

# U.S. GRANT ADMINISTRATION STANDARDS

## North American Wetlands Conservation Act

and

## Neotropical Migratory Birds Conservation Act

**September 2010**

**PAPERWORK REDUCTION ACT STATEMENT:** In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), please note the following. This information collection is authorized by the North American Wetlands Conservation Act of 1989 (NAWCA), as amended (16 U.S.C. 4401 et seq.) , and the Neotropical Migratory Bird Conservation Act (NMBCA) (16 U.S.C. 6101 et seq.). Your response is required to obtain or retain a benefit in the form of a grant. Our estimates of the amount of time it will take to complete an application and report for each of the grant programs in this collection are shown below. These estimates include time to review instructions, gather and maintain data, and complete and review the proposal or report.

| GRANT PROGRAM          | COMPLETION TIME – APPLICATION | COMPLETION TIME – REPORT |
|------------------------|-------------------------------|--------------------------|
| U.S. Small Grants      | 58 hours                      | 33 hours                 |
| U.S. Standard Grants   | 215 hours                     | 43 hours                 |
| Canada Standard Grants | 80 hours                      | 43 hours                 |
| Mexico Standard Grants | 80 hours                      | 43 hours                 |
| NMBCA Grants           | 62 hours                      | 42 hours                 |

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**A. APPLICABILITY AND AUTHORITIES**

A-1 To what do these Standards apply?

These Standards apply to any project that;

(a) is granted Federal financial assistance approved under the authority of the North American Wetlands Conservation Act (NAWCA) or the Neotropical Migratory Bird Conservation Act (NMBCA); and

(b) occurs on lands or waters under the jurisdiction of the United States of America.

A-2 What laws and regulations govern a North American Wetlands Conservation Act (NAWCA) or a Neotropical Migratory Bird Conservation Act (NMBCA) grant?

The authority for the North American Wetlands Conservation Act grant program is 16 USC 4401 et seq., as amended. The authority for the Neotropical Migratory Bird Conservation Act grant program is 16 USC 6101 et seq., as amended. General provisions applicable to grants awarded by agencies of the U.S. Department of the Interior, including definitions of terms used in this document, are in Title 43, Part 12, of the Code of Federal Regulations (CFR). General Provisions applicable to the acquisition of real property under a Federal grant, including definitions of terms used in this document, are in 49 CFR, Part 24. The actual laws and regulations take precedence over any restatement, summary, or interpretation of the same in this document.

**B. GRANT AGREEMENT**

B-1 What constitutes a Grant Agreement?

The Grant Agreement consists of a signed Assistance Award with incorporated provisions, these Standards, the Proposal and any approved amendments, and Recipient's signed Standard Form 424 (SF-424), including required Certifications and Assurances.

B-2 What Certifications and Assurances are required?

The SF-424D Assurances for Construction Projects are required for all NAWCA projects. The SF-424D Assurances for Construction Projects are required for all NMBCA projects involving acquisition, restoration or enhancement of habitat. For all other NMBCA activities the SF-424B Assurances for Non-Construction Projects are required.

By accepting the Assistance Award, the Recipient agrees to Certifications regarding Proposal Submission, Conflict of Interest, Debarment, Suspension, and other Responsibility Matters, Lobbying, and Drug-Free Workplace, as explained in Appendix A of these Standards.

B-3 At what point has the Recipient entered into a binding agreement?

The Recipient agrees to terms and conditions of the grant by signing the SF-424 and required Assurances, and enters a binding agreement by receiving Federal funds through the electronic funds transfer process.

B-4 Who has the authority to terminate the Grant Agreement?

The Recipient may decline the award or request a delay of the execution date by written notice to the U.S. Fish and Wildlife Service (FWS) Grant Officer within 10 business days of receipt of the award. FWS may terminate the award in whole or in part if a Recipient materially fails to comply with the terms and conditions of an award. The FWS may also terminate this award with the consent of the Recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Recipient may terminate the award upon sending to FWS written notification setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if FWS determines in the case of partial termination that the reduced or modified portion of the Grant Agreement will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety. In any partial termination of an award, FWS must consider the Recipient's responsibilities for property management (if any) and to submit financial, performance, and other reports required by this document.

**C. REPORTS AND OTHER DOCUMENTATION**

C-1 What reports and other documents are required before the Grant Agreement is executed?

(a) Documentation of compliance with 36 CFR, Part 800, which implements the National Historic Preservation Act (NHPA), for all project activities. (See Section D-9 regarding documentation for certain matching in kind contributions, or "old match" allowable only in NAWCA projects.)

(b) FWS documentation demonstrating compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act for all project activities.

(c) For NAWCA projects, the Secretary of the Interior (or his or her designee) must make a finding that the real property interests should not be included in the National Wildlife Refuge System. The Recipient must obtain an additional such finding if a tract not included in the Proposal is targeted for acquisition.

(d) Documentation from FWS Regional Offices or field stations demonstrating that contaminants will not preclude the incorporation of those lands acquired in the project into the National Wildlife Refuge System (applicable only if such lands will be acquired in the project).

C-2 What reports and other documentation does the Recipient have to provide during the funding period?

(a) Annual performance reports must be received by the Grant Officer within 90 days after the end of each full year of the funding period.

(b) Annual financial status must be reported on Standard Form 425 (SF 425) and be received by the Grant Officer within 90 days after the end of each full year of the funding period. The first annual financial report must include all project-related financial activity from the date the Proposal was received by FWS to one year after the signature date on the Assistance Award, and should include the value of in-kind match contributed prior to the Proposal date. If a separate subaward is issued by FWS Division of Bird Habitat Conservation (DBHC) for the project, the subrecipient must submit a separate SF 425 reporting only their grant fund expenditures.

(c) Real property acquisition documentation must be submitted with Annual or Final Reports for any transactions completed during the reporting period.

(d) If the Recipient chooses the ability to receive advance payment of Federal funds through the electronic funds transfer process, quarterly financial reports are required during the entire project period, regardless of Federal payments received during the reporting quarter and length of project period overlap with that quarter. Through September 2011, Federal Cash Transactions must be reported quarterly on Form 425 through SMARTLINK. After September 2011, quarterly Federal Cash Transactions reports must be submitted on SF 425 to DBHC. If the recipient chooses to receive reimbursements only, no quarterly report is required.

(e) Recipients of awards that include any funds obligated on or after October 1, 2010, are required to report subaward and subcontract information under the Federal Funding Accountability and Transparency Act (FFATA) if the Federal award amount is equal to or over \$25,000 at any time during the project period.

Recipients must report the following information related to each subaward and subcontract:

- (1) name of the entity receiving the award/contract;
- (2) amount of the award/contract;
- (3) information on the award/contract including transaction type, funding agency, Catalog of Federal Domestic Assistance number, program source, and award/contract title descriptive of the purpose of each funding action;
- (4) location of the entity receiving the award/contract and primary location of performance under the award/contract, including city, State, congressional district, and country;
- (5) unique identifier of the entity receiving the award/contract and the parent entity of the recipient, should the entity be owned by another entity; and
- (6) names and total compensation of the five most highly compensated officers of the entity if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1).

Recipients must report subaward/subcontract information by the end of the month after the subaward/subcontract was made. For example, if a subaward was made on December 18, the information must be entered by January 31.

C-3 What information must the Recipient include in an annual performance report?

(a) A comparison of cumulative actual accomplishments with proposed objectives, for both grant and match-funded activities. The comparison should include a listing of the objectives and description of the extent of accomplishment for each objective. If DBHC has issued a subaward

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for the project, the accomplishments of the subrecipient should be included in the performance report that is submitted by the Recipient.

(b) A budget table comparing proposed and cumulative actual grant and match expenditures by partner.

