replacement property is equivalent in recreation usefulness and location to the converted area.

# **Conversions Agency Responsibilities**

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**LOCAL GOVERNMENT:** County or Municipal Agency (Applicant)

- Review of the Land Conversion Policy & Guidelines and the Conversion Proposal Review Process and Checklist
- Coordinate with the POS Program Administrator for a preliminary review
- When permitted by the Director of POS, submit a complete conversion proposal package, (see checklist)

**STATE GOVERNMENT:** Maryland Department of Natural Resources

- Review preliminary proposal(s)
- Discuss with the Director of POS preliminary review of proposal
- Inspect both sites
- Notify applicant of decision and, when appropriate, direct applicant to proceed with a conversion proposal package to initiate formal review
- Coordinate department review (seven agencies within DNR)
- Coordinate all State and federal reviews
- \*Prepare federal application form #424
- \*Prepare federal application form HCRS 8-222
- \*Request State Clearinghouse review(A-95-E012372), ten agencies
- \*Request MDP certification of compliance with the State Land Preservation and Recreation Plan
- \*Prepare formal letter of request for conversion to the Department of The Interior, National Park Service, from the State Liaison Officer(Mike Nelson, Assistant Secretary for Capital Grants and Loans Administration, DNR)
- \*Write project narrative
- \*Prepare L&WCF project amendment form
- \*Prepare 6-F boundary maps
- Follow up on mitigation and contingencies stated in joint response letter

**STATE GOVERNMENT:** Maryland Department of Planning

- \_\_\_ Perform comprehensive planning review
- \_\_\_ Verify compliance with the Maryland Economic Growth, Resource Protection and Planning Act of 1992
- \_\_\_ \*Initiate State Clearinghouse review (A-95-E012372) through ten agencies

**STATE GOVERNMENT:** Department of Budget and Management

- \_\_\_ Review proposal for compliance with the State's surplus property laws and procedures
- \_\_\_ Review and evaluate land values and appraisers' conclusions
- \_\_\_ Verify on behalf of the general public that the State's initial fiscal investment and any increased value has been adequately protected and land and facilities equitably replaced

**\*FEDERAL GOVERNMENT:** Department of Interior, National Park Service

- \_\_\_ \*Evaluate the State Liaison Officer's (SLO) request and documentation to assure that federal law and regulations have been met and that the public's investment and its interest has been adequately protected
  - \_\_\_ \*Work with the RA to obtain any additional information that is needed to verify the necessity of the conversion
  - \_\_\_ \*Prepare written response to the SLO as to the decision to allow conversion or not
- \*required steps when federal L&WCF assistance was provided on the original project.*

# Formal Review Conversion Proposal Package Checklist

The local jurisdiction legally responsible for the POS or L&WCF assisted land or facilities is known as the applicant. If the applicant receives permission from the Director of POS, or the Assistant Secretary of DNR's Capital Grants and Loans Administration on appeal, to initiate a formal review of a proposal for a land conversion, the applicant will provide the following:

- A. review fee; (when required)
- B. explanation of alternatives and why each was unacceptable;
- C. two appraisals, one on the proposed conversion site and one on the proposed replacement land;
- D. comparison of the two sites demonstrating that the replacement site is at least equal or greater in recreation and open space value, size, fair market value, and in the same general location;
- E. evidence of municipal or county review, coordination and concurrence with the proposal;
- F. certification that the replacement site is consistent with:
  - 1. the county's comprehensive plan
  - 2. the Local Land Preservation & Recreation Plan
  - 3. the State Land Preservation & Recreation Plan, and
  - 4. one or more of the eight visions of the Md. Economic Growth, Resource Protection and Planning Act of 1992;
- G. evidence of public meetings;
- H. environmental assessment;
- I. road maps showing location of both and parcel maps showing the boundaries of all acreage involved;
- J. wetlands delineation maps or certification;
- K. new POS application designating the replacement site as an amendment to the original project;
- L. acknowledgment of the requirement for the deed restriction for the replacement site; and
- M. list of mitigation measures that would add value to the proposal.

