

Coastal Management Assistance Grant Program

Acquisition

Procedural Guide

2009



Department of Natural Resources
Office of Coastal Management

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OHIO COASTAL MANAGEMENT PROGRAM ACQUISITION PROCEDURAL GUIDE

SECTION I

GENERAL PROJECT INFORMATION

A. INTRODUCTION

This Procedural Guide is designed to assist you, the Subrecipient, with the successful completion and operation of your Coastal Management Assistance Grant (CMAG).

The guide is organized into two sections. The first section contains general project information that applies to all grant projects. Section II contains specific guidelines for acquisition projects.

Recognizing the uniqueness of each project, you may have specific questions that are not answered in this guide. If so, please feel free to contact:

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ODNR Office of Coastal Management
105 West Shoreline Drive
Sandusky, Ohio 44870
(419) 626-7986 or (419) 626-7980
Fax (419) 626-7983
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B. PROGRAM ADMINISTRATION

The Ohio Department of Natural Resources (the Department) is the state agency responsible for program administration and coordination of the Ohio Coastal Management Program. The Ohio Coastal Management Program is funded by annual grants provided by Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Within the Department, program responsibilities have been assigned to the Office of Coastal Management. Under the terms of a project agreement, the Department delegates to you, the Subrecipient, certain responsibilities for project completion, record retention, and operation. The acceptance and use of program funds is subject to both federal and state statutes, policies and regulations.

C. RESPONSIBILITY FOR PROJECT COMPLETION

State and Local Responsibilities Defined. The Subrecipient is legally responsible to complete the project. Once reimbursement is accepted, the Subrecipient shall not terminate a project financed with CMAG funds before it is satisfactorily completed. Requests to prematurely terminate a project must be accompanied by a full explanation of the need to terminate and the proposed disposition of the incomplete project. Premature termination requires prior approval from the Department.

Under the terms of the CMAG Program, it is the responsibility of the Subrecipient to follow the guidelines and rules as established by the Department. The Department shall assure that the Subrecipient complies with the terms of the project agreement, the provisions of this guide, and all relevant laws, rules and regulations. The Department may issue instructions, interpretations or additional guidelines as necessary for effective program performance. Project assistance may be terminated in whole or in part at any time before or within the project period if the Department determines that the Subrecipient has failed to comply with the project agreement. The Subrecipient will be promptly notified in writing of such findings and given the reasons for the actions.

1. Satisfactory Progress. The Subrecipient is responsible to ensure that its project is carried through with reasonable promptness to a stage of completion acceptable to the Department. Failure to maintain satisfactory progress or failure to complete the project to the satisfaction of the Department may be cause for termination or cause to withhold further payments on any of the Subrecipient's existing projects. Qualification of new projects may also be delayed until project provisions are satisfactorily met.

Changes in an Approved Project.

Scope: The Subrecipient may not deviate from the scope of an approved project without the concurrence of this Department. All proposed grant projects are competitively scored and selected on the basis of merit. For these reasons, the Department will avoid the approval of significant changes to approved projects in order to maintain the integrity of the selection process that is centered on the merit of the original proposal. The scope of an approved project is defined in the State-Local Project Agreement. These documents specify the type and extent of the project or the acreage to be acquired.

Requests for change after a project is approved must be made in writing to the Office of Coastal Management and must contain a detailed explanation and be submitted no later than 60 days before the State/Local Project Agreement expiration date. The request should include appropriate maps, cost estimates, etc., to accurately reflect the proposed change. Any changes to a project must be approved in advance.

Extension: If the Department determines that circumstances warrant, projects can be extended for a total project length of up to 18 months. A written request must be submitted no later than 60 days before the State/Local Project Agreement expiration date. The written request must include:

- Explanation of why the extension is needed
- Length of extension request
- Describe what remains to be done and a timeline for the remaining work
- How much funds are remaining.

D. GRANT ACCOUNTING AND REPORTING

Grant Accounting

1. Financial Responsibility. The Subrecipient is responsible for the financial management of its approved project.
2. Accounting System. Subrecipients must use an accounting system that complies with "generally accepted accounting principles." Subrecipients shall record the receipt of funds by type and source and the disbursement of funds by approved grant line items. Local government accounting systems

that comply with standards and procedures published by the Auditor of the State of Ohio are considered to meet the Ohio Department of Natural Resources' accounting standards.

The accounting system must provide a timely and accurate record of transactions. The system should produce reports that show fund receipts and disbursements, the expended and unexpended balance for each budget line item, and the total expended and unexpended balance.

Any budget changes must be approved in writing prior to any purchases in the eligible categories.

It is strongly recommended that a separate account be established for each CMAG project.

3. Federal Office of Management and Budget (OMB) Circular. Subrecipients must be familiar with the various requirements and procedures that apply to the use of federal grant funds. These requirements can be found in the federal OMB circular A-87, "*Cost Principles for State, Local and Tribal Governments*", as revised and dated May 10, 2004. A copy for review may be obtained through the OMB website at http://www.whitehouse.gov/omb/circulars/a087/a87_2004.html or by calling OMB at (202) 395-3993.
4. Audit Information. For audit purposes, an audit trail of supporting documents that account for grant expenditures, whether paid from coastal management grant funds or from the Subrecipient's matching funds, such as equipment records, receipts, invoices, purchase orders, personnel time sheets, logs etc. must be retained for a period of six years from the project period start date.

The Subrecipient is responsible for being familiar with federal OMB circular A-133 and its requirements. This circular is available through the OMB website at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Agencies audited under these requirements must submit a copy of any single audit report that covers all or a portion of this project period to the Department's Office of Coastal Management.

This Ohio Coastal Management Program Grant begins July 1, 2009 and is funded under award NA09NOS4190080 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce through the Ohio Department of Natural Resources, Office of Coastal Management. The Catalog of Federal Domestic Assistance (CFDA) number for this grant funding is 11.419.

Reporting

1. Performance Report Requirements. Performance reports shall summarize accomplishments with respect to task objectives, degree of completion, and problems encountered. These reports will also cover progress under any subcontracts involved in this project. See Appendix A for the Performance Report form which is separate from the Acquisition Performance Report.
 - a. Quarterly and Semi-annual Performance Reports.
 - Quarterly Report due by October 1 for work completed July 1 - September 30
 - **Semi-annual Report** due by **January 1** for work completed **July 1 - December 31** (Note that this report covers two quarters)
 - Quarterly Report due by April 1 for work completed January 1 - March 31
 - **Semi-annual Report** due by **July 1** for work completed **January 1 - June 30** (Note that this report covers two quarters)

- b. Final Performance Report. A final performance report is only required when a project is prematurely terminated or project assistance is terminated. This report will include a final accounting of all expenditures and a description of the work accomplished by task and any problems encountered.
2. Final Reporting at Project Close. Final Reporting will be submitted to the Office of Coastal Management within 45 days following the completion of the project, if before the designated project completion date, or no later than 21 days after the grant period ends as identified in the State/Local Project Agreement.

FINAL REPORTING CHECKLIST:

- _____ Final Project Summary- An electronic form will be provided to Subrecipients by OCM. This summary is separate from the Acquisition Performance Report. (See Appendix H for a sample Final Project Summary form.)
- _____ A complete Acquisition Performance Report for all project costs and expenditures, including match expenditures.

