



United States Department of the Interior

OFFICE OF THE SECRETARY
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To: Director, Bureau of Land Management
Director, National Park Service
Director, U.S. Fish and Wildlife Service
Director, Bureau of Indian Affairs
Commissioner, Bureau of Reclamation

From: Joan Mooney
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Exercising the Delegated Authority of the Assistant Secretary – Policy,
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Subject: Guidelines for Federal Land Acquisitions Involving Non-Governmental Organizations
and Bureaus of the Department of the Interior

The Federal government frequently cannot acquire land in the timeframe required by willing sellers. Additionally, some landowners, although willing to sell to the Federal government, are unwilling to work with the Federal government directly. Because Non-Governmental Organizations (NGOs)¹ can navigate these and other challenges that may arise during the Federal land acquisition process, they provide important support to Federal land acquisition that greatly benefits the mission of the Department of the Interior (Department). It is the responsibility of the Department and its bureaus² to ensure that, in every instance, they acquire land consistent with all applicable law, regulation, and policy, including when working with an NGO partner. This requires alignment in expectations of the parties involved and a shared understanding of their respective roles.

Accordingly, the following guidelines apply to Federal acquisitions of land or interests in land³ from a willing seller involving an NGO.⁴ Department of the Interior bureaus should follow these guidelines when they elect to work with an NGO. This document first establishes general guidelines for acquisitions involving NGOs. Then, it provides specific guidelines for when an NGO: 1) intends to hold or holds a purchase/sale agreement or an option to purchase land and will enter the chain of title to be the entity from whom the Federal government ultimately purchases the land; or

¹ For the purpose of this document, an NGO is a nongovernmental organization, most often an environmental or other public interest organization, working to acquire land for the purpose of transfer to the United States and motivated by nonmarket principles including, but not limited to, preservation or conservation of public lands. *See* Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), §§ 4.4.2.4.2.(6) and 4.3.2.3.

² This guidance does not apply to acquisitions by the Bureau of Indian Affairs.

³ The terms “land”, “real property”, and “property” as used throughout this document include any relevant interest in land, such as conservation easements, water and/or subsurface rights, and/or any other less-than-fee interest in land.

⁴ These guidelines apply only to land acquisitions made directly by the Department and do not apply to acquisitions by non-federal parties using federal financial assistance.

2) participates in the transaction solely as a facilitator, such as by supporting pre-acquisition due diligence.⁵ Finally, the document concludes with general guidelines applicable to appraisals of land that the Department intends to acquire from an NGO or other willing seller with the involvement of an NGO.

I. General Guidelines for Acquisitions Involving NGOs

These general guidelines should be followed for all voluntary Federal land acquisitions involving NGOs.

1. **No Agency Relationship.** NGOs are not in any manner agents of the Department or its bureaus, and neither the Department nor its bureaus will provide any authority to an NGO to act on their behalf in any proposed realty acquisition.
2. **Compliance with Uniform Act Obligations.** Bureaus must ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, at 42 U.S.C. § 4601 et seq. (Uniform Act) and the corresponding regulations at 49 C.F.R. § 24 et seq. The purpose of the regulations is to implement the Uniform Act consistent with the following objectives: ensuring “that owners of real property to be acquired for Federal and federally assisted programs are treated fairly and consistently” and promoting “public confidence in Federal and federally assisted land acquisition programs.”⁶ The basic acquisition policies, laid out at 49 CFR § 24.102, afford specific rights and protections to the owners of real property, including a right to notice of Federal interest in acquisition of the property and to an appraisal to ensure just compensation is paid, among others. Instances in which an NGO holds a purchase and sale agreement or an option to purchase and will enter the chain of title present unique considerations that are addressed in **Section II** below.
 - a. **Landowner Notice Requirement.** As soon as feasible, the bureau must notify the landowner or the landowner’s designated representative⁷ in writing of its interest in acquiring the property and the basic protections owed to the landowner, consistent with 49 C.F.R. § 24.102(b). Refer to **Section II.1** below for specific guidelines regarding notice when the NGO holds a purchase/sale agreement or an option to purchase the land.
 - i. *Landowner prefers to communicate through NGO:* If the landowner provides written confirmation that they prefer to communicate through an NGO rather than directly with the Federal government, the bureau may allow the NGO to provide notices to the landowner.⁸ In each instance a required notice is provided, the NGO must confirm to the bureau that they

