



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

IN REPLY REFER TO

DIRECTOR'S ORDER NO. 164

Subject: Migratory Bird Conservation Fund - Minimally Restrictive Conservation Easement Acquisition Policy

Sec. 1 What is the purpose of this Order? This Order provides land acquisition policy that authorizes the use of administratively determined payments for the acquisition of minimally restrictive wetland and grassland easements in support of areas designated as "Waterfowl Production Areas." This Order further describes the process for delineating biologically significant wetlands and grasslands, and identifies the methodology for ascertaining the appropriate amount of just compensation for the rights acquired by the United States.

Sec. 2 Does this Order supersede another directive? This Order supersedes Director's Order 164, January 27, 2004.

Sec. 3 What is the authority for this policy? The authority for this policy is found in the Migratory Bird Hunting and Conservation Stamp Act of 1934 (16 U.S.C. 718-718j), as amended by the passage of Public Law 85-585 on August 1, 1958. This policy utilizes the Secretary's legislated authority for all matters pertaining to the Small Wetlands Acquisition Program under the 1958 amendment to the Migratory Bird Hunting and Conservation Stamp Act, commonly referred to as the "Duck Stamp Act." The 1958 amendment allows the Secretary broad discretion to determine how property rights are acquired. The language in the amendment sets forth the requirement to acquire small prairie potholes and interest therein, but is silent on the specific land acquisition details.

Sec. 4 What is a Waterfowl Production Area? A Waterfowl Production Area is any wetland or pothole area acquired pursuant to section 4(c) of the amended Migratory Bird Hunting and Conservation Stamp Act, owned or controlled by the United States, and administered by the Service as a part of the National Wildlife Refuge System.

Sec. 5 How are Waterfowl Production Areas delineated? The Wetlands District Manager is responsible for the biological determination of the type and amount of wetland and grassland acres to be acquired in the Small Wetlands Acquisition Program (SWAP). We delineate wetlands and grasslands using the criteria set forth in the *U.S. Fish and Wildlife Service, Strategic Growth of the Small Wetland Acquisition Program, Guidelines for Fee and Easement Purchase (Region 3)*, and the *U.S. Fish and Wildlife Service Grassland Easement Evaluation Worksheet (Region 6)*. We incorporate these evaluation criteria and make them a part of this Order by reference. The Wetland Manager is responsible for preparation and approval of the appropriate delineation diagram with each acquisition proposal. The delineation diagram clearly defines the amount and location of wetlands and grasslands that we are to acquire.

Sec. 6 What does this policy impact? We will use administratively determined payments, as authorized by this policy, in lieu of an appraisal. This policy impacts:

a. Our ability to acquire and protect critical migratory waterfowl breeding habitat as Waterfowl Production Areas (WPA) in the Prairie Pothole Region of the northern Great Plains. The Prairie Pothole Region, located in eastern South Dakota, eastern and northern North Dakota, northeastern Montana, western Minnesota, and north central Iowa, is one of the most important areas for duck reproduction in North America. The Region produces, on average, 50 to 75 percent of the primary species of ducks on the continent. Twelve of the 34 species of North American ducks are common breeders in the region. For seven species—mallard, gadwall, blue-winged teal, northern shoveler, northern pintail, redhead, and canvasback—the Prairie Pothole Region accounts for more than 60 percent of the breeding population. The Region is also a major migration corridor during fall and spring for ducks, geese, and other water birds.

b. Our ability to purchase wetland and grassland easements surrounding temporary and seasonal wetland basins of breeding pair habitat that support the WPA key brood marshes.

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.

d. All counties authorized for WPA acquisition.

e. The easement payment determination for all WPA delineated lands and waters, regardless of their current use or their potential highest and best use.

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

Sec. 7 Why does the Service need this policy? We will use administratively determined payments, as authorized by this policy, in lieu of an appraisal. The acquisition of minimally restrictive wetland and grassland easements provides significant conservation benefits, but it has little or no impact on property values. This policy:

a. Meets critical conservation mandates as set forth in the Duck Stamp Act. The Duck Stamp Act authorizes the acquisition of lands and waters, interests therein, and rights-of-way to provide access to the WPA.

b. Provides a simple methodology for determining payments for minimally restrictive wetland and grassland easements in the Prairie Pothole Region of the United States.

Sec. 8 What types of easements does this policy cover? This policy pertains to the acquisition of minimally restrictive wetland easements, grassland easements, and habitat easements. This policy does not address restrictive habitat easements or fee acquisitions. The following provides a brief synopsis of the wetland and grassland legal instruments:

a. Wetland Easements. Permanent conservation easements that protect wetlands include: (1) Palustrine wetlands with water regimes A through U; (2) Lacustrine littoral wetlands; (3) Lacustrine limnetic wetlands with association numbers 1 and 2. Such wetlands may be natural, fully restored, or capable of being restored. The Wetland Manager delineates size of the wetland area. These easements utilize wetland easement conveyance documents that restrict the right to ditch, drain, level,

fill, and burn the land, and secure 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. Regions 3 and 6 utilize wetland easements. The landowner retains control of public access.

b. Grassland Easements. Permanent conservation easements that protect and conserve waterfowl production habitat include: sensitive groundwater areas, riparian lands, wetland restoration areas, marginal agricultural cropland areas, pastured hillsides, and woodlots on agricultural land. We may use the land for haying and/or grazing depending on the type of easement instrument. The Wetland Manager delineates the size of the grassland area. The grassland easements acquire the right to maintain the land, the right of ingress and egress by authorized representatives of the United States, the right to maintain permanent vegetative cover and restrict the alteration of grasslands and wildlife habitat, and the right to restrict haying, mowing, or seed harvesting until after July 15 of each calendar year. The easements included are the habitat easements used by Region 3 and the grassland easement used by Region 6. Hereinafter, we collectively refer to grassland and habitat easements as grassland easements. The landowner retains control of public access.