(c) For Standard Grant NAWCA projects only, a comparison of the acres achieved compared with the acres described by category in the responses to Technical Assessment Questions 4 and 5 of the Proposal, and an explanation of any differences.

C-4 What reports and other documentation must the Recipient provide at the end of the funding period?

(a) A final performance report must be received by the Grant Officer within 90 days of the end of the funding period.

(b) A final financial status report on Standard Form 425 must be received by the Grant Officer within 90 days of the end of the funding period.

(c) Complete shapefiles in geospatial vector data format for geographic information systems software (GIS) that describe all interests in real property that the Recipient or match provider purchased, restored, enhanced, or created with grant or matching dollars or accepted as in-kind matching contributions as part of the project. A Recipient that does not have access to GIS software may create digital project area maps using the FWS NAWCA on-line mapping tool.

(d) Real property acquisition documentation not already provided with annual reports.

(e) An inventory of all equipment acquired by the Recipient with Federal funds.

(f) An inventory of unused supplies if the total aggregate value upon completion of the project exceeds \$5,000.

C-5 What information must be included in a final performance report?

The final report must include all of the information required in the annual performance report and cover the entire project period (including old match in NAWCA projects). In addition, for Standard Grant NAWCA projects only, the report must include the tract table as presented in the Proposal (or as amended) with proposed and actual acreage accomplishments, and an explanation of any substitutions or differences. The tract table must include latitude and longitude (lat/long) information for properties involved in the project. The coordinates should be taken at the primary entrance to the property using NAD 83 datum, and reported in decimal degree or degree-minute-second format.

C-6 May reporting deadlines be extended?

Annual and final report deadlines may be extended for up to 30 days if a written request is made by the Recipient before the deadline and approved in writing by the Grant Officer and DBHC Branch Chief. Extension of the deadline for a final report does not automatically extend the liquidation period at the end of the project period.

C-7 What documentation must be available for FWS monitoring?



The Recipient must have access to thorough records of all grant and match expenditures and supporting documentation for those expenditures. Recipient must also have access to complete records substantiating compliance with any applicable Federal or program level financial, administrative, and property requirements. These records must be made available for review if requested by FWS. See J-4 for additional information regarding responsibilities when monitored.

C-8 How long must project records be retained?

All project records must be retained for at least 3 years from FWS receipt of a complete final report and all required supporting documentation.

**D. FINANCIAL ADMINISTRATION**

D-1 What is the funding period?

The funding period will be designated in the Agreement and last no more than two years unless it is extended. The terms “grant period” and “project period” are considered synonyms for the funding period.

D-2 May the Recipient or subrecipient incur pre-agreement costs before the funding period?

FWS authorizes pre-agreement costs only if such costs:

- (a) do not exceed the amount of the grant funds as awarded in the Agreement;
- (b) are necessary to accomplish the objectives of the project by the end of the funding period;
- (c) fund activities listed in the Proposal for accomplishment with grant funds;
- (d) have not been incurred before the date that FWS receives the Proposal from the Recipient (see Section F-2 for costs incurred in purchase of real property); and
- (e) are allowable to the extent that they would have been allowed if they had been incurred during the funding period.

By definition, pre-agreement costs occur before a signed Grant Agreement, and therefore they are incurred at the applicant’s risk. Upon completion of a signed Grant Agreement, this section constitutes prior written approval for any pre-agreement cost that qualifies under its provisions.

D-3 When must grant funds and matching contributions be obligated?

Grant funds and matching contributions must be obligated during the funding period, except an eligible pre-agreement cost which may be obligated prior to the funding period. A Recipient or subrecipient obligates funds (i.e., incurs costs) on the earlier of placing an order, signing a contract, receiving goods or services, or carrying out similar transactions during a given period that will require payment during the same or a future period (not to exceed ninety days after the funding period). For acquisitions of a real property interest, funds are considered obligated when costs are incurred at the time of closing/property settlement, and title is taken. All matching cash and eligible in-kind contributions must be obligated for the authorized purpose of the project by the end of the funding period.

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- D-4 Does the Recipient or subrecipient have to complete all the work on the project during the funding period?

All obligations must be made and work must be accomplished during the funding period, although cash does not necessarily have to be disbursed by the end of that time period. The Recipient must liquidate all obligations and ensure that the Grant Officer receives a final report no later than 90 days after the end of the funding period.

- D-5 Is the use of matching contributions subject to the same requirements as the use of grant funds?

Unless otherwise specified in these Standards, both grant funds and matching contributions are considered part of the project and subject to the same requirements.

- D-6 What is allowable match for a NMBCA project in the United States?

For NMBCA project activities in the United States the matching contribution must be cash only. Cash means the Recipient or subrecipient's cash outlay, including the outlay of money contributed to the Recipient or subrecipient by third parties, to be expended after the date the Proposal is submitted, and that complies with the applicable Federal Cost Principles in 2 CFR Parts 220, 225, and 230. Matching cash must be contributed to or by a Recipient or subrecipient to accomplish the purposes of the project. If money has been used to incur costs for project purposes before the FWS receives the Proposal, it is considered in-kind rather than cash and will not be eligible as match for projects in the United States.

- D-7 If the Recipient or subrecipient generates match contributions in excess of the project's approved match-grant ratio, may this be used as match in a future grant?

For Standard Grant NAWCA projects only, match contributions in excess of the amount required according to the match-grant ratio approved in the Grant Agreement is termed excess match. Excess match may be used only in the second or third phase of a Programmatic project under the following conditions:

(a) The excess match must accomplish more acquisition, restoration, or enhancement than required by the Grant Agreement. (Spending more, but accomplishing the same as required in the Grant Agreement, does not qualify as "excess" match. Additional spending due to unique circumstances totally beyond the control of the Recipient or subrecipient, such as a natural disaster, leading to unique efforts by the Recipient or subrecipient to accomplish project objectives, may be considered on a case-by-case basis.)

(b) The excess match cannot result from cost overruns on activities required in the Grant Agreement (but see D-7(a)) or from underestimated values on properties included in the Grant Agreement; excess acreage cannot result from minor survey or rounding differences associated with tracts included in the Grant Agreement.

(c) The subsequent phase must be substantively the same project area and type as the original grant, so that if the excess match were included in the subsequent grant it would be eligible.

(d) The additional acres must be specified as "excess" in the documentation provided in reports for the original NAWCA grant.

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(e) All acres must be protected as part of the original NAWCA grant.

(f) The source and nature of the excess match must be identified in the subsequent phase of the Programmatic grant and that phase of the project must be selected for funding as part of a Programmatic project. If a subsequent project is selected for funding, but is not approved as a Programmatic addition to a previous phase, the excess match remains part of the original project and cannot be used for a separate, unrelated grant.

D-8 How old can matching in-kind contributions be?

For NAWCA projects only, match providers may acquire real property, supplies, or services, or provide the services of its own personnel for a proposed project back to the beginning of the calendar year two years before the year in which FWS receives the Proposal.

D-9 What documentation is required to ensure compliance with Section 106 of the National Historic Preservation Act for matching in-kind contributions (ineligible in NMBCA grants) acquired or performed before the FWS receives a NAWCA proposal?

No advance documentation for Section 106 of the National Historic Preservation Act, as implemented in 36 CFR, Part 800, is required for matching in-kind contributions acquired or performed before the FWS receives a NAWCA proposal. However, if the Recipient or subrecipient or match provider has disturbed or allowed the disturbance of a site that is subject to NHPA, the FWS may disallow the use of that property in a NAWCA project or require the Recipient to take other steps as appropriate to ameliorate the disturbance.

D-10 Are acquisition costs that are incurred before the FWS receives the Proposal and used as matching in-kind contributions (ineligible in NMBCA grants) subject to the relocation assistance and real property acquisition requirements of 49 CFR, Part 24?

