



# Land Protection

# Reference Manual 25

# DRAFT

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## **1. Introduction**

Director's Order #25 deals with land protection through various means of acquisition. References are made to different legislation, departmental memoranda and guidance, as well as NPS memoranda and guidance. These documents are referenced in the Director's Order but often not described in detail. This reference manual is an annotated list intended to provide additional information about the various references pertaining to acquisition of land by the National Park Service.

## 2. Guidance on Preparing Land Protection Plans (FR 48:21121)

Land acquisition priorities will be guided by a unit's land protection plan (LPP). Any park in the National Park System containing private or other non-Federal land within its authorized boundary should have a Land Protection Plan in place. Superintendents will ensure that land protection plans are developed and periodically reviewed and updated, as needed, for each unit containing nonfederal land or interests that may need to be acquired. These plans are intended to provide guidance to ensure that the resources of each park unit are protected in a manner consistent with the stated purpose for which each unit was created.

In addition to establishing acquisition priorities, Land Protection Plans will:

1. Determine what land or interests in land need to be in public ownership, and what means of protection other than acquisition are available to achieve unit purposes as established by Congress.
2. Inform landowners about NPS interest in purchasing or protecting land through other means within the unit.
3. Help managers identify priorities for making budget requests and allocating available funds to protect land and unit resources.
4. Find opportunities to help protect the unit by cooperating with state or local governments, landowners, and the private sector.

The development of LPPs should be incorporated into the general management planning process of the park. The primary focus should be on lands within the administrative boundary of the park but since lands beyond the boundary of the park are likely to change, these plans may address a broader range of issues related to the impact on park resources from activities outside park boundaries.

The LPP should also provide recommendations for how to acquire the land. There are multiple ways this can take place including (1) fee acquisition (most common); (2) Donations; (3) transfer from other agency; (4) Bargain Sale; (5) Exchange; and (6) Condemnation. Plans should discuss acquisition methods in general terms because funding for acquiring land varies.

## 3. Land Acquisition Ranking System

The NPS uses the Land Acquisition Ranking System to evaluate service-wide land acquisition priorities for funding. Parks must complete and submit a form for each land parcel they are interested in acquiring. Forms must include a summary explaining why the acquisition is important to the park. When preparing the summary parks should consider a number of factors including economic, conservation and visitor use. It also important to explain how the proposed acquisition fits in with the larger park landscape including information on the natural and cultural

resources contained there. Requests are reviewed by the regional offices prior to undergoing a WASO level review where the final decision regarding whether to pursue the acquisition will be made.

#### **4. Land Exchanges (Part 602, Chapter 1 of the Department of the Interior Manual)**

This chapter of the Department Manual provides policy guidance for land valuation, real property appraisals (including alternative methods of property valuation), and legislative land exchanges. It also provides for a Departmental determination on how to review appraisals to ensure appropriate coordination and decision making.

##### **Alternative Methods of Valuation (AMVs)**

All real property appraisals must conform to nationally recognized appraisal standards (i.e. Uniform Appraisal Standards for Federal Land Acquisitions [UASFLA] and the Uniform Standards of Professional Appraisal Practice [USPAP]).

The following are examples of when the preparation of AMVs are appropriate:

1. Congress directs the Department to prepare an AMV
2. The Department can propose to prepare an AMV in addition to the real property appraisal for property valuations requiring Congressional approval
3. The Department can propose to prepare an AMV in instances not requiring Congressional approval

In each case described above, the Department must use an AMV that conforms to National standards or provide a written explanation of the AMV explaining how it differs from the standard National appraisal methods. The explanation must be provided to the appropriate Congressional committees. Case #3 also requires that the Office of the Inspector General also receives written explanation of the transaction prior to the completion of the transaction.

##### **Appraisals Prepared for Third (non-Federal) Parties**

Third party appraisals may benefit both the Department and the non-Federal party but the Department is not *required* to review land acquisition proposals or the associated third party appraisals if they do not comply with land management mission, priorities, and plans.

##### **Legislative Land Exchanges**

Legislation is required to authorize land exchanges in all interstate exchanges and exchanges directed by Congress that include provisions exempting agencies from mandates that would otherwise apply. Legislation can be used for land exchanges even when no other authority is available.

## **5. Land Exchanges (Part 602, Chapter 2 of the Department of the Interior Manual)**

This document describes the Departmental policy regarding the determination of risk and liability associated with the acquisition of property that may contain potentially hazardous substances. All property acquisitions, whether they are discretionary or non-discretionary, require a pre-acquisition environmental assessment. It is the Department's policy to minimize the potential liability by acquiring property that is not contaminated unless directed by Congress to do so. Bureaus can establish their own pre-acquisition environmental site assessment procedures to meet their needs but all procedures must adopt the American Society for Testing Materials (ASTM) Assessments for Commercial Real Estate standards in effect at the time. Pre-acquisition site assessments are generally only considered adequate for 12 months prior to the acquisition of the property.

