U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
341 FW 5	Real Property Nonprofit Organization Acquisition	369
FOR FURTHER INFORMATION CONTACT Division of Realty		DATE June 17, 2001

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter implements the Department of the Interior, Office of the Inspector General Audit Report Department of the Interior Land Acquisitions Conducted with the Assistance of Nonprofit Organizations (Report No. 92-I-833, May 1992).

K Adams

ACTING DEPUTY DIRECTOR

FILING INSTRUCTIONS:

Remove:

None

Insert:

341 FW 5, 06/17/01, FWM 369 (2 sheets)
Exhibit 1, 341 FW 5, 06/17/01, FWM 369 (1 sheet)

5.1 What is the purpose of this chapter? This chapter provides information and guidance concerning the relationship of the Fish and Wildlife Service to nonprofit organizations in the conduct of our land acquisition program. We encourage the continuation of productive relationships with nonprofit organizations and will ensure that:

A. Cooperation is consistent across the Service.

B. We conduct transactions in a fiscally responsible manner.

C. We acquire lands based on Service priorities.

5.2 What is the background for issuing this chapter? This chapter implements the Department of the Interior, Office of the Inspector General Audit Report "Department of the Interior Land Acquisitions Conducted with the Assistance of Nonprofit Organizations (Report No. 92-I-833, May 1992). On August 28, 1995, the Assistant Secretary for Policy, Management and Budget issued Clarifications to Guidelines for Transactions between Nonprofit Organizations and Agencies of the Department of the Interior allowing the payment of related and associated expenses from an approved list. On July 18, 1996, the Assistant Secretary for Policy, Management and Budget approved a list of expenses that can be paid to nonprofit organizations under a Letter of Intent. In the absence of a Letter of Intent, nonprofit organizations may be treated as a normal landowner under the requirements of Pub. L. 91-646.

5.3 What is a nonprofit organization? Within this chapter, the term includes nonprofit organizations or similar legal entities that acquire lands and interests in land for possible transfer to us by gift, purchase, exchange, or some other means. Nonprofit organizations serve a useful role in acquiring lands and interests in land that have significant public values. We encourage work with such organizations consistent with the guidelines in this chapter.

5.4 How do cooperative relationships with nonprofit organizations support the land acquisition program? Because of the lengthy time requirements in the budget and appropriation process, there are occasions when we are unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. Working in the private real estate market, nonprofit organizations have the ability to react quickly to these threats and to protect important resources. However, each transaction must clearly define the role of nonprofit organizations in acquiring land or interests in land for ultimate Federal acquisition according to the requirements of Pub. L. 91-646.

5.5 Are nonprofit organizations agents of the U.S. Government? Nonprofit organizations are not agents of the Federal Government unless we designate an agency relationship in writing by mutual consent of the parties. Nonprofit organizations are typically private, independent groups that freely negotiate real estate actions anywhere and anytime they desire and at their own risk.

5.6 How does the Service determine what land to acquire? Our objectives must supersede those of the nonprofit organization because of statutory, budgetary, and policy considerations associated with any land acquisition. Lands or interests in land acquired from a nonprofit organization will be:

A. In accordance with our land acquisition policies.

B. Consistent with our acquisition authorities.

C. Limited to tracts that we have determined need acquisition.

D. Within approved boundaries or otherwise authorized by law.

5.7 When is the acquisition considered a Service-sponsored effort? To be considered a Service-sponsored effort, the nonprofit organization must satisfy the following requirements:

A. Lands considered for acquisition must be within an approved boundary or within the boundary of an existing national wildlife refuge in the State of Alaska.

B. A Letter of Intent is required when the nonprofit requests payment of related and associated expenses (see paragraph 5.16).

C. When a Letter of Intent is used, the nonprofit must fully disclose specifics of the purchase before we can accept the transfer of real property and reimburse the nonprofit.

D. Under a Letter of Intent, a nonprofit must use Department of Justice Standards for Land Acquisition for any purchase of lands that it intends to resell to the United States. This includes acquisition by Warranty Deed.