⁵ For the purpose of this document, due diligence includes, but is not limited to, the following expenses listed in the Uniform Act implementing regulations, 24 C.F.R. § 24.106(a)(1): “[r]ecording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency.”

⁶ 49 C.F.R. § 24.1(a).

⁷ The landowner’s designated representative may receive notification of the bureau’s interest in acquiring the property. See I.4.a. for more information about how a landowner may designate an NGO as its representative.

⁸ A landowner need not indicate this directly to the bureau. For example, the landowner may indicate acceptability to simultaneous notice through an email to the NGO that the NGO forwards to the Bureau.

transmitted the required notice to the landowner.

- b. **Just Compensation.** In accordance with 49 C.F.R. § 24.102(d), the bureau must offer to purchase property from the landowner⁹ and must establish an amount that it believes is just compensation for the real property, which must not be less than the approved appraisal or waiver valuation of the fair market value of the property. Bureaus must use Department-approved methods to determine the fair market value.
 - i. A landowner may opt to sell the property to the bureau for—and the bureau generally will be authorized to accept—an amount less than the Department approved appraised value, consistent with 49 C.F.R. § 24.108, the bureau’s relevant donation authority, and Departmental policy.
 - c. **Reimbursement.** In accordance with 49 C.F.R. § 24.106, the bureau must reimburse the landowner for all reasonable due diligence expenses that the landowner incurred incidental to transfer of title.
3. **Written Memorialization of Relationship.** The bureau should memorialize the relationship with the NGO and document expectations in a written, non-binding agreement between the bureau and the NGO (e.g., letter of intent, letter of support). At a minimum, this non-binding written agreement should contain the following:
- a. Description of the role of the NGO in accordance with **Section I.4** below.
 - b. Identification of the land the bureau intends to acquire, including the terms of any less-than-fee simple interest.
 - c. The estimated value, if available.
 - d. The approximate date by which the bureau expects to acquire the land.
 - e. A statement indicating that disposition of the land by the NGO is made without liability to the bureau if the bureau is unable or declines to acquire the land within the projected timeframe or a revised timeframe agreed upon by the bureau and the NGO.
 - f. A statement that the bureau intends to acquire the property from the NGO or other landowner when sufficient funding is available and when compliance with Federal land acquisition requirements have been met.
 - g. A statement that the letter is a non-binding document.
 - h. A statement that the letter does not create a principal-agent relationship between the NGO and the bureau.
 - i. Any bureau review or oversight requirements for statements of work or other due diligence.
 - j. A statement indicating all due diligence activities undertaken by the NGO in support of the Federal land project are in conformance with **Section I.10** of this document.
4. **Clearly Defined Relationship.** For each acquisition, bureaus must clearly identify in writing the role of the NGO, making sure to consider the following:

⁹ If an NGO will not enter the chain of title, it cannot be considered the landowner for this purpose. Consistent with 49 C.F.R § 24.2(a) and 49 C.F.R § 24.5(d), the landowner's designated representative may receive the agency's offer if the landowner has authorized the designated representative to do so in writing. See I.4.a. for more information about how a landowner may designate an NGO as its representative.

