



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)<sup>1</sup>**

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; and (5) exchange. Plans should discuss acquisition methods in general terms because funding for acquiring land varies.

<sup>1</sup> Guidance available on the [Federal Register website](#).

### **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 [LARS 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 threat to the resource, preservation of the resource, visitor use, involvement of partners/nonprofit groups, continuation of an ongoing effort with demonstrated regional and national support, recreational opportunities, local and Congressional support, and the willingness of the landowner to sell the property. 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 must be for acquisitions where a willing seller has been identified. 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. Appraisal and Valuation Services for Realty Property (Part 602, Chapter 1 of the DOI Manual)**

This chapter of the Department Manual provides policy guidance governing all real property appraisal and valuation services, including mineral economic evaluations. The policy applies to all appraisal and valuation services provided or overseen by the Appraisal and Valuation Services Office (AVSO), which is responsible for all real property appraisals and valuation services for the Department of the Interior.

Valuation services provided by AVSO include:

1. **Valuation Products.** The AVSO performs valuation services in accordance with statutory authority, applicable regulations, valuation standards (including the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP)), and Departmental policy. AVSO appraisers will not prepare appraisal reports for mortgage lending or donations of interests in land, including charitable contributions related to the Internal Revenue Service. Products AVSO may provide include valuation reports, valuation review reports, preliminary value estimates, consultation reports, and appraisal waivers.
2. **Statements of Work.** A Statement of Work (SOW) will be prepared for every assignment under direct oversight by the AVSO. In these assignments, the assigned appraiser must instruct all appraisals through a SOW whether completed by AVSO appraisers or fee

appraisers or procured by non-Federal parties pursuant to Department and AVSO policies.

3. Valuations Acquired by a non-Federal Party. A non-Federal party is any entity apart from the United States that may procure valuation services as part of a Bureau realty action. Non-Federal parties may be the property owner or other entity representing the landowner, local or state government organizations, or non-governmental organizations in partnership with the Department or its Bureaus/Offices. The AVSO can only review valuation products procured by a non-Federal party if the agency and non-Federal party follow the procedures listed.

#### **5. Pre-Acquisition Environmental Site Assessments (Part 602, Chapter 2 of the DOI 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 unit's 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 of 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 of the 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 transactions.

### **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, 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. 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. Per verbal notification, the Committees have indicated this requirement is waived until further notice.

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

# Appendix A Land Acquisition Ranking System (LARS) Form

National Park Service  
 US Department of the Interior  
 Land Resources Division



NPS Land Acquisition Ranking System (LARS)     FY2024    

Park Name \_\_\_\_\_

Lands Office \_\_\_\_\_

Region Priority   
Land Resources Program Center Use Only

Proposed Number of Tracts \_\_\_\_\_

Park Priority

Proposed Number of Acres \_\_\_\_\_

Land Protection Plan Priority

Property Name \_\_\_\_\_

Tract Number(s) \_\_\_\_\_

Land Resources Program Center Use Only	Title	\$0
	Appraisal	\$0
	Hazmat	\$0
	Relocation	\$0
	Land	\$0
	Closing	\$0
	Carto/mapping/survey	\$0
	<b>Requested Amount</b>	<b>\$0.</b>
	O&M Future Costs/Savings	\$0

IF APPLICABLE: Matching Funds

Current Economic Price Escalation Factor (%)

Legislative Authority: Check One

Exists P.L. \_\_\_\_\_

Needed If needed, the type:

- authorization
- ceiling (dollar) increase
- boundary revision

**Narrative Summary:** Describe the importance of this acquisition request. (Limited to the space provided below.)

File Name: LARS\_FY2024.pdf

## Ranking Factors

<b>A. Resource Threat:</b> <i>(Maximum points 25)</i> For this element describe in detail:						
i. the nature of the threat (0-5 pts.):						
ii. how immediate is the threat (0-10 pts):						
iii. how valid or probable is the threat:						
iv. and whether or not the resource might be repaired if it were to come to harm (no, 5 pts., possibly, 0-4 pts.):						
<b>Scoring</b> <i>(For Land Resources Program Center Use Only)</i>						
	Ai	Aii	Aiii	Aiv	Total	
Enter Name						Add Remove

<b>B. Preservation of Resource</b> <i>(Note-the sum of all scoring elements could but will not exceed 25.)</i> For this element describe in detail:						
i. the resources protected by the proposed land acquisition (0-10 pts.):						
ii. the scarcity of the resource (0-10 pts.):						
iii. any protection alternatives to Federal land acquisition (no 5 pts., yes 0-4 pts):						
iv. open space enhanced, landscape connectivity or land management efficiencies gained (0-5 pts.):						
<b>Scoring</b> <i>(For Land Resources Program Center Use Only)</i>						
	Bi	Bii	Biii	Biv	Total	0
Enter Name					0	Add Remove

<b>C. Visitor Use and Infrastructure</b> <i>(Maximum points 20)</i> For this element describe in detail:						
i. Is acquisition necessary for the planned construction or development of a structure/facility needed for visitor use or administrative purposes? (Yes=10pts, No=0pts)						
<input type="radio"/> No <input type="radio"/> Yes If yes, describe need:						
ii. Funding for such construction/development is on hand (10pts) or requested (5pts):						
<b>Scoring</b> <i>(For Land Resources Program Center Use Only)</i>						
			Ci	Cii	Total	0
Enter Name					0	Add Remove

<b>D. Commitment Made to Acquire</b> <i>(Maximum points 15)</i> Select one from the dropdown:						
<input type="text"/>						
<b>Ranking</b> <i>(For Land Resources Program Center Use Only)</i>						
<input type="text"/>						

**E. Non-Profit/partner involvement** (Maximum points 10)

Is there a partner?  No  Yes

<b>Ranking</b> (For Land Resources Program Center Use Only)	0
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**F. Continuity** (Maximum points 10) For this element describe in detail the importance of continuity:

<b>Ranking</b> (For Land Resources Program Center Use Only)	F	0
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Enter Name	0	Add	Remove
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**G. Recreation** (Maximum points 5) For this element describe in detail:

i. acquisition is necessary to provide recreational opportunities (No=0pts, Yes=3pts):

ii. is funding available to develop such opportunities following acquisition?  No  Yes or Not Applicable

<b>Ranking</b> (For Land Resources Program Center Use Only)	Gi	Gii	Total	0
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Enter Name	Add	Remove
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**H. Hardship:** (Maximum points 5) For this element describe in detail:

Is there a time constraint for hardship?  No  Yes      This hardship is :

<b>Ranking</b> (For Land Resources Program Center Use Only)	0
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**Out-Year Costs or Savings** (10 points) For this element describe the costs/savings associated with this parcel:

O&M Costs/Savings: \$0

*For WASO Land Resources Division Use Only*

**Ability to obligate funds:** (Maximum points 15) For this element describe in detail:

i. the extent to which pre-acquisition work has been completed (0-15 pts.):

*For WASO Land Resources Division Use Only*

**Local and Congressional Support:** (Maximum points 10) For this element describe in detail:

i. the support this acquisition project has received from local groups, including neighbors, townspeople, non-profit groups, and others (0-6 pts.):

ii. Further describe the support this project has received from the Congressional delegation, including both the Representative (s) and the Senators concerned (0-4 pts.):

*For WASO Land Resources Division Use Only*

For Land Resources Program Center Use Only

<b>Grand Total</b>	<b>0</b>
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<b>Scoring</b> <i>(For WASO Use Only)</i>	A	B	Fi	Fii	H		
Enter Name	0	0	0	0	0	Add	Remove
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	



## Department of the Interior Departmental Manual

**Effective Date:** 1/15/21

**Series:** Public Lands

**Part 602:** Land Acquisition, Exchange, and Disposal

**Chapter 1:** Appraisal and Valuation Services for Real Property

**Originating Office:** Appraisal and Valuation Services Office

### 602 DM 1

1.1 **Purpose.** This Chapter provides the Department of the Interior (Department) policy governing all real property appraisal and valuation services, including mineral economic evaluations and development of valuation policy for the Department.

1.2 **Scope.** This policy applies to all appraisal and valuation services provided or overseen by the Appraisal and Valuation Services Office (AVSO). The AVSO is responsible for all real property appraisals and valuation services, valuation policy, and mineral economic evaluations for the Department including appraisals and valuations of Indian trust and restricted fee property. From time to time, Government agencies outside the Department may request AVSO valuation services or oversight.

1.3 **Authorities.** Various legal authorities guide the appraisal and valuation services processes within the Department. The following is a non-exhaustive list of laws applicable to the AVSO or real property managed by the Department's Bureaus/Offices that routinely affect real property appraisal and valuation services for the Department.

A. Federal Land Policy and Management Act of 1976 (FLPMA), as amended [Pub. L. 94-579, 90 Stat. 2743 (1976) (codified as amended at 43 U.S.C. §§ 1701–1787)]. This act provides the Secretary of the Interior comprehensive authority and guidelines for the administration and protection of Federal lands primarily under Bureau of Land Management jurisdiction. It includes uniform rules and regulations pertaining to land appraisals that reflect nationally recognized appraisal standards and well-established procedures and guidelines for the resolution of appraisal disputes.

B. Federal Land Exchange Facilitation Act of 1988 (FLEFA) [Pub. L. 100-409, 102 Stat. 1086 (1988) (codified at 43 U.S.C. § 1716)]. Section 3 of this act amends the FLPMA to provide uniform criteria for land appraisals related to land exchanges that reflect nationally recognized appraisal standards and established procedures for resolution of appraisal disputes.

C. Financial Institutions Reform, Recovery and Enforcement Act of 1989, Title XI, as amended [Pub. L. 101-73, 103 Stat. 183 (1989) (codified as amended at 12 U.S.C. § 3331)]. This act requires the establishment of state programs for the licensing and certification of appraisers. Office of Management and Budget (OMB) Bulletin 92-06, March 19, 1992, provides that Federal appraisers need only be licensed in one state or territory to conduct appraisal work on behalf of the United States.

D. Indian Land Consolidation Act of 1983 (ILCA), as amended [Pub. L. 97-459, 96 Stat. 2517 (1983) (codified as amended at 25 U.S.C. §§ 2201–2221)]. The ILCA authorizes the Secretary of the Interior to acquire from willing sellers, and at fair market value, any fractional interest in trust or restricted land, in order to: prevent further fractionation; consolidate fractional interests and ownership into usable parcels in the name of the tribe/band, in a manner that enhances tribal sovereignty, promotes tribal self-sufficiency and self-determination; and reverses the effects of the allotment policy on Indian tribes.

E. Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), as amended [Pub. L. 93-638, 88 Stat. 2203 (1975) (codified as amended at 25 U.S.C. §§ 5301–5368)]. This act authorizes the Secretary of the Interior to enter into contracts and compacts with, and make grants directly to, federally recognized Indian tribes and tribal consortiums. This authority includes operation of the real estate appraisal function through an agreement between tribes, the Bureau of Indian Affairs, and the Office of Self Governance on behalf of the AVSO.

F. Indian Trust Asset Reform Act (ITARA) [Pub. L. 114-178, 130 Stat. 432 (2016) (codified at 25 U.S.C. §§ 5601–5636)]. Title III of the act is intended to ensure a more efficient and streamlined administration of duties of the Secretary of the Interior with respect to providing services and programs to Indians and Indian tribes, including management of Indian trust resources. The act requires appraisals and valuations of Indian trust property be administered by a single Bureau, agency, or other administrative entity within the Department. It requires the Secretary of the Interior to establish and publish in the Federal Register minimum qualification requirements for individuals who prepare appraisals and valuations of Indian trust property. The act also allows an appraisal or valuation by a qualified individual to be considered final for purposes of effectuating the transaction for which the appraisal or valuation is required without requiring additional review and approval by the Secretary of the Interior when certain criteria are met.

G. Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended [Pub. L. 91-646, 84 Stat. 1894 (1971) (codified as amended at 42 U.S.C. §§ 4601–4655)]. This act establishes standards for the appraisal of property for direct Federal acquisitions for both voluntary purchase and condemnation, as well as appraisal requirements for federally assisted acquisitions of real property interests.

H. Land and Water Conservation Fund Act of 1965, as amended [Pub. L. 88-578, 78 Stat. 897] (1965) (codified as amended in scattered sections of title 54 U.S.C.)). This act establishes in the U.S. Treasury a fund that may be used to acquire land, water, or an interest in land or water within the exterior boundaries of units of the National Park System; for various areas administered

by the U.S. Fish and Wildlife Service; and for various areas administered by the U.S. Forest Service. The act also authorizes the Secretary of the Interior to make minor changes to the boundaries of units of the National Park System and to acquire, by various means, land, water, or interests in land or water added to system units

1.4 **Objective.** The AVSO is responsible for all real property appraisal and other valuation services within the Department and provides these services to the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Indian Education, the Bureau of Reclamation, the National Park Service, and the U.S. Fish and Wildlife Service. The AVSO also provides these services to various tribal land management programs operating under the ISDEAA. The primary objective of the AVSO is to provide credible and impartial valuation services that are equitable to the United States and any non-Federal parties involved. The valuation services provided comply with the type and definition of value in the authorizing statute, regulation, policy, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), the Uniform Standards of Professional Appraisal Practice (USPAP), or a combination of these authorities and applicable standards.

#### 1.5 **Responsibilities.**

A. Director, AVSO. The Director provides leadership, strategic direction, and overall program management for real property appraisal and valuation functions, including program policy and guidance (112 DM 33).

B. Principal Deputy Director. Responsibilities reserved to the Principal Deputy Director (in addition to those listed in 112 DM 33) include:

- (1) Performing valuation services for the Department and other Federal agencies.
- (2) Serving as final authority for valuation policy and guidance to ensure consistency within the Department.
- (3) Providing the Office of the Secretary Freedom of Information Act (FOIA) Officer with AVSO and/or valuation records, upon request.
- (4) Releasing AVSO work products, in full or with redactions as appropriate, to state appraiser-licensing authorities for license applications or potential disciplinary action by the state regulatory board.
- (5) Releasing AVSO work products, in full or with redactions as appropriate, to professional appraisal organizations for peer review for accreditation or disciplinary actions by a professional appraisal organization.
- (6) Working with the Office of the Solicitor and other Bureaus/Offices to respond to subpoenas or Touhy requests regarding valuation matters affecting AVSO records or

employees.

(7) Working with the Department of Justice in providing valuation records and information, or testimony, or performing valuation services.

C. Associate Deputy Director. Responsibilities reserved to the Associate Deputy Director (in addition to those listed in 112 DM 33) include:

(1) Serving as senior advisor to the Director for outreach and relations with Bureaus/Offices within the Department as well as tribes and individual Indians.

Overseeing and managing self-governance/self-determination relationships for the AVSO.

(3) Serving as the liaison and point of contact for tribes that have established their own appraisal programs pursuant to the ISDEAA.

(4) Supporting the Principal Deputy Director and Chief Appraiser in the development of appraisal policies and methodologies for appraisals performed on Indian trust land.

D. Chief Appraiser. Responsibilities reserved to the Chief Appraiser (in addition to those listed in 112 DM 33) include:

(1) Approving all AVSO requests for legal opinions or instructions related to valuation assignments and evaluating legal instructions for their propriety to the assignment.

(2) Determining qualifications and competency for staff and fee appraisers preparing valuation products for AVSO review, for appraisals submitted pursuant to ITARA, and for appraisers completing work for Federal assistance programs with the Department's Bureaus/Offices.

(3) Delegating authority to Bureau staff to prepare waiver valuations under applicable authorities that allow for re-delegation of preparation authority, as appropriate and consistent with Bureau policy.

(4) Developing minimum qualifications for Bureau staff exercising the delegated authority to prepare waiver valuations.

(5) Delegating authority to AVSO staff to review and approve valuation reports on behalf of the Secretary of the Interior.

(6) Ensuring that valuation products prepared by the AVSO comply with statutory authority, applicable regulations, valuation standards, and the assignment specific Statement of Work.

- (7) Evaluating alleged violations of the USPAP.
- (8) Developing valuation policy and guidance for the Department.
- (9) Approving the need for multiple valuation products of the identical estate appraised.
- (10) Responding to requests for records, information, or testimony related to judicial or administrative hearings and determining appropriate personnel for the assignment.

E. Deputy Directors. Deputy Directors serve as overall division supervisors who focus on meeting Department valuation needs through staff performance. Their responsibilities include:

- (1) Serving as a member of the AVSO executive leadership team.
- (2) Serving as the point of contact for Bureaus at the national level.
- (3) Staffing and workload planning in coordination with the Principal Deputy Director and/or the Director.
- (4) Planning and implementing division budgets in coordination with the Business Services Office.
- (5) Monitoring division performance based on AVSO metrics and developing division and team metrics to ensure that areas of success are recognized and areas for improvement identified.
- (6) Guiding employee development of the division staff through coaching and mentoring and the use of Individual Development Plans.

F. Team Lead Appraisers (TLA)/Regional Supervisory Appraisers (RSA). The TLAs and RSAs focus on valuation case management and workflow for their assigned workgroup. Responsibilities of the TLA/RSA include:

- (1) Acting in the absence of the Deputy Director for their respective division as needed.
- (2) Serving as the point of contact for Bureaus at regional or field levels.
- (3) Assigning valuation cases to appraisal staff through the appropriate valuation case management system for their division.
- (4) Monitoring and reporting team metrics to Deputy Directors.

(5) Coordinating or performing second-level reviews as necessary.

(6) Managing the quality control function within their team as directed by the Deputy Director.

G. AVSO Appraisers. The AVSO appraisers include both appraisers and review appraisers. Responsibilities of all AVSO staff licensed to do appraisals and/or reviews include:

(1) Developing and reporting analyses, opinions, and conclusions for intended users in a manner that is credible and consistent with applicable law, regulation, valuation standards, and Departmental policy.

(2) Conducting independent and defensible real property valuation services in an efficient, timely, and fiscally responsible manner in accordance with the highest professional and ethical standards. These include all types of appraisal practice, including appraisal, appraisal review, consultation, feasibility analysis, and any other service while acting as an appraiser on behalf of the AVSO and the Department.

H. Division of Minerals Evaluation (DME). The DME provides minerals economic evaluations and mineral commodity valuations for the Department's Bureaus/Offices. When requested by other divisions within the AVSO or other Government agencies, the DME evaluates mineral potential for the estate to be valued, prepares value schedules for mineral commodities, provides mapping or other property descriptions, or identifies potential fractionated estates.

## 1.6 Appraiser Qualifications and Requirements.

A. AVSO Appraisers.

(1) The minimum level of state appraisal licensure for all journey-level appraisers GS-1171-11 or higher shall be Certified General.

(2) The Director of AVSO and all other appraisal staff GS-1171-13 and higher grade, including the Principal Deputy Director, Associate Deputy Director, Chief Appraiser, Deputy Directors and TLAs/RSAs must have a professional valuation organization designation or accreditation that includes experience requirements, training in appraisal practice approved by the Appraiser Qualifications Board, a demonstration report, and a comprehensive examination.

B. Fee Appraisers. Fee appraisers preparing valuation products for AVSO review or for other programs subject to AVSO oversight, including Federal financial assistance programs, must hold a valid license as a Certified General Appraiser for the jurisdiction in which the subject property is located. Valid credentials include those obtained directly from the jurisdiction, those issued under a reciprocity agreement, and/or those characterized as "temporary" under the jurisdiction's licensing and certification statutes. For assignments with direct oversight by the AVSO, the assigned AVSO review appraiser must approve training and experience qualifications of

fee appraisers prior to the commencement of an appraisal assignment.

## 1.7 Valuation Services.

A. Valuation Products. The AVSO performs valuation services in accordance with statutory authority, applicable regulations, valuation standards, and Departmental policy. AVSO appraisers will not prepare appraisal reports for mortgage lending or donations of interests in land, including for charitable contributions related to the Internal Revenue Service.

(1) Valuation Reports. The AVSO performs only one appraisal for each subject property. An appraisal report may include more than one value opinion for complex, multi-estate assignments, project appraisal reports, or include different values for different valuation scenarios.

(2) Valuation Review Reports. The AVSO provides assignment instructions in the form of a Statement of Work for all valuation products under its direct oversight and then reviews those products to approve or disapprove them for use by Bureaus/Offices. All reviews and assignment instructions will be done in a reasonable timeframe and communicated promptly to the agency for which the review or instructions is being performed.

(3) Preliminary Value Estimates. Except with specific regulatory authority, such as 43 CFR 2201.1(b), "preliminary" value estimates are inappropriate AVSO valuation products. Preliminary value estimates performed by an appraiser are appraisals regardless of their title and must conform to the applicable appraisal standard for the assignment.

(4) Consultation Reports. Consultation services, where the report opinion is not a value (but may include values as part of the analysis), may be appropriate when the assignment helps define the scope or feasibility of a realty transaction. Consultation reports are not subject to AVSO review and approval.