Acquisition costs of matching in-kind contributions incurred before the FWS receives a NAWCA proposal are not subject to the relocation assistance and real property acquisition requirements of 49 CFR, Part 24. However, costs for such matching property must still be allowable, reasonable, and allocable, as required by 43 CFR, Part 12.

D-11 What constitutes satisfactory compliance with matching commitments?

At the end of the funding period, the matching contributions must at least equal the amount committed to by the Recipient in the Grant Agreement.

D-12 Who may contribute matching cash or, for NAWCA only, in-kind contributions to a project?

All Recipients and their partners may contribute matching cash or, for NAWCA only, in-kind contributions. Unless clearly identified as 'non-Federal' in Federal statute or other Federal legal authority, funding that originates from a Federal source is considered non-match, even if it has been awarded to or passed-through another entity.

D-13 What is program income?

Program income is income directly generated by any project activity, or earned only as a result of the Grant Agreement during the funding period. By definition, program income is that income received by the grant Recipient itself, if the grant Recipient is an institution of higher education,

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hospital, or other non-profit organization (43 CFR 12.902); or received by the Recipient or subrecipient if it is a state or local government (43 CFR 12.65(b)).

D-14 Should “net” or “gross” income be used when calculating and reporting program income?

Either “net” or “gross” program income can be calculated and reported. If the Recipient chooses, and if authorized by FWS, “net” program income may be determined by deducting the costs necessary for the generation of program income from the gross program income, provided these costs have not been charged to the award (43 CFR 12.65(c), 43 CFR 12.924(f)). It is the Recipient’s responsibility to identify these costs and how they are calculated. Total or “gross” program income can be reported without additional calculations.

D-15 How may the Recipient use program income?

Federal regulations identify three ways to use program income: deduction, addition, and cost sharing or matching (43 CFR 12.65(g), 12.924(b)).

(a) Unless otherwise specified, the Recipient must use the deductive method (subtracting the program income from the amount awarded).

(b) If the Recipient desires, the Service will authorize the Recipient to use the additive method (adding the program income to the funds committed to the Grant Agreement). The program income must be used for the purposes and under the conditions of the Grant Agreement.

(c) DBHC will not authorize use of program income for cost sharing or matching purposes.

D-16 How is income generated outside the funding period handled?

Income generated by the Recipient outside of the funding period shall be retained by the Recipient. FWS encourages Recipients to use generated funds to support wetland conservation purposes consistent with the NAWCA program or to support neotropical migratory bird conservation consistent with the NMBCA program.

D-17 What can the Recipient or subrecipient acquire using grant funds?

Grant funds may be used to acquire those things that are necessary for the purpose described in the Grant Agreement and that are reasonable, allowable, and allocable as explained in the Cost Principles and NAWCA or NMBCA application instructions.

D-18 If a project involves easement acquisition during the project period, is FWS approval required before grant funds may be drawn?

FWS must approve in writing the language of a conservation easement before grant funds may be used for its purchase or associated match funds may be applied to the project. Executed or negotiated draft easements that were reviewed and accepted during the proposal review process are considered approved and do not require additional approval unless modified. Template easements submitted with proposals are not considered approved. Recipients must obtain additional approval for any changes to previously approved language in an easement. Easements without FWS approval may be disallowed as grant or match activities.

D-19 Are indirect costs, facilities costs, and direct overhead and administrative costs allowable?

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These costs are allowable for both grant funds and matching funds. These costs must be calculated by an acceptable method including negotiated indirect cost rate, directly charged administrative costs, or direct allocation method.

D-20 What is required for the Recipient to receive Federal funds?

(a) In order to receive Federal funds, the Recipient must register with the Federal Central Contractor Registration at <https://www.bpn.gov/ccr/default.aspx>. Recipients must maintain their registration annually.

(b) Through September 2011, the Recipient's financial institution must be able to receive Federal funds through the electronic funds transfer process and request advance payment and reimbursement through SMARTLINK, an electronic funds transfer system that is administered by the U.S. Department of Health and Human Services Division of Payment Management. After September 2011, all Recipients must transfer to the Automated Standard Application for Payments system that is administered by the U.S. Department of the Treasury.

D-21 What funds must be spent before the Recipient may draw down grant funds?

The following forms of funds must be spent before drawing down grant funds: program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds.

D-22 Must the Recipient deposit Federal cash advances in interest-bearing accounts separate from other funds?

The Recipient must deposit Federal cash advances in interest bearing accounts unless (a), (b), or (c) apply:

(a) The Recipient receives less than \$120,000 in Federal assistance awards per year.

(b) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year.

(c) The depository would require an average or minimum balance so high that it would not be feasible with the expected Federal and non-Federal cash resources.

These requirements may not apply to States, State universities and hospitals, federally recognized Tribes, and local governments.

When depositing Federal cash advances in an interest-bearing account, separate depository accounts are not required, but Recipients must be able to account for the receipt, obligation, expenditure of and interest on the funds.

D-23 May the Recipient keep the interest earned on Federal cash advances?

The Recipient's status determines whether or not earned interest may be kept. For this purpose, a Recipient's belongs in one of three categories: State, Tribal or local government, and all others.

(a) States are not required to deposit Federal cash advances in an interest-bearing account. States that are not subject to a Treasury-State agreement have no interest liability to the Federal

government whether or not they earn interest on Federal cash advances. However, if a Treasury-State agreement is in place, States incur an interest liability from the day Federal funds are credited to the account to the day funds are disbursed for the project or credited to a Federal Government account as a refund, whether or not they deposit their Federal grant funds in interest-bearing accounts.

(b) Federally-recognized Tribal Recipients and local government Recipients are not required to deposit Federal cash advances in an interest-bearing account. They may retain interest amounts up to \$100 per year for administrative expenses, if they do deposit funds in an interest bearing account. Interest on Federal cash advances above \$100 must be remitted promptly, but at least quarterly, to the FWS.

(c) All others may retain up to \$250 of interest earned annually on Federal cash advances. The amount retained may be used for administrative expenses.

D-24 How long does a Recipient have to disburse or refund money obtained as a Federal cash advance?

(a) When Federal cash advances are made by electronic transfer of funds methods, the Recipient must draw down grant funds as close as possible to the time of making disbursements. The only exceptions are when the funds involved will be disbursed by the Recipient within seven calendar days, or are less than \$10,000 and will be disbursed within 30 calendar days.

(b) If a Recipient draws down funds but is unable to disburse them as required in D-24(a), the Recipient must return those funds to FWS as soon as possible.

## **E. EQUIPMENT AND SUPPLIES**

E-1 May the Recipient or subrecipient purchase and manage equipment with grant or match funds?

Yes, the Recipient or subrecipient may purchase and manage equipment acquired under a Grant Agreement in accordance with the applicable cost principles. Title to all equipment acquired for the project will vest in the Recipient or subrecipient.

The Recipient or subrecipient may use the equipment acquired for the project as long as needed whether or not the project continues to be supported by Federal funds. While the equipment is used for the project, the Recipient or subrecipient must make it available for use on other projects or programs currently or previously supported by the Federal government if such other use will not interfere with the work on the project for which the equipment was originally acquired.

E-2 May the Recipient or subrecipient replace and dispose of equipment obtained with grant funds?

The rules for replacing or disposing equipment obtained with grant funds vary according to Recipient or subrecipient status. A State may replace and dispose of equipment acquired under a Grant Agreement as required by its own laws and procedures. For all others, when original or replacement equipment acquired with grant funds is no longer needed for the original project or for other activities currently or previously supported by a Federal agency, equipment disposition will be as follows:

(a) Equipment with a current market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the FWS.

(b) Equipment with a current market value in excess of \$5,000 may be retained or sold and the FWS will have a right to an amount calculated by applying the percentage of Federal participation in the cost of the original project to the current market value of the equipment.

