



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

DIRECTOR'S ORDER NO. 170

Subject: Land and Water Conservation Fund/North American Wetland Conservation Act
Minimally-Restrictive Conservation Easement Acquisition Policy

Sec. 1 What is the purpose of this Order? This Order provides land acquisition policy that extends the authority provided by Director's Order No. 164, to the use of administratively determined payments for the acquisition of all minimally-restrictive conservation easements, irrespective of funding source or statutory authority. The Order further identifies the methodology for ascertaining the appropriate amount of just compensation for the rights acquired by the United States. As used in this Order, the term "we" refers to the Fish and Wildlife Service.

Sec. 2 What is the scope of this Order? Director's Order No. 164 applies only to easement acquisitions funded with Migratory Bird Conservation Fund (MBCF) monies. This Order applies the policy to minimally-restrictive conservation easements funded under the Land and Water Conservation Fund (LWCF) and the North American Wetland Conservation Act (NAWCA). The extension applies to all counties with approved Waterfowl Production Area (WPA) acquisition authority in Minnesota, North Dakota, South Dakota, Montana and Iowa.

Sec. 3 What is the authority for this policy? The authority for this policy is found under the exemption provisions of Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The rules implementing Pub. L. 91-646 provide exceptions for application of the law to land acquisition that is voluntary. There are four conditions that must be met for a transaction to be considered voluntary. All four are met by the Service's minimally-restrictive conservation easement acquisitions program; therefore, Pub. L. 91-646 exemption provisions apply and all minimally-restrictive conservation easements are exempt from the appraisal process.

Sec. 4 What does this policy impact? This policy impacts:

a. Our ability to acquire and protect critical migratory waterfowl, nesting marsh, and water bird habitat in the Prairie Pothole Region located in eastern South Dakota, eastern and northern North Dakota, northeastern Montana, western Minnesota, and north central Iowa. The acquisitions also provide important nesting cover and surface habitat for water and grassland dependent songbirds.

b. Our ability to purchase conservation easements that protect wetlands and grasslands providing nesting cover and surface habitat for waterfowl and other grassland nesting bird species.



c. The amount of consideration that we offer to private landowners in exchange for the transfer of property rights that are acquired with minimally-restrictive wetland and grassland easements. This policy impacts all counties authorized for WPA acquisition.

d. The documentation and reporting requirements for the determination of easement payments on all minimally-restrictive conservation easements in Minnesota, North Dakota, South Dakota, Montana, and Iowa.

Sec. 5 Why is this policy being implemented?

a. This policy is being implemented to address inequities that will occur if only easement acquisitions funded with MBCF monies utilize formula derived values, while LWCF and NAWCA acquisitions are valued with Uniform Appraisal Standards for Federal Land Acquisition (UAS) appraisals completed through the Office of Appraisal Services. Applying two different methodologies could result in a disparity in the amount paid for easements of a similar or identical nature. Additionally, offers to acquire WPA conservation easements with MBCF funds could be made within several days of landowner contact, while LWCF or NAWCA funded easements could take months. As a result, the timing and amount of offer for the two methods could be highly variable. This conflicts with Pub. L. 91-646, which provides for the consistent treatment of landowners.

b. This policy is being implemented to provide a simple methodology for determining payments for all minimally-restrictive wetland and grassland easements in the Prairie Pothole Region of the United States.

c. The acquisition of minimally-restrictive wetland and grassland easements provides significant conservation benefits. However, it has little or no impact on property values. Accordingly, the use of administratively determined payments, as authorized by this policy, will be used in lieu of an appraisal.

Sec. 6 What are the types of easements covered by this policy? This policy pertains to the acquisition of minimally-restrictive wetland easements, grassland easements, and other habitat protection easements. This policy does not address restrictive habitat protection easements or fee acquisitions. The following provides a brief synopsis of the legal instruments:

a. Wetland Protection: Permanent conservation easements protect wetlands including: (1) Palustrine wetlands with water regimes A through U; (2) Lacustrine littoral wetlands; and (3) Lacustrine limnetic wetlands with association numbers 1 and 2. Such wetlands may be natural, fully restored, or capable of being restored. The size of the wetland area is constrained by the area delineated by the Wetland Manager. Easements restrict the right to ditch, drain, level, fill, and burn the land, and secures the right of ingress and egress by authorized representatives of the United States and the right of access in order to build and maintain water control structures. These provisions are used in Regions 3 and 6. The private landowners retain control over public access to the property.

b. Grassland and Upland Protection: Permanent easement restrictions that protect and conserve upland habitat include: sensitive groundwater areas, riparian lands, wetland restoration areas, marginal agricultural cropland areas, pastured hillsides, and woodlots on agricultural land.