5.8 What is a Letter of Intent? A signed Letter of Intent (Exhibit 1) establishes the cooperative relationship between us and any nonprofit organization. Either we or the nonprofit can request a Letter of Intent. When a nonprofit organization intends to acquire land for transfer to us, it may request a Letter of Intent. This letter assures the nonprofit that we have an interest and intend to accept the transfer of land.

5.9 Who can sign Letters of Intent?

A. Only the Director has authority to sign Letters of Intent on projects for which funding has not been secured or for which

the nonprofit is to receive payment of related and associated expenses, as defined in paragraph 5.16B.

B. Only the Assistant Secretary for Policy, Management and Budget is authorized to approve a Letter of Intent seeking repayment of associated expenses as defined in paragraph 5.16C.

C. Occasionally a Regional Director may wish to sign a Letter of Interest for projects where Congress has appropriated funds and we have apportioned the funds, or, in the case of the Migratory Bird Conservation Fund, where the projects and amounts are included in the Migratory Bird Plan for the current year. Reimbursements under paragraph 5.16B cannot exceed the funds available in the current year. The use of a Letter or Interest by the Regional Director is optional, not mandatory. These letters do not have the standing of Letters of Intent and they do not in any way obligate the Service to future acquisition.

5.10 What does a Letter of Intent include? If given by us, the Letter of Intent to the nonprofit organization must address and include the following basic elements:

A. We will encourage the nonprofit to donate the property to us.

B. We will reimburse the nonprofit's purchase price for land up to the approved market value.

C. Reimbursement will depend upon congressional appropriations or approval by the Migratory Bird Conservation Commission. If reimbursement is dependent on future appropriations, only the Director can make this commitment. Regional Directors may only sign Letters of Interest for projects in accordance with 5.9C above.

D. Acreage and description of the lands to be acquired, the interest to be acquired, and any anticipated reservations.

E. The estimated fiscal year in which we intend to acquire the property.

F. A statement indicating that if we are 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 is without liability to the Federal Government.

G. A clause stating that any acquisition by the nonprofit organization for resale to the United States will use Department of Justice Standards for Land Acquisition.

H. A description of the agreed-upon roles, responsibilities, and conditions of the purchase by the nonprofit and sale to us. Some of the items to include are: (1) an estimation of reasonable acquisition related expenses, and (2) a request for a complete disclosure statement from the nonprofit before we can make reimbursement and transfer. The disclosure statement must include the actual purchase and/or option price and an itemized list of associated expenses with the tract to be acquired.

I. If the nonprofit has an appraisal to support the value, it must provide the appraisal in enough time to ensure adequate technical review before we can purchase the property.

J. A justification statement on why we should pay associated expenses in addition to reimbursable expenses to the nonprofit.

K. A statement of need for an acceptable contaminant report by us (or by the nonprofit, but approved by us) and clean up, if applicable, before transferring the property to us.

5.11 Are Letters of Intent applicable to all situations? No. The guidelines for Letters of Intent do not apply to situations where the history of the transaction clearly demonstrates that the nonprofit organization did not make the initial purchase with the intent to sell to us. Factors considered are: (1) the length of time between first acquisition and proposed resale to us; (2) the terms of the initial transaction; and (3) the use of the property during the interim. We determine each case on its own merits.

5.12 What is the administrative reduction for life use? We may buy property from a nonprofit organization subject to a life use reservation. We will use the "Remaining Life Tables," Exhibit 15, Apprisal Handbook (342 FW 1), to determine the remaining life use of the tenant and to calculate the reduction in value associated with the reserved interest. We will subtract that amount from the market value of the property. If a nonprofit organization negotiates a life use reservation with a property owner for an approved amount different from what we would pay, we will only reimburse the nonprofit based on the appraised value encumbered by the life use estate or the nonprofit's purchase price, whichever is less.

5.13 What budget considerations affect Letters of Intent?

A. The Director will sign Letters of Intent for the program year before we forward our budget to the Department. This is not an attempt to limit Regional land acquisition programs, but an effort to include Regional needs within the budget process. Letters of Intent signed after forwarding the Budget Estimate to the Department will cite the fiscal year appropriation from which the funds will be paid.

B. We may give special priority consideration to funding requests that relate to an existing Letter of Intent.

5.14 What access does the Service have to records and financial information of a nonprofit organization?

A. As a followup to a Letter of Intent, we have the right to inspect the records of the nonprofit organization to verify the option price and other terms and conditions of any acquisition agreed to, including all appraisals made of the property.

B. The nonprofit organization must be able to document and substantiate all expenses claimed in the transaction.

5.15 Can the Service pay interest to a nonprofit organization? We are prohibited from paying any interest to a nonprofit organization as a result of their participation in land acquisition transactions.

5.16 What can the Service pay when acquiring property from a nonprofit organization? We can pay:

A. Market Value.

(1) The market value of the property, based upon the Service-approved appraisal and agreed upon by the nonprofit organization, or a lower amount at which the nonprofit organization offers to sell the property; or

(2) The purchase price paid by the nonprofit organization to acquire the property from a third party. This price is not to exceed the appraised market value approved by us, plus reimbursable direct costs and associated expenses. We will pay associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. The expenses are those that the Department would have paid itself in acquiring the concerned property. In special cases, the Secretary may approve payment of a predetermined overhead cost.

B. Reimbursable Expenses. Reimbursable expenses include the following:

(1) Surveys.

(2) Appraisals.

(3) Title reports/insurance.

(4) Documentary stamps/recording fees.

(5) Escrow fees/closing expenses.

(6) Interim repairs/maintenance.

(7) Contaminant surveys.

(8) Conveyance fees.

(9) Penalty costs for prepayment of pre-existing mortgages.

(10) Other documented direct costs (phone, copying, postage, courier, photographs, etc.)

C. Associated Expenses. Associated expenses that require the approval of the Assistant Secretary for Policy, Management and Budget are:

(1) Outside legal fees.

(2) Travel related to the acquisition.

(3) The nonprofit's staff salary when specifically itemized and attributed to the cooperative project (overhead).

5.17 What are the appraisal requirements for acquiring land from nonprofit organizations?

A. Either we or an appraiser that we recommend and/or approve will prepare appraisals. Appraisals will conform with the Uniform Appraisal Standards for Federal Land Acquisitions.

B. Reviews of appraisals following a Letter of Intent will not exceed the marketing period of the land as described in the appraisal report (see 342 FW 2).

SAMPLE LETTER OF INTENT

In Reply Refer To:
FWS/RE

Mr. John Doe
Chairman, The XYZ Land Trust
1000 Main Street
Arlington, Virginia 20002

Dear Mr. Doe:

We have been informed of the availability of _____acres located within the _____ National Wildlife Refuge in _____County, Washington. We would appreciate The XYZ Land Trust assisting us in the acquisition of this important property.

We encourage you to consider acquiring and donating the property to the Service. However, if a donation is not possible, we will, subject to an approved contaminants survey and the completion and approval of the necessary documents, purchase the property from XYZ at your purchase price (not to exceed the Service's approved appraised value) plus an amount that will allow for the payment of related and associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. It is anticipated that funding constraints will make it necessary to delay the completion of the purchase until Fiscal Year _____ or later.

Before we reimburse you, we will request a full disclosure statement. The disclosure statement should include the following:

(1) The actual purchase price.

(2) An estimated list of expenses specifically associated with the tract to be transferred.

(3) A copy of the purchase agreement and/or deed between XYZ and the landowner.

In the event we are unable to purchase the property from you, it is understood and agreed that the XYZ Land Trust, without liability to the Government, may take whatever action is necessary to recover its investment, including the placement of the property on the open market if no conservation purchaser can be found.

We appreciate your assistance and interest in our program.

Sincerely,

DIRECTOR