(c) In cases where a Recipient or subrecipient fails to take appropriate disposition actions, the FWS may direct the Recipient or subrecipient regarding required actions. In such cases, the FWS reserves the right to transfer title to the Federal Government or a third party of its choosing, when such a third party is otherwise eligible under existing statutes.

E-3 How often must the Recipient or subrecipient inventory equipment?

A State may inventory equipment acquired under a grant according to its own laws and procedures. Every other Recipient or subrecipient must take a physical inventory of equipment acquired with grant or match funds or received as a matching in-kind contribution immediately prior to submitting the final performance report and at least once every two years thereafter.

E-4 May the Recipient or subrecipient dispose of supplies and other expendable property purchased with grant or matching funds?

If the residual inventory of unused supplies is worth less than \$5000, these items belong to the Recipient or subrecipient who may chose how to dispose of them. However, at the termination or completion of the project, if there is a residual inventory of unused supplies which in aggregate is worth \$5,000 or more, and is not needed for any other federally sponsored project or program, the Recipient or subrecipient may either retain the supplies or sell them, but in either case must compensate the Federal government for its share.

## **F. REAL PROPERTY ACQUISITION**

F-1 What real property acquisition costs may be paid with grant or matching funds?

Federal grant or matching funds may be used to pay for the following costs of acquiring real property:

(a) the market value of the interest in real property;

(b) real property valuation, appraisals, appraisal reviews, and relocation expenses (if qualified and required under 49 CFR, part 24);

(c) title insurance (types and extent of coverage must be in accordance with sound business practice and the rates and premiums must be reasonable under the circumstances);

(d) costs of compliance with the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act;

(e) recording 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 Recipient or subrecipient (the Recipient or subrecipient is not required to pay costs solely required to perfect the owner's title to the real property);

(f) penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(g) the pro-rata portion of any prepaid real property taxes which are allocable to the period after the grant Recipient or subrecipient obtains title to the property or effective possession of it, whichever is earlier (taxes for which exemptions are available are unallowable).

F-2 When does the Recipient or subrecipient incur the costs of acquiring real property?

Costs are incurred at the time of transfer of title. The grantee's contractual obligation to purchase real property does not constitute a cost incurred by the Federal government. A contractual obligation to purchase real property (purchase agreement, etc.) may be made at any time and, as long as title is transferred after the Proposal is received by the FWS, the costs associated with the purchase can be reimbursed with grant funds. However, if title is transferred before the FWS received the Proposal, costs associated with the purchase may only be used as match, and can not be reimbursed with grant funds. Any obligation to purchase property before Federal grant funds are obligated is made at the Recipient or subrecipient's risk. No matter when an obligation is signed, all purchases of real property must comply with all applicable Federal regulations, including but not limited to requirements specified in this section (F).

F-3 Must conservation easements be approved by FWS before finalization and acquisition?

FWS must approve in writing the language of a conservation easement before grant funds may be used for its purchase or associated match funds may be applied to the project. Executed or negotiated draft easements that were reviewed and accepted during the proposal review process are considered approved and do not require additional approval unless modified. Template easements submitted with proposals are not considered approved. Recipients must obtain additional approval for any changes to previously approved language in an easement. Easements without FWS approval may be disallowed as grant or match activities.

F-4 May condemnation proceedings be used to purchase lands in NAWCA or NMBCA projects?

All real property interests acquired as part of a NAWCA or NMBCA project, whether funded by grant funds or as match, must be from willing sellers. Condemnation proceedings may be used only when necessary to assist in determining the legal owner.

F-5 What notice must be provided to a seller?

Prior to making an offer for the property, the buyer must inform the seller that the buyer will be unable to acquire the property in the event negotiations fail to result in an amicable agreement (i.e., that the buyer does not have condemnation or eminent domain authority), and must inform the seller what the buyer believes to be the market value of the property.

If the buyer is an agency that has eminent domain authority, but the acquisition is voluntary, then two additional assurances must be included in the notice: (1) no specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area (where an agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly); and (2) the property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

This requirement does not apply to matching real property acquired prior to the receipt of the Proposal by the FWS (ineligible for NMBCA).



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F-6 What if the Recipient or subrecipient fails to provide the required notice?

If the seller is not notified as required in Section F-5 above, the buyer must:

- (a) pay any relocation benefits for which the landowner is eligible,
- (b) pay any qualifying expenses incidental to transfer, and
- (c) comply with all other provisions of 49 CFR, part 24, that apply.

This requirement does not apply to matching real property acquired prior to the receipt of the Proposal by the FWS (ineligible for NMBCA).

F-7 Are appraisals required?

Appraisals are required unless one of the following exceptions apply: (1) the market value is estimated to be less than \$10,000, and appropriate documentation is provided showing that this valuation is reasonable and uncomplicated; or (2) there is an alternative valuation formula authorized by Federal law, regulation, or FWS policy, as for specific categories of properties. An approved alternative valuation process is currently applicable to FWS grassland and wetland easements in the prairie pothole region of the United States.

If the buyer obtains an appraisal even though the market value is \$10,000 or less, it must be used as the sole determinant of market value unless the Recipient or subrecipient can conclusively demonstrate that it is not accurate. Whatever method is used to determine value, the valuation must be certified by the Recipient or subrecipient. The Grant Officer may require the Recipient or subrecipient to submit additional documentation if he or she finds any informal determination of market value to be insufficient or if the Grant Officer does not concur with the analysis and conclusions.

Regardless of the method of real property valuation, the date of the valuation must be within 12 months of the buyer's contractual obligation to purchase property or of the title transfer, whichever establishes the purchase price. The FWS may require the Recipient or subrecipient to secure an updated valuation if a material change occurs in the local real estate market, the character or condition of the property, or its surroundings between the effective date of the valuation and the date of the transfer of title to the Recipient or subrecipient.

F-8 What constitutes an acceptable appraisal?

Any appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and be completed by a state-certified appraiser. The appraisal must provide valuation of the specific interests being included in the project.

F-9 Must appraisals be reviewed?

Recipients or subrecipients must have each appraisal reviewed by a state-certified review appraiser. FWS reserves the right to have any appraisal additionally reviewed for federally assisted land acquisition.

F-10 Must the Recipient or subrecipient pay market value for real property?

The Recipient or subrecipient must pay at least market value for any real property interest, unless the Recipient or subrecipient provides documentation of a bargain sale with a signed statement from the seller that donates or willingly forgoes any difference between the market value and the selling price.

In order to claim the difference between the sale price and market value as match, the seller must explicitly donate the value to the project or the partner (willing seller notice alone is insufficient). If the Recipient pays more than the market value, the excess amount may not be paid with grant funds or used as match.

F-11 May the Recipient or subrecipient purchase real property subject to leases or occupied by tenants?

The Recipient or subrecipient may purchase real property subject to leases or occupied by tenants. Other than matching real property acquired prior to the receipt of the Proposal by the FWS (ineligible for NMBCA), however, such purchases are subject to relocation assistance requirements as described in 49 CFR, Part 24. The relocation assistance requirements apply only to tenants that must move as a result of the acquisition, unless the Recipient or subrecipient fails to meet the requirements in Section F-5.

F-12 Do relocation requirements apply if the price is set before the FWS receives the Proposal, but the title is transferred after the FWS receives the Proposal?

The relocation requirements of 49 CFR, Part 24, apply to any transfers of title that are completed after the Proposal is received by FWS, regardless of when the price associated with the transfer is established.

F-13 What documents must be submitted when acquiring an interest in real property?