# Conversion Proposal Review Process

Date:

- \_\_\_\_\_ Potential conversion of POS and/or Land & Water Conservation Fund (L&WCF) assisted land or facilities identified.
- \_\_\_\_\_ Applicant presents the proposal to the Department of Natural Resources (DNR) Program Administrator for a preliminary review.
- \_\_\_\_\_ RA initiates database and file search to identify all projects possibly affected and identify all fund sources involved in original project agreements.
- \_\_\_\_\_ RA and POS Director decide if proposal appears to meet the requirements for a legal conversion and if it warrants a formal review.
- \_\_\_\_\_ Applicant is notified of POS's decision to:
  - A. allow the applicant to submit documentation that would initiate a formal review of the proposal, or
  - B. inform applicant that proposal is inappropriate or does not appear to qualify as an eligible conversion unless modified.
- \_\_\_\_\_ If the proposal is rejected, but the applicant feels that it should proceed for review and consideration, he/she may choose to appeal the decision to the Deputy Assistant Secretary of DNR Capital Grants and Loans Administration via a letter sent to the Director of POS.
- \_\_\_\_\_ If the applicant has met all the necessary criteria specified in the Manual, under APPEALS FOR DENIAL OF A REVIEW, and the appeal is successful, the applicant will be notified that they have permission to proceed with the compilation of elements that are required for a formal review.
- \_\_\_\_\_ If the appeal is unsuccessful, the project will not be converted.
- \_\_\_\_\_ When the applicant has collected all required information send one package to each of the three signatories offices:

Secretary  
Maryland Department of Natural Resources  
Tawes Building  
580 Taylor Avenue  
Annapolis MD 21401  
ATTENTION: Director, POS, E-4

Secretary  
Maryland Department of Planning  
301 W. Preston Street  
Room 1101  
Baltimore MD 21201-2365  
ATTENTION: Chief, Comprehensive Planning

Secretary  
Maryland Department of Budget & Management  
Division of Capital Budgeting  
Room 1209  
301 W. Preston  
Baltimore MD 21201  
Attention Budget Analyst, Surplus Real Property Review

- \_\_\_\_\_ If L&WCF funds were used to assist the acquisition or the development of the project, refer to the POS Manual on Conversions and Exhibits A and B and checklist for additional review criteria.
- \_\_\_\_\_ DNR will acknowledge receipt of formal proposal and the RA will update the information in the computer data base to reflect an active conversion in the appropriate files.
- \_\_\_\_\_ POS will initiate a DNR clearinghouse review of the proposal.
- \_\_\_\_\_ POS and other agencies within DNR will review conversion package, and schedule an on-site inspection of the proposed conversion and proposed replacement land.
- \_\_\_\_\_ The RA will coordinate the interdepartmental reviews and if all three signatory agencies are in agreement , will generate the necessary joint response letter that is legally required to permit the conversion and release of the deed restriction.
- \_\_\_\_\_ The RA will track the joint response letter for signatures. The letter goes from:
  - 1. DNR to MDP
  - 2. MDP to DBM
  - 3. DBM to DNR
  - 4. DNR to the Applicant.
- \_\_\_\_\_ Applicant may now proceed with the proposed conversion, complying with all conditions stated in the joint response letter.
- \_\_\_\_\_ Applicant will record the deed for the replacement parcel containing POS restriction, and forward a copy of the deed to DNR to update the project file within the computer database.
- \_\_\_\_\_ If any one of the three signatory agencies finds the proposal unacceptable, not in compliance with State law or policy, or is not satisfied with the information provided by the applicant, the issue will be discussed with the RA. If it cannot be resolved satisfactorily, the proposal will be rejected. The project will not be converted.

See Agency Responsibility List and Proposal Checklist for more information.

# APPENDIX A: Department of Planning -The Visions

## I. Guidelines on The 1992 Planning Act

### A. Background:

The 1992 Planning Act establishes Maryland's growth management policies in the form of **the eight Visions**. The intent of the Act is to provide a unifying set of principles to guide local and State actions at all stages of activity from general comprehensive planning through implementation of those plans by means of State and local operational, regulatory, and capital programs.

Section 5-7A-02 of the Planning Act requires all major capital improvement projects and local construction projects involving the use of State financial assistance to be consistent with the eight Visions and the local comprehensive plan. Assuring the consistency of POS projects with one or more of the Visions helps the State move closer to its goals as stated in the Planning Act.

The POS Law promotes consistency and unifies planning with implementation actions under the eight Visions. Provisions of that law require consistency among The Local Comprehensive Plan, the Land Preservation and Recreation Plan and, the projects funded under POS.

### B. The Eight Visions:

"...the [planning] commission shall implement the following visions through the plan...

1. development is concentrated in suitable areas;
2. sensitive areas are protected;
3. in rural areas, growth is directed to existing population centers and resource areas are protected;
4. stewardship of the Chesapeake Bay and the land is a universal ethic;
5. conservation of resources, including a reduction in resource consumption, is practiced;
6. to assure the achievement of paragraphs 1-5, economic growth is encouraged and regulatory mechanisms are streamlined;
7. adequate public facilities and infrastructure under the control of the county or municipal corporation area are available or planned in areas where growth is to occur; and
8. funding mechanisms are addressed to achieve these visions."