(5) Appraisal Waivers. Agencies may determine that an appraisal is not necessary (may be waived) where the valuation problem is uncomplicated and the anticipated value is low, as authorized by 49 CFR 24.102(c) (2) or other statutory authority. For the Department's valuation products, 112 DM 33 describes the AVSO's responsibility for valuation training, including training agency staff to perform the waiver valuations. Part 212 DM 33 identifies the authorities delegated by the Chief Appraiser to agency staff performing waiver valuations. Waiver of Departmental review of appraisals and valuations of Indian property under 43 CFR 100 does not require the preparation of a waiver valuation. No delegation or specific training is required since a waiver valuation is not prepared or reviewed under 43 CFR 100.

(6) Requests for Reconsideration of Results. Bureaus/Offices with compelling arguments supporting reconsideration of an approved valuation product may submit a detailed written request for reconsideration to the Chief Appraiser through the Deputy Director of the appropriate division. The AVSO will not reconsider approved appraisals without a specific request

from the Bureau/Office involved. The request must include evidence indicating the approved appraisal is flawed or not representative of the market value of the subject property. The AVSO may return requests that fail to provide compelling evidence to the requesting Bureau/Office without reconsideration. The Chief Appraiser will evaluate the request, determine the appropriate action, and provide a written response to the Deputy Director and the requesting Bureau/Office after the reconsideration is complete. The Chief Appraiser is the technical valuation authority for the Department and reconsideration results issued by the Chief Appraiser are final.

B. Statements of Work. A Statement of Work (SOW) will be prepared for every appraisal assignment under direct oversight by the AVSO. In these assignments, the assigned appraiser must instruct all appraisals through a SOW whether completed by AVSO appraisers or fee appraisers or procured by non-Federal parties pursuant to Department and AVSO policies.

C. Valuations Acquired by a non-Federal Party. A non-Federal party is any entity apart from the United States that may procure valuation services as part of a Bureau realty action. Non-Federal parties may be the property owner or other entity representing the landowner, local or state government organizations, or non-governmental organizations in partnership with the Department or its Bureaus/Offices. The AVSO can only review valuation products procured by a non-Federal party if the agency and non-Federal party follow the procedures provided below.

(1) Prior to initiation of the appraisal, the AVSO selects a qualified appraiser considering any recommendations from the non-Federal party. The non-Federal party agrees the AVSO is the client for the assignment and an intended user of the appraisal, and that the AVSO will make all appraisal assignment instructions.

(2) The AVSO engages the appraiser in writing establishing the client-appraiser relationship.

(3) In cases where the AVSO has not been involved in the selection of the appraiser and issuance of appraisal instructions, the AVSO may only review an appraisal under the following conditions:

(a) A senior agency/program manager, typically a line officer, transmits the appraisal and a request to review the appraisal for agency use to the Deputy Director of the respective division within the AVSO. This request must include the agency's determination that the proposed land tenure action supported by the appraisal comports with applicable missions, priorities, and plans. Acceptance of an appraisal for review in these situations does not guarantee approval of the appraisal by the AVSO.

(b) The AVSO determines that the appraisal was prepared by a qualified appraiser as described in Section 1.6(B) above.

(c) In either circumstance listed above, review of a non-Federal party procured appraisal does not create an expectation that such appraisal will be approved.



(4) **Unsolicited Valuation Reports.** The AVSO returns unsolicited appraisal reports without review, except as authorized in paragraph (C)(3) of this section.

D. **Requests for Valuation Products.** Agencies must request all valuation products via the current electronic valuation request system(s) in use by the AVSO.

1.8 **Release of Records that Have Not Been Requested under FOIA.** Any release of valuation records, other than to the relevant AVSO client bureau, must be approved by the Principal Deputy Director.

1.9 **Coordination with Organizations Outside the Department.** The AVSO and organizations outside the Department will define roles and responsibilities in writing at the outset of case cooperation.

**Department of the Interior  
Departmental Manual**

**Effective Date:** 10/12/16

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**Part 602:** Land Acquisition, Exchange and Disposal

**Chapter 2:** Real Property Pre-Acquisition Environmental Site Assessments

**Originating Office:** Office of Environmental Policy and Compliance

**602 DM 2**

2.1 **Purpose.** This chapter prescribes Departmental policy, responsibilities, and requirements regarding determinations of the potential to expose the Department of the Interior (Department) to liabilities and costs of remediation related to the release or threatened release of hazardous substances, oil, or petroleum products, defined in the Appendix to this chapter as “recognized environmental conditions.” In addition, this chapter:

A. Addresses the identification of environmental issues of concern, as defined in the Appendix to this chapter, associated with the acquisition of real property by the Department for the United States.

B. Describes steps to ensure informed decisionmaking and compliance with applicable laws, regulations, and standards for assessments prior to the acquisition of real property.

2.2 **Scope.**

A. The policy in this chapter applies to all proposed discretionary, mandatory, and/or legislative “real property acquisition” as defined in this chapter, except as specified in paragraph 2.2B below. This includes the following:

(1) Withdrawn public domain land being returned or reverted to the Department’s jurisdiction—the transaction needs to be treated as a land acquisition because the land might not be in the same condition as it was at the time of withdrawal.

(2) Land to be acquired through land exchanges, other acquisitions (e.g., Land and Water Conservation Fund), or other transfers from other government agencies (e.g., real property acquired from the General Services Administration (GSA), or Department of Defense/U.S. Army Corps of Engineers, including Base Realignment and Closure properties; National Guard; U.S. Coast Guard; Department of Energy; states; or private entities).

(3) Discretionary fee-to-trust acquisitions.

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B. The policy in this chapter does not apply to the following:

(1) Mandatory fee-to-trust acquisitions. The Secretary has the authority and duty to acquire land to be held in trust by the United States on behalf of an Indian tribe or individual Indian under various mandatory acquisition statutes, judicial decrees, and legislative transfers involving unique circumstances applicable to the acquisition of such real property. The procedures by which mandatory fee-to-trust acquisitions satisfy the intent and objectives of this chapter shall be defined by regulation, policies, and guidance adopted by the Bureau of Indian Affairs.

(2) Leases for commercial real estate, GSA Occupancy Agreements, and agreements entered into by the bureau/office with non-governmental entities for the use of buildings or structures. This exception does not apply to cases where the bureau/office has reason to believe a building or structure has been used to store or handle hazardous substances, oil, or petroleum products, nor to cases where there is visible evidence of environmental issues of concern.

(3) Federal lands transferred through the National Park Service's Federal Lands to Parks program.

(4) Easements that do not convey authority or rights to participate in the management of the property (e.g., conservation easements). For acquisition of other property interests that are less than fee title, such as water rights or mineral rights, the bureau must consult with the Solicitor's Office on a case-by-case basis to determine whether the acquisition could expose the bureau to associated liabilities or potential remediation costs that would trigger the requirements of this chapter.

### 2.3 Authorities.

A. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601, et seq.

B. Oil Pollution Act (OPA), as amended, 33 U.S.C. §§ 2701, et seq.

C. Innocent Landowners, Standards for Conducting All Appropriate Inquiries (AAI), 40 CFR Part 312.

D. Oil Spill Liability: Standards for Conducting All Appropriate Inquiries Under the Innocent Landowner Defense, 33 CFR Part 137.

E. 40 CFR 312.11. The Environmental Protection Agency (EPA) has determined that American Society for Testing and Materials (ASTM) International standards E1527-13 and E2247-08 are consistent with its AAI regulations for 40 CFR 312.23-31. The EPA also still accepts ASTM standard E1527-05 as consistent with its AAI regulations. The ASTM standards E1527-13 and E1527-05 may be used for a Pre-Acquisition Environmental Site Assessment (PA-ESA), and ASTM standard E2247-08 may be used for a property of 120 acres or greater of

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forestland or rural property, or with a developed use of only managed forestland and/or agriculture. The ASTM standards E1527-13, E1527-05, and E2247-08 provide a path for landowner liability protections for land acquisition. Bureaus/offices should use the most current ASTM standards accepted by the EPA.

F. 33 CFR 137.20. The U.S. Coast Guard has determined that E1527-05 is consistent with its AAI regulations for 33 CFR 137.45-85. Bureaus/offices should use the most current ASTM standards accepted by the U.S. Coast Guard.

G. ASTM E1528-14 offers guidance accepted by the Department for conducting Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP). However, ASTM E1528-14 does not provide a path for landowner liability protections for Federal land transactions. Bureaus/offices should use the most current version of ASTM E1528.

2.4 **Definitions.** Definitions for terms used in this chapter are provided in the Appendix.

2.5 **Policy.** It is Departmental policy to minimize the exposure of bureaus/offices to liabilities and potential remediation costs by avoiding the acquisition of real property that is contaminated, unless otherwise specifically directed by Congress, court mandate, or as determined by the Secretary or the Secretary's authorized representative as described in paragraph 2.14. When a bureau/office plans to acquire contaminated property, except under the conditions provided in paragraph 2.2B of this chapter, it is the Department's policy to preserve potential defenses to CERCLA and/or OPA liability when prudent and practicable by performing a PA-ESA, which is one step in the requirements for AAI (see the definition in the Appendix to this chapter).

A. Under limited circumstances, a bureau/office may determine, in consultation with the Office of the Solicitor (SOL), that preserving defenses to CERCLA and/or OPA liability, or developing the understanding of baseline environmental conditions that performing a PA-ESA would provide, is not relevant or useful with regard to the acquisition of a particular property. Under such limited circumstances, the bureau/office may perform a less stringent assessment process, described herein as LEDD/TSP (see the definition in the Appendix to this chapter), to determine whether there has been a release or threatened release of hazardous substances, oil, or petroleum products, or if there are other environmental issues of concern on or affecting the property. This LEDD/TSP process is described in detail in ASTM standard E1528-14. The LEDD/TSP should not be used when a bureau/office is seeking to preserve defenses to liability under CERCLA and/or OPA.

B. Bureaus/offices must consult with the SOL concerning the applicability of the policy and requirements in this chapter to site-specific locations and language in specific agreements (e.g., easements and other interests), as well as language of specific withdrawal agreements mentioned in paragraph 2.2A(1) in which liability could arise.

C. For intra-departmental transfers/land exchanges, the receiving bureau/office should consult with SOL on a case-by-case basis to determine whether the acquisition could

expose the bureau/office to associated liabilities or potential remediation costs. Although not required, the receiving bureau/office has the option to conduct either a PA-ESA or LEDD/TSP.