- a. **Designated Representative:** If the NGO is acting as the landowner's designated representative pursuant to the Uniform Act and its implementing regulations, the bureau must receive written notification from the landowner. The written notification should specify (i) if there are any notices or documents the designated representative is not authorized to receive; (ii) if the owner is electing to have such notices go solely to its designated representative (i.e. declining duplicate notices); and (iii) if the designated representative will exercise the owner's participatory rights to accompany the bureau on any inspections or due diligence activities.
 - b. **NGO Intends to Secure or Secures a Purchase/Sale Agreement or an Option to Purchase and will Enter Chain of Title:** If the NGO does not hold title but intends to hold or has already entered into a purchase/sale agreement or an option to purchase and seeks assurance from the bureau of the government's intent to pursue acquisition of the property, the bureau should memorialize this intention in writing in a manner that is agreeable to both the bureau and the NGO.
 - c. **Pre-Acquisition Due Diligence Support:** If the NGO is solely undertaking pre-acquisition due diligence and will not enter the chain of title, specific deliverables, timing, and estimated reimbursement should be memorialized in writing.
5. **Bureau Priority Acquisitions.** The Bureau may only indicate an intent to purchase land consistent with the priorities it has set. Because of statutory, budgetary, and policy considerations associated with any land acquisition transaction, the objectives of the Federal government supersede any NGO priorities or objectives.
6. **Acquisition within an Authorized Boundary.** Land acquired by the Federal government from NGOs must be within the boundaries of authorized areas, or otherwise authorized by law.
7. **No Interest-Related Reimbursements.** Bureaus must not reimburse NGOs for any interest expense incurred, or interest income foregone, by an NGO because of its participation in a land acquisition transaction.
8. **No Obligation to Acquire.** If the bureau is unable or otherwise declines for any reason to acquire property within the anticipated timeframe, disposition of the property or interests therein must be made without liability to the Federal government. An NGO may elect to convey the property to entities other than the bureau without liability, unless the property is subject to a binding agreement between the NGO and the bureau.
9. **Acquisitions Undertaken by an NGO Using Other Federal Funding Sources (Federal Grants) or Congressionally Authorized Foundations to Acquire Property.** Bureaus may purchase property interests acquired by an NGO with other Federal funds (Federal grants) or funds from Congressionally authorized foundations, however, the purchase price of the land must be reduced in compliance with 2 C.F.R. § 200.311(c)(3), or other applicable law. NGOs are responsible for consulting with the Federal awarding agency and for any monetary repayment requirements. Additionally, NGOs shall not receive reimbursement under the Uniform Act for due diligence expenses that have been funded by a Congressionally authorized foundation.

10. **Conformance with Bureau Due Diligence Requirements.** All due diligence contracted for by an NGO and for use by the acquiring bureau must conform to all applicable law, regulation, and policy, including:

- a. **Title Evidence:** Title evidence must comply with the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), or any superseding authority, and be conducted in accordance with a bureau's title specifications.
- b. **Environmental Site Assessments:** Environmental site assessments must be conducted in accordance with the bureau's Statement of Work and the bureau policies implementing the Environmental Protection Agency's "All Appropriate Inquiries" regulations (40 C.F.R. Part 312) and be reviewed and approved by an appropriate bureau representative.
- c. **Appraisals and Other Valuation Services:** All appraisals must be in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as applicable.
- d. **Surveys:** Surveys documenting property boundaries must be conducted in accordance with the bureau's survey specifications and must be reviewed and approved by an appropriate bureau representative.

II. Specific Guidelines

1. NGO Secures a Purchase/Sale Agreement or an Option to Purchase and Will Enter the Chain of Title

The following guidelines apply when an NGO holds or intends to hold a purchase/sale agreement or an option to purchase and will enter the chain of title and be the entity from whom the Federal government ultimately purchases the land. If the NGO or original landowner declines to share the underlying agreement, these guidelines may be followed upon written confirmation by the original landowner of the existence of such agreement.