(Codified at Section 3.06 (b), Article 66B, Annotated Code of Maryland.)

## II. How to apply the Eight Visions to POS Projects

### A. Show Consistency

The majority of acquisition and development projects funded through POS have been by their very nature consistent with the Visions by:

- \*protecting sensitive areas,
- \*attempting to meet the needs of existing resident populations,
- \*conserving resources, and
- \*concentrating development in suitable areas.

To meet the review criteria and show consistency with the Planning Act, DNR has modified the application forms. Each project will be defined by a Narrative Description which will appear on page one of the application. This description will include a reference stating how the proposed project is consistent with one or more of the seven Visions.

### B. How and Why is it Consistent?

The reference within the Project Descriptions may look something like these:

...this acquisition is consistent with the Planning Vision # 2 because it will protect sensitive stream banks and flood plains and Vision # 1, by providing needed open space acreage for this growing neighborhood...

...supporting the goal of Planning Vision # 1, this athletic complex concentrates development in suitable areas, maximizing the provision of team play facilities for the northern area of the county, and Vision # 5, minimizing maintenance and development costs and conserving financial and land resources, by not putting one field in each of several neighborhoods....

...the existing roadway is sufficient to support the additional traffic projected to be generated by the new fishing pier and boat ramp facilities (Vision # 5.) The pier area will utilize portable toilets and will not cause an additional strain on the existing -septic system at the visitor's station across the road...

## **APPENDIX B: Achieving Consistency**

## APPENDIX C: Local Land Trust Guidelines

A local governing body may use part of its funds reserved for acquisition for a **Local Land Trust Grant Fund**.

A **Local Land Trust Grant Fund** may be used to:

1. **Make matching or reimbursable grants to land trusts** for the acquisition of interests or rights in real property for recreational or open space purposes; or
2. **Acquire, under an agreement with a land trust, title to or an interest** or right in property owned by a land trust or property, on which the land trust holds an option or a contract to purchase.

As a condition to any agreement under which a local government agrees to acquire title to or an interest or rights in property owned by a land trust or property on which the land trust holds an option or a contract to purchase, **a perpetual conservation easement on the land shall be donated to the Department of Natural Resources, Maryland Environmental Trust or a local land trust.**

A project may not receive funds from a local land trust grant fund unless:

1. The Department approves the project as being in conformity with criteria governing land acquired under a local grant from POS;
2. The Maryland Department of Planning approves the project as being consistent with the local recreation and parks master plan; and
3. The Board of Public Works approves the grant.

The Board of Public Works may approve a grant from a local land trust grant fund conditional upon modifying its terms.

# APPENDIX D: Joint-use Agreement - Language

A Joint-Use Agreement is required for a project which is proposed to be developed on land which is not owned or leased for a minimum of 20 years by the applicant. This agreement is necessary to assure protection of the public investment in the project. All Joint-Use Agreements must be reviewed and approved by the Department of Natural Resources prior to becoming a part of a POS grant application. The following is the format for Joint-Use Agreements on POS projects.

## JOINT-USE AGREEMENT

THIS JOINT-USE AGREEMENT (this "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

(a) \_\_\_\_\_

\_\_\_\_\_  
(hereinafter, the "County")

(b) \_\_\_\_\_

\_\_\_\_\_  
(hereinafter, the "Third Party"), and

(c) the Department of Natural Resources, acting for and on behalf of the State of Maryland (hereinafter, the "Department")

WHEREAS, the County is applying for Program Open Space funds under Title 5, Subtitle 9 of the Natural Resources Article (1997 Replacement Volume as amended) for recreational facilities on lands owned by the Third Party.

NOW, THEREFORE, the County, the Third Party, and the Department agree as follows:

1. This Agreement applies to the facility described in the Development and Capital Renewal Application and Project Agreement, Program Open Space # \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_, set forth in Attachment A, which is hereby incorporated herein by reference (the "Project").
2. Any additional agreements between the County, the Third Party, and any other parties with respect to the Project are set forth in Attachment B, which is hereby incorporated herein by reference. In the event of a conflict between the terms of Attachment B and the terms of this Agreement, the terms of this Agreement shall prevail.
3. The County shall operate and maintain, or have operated and maintained, the Project throughout its estimated life set forth in Attachment A.
  - a. The Project shall be maintained so as to appear attractive and inviting to the public.
  - b. Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local health standards.
  - c. The Project shall be kept reasonably safe for public use.
  - d. Buildings, roads, trails and other structures and improvements shall be kept in reasonable repair so as to prevent undue deterioration and to encourage public use.