Final payment will be made upon request and submission of the above information along with the appropriate support documentation cited in the following section.

SECTION II

ACQUISITION PROJECTS

A. INTRODUCTION

General Responsibilities. Responsibilities applicable to all grant projects were described in Section I of this guide. This section contains specific procedures on how to successfully complete an acquisition project.

If you have any questions, call the Office of Coastal Management at (419) 626-7986 or 7980.

B. DEED – LIMITATION OF USE

Pursuant to 15 CFR 24.31(b)(1), the deed(s) for the real property acquired with funds from this Ohio Coastal Management Program Grant award shall contain the following provision:

NOTICE OF LIMITATION OF USE

This property has been acquired in part with funds from a federal financial assistance award through the Coastal Zone Management Act administered by the National Oceanic and Atmospheric Administration (NOAA). Title to the property conveyed by this deed shall vest upon acquisition in the [Subrecipient of the award or other appropriate public agency] subject to the conditions that the property shall be managed for conservation purposes and consistent with the purposes for which it was awarded NOAA funding, and shall not convert to other uses. The [Subrecipient/public entity] shall not dispose of, exchange, encumber its title in, or convert the use of this property without written approval from NOAA, its successor agencies or the Ohio Department of Natural Resources, Office of Coastal Management.

The Notice listed above must become part of the deed and be recorded in the county courthouse. A copy of the recorded deed that includes the Notice must be submitted with the reimbursement request at the completion of the project.

C. GRANT ACKNOWLEDGMENT SIGN

Suitable public acknowledgment of funding assistance from the Ohio Coastal Management Program Grant at project sites is required. Such acknowledgment will emphasize the support and assistance of the National Oceanic and Atmospheric Administration through the Ohio Coastal Management Program.

The Subrecipient is responsible for providing a permanent acknowledgment sign when an acquisition project is completed. The Department may provide digital files for the sign symbols.

Permanent Ohio Coastal Management Program Grant Acknowledgment Sign. The symbols and text shown in Appendix E must be displayed at entrances or other appropriate on-site locations, and at least the Ohio Coastal Management Program logo must appear in site literature. The format may be altered; however signs must not be smaller than 11" by 17". Such considerations as color combinations, method of sign construction, and placement, are matters to be determined by the Subrecipient; however, the sign must be permanent. Acknowledgment sign text and symbols may be included as part of other site signage as long as it meets the criteria listed above.

A map showing the location of the grant acknowledgment sign on the property must be provided as part of the final grant reporting.

D. SURVEY

Exact property boundary lines must be established. A survey may be required when there is reasonable doubt about the size or exact location of the boundaries of the tract being acquired. Refer to the State/Local Project Agreement to determine if a survey is needed for your project.

It is recommended that the most current American Land Title Association (ALTA)/ American Congress on Surveying and Mapping (ACSM) Minimum Standards be followed if a survey is required. The most current standards can be found at <http://www.acsm.net/alta.html>.

If a survey is required, it must be reviewed and approved by the Office of Coastal Management.

E. APPRAISAL PROCESS

1. Sequence of Events. A detailed explanation of the sequence of events for your acquisition project is included in the following paragraphs.
2. Uniform Relocation and Acquisition. All acquisitions made with Coastal Management Assistance Grant funding must be completed in accordance with the provisions of the Ohio Revised Code Section 163 and Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which requires in part:
 - You must offer the landowner just compensation for the property being acquired as determined by a Department-approved appraisal.
 - You must provide all displaced persons, whether landowner or tenant, with appropriate relocation assistance.
3. Appraisal. Any property to be acquired must be appraised by the Subrecipient. The Subrecipient is required to submit one independent appraisal to ODNR's Office of Coastal Management. The appraisal must be prepared by a certified general appraiser whose qualifications have been reviewed and approved by the Ohio Department of Natural Resources. The fair market value established by the state-approved appraisal is the amount of just compensation the Subrecipient is required by law to offer the owner for the land to be acquired. The appraisal must be approved by both the Ohio Department of Natural Resources and the National Oceanic and Atmospheric Administration.

Guidelines which must be followed in the preparation of the appraisal are provided by ODNR's Office of Coastal Management. (See Appendix B)

IMPORTANT - The Subrecipient should not proceed to acquire the property until written authorization to do so is received from ODNR. Every appraisal must include a statement that the landowner has been offered the opportunity to accompany the appraiser during inspection of the property.

F. STATEMENT OF JUST COMPENSATION

After you receive notification from the Department that the appraisal is approved, you must provide the landowner with a Statement of Just Compensation, and the required information for landowners and tenants about benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1980 (P.L. 91-646). A blank Statement of Just Compensation form and the required attachment are provided in Appendix C. A copy of the Statement of Just Compensation WITH ORIGINAL SIGNATURE must be returned to the Office of Coastal Management at the time of billing.

G. NEGOTIATIONS

Negotiations must be initiated by offering the approved appraised value in a Statement of Just Compensation. You must negotiate a purchase price within six months of the effective date of the appraisal. If it is found that negotiations or the actual purchase occurred prior to state and federal approval of the project, the Subrecipient may not be eligible for reimbursement.

IMPORTANT - Since you are required by law to offer the appraised amount, you are obligated to offer and must be prepared to pay that amount if it is accepted by the seller.

Waiver of Just Compensation. If the landowner chooses to accept less than the amount offered in the Statement of Just Compensation, the landowner must sign a Waiver of Just Compensation explaining the reasons for accepting less. A blank Waiver of Just Compensation form is provided in Appendix D.

Condemnation. Condemnation should not be advanced or delayed in order to induce an agreement on price. If an agreement does not appear possible after a reasonable period of negotiation, the Subrecipient may, if authorized by law, institute condemnation proceedings.

H. TRANSFER TITLE AND RECORD DEED

1. You must acquire the property within one year from the effective date of the appraisal or an update of the appraisal will be needed.
2. Title Rights, Documentation of Price Paid and Evidence of Title. You must supply satisfactory evidence of purchase price and of the character and nature of the title. Evidence of title can be satisfied by a written Certification of Title by your legal counsel or by title insurance, and by a copy of the deed.
3. Acquisition of Interests in Real Property. The acquisition of easements, rights-of-way, etc., will be viewed in the same light as full takings. Documentation of value by appraisal will be the same. All lesser interests are subject to a non-revocable 20-year minimum period. Copies of leases and contracts on all projects involving lesser interests are subject to approval by this Department. The Subrecipient should adequately explain why lesser interests are to be acquired.

I. POST-PROJECT

1. Record Retention. All documentation supporting the acquisition of land and water, or interests therein, must be kept readily available for examination by duly authorized representatives of the Department. All such records must be retained for a period of six years from the project period start date.

2. Underground Utility Requirements. All electrical lines installed after project approval must be placed underground. This requirement applies to all utilities including new or replacement electrical wiring installed on a grant-assisted site.
3. Accessibility to the Public. Discrimination on the basis of residence, including preferential reservation or membership systems and annual permit systems, is prohibited, except to the extent that reasonable difference in admission and other fees may be maintained on the basis of residence.
4. Site Inspections. After the completion of the acquisition project, periodic inspections will be made by representatives of the ODNR Office of Coastal Management in order to ensure that the area is being used in accordance with the purposes for which the Ohio Coastal Management Assistance Grant was awarded. These post-completion inspections, in some instances, may be unannounced.