Sec. 9 What is the current valuation process that this policy replaces?

a. Since 1971, the Uniform Appraisal Standards for Federal Land Acquisitions (UAS) have 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. We can use the UAS and the USPAP 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.

b. Since the inception of the SWAP, it has been apparent that the acquisition of minimally restrictive wetland easements has little impact on property rights. To meet the legislative mandate to acquire lands and waters for the protection of wetlands in WPAs, the Service currently utilizes a direct percentage of the fee unit value of the property to be encumbered by the wetland easement in order to determine the easement payment. This method is commonly referred to as the administrative formula.

c. Under the current payment determination, the Division of Realty performs the following steps to determine a wetland easement payment. This policy replaces the estimate of value as determined through the appraisal process with a figure known as the adjusted assessed land value (AALV) of record.

- (1) Prepares, reviews, and approves the conventional appraisal;
- (2) Extracts the unit value (dollars per acre) from the approved appraisal.
- (3) Multiplies the unit value by a 50-90 percent factor depending upon the State and the amount of the unit value.
- (4) Multiplies the result of the previous step by the number of wetland acres to be acquired that results in the final wetland easement payment.

d. The administratively determined payment for wetland easements ranges between \$2,500 and \$20,000 and can sometimes reach as high as \$50,000 per acquisition. In most common easement 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 AALV.

Sec. 10 What is the adjusted assessed land value?

a. Counties must, by law, 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, we can measure the gap between assessed value and market value using standard statistical analysis. A comparison of the two values produces a reliable multiplier. When this multiplier is taken times the assessed value, we can replicate a consistent and fairly reliable estimate of "market value"—this computed estimate of market value is the AALV. All of the information needed for computation (sales prices and assessed values) is easily obtainable from county assessor offices. 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 SWAP while ensuring that payments to landowners are fair and equitable.

b. This policy uses a normalized figure known as the AALV. We will use AALV consistently throughout the SWAP. 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 is usually at the county level. The land sales that we use to determine the multiplier will include similar land types (both economic use and geographic and physical aspects) as the encumbered lands. The majority of land sales will include agricultural and pasture land sales. We will always exclude inappropriate properties that could distort the multiplier (e.g., residential, rural residential, and commercial). We will also exclude properties that indicate anomalies in the market (sales that are not arm's length transactions). We will compare properties exhibiting assessment anomalies with the assessments of other properties in the market area. We define an assessment anomaly as a subject property having an assessed unit value that we find to be significantly lower than the assessed unit values of the surrounding properties. In such cases, we will substitute the lowest assessed unit value used in the market analysis for establishing the multiplier for the purpose of determining the easement payment.

Sec. 11 How are easement payments determined? The easement payments for both wetlands and grasslands utilize the AALV unit value for the subject property. Use the following indices in conjunction with the AALV on the wetland and grassland easements. The wetland indices contain the percentages that the Service has historically used. The grassland indices contain percentages that we 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 paragraph 13 of this Order, Regions 3 and 6 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. We will base payment rates for wetland easements 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
Less than \$300	60	60	60
\$301-\$350	60-65	60	60
\$351-\$400	65	60	60
\$401-\$450	65-70	60	60
\$451-\$500	70	60	60
\$501-\$550	70-75	60	60
\$551-\$600	75	60	60
\$601-\$650	75-80	60	60
\$651-\$700	80	60	60
\$701-\$750	80-85	60	60
\$751-\$800	85-90	60	60
\$801+	90	60	60

b. Grassland Easements – We will base payment rates for grassland easements 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	South Dakota	Minnesota
Less than \$250	35	25	75
\$251-\$300	40	25	75
\$301-\$400	40-45	25	75
\$401-\$500	45-50	25-35	75
\$501-\$600	50	35-40	75
\$601-\$700	50	40-50	75
\$701-\$800	50	50-60	75
\$801+	50	60	75

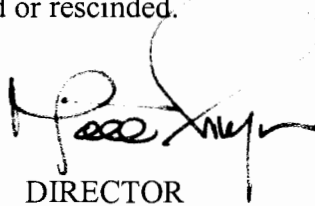
$$\text{Grassland Easement Payment} = \text{AALV} * \text{GI} * \text{Number of Grassland Acres}$$

Sec. 12 What is the easement payment preparation and process? The Director authorizes the Regional Directors for Regions 3 and 6 to perform the following with regard to the easement payments:

- a. Document the methodology and analysis used in computing the multipliers for use in determining the AALV.
- b. Approve the county and subcounty multipliers.
- c. Approve the computation of the easement payments using the county/subcounty multipliers and the indices in paragraph 11.
- d. Maintain records of ownership and sale information as well as property characteristics and corresponding assessed values of record. Compile sales and assessor information into sales data binders and keep the resulting multipliers current and available for inspection. We consider these documents a permanent record of the respective Regional Realty Offices and subject to review and evaluation.
- e. Certify each easement payment calculation prior to signing the Statement of Just Compensation. The respective Regional Director may redelegate the certification of the easement payment calculation and the Statement of Just Compensation.

Sec. 13 What are the management controls, review, and reporting requirements? Regional Directors, Region 3 and Region 6 are responsible for jointly reviewing the payment schedule on an annual basis. The Regional Directors will submit an annual report (RCS FWS-04-0001-AN) to the Washington Office that indicates the extent of program activity in the SWAP 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 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. 14 When is this Order effective? This Order is effective immediately. We will include the contents of this Order in Part 340 of the Fish and Wildlife Service Manual. This Order will expire on June 30, 2006, unless amended, superseded or rescinded.



Acting DIRECTOR

Date: 4.8.05