Following the preparation of the site assessment real property may be acquired if (1) no evidence of hazardous substances or environmental liability are identified; (2) if such evidence is found, the acquisition will result in no additional cost to the Federal Government; (3) proposal, including and liability risk associated with the property is determined to benefit the bureau; (4) the acquisition is mandated by Congress, courts or the Secretary.

Approvals are required for any property that may require environmental cleanup or other costs associated with remediation or liability risks. Costs in excess of \$500,000 require the approval of the Asst. Secretary for Management and Budget. The Bureau Director is authorized to approve costs that amount to less than \$500,000 and can further assign approval authority to others for costs that do not exceed \$250,000.

## **6. DOI – Solicitor's Memo (Jan. 25, 1985)**

The memorandum discusses the processes for exchanging Federally owned and DOI administered lands or interests in lands for state, local or privately-held lands or interests. There are four statutes that provide general authority for land exchanges but The Land and Water Conservation Act (16 U.S.C. § 4601-22(b)) provides the National Park Service with the authority to acquire private property or other areas within a National Park's administrative boundary. Other statutes that may apply to the National Park Service are the National Historic Preservation Act, as amended (16 U.S.C. § 470h-3). Federally owned land must be (1) suitable for exchange, (2) located in the same state as the private property to be acquired, (3) approximately equal in value or can be equalized with the payment of cash. Federal lands subject to timber harvest under the sustained yield program may not be exchanged.

The steps in land exchanges will vary depending on the statutory authority but the basic steps include:

1. Identify the lands or interests to be exchanged.
  - a. Exchange lands are typically identified by Congress or identified within a general management or land protection plan, or proposed by a third party.
  - b. Sufficient descriptions of the land or maps will be needed.
2. Identify all parties involved in the exchange.
  - a. Determine if non-Federal parties are even interested in the exchange.
  - b. Investigate into whether any ownership disputes exist over the land in question.
3. Perform a preliminary value estimate to determine if the properties involved in the exchange are comparable in value.
  - a. If property value equalization from the NPS is necessary to complete the exchange, the availability of appropriated funds to complete the exchange must be determined.
  - b. Valuation of the property usually causes the greatest dispute. Currently the only way to resolve this is through negotiations.

Numerous administrative actions may delay exchanges as well as drastically increase the cost to both parties (e.g. NEPA compliance, ESA consultation, etc.). In addition, before an exchange can be completed, the NPS may need to provide notice to the state or local government and all other interested parties. It is also essential that all administrative records associated with the land exchange are properly managed and maintained. These records will be vital in the event that an exchange is challenged in court.

## **7. NPS Memorandum: Acquisition of Land from Nonprofit Organizations (Dec. 21, 1999).**

The NPS Memo dated December 21, 1999 is used to reinforce the DOI Memo dated August 28, 1995 wherein the Asst. Secretary provides clarification on land acquisitions conducted with the assistance of non-profit entities and reminds employees that, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the NPS must, at least initially, offer a fair market value price for the property.

The land acquisition process can be lengthy. Once the NPS identifies an interest in acquiring lands or interest in lands with significant value, nonprofit organizations can play a useful role by helping to acquire those lands in a timelier manner. It would typically take the Federal government much longer to appropriate the funds needed to purchase these interests. The basic guidance includes:

1. The nonprofit cannot be agents of the Federal Government
2. The policy does not apply when it is clear that the history of the transaction demonstrates that the acquisitions by the non-profit were not originally intended for sale.
3. Lands acquired from the nonprofit entity must be related to the NPS mission and meet the units acquisition priorities.

4. Lands or interests must be inside the administrative boundary of the NPS unit or authorized for acquisition by law.
5. Letters of intent are required from the NPS if they are interested in having a nonprofit make a purchase or by the nonprofit if they are interested in purchasing interests intended for sale to the NPS.
6. The NPS has the right to inspect the nonprofit's financial records to verify the conditions of the acquisition pursuant to the letter of intent.
7. The NPS will not reimburse a nonprofit for any interest incurred by the nonprofit as part the land acquisition transaction.
8. The NPS will pay either (1) fair market value based on the appraisal or less for properties/interests if agreed upon by the nonprofit or (2) the purchase price paid by the nonprofit to acquire the property, not to exceed market value, as well as related expenses approved by the Asst. Sec. for Policy, Management, and Budget.
9. The land being purchased must be appraised by either the NPS or by a third party appraiser approved by NPS.

## **8. DOI Memorandum: Improving Land Exchanges in the Lower 48 States (Oct. 22, 1986)**

This memo summarizes the work done by the DOI Task Force on Large Land Exchanges once it was reconstituted in 1985. This group was tasked with determining how to increase the timeliness of large land exchanges that benefit conservation units as well as exchanges that benefit normal units. Land exchanges, as opposed to purchasing the land, typically take a long time to complete and are very labor intensive. Instead of looking at how to improve the land exchange process in general the task force decided to divide large land exchanges into three categories:

Type A – Large land exchanges that require congressional approval.

Type B – Large land exchanges processed under existing procedures receiving high level management attention.