Where lands have been acquired but not yet developed, the inspection will determine whether the interim use being made of the property, if any, is as agreed to by the Department and the Subrecipient.

5. Operation, Maintenance and Use. In the event the ODNR Office of Coastal Management becomes aware that: the property has been sold or exchanged; there are title discrepancies or encumbrances that the ODNR Office of Coastal Management deems interferes with the purpose for which these funds were granted; or the property has ceased to be used for the original purposes as approved by the ODNR Office of Coastal Management, the ODNR Office of Coastal Management shall be reimbursed for the share of the federal funds received for the project based on the fair market value of the interest in the land at the time of disposal. The ODNR Office of Coastal Management shall consult with the National Oceanic and Atmospheric Administration (NOAA) and the Subrecipient before deciding to exercise this right regarding disposition of the property and may in its discretion consent to other alternatives provided for under 15 CFR 24.31(c). Pursuant to 15 CFR 24.31(c), the funds reimbursed to the ODNR Office of Coastal Management shall be reimbursed to NOAA.

J. SUBMIT REQUEST FOR REIMBURSEMENT

1. Support documentation and reimbursement reporting requirements are as follows:
 - a) All time and expenditures to be counted towards the grant for reimbursement or as match must occur within the grant period identified in the Coastal Management Grant Program State/Local Project Agreement. For example, invoices and the payment there of must be dated within the grant period. Likewise, personnel time spent on compiling the final reporting after the grant period cannot be counted towards the project.
 - b) All support documents must include the CMAG project number.
 - c) Invoices and checks should have the CMAG project number and date.
 - d) State sales tax on supplies or materials is ineligible for reimbursement.
 - e) Itemize all support documents for project expenditures in detail and show the exact nature of all expenditures. Do not list any items as "miscellaneous".
 - f) Cross-reference each expenditure with a supporting purchase order, contract, bill, etc. A Subrecipient can be reimbursed only if checks and invoices match.
 - g) Maintain adequate records to show that the Subrecipient authorized all expenditures charged against the project.
 - h) Matching funds must be accounted for in the same manner and detail as reimbursed funds.
 - i) If a transfer of funds between budget categories is needed, a budget modification request must be submitted and approved prior to the submission of a reimbursement/draw request.

- j) The performance report/reimbursement request must have the original signature of the authorized official.
- k) Reimbursement requests for related costs such as appraisals, surveys, etc. will be processed only if the parcel has been acquired.
- l) Final payment of up to ten percent of the grant amount will be withheld pending completion of the project and receipt of all required Final Report documents. The final payment, in reimbursement of expenditures not covered in previous payments, is subject to a state audit of total project costs.

IMPORTANT - Subrecipients must adhere to the ratio of grant dollars to non-federal match dollars identified in their Ohio Coastal Management Assistance Grant Proposal when requesting reimbursement.

- 2. Processing Time. In order to receive reimbursement, the items in the billing must be correct, completed, well documented, and within the limits of fund assistance. **If all forms and documents are acceptable, the Subrecipient can usually expect reimbursement within 45 days.** To avoid delays, contact the Office of Coastal Management if you do not understand a procedure or the documentation that is required.
- 3. Acquisition Billing Checklist. One copy of each of the following documents is required when requesting reimbursement:

- _____ A cover memo indicating the request for reimbursement.
- _____ The "Acquisition Performance Report" with an original authorizing signature. See Appendix F for the report form and Appendix G for an example.
- _____ The recorded deed.
- _____ The "Statement of Just Compensation" form with original signature.
- _____ Copies of the fronts of checks used to make payments or purchases. (Copies of the canceled checks must be retained in the Subrecipient's records.)
- _____ The court award concerning the land value, if applicable.
- _____ The "Waiver of Just Compensation" form, if applicable.
- _____ The "Certification of Title" or "Title Insurance".
- _____ The "Option", if applicable.
- _____ The settlement statement.
- _____ 2-5 photos, submitted in a digital format, of the project site and grant acknowledgment sign.
- _____ A map showing the location of the grant acknowledgment sign on the property.

All forms (along with examples) to request reimbursement are included in the Appendices of this Procedural Guide.

Acquisition costs NOT eligible for reimbursement or to be claimed as match include:

- Attorney fees and court costs
- Realtor commissions

IMPORTANT - REIMBURSEMENT IS BASED ON THE APPRAISED VALUE OF THE LAND, NOT THE AMOUNT PAID. IN ADDITION, REIMBURSEMENT WILL NOT EXCEED THE GRANT AMOUNT.

If your project involves acquisition of residentially occupied structures, an operating farm or business, or if the project site has any improvements on it, call the Office of Coastal Management to find out what additional requirements may apply. Each acquisition is unique; therefore, you must be able to provide specific detailed information on the existing use of developed property that is to be acquired.

April 2009

APPENDICES

APPENDIX A	PERFORMANCE REPORT
APPENDIX B	SPECIFICATIONS FOR ANALYTICAL NARRATIVE APPRAISAL REPORT
APPENDIX C	STATEMENT OF JUST COMPENSATION
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APPENDIX E	GRANT ACKNOWLEDGMENT SIGN
APPENDIX F	ACQUISITION PERFORMANCE REPORT
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APPENDIX H	FINAL PROJECT SUMMARY FORM
APPENDIX I	U.S. DEPARTMENT OF JUSTICE POSITION PAPER, RE: HIGHEST AND BEST USE



APPENDIX A
Performance Report Form
Office of Coastal Management

THIS REPORT USES FORM FIELDS; MAKE SURE THE DOCUMENT IS PROTECTED BEFORE EDITING
 (TOOLS>PROTECT DOCUMENT>SELECT FORMS) USERS MUST CLICK IN GRAY FORM FIELDS TO 1) SELECT
 VALUES OR 2) INPUT TEXT. USE THE [F1] KEY OVER FIELD FOR HELP.

Project Details

Subrecipient Name:

Contract/Agreement Expiration Date:

Project Title: DNRFN236/Cycle 11:
DNRFH003/Cycle 12:
DNRFH004/Cycle 13:

Performance Report Period: 2009

July 1 - September 30
 (Quarterly Report)

July 1 - December 31
 (Semi-Annual Report)

Other Report Period:

January 1 - March 31
 (Quarterly Report)

January 1 - June 30
 (Semi-Annual Report)

Project Manager Name:

Title:

Project Manager Signature: _____

Schedule Details

% of Project Completed: 0 %

CHECK ONE: On Schedule Delayed If so, how long? N/A

Extension Submitted Date Extension Submitted:

A written **extension request must be submitted 60 days prior** to contract expiration.

Financial Details

	Authorized Budget	Current Expenditures	Cumulative Expenditures
Federal Funds Estimated			
Match Funds Estimated			

Performance Details

Summarize progress and or accomplishments by Project Task:

Difficulties and Delays encountered during the reporting period:

Deliverables: (Please describe work progress on original deliverables.)