- a. **Landowner Notice Requirement.** Pursuant to the Uniform Act, notices must be provided to the landowner or landowner's designated representative. If the NGO holds a purchase/sale agreement or an option to purchase and will enter the chain of title, the NGO may be considered the landowner and notice should be provided to the NGO. Bureaus should consider whether to request that the NGO provide notice received from the bureau to the original landowner.
- b. **Eligible Reimbursements.** Bureaus must reimburse the landowner for reasonable due diligence expenses incurred incidental to transfer of title. This includes an NGO that is a landowner or an NGO that will enter the chain of title and become the landowner prior to transfer of title to the bureau.
- c. **Appraisals Utilizing the Hypothetical Condition of Ownership.** The Solicitor's Office may be required to issue a legal instruction utilizing a hypothetical condition of ownership if the NGO intends to hold or holds a purchase and sale agreement or an option to purchase but does not hold title at the time of the appraisal. Prior to issuance

of the legal instruction, the bureau must provide the Solicitor's Office with information sufficient to demonstrate that the NGO will take title and be the entity the Federal government will acquire from. Specifically, the bureau must provide the Solicitor's Office with sufficient information to make it reasonable to believe the NGO will enter the chain of title, such as the purchase/sale agreement (in full or partially redacted by the NGO) or written confirmation that the landowner intends to sell their property to the NGO.

2. NGO Facilitates the Acquisition by Supporting Pre-Acquisition Due Diligence

An NGO may facilitate an acquisition by undertaking required pre-acquisition due diligence that commonly includes, but is not limited to, obtaining appraisal reports, title reports, environmental site assessments, and/or boundary surveys. In these instances, the bureau must coordinate with the NGO to ensure that the due diligence is undertaken in a manner consistent with bureau requirements (see **Section I.10**). The bureau is encouraged to memorialize in writing the scope of the due diligence, including specific deliverables and the timing for each deliverable. Note that the Uniform Act and its implementing regulations only require reimbursement of the landowner for expenses incurred incidental to transfer of title. If the NGO is not the landowner and will not enter the chain of title, the bureau may only reimburse the NGO for these expenses if an appropriate legal authority is identified and reimbursement is in conformance with the bureau's policy.

III. Appraisal Guidelines

Offices and bureaus must comply with the following guidelines for appraisals.

1. All appraisal reports must be reviewed and approved by a Department of the Interior-qualified review appraiser.¹⁰
2. Bureaus are responsible for identifying the property interest to be appraised and specific assignment conditions, with the understanding that the credibility of the assignment results may be impacted if an appraisal assignment condition varies from its description in the appraisal scope of work.
3. The Secretary's delegated representative for appraisal functions is the appraiser's client.
4. The Secretary's delegated representative for appraisal functions and the acquiring bureau are intended users.
5. The intended use of an appraisal is to provide an independent determination of fair market value to be used by the Department in determining just compensation for the acquisition of real property rights. See **Section I.2.b**.
6. Bureaus may voluntarily release approved appraisal reports to an NGO or landowner; the NGO or landowner is not required to submit a Freedom of Information Act (FOIA) request to receive a copy of the report. Bureaus are encouraged, but not required, to consult with their respective FOIA offices before voluntarily releasing approved appraisal reports so that they may identify information in the report that is exempt from release under the FOIA. If the bureau would like to retain the ability to withhold the exempt information from release in response to future FOIA requests, it must be withheld (redacted) in the version of the

¹⁰ 49 C.F.R. § 24.103(d)(1).

