



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

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Memorandum

To: Chiefs, Land Resources Program Centers and
Chiefs, Land Acquisition Field Offices

From: Chief, Land Resources Division

Subject: Actions requiring Congressional review

The purpose of this memorandum is to update requirements regarding certain types of acquisitions or reprogramming proposals, which require Congressional review. Pursuant to the Department of the Interior, Environment, and Related Agencies Appropriations Act for Fiscal Year 2010 (P.L. 111-88, enacted October 30, 2009) and the accompanying House Conference Report No. 111-316, the following changes regarding those requirements are now in effect:

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

All land exchanges for which the estimated value of the Federal land to be exchanged exceeds \$1,000,000 must be submitted to the Committees for a 30-day review. The Committees also must be given advance notice of exchanges valued between \$500,000 and \$1,000,000.

This memorandum also summarizes the information and documents you must provide this Office to support acquisitions or reprogramming proposals. Please note that the Department requires that most acquisition proposals requiring notification of Congress be accompanied by an approved Environmental Site Assessment (ESA) in accordance with 602 DM 2.

A revised summary of the oversight requirements follows:

Type I. Purchase for an amount that exceeds the appraised value.

A. Requirement: House Conference Report No. 111-316 (agreed to by House and Senate on October 29, 2009), requires that lands shall not be acquired for more than the approved appraised value (as addressed in section 301(3) of Public Law 91-646), unless such acquisitions are submitted to the Committees on Appropriations for approval in compliance with the

reprogramming guidelines.

B. Documentation needed:

- draft letter to the Committees
- copy of the offer to sell,
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appraisal and the appraisal review,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A).

C. Justification needed: The Committees want to know why it is necessary to acquire the property for more than the appraised value. Are there special circumstances? Is there a rational basis for the owner's refusal to sell for the appraised value? How have we tried to convince the owner to sell for a lesser amount? What will happen if we do not accept the offer to sell?

Type II. Purchase of publicly owned lands.

A. Requirement: Senate Report No. 90-233 prohibits the purchase of publicly owned land until efforts to acquire it without cost have been exhausted and then only with the approval of the Committees on Appropriations. Subsequently, the Senate Appropriations Committee exempted specific types of publicly owned land from this restriction (Senate Report No. 94-991 and Senate Report No. 95-276). Senate Report No. 94-991 directs that the acquisition of publicly owned lands by purchase or condemnation need not be precluded (1) when private property is transferred to public ownership subsequent to the authorization of Federal acquisition; and (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; and (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. Senate Report No. 95-276 directs that the purchase of publicly owned lands need not be precluded when land to be acquired from a State or its political subdivision was granted by the Federal Government solely for the support of public schools.

B. Documentation needed:

- draft letter to the Committees
- copy of the offer to sell,
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A).

C. Justification needed: Why is Federal acquisition of the property necessary? Why were we unable to acquire the property by donation or exchange?

Type III. Condemnation of an inholding tract.

A. Requirement: Senate Report No. 93-1069 and Conference Report No. 93-1293 require that all proposed acquisitions, by eminent domain, of inholding tracts (privately owned lands included in the National Park System before July 1959), receive prior approval of the Committees on Appropriations.

B. Documentation needed:

- draft letter to the Committees
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appraisal and the appraisal review,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A).

C. Justification needed: Why were negotiations to acquire the property by other means unsuccessful? Why is condemnation necessary? Why is Federal possession of the property necessary?

Type IV. Condemnation with or without a declaration of taking.

A. Requirement: Section 414 of the General Provisions, Division A, Title IV of the Department of the Interior, Environment, and Related Agencies Appropriations Act for Fiscal Year 2010 ((P.L. 111-88, enacted October 30, 2009), directs that no funds appropriated in the Act for the acquisition of lands or interests in lands may be expended for the filing of declarations of taking or complaints in condemnation without the approval of the Committees on Appropriations: Provided, that this provision shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act of 1989, or to funds appropriated for Federal assistance to the State of Florida to acquire lands for Everglades restoration purposes.

NOTE: Unlike Types III and V, this requirement applies only to condemnations using funds appropriated in certain fiscal years. This requirement was also included in the public laws providing DOI appropriations for Fiscal Years 2003 through 2009.

B. Documentation needed:

- draft letter to the Committees,
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appraisal and the appraisal review,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A).