APPENDIX B

SPECIFICATIONS FOR ANALYTICAL NARRATIVE APPRAISAL REPORT

(In Conformance with "Uniform Appraisal Standards for Federal Land Acquisition" based on Interagency Land Acquisition Conference 1992 - "Yellow Book")

GENERAL

In the preparation of this report, the appraiser shall follow current professional appraisal practices giving consideration to three approaches to value, unless otherwise specified in these instructions.

1. COST LESS DEPRECIATION APPROACH
2. INCOME APPROACH
3. COMPARATIVE (OR MARKET) APPROACH

Should certain approaches or requirements covered in these specifications not be applicable to the assignment, the obligation can be fulfilled by identifying that approach or requirement together with a brief explanation for its omission (i.e. an appraisal involving land valuation only). Of necessity, supplementary specifications will be furnished requiring additional data in the appraisal of highly specialized properties or under other unusual circumstances.

FORMAT

The report shall be bound, in book-fashion, in the left margin, in a durable cover with an identification of the property on the face thereof. The paper used shall be a good grade bond of size 8 1/2x 11 inches. All pages shall be numbered consecutively, including all exhibits, and each important heading shall be shown in the Table of Contents. The text shall be divided into four parts as outlined below.

PART I - INTRODUCTION

1. Title Page. This shall include:
 - a. Project identification, County, and Parcel identification of the property;
 - b. Name of the individual making the report;
 - c. Effective date of the appraisal; and
 - d. Owner's name, address, and telephone number.
2. Table of Contents
3. Letter of Transmittal
 - a. Date of Letter and Salutation
 - b. Value Estimate
 - c. Appraiser's Signature
4. Photographs. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall

view, photographs may be bound as pages facing the discussion or description which the photographs concern. All photographs shall include captions and be in color.

5. Statement of Limiting Assumptions and Conditions. The appraiser should provide clear concise statements of all assumptions including the following specifics:
 - a. that the title to the property is marketable,
 - b. that the appraiser assumes no responsibility for legal matters,
 - c. that all data furnished by others are presumed correct; and
 - d. any other assumptions and/or limitations.
6. References. If preferred, can be shown with applicable approach.

Part II - FACTUAL DATA

7. Purpose of the Appraisal. This shall include the reason for the appraisal, a definition of Market Value (and any other values required), and property rights appraised.
8. Legal Description. This description shall be so complete as to properly identify the total holding and the portion which is to be required. If lengthy, it should be referenced and included in Part IV.
9. Area, City, and Neighborhood Data. All the important facts about the area, city, and neighborhood that the appraiser has judged pertinent to the specific appraisal problems should be included.
10. Project Data.
 - a. Site - Describe the soil, topography, mineral deposits, easements, etc. A statement must be made concerning the existence or non-existence of mineral deposits having a commercial value. In case of a partial taking discuss access both before and after to remaining tract. Also discuss the detrimental and hazardous factors inherent in the location of the property.
 - b. Improvements and Conditions - This shall be by narrative description, including dimensions of principal building and/or improvements. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised and, whenever applicable, the repair or replacement to bring the property to useable conditions.
 - c. Equipment - This shall be described by narrative or schedule form and include all items of equipment, including a statement of the type and purpose of the equipment and its state of cannibalization. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised, and whenever applicable, the repair or replacement requirements to bring the property to usable condition.

Any related personality or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, shall be separately inventoried. Where applicable, these detachable or individually owned items shall be separately valued.
 - d. History - State briefly the purpose for which the improvements were designed, dates of original construction and major renovation and/or additions; include, for privately owned property, A TEN-YEAR RECORD as to each parcel, of all sales, and, if possible, officers to buy or sell, and recent lease(s); if no sale in the past ten years- include a report of the last sale, if available, or advise that there have been no sales in the last ten years.

- e. Assessed Value and Annual Tax Load - Include the current assessment and dollar amount of real estate taxes. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate and give the dollar amount of the tax estimate.
- f. Insurance - If applicable, give the estimated rate per thousand and the annual cost of adequate insurance coverage for any improvements on the site.
- g. The Restrictions, Easements, and Other Fee Interests - give a detailed description of all utilities, easements, and/or title restrictions affecting the property and the resultant impact they may have, if any, on the site's value and/or use.
- h. Zoning - Describe the zoning for subject and comparable properties. If not zoned, state what the zoning probably will be under private ownership, and if rezoning is imminent, discuss further under Item 11.
- i. Hazardous Waste Statement - A statement indicating any hazardous waste on subject property in the form of waste disposal underground tanks, or solid waste that was visible at time of inspection.

PART III - ANALYSIS AND CONCLUSIONS

- 11. Definition and Analysis of Highest and Best Use. The report shall state the highest and best use that can be reasonably made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use. In no case shall the land be appraised for one highest and best use and the value of the improvements added when they do not contribute to the fair market value of the land under the highest and best use. Such special purpose appraisals are not allowable.
- 12. Land Value. The appraiser's opinion of the value of the land shall be supported by confirmed sales of comparable, or nearly comparable lands having like optimum (highest and best) uses. Differences shall be weighed and explained to show how they indicate the value of the land adjustments are made for location, time, size, site characteristics, etc. and result in an adjusted sales price. This will establish an adjusted sales price range. If one or more of the comparables influence the final determination of value, it should be so stated. (It is preferable to include a grid showing each adjustment and the final adjusted sale price.)
- 13. Value Estimate:
 - a. Cost Approach - This section shall be in the form of computative data, arranged in sequence, beginning with the reproduction or replacement cost, and shall state the source (book and page if a national cost service) of all figures used. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.
 - b. Income Approach - This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least:
 - (1) estimated gross economic rent or income;
 - (2) allowance for vacancy and credit losses; and
 - (3) an itemized estimate of total expenses including reserves for replacements. '

Capitalization of net income shall be the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rate and factors.

- c. Comparative (Market) Approach - All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

Note: Each comparable sale shall have the same Highest and Best Use as the subject property or, if not, a full explanation is needed.

14. Appraisal of Partial Takings must be prepared using the Federal Method as shown on Pages 28 through 35 of the Uniform Standards for Federal Land Acquisitions, and include the following:
 - a. Before Value, (valuation of the total ownership or whole property).
 - b. Less the After Value (valuation of the land remaining after the "taking").
 - c. Total Compensation, (Value of the part "taken).
 - d. Damage/Severance (if any) to the remainder after the "taking".

NOTE: The Before and After Method must be used even though there may be no Damage/Severance to the remainder.

15. Interpretation and Correlation of Estimates, The appraiser shall interpret the foregoing estimates and shall state his reasons why one or more of the conclusions reached in items 13(a), (b), and (c) are indicative of the market value of the property.

When correlating two or all three approaches, take into account the type of property in relation to the adequacy of the data processed in each approach. This summary should explain the strengths and weaknesses of each approach and influence the weight to be given each one.

Do not obtain a final estimate of value by averaging the individual indications. Place the greatest emphasis on the approach which most reliably reflects local thinking and marketability.

The appraiser shall give the final estimate of value in a definite statement.