The land may be used for haying and/or grazing, depending on the type of easement instrument used. The size of the grassland area is constrained by the area delineated by the Wetland Manager. Easements include the right to maintain the land, right of ingress and egress by authorized representatives of the United States, right to maintain permanent vegetative cover and restrict the alteration of grasslands and other wildlife habitat, and the right to restrict haying, mowing, or seed harvesting until after July 15 of each calendar year. The private landowners retain control over public access to the property.

Sec. 7 What is the current valuation process that this policy will replace? Since 1971, the UAS has provided the guidance and appraisal methodology for nearly all Federal land acquisitions. Since 1987, the Uniform Standards for Professional Appraisal Practice (USPAP) have become the required standards used by all licensed appraisers. The UAS and the USPAP can be used in the payment determination of minimally-restrictive wetland and grassland easements. However, since minimally-restrictive easements acquire very few property rights, appraisals prepared under the auspices of the UAS and the USPAP typically indicate little or no impact on property values and, therefore, little or no value for the placement of a minimally-restrictive easement on the property.

a. To successfully acquire these easements and meet the legislative mandate to acquire lands and waters for the protection of wetland and grassland, we have historically used a direct percentage of the fee unit value of the property to be encumbered by the easement in order to determine the easement payment. This method is commonly referred to as the administrative formula.

b. Under the current payment determination for LWCF and NAWCA funded acquisition, the Division of Realty performs the following steps to determine a minimally-restrictive conservation easement payment: (1) conventional appraisal is prepared, reviewed and approved; (2) the unit value (dollars per acre) is extracted from the approved appraisal; (3) the unit value is multiplied by a 50-90 percent factor depending upon the State and the amount of the unit value; and, (4) the result of the previous step is then multiplied by the number of acres to be acquired to yield the final easement payment.

c. The administratively determined payments for wetland easements have normally ranged between \$2,500 and \$20,000, and can sometimes reach as high as \$50,000 per acquisition. In some cases, the cost to prepare and approve a UAS/USPAP compliant appraisal will exceed the final easement payment. This policy sets forth a streamlined payment determination based upon the adjusted assessed land value.

Sec. 8 What is the Adjusted Assessed Land Value?

a. This policy uses a normalized figure known as the Adjusted Assessed Land Value (AALV). The AALV will be used consistently throughout the geographic area. An analysis of land sales indicates that assessed values of record can represent “market value” by establishing a multiplier through studies in a defined market area. For the purposes of this policy, and to ensure consistency and uniformity, a defined market area will usually match the area covered by the assessing entity—for the Prairie Pothole Region the defined market area will be at the county level. The land sales that are used to determine the multiplier will include similar land types

(both economic use and geographic and physical aspects) as the lands that are being encumbered. The majority of land sales will include agricultural and pasture land sales. Inappropriate properties, that could distort the multiplier, will always be excluded (e.g., residential, rural residential, and commercial). Properties that indicate anomalies in the market (sales which are not arm's length transactions) will also be excluded.

b. By law, counties are required to maintain property value assessments at, or near, 100 percent of "full and true" value. However, the "full and true" value does not usually follow market values. Because of the high correlation between land sales price and assessed value of land sales, the gap between assessed value and market value can be measured using standard statistical analysis. A comparison of the two values produces a reliable multiplier. When this multiplier is taken times the assessed value, a consistent and fairly reliable estimate of "market value" can be replicate. This computed estimate of market value will be known as the Adjusted Assessed Land Value. All of the information needed for computation (sales prices and assessed values) is obtainable from county assessor offices and other sources in the market area. For example, the assessed land value for a property may have a unit value of \$600 per acre. The multiplier for the county may be 1.4. The computed AALV will result in a unit "market value" of \$840. The AALV will provide consistency throughout the entire geographic area while ensuring that payments to landowners are fair and equitable.