The Recipient or subrecipient must submit the following documents for each interest in real property purchased with grant or match funds, or provided as a matching in-kind contribution:

(a) appropriate evidence of valuation of real property. If an appraisal is used, send the appraiser's signed certification and the appraisal summary, and the signed summary and certification pages of an appraisal review;

(b) documentation that the seller has been informed that the buyer will be unable to acquire the property in the event negotiations fail to result in an amicable agreement (i.e., that the buyer does not have condemnation or eminent domain authority), and informs the seller of what the buyer believes to be the market value of the property;

(c) documentation of a bargain sale through a signed statement from a seller that donates or willingly forgoes any difference between the market value and the selling price, if the sale price is below market value;

(d) a copy of the closing statement (also called the settlement statement or adjustment sheet) or other evidence of funds transferred;

(e) a copy of any deed, easement, or assignment of lease that transfers ownership to the Recipient or subrecipient or match provider, as well as any subsequent owner as provided in the Grant Agreement (copies must demonstrate that the documents were recorded);

(f) either (1) a statement certifying that the real property acquired had no tenants, or (2) a copy of a notice of relocation eligibility as required in 49 CFR 24.203 and a statement certifying that the Recipient or subrecipient provided tenants with relocation assistance advice and relocation assistance as required in 49 CFR, part 24, with an itemized breakdown of any relocation payments made to the tenant; and

(g) copies of recorded Notices of Grant Requirements (NOGR) for all interests in real property acquired for the project including those interests received as matching in-kind contributions. If the required language of a NOGR is included in the deed, easement, lease or other recorded conveyance document for a specific interest in real property, such language may substitute for a Notice of Grant Requirements.

Items (b) and (f) do not apply to matching real property acquired prior to the receipt of the Proposal by the FWS (ineligible for NMBCA).

F-14 What recorded notices are required for real property included in a project?

The Recipient or subrecipient must ensure that Notices of Grant Requirements are recorded for all interests in real property acquired in perpetuity or for terms longer than 10 years unless equivalent provisions were entered in the deed, easement, or assignment of lease. The NOGR must include all of the following elements:

(a) identification of the legal interest being encumbered;

(b) name of the FWS grant program (NAWCA or NMBCA), name and number of FWS Grant Agreement, and locations where copies of the Agreement are stored;

(c) summary of the project purpose as described in the Proposal;

(d) confirmation of the obligations to manage the property in accordance with the Grant Agreement and to obtain FWS consent before conveyance or encumbrance of any part of the interest included in the project.

In addition, if the real property interest is located in a county or state where encumbrances (e.g., easement) on real property automatically expire after a certain period, the NOGR must include a provision requiring re-recording of the encumbrance and/or the NOGR before the project property interests expire. A sample NOGR template is included in Appendix C.

F-15 Can the Recipient or subrecipient be reimbursed with grant funds if title is transferred before the FWS receives the Proposal?

The FWS will not reimburse the Recipient or subrecipient for the purchase of real property if title is transferred before the FWS receives the Proposal. At its own risk, however, the Recipient or subrecipient may contractually commit to purchasing property before the FWS receives the Proposal, and be reimbursed by grant funds after the Grant Agreement is signed.

F-16 Must the Recipient or subrecipient record deeds, leases, easements or other conveyance documents?

Regardless of whether it is required by the applicable State, the Recipient or subrecipient must ensure that all deeds, easements with a term 10 years or longer, and assignments of leases with a term 10 years or longer are recorded with reference to a deed or other real-property-conveyance instrument in the county, parish, borough, or other local office that maintains the records affecting title to real property in that jurisdiction (referred to as recorder's office, registrar of deeds office, commissioner of deeds office, bureau of conveyances, or similar title).

F-17 Can the Recipient or subrecipient obtain a waiver of these land acquisition requirements?

Subject to the specific conditions defined in 49 CFR, Part 24, in extreme circumstances certain real property acquisitions may be waived. These waivers will be granted on a case-by-case basis at the discretion of the Grant Officer, and will apply only to the project for which the waiver is requested.

## **G. PROPERTY MANAGEMENT**

G-1 Does the Recipient or subrecipient have continuing obligations to manage property acquired through a Grant Agreement?

A Recipient or other authorized titleholder of real property acquired through a Grant Agreement must manage any interests in real property acquired under that Agreement consistent with the project's purpose as long as the interests in real property are needed for that purpose. This is required regardless of whether the interests in real property were acquired with grant or matching funds or contributed as a matching in-kind contribution (ineligible for NMBCA).

G-2 May the Recipient or subrecipient encumber, sell, or transfer some or all of the interests in real property acquired through a Grant Agreement?

Except as specified in the Proposal, the Recipient or other authorized titleholder of interests in real property acquired with Federal grant or matching funds or as a matching in-kind contribution (ineligible for NMBCA) may not encumber, sell, or otherwise transfer the interest in real property, or any part of the same, without the approval of FWS. However, if the interest in the real property is an easement or a lease with a term that is less than perpetual, the obligation to seek FWS permission will end with the expiration of the term of the easement or lease.

G-3 For real property restored or enhanced under a Grant Agreement, how must the Recipient or subrecipient manage the property?

The Recipient or other authorized titleholder must manage restored or enhanced real property consistent with the purpose authorized by the Grant Agreement. This requirement pertains to all interests in real property that were restored or enhanced with Federal grant or matching funds or received as match (NAWCA only). The Recipient or other authorized titleholder may propose that the interest in real property is no longer needed for the project's authorized purpose. However, the Recipient or other authorized titleholder is prohibited from managing the property in a manner that interferes with the authorized project purpose unless it obtains written permission to do so from the FWS.

G-4 How long must the Recipient or subrecipient manage restored or enhanced real property for the project purposes?

The Recipient or authorized titleholder must manage restored or enhanced real property for the time period the Proposal identifies for project benefits (for NAWCA, the described contributions to long-term conservation of wetlands and associated habitats). If no time period was specified in the Proposal, the Recipient or authorized titleholder must manage the property for 25 years from the date that the Grant Officer receives acceptable final performance and financial reports. This period may be shorter than 25 years if limited by easements, leases, or other special considerations approved by the Grant Officer. During the required management period, a Recipient must ensure that the real property is available for site-inspection by the FWS or its designee to ensure that it is managed consistent with the authorized project purposes.

## **H. MODIFICATIONS**

H-1 Must the Recipient or subrecipient receive prior approval to depart from what is specified in the Grant Agreement?

The Recipient or subrecipient must obtain the prior written approval of the Grant Officer in any of the following situations:

- (a) changes in the purpose and scope of the project;
- (b) any extension of the funding period after the first extension (first extensions require only written notification to the Grant Officer at least 10 days in advance with the supporting reasons and a revised expiration date no more than 12 months in the future);
- (c) additions to, deletions from, or substitutions for the specific sites targeted for acquisition, habitat restoration, habitat enhancement, or habitat establishment unless the Proposal was approved without such sites being designated;
- (d) initial identification of the specific sites which will be acquired, restored, enhanced, or established where such parcels or interests were not identified in the Proposal;
- (e) changes to the boundaries of the area within which sites will be selected for acquisition, restoration, enhancement, or establishment (project area);
- (f) any change in the restoration, enhancement, or wetland establishment techniques or specifications (e.g., the species or the number of seedlings to be planted);
- (g) changes in the proposed titleholder of any interests in real property purchased, donated (NAWCA only), or otherwise acquired for the project;
- (h) any decrease in the number of acres acquired, restored, enhanced or established as described in the Grant Agreement, other than de minimis changes due to survey error;
- (i) any decrease in the number of years of benefit to acres acquired, restored, enhanced or established as described in the Grant Agreement;
- (j) any decrease in the total amount of matching contributions committed to the project;
- (k) the inclusion of costs that require prior approval in accordance with the applicable Federal Cost Principles;

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(l) the transfer of funds from a direct cost category to indirect costs or the transfer of funds from construction to non-construction, or vice versa; or

(m) addition of match partners to the project.