16. Affidavit of Appraiser. (Form Attached) (Certification)
 - a. No undisclosed interest
 - b. Personally inspected property with permission
 - c. State and value estimate

PART IV – EXHIBITS AND ADDENDA

17. Location Map* (Within the city or area) This map should be in such detail to clearly identify access to the site and adjacent boundaries.
18. Comparative Sales Data Map. This map should show the location of the subject

property and the comparable sales on the same map to aid the review appraiser in the field inspection.

19. Details of the Comparative Sales Data, Sales must be identified by data taken from the recorded instrument (if recorded), AND from information obtained from the parties involved. In all cases, the comparable sales properties considered with the appraisal report must be personally visited/inspected (see appraiser affidavit) and color photographs provided of those properties. The following items must be part of the sales identification description;
 - a. Name of grantor and grantee.
 - b. Deed book, page number, and county.
 - c. Type of instrument (warranty deed, land contract, etc.).
 - d. Date of instrument.
 - e. Date of sale.
 - f. Reservations, exceptions, and deeded restrictions, if noted.
 - g. Value of State transfer tax stamps affixed to the instrument.
 - h. Sales consideration and terms.
 - i. Legal description.
 - j. Zoning.
 - k. Soil description.
 - l. Verification (either buyer, sellers brokers other knowledgeable person).
 - m. Highest and Best Use analysis of comparable sale properties.

Additional documented data having a major bearing on valuation of the subject property may include:

- n. Quantity and quality of attached mineral rights.
 - o. Quantity and quality of attached water rights.
 - p. Quantity, quality, and legal description (or maps of functional boundary) of attached permits, leases, allotments, etc.
20. Plot Plan. * Plan showing the configuration of the property being acquired.
 21. Floor Plans. * (When needed to explain the value estimates.)
 22. Other Pertinent Exhibits. (Such as sketches to locate easements, or other-fee interests on subject property.)
 23. Qualifications. (Of all Appraisers and/or Technicians contributing to the report).
- * All maps and plans may be bound as facing pages opposite the description, tabulation, or discussions they concern.

APPRAISAL CHECKLIST

(Adapted from "Uniform Appraisal Standards for Federal Standards Acquisitions" based on Interagency Land Acquisition Conference 1992 - "Yellow Book")

PREFACE

- 1. Copy of Specifications and Checklist provided to appraiser prior to start.
- 2. Checklist attached.
- 3. A copy of the Preliminary Title Report, Opinion of Title or Commitment for Title Insurance attached.
- 4. Deed restrictions as found in the Preliminary Title Report, etc., included in appraisal.
- 5. Appraiser advised of legal description of subject property.

FORMAT

- 1. Bound Report.
- 2. Pages numbered.

PART I - INTRODUCTION

- 1. Title Page.
- 2. Letter of Transmittal.
- 3. Table of Contents.
- 4. Photographs (should include at least the front elevations of the subject, any major improvements, any unusual features. There should also be views of abutting properties on either side and the property directly opposite the subject property. Views of each comparable sales property must also be included. Original color photographs should be used in each copy of the appraisal rather than photocopies of the original photos. All graphic material shall include a caption.)
- 5. Statement of Assumptions and Limiting Conditions.
- 6. References.

PART II – FACTUAL DATA

- 7. Purpose of Appraisal and Definitions of Market Value.
- 8. Legal Description.
- 9. Area and Neighborhood Data.
- 10. Property Data.
 - A. Site (soil, topography, minerals, etc.)
 - B. Improvement and Conditions.
 - C. Equipment.
 - D. History (10 year history conveyance).
 - E. Assessed value and annual tax load.
 - F. Insurance (if applicable, give estimated rate per thousand and the annual cost of adequate insurance, but not necessarily the present coverage, for any improvements on the site.)
 - G. Title restrictions/easements/other fee interests.
 - H. Zoning.
 - I. Hazardous Waste Statement.

PART III ANALYSIS AND CONCLUSIONS

- 11. Definition and Analysis of Highest and Best Use.
- 12. Land Value.
- 13. Valued Estimate.
 - A. Cost Approach
 - B. Income Approach
 - C. Comparative (Market) Approach.
- 14. If appraisal of a "partial taking", appraiser must appraise the entire ownership, and then deduct the value of the remainder for value. Severance Damage shall be estimated if applicable.
- 15. Interpretation and Correlation of Estimates.
- 16. Affidavit and Statement of owner notification, accompaniment, valuation date and value established.
- 17. Location Map (Within city or area).
- 18. Comparative Sales Data Map. (This map must be of sufficient detail as on a regional map, community map, neighborhood map with both the subject property and each comparable property clearly identified so as to allow the properties to be easily found during the required on-site inspections by the reviewing appraiser.)

- 19. Details of the Comparative Sales Data. (All sales must be verified either by the buyer, seller, broker or other knowledgeable person.) The following items must be a part of the comparable sales identification:
 - A. Name of grantor and grantee.
 - B. Legal/size description of comparable and street address or location description.
 - C. Deed Book, Page Number, and County.
 - D. Type of Instrument (Warranty deed, contract).
 - E. Date of Instrument.
 - F. Date of Sale.
 - G. Reservations, exceptions, deed restrictions, if noted.
 - H. Value of State Transfer Tax affixed to the instrument.
 - I. Sales consideration and terms.
 - J. Zoning classification of comparable sales.
 - K. Soil types of comparable sale.
 - L. Sales confirmed with grantee, grantor or broker.
 - M. Highest and best use of each comparable sale.

Additional documentation data having a major bearing on valuation of the subject property may include:

- Quantity and quality of attached mineral rights.
- Quantity and quality of attached water rights.
- Quantity, quality and legal descriptions (or maps of functional boundary of attached leases, allotments, etc.)

- 20. Plot Plan.*
- 21. Floor Plan.*
- 22. Other pertinent exhibits (location sketches of easements, other fee interests, etc.)
- 23. Qualifications.

* All maps and plans may be bound as facing pages opposite the description, tabulation or discussions that they concern.

AFFIDAVIT OF APPRAISER CERTIFICATION

STATE of OHIO

)SS

COUNTY _____

_____, being duly sworn, deposes, and says:

That on _____ (date) I personally inspected the property herein appraised. The owner, or his representative, was advised of my mission and (did) (did not) accompany me. That I personally inspected the comparable sales property considered within this report.

That to the best of my knowledge and belief, the statements contained in this appraisal are true, and the information upon which the opinions expressed therein are based is correct, subject to the limiting conditions therein set forth.

That I understand that this appraisal is to be used in connection with the acquisition of said property by _____, and that to the best of my knowledge and belief, this appraisal has been made in conformity with the "Uniform Appraisal Standards for Federal Land Acquisition" instructions provided me and which are applicable to appraisal of property involving federal and/or State funding, and that no portion of the value assigned to such property, consists of items which are noncompensable under the established law of said State, and that value does not reflect influence of the proposed project.

That neither my employment, nor my compensation for making this appraisal and report are in any way contingent upon the values reported therein.

That I have no direct, or indirect, present, or contemplated future personal interest in this property, or in any way benefit from its acquisition.

That I will not reveal the findings and results of this appraisal to anyone other than the proper officials of the _____ or officials of the National Oceanic and Atmospheric Administration, unless authorized by State officials to do so, or unless I am required to do so by due process of law, or until I am released from this obligation by having publicly testified to such findings.

