

MEMORANDUM OF UNDERSTANDING

Interagency Implementation of the Federal Land Transaction Facilitation Act of 2000

I. INTRODUCTION

- A. Federal Land Transaction Facilitation Act:** The Federal Land Transaction Facilitation Act of 2000 (Title II of Public Law 106-248) ("*FLTFA*") provides that the Bureau of Land Management ("*BLM*") shall carry out a land disposal program and deposit all land sale and exchange proceeds into the Federal Land Disposal Account for the purpose of:
- 1. Resource Management:** Reconfiguring Federal land ownership patterns to better facilitate resource management;
 - 2. Administrative Efficiency:** Enhancing administrative efficiency within Federal land management units; and
 - 3. Resource Allocation:** Allocating resources within Federal land management agencies more effectively.
- B. Improved Implementation:** In accordance with FLTFA, this Memorandum of Understanding ("*MOU*") is entered into by and among the BLM, Fish and Wildlife Service ("*FWS*"), National Park Service ("*NPS*"), and U.S. Forest Service ("*USFS*") (collectively, the "*agencies*") and the Assistant Secretary of the Interior for Policy, Management and Budget to improve the implementation of FLTFA by coordinating the roles and responsibilities of the agencies.

II. FUND ALLOCATION

- A. Administrative Expenses:** Twenty percent (20%) or less of the funds deposited in the Federal Land Disposal Account shall be used by the Secretary of the Interior for administrative and other expenses necessary to carry out the land disposal program.
- B. Inholdings and Adjacent Lands:** Eighty percent (80%) or more of the funds deposited in the Federal Land Disposal Account shall be used to acquire inholdings and lands adjacent to federally designated areas containing exceptional resources (as defined in Section IV (B) below).
- 1. State Allocation:** From the funds set forth in Section II (B) above, not less than eighty percent (80%) of those funds shall be expended within the State from which they were generated.

2. **Agency Allocation:** From the funds set forth in Section II (B) above, the Agencies' allocations shall be, subject to Section II (C) below, as follows:

- (a) **BLM:** Sixty percent (60%) to BLM;
- (b) **USFS:** Twenty percent (20%) to USFS;
- (c) **FWS:** Ten percent (10%) to FWS; and
- (d) **NPS:** Ten percent (10%) to NPS.

C. **Special Acquisitions:** Consistent with FLTFA, the Secretary of the Interior and the Secretary of Agriculture may mutually decide to allocate funds to a specific acquisition project, notwithstanding the allocations of funds set forth in Section II (B)(2) above.

III. IDENTIFICATION AND ACQUISITION PROCEDURES

A. **Identification and Prioritization:** The Secretary of the Interior and the Secretary of Agriculture shall establish a mechanism to accomplish the following:

- 1. **Identification:** Identify inholdings following notification by the landowner of a desire to sell either the land or an interest therein to the United States; and
- 2. **Prioritization:** Prioritize the acquisition of these inholdings taking into consideration the following criteria:
 - (a) **Date:** The date the inholding was established;
 - (b) **Management Efficiency:** The extent to which acquisition of the land or an interest therein would facilitate management efficiency; and
 - (c) **Additional Criteria:** Such other criteria as the Secretary of the Interior and the Secretary of Agriculture deem appropriate.

B. **Land Transaction Facilitation Council:** Pursuant to Section III (A) above, this MOU establishes the Land Transaction Facilitation Council ("*Council*"), consisting of each of the signatories hereto. The Council shall oversee the implementation and coordination of all activities undertaken pursuant to this MOU. In so doing, the Council shall issue such guidance as it determines appropriate, which may include revision to the appendices included in this MOU.

C. **Implementation Plans:** The agencies shall jointly prepare state-level implementation plans establishing:

- 1. **Roles:** Agency roles and responsibilities;
- 2. **Coordination:** Procedures for inter-agency coordination; and

3. **Selection Processes:** Field level processes for identifying and prioritizing land acquisition recommendations.
- D. **Acquisition Recommendations:** The following process shall be observed for all acquisition recommendations:
1. **Proposals:** The Council shall request proposals from the agencies consolidated by State in accordance with the implementation plans not less than sixty (60) calendar days prior to the date of expected review by the Secretaries.
 2. **Agency Recommendation:** The agencies shall prepare land acquisition recommendations in accordance with the terms of this MOU and report them to the Council not less than thirty (30) calendar days in advance of the date of expected review by the Secretaries.
 3. **Council Review:** The Council shall review the proposals and make recommendations to the Secretaries for approval.
 4. **Joint Decision:** The Secretaries shall jointly render decisions for the expenditure of funds in the Federal Land Disposal Account.
- E. **Task Orders:** Following written approval from the Secretaries, the following actions shall take place for the issuance of a Task Order:
1. **Task Order Packet:** The acquiring agency shall submit to the appropriate BLM State Director the Task Order packet as set forth in Appendix B, Section A (Task Order Packet).
 2. **Task Order Issuance:** Upon receipt and approval of the Task Order packet, the BLM Contracting Office shall issue a Task Order in accordance with Attachment 1 of this MOU.
 3. **Reimbursement Process:** The acquiring agency shall conform to the Task Order and reimbursement process set forth in Attachment 1. BLM shall then reimburse the agencies.
- F. **Third-Party Coordination and Notice**
1. **Acquisitions:** The acquiring agency shall coordinate potential purchases with State and local governments, Tribes, landowners, and other interested parties in order to ensure that each party is informed in a timely manner and afforded an opportunity to comment before a final decision to acquire a property or an interest therein occurs.