## 2.6 Responsibilities.

A. Office of the Solicitor. Provides legal review and guidance for proposed real property acquisition including, but not limited to, providing advice with respect to potential legal enforcement by third parties and evaluating whether the Department's defenses for liability under CERCLA or OPA should be or have been adequately preserved. Also, the SOL provides legal review and guidance to structure the instrument for land acquisition, whether it is a deed, statute, or interagency agreement, so as to minimize, whenever possible and appropriate, the Department's exposure to associated liabilities and potential costs of remediation.

B. Assistant Secretary – Policy, Management and Budget (AS-PMB). Provides policy oversight for acquisition of real property. Makes decisions on all recommendations to acquire real property which could result in bureaus/offices incurring associated liabilities or potential remediation costs exceeding \$500,000.

C. Program Assistant Secretaries. Oversee bureaus/offices under their jurisdiction to ensure compliance with this chapter. Under their respective jurisdictions, program Assistant Secretaries must concur with any recommendation to the AS-PMB for approval to acquire real property that could cause a bureau to incur associated liabilities or potential costs of remediation exceeding \$500,000.

D. Heads of Bureaus/Offices. Oversee bureau/office real property acquisition and development of bureau guidance and instructions to implement the policy requirements of this chapter. The heads of bureaus/offices must ensure that PA-ESA or LEDD/TSP is performed in accordance with the requirements of this chapter, and must exercise due diligence in limiting any associated liabilities and potential costs of remediation to the bureau/office. The heads of bureaus/offices are responsible for approval of remediation expenditures under their jurisdiction and, within their scope of authority, must ensure adequate program support (i.e., resources and budget) to fulfill the requirements of this chapter. If anticipated remediation expenditures total less than \$500,000, the head of the bureau/office is responsible for review and approval of expenditures for acquisition, and subsequent approval by the AS-PMB is not necessary. If anticipated remediation expenditures total less than \$250,000, the head of the bureau/office may delegate this approval authority in writing to a Regional or State Director.

E. Associate Director(s) for Bureau/Office Realty Program and Environmental and Disposal Liabilities Program. Receive(s) notification of decisions made by the Regional or State Director to not seek landowner liability protection. Provide(s) oversight on bureau/office land acquisitions.

F. Director, Office of Environmental Policy and Compliance (OEPC). Reviews all PA-ESA and LEDD/TSP reports and recommendations requiring approval by the AS-PMB. The OEPC may also assist bureaus/offices in interpreting and implementing the requirements of this chapter. In addition, OEPC may provide and revise additional guidance on land acquisition (e.g.,

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environmental compliance memoranda). The OEPC is also responsible for informing bureaus/offices of updates to ASTM standards consistent with the EPA's and U.S. Coast Guard's AAI regulations.

G. Director, Office of Acquisition and Property Management (PAM). Reviews all PA-ESA and LEDD/TSP reports requiring approval by the AS-PMB. The PAM evaluates impacts and lifecycle costs associated with buildings and structures included in a proposed acquisition.

**2.7 General Requirements.** The responsibilities and functions prescribed in this chapter are intended to ensure that each bureau/office, prior to the acquisition of real property, determines the associated liabilities and potential remediation costs that could result from the presence, extent and/or release of hazardous substances, oil, petroleum products, or environmental issues of concern. Such determinations must be considered in any decision to acquire real property and must be taken into account when establishing the total cost of acquisition.

A. Assessments. The bureaus/offices must use one of two types of assessments to identify the presence or potential presence of recognized environmental conditions at a site, as well as the associated liabilities and potential costs to remedy contamination, thereby providing the bureau/office with valuable information for the calculation of the true costs of a proposed acquisition.

(1) The first type of assessment involves performing environmental due diligence with a PA-ESA in compliance with AAI standards. To preserve defenses to CERCLA and OPA liability at the time of acquisition, bureaus/offices must document compliance with the requirements of the applicable AAI regulations prior to the acquisition of real property. (See the Authorities section to find the list of standards that the EPA and U.S. Coast Guard have determined to be consistent with their AAI regulations at the time of publication of this chapter.) To acquire an understanding of baseline environmental conditions at the time of acquisition, including the liabilities and potential remediation costs associated with recognized environmental conditions, as well as an understanding of other environmental issues of concern, the bureau/office needs to complete a PA-ESA, except as otherwise specified in paragraph 2.2B or when performing an LEDD/TSP assessment as described below. A PA-ESA is one step in the AAI process and will provide the basis for informed decisionmaking regarding acquisition of the real property.

(2) The second type of assessment, the LEDD/TSP, which may be used in certain limited circumstances, will not preserve certain defenses to liability under CERCLA or OPA. The LEDD/TSP is explained in detail in ASTM standard E1528-14.

B. Deciding on an Assessment.

(1) Before acquiring real property, including acquisitions described in paragraph 2.2A, the acquiring bureau/office must complete an assessment (i.e., PA-ESA or LEDD/TSP) of the property in accordance with applicable regulations and guidance, except as specified in paragraph 2.2B. Early in the process, if the bureau/office is considering not

completing a PA-ESA, the Regional or State Director must consult with SOL and determine whether to preserve certain defenses to CERCLA and/or OPA liability and establish a comprehensive assessment of the property's baseline environmental conditions, or to proceed with LEDD/TSP and not seek to preserve these defenses. This decision may not be delegated below this level. The Associate Director(s) or person(s) in equivalent position(s) over the bureau's realty program and environmental and disposal liabilities (EDL) program must be notified when a decision is made not to seek landowner liability protection.

(2) Bureaus/offices may establish additional pre-acquisition assessment procedures to meet their individual needs, including criteria for when to seek landowner liability protection from CERCLA and/or OPA. Ideally, in addition to doing a PA-ESA, these procedures could assist in defining the objectives of the assessment (e.g., evaluate total cost of acquisition inclusive of potential costs of remediation, determine associated liabilities, identify recognized environmental conditions, and ascertain potential responsible parties).

(3) Before taking title to real property, except as specified in paragraph 2.2B, and in accordance with applicable regulations and/or guidance, the bureau/office must either:

(a) Complete a PA-ESA in compliance with applicable AAI standards to preserve certain defenses to CERCLA and/or OPA, as well as to understand baseline environmental conditions that a PA-ESA would identify; or

(b) Complete an LEDD/TSP in accordance with ASTM standard E1528-14, if the Regional or State Director, pursuant to paragraph 2.7B(1), decides not to pursue landowner liability protection and understanding of additional baseline environmental conditions.

(4) Bureaus/offices are responsible for ensuring that the PA-ESA or LEDD/TSP is complete in terms of technical accuracy and comprehensiveness, whether it is performed by a bureau/office employee or by a contractor, in order to ascertain whether recognized environmental conditions exist that might expose the Department to associated liabilities or potential costs of remediation. The assessment could also be used to achieve any objectives identified in paragraph 2.7B(2).

## 2.8 PA-ESA Requirements.

A. If defenses to CERCLA and/or OPA liability are to be preserved or there are other reasons to develop an understanding of baseline environmental conditions that performing PA-ESA would identify, the bureau/office shall complete a PA-ESA in compliance with the applicable requirements of CERCLA, OPA, AAI regulations (40 CFR 312 or 33 CFR 137), and this chapter. The ASTM standards specified in paragraph 2.3 may be used to satisfy the AAI requirements. See definitions of PA-ESA and AAI in the Appendix.

B. Review of Contractor Work Product. The bureau/office must review any PA-ESA completed by a contractor on behalf of the bureau/office. The bureau/office may approve the PA-ESA only after a qualified individual, as designated by the bureau/office,

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determines that it complies with applicable statutory and regulatory standards and that all data gaps have been addressed. Note that the PA-ESA itself must be conducted by an environmental professional as specified in paragraph 2.8F below.

C. Time Requirements. A PA-ESA must be completed prior to taking title of the subject property. In addition, as required by the AAI regulations (40 CFR 312.20 and 33 CFR 137.33), a PA-ESA must be completed within one year prior to the date of acquisition. For more details on timing requirements, see 40 CFR 312.20 and 33 CFR 137.33. The following specific components of the PA-ESA must be completed or updated within 180 days of acquisition:

- (1) Interviews with owners, operators, and occupants.
- (2) Searches for recorded environmental cleanup liens.
- (3) Records reviews.
- (4) Visual site inspections.
- (5) The declaration by an environmental professional that all appropriate inquiries into the previous ownership and uses of the property have been conducted.

D. Visual Inspections. In accordance with ASTM E2247-08, provided that other requirements in 40 CFR 312.27 and 33 CFR 137.65 are met, an exception to on-site visual inspection of a property may be granted in unusual circumstances where an on-site visual inspection of the property cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the property after good faith efforts. It should be noted that in 40 CFR 312.27(c) and 33 CFR 137.65(c), the EPA and U.S. Coast Guard state that “the mere refusal of a voluntary seller to provide access to the subject property does not constitute an unusual circumstance.” If an on-site visual inspection cannot be conducted, other options include aerial photography, aerial imagery, and/or aerial flyover, as outlined in ASTM standard E2247-08.

E. Prior Assessments. A prior ESA may be used if (a) it is reviewed and found to be in compliance with the AAI regulations (40 CFR 312 and 33 CFR 137), (b) the information in the assessment meets the timing requirements enumerated in paragraph 2.8C, and (c) the information accurately reflects the current conditions of the property. The components of the assessment enumerated in paragraph 2.8C must be completed or updated within 180 days prior to acquisition. If all of the PA-ESA requirements are not met by the prior ESA, whether it was conducted by the bureau/office, an outside party, or a party contracted by the bureau/office, the bureau/office must complete a PA-ESA addressing any missing information or data gaps and ensure that all PA-ESA requirements are met prior to the acquisition. Any assessment conducted by outside parties should be considered as a part of the “User Provided Information” and “Records Review” section of the final PA-ESA report.



F. Environmental Professional. The AAI regulations (40 CFR 312 and 33 CFR 137) require that AAI investigations, of which PA-ESA is a critical component, must be conducted or supervised by an environmental professional that meets specific requirements. See the definition of “environmental professional” in the Appendix to this chapter. Pursuant to 40 CFR 312.10(b)(5) and 33 CFR 137.25(a)(4), a person who does not qualify as an environmental professional may assist in conducting a PA-ESA if such person is under the supervision or responsible charge of an environmental professional when conducting such activities.

G. Certification program. Bureaus/offices may develop their own certification program for environmental professionals as defined in the Appendix to this chapter. At a minimum, bureaus/offices must determine what constitutes “relevant experience” in accordance with 40 CFR 312.10(b) and 33 CFR 137.25, and determine whether their personnel are environmental professionals. This may include using a bureau/office training program to facilitate meeting these requirements or relevant courses provided by other agencies or bureaus/offices.