That in my opinion the market value of the taking as of _____ is \$ _____
(Valuation Date)

(Signature)

(Date report submitted)

Subscribed and sworn to before me this _____ Day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

**APPENDIX C
STATEMENT OF JUST COMPENSATION**

INITIAL OFFER

PROJECT: _____

OWNER: _____

TRACT NO. _____

Dear _____:

This is to confirm my discussion with you concerning your property and to indicate my willingness to further discuss the acquisition of your property at your convenience.

As indicated, the _____ has had an appraisal made of your property. The Ohio Department of Natural Resources has reviewed and approved the appraisal and in compliance with Section 301 of the Act of Congress of January 2, 1971, Public Law 91-646, and Ohio Revised Code Section 163.51 and 163.62, you are hereby advised that just compensation for fee interest in your property is:

Land	= \$ _____
Improvements	= \$ _____
Damages	= \$ _____
TOTAL	= \$ _____

This amount is an estimate of fair market value which is not less than the state-approved appraisal. The estimate of fair market value of the real property is based on acceptable standard appraisal practices and procedures, which considered the highest and best use of the property, current land sales of similar properties in the vicinity, and other indicators of land value as follows:

(Income, Market, or Cost Approach)

Also considered were possible damages to any real property owned by you and not included in the above description.

The state-approved value encompasses all property values within the described premises, including any and all buildings and other improvements, except as specifically stated below.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement on the project for which the property is being acquired, or by the likelihood that the property would be acquired for such improvement or project, other than

that due to physical deterioration within the reasonable control of the owner, has been disregarded by the appraiser making his determination of just compensation for the property.

County _____ Township _____

Section _____ Range _____
(If Applicable) (If Applicable)

Municipality _____
(If Applicable)

EXCEPTIONS:

Signature

Date Title

I (We) have been furnished with information for property owners and tenants concerning relocation rights and benefits as required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646).

Received:

Date Signature of Property Owner(s)

IMPORTANT - SIGNATURES ON THIS FORM DO NOT CONSTITUTE ACCEPTANCE OF THIS OFFER TO BUY ON THE PART OF THE LANDOWNER.

ATTACHMENT TO STATEMENT OF JUST COMPENSATION

Information for Landowners and Tenants About Benefits Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - Public Law 91-646

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides for certain benefits and payments to displaced persons (landowners and tenants) which result from the sale of land to a government agency (federal, state, or local). A person is considered displaced when (a) a person, partnership, corporation or association on or after January 2, 1971, moves from real property as a result of the acquisition of such real property, in whole or in part; or (b) they are in receipt of a written order from the acquiring agency to vacate real property for a program or project receiving federal financial assistance. The law provides for benefits and payments for which you may be eligible in the following areas:

1. Reimbursement of moving and related expenses or certain substitute payments.
2. Replacement housing allowance under certain conditions.
3. Relocation assistance services to help locate replacement housing, farms, or business properties.
4. Reimbursement of certain expenses incurred in selling real property to a government agency.

These payments and benefits are discussed in greater detail in the following paragraphs.

1. Reimbursement of Moving and Related Expenses

Displaced landowners and tenants are eligible for reimbursement of actual expenses incurred in moving themselves, their families, and their personal property from land acquired for federal or federally assisted programs. When a commercial mover is used, the reimbursement will be the amount charged. If the actual expenses are to be claimed, accurate records must be kept and bills and receipts obtained to support an application for reimbursement of expenses. Reimbursement for actual moving expenses shall not exceed the estimate or amount charged by a commercial mover.

In addition to moving expenses, actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation may be reimbursable, but may not exceed the cost of moving such property.

Landowners or tenants displaced from a business or farm operation are eligible for an additional payment not to exceed \$500 for expenses incurred in searching within a 50-mile radius for a replacement business or farm.

Should an owner or tenant displaced from a dwelling prefer, he may accept substitute payment of \$200 plus an allowance of up to \$300 (based on the size of the dwelling moved from) instead of actual moving expenses.

Should a displaced person from a business or farm operation prefer, he may accept a substitute payment instead of actual costs of moving and searching for relocation property. The Costs are not to be less than \$2,500 nor more than \$10,000 (based on the actual net income before income taxes). To qualify as a farm operation, the farm must contribute, or be capable of contributing, at least one-third of the operator's support. To qualify as a business, it must be shown that (a) it cannot be relocated without a substantial loss of its existing patronage; and (b) it is not a part of a commercial enterprise having at least one other establishment not being acquired by the governmental agency.

2. Replacement Housing Allowance.

In addition to reimbursement of moving expenses, owners or tenants actually occupying dwellings on the property acquired by a government agency under a federal or federally assisted program may be eligible for payment to help them purchase or rent a decent, safe, and sanitary replacement dwelling. This payment may be in the form of (a) a differential payment; (b) a rent supplement; or (c) a down payment allowance.

- a. Differential Payment. A payment which, when added to the purchase price of the dwelling acquired by the governmental agency, would enable the owner/occupant to acquire a decent, safe, and sanitary dwelling in the same general area from which he was displaced. The maximum amount that can be allowed for a replacement dwelling shall in no case exceed \$15,000. To qualify for this payment, an owner/occupant must have occupied the dwelling for not less than 180 days prior to the initiation of negotiations by the governmental agency (ie: 180 days from the date the first monetary offer was made).
- b. Rent Supplement. The amount necessary, when added to the actual rent or fair cash rental, whichever is greater, which will enable a displaced tenant or owner/occupant to rent a decent, safe, and sanitary dwelling for a period not to exceed four years; but in no case shall the total amount of such payment exceed \$4,000. The governmental agency will determine the maximum amount necessary to rent a replacement dwelling. Total payments in excess of \$500 will be made in four equal annual installments. To qualify for this payment, a tenant or owner must have occupied the dwelling acquired by the governmental agency for not less than 90 days prior to the initiation of negotiations. An owner/occupant of more than 180 days prior to the initiation of negotiations may elect to receive this payment instead of the initiation of the differential payment, but not to exceed the amount he would have received as a differential payment.
- c. Down Payment. The amount necessary to make a down payment for purchase, including closing costs, on a decent, safe, and sanitary dwelling but not to exceed \$4,000. However, any amount over \$2,000 must be matched on an equal basis by the displaced tenant. The amount required for a down payment cannot exceed the minimum needed in the area for a conventional loan plus closing costs. The same occupancy qualifications apply for a down payment as for a rent supplement.

3. Relocation Assistance.

The government agency (federal, state, or local) will, to the greatest extent possible, assist displaced landowners and tenants in locating and becoming established in decent, safe, and sanitary replacement housing and in locating replacement farm and business properties. It will also provide assistance in completing applications for moving and other expenses and payments authorized by Public Law 91-646. Should you have questions, the governmental agency (federal, state, or local) negotiator will be glad to discuss them with you, or you may write to the government office in charge of federal or federally assisted programs.

The government agency (federal, state, or local) will, upon request, provide any lending institution, or other interested party, a statement of expenses and allowances for which you, as a displaced owner or tenant, are eligible under Public Law 91-646.