H-2 May the Recipient extend the funding period?

(a) Any Recipient may receive an initial extension of the expiration date of the award of up to 12 months unless one of the following conditions apply:

(1) The terms and conditions of Grant Agreement prohibit the extension;

(2) The extension requires additional Federal funds; or

(3) The extension involves any change in the purpose or scope of the project.

Extensions may not be exercised merely for the purpose of using unobligated balances that are not necessary for the completion of the project.

(b) A Recipient may be given an additional extension of up to 12 months only if sufficiently compelling reasons are provided. In general, rationale for any extension must include confirmation that the project will still succeed, that the to-date failure is no fault of the Recipient, and that the extension will result in a benefit to the federal government.

H-3 How does the Recipient obtain an extension?

In order to obtain an extension, the Recipient must notify the Grant Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the Grant Agreement.

## **I. NONCOMPLIANCE**

I-1 What constitutes noncompliance with the Grant Agreement?

Any instance of a failure to comply with one or more of the terms and conditions of the Grant Agreement, including any approved modification of the Grant Agreement, constitutes noncompliance.

I-2 What considerations are used to evaluate noncompliance with the Grant Agreement?

Before determining the consequences, an instance of noncompliance will be evaluated by the Grant Officer based on the following considerations:

(a) whether the noncompliance is deemed to be intentional or repeated;

(b) the impact on natural resources;

(c) the impact on the project and associated Federally-assisted projects;

(d) the impact on project partners;

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- (e) the impact on the buyers or sellers of real property interests that are part of, or affected by, the project;
- (f) the need for immediate action to protect the public's interest;
- (g) the harm or benefit to the Federal government; and
- (h) whether there are mitigating factors.

I-3 What are the potential consequences of noncompliance with the Grant Agreement?

After having taken into account the considerations described in Section I-2, the Grant Officer may apply one or more of the following remedies as a consequence of noncompliance with the Grant Agreement:

- (a) temporarily withhold cash payments pending correction of the noncompliance;
- (b) disallow (that is, deny both use of grant funds and any applicable matching credit for) all or part of the cost of the project not in compliance;
- (c) wholly or partly suspend or terminate the current Grant Agreement;
- (d) reduce the federal share of costs after the final reports are received;
- (e) withhold further Grant Agreements for the project or Recipient;
- (f) place the Recipient on a list of recipients that did not fulfill the commitments of a NAWCA or NMBCA Grant Agreement;
- (g) impose special administrative conditions during the funding period;
- (h) take other remedies that may be legally available; or
- (i) initiate procedures for suspension or debarment of a Recipient or subrecipient from Federal financial and non-financial assistance and benefits.

I-4 What are the grounds for imposition of special administrative conditions during the funding period?

Special administrative conditions during the funding period may be imposed by the Grant Officer if the Recipient meets one or more of the following criteria:

- (a) has a history of unsatisfactory performance;
- (b) is not financially stable;
- (c) has a management system that does not meet the standards prescribed in 43 CFR, part 12;
- (d) has failed to comply with the terms and conditions of a previous Grant Agreement;
- (e) is in noncompliance with the terms of the current Grant Agreement; or

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(f) is not otherwise responsible.

I-5 What special administrative conditions may be imposed during the funding period?

If appropriate grounds exist to impose special administration conditions during the funding period, the Grant Officer may apply any of the following conditions:

- (a) allow only reimbursement of funds (allow no funds to be advanced);
- (b) withhold authority to proceed to the next phase of the project until receipt of evidence of acceptable performance within a given funding period;
- (c) require additional or more detailed financial reporting;
- (d) require additional project monitoring;
- (e) require the Recipient to obtain technical or management assistance; or
- (f) require that prior approval be obtained from the Grant Officer before implementing one of more aspects of the project or Grant Agreement.

I-6 What are the grounds for debarment and suspension of a Recipient or subrecipient from Federal financial and non-financial assistance and benefits?

Debarment or suspension may be imposed, through appropriate regulatory methods, as a consequence of any of the following circumstances:

- (a) Indictment for or conviction of, civil judgment, or other official findings for:
  - (1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
  - (2) violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
  - (3) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
  - (4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.
- (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as
  - (1) a willful failure to perform in accordance with the terms of one or more public agreements or transactions;
  - (2) a history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions;



(3) a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) a non-procurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in 43 CFR 12.215 or 43 CFR 12.220;

(3) failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor, or if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) violation of a material provision of a voluntary exclusion agreement entered into under 43 CFR 12.315 or of any settlement of a debarment or suspension action; or

(5) violation of any requirements of the drug-free workplace requirements for grants, relating to providing a drug-free workplace, as set forth in 43 CFR 12.615.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

I-7 What happens if the Recipient does not submit a Financial Status Report or a Performance Report by the due date?

Failure to submit a timely report constitutes noncompliance with the Grant Agreement and can result, after notification by FWS, in consequences described in Section I-3.

I-8 What are the penalties for an unpaid debt to the FWS?

Unless otherwise established in a Treasury-State agreement, contract, repayment agreement, or by statute, the FWS will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency, which will generally be 30 days from the date that the demand letter is mailed or hand delivered.

## **J. AUDITS AND MONITORING**

J-1 Must the Recipient or subrecipient arrange for an annual audit of project expenditures?

Recipient or subrecipients must have a single or program-specific audit if they expend \$500,000 or more in a year in Federal awards and are agencies or instrumentalities of States, Federally-recognized Tribes, or local government, or nonprofit institutions of higher education, nonprofit hospitals, or other nonprofit organizations. The audit must be conducted by an independent

auditor for that year; it must be in accordance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”; and Form SF-SAC and the Single Audit reporting package must be submitted on-line using the Federal Audit Clearinghouse’s Internet Data Entry System

J-2 May the FWS conduct its own audit of a NAWCA- or NMBCA-funded project?

The FWS, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipient or subrecipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. In the case of Recipient or subrecipients that are institutions of higher education, hospitals, and other nonprofit organizations, this right also includes timely and reasonable access to a Recipient or subrecipient’s personnel for the purpose of interview and discussion related to such documents. For all Recipient or subrecipients, the rights of access in this paragraph are not limited to the required retention period for records, but will last as long as any records on the project are retained by the Recipient or subrecipient or the FWS.

J-3 Does the FWS have the authority to inspect and monitor real property, equipment, and supplies acquired, habitat restored or enhanced, or wetlands established?

The Grant Officer and other FWS personnel may inspect and monitor real property, equipment, or supplies acquired as part of the Grant Agreement, habitat restored or enhanced under the Grant Agreement, or wetlands established through the Grant Agreement. The purpose of such inspections will be to insure that the real property, equipment, supplies, or habitat is being used or managed for the authorized purpose, and consistent with the terms, of the Grant Agreement. The rights of access to real property, equipment, or supplies acquired as part of the Grant Agreement will terminate:

- (a) once the real property, equipment, or supplies have been legally disposed of;
- (b) when the FWS has approved a request that such real property, equipment, or supplies will no longer be used for the authorized purpose of the Grant Agreement; or
- (c) when the management term as defined in the Grant Agreement expires, regarding leases, easement, restoration, enhancement, and wetland establishment actions.

J-4 Is the Recipient responsible for documenting all reported grant and match activities?

The Recipient must have access to thorough records of all project grant and match expenditures included in the final report, and supporting documentation for those expenditures. Accounting records for in-kind match must show how the value match value was derived (i.e., hours of volunteer time contributed at what rate; hours of personnel time donated at what rate, meeting space, etc.). Recipient must also have access to complete records substantiating compliance with any applicable Federal or program level financial, administrative, and property requirements. If requested by FWS, Recipient must make these records available for review.