4. The County and the Third Party shall ensure that:
  - a. The Project shall be open for public use at all reasonable hours and times of the year, according to the type of area and facility.
  - b. The Project shall be open to entry and use by all persons, regardless of race, color, religion, sex, age, handicap, or national origin, and shall be operated in compliance with Title VI of the Civil Rights Act of 1964, P.L. 88-354 (1964) and its Amendments, the Americans with Disabilities Act of 1990, P.L. 101-336 and its amendments, and Article 49B, Sections 14 to 18, (Discrimination in Employment) of the Annotated Code of Maryland (1998 Replacement Volume and its amendments).
  - c. The Project shall be retained and used for public outdoor recreation or open space purposes. The Project shall not be converted to any other use without the prior written approval of the Secretary of the Department of Natural Resources, the Secretary of the Department of Budget and Management, and the Secretary of the Department of Planning. Said approval shall not be granted unless the County and/or Third Party replace the Project with property and/or facilities of at least equivalent area and of equal recreation or open space value. The appraised monetary value of the land proposed for replacement shall be equal to or greater than the appraised monetary value of the land to be converted under the proposed new use of the converted land. The Secretaries, at their sole discretion, shall determine the relative recreation and open space value of the properties, considering the fair market value, usefulness, quality and location of the properties and/or facilities.
  - d. The Department, its agents and employees shall have the right to inspect the Project for compliance with this Agreement.
  
5. To the extent permitted by law and subject to available appropriations, the County agrees:
  - a. To protect, indemnify and save harmless the Department, its officers, agents, and employees from and against any and all claims, demands, causes of action, and liability of any kind arising out of the operation and use of the Project.
  - b. That if the Project is rendered unusable for any reason whatsoever, the County shall immediately notify the Department of said condition. The County, at its own expense, shall repair the Project, taking any action necessary to restore use and enjoyment of the Project by the public.
  - c. That any violation of this Agreement shall render the County liable to the Department to replace the Project with land of at least equivalent area and of equal public recreational value, and to construct on this replacement land facilities of the same type, size, and quality of construction as those in the Project.
  - d. That in the event of a violation of any provisions of this Agreement, the State, in addition to pursuing other remedies, may impose the following sanctions until the violation has been corrected to the satisfaction of the Department:
    - i. Withhold approval of any Program Open Space project request submitted by the County to the Department;
    - ii. Withhold reimbursement from Program Open Space funds for the State=s share of the cost of the Project;
    - iii. Withhold reimbursement from Program Open Space funds for the State=s share of the cost of any or all outstanding projects of the County; Maintain, operate, or repair the Project, charging the cost of said maintenance, operation, or repair to the County as a debt due and owing the Department.
  
6. If the Third Party is a Board of Education that holds title to the land on which the Project is located, then, the Third Party shall permit the Project to be open to the general public, as regulated by the Third Party or the County at all hours and times consistent with the type of facility, so long as same does not interfere with specific school activities.

7. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including assigns and successors by way of privity of estate and contract. Nothing in this Agreement, expressed or implied, is intended to confer upon or against any person, corporation, or government unit not a party to this Agreement, any right or remedy under or by reason of this Agreement.

[the remainder of this page is intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement causing same to be signed the day and year first written above.

WITNESS:

\_\_\_\_\_

THE COUNTY:

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

THE THIRD PARTY:

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

THE DEPARTMENT:

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Approved as to legal form and sufficiency. "Approved" means the document meets the legal requirements for a contract if the signature blocks are executed properly; it does not mean approval or disapproval of the transaction. Approval is of the typed language only; any modification requires re-approval.

Office of the Attorney General  
Department of Natural Resources  
August 2000

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Note: Attachment B should set forth the respective roles of the County and the Third Party for construction and development of the Project and for the operation, maintenance, supervision and scheduling of the Project. It may also include other agreements between the County, the Third Party and any other parties with respect to the Project.

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# APPENDIX E: Funding Authorization

January 1, 2099

Director, Program Open Space  
Department of Natural Resources  
Tawes Building E-4  
580 Taylor Avenue  
Annapolis, Maryland 21401

RE: Complete Project Title

Dear \_\_\_\_\_;

As the official designated by \_\_\_\_\_ County for the purpose of dispensing the Program Open Space and Land and Water Conservation Fund apportionments for this political subdivision, I hereby certify that

\_\_\_\_\_  
(Applicant)

may apply for the following funds on the above referenced project.

Name of Grant Program	Amount
Program Open Space	
Land and Water Conservation Fund	
Other (specify)	
TOTAL	

\_\_\_\_\_  
Signature - County Liaison Officer

\_\_\_\_\_  
Type Name of County Liaison