4. Reimbursement of Expenses Incurred in Selling Real Property to a Governmental Agency.

Landowners are eligible for reimbursement of certain expenses incurred by them in conveying title to real property to the government. The expenses eligible are:

- a. Recording fees, transfer taxes, revenue stamps, and notary fees.

- b. Penalty costs for pre-payment of pre-existing recorded mortgages as may be required to convey a clear title to the government agency.
- c. The pro rate portion of real property taxes which would apply to the period after the date title vests in the government, or the effective date of possession by the government, whichever is earlier.

It is the obligation of the landowner to pay these expenses initially and then claim reimbursement from the agency purchasing the land. The agency will then be eligible for federal reimbursement as an allowable expense of the project.

**APPENDIX D
WAIVER OF JUST COMPENSATION**

PROJECT: _____

OWNER: _____

TRACT NO.: _____

I/We, _____, have been informed of all of my/our rights and benefits under the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970 and have been provided with a Statement of Just Compensation and a written offer to purchase for the appraised value of \$_____. Of my/our choice, I/We have elected to accept an amount less than the approved appraisal of fair market value for the following reason:

Signature of Property Owner(s)

Date

IMPORTANT - An explanation for accepting less than fair market value must be provided.

APPENDIX E
COASTAL MANAGEMENT ASSISTANCE GRANT ACKNOWLEDGMENT SIGN

Permanent Sign- After Acquisition

Project Name Here
Sponsoring Agency Here



This project was funded in part by
the National Oceanic and Atmospheric Administration (NOAA)
through the Ohio Coastal Management Program (OCMP).

APPENDIX F
ACQUISITION PERFORMANCE REPORT
OFFICE OF COASTAL MANAGEMENT

Subrecipient Name _____ Today's Date _____

Project Name _____ CMAG No. _____

Payment Period Covered: _____, _____ through _____, _____

Payment Requested: Partial or Final (circle one) Amount Requested: \$ _____

Signature _____

Title _____

Remit to Name: _____

Remit to Address: _____

Tax ID: _____

Item	Authorized Budget		Appraised Value	Amount Paid	Current Invoice	
	OCMP	Local			OCMP	Local
Parcel # _____						
Survey						
Appraisal						
Closing Costs						
Sign						
Other _____						
Relocation Costs						
TOTAL						

Acres acquired _____

Reimbursement = _____ % of total projects costs.

Comments:

Notes:

Reimbursement is based on the appraised value of the land and cannot total more than 50% of the total eligible project costs or exceed the original grant award.

Costs not eligible for reimbursement or to be counted as match include: 1) Attorney fees and court costs; 2) Realtor commissions; 3) Parcel costs above the appraised value.

APPENDIX G
Sample ACQUISITION PERFORMANCE REPORT Sample
OFFICE OF COASTAL MANAGEMENT

Subrecipient Name City of Shoreline Today's Date 8-25-07

Project Name Beach Park Acquisition CMAG No. M363 306A-7

Payment Period Covered: July 1, 2006 through August 25, 2007

Payment Requested: Partial or **Final** (circle one) Amount Requested: \$ 10,800.00

Jane Smith
Signature

City Administrator
Title

Remit to
Name: City of Shoreline

Remit to
Address: City of Shoreline

1234 Lakeview Road

Tax ID: 00-0000000

Shoreline, OH 43210

Item	Authorized Budget		Appraised Value	Amount Paid	Current Invoice	
	OCMP	Local			OCMP	Local
Parcel # <u>1</u>	10,000.00	6,300.00	16,300.00	17,900.00*	10,000.00	6,300.00
Survey	400.00	1,600.00		2,000.00	400.00	1,600.00
Appraisal	400.00	1,600.00		2,400.00	400.00	2,000.00
Closing Costs		800.00		800.00		800.00
Sign		500.00		500.00		500.00
Other _____						
Relocation Costs				N/A		
TOTAL	10,800.00	10,800.00		23,600.00	10,800.00	11,200.00

*Note: Parcel costs above the appraised value cannot be claimed as Local Match.

Acres acquired 4

Reimbursement = 49 % of total eligible projects costs.

Comments:

The City of Shoreline acquired one 4-acre parcel along Lake Erie to establish a public park and beach in our community. No relocation was required for this project.

The project is complete.

Notes:

Reimbursement is based on the appraised value of the land and cannot total more than 50% of the total eligible project costs or exceed the original grant award.

Costs not eligible for reimbursement or to be counted as match include: 1) Attorney fees and court costs; 2) Realtor commissions; 3) Parcel costs above the appraised value.

APPENDIX I

U.S. Department of Justice Position Paper, RE: Highest and Best Use



U. S. Department of Justice
Environment & Natural Resources Division
Land Acquisition Section

APR 21 1995

P. O. Box 561
Washington D.C. 20044
Telephone: (202) 577-6770
Teletype: (202) 577-4389

April 18, 1995

MEMORANDUM

TO: AGENCY REPRESENTATIVES
INTERAGENCY LAND ACQUISITION CONFERENCE

FR: WILLIAM J. KOLLINS
CONFERENCE EXECUTIVE
INTERAGENCY LAND ACQUISITION CONFERENCE

RE: INTERAGENCY LAND ACQUISITION CONFERENCE POSITION PAPER ON
HIGHEST AND BEST USE

Attached for your use and distribution please find the approved copy of the Interagency Land Acquisition Conference's position paper on highest and best use. Of the members of the Conference voting on this position paper, all voted in favor of its adoption.

Distribution of this paper to your agency's appraisers is encouraged. If you become involved in a land acquisition project in which you anticipate that staff and/or contract appraisers may inappropriately conclude an uneconomic highest and best use of the property being appraised, I would suggest that you reference this document, in addition to the *Uniform Appraisal Standards for Federal Land Acquisitions* (Washington, D.C.: U.S. Printing Office, 1992), in you appraisal assignment or contract.

Your agency's cooperation and efforts in the development and adoption of this important position paper is very much appreciated.

INTERAGENCY LAND ACQUISITION CONFERENCE

POSITION PAPER

On the issue whether a non-economic highest and best use can be a proper basis for the estimate of market value.

INTRODUCTION

The Interagency Land Acquisition Conference is an organization composed of representatives of federal agencies engaged in the acquisition of real estate for public uses. The Conference was established on November 27, 1968, by invitations issued by the Attorney General. The Conference chairperson is the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, and the Conference Executive is the Chief of the Land Acquisition Section of the Environment and Natural Resources Division, Department of Justice.

The Conference conducts its business by *ad hoc* committee called into session as land acquisition issues arise that affect the federal land acquiring agencies. For example, when the Freedom of Information Act (FOIA) was enacted, the Conference was called into session and developed a position paper regarding the release of government appraisal reports under FOIA. The Conference was also responsible for the development of the *Uniform Appraisal Standards for Federal Land Acquisitions* published in 1972, as well as the 1973 and 1992 revisions thereof, which establish guidelines for appraisals prepared for the purpose of federal land acquisition. When the subject under Conference consideration is valuation, as here, the agencies are generally represented on the Conference by their Chief Appraisers.