## 2.9 LEDD/TSP Requirements.

A. Bureaus/offices, upon making the decision as prescribed in paragraph 2.7B(1), may proceed with an LEDD/TSP in accordance with ASTM standard E1528-14. Whether the LEDD/TSP is performed by a bureau/office employee or by a contractor, bureaus/offices are responsible for ensuring that the LEDD/TSP is complete in terms of technical accuracy and comprehensiveness in order to ascertain whether recognized environmental conditions exist that could expose the Department to associated liabilities or potential costs of remediation.

B. The LEDD/TSP must be conducted or supervised by a qualified individual, as determined by the bureau. This person does not need to be classified as an environmental professional, as that term is defined in the AAI regulations and the definition in the Appendix to this chapter.

C. Time requirements. Prior to taking title of the subject property, the LEDD/TSP must be completed and approval given in accordance with paragraphs 2.10 and 2.14.

D. Prior assessments may be used if the prior assessment is reviewed and found to be in compliance with this policy. If all of the requirements of ASTM standards in E1528-14 are not met, the bureau should complete any missing information or data gaps in order to provide for an informed decision under paragraphs 2.10 and 2.14.

## 2.10 Finalizing a PA-ESA or LEDD/TSP.

A. The bureau/office must incorporate the PA-ESA or LEDD/TSP results, including associated liabilities and potential costs of remediation, in its evaluation of the estimated total cost of the acquisition. This information must be provided as part of the Acquisition Approval process addressed in paragraph 2.14 below.

B. Prior to acquisition, bureaus/offices are also encouraged to evaluate environmental issues of concern, as defined in the Appendix to this chapter and including non-scope issues as identified in ASTM standards E1527-05 and E1527-13, that could expose the Department to associated liabilities and potential costs of remediation.

C. If evidence is found during the initial PA-ESA or LEDD/TSP that indicates environmental contamination could be present on the land, the bureau would likely need to perform additional analysis to determine the potential cost of remediation (e.g., ASTM standard E1903 for Environmental Site Assessments: Phase II). Additional analysis should more fully ascertain the nature and extent of the contamination and help estimate the cleanup cost identified in the PA-ESA and LEDD/TSP.

D. Any information on known potentially responsible parties should be helpful in the analysis of potential cost liability documentation.

2.11 **Mandatory Acquisitions.** Heads of bureaus/offices shall, to the maximum extent practicable, ensure that reports to Congress, comments on proposed legislation, Congressional testimony, and responses pertaining to acquisition of real property contain pre-acquisition environmental site assessment information from a PA-ESA or LEDD/TSP and estimates of remediation costs in order to inform total costs for any congressionally-mandated acquisition of contaminated property. These requirements would not apply to the policy exceptions described in paragraph 2.2B of this chapter.

2.12 **Funding.** Bureaus/offices proposing to acquire property shall ensure the availability of adequate funds to conduct PA-ESA or LEDD/TSP, as well as complete any further investigation of contaminated real property proposed to be acquired, including the identification and evaluation of cleanup alternatives. Bureaus may not obtain funding for PA-ESA or LEDD/TSP from the Department's Central Hazardous Materials Fund (CHF). The CHF also will not be used to fund remediation work associated with property acquired after September 30, 1995, where the environmental contamination was, or reasonably could have been, identified prior to acquisition. The acquiring bureau/office, in accordance with the Anti-Deficiency Act, needs to plan how adequate funds would be available for completion of cleanup or remediation of contamination for real property to be acquired.

2.13 **Acquisition.** Following the preparation of the PA-ESA or LEDD/TSP written report, including the determination of any associated liabilities and potential costs of remediation, the Department or bureau may acquire the real property, provided one of the following conditions exists:

A. There is no evidence of releases or threatened releases of hazardous substances, oil, or petroleum products, nor is there evidence of environmental issues of concern.

B. The acquisition will not result in significant associated liabilities or potential costs of remediation to the United States beyond the purchase price of the property.

C. The pre-acquisition proposal, which would include the findings of a PA-ESA and any calculated liabilities and potential costs of remediation associated with the acquisition, is approved in accordance with paragraph 2.14 below.

D. The acquisition is mandated by Act of Congress, judicial decision, or the Secretary.

**2.14 Acquisition Approvals.** Approval as described in this paragraph is required for all real property acquisitions that could require oil, hazardous substance, or other environmental cleanup, or could otherwise result in associated liabilities or potential costs of remediation to the Department. Where applicable, a formal estimate of the costs of remediation alternatives, taking into consideration reasonable future-use assumptions, should be included as part of the request for approval.

A. The bureau/office may acquire real property upon receipt of the following levels of approval:

(1) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified environmental issues of concern, and associated liabilities and potential costs of remediation are estimated to be less than \$500,000, the head of the bureau/office may approve the acquisition after consulting with the SOL. The head of the bureau/office may delegate this approval authority in writing to the Regional or State Director level for acquisitions for which associated liabilities and potential costs of remediation total less than \$250,000. The Regional or State Director must also consult with the SOL prior to approving the acquisition and may not re-delegate this authority.

(2) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified environmental issues of concern, and associated liabilities and potential costs of remediation are estimated to exceed \$500,000, then the acquisition must be approved by the AS-PMB. The bureau/office shall, after consulting with the SOL, forward the PA-ESA written report, as well as other information relevant to the proposed acquisition, through the applicable program Assistant Secretary to the AS-PMB for approval or disapproval.

B. Requests for approval sent to the AS-PMB must provide detailed information on the benefits of the acquisition relative to the total cost, including the fair market value of the property; the estimated costs of acquisition, including associated liabilities and potential costs of remediation to address hazardous substances, oil, petroleum products, or environmental issues of concern; and any other known or reasonably estimated monetary costs or damages that are expected to be associated with the acquisition.

C. The AS-PMB or the SOL may impose additional limitations on or requirements for acquisitions which are necessary to protect the interests of the Department.

D. If the SOL determines it is appropriate, the existence of any recognized environmental conditions or environmental issues of concern found prior to the transfer, as well

as the associated liabilities and potential costs of remediation identified in the PA-ESA or LEDD/TSP report, should be documented during the transfer of property. This documentation should identify whether the party transferring the property, or some other potentially responsible party, will be responsible for addressing the associated liabilities and potential costs of remediation, in whole or in part.

**2.15 Records Retention.** Each bureau/office that acquires real property must maintain documentation of the process and the findings of the PA-ESA or LEDD/TSP. Bureaus/offices must retain these records as part of the acquisition case file and real property record as long as the Department manages and retains ownership of the real property. After the Department no longer manages or retains the real property, the bureau/office must submit the records to the National Archives and Records Administration for appropriate retention, in compliance with 384 DM 4, Records Disposition.

**2.16 Reprogramming.** Any reprogramming proposal should be submitted according to established Departmental reprogramming procedures.

**2.17 Additional Guidance and History.**

A. See Environmental Compliance Memorandum (ECM) titled “Pre-acquisition Environmental Assessment Guidance for Federal Land Transactions.”

B. Congress enacted amendments to CERCLA in 2001 which clarified and expanded liability protection for certain prospective purchasers of property who comply with specific provisions outlined in the statute. Among those provisions were requirements necessary to satisfy AAI standards, which included additional requirements that went beyond those more limited ESAs that were provided in LEDD/TSP in ASTM standard E1528-00.

C. The EPA published regulations (40 CFR 312) in 2005 that clarified the actions necessary to perform AAI in order to preserve certain defenses to CERCLA liability, and the U.S. Coast Guard issued regulations (33 CFR 137) in 2008 consistent with the EPA regulations with respect to performing AAI to preserve certain defenses to OPA liability. In addition, the ASTM published standards for conducting AAI. The EPA and Coast Guard have confirmed that certain ASTM standards are consistent with AAI regulations. See the Authorities section to find the list of standards that the EPA and U.S. Coast Guard have determined to be consistent with their AAI regulations at the time of publication of this chapter.

Appendix  
Definitions and Acronyms

1. **All Appropriate Inquiry (AAI).** The pre-acquisition evaluation process defined in CERCLA 101(35)(B)(i), 40 CFR 312.20, and 33 CFR 137 that is used when seeking landowner liability protections pursuant to CERCLA and/or OPA.
2. **American Society for Testing and Materials (ASTM) International Standards.**
3. **Bona Fide Prospective Purchaser.** A person (or tenant of a person) who acquires ownership of a facility after January 11, 2002, and establishes by a preponderance of the evidence each of the requirements set forth in CERCLA 101(40) and applicable regulations. All bona fide prospective purchasers must conduct AAI into previous ownerships and uses of the facility.
4. **The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601, et seq. (CERCLA)**
5. **Environmental Issues of Concern.** The broad array of environmental issues, outside of the scope of releases of hazardous substances, oil, or petroleum products, presented by conditions on a property. These could include, but are not limited to:
  - A. Asbestos-containing building materials, radon, nuclear/radiological source materials, lead-based paint, lead in drinking water, unexploded ordnance, regulatory compliance, industrial hygiene, health and safety, indoor air quality, biological agents, high voltage power lines, and mold and other Non-Scope Considerations discussed in ASTM standards E1527-05 and E1527-13.
  - B. Environmental liabilities – these are subject to the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standard (SFFAS) Number 5, Accounting for Liabilities of the Federal Government.
  - C. Bureau-specific concerns, such as invasive species, radioactive substances, unexploded ordnance, landfills, abandoned vehicles, abandoned subsurface utilities, hazards on abandoned mine sites, debris, underground storage tanks, and storm water collection points that might be Class V injection wells.
  - D. The presence of wetlands, infrastructure, cultural resources including historic properties, ecological resources, endangered species, or other conditions that could affect management costs and considerations.
6. **Environmental Professional.** A person with specific education, training, and experience as set forth in 40 CFR 312.10(b) and 33 CFR 137.25.
7. **Hazardous Substance.** A substance as defined in CERCLA 101(14).

10/12/16 #4053  
Replaces 9/29/95 #3047

8. **Landowner Liability Protections.** Protections from CERCLA and/or OPA liability is available for the landowner who qualifies for and meets certain statutory criteria to preserve defenses under CERCLA for “bona fide prospective purchaser” liability protection, contiguous property owner liability protection, or innocent landowner defense (AAI). For OPA, the liability protection pertain to the operator of a facility who qualifies for and meets certain statutory criteria to preserve defenses for innocent landowner defense to liability under 33 U.S.C. 2703 (d)(4) of OPA.