Type C – Normal land exchanges involving less important resource values.

Type C transactions would receive much less attention at the Secretarial level so the task force focused on selection guidelines and the process to be followed for exchange Types A and B. Type B exchanges are very similar to Type C exchanges although they will receive a higher funding priority. Focusing on these important exchanges at the Department level should improve the chances of completing exchanges involving significant resources in a timelier manner.

## **9. NPS Memorandum: Actions requiring Congressional Review (Nov. 18, 2010).**

The memorandum was intended to update the requirements relating to acquisitions which require Congressional review. The changes implemented include:

**All acquisition proposals for an amount in excess of the approved appraised value require the concurrence on Committees on appropriations.**

**All land exchanges where the estimated costs exceed \$1,000,000.00 must be submitted to the Committees for a 30-day review and Committees must be given advance notice regarding exchanges valued between \$500 K and \$1 million.**

The document goes on to list the requirements, documentation needs, and justification needs for nine different examples of land exchanges.

### **Type I – Purchase for an Amount that Exceeds the Appraised Value**

Congressional rules require that lands not be acquired for more than the appraised value unless the acquisitions are submitted to the Appropriations Committees and approved. The Committees need to know the circumstances behind paying more than the appraised value. Are there special circumstances? Is there a reason to pay more than the appraised value? Have we offered less? What will the consequences be if the deal falls through?

### **Type II – Purchase of Publicly Owned Lands**

The purchase of publicly owned lands is prohibited until efforts to acquire the land without cost have been exhausted and even then purchase must be approved by the Committees on Appropriations. Certain types are exempt: (1) when private property is transferred to public ownership subsequent to the authorization of Federal acquisition; (2) when a public body has ownership or a lesser interest in land because of unpaid taxes or other debt owed a state or local government; (3) when a public body has acquired land at the request of a Federal agency for subsequent conveyance to such agency for use as Federal parkland. Additionally, purchase State land or its subdivision was granted by the Federal Government solely for the support of public schools. Justification must be provided for why the property is necessary and why it was not acquirable via donation or exchange.

### **Type III – Condemnation of an Inholding Tract**

All acquisitions by eminent domain of inholding tracts receive prior approval of the Committees on Appropriations. Justification is necessary for why negotiations to acquire the land by other means were not successful? Why was condemnation necessary? Why is the Federal possession of the property necessary?

#### **Type IV – Condemnation With or Without a Declaration of Taking**

The Committees on Appropriations must approve the use of appropriated funds for the acquisition of lands or interest in lands for the filing of declarations of taking or complaints in condemnation. This provision shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act. Justification is necessary for why negotiations to acquire the land by other means were not successful. Additionally, why was condemnation necessary and why is the Federal possession of the property necessary?

#### **Type V – Condemnation with a Declaration of Taking**

The concurrence of the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources must be obtained prior to the filing of the declaration of taking. This does not apply to cases where there is a negotiated agreement with the landowner and a declaration of taking is necessary to clear title. Must provide justification why negotiations to acquire the property by other means were unsuccessful. Why was condemnation necessary? Why was Federal possession of the property necessary?

#### **Type VI – Reprogramming of Funds in Excess of \$1,000,000.00**

Requires that any proposed reprogramming be submitted to the Committees on Appropriations for approval if it exceeds one million dollars annually or results in an increase or decrease of more than 10 percent annually in affected programs. Must justify if the funds are from your region and if so, why they are available? What impact will the reprogramming have on the acquisition program at the unit from which the funds are being reprogrammed? Why can't the required funds be obtained through the normal appropriations process?

#### **Type VII – Land Exchanges**

Land exchanges, where the estimated value of the Federal lands to be exchanged is greater than one million dollars, must undergo a 30-day review by the Committees on Appropriations. The Committees shall also be provided with advanced notice of exchanges valued in excess of \$500,000. Must justify how the exchange is in the best interest of the United States and whether it is an equal-value exchange.

#### **VIII – Purchase of an Inholding Tract for an Amount that Exceeds \$150,000.**

The acquisition of an inholding for an amount in excess of \$150,000 is prohibited unless such a purchase is submitted to the Committees on Appropriations for approval. Parks must justify why the acquisition is necessary.

#### **IX – Minor Boundary Revisions**

After notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior may make minor revisions to the boundary of a national park by publication of a revised boundary map or other description in the Federal Register. Parks must justify why it is necessary to include the boundary in the property.

## 10. Records Management System (Module 3: Records Schedule 2010)

This document provides information relating to the retention of land acquisition files.

- Subcategory 1.A.1, it details which records should be considered *permanent* records for both the NPS and NARA. This section also provides instructions on how to handle to the hardcopy documents and where mandatory copies must go.
- Subcategory 1.C. provides information on handling *short-term* records. Records in this category are considered *temporary*. Very few record types fall into the category of records but those that do are typically destroyed or deleted 15 years after the closing or cutoff date of the project or position.
- Subcategory 1.D. describes routine records all of which are considered *temporary* records. These records are typically deleted or destroyed three years after project closure.