C. Justification needed: Why were negotiations to acquire the property by other means unsuccessful? Why is condemnation necessary? Why is Federal possession of the property necessary?

Type V. Condemnation with a declaration of taking.

A. Requirement: Prior to 1968, the National Park Service, in common with other Federal agencies, made almost universal use of declarations of taking in its land condemnations. In early 1968, however, a general understanding was reached with the House and Senate Interior Committees that declarations of taking would not be utilized without consultation with those Committees. The general understanding was formalized in Senate Report No. 1597 of October 1, 1968. Consequently, 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 a declaration of taking. This requirement does not apply to cases where there is a negotiated agreement with the landowner and a declaration of taking is necessary to clear title.

B. Documentation needed:

- draft letter to the Committees,
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appraisal and the appraisal review,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A)

C. Justification needed: Why were negotiations to acquire the property by other means unsuccessful? Why is condemnation with a declaration of taking necessary? Why is Federal possession of the property necessary?

Type VI. Reprogramming of funds in excess of \$1,000,000.

A. Requirement: House Conference Report No. 111-316 (agreed to by House and Senate on October 29, 2009) requires that any proposed reprogramming be submitted to the Committees on Appropriations for approval if it exceeds \$1,000,000 annually or results in an increase or decrease of more than 10 percent annually in affected programs.

B. Documentation needed:

- draft letter to the Committees,
- letter of recommendation from the Regional Director, and
- justification statement.

C. Justification needed: Are the funds to be programmed from your region and, if so, why are they available? What impact will the reprogramming have on the acquisition program at the unit from which the funds are being reprogrammed? Why can the required funds not be obtained through the normal appropriation process (ie., time-sensitive acquisition)?

Type VII. Land exchanges.

A. Requirement: House Conference Report No. 111-316 (agreed to by House and Senate on October 29, 2009) requires that land exchanges, wherein the estimated value of the Federal lands to be exchanged is greater than \$1,000,000, shall not be consummated until the Committees on Appropriations have had a 30-day period in which to examine the proposed exchange, and the Committees shall be provided advance notification of exchanges valued between \$500,000 and \$1,000,000.

B. Documentation needed:

- draft letter to the Committees,
- an approved ESA in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of pertinent appraisals and appraisal reviews,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A).

C. Justification needed: How is the exchange in the best interest of the United States? Is this an equal-value exchange?

NOTE: Per verbal notification, the Committees have indicated that the following requirement is waived until further notice:

Type VIII. Purchase of an inholding tract for an amount that exceeds \$150,000.

A. Requirement: Senate Report No. 93-1069 and Conference Report No. 93-1293 prohibit the acquisition of an inholding tract for an amount in excess of \$150,000, unless such acquisitions are submitted to the Committees on Appropriations for approval.

B. Documentation needed:

- draft letter to the Committees,
- copy of the offer to sell,
- an approved HAZMAT survey in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- a copy of the appraisal and the appraisal review,
- five copies of the appropriate Index and Segment maps, and
- a completed Information Sheet (See Exhibit A)

C. Justification needed: Why is it necessary to acquire the property?

Type IX. Minor Boundary Revision

A. Requirement: Section 7(c) of the Land and Water Conservation Fund Act of 1965, as amended, provides that, 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 boundaries of a unit of the National Park System by publication of a revised boundary map or other description in the Federal Register.

B. Documentation needed:

- draft letter to Committees
- an approved HAZMAT survey in accordance with 602 DM 2,
- letters of recommendation from the Regional Director and Superintendent,
- five copies of the appropriate Index and Segment maps, and
- draft Federal Register notice.

C. Justification needed: Why is it necessary to include the property in the boundary?

Exhibit A, a sample of the required Information Sheet, illustrates the kinds of information needed by this Office to prepare a submission to the Committees and to respond to inquiries by the Department and the Committees. The attached Information Sheet combines elements of the two types of supplemental information sheets we have used in the past.

Please note that offers which require Congressional approval should expire no less than 6 months from the signing date. The review process can be lengthy and, for an offer that has expired by the time it reaches the Committees, the chance for approval may be jeopardized.

William D. Shaddox
Chief, Land Resources Division

Enclosure

bcc:
0001-RF
2540-A24, w/c of enc.
2540-Miller/Walsh/Leisz, w/c of enc.
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