The member agencies of the Conference whose representatives participated in this project are:

U.S. Department of Justice
U.S. Army Corps of Engineers
General Services Administration, FPRS
General Services Administration, PBS
Housing and Urban Development, MF
Housing and Urban Development, SF
Bureau of Land Management
U.S. Fish and Wildlife Service
U.S. Forest Service
Department of Transportation, FHWA
National Park Service
U.S. Navy
Western Area Power Administration
U.S. Postal Service
Bureau of Indian Affairs
Bureau of Reclamation

Pennsylvania Avenue Development Corporation
Bonneville Power Administration
Federal Aviation Administration

The Conference convened in late 1994 to consider the issue that is the subject of this paper. It was decided by the Conference that a committee should be appointed to study the issue and draft a position paper for consideration by the Conference. The committee appointed consisted of the representatives of the following Conference members:

U.S. Department of Justice
U.S. Forest Service
U. S. Fish and Wildlife Service
Bureau of Land Management
Bonneville Power Administration
U.S. Army Corps of Engineers
Department of Transportation, FHWA
National Park Service

The committee developed a draft position paper and submitted it to the members of the Conference. Following receipt of comments and suggestions from Conference members, a modified final version of the paper was presented to the Conference members and approved.

THE ISSUE

Is a non-economic highest and best use a proper basis for the estimate of market value?

This question has been analyzed by the Conference with reference to the *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992).

BACKGROUND

Public concern over the environment the past several years has resulted in legislatively mandated land acquisitions for the sole purpose of conservation, wildlife habitat, or preservation of the lands in their natural state. Because of the nature of these acquisition programs and the goals they are intended to achieve, much of the land acquired is held in large ownership blocks, is remotely located, has suffered little human encroachment, and is of minimal economic utility or value.

Historically, the appraisal of such lands would bring about such economic highest and best use estimates as timber production, grazing, marginal recreation, or hold for speculative

appreciation. Recently however, a small group of appraisers and others have advocated that the highest and best use of such lands is for the very purpose for which the government is acquiring them - such as preservation in their natural state, or other non-economic uses.

The validity of appraisals, based on non-economic highest and best uses, as legitimate estimates of market value has been the subject of numerous articles in professional journals, and has been the subject of committee research and/or forums at the national meetings of the International Right-of-Way Association, the American Society of Farm Managers and Rural Appraisers, and the Appraisal Institute. In many of these articles and forums it has been suggested that estimates of such value are not estimates of market value, but rather estimates of value in use, value to the government or public, natural value, or public interest value.¹

Value estimates and appraisal reports have been developed on this premise of "preservation" as a property's highest and best use. Legal counsel for some property owners have submitted these reports to Conference members urging that they be accepted as reliable opinions of market value. They have argued that such reports are in conformance with the *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992), the *Uniform Standards of Professional Appraisal Practice*, and are in keeping with generally accepted definitions of highest and best use and market value.

Conference members, to whom such reports have been submitted, have found within them a common thread. Authors of these reports have adopted a definition of highest and best use that encompasses consideration of non-economic uses. The appraisals develop an indication of value that clearly falls outside of the traditionally accepted definition of market value.

Under established law the criterion for just compensation is the fair market value of the property at the time it is acquired.² Because the purpose of the *Uniform Appraisal Standards for Federal Land Acquisitions* is to set forth the principles applicable to the appraisal of property for Federal

¹ The Conference finds the term "public interest value" inappropriate and misleading. After a review of several of these reports the Conference has concluded that what is being estimated is not a value, but a prediction of the price at which a transaction will be consummated between two specific parties rather than market value. *The Dictionary of Real Estate Appraisal*, 3d. ed. (The Appraisal Institute, 1993) defines "price" as "The amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction."

² *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992), §A-2, p. 3, citing *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 9 (1984); *United States v. Miller*, 317 U.S. 369, 373-378 (1943); *Olson v. United States*, 292 U.S. 246, 255 (1934); *United States v. Petty Motor Co.*, 327 U.S. 372, 377-378 (1946).

land acquisitions by both direct purchase and condemnation,³ only estimates of market value are applicable to federal land acquisitions. Absent legislative mandate, any other type of value estimate is unacceptable for Federal land acquisition purposes.

HIGHEST AND BEST USE

Fair market value is to be determined with reference to the property's "highest and best use" - that is, the highest and most profitable use for which the property is adaptable and needed or likely to be needed in the near future.⁴

A proposed highest and best use requires a showing of a reasonable probability that the land is both physically adaptable for such use and that there is a need or demand for such use in the reasonably near future; physical adaptability alone is insufficient.⁵

Highest and best use cannot be predicated on a demand created solely by the project for which the property is taken (e.g., rock quarry, when only market is highway project for which property was taken). A proposed highest and best use cannot be the use for which the government is acquiring the property (e.g., missile test range, airfield, park), unless there is a prospect and demand for that use by others than the government.⁶

The use to which the government will put the property after it has been taken is, as a general rule, an improper highest and best use. It is the value of the land taken which is to be estimated, not the value of the land to the taker. If it is solely the government's need which creates a market for the land, this special need must be excluded from consideration by the appraiser. Only on the rare occasion that a private demand for the land exists, for the same use for which it is being acquired by the government, is it proper for the appraiser to conclude that the highest and best use of the property is that use for which it is being acquired by the government.⁷

³ *Ibid.*, p. 1.

⁴ *Ibid.*, §A-3, p. 8, citing *Olson v. United States*, 292 U.S. 246, 255 (1934).

⁵ *Ibid.*, p.9, citing *Olson, supra*, 292 U.S. at 256; *United States v. 341.45 Acres of Land*, 633 F.2d 108, 111 (8th Cir. 1980), cert. denied, 451 U.S. 938 (1981).

⁶ *Ibid.*, pp. 9-10 (citations omitted).

⁷ *Ibid.*, §B-1 14, pp. 73-74.

From the above it is clear that highest and best use, as used in the *Uniform Appraisal Standards for Federal Land Acquisitions*, is to be estimated in economic terms. Implied in the forgoing is that highest and best use is an economic concept, not a social concept. This position is supported by modern appraisal textbooks.

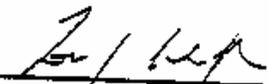
Therefore, the analysis and interpretation of highest and best use is an *economic* study of market forces focused on the subject property.⁸ The benefit a real estate development (or non-development in the case of preservation) produces for a community or the amenity contribution provided by a planned project (*i.e.*, the public space in a park-like area) are not considered in the appraiser's analysis of highest and best use.⁹

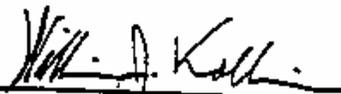
CONCLUSIONS

For the above reasons, it is the Conference's position that a non-economic highest and best use is not a proper basis for the estimate of market value and, accordingly, that a highest and best use of conservation, preservation, or other use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Such an estimate is, therefore, not in conformance with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

ADOPTED this 14th day of April, 1995.

Interagency Land Acquisition Conference

By: 
Lois J. Schiffer, Conference Chairperson

By: 
William J. Kolins, Conference Executive

⁸ *The Appraisal of Real Estate*, 10th ed., (Chicago: Appraisal Institute, 1992), 276-277 (emphasis added).

⁹ *Ibid.*, 276, fn. 1.

Ted Strickland, Governor
Sean D. Logan, Director

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