Any grant or match activity that is not supported by adequate documentation may be disallowed by the Grant Officer.

## Appendix A

### Certifications and Assurances

Through acceptance of the Assistance Award, in addition to the assurances appended to Standard Form 424, the Recipient's Authorized Representative certifies to the best of his or her knowledge and belief that:

- A. Certification Regarding Proposal Submission The Assistance Award is for the support and stimulation of the recipient's project; that the request for financial assistance and the related proposal have not been submitted in response to a request from the Government to undertake work to support a specific Government project; and that the proposal has been prepared without the assistance and/or input of Federal personnel. However, this statement excludes the general technical assistance provided by FWS staff to all applicants and grantees as needed or requested.
- B. Certification Regarding Conflict of Interest There are no relevant facts or circumstances which could give rise to an individual or organizational conflict of interest. Such conflict of interest could involve such things as Government employees being associated with or being a member of the requesting organization and being in a position to influence the awarding of a Grant Agreement. The Recipient agrees that if an actual or potential conflict of interest is discovered, the Recipient shall make a full disclosure in writing to the Service Program Officer. This disclosure shall include a description of actions, which the Recipient has taken or proposes to take, after consultation with the Service Program Officer, to avoid, mitigate or neutralize the actual or potential conflict.
- C. Certification Regarding Debarment, Suspension, and Other Responsibility Matters (DI-2010 June 1995)
- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its principals and lower tier participants:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary or lower tier participant is unable to certify to any of the statements in this certification, such prospective participant(s) shall attach an explanation to this proposal and send it to the FWS Program Officer.
- D. Certification Regarding Lobbying (DI-2010 June 1995) [applicable if award exceeds \$100,000]
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, of an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of

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any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subjected to a civil penalty of not less than \$10,000 and not more than \$100,000.00 for each such failure.

#### E. Certification Regarding Drug-Free Workplace Requirements

(1) For Recipients other than individuals, the Recipient certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

- (i) The dangers of drug abuse in the workplace;
- (ii) The Recipient's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the recipient of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(ii), with respect to any employee who is so convicted—

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- (i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(1) For grantees who are individuals, the Recipient certifies that

(a) As a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

## Appendix B

### Definitions

These definitions are for the purpose of these Standards as applied to the NAWCA and NMBCA Grants Programs. Many of the terms are also defined in the statutes, regulations, and OMB Circulars applicable to Federal Assistance, and some of these are repeated verbatim below for convenience. Some, however, are clarified for the context of the NAWCA and NMBCA Grants Programs. Others are technical terms that are not defined in any of the applicable laws or regulations. Still others are acronyms or common words with specific meaning in the context of the Standards.

**Acquisition** means the voluntary purchase, donation, or transfer of any or all of a real property interest by means of a written deed, easement, lease assignment, or other legal instrument.

**Allocable** means capable of being distributed to a grant in accordance with the relative benefits received. It is allocable to a grant if it is treated consistently with other costs incurred for the same purpose in like circumstances. It must also meet one of the following criteria:

(a) it is incurred specifically for the award;

(b) it benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or

(c) it is necessary to the overall operation of the organization although a direct relationship to any particular cost objective cannot be shown.

Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

**Applicant** is any entity that has applied for a NAWCA or NMBCA grant by submitting a Proposal.

**Assistance Award** is the instrument used by FWS to financially obligate grant funds under NAWCA or NMBCA, and is included in the Grant Agreement.

**Award** means Federal financial assistance to an eligible recipient for the purpose of providing support or stimulation to accomplish a public purpose. An award occurs when an authorized representative of the FWS signs the Grant Agreement.

**Bargain sale** is a voluntary transfer of some interest in real property for less than the market value of that interest.

**Buyer** means (for purposes of land acquisition under a NAWCA grant) the entity that is purchasing some or all of the interests or rights in a specific tract of land.

**CFR** means the Code of Federal Regulations.

**Construction** means the erection, assembly, installation, alteration, demolition, destruction, removal, or repair (including dredging, excavating, and painting) of buildings, structures, and other improvements of real property of all types. Land acquisition and land development are also classified as construction. Almost all restoration, enhancement, and wetland establishment activities in a NAWCA- or NMBCA-funded project result in soil disturbance, either directly or indirectly, and can be categorized as conservation-oriented construction.

**Cooperative agreement**, like a grant, is a legal instrument documenting the relationship between the FWS and a grant recipient. However, in a cooperative agreement, the Service is substantially involved in the grant activities. For purposes of these Standards, the term Grant Agreement includes cooperative agreements.

**Debarment** means an action taken by an authorized official in accordance with the regulations in 43 CFR 12 subpart D to exclude a *person* from Federal financial and non-financial assistance and benefits under Federal programs and activities. Debarment by any agency has government-wide effect. A *person* within the context of this definition is

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an individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

**Direct costs** are those costs necessary to meet a project's specific objectives, including conservation project activities and directly allocable administrative costs. See indirect costs.

**Electronic funds transfer process** means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, which is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. All Federal payments made by an agency shall be made by electronic funds transfer when possible.

**Eligible cost** means a cost that can be reimbursed with Federal grant and/or matching funds or accepted as a matching in-kind contribution as a result of policy established by the North American Wetlands Conservation Council.

**Encumber** real property means to attach a claim, liability, or some other right to real property and make it binding on the same. An encumbrance may burden or lessen the value of the real property or obstruct or impair its use. It does not necessarily prevent transfer of title.

**Enhance** habitat means to modify or rehabilitate an existing or degraded but functioning habitat to improve function and meet project objectives.

**Equipment** means tangible non-expendable personal property, including exempt property charged directly to the award, having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

**Establish wetlands (wetland creation)** means to manipulate through design, construction and management, the physical, chemical, and/or biological characteristics of a site to produce and sustain a wetland that did not previously exist there. Such establishment results in a gain in wetland acres.

**Federal assistance** is the transfer of money, property, services, or anything of value from the United States government to a Recipient to accomplish a public purpose of support or stimulation authorized by a Federal statute.

**Federal Cash Transactions** are grant fund receipts and expenditures reportable on the SF 425, required only if Recipient opts to receive advances of grant funds.

**Funding period** means the period of time established in the Grant Agreement when Federal funding is available for obligation by the Recipient. The funding period begins on the first day during which the Recipient may request an advance of funds or a reimbursement. It ends on the last day that the Recipient may incur costs for the project. For purposes of these Standards, the funding period means the same as "project period," "grant period," or the "period of performance".

**FWS** means the United States Fish and Wildlife Service, an agency of the Department of the Interior.

**Grant Agreement** may be a grant or cooperative agreement, and consists of a signed Assistance Award and incorporated provisions, the Recipient's project proposal, and the Recipient's signed SF-424 including required certifications and assurances. It is the legal instrument used to document a type of relationship between FWS and a Recipient of an award under NAWCA or NMBCA.

**Grant funds** are Federal financial assistance provided through NAWCA or NMBCA to an eligible Recipient for the purpose of providing support or stimulation to accomplish a public purpose. Other Federal funds are not considered grant funds for the purposes of these Standards.

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**Grant Officer** means the FWS official who develops and administers a Grant Agreement. The Grant Officer will review the progress of the grant-funded project, approve or disapprove all requests for prior approval or concurrence, recommend reductions in the grant amount where appropriate, and perform the final review of the project prior to close-out. May also be called **Program Officer**.

**In-kind match** See matching in-kind contribution.

**Incurred costs** means those costs for which an obligation to pay commences on: (a) the earlier of placing an order, signing a contract, or performing or receiving a service; or (b) in the case of real property, taking title to real property.

**Indirect costs** are those that have been incurred for common or joint objectives and cannot readily be identified with a particular final cost objective without effort disproportionate to the results achieved. Indirect costs include all costs determined, allocated, or distributed in accordance with the methods authorized for indirect costs in the Federal Cost Principles.

