



United States Department of the Interior

NATIONAL PARK SERVICE
1649 C Street, N.W.
Washington, D.C. 20240

DEC 21 1999

IN REPLY REFER TO:

L1425(2540)

RD LOG NO. 3 ¹⁵

Memorandum

To: Regional Directors and Project Manager, Appalachian National Scenic Trail

From: Director *[Signature]*

Subject: Acquisition of Land from Nonprofit Organizations

The purpose of this memorandum is to provide further guidance in the acquisition of land from nonprofit organizations.

It is the policy of the National Park Service to pay a nonprofit the fair market value, based upon the approved appraisal and agreed upon by the acquiring bureau and the nonprofit organization, or such lesser figure at which the nonprofit organization offers to sell the property. This policy is in conformance with the "Clarification to August 10, 1983, Guidelines for Transactions Between Nonprofits Organizations and Agencies of the Department of the Interior" issued by the Assistant Secretary, Policy, Management and Budget on August 28, 1995.

Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as amended, Federal agencies are required to offer not less than fair market value when they seek to acquire land. The Act does not prohibit a Federal agency from acquiring land for less than fair market value, if the owner desires to sell for less or to donate land.

The Inspector General Audit Report No 99-I-518 dated May 1999 entitled "Land Acquisition Activities, National Park Service," implied that the Service was not taking full advantage of the opportunity to achieve savings by failing to negotiate for less than fair market value when acquiring land from a nonprofit organization.



United States Department of the Interior

Geri Smith
Off of Policy

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 28 1995

Memorandum

To: Director, Bureau of Land Management
Director, National Park Service
Director, U.S. Fish and Wildlife Service

From: Bonnie R. Cohen,
Assistant Secretary, Policy, Management and Budget

Subject: Clarifications to August 10, 1983 Guidelines for Transactions Between
Nonprofit Organizations and Agencies of the Department of the Interior

These clarifications have been developed in response to the Inspector General's May 1992 Audit Report on land acquisitions conducted with the assistance of nonprofit organizations (Report No. 92-I-833). The guidelines apply to real estate transactions pursuant to letters of intent between nonprofit organizations and the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and other agencies of the Department of the Interior utilizing funds appropriated from the Land and Water Conservation Fund.

For purposes of these guidelines, the term "nonprofit organization" shall include, but is not necessarily limited to, nonprofit organizations and other corporations or similar legal entities which acquire lands and interests therein for possible sale to the United States.

Introduction

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships, nonprofit organizations can assist and support Federal land acquisition programs. However, the role of nonprofit organizations in acquiring land or interests in land for ultimate Federal acquisition must be clearly and carefully defined in each transaction in conformity with these guidelines.

General policy

Nonprofit organizations serve a very useful role in acquiring lands and interests in land having significant public values. Federal agencies are encouraged to work with such organizations and entities consistent with these guidelines.

Guidelines

1. *No agency relationship.* Nonprofit organizations are not in any manner agents of the Federal Government unless an agency relationship is specifically designated in writing by mutual consent of the parties. Nonprofit organizations are typically private independent groups which freely negotiate real estate actions anywhere and anytime they desire and do so at their own risk. In transactions with the agencies of the Department of the Interior, nonprofit organizations shall not incur any liability or responsibility for payment of any relocation or other benefits under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646).
2. *Applicability to certain properties proposed for conveyance to the United States.* These guidelines do not apply to situations where the history of the transaction clearly demonstrates that the initial acquisition by the nonprofit organization was not made in contemplation of resale. Typically, factors such as the length of time between initial acquisition and proposed resale to the Government, the terms of the initial transaction, and the use of the property in the interim period will be considered. Each case will be determined on its own merits.
3. *Agency acquisition priorities.* Lands or interests in lands acquired from a nonprofit organization or other entity shall be in accord with priorities set by the acquiring Federal agency, consistent with the agency's acquisition authorities, and limited to tracts that the agency has determined need to be acquired. Because of statutory, budgetary and policy considerations associated with any land acquisition transaction, the objectives of the Federal agencies must supersede those of the nonprofit organization.
4. *Areas of acquisition.* Lands or interests in land acquired by Federal agencies from nonprofit organizations must be within the boundaries of authorized areas or otherwise authorized by law.
5. *Letters of intent.* In each case where a nonprofit organization intends to acquire land for subsequent conveyance to a Federal agency and seeks prior assurance from the agency of its interest in and intent to take such a conveyance, the nonprofit may request and the agency may give a letter of intent to acquire. Such a letter of intent should also be used whenever an agency requests the assistance of a nonprofit organization in a proposed acquisition. If given by the Federal agency, the letter of intent to the nonprofit organization shall, at a minimum:
 - (a) identify the land or interest in land which the agency desires to acquire;
 - (b) state the estimated purchase price or other consideration subject to future appraisal;

(c) state the projected time frame as to when the agency intends to acquire the property; and,

(d) contain a statement indicating that should the agency be unable or decline to purchase the land within the projected time frame or at any time, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the Federal government.

6. Access to records and financial information. The acquiring Federal agency shall have the right to inspect the records of the nonprofit organization to verify the option price and other terms and conditions of any acquisition undertaken pursuant to a letter of intent, including all appraisals made of the property.

The nonprofit organization must be able to document and substantiate all expenses claimed in the transaction. Records shall be made available for inspection upon reasonable prior notice from the authorized representative of the Department.

7. Prohibitions on interest payments by Federal agencies. No agency shall pay nonprofit organizations for any interest incurred or foregone by the nonprofit organizations as a result of their participation in land acquisition transactions. (This practice has been discontinued since the Department of the Interior Solicitor's July, 1992 opinion which stated that there was no legal basis for making such payments.)

8. Acquisitions. In acquiring property from a nonprofit organization, a bureau of the Department of the Interior may pay either:

a) the fair market value of the property, based upon the bureau-approved appraisal and agreed upon by the acquiring bureau and the nonprofit organization, or such lesser figure at which the nonprofit organization offers to sell the property; or

b) the purchase price paid by the nonprofit organization to acquire the property from a third party, not to exceed the appraised fair market value approved by the acquiring bureau, plus related and associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. The expenses shall be those which the Department would have incurred itself in acquiring the concerned property. Payment of a predetermined overhead cost may be approved in special cases subject to the approval of the Secretary.

9. Requirements for appraisals. Appraisals of land to be acquired from nonprofit organizations shall be prepared either by the purchasing agency or by an appraiser approved by such agency. Appraisals shall conform with the Uniform Appraisal Standards for Federal Land Acquisitions.

In addition, reviews of appraisals of land to be acquired from nonprofit organizations pursuant to letters of intent shall be no more than six months old in order to reflect current market analysis.