9. **Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP).** An evaluation conducted prior to land acquisition, to identify “potential environmental concerns.” Such analysis determines the potential of, and extent of liability for oil and hazardous substances or other environmental remediation. This includes, but is not limited to, a determination of the absence or presence of oil and hazardous substances or conditions that indicate an existing or past release, or a material threat of a release on the real property, into the air, soil, sediment, groundwater, surface water or any structures located on the real property. The standards can be found in ASTM standard E1528; however, completion of this evaluation will not meet the standards for a PA-ESA for landowner liability protection from CERCLA or OPA. (Note that as of the date of the publication of this chapter, the ASTM standard is E1528-14.)

10. **Mandatory Acquisition.** An acquisition that occurs as pursuant to a Presidential Proclamation or an Executive, Congressional, or Judicial order directing the Secretary to take title to real property.

11. **Occupancy Agreement (OA).** The formal written agreement between GSA and the bureau/office defining the financial terms and conditions for the occupancy of GSA-provided space.

12. **Oil.** As defined in 33 U.S.C. 2701 (23) of OPA, oil means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of CERCLA and which is subject to the provisions of that Act.

13. **The Oil Pollution Act of 1990, 33 U.S.C. section 2701, et seq. (OPA)**

14. **Petroleum products.** As defined in section 3.2.65 of ASTM standard E1527-13: Those substances included within the meaning of the petroleum exclusion to CERCLA, 42 U.S.C. 9601(14), as interpreted by the courts and EPA, that is: petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under sub paragraphs (A) through (F) of 42 U.S.C., Sect 9601(14), natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). (The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to Standard Definitions of Petroleum Statistics.)

15. **Potential environmental concerns.** As defined in section 3.2.35 of ASTM standard E1528-14 (LEDD/TSP): The possible presence of any hazardous substances or petroleum products on a property under conditions that indicate the possibility of an existing release, a past release, or a threat of a future release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. (Note that “threat of release” is generally understood to be present when hazardous substances or petroleum products are poorly managed (for example in corroded tanks or damaged containers) but the release of the contaminants has not yet occurred, and there is an opportunity to take response action to prevent a release of the contaminants.)

16. **Pre-Acquisition Environmental Site Assessment (PA-ESA).** A pre-acquisition evaluation of real property that identifies recognized environmental conditions and other environmental issues of concern; identifies and evaluates associated liabilities; evaluates potential costs of remediation; and evaluates the total cost of acquisition inclusive of environmental issues of concern, associated liabilities, and potential costs of remediation. When CERCLA and/or OPA liability protections are sought, the PA-ESA must comply with all AAI requirements set forth in 40 CFR 312 and 33 CFR 137.

17. **Real Property.** Land or interests in land, including easements, and any improvements thereon (e.g., roads, buildings, and other structures, including installed permanent features).

18. **Real Property Acquisition.** For the purposes of this chapter, real property acquired by bureaus/offices through acts or operation of law, by condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, reversions, purchase, return of previously withdrawn lands, or transfer and that will be under the jurisdiction or control of the United States for any period of time, except for public benefit transfer programs and other exceptions specified in paragraph 2.2B. This term does not include real property that may be leased by a bureau from another party.

19. **Recognized Environmental Conditions.** Conditions resulting from or related to the release or threatened release of hazardous substances, oil, or petroleum products.

20. **Release.** As defined in CERCLA 101(22): <http://www.epw.senate.gov/cercla.pdf>. Any discharge of oil or a hazardous substance into the environment.

*Comprehensive research on exchange authority*

*Dave Watts*  
*Thanks!*  
*Bob Ryan*



United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

SEC. 0165

JAN 25 1985

MEMORANDUM

TO: Secretary  
THROUGH: Solicitor  
FROM: Marion Blank Horn *ls*  
Associate Solicitor  
Division of General Law  
SUBJECT: Land Exchanges

This memorandum discusses the processes for exchanging federal-owned and Department-administered lands or interests in land for state, local or privately-held lands or interests. The various statutory authorities for and the steps common to exchanges are reviewed. While we also have included, as requested, a listing of several highly visible, pending exchanges, it should be known that the Department annually handles routine land exchanges numbering in the hundreds. This memorandum is the combined product of several attorneys in the Office of the Solicitor and realty specialists in the bureaus and offices.

I. Statutory Authorities

Four statutes provide the general authority for exchanges of Interior-administered lands: the Land and Water Conservation Fund Act, the Federal Land Policy Management Act, the National Wildlife Refuge System Administration Act, and the Fish and Wildlife Management Act of 1956, as amended. In addition, there are numerous statutes which provide specific authority for exchanges in Alaska or other geographic areas, and for exchanges that meet particular program purposes. Many of the statutes have similar provisions, including a common requirement that the lands or interests exchanged be of equal value, or be "equalized" with payments of cash. However, because each statute has minor variations, the first step in any exchange process is to determine the statutory authority being relied upon for the exchange, and to consult and proceed within the constraints of that authority.

The Land and Water Conservation Fund Act, 16 U.S.C. § 4501-22(b), authorizes the Secretary to acquire private property or interests within a unit of a national park system, or other miscellaneous area under his jurisdiction, in exchange for federally-owned property or interests administered by the Department. The Federally-owned property must be (a) suitable for exchange, (b)



located in the same state as the private property to be acquired, and (c) approximately equal in value or susceptible to being equalized with payments of cash. In addition, Federal timber lands that are subject to harvest under a sustained yield program may not be exchanged. If requested by the state, political subdivision, or party in interest, a public hearing must be held in the area where the lands are located.

Section 205 of the Federal Land Policy Management Act, 43 U.S.C. § 1715, authorizes exchanges, with respect to federal lands or interests managed through the Bureau of Land Management, that are consistent with the mission of the Department and applicable land use plans. Section 206 of the Act, 43 U.S.C. § 1716, permits exchanges of federal lands or interests managed through the Bureau of Land Management if the public interest will be well-served, after giving full consideration to better federal land management and state and local needs. The federal lands or interests to be exchanged under section 205 or 206 must be located in the same state as the private lands or interests to be acquired, and the value of the properties exchanged must be equal. The values may be equalized with cash payments up to 75% of the total value of the federal property to be transferred, but the payment is to be reduced to as small an amount as possible. The non-federal lands or interests acquired may be transferred to the appropriate bureau or office for administration.

The National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd(b)(3), permits exchanges of federal lands or interests under the Department's jurisdiction, that have been determined to be suitable for disposition, for non-federal lands or interests of approximately equal or equalized value for inclusion in the National Wildlife Refuge System. The Fish and Wildlife Act of 1956, as amended, 16 U.S.C. § 742f(a)(4), authorizes exchanges of federal property for land, water, or interests in land or water, that will be used for the development, advancement, management, conservation, and protection of fish and wildlife resources.

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(f), and the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 3102(h), provide general authority for land exchanges in Alaska that are based upon equal value, equalization of value with cash payments, or, if in the public interest, the values may be unequal. ~~Section 22(f) of ANCSA~~ permits exchanges for land consolidations, facilitating land management or development, or other public purposes. Section 1302(h) of ANILCA authorizes the Secretary to exchange lands and interests (including lands within conservation system units) in Alaska that meet the purposes of ANILCA. In addition, section 1302(i) of ANILCA, 43 U.S.C. § 3102(i), authorizes exchanges for lands contiguous to conservation system units that are owned or validly selected by the state of Alaska.

In addition to the general authorities discussed above, over the years many statutory provisions have been enacted which provide

very specific exchange authority to acquire land in a particular geographic area or administrative unit under the jurisdiction of the Department. For example, a 1962 statute authorized exchanges to acquire land within the boundaries of the Point Reyes National Seashore, California. 16 U.S.C. § 450c-2. A 1957 statute authorized exchanges to acquire lands suitable for the conservation of wildlife for the National Key Deer Refuge, Florida. 16 U.S.C. § 606.

Other statutes provide land exchange authorities for limited purposes. One example is the National Historic Preservation Act, as amended, 16 U.S.C. § 470h-3, which authorizes exchanges of comparable historic property after consultation with the Advisory Council on Historic Preservation and determinations that the exchanges will adequately insure the preservation of the property. Another example is the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1260(b)(5), which permits exchanges of certain coal interests in accordance with the provisions of section 206 of the Federal Land Policy and Management Act, discussed above. Other statutes permit exchanges affecting certain Indian reservations, reclamation projects, the National Wild and Scenic Rivers System, and the National Trails System. See, 43 C.F.R. Part 2270.

The Bureau and offices also have developed regulations, manual provisions, and operating instructions which govern the exchange processes. General procedures applicable to exchanges by the Bureau of Land Management are contained in 43 C.F.R. Part 2200. Regulations have been promulgated by the National Park Service to implement the National Historic Preservation Act, 36 C.F.R. Part 18, and by the Bureau of Reclamation for its projects, 43 C.F.R. Parts 403 and 406.

Part II of this memorandum reviews steps that are common to many of the exchange processes.

## II. Exchange Procedures

An initial step in any exchange is the obvious one: the identification of the lands or interests to be exchanged. Congress may have specified the lands or interests to be exchanged, a bureau may have identified potential exchange property through a general management or land use plan, or a private party may make an exchange proposal to the Department. Adequate land descriptions or maps will be needed and surveys also may be necessary, particularly if there is any dispute with regard to boundaries. In identifying the lands or interests to be considered for an exchange, the statutory purposes for and limitations on the exchange must be considered. Additional factors are the type of interest to be conveyed (surface, subsurface, or other) and access needs.

Further, all the parties to the land exchange process must be identified, including not only the non-federal landowners but any

third parties who might have claims to the property. It is important to establish at the outset of the exchange process whether the non-federal landowners are interested in the exchange and willing to enter into negotiations. Many exchanges are not completed because the private owner does not wish to convey his property or the Department cannot find land attractive to the owner. Consideration also must be given to whether there are any ownership disputes or claims that would affect the availability of the properties for an exchange.

Given the statutory requirement for most exchanges that the properties exchanged be equal or equalized in value, and the relevance of value to public interest determinations for those exchanges where equal value is not a requirement, a preliminary value estimate will help to determine whether the properties are at least comparable in value. Appraisals of the federal and non-federal properties generally are required before exchanges may be effected. Appraisals for the Department usually are performed by independent appraisers under contract in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" developed by the 1973 Interagency Land Acquisition Conference, and are reviewed by qualified realty specialists in the Bureau or office responsible for the federal property. If equalization of values with cash payments from the Department will be necessary to effect the exchanges, the availability (or unavailability) of appropriate funds for the cash payments must be determined.