- approved appraisal report that is voluntarily released.
7. Bureaus may not voluntarily release appraisal reviews or disapproved appraisal reports.
 8. Statements of work for appraisals must be drafted by the Secretary's delegated representative for appraisal functions and reviewed by the bureau engaged in the realty action.
 9. An assembled acquisition occurs when a bureau provides written request(s) to a non-Federal party to acquire two or more separate tracts under different ownerships, resulting in ownership by a single non-Federal entity, for subsequent conveyance to the United States. In the request for appraisal services of an assembled acquisition, the Bureau must provide the original written request(s) to the non-Federal party, identifying the tracts to be assembled. The appraiser instructions will be to appraise the non-Federal ownership being assembled in the manner they were acquired and conveyed: as individual transactions. These instructions will be listed in the "Assumptions and Limiting Conditions" section of the scope of work. If these instructions are contrary to the appraiser's highest and best use or larger parcel conclusion, use of an extraordinary assumption or hypothetical condition may be necessary. The individual market values of each parcel may be included in one report but should not be summed into one purchase price in the appraisal report or review.
 10. If the appraisal will be paid for by an NGO, the NGO must select from a list of assignment-qualified appraisers provided by the Secretary's delegated representative for appraisal functions. This list may include assignment-qualified appraisers submitted by the NGO and approved by the Secretary's delegated representative for appraisal functions. Appraisers who have previously been contracted by an NGO may be included on the list of assignment-qualified appraisers on the condition that they have the required qualifications and have been released in writing from their previous appraiser-client relationship with the NGO.
 11. For purposes of addressing appraisal obligations arising out of USPAP and UASFLA, specifically review of the 10-year sales history of the property and an analysis of current agreements of sale, options, and listings of the property, the bureau, appraiser, or review appraiser may ask for all agreements, options, and sales contracts relevant to the subject property; sensitive information may be redacted, if necessary.
 12. If prior to the Federal government's acquisition, the last sale is to an NGO, that sale may reflect nonmarket motivations because it is a sale to an environmental or public interest entity motivated by preservation, conservation or open space purposes, and for subsequent transfer to the Federal government. This may indicate that such a sale is not a comparable sale, and it may be appropriate to move an appraisal forward lacking information regarding that sale that may reflect such nonmarket motivations.
 13. Consistent with the Uniform Act implementing regulations, 49 C.F.R. § 24.102(f), the landowner, their designated representative, or the NGO that will enter the chain of title and be the entity from whom the Federal government purchases the property may present materials believed to be relevant in determining fair market value, which may include suggested comparable sales. The appraiser should receive, review, and consider any such information provided.
 14. Consistent with the Uniform Act implementing regulations, 49 C.F.R. § 24.102(f), the landowner, their designated representative, or the NGO that will enter the chain of title and be the entity from whom the Federal government purchases the property, must be given a reasonable opportunity to consider an offer of appraised value.
 15. Consistent with the Uniform Act implementing regulations, 49 C.F.R. § 24.102(g), a landowner, their designated representative, or the NGO that will enter the chain of title and

be the entity from whom the Federal government purchases the property, may present information or material changes in the character or condition of the property for determination of updating the offer of just compensation. The landowner, their designated representative, or the NGO must present this information to the bureau, which in turn will provide it to the appraiser and Department review appraiser for consideration of whether an appraisal update or a new appraisal assignment is warranted.

16. All Department appraisals must reflect fair market value, which is used by the agency to establish just compensation for the title holder from whom the government will be acquiring the property. If an NGO holds a purchase and sale agreement or an option to purchase and intends to hold title but does not yet hold title at the time of the appraisal, the appraisal may require legal instructions issued from the Solicitor's Office that utilize the hypothetical condition, in accordance with **Section II.1.c**.

Addendum

Role of the NGOs & Guideline Recap

Role of NGO	Written documentation provided by present landowner	Written, non-binding agreement between Bureau and NGO	Can receive notices and offer of just compensation
Supports Pre-Acquisition Due Diligence	N	Y	N
Designated Representative	Y	Y	Y – on behalf of landowner*
Holds a Purchase/Sale Agreement or an Option to Purchase and Will Enter the Chain of Title	Y	Y	Y – directly**

*As the landowner’s designated representative, an NGO may receive all required notices and documents from the bureau that the landowner is entitled to. Note, however, that the landowner may choose to limit which notices or information the NGO receives when they designate the NGO their representative via written notification to the bureau.

** If the bureau has sufficient information to reasonably believe the NGO will enter the chain of title and will be the party from whom the Federal government ultimately purchases the land, requisite Uniform Act notices should be provided directly to the NGO.