

funded capital improvement. An agency must exercise this control by holding title to a fee or leasehold interest or through another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life even if the agency did not acquire the parcel with grant funds.

**§ 80.133 Does an agency have to maintain acquired or completed capital improvements?**

Yes. A State fish and wildlife agency is responsible for maintaining capital improvements acquired or completed under a grant to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

**§ 80.134 How must an agency use real property?**

(a) If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant.

(b) If a grant funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the grant during the useful life of the capital improvement. The agency must do this even if it did not use grant funds to:

(1) Acquire the parcel on which the capital improvement is located; or

(2) Build the structure in which the capital improvement is a component.

(c) If a grant funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use it for the purpose authorized in the grant during the grant period. The agency must do this even if it did not acquire the parcel or construct the capital improvement with grant funds.

(d) A State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the grant.

**§ 80.135 What if an agency allows a use of real property that interferes with its authorized purpose?**

(a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose.

(b) If the agency cannot fully restore the real property to its authorized purpose, it must replace the real property using non-Federal funds.

(c) The agency must determine that the replacement property:

(1) Is of at least equal value at current market prices; and

(2) Has fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.

(e) The agency must obtain the Regional Director's approval of:

(1) Its determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new grants in the program or programs that funded the original acquisition.

**§ 80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?**

If a State fish and wildlife agency does not use grant-acquired real property for its authorized purpose, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as match for the grant; and

(b) The unauthorized use is for a purpose other than management of the