The valuation of the properties being considered for exchange is the area of greatest dispute between the private landowners, the Department, and third parties. At present, the only means for resolving the disputes is through negotiations. There is no established recourse to an administrative (e.g., an arbitrator) or judicial tribunal since the Department is responsible for determining value.

There are a number of other administrative actions which may be necessary in any given exchange and which may result in substantial costs and delays to the parties to the exchange. Compliance with the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C), generally requires an environmental assessment and either a finding of no significant impact or the preparation of an environmental impact statement. Other administrative actions which may be required include a determination of the ~~consistency of the proposed exchange with general management or~~ land use plans of the Department; consultation under the Endangered Species Act, 16 U.S.C. § 1536; a determination of eligibility under the National Historic Preservation Act, 16 U.S.C. § 479f; and a consistency determination under the Coastal Zone Management Act, 16 U.S.C. § 1456(a)(1). A mineral resource evaluation or a cultural inventory also may be necessary. Finally, where relevant, the use to be made by the non-federal party of the federal lands or interests exchanged may have to be determined and evaluated. Any one of these steps

could raise difficult issues regarding a particular proposed exchange requiring adjustments or extensive additional work.

Before an exchange may be effected, notice to the state or local government or the interested public may be required or appropriate. For Bureau of Land Management exchanges, a "notice of realty action" must be published in the Federal Register and in local newspapers and the public must be given an opportunity to comment. Copies of the notice may be provided to the state governor, local governing bodies, and interested parties such as adjoining landowners and current land users. 43 C.F.R. § 2201.1. In addition, if an exchange is controversial, a public meeting may be held.

In an exchange process, the non-federal landowner usually provides such acceptable evidence of title as meets the title standards of the Department of Justice, and a preliminary title opinion is provided by the Solicitor's Office before the exchange agreement is executed. The exchange agreement, at a minimum, must describe the lands or interests in land to be exchanged, all reservations and interests in the property, and all terms, conditions and covenants. Deeds to the United States generally are prepared in accordance with a 1963 Department of Justice publication, "A Procedural Guide for the Acquisition of Real Property by Government Agencies."

After the deeds for the properties are executed, they are exchanged by the parties and recorded in accordance with state laws. After recordation, the appropriate division or regional office of the Solicitor's Office will prepare a final title opinion. The Department may be required to publish notice of the conveyance in the Federal Register and notify the state governor and the local government.

Throughout the exchange process, it is essential that each bureau or office involved in the exchange maintain complete administrative records that support the determinations and decisions made with regard to the exchange. If a completed exchange should be challenged in court, the court will look to the administrative record to determine whether the exchange was reasonable or arbitrary, capricious or an abuse of agency discretion. 5 U.S.C. § 706. A recent example of judicial review turning on the adequacy of the administrative record is the court opinion regarding the St. Matthew Island exchange in Alaska, in which the district judge examined the public interest determination for the exchange and held the exchange invalid. National Audubon Society et al. v. Clark, Civil No. A 83-125 (D. Alaska November 26, 1984).

The steps required in any given exchange process will vary depending on the statutory authority, applicable bureau regulations and procedural guidelines, and the particular circumstances surrounding the exchange. For example, if the non-federal party is a state rather than a private landowner,

somewhat different steps will be followed although basic requirements with regard to such matters as acceptable appraisals, sufficient title evidence, and properly executed conveyance documents generally will continue to apply. If specific exchanges of property are to be initiated, attorneys in the Office of the Solicitor and realty specialists in the Bureau and offices should be called upon early in the process for their experience and expertise regarding land exchanges.

Land exchange transactions generally are complex and subject to extensive time delays due to the many steps involved, as outlined above, and because often multiple agencies within the Department or other, separate executive agencies (e.g., the Forest Service or the General Services Administration) are involved. Of the proposed land exchanges listed at the end of this memorandum, several have been kicking about the Department for quite some time.

If there is interest in expediting a given land exchange proposal, we suggest that a high-level official be designated to spearhead the exchange, and/or that a Department Inter-bureau task force be appointed which includes members from each affected bureau or external agency who represent each required discipline to accomplish the task. High-level emphasis at the Department, and if necessary, at other agencies, on the need for quick action and effective coordination, and dedicated, full-time work by a task force can result in significant time savings.

### III. Pending Exchanges

The following is a list of the private properties that are involved in some of the more highly visible land exchanges which are pending<sup>1/</sup> or may be considered:

- Laurence Rockefeller's J-Y Ranch, Grand Teton National Park.
- Hearst property, Grand Canyon National Park.
- Davis and other properties, Kaloko-Honokohau National Historical Park.
- Channel Island National Park, Malibu.
- Water Island, Virgin Islands.
- Dee Ranch, McKinley County, New Mexico (coal exchange).

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cc: Docket/Subject/Chron/Sol.Rf/Reading/Eorn/Ryan  
Ryan:mwt:1/14/85

<sup>1/</sup> OF course there are many land exchanges pending which involve Departmental lands throughout the country. For example, the Bureau of Land Management estimates that on October 1, 1984, it had 480 land exchange proposals pending. Records concerning the pending exchanges are kept in the state offices.

Appendix E NPS Memorandum: Acquisition of Land from Nonprofit Organizations (December 21, 1999)

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LANDS, RESOURCES



IN APPLY MARK TO:  
L1425(2540)

United States Department of the Interior

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

DEC 21 1999

RD LOG NO. 15  
3

Memorandum

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

From: Director *Bill S. Martin*

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

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

AUG 28 1995

*Geri Smith*  
*Off of Policy*

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.

Appendix F DOI Memorandum: Improving Land Exchanges in the Lower 48 States (October 22, 1986)



United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

October 22, 1986

Log # 23007

MEMORANDUM

TO: Under Secretary

THROUGH: Assistant Secretary for Land and Minerals Management

FROM: Chairman, Task Force on Large Land Exchanges

SUBJECT SUMMARY: Improving Land Exchanges in the Lower 48 States - Request for Secretarial Action

*John D. Smith*  
OCT 27 1986  
*W. D. ...*

On September 24, 1985, the Interior Agency Task Force on Large Land Exchanges was reconstituted under the leadership of the Assistant Secretary for Fish and Wildlife and Parks. The new mission of the Task Force was to determine how to increase the timeliness of large land exchanges benefitting conservation units as well as identifying modifications that could improve normal exchanges.

The task force continued to focus on the Secretary's desire to complete necessary acquisition of private property within existing national park and refuge systems and to protect other significant resource values without increasing the need for appropriated dollars. Land exchanges accomplish this goal by placing public property of lesser or no natural resource value into the private sector where it can be put to use for greater economic return. This not only adds valuable land and water areas to the natural resource base, but often results in a net increase in taxes and other income associated with the fuller economic use of the former Government lands.

The land exchange, as an alternative to cash purchase, has been studied numerous times over the past 20-30 years. The conclusion of each of these studies is that successful exchanges occur only when there is an equal desire on the part of the private owner and the land managing bureaus, sufficient administrative funds, pertinent laws (FLPMA, LQCF, NEPA)/regulations have been followed and when appropriate Bureau of Land Management (BLM) lands are made available. Exchanges seldom occur expeditiously. They are labor-intensive, significantly more complicated than cash purchases, and are encumbered by various legal requirements depending on the particular authority relied upon (e.g., must be within the same State; conform with BLM land use plans; determined to be in the public interest and are of approximately equal value). Exchanges can also be complicated by third-party rights and interests in Federal lands (e.g., mining claims, competitive interest in leasable minerals, lease termination limitations). Rather than discuss how exchanges could be improved in general, it was decided to categorize exchanges according to their relative significance into three types.



- Type A - These are large exchanges to be forwarded for congressional authorization or ratification. They involve significant resource values and are often complex or cannot be completed under current regulations/laws, but are in need of prompt action. (Two to four exchanges of this type could be anticipated per year.) An example would be the exchange of two large properties, one located in State A and one in State B. The value of the property to be acquired is primarily natural resource protection and the value of the property to be given up by the Government is mineral development.
- Type B - These are large land exchanges processed under existing procedures that receive high-level management attention. They involve significant resource values in need of prompt action but are less complex and can be completed under current regulations/laws. (Five to seven exchanges of this type could be anticipated per year.) An example would be two large parcels located within the same State, of approximate equal value and no major revenue loss to the State.
- Type C - These are normal land exchanges involving less important resource values (usually not under great pressure to be acquired and can be accomplished within the current constraints). (BLM has several hundred exchanges of this type awaiting processing each year.) This type of exchange would involve smaller parcels, usually within the same vicinity.

The major effort of the task force centered on developing selection guidelines and the process to be followed for exchange Types A and B (Attachment 1). By focusing on these few but important exchanges at the Department level we should be able to improve our chances of completing exchanges involving significant resource values.

Improvement in the efficiency of "normal" land exchanges (Type C) is not expected to be as dramatic because less emphasis and attention will be given at the Secretarial level. Type B exchanges will be subject to the same constraints as Type C but will receive higher priority in funding and work months.

Attachment 2 discusses possible solutions for some of the significant roadblocks involving the exchange of public domain lands under BLM jurisdiction. Also attached is a brief discussion (Attachment 3) of land exchanges involving property which was originally acquired by other Federal agencies and which, because it has become excess or surplus to agency or Federal needs, is now under the control of the General Services Administration (GSA).

Also attached for your information are actual action plans for completing Type B exchanges for Fish and Wildlife Service (FWS) (Teton Valley Ranch at National Elk National Wildlife Refuge (NWR) and for National Park Service (NPS) (McKinley County Coal Exchange at Chaco Culture National Historic Park (NHP)). We have also begun working on a Type A exchange involving FWS, BLM and Aerojet General, Inc.

In conclusion, the task force recommends the following actions:

1. The Department should adopt the general guidelines and process to be followed for accomplishing land exchanges involving significant resources (Type A & Type B) as outlined in Attachment 1.  
Concur Qmcl Date 11-11-86
2. Assistant Secretary for Land and Minerals Management should establish an MBO to highlight the importance of Type B exchanges in meeting the Department's goal of land protection within fiscal constraints. The benefitting Assistant Secretary should establish an MBO for Type A and Type B exchanges, in accordance with annual Planning Schedule (Attachment 4).  
Concur Qmcl Date 11-17-86
3. Assistant Secretary for Land and Minerals Management should review current regulations and make appropriate changes to streamline the normal land exchange process followed for exchanges involving public lands that are carried out under FLPMA.  
Concur Qmcl Date 11-17-86
4. Assistant Secretary for Fish and Wildlife and Parks should review both the cultural resource and rare and endangered species consultation processes and initiate appropriate changes to streamline the normal land exchange process.  
Concur Qmcl Date 11-17-86
5. The Department should support benefitting bureaus having sufficient funds in their budget proposals to reimburse BLM for work directly related to desired exchanges.  
Concur Qmcl Date 11-17-86
6. Assistant Secretary for Fish and Wildlife and Parks should initiate discussions with GSA to improve access to excess/surplus property for exchange purposes as outlined in Attachment 3. GSA's requirement for reimbursement of fair market value should also be discussed.  
Concur Qmcl Date 11-17-86

Attachments

Selection Guidelines and Procedures for Significant Land Exchanges

Significant Land exchanges of interest to the Department can be separated into two groups, Type A and Type B. Type A are those exchanges that cannot be accomplished within the current land exchange framework but could be realized on a case-by-case basis through legislative approval. Type B exchanges can be accomplished within the current framework but their significance or potential threat of resource loss dictates that they should be given special attention to ensure accomplishment on an expedited basis.