**Ineligible cost** means a cost that cannot be reimbursed with Federal grant and/or matching funds or accepted as a matching in-kind contribution as a result of policy established by the North American Wetlands Conservation Council

**Interest in real property** means a legal share of ownership, whether entire or partial, fee simple, easement, or other, in land including land improvements, structures, and appurtenances such as trees, grass, and other plants growing on the land except crops.

**Liquidate** means to settle all debts, claims, or obligations associated with a grant by applying grant and match funds. The business portion of a grant is settled by liquidating all of its liabilities and assets.

**Liquidation period** is the time after the project period ends during which all remaining funds must be disbursed. It ends 90 days after the end of the project period.

**Market value** is the most probable price for a property to be sold in an open and competitive market, as established by professional appraisal or other accepted valuation; also referred to as fair market value.

**Match** means the financial value of any cash, real property, or in-kind services donated to the project by the Recipient or other partners to fulfill terms and requirements of the Grant Agreement. No match with a direct or indirect Federal origin, or that was received or used as match under other Federal assistance agreements, qualifies as a matching contribution unless expressly authorized by Federal legislation. An eligible cash matching contribution expended for property or services for which the cost was incurred before FWS receives the proposal, is considered a matching in-kind contribution.

**Matching cash contribution** means any cash that is donated for use as non-Federal match to a project by the Recipient or by other partners under the terms of the Grant Agreement.

**Matching in-kind contribution** means any property or service that is donated by a non-Federal entity under the terms of a Grant Agreement. The match provider gives the property or service without charge or for a nominal payment or something of nominal or no market value. Matching in-kind contributions are eligible under NAWCA grants and under NMBCA grants in Latin America and the Caribbean.

**NAWCA** means the North American Wetlands Conservation Act (16 U.S.C. 4401 *et seq.*, and amendments thereto).

**NMBCA** means the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6101 *et seq.*, and amendments thereto).

**Notice of Grant Requirements** means a written instrument recorded in the county recorder's office, the registrar of deeds office, the commissioner of deeds office, the county registrar's office, or the bureau of conveyances, in reference to any real property right that is part of a NAWCA-funded project. The Notice of Grant Requirements



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states the purpose of project and serves as notice that any transfer or encumbrance of the referenced property rights must be approved by the FWS.

**Obligate** funds means place an order, award a contract, award a grant, receive a service, or make a similar transaction during a given period that will require payment during the same or a future period.

**Obligation** means a binding agreement that will result in outlays, immediately or in the future.

**Old match** means eligible matching in-kind contributions acquired or performed before the FWS receives a NAWCA proposal. Matching in-kind contributions are not eligible for a NMBCA proposal.

**Other authorized titleholder** means any entity that holds an interest in real property acquired with grant or matching funds or as a matching in-kind contribution, but is not necessarily a “recipient” or “subrecipient.” Examples of an “other authorized titleholder” are: (a) a nonprofit organization that buys land and commits it as match for a NAWCA project, but retains ownership and continues to administer the land for the purposes of the project; and (b) an organization that receives title to land acquired under a Grant Agreement five years after the funding period.

**Outlay** means a payment towards liquidating an obligation. On financial reports prepared on a cash basis, outlays mean the sum of cash disbursements for direct charges for goods and services, the amount of indirect expenses charged, the value of third-party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. On financial reports prepared on an accrual basis, outlays means the sum of cash disbursements for direct charges for goods and services, the amount of indirect expenses incurred, the value of third-party in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the Recipient for goods and other property received for services performed by employees, contractors, subrecipients and other payees, and other amounts becoming owed.

**Partner** is a group, agency, organization, or individual which participates in a specific NAWCA or NMBCA project as a match provider.

**Pre-agreement costs** means those project costs to be funded by Federal grant and/or matching funds, which are incurred after FWS receives the proposal and before it signs the Grant Agreement. Such costs are allowable only to the extent that they would have been allowable if incurred during the funding period. This term is synonymous with “pre-award costs”.

**Prior approval** means written permission from the Grant Officer in advance of any act that would modify the project budget or scope where such approval is required by the award.

**Program income** means gross income earned by the Recipient or subrecipient that is directly generated by the Grant Agreement or earned only as a result of the Grant Agreement. Program income may be generated by both the federally funded and match-funded portions of the award, but must be generated after the beginning of the funding period. Program income includes but is not limited to: income from recreational or other fees; income from the use, rental, or lease of any real or personal property; the sale of timber, firewood, hay, seed, wild rice, agricultural products, and other commodities; the sale of specific quantities (but not the real property interests therein) of water, earth, gravel, oil, gas, and minerals; and the use or rental of personal or real property acquired under the Grant Agreement. **Net program income** is program income less the costs incident to the generation of the program income, provided these costs have not been: (a) charged to the Federal funds in the award; (b) charged to a matching cash contribution; or c) provided as a matching in-kind contribution.

**Programmatic project** is one where a subsequent phase of a Standard Grant NAWCA project has been awarded and combined with an original project as a continuation of the work of that original project. Programmatic projects include essentially the same conservation work conducted by the same grantee within the same project area as originally described. A programmatic project may include no more than three phases.

**Project** means a program of related undertakings necessary to fulfill a defined need consistent with the purposes of NAWCA or NMBCA and approved by the Migratory Bird Conservation Commission or FWS Director, as applicable.

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**Project activity** refers to any undertaking sponsored by grant funds or accomplished through a matching contribution. Project activities are defined in the application instructions for NAWCA and NMBCA grants.

**Project period** See funding period.

**Proposal** means all the documents that are submitted with, or pursuant to, a NAWCA or NMBCA grant application to the FWS.

**Real property** means land, including land improvements, structures, and appurtenances such as trees, grass, and other plants growing on the land except crops. It does not include movable machinery and equipment.

**Real property valuation** means the method used for determining market value of real property, generally a professional appraisal.

**Recipient** means an entity that receives an award to carry out a project. The Recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

**Restore** habitat means to return a converted or severely degraded habitat to a functioning type of natural system previously present at the site, often to some desirable historic baseline considered suitable and sufficient to support healthy and self-sustaining populations of fish and wildlife.

**State** means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

**Subaward** means financial assistance in the form of money or property made under an award by a Recipient to an eligible subrecipient or by a subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services. For the purposes of the NAWCA Grants Program, “subaward” is synonymous with “subgrant.”

**Subrecipient** or subgrantee is the legal entity that receives a subaward and is accountable to the Recipient for the use of the funds provided. The subrecipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

**Suspension** means an action taken by a suspending official in accordance with the regulations in 43 CFR, part 12, subpart D, that immediately excludes a *person* from participating in covered transactions for a temporary period, pending completion of an investigation, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act Proceedings as may ensue. A person so excluded is suspended. A *person* within the context of this definition is an individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

**Supplies** are tangible personal property other than equipment.

**Tenant** means a person who has the temporary use and occupancy of real property owned by another, whether for residential or business purposes.

**Term** of an agreement means a provision or condition of that agreement.

**Term** of a less-than-perpetual easement means the length of time that the holder of the easement may exercise limited use of another’s land. **Term** of a lease means the length of time that a tenant may rightfully occupy the premises, as stipulated in the lease document.

**Transfer of title** means a change in ownership of any or all real property rights.

## Appendix C

### Sample Notice of Grant Requirements Template

[PARTNER] is the owner of a certain piece or parcel of land located in [TOWN, COUNTY, STATE] more particularly described in Exhibit \_\_ attached hereto and made part hereof (the "Property").

[PARTNER] acquired the Property [with] [as match for] North American Wetlands Conservation Act funds pursuant to a Grant Agreement between the U.S. Fish and Wildlife Service and [