2. **Land Sales and Exchanges:** In accordance with this MOU, FLTFA and all other applicable laws, rules and regulations, BLM shall
 - (a) **Public Notice:** Provide formal public notice of proposed sales and exchanges; and
 - (b) **Coordination:** Coordinate land sales and exchanges with State and local governments, Tribes, landowners, and other interested parties in order to ensure that each party is informed in a timely manner and afforded an opportunity to comment before a final decision to sell or exchange a property or an interest therein occurs.

IV. MISCELLANEOUS

- A. **Legislative Authorities:** In addition to the authority provided under FLTFA, this MOU is entered into in accordance with the authority and delegated responsibilities under, but not limited to, the statutes listed below.
 1. **BLM:** Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701);
 2. **FWS:** National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668);
 3. **NPS:** National Park Service Act of 1916 (16 U.S.C. 1); and
 4. **USFS:** National Forest Management Act of 1976 (16 U.S.C. 472).
- B. **Definitions:** The terms set forth below shall have the means ascribed to them in FLTFA and are hereby incorporated into this MOU:
 1. **Agencies:** "Agencies" shall have the meaning ascribed to it in Section I (B).
 2. **Exceptional Resource:** "Exceptional resource" shall mean a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.
 3. **Federally Designated Area:** "Federally designated area" shall mean land in Alaska and the eleven contiguous Western States that on the date of enactment of FLTFA was within the boundary of:
 - (a) A national monument, area of critical environmental concern, national conservation area, national riparian conservation area, national recreation area, national scenic area, research natural area, national outstanding

- (b) A unit of the National Park System;
- (c) A unit of the National Wildlife Refuge System;
- (d) An area of the National Forest System designated for special management by an Act of Congress; and
- (e) An area within which the Secretary of the Interior or the Secretary of Agriculture is otherwise authorized by law to acquire lands or interests therein that is designated as wilderness under the Wilderness Act, a wilderness study area, a component of the Wild and Scenic Rivers System under the Wild and Scenic Rivers Act, or a component of the National Trails System under the National Trails System Act.

4. **Inholding:** "Inholding" shall mean any right, title, or interest, held by a non-Federal entity in or to a tract of land that lies within the boundary of a federally designated area.

- C. **Contacts:** Each agency shall designate a single point of contact for all matters related to or arising from this MOU.
- D. **Amendments:** If the authority under FLTFA is extended or otherwise amended by Congress, this MOU shall remain in effect and shall be amended as necessary to reflect Congressional direction.
- E. **Term:** This MOU shall begin on the date of the last signature below and shall continue, unless terminated in writing by any agency with thirty (30) calendar days notice, until July 25, 2010.

P. Lynn Scarlett

P. Lynn Scarlett
Assistant Secretary
Policy, Management and Budget

5/6/03
Date

Kathleen Clarke

Kathleen Clarke
Director, Bureau of Land Management

4/10/03
Date

Fran P. Mainella

Fran P. Mainella
Director, National Park Service

APR 14 2003
Date

Steve Williams

Steven A. Williams
Director, Fish and Wildlife Service

APR 15 2003
Date

Dale N. Bosworth

Dale N. Bosworth
Chief, U.S. Forest Service

5/5/03
Date

ATTACHMENT 1

FEDERAL LAND DISPOSAL ACCOUNT OBLIGATION
AND REIMBURSEMENT PROCESS

This Attachment 1 sets forth the process for obligating and reimbursing funds from the Federal Land Disposal Account. The process is designed to ensure that funds allocated under FLTFA are expended appropriately. It specifies the documentation required to initiate an acquisition project and to be reimbursed for the acquisition, including certain associated direct costs.

I. ACQUISITION FORMS AND PROCESS

- A. Acquisition Proposal Nomination Process:** For each acquisition proposal, the acquiring agency shall submit the Land Acquisition Proposal-Estimated Direct Costs form attached hereto (Appendix A) and a brief project description to the Land Transaction Facilitation Council.
- B. Secretarial Discretion:** The Secretary of the Interior and the Secretary of Agriculture shall retain discretion to approve or deny all planned expenditures of FLTFA funds for land acquisitions.
- C. Notification:** The appropriate BLM State Director shall notify the agencies in writing of the Secretaries' decisions.