Clearly, both Type A and Type B exchanges are those that require special emphasis at the Assistant Secretary level. Type A exchanges will be directed by the affected Assistant Secretaries. Type B exchanges will be directed at the Regional/State office level with monitoring by the affected Assistant Secretaries.

Proposed Land Exchange Guidelines  
for Internal Decisionmaking

Type A - Major Exchanges for Congressional Authorization or Ratification.

1. Selection Guidelines:

- A. Desirable exchange opportunity constrained by current law or regulation.
- B. Usually involves more than one agency or bureau.
  - (1) multi-agency benefits
  - (2) non-Federal benefits
- C. Significant public interest large acreage (5,000 ac.+) and/or large value (\$1,000,000+).

Appendix G NPS Memorandum: Actions Requiring Congressional Review (November 18, 2010)



United States Department of the Interior

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

IN REPLY REFER TO:

L1425 (2540)

NOV 18 2010

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 25, 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. 111-38, 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 Committee 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 (i.e., 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**

hcc:  
0001-RP  
2540-A24, w/e of enc.  
2540-Miller/Walsh/Leisz, w/e of enc.  
Draf: MPWalsh 11/17/2009;202-354-6960



## Appendix H National Park Service Records Schedule

### NATIONAL PARK SERVICE (NPS) RECORDS SCHEDULE RESOURCE MANAGEMENT AND LANDS (ITEM 1)

This schedule (N1-79-08-1) covers all records regardless of media (media neutral).

#### RESOURCE MANAGEMENT AND LANDS

##### Description

**Function:** The acquisition, planning, management, and protection of lands and natural and cultural resources under the stewardship of the National Park Service.

**Natural resources** include national parks and monuments, natural history museum collections and associated records, national heritage areas, national recreation areas, national preserves, wilderness areas, and wild and scenic rivers. It includes other resources such as air, biological, geological, water, and natural sound.

**Cultural resources** include archeological sites, cultural landscapes, ethnographic resources, historic and prehistoric structures, and museum collections (historic objects and archival and manuscript materials).

**Resource Management** encompasses the planning, study, observation, preservation, management, and maintenance of natural and cultural resources.

**Resource Management Activities** include archeological identification and evaluation studies, archeological excavations, natural resource surveys, inventory and monitoring of natural resources, re-vegetation and landscape restoration, reintroduction of native species, eradication of invasive species, historical research, historic preservation, historic structure resource management and maintenance, cultural landscape research, scientific projects, various natural and cultural resource maintenance projects, and environmental and science management programs.

**Records Documenting Resource Management Activities** include, but are not limited to:

- General Management Plans,
- Development Concept Plans,
- study plans,
- inventory and monitoring plans,
- annual reports,
- situation reports,
- special studies,
- contracts relating to natural and cultural resources,
- drawings,
- photographic negatives, prints and slides, motion pictures,
- field notes,
- films,
- laboratory reports,
- maps,
- manuscripts,

- oral histories, and
- related correspondence.

Records also include:

- museum collection management and preservation plans,
- park histories,
- land preservation records,
- historic structure preservation and restoration, and
- wildlife records.

Project records may include:

- agenda and meeting minutes,
- budget and actual cost data,
- peer reviews, evaluations, and assessments,
- partnering agreements,
- newsletters and press releases,
- operating plans, and
- final reports.

***Associated Records*** are a subset of resource management records essential for the control and use of related cultural and natural museum objects. They include all documentation generated by the activity of collecting and analyzing artifacts, specimens, or other resources that are (or subsequently may be) designated as part of a park's museum collection.

Records include, but are not limited to:

- analytical data,
- artifact or specimen inventories,
- computer documentation and data,
- conservation treatment records,
- daily journals,
- drawings,
- field notes,
- manuscripts,
- maps,
- photographic negatives, prints and slides, and
- reports generated by historic preservation, archeological, and scientific investigations.

**Activities Relating to Land Acquisition and Protection** include the acquisition of real property, easements, and rights-of-way. Other activities include land use planning, cooperative efforts via agreements with other entities, and participating in regional consortia, and local planning and zoning processes. Land use activities include the granting or denial of permits for park area special uses for agriculture, grazing, Native American ceremonials, roads, road rights-of-way, and water and transmission lines.

**Records Relating to Land Acquisition and Protection** include, but are not limited to:

- deeds,
- appraisals,
- easements,
- surveys,



- right-of-way agreements,
- leases under 36 CFR Part 17,
- maps,
- protection plans,
- condemnation proceeding records,
- documentation relating to water and mineral rights,
- boundary records, and
- photographic negatives and prints, slides, and motion pictures.

Records that relate to non-Federally owned land within NPS boundaries include correspondence with land in-holders and cooperative agreements with in-holders and adjacent property owners.

Resource Management and Lands also includes records containing sensitive, proprietary, or confidential information, including, but not limited to: certified payrolls (listing social security numbers of contractors and subcontractors), social security numbers of temporary workers, banking information for companies submitting bids, and any proprietary information about corporate practices, costs, and procedures submitted during the bidding process.

Records with short-term operational value include, but are not limited to, approved permits, and other records that do not warrant permanent retention.

Routine and supporting documentation not addressed elsewhere in this category include, but are not limited to, transmittals, unapproved permits, reviews of environmental impact statements of other state, Federal, or private agencies, routine or housekeeping correspondence, and similar records.

Retention Plan	Disposition Instructions
<ul style="list-style-type: none"> <li>• <b>Permanent Records Criteria:</b> Records that document an activity or resource designated by Congress as a National park, monument, preserve, lake, sea shore, river, wild and scenic river(way), scenic trail, historic site, military park, battlefield park, battlefield site, battlefield, recreation area, parkway, wilderness area, heritage area, or other designated area, and which meet one or more of the following criteria are Permanent:               <ul style="list-style-type: none"> <li>• essential for understanding substantive policy development, long-term planning, and/or results of studies, surveys, and projects,</li> <li>• “first of a kind” or establishes precedents,</li> <li>• involves tribal lands,</li> <li>• produces major contributions to scientific or historic knowledge,</li> <li>• subject of widespread media attention or Congressional scrutiny,</li> <li>• high-level (park superintendent and above) NPS personnel, and significant visitors, and historic ceremonies, dedications, and events,</li> <li>• significant construction, repair, reconstruction, and rehabilitation of parks and park facilities,</li> </ul> </li> </ul>	

Retention Plan	Disposition Instructions
<ul style="list-style-type: none"> <li>• natural, historical, archeological, and cultural resource protection and management,</li> <li>• land protection and wilderness and wildlife preservation and management,</li> <li>• documentary photographs and films, both electronic and digital, of natural and cultural resources,</li> <li>• special park uses, bearing on the unique responsibilities, programs, and activities relating to the mission of NPS and its custodianship of national parks and historic sites.</li> </ul>	
<p><b>A. 1. Land Acquisition and Land Status Records Permanent:</b> Records that document NPS land acquisition and ownership, and any changes to land holdings; contains maps, drawings, blueprints, photographs, etc. that meet the permanent criteria outlined above.</p>	<p><b>A. 1. and A. 2. Transfer</b> permanent special media and electronic records along with any finding aids or descriptive information (including linkage to the original file) and related documentation <b>by calendar year</b> to the National Archives <b>when 3 years old</b>.</p>
<p><b>A. 2. Cultural and Natural Resource Management Program and Planning Records Permanent:</b> All records that document NPS programs, projects, studies, reports, and surveys pertaining to cultural and natural resources, as well as planning and policy development relating to overall management, use, protection, and preservation of cultural and natural resources. Contains documents essential for understanding the history of the project or program from inception to completion. Includes audiovisual records that document high-level NPS officials and visiting dignitaries, special activities and events, historic buildings, landscape features of natural or cultural significance (e.g. Old Faithful, Delicate Arch, Pecos Mission Ruins), significant transportation systems (e.g. The Going to the Sun Road), and other mission related significant activities. Also included is documentation of the variety of plants and animals that grow in or inhabit park units, as well as high-level park visitors and recreational activities at the level described as significant. These records meet the permanent criteria outlined above.</p>	<p>Digital records will be transferred according to standards applicable at the time.</p> <p><b>Transfer</b> all other permanent records to NARA 15 years after closure.</p>
<p><b>B. Non-Permanent Long-term Resource Management and Land Records Temporary:</b> Records that document long-term, ongoing management, maintenance, preservation, modification, and rehabilitation of land and natural and cultural resources, as well as associated records that document cultural and natural museum and archival collections, and that do <b>not</b> meet the permanent criteria specified above. Includes everyday construction and</p>	<p><b>B. Destroy</b> when no longer needed, but never before they are 10 years old.</p>

Retention Plan	Disposition Instructions
<p>maintenance records for historic structures, such as minor electrical or plumbing repair/maintenance work, for example, the replacement or repair of a leaking faucet. Records also cover minor road, trail, fence, and campground construction and rehabilitation; solicitation and bids for contracts that have an impact upon a park's natural and cultural resources or mission, such as construction, painting, planting, revegetation, repair and replacement; planning of museum exhibits; supporting documentation for reports; and procurement files for scientific and historic studies, including management of flora and fauna.</p>	
<p><b>C. Short-term Resource Management and Land Records</b>  <b>Temporary:</b> Records with short-term operational value and not considered essential for the ongoing management of land and cultural and natural resources.</p>	<p><b>C. Destroy/Delete</b> records 15 years after closure.</p>
<p><b>D. Routine Resource Management and Land Records</b>  <b>Temporary:</b> All other routine, housekeeping, and supporting documentation not addressed elsewhere in this category.</p>	<p><b>D. Destroy/Delete</b> records 3 years after closure.</p>