



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

IN REPLY REFER TO:

DIRECTOR'S ORDER NO. 170

Subject: Land and Water Conservation Fund/North American Wetlands 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 Does this Order supersede another directive? This Order supersedes Director's Order 170, April 22, 2004.

Sec. 3 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 to minimally restrictive conservation easements funded under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460(l-4) – (l-11), as amended) (LWCF) and the North American Wetlands Conservation Act (16 U.S.C. 4401-4414, as amended) (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. 4 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 codified in 42 U.S.C. 4601-4655, as amended. 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 we must meet 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. 5 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 and the easement payment determination for all WPA-delineated lands and waters, regardless of their current use or their potential highest and best use.

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. 6 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. Addresses inequities that will occur if only easement acquisitions funded with MBCF monies utilize formula-derived values, while we value LWCF and NAWCA acquisitions with Uniform Appraisal Standards for Federal Land Acquisition (UAS) appraisals. Applying two different methodologies could result in a disparity in the amount paid for easements of a similar or identical nature. Additionally, we could make offers to acquire WPA conservation easements with MBCF funds 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. Provides a simple methodology for determining payments for all minimally restrictive wetland and grassland easements in the Prairie Pothole Region of the United States.

Sec. 7 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. It 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 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 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, 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 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. 8 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. 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.

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) Prepares, reviews, and approves conventional appraisals.

(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 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. 9 What is the adjusted assessed land value?

a. This policy uses a normalized figure known as the adjusted assessed land value (AALV). We will use the AALV 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 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 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). 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 is found 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.

b. 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 we take this multiplier times the assessed value, we can replicate a consistent and fairly reliable estimate of "market value." This computed estimate of market value is known as the AALV. You may obtain all of the information needed for computation (sales prices and assessed values) 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. 10 How are easement payments determined? The easement payments 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 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. These sign-up rates and payments suggest that the payment rates are acceptable to private landowners based upon the encumbrance imposed by the respective easement. 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. 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.

Wetland Easement Payment = AALV * WI * 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 on 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

Grassland Easement Payment = AALV * GI * Number of Grassland Acres

Sec. 11 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/subcounty multipliers.

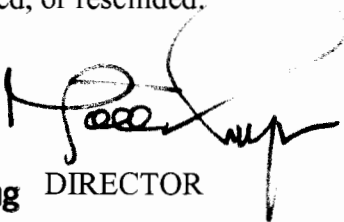
c. Approve the computation of the easement payments using the county/sub-county multipliers and the indices in paragraph 10.

d. Maintain records of ownership and sale information as well as property characteristics and corresponding assessed values of record. Compile the 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. 12 What are the management controls, review, and reporting requirements? 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 (RCS FWS-04-0001-AN) 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. 13 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