II. TASK ORDER

- A. Required Documentation:** The acquiring agency shall have one year from the date of project approval notification from the BLM State Director to open a Task Order. To open a Task Order, the acquiring agency must prepare and submit to the appropriate BLM State Director the documentation set forth in of Appendix B, Section A (Task Order).
- B. Issuance of Task Order:** The BLM Contracting Officer shall issue a Task Order to the acquiring agency within thirty (30) calendar days following receipt of the required documentation. The Task Order shall be signed by an authorized representative of the acquiring agency prior to submission to the BLM Contracting Officer for signature. The Task Order obligates funding from the Federal Land Disposal Account for the specific acquisition.

III. REIMBURSEMENTS

- A. Reimbursable Costs:** Direct acquisition costs associated with land acquisition projects shall be reimbursed from the Federal Land Disposal Account. Direct acquisition costs are identified on the Land Acquisition Proposal-Estimated Direct Costs form attached hereto (Appendix A).

- B. Non-Reimbursable Costs:** Costs that are not reimbursable shall be the responsibility of the acquiring agency.
- C. Reimbursable Account:** A Task Order allows the acquiring agency to open a reimbursable account for the project. The acquiring agency may charge against this account up to the amount of the Task Order. The final transfer of funds to the acquiring agency shall occur when the acquisition is completed and all documentation is in order.
 - (1) **No-Year Accounts:** Reimbursable accounts are generally "no-year" accounts, so they need not be settled at the end of a fiscal year.
 - (2) **Appropriated Funds:** Once the appropriate budget arrangements are made, all or part of the direct costs of acquisition may be charged against appropriated funds and then reimbursed later from the Federal Land Disposal Account.
- D. Incomplete Acquisition:** If, for any reason, the acquisition cannot be completed, the individual agency shall cover any expenditures from other funding sources.

IV. TASK ORDER AMENDMENTS

- A. Amendment:** The acquiring agency shall request an Amendment to the Task Order whenever the actual direct costs to be reimbursed from the Federal Land Disposal Account exceed the original approved budget amount. No Amendment to the Task Order is required if the cost overruns will be covered by other agency appropriated funds.
- B. Form:** An Amendment to the Task Order shall be in writing accompanied by a justification statement explaining the reason for project overruns. Amendment requests shall be processed as expeditiously as possible but no less than thirty (30) calendar days from receipt of a request. Amendments associated with work outside the scope of the original approved project shall not be considered.

V. FINAL DOCUMENTATION

- A. Documentation:** Following completion of the land acquisition, the acquiring agency shall prepare and submit to the appropriate BLM State Director a reimbursement/payment documentation package which includes the documentation set forth in Appendix B, Section (B) (Reimbursement/Payment Packet).
- B. Final Transfer:** The BLM State Director shall review the package and, upon approval, authorize the final transfer of funds to the acquiring agency. The BLM State Director shall also maintain a case file of acquisition documents to support the disbursement from the Federal Land Disposal Account.

APPENDIX A

LAND ACQUISITION PROPOSAL - ESTIMATED DIRECT COSTS

1. Land	\$				%
2. Appraisal	\$				%
3. Land Survey	\$				%
4. Environmental Site Assessment	\$				%
5. Title and Escrow Fees	\$				%
6. Recording Fees	\$				%
7. Pro-rata Share of any pre-paid property taxes or assessments	\$				%
8. Other Miscellaneous Closing Costs	\$				%
9. Penalties and Charges for prepayment of pre-existing recorded mortgage, deed of trust or other security instrument that encumbers the real property	\$				%
10. Relocation Payments to Eligible Tenants	\$				%
TOTAL:	\$				%

The acquiring agency agrees to furnish equipment, materials, facilities, services, personnel, overhead expenses and all other costs and expenses except those specified above.

Acquiring Agency _____ Authorized Officer _____ Date _____

APPENDIX B**DOCUMENTATION REQUIREMENTS FOR LAND ACQUISITION****A. Task Order Packet**

1. Form 1681, Task Order;
2. Land acquisition project proposal description and schedule;
3. Estimated Direct Costs;
4. Written Approval of the Secretaries; and
5. Range of Value Estimate approved by nominating agency appraiser in the form of a "work in progress" statement.

B. Reimbursement/Payment Packet

1. Final Title Opinion;
2. Receipts for Direct Costs;
3. Recorded Deed;
4. Cover Letter requesting payment and attesting to compliance with this MOU, FLTFA, the Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970(PI-91-646), and all applicable agency acquisition policies; and
5. Copy of agency Appraisal Review Report.