Sec. 9 How are the easement payments determined? The easement payments utilize the AALV unit value for the subject property. The following indices are to be used in conjunction with the AALV on the wetland and grassland easements. The wetland indices contain the percentages that have been historically used by the Service. The grassland indices contain percentages that have been determined from historical grassland easement payments compared to unencumbered grassland fee value. Both indices recognize and support an acceptable landowner acceptance rate of 45 to 65 percent. While based upon historical sign-up rates and payments, the indices indicate that the payment rates are acceptable to private landowners based upon the encumbrance imposed by the respective easement. As set forth in section 11 of this Order, the Regions will submit their annual acceptance rate as part of the annual reporting requirements. In addition, the Regions will make the necessary recommendations for adjusting the indices if the acceptance rate exceeds 70 percent or drops below 40 percent.

a. Wetland Easements. Payment rates for wetland easements will be based upon the AALV and the wetland index (WI) contained in the following table. Wetland areas include all delineated wetlands regardless of cropping history. This includes Conservation Reserve Program lands and temporary wetlands that are currently being farmed.

$$\text{Wetland Easement Payment} = \text{AALV} * \text{WI} * \text{Number of Wetland Acres}$$

WETLANDS EASEMENT INDEX

AALV/Acre	Wetland Index Expressed as a Percent (WI)		
	North Dakota	South Dakota/Montana	Minnesota
\$100.00	50	50	50
150.00	50	50	50
200.00	50	50	50
250.00	50	50	50
300.00	60	60	60
350.00	65	60	60
400.00	65	60	60
450.00	70	60	60
500.00	70	60	60
550.00	75	60	60
600.00	75	60	60
650.00	80	60	60
700.00	80	60	60
750.00	85	60	60
800.00+	90	60	60
Below Value	North Dakota	South Dakota/Montana	Minnesota

b. Grassland Easements. Payment rates for grassland easements will be based upon the AALV and the grassland index (GI) contained in the following table:

GRASSLAND EASEMENT INDEX

AALV/Acre	Grassland Index Expressed as a Percent (GI)	
	Montana/North Dakota	Minnesota/South Dakota
Less than \$150	25-30	25
\$151-\$250	30-35	25
\$251-\$300	35-40	25
\$301-\$400	40-45	25
\$401-\$500	45-50	25-35
\$501-\$600	50	35-40
\$601-\$700	50	40-50
\$701-\$800	50	50-60
\$801+	50	60

$$\text{Grassland Easement Payment} = \text{AALV} * \text{GI} * \text{Number of Grassland Acres}$$

Sec. 10 What is the payment schedule preparation and process? Regional Directors, Regions 3 and 6 are authorized to perform the following with regard to the easement payment schedules:

- a. Document the methodology and analysis used in computing the multipliers for use in determining the AALV.
- b. Prepare the payment schedule to be used for Fiscal Year 2004 using the tables in section 9 as guides.
- c. Maintain records of ownership and sale information as well as property characteristics and corresponding assessed values of record. The sales and assessor information is to be compiled into sales data binders and the resulting multipliers are to be kept current and available for inspection. These documents are considered a permanent record of the respective Regional Realty Offices and subject to review and evaluation.
- d. Certify each easement payment calculation prior to signing the Statement of Just Compensation. This certification may be further delegated at the discretion of the respective Regional Director.

Sec. 11 What are the management controls, review, and reporting requirements? The Regional Directors, Regions 3 and 6 are responsible for jointly reviewing the payment schedule on an annual basis. The Regional Directors will submit an annual report to the Washington Office that indicates the extent of program activity with a full and complete analysis and assessment of payment methodology and level of landowner acceptance rates. The assessment will indicate to the Headquarters Office the overall validity and whether or not the easement indices require revision. The Regional Directors will submit the report, together with necessary recommendations and adjustments, to the Director for review and approval by October 31 of each fiscal year.

Sec. 12 What about ongoing appraisals? All ongoing appraisals for wetland and grassland easements will be completed in their current format. The reports will be forwarded to the Senior Realty Officers for Regions 3 and 6 who are authorized to accept the appraised unit values. All future payment determinations for wetland and grassland easements will utilize the new and simplified AALV and easement indices to determine the final easement payment.

Sec. 13 When is this Order effective? This Order is effective immediately. We will include the contents of this Order in Part 342 of the Fish and Wildlife Service Manual. This Order will expire on June 30, 2005, unless amended, superseded, or rescinded.



DIRECTOR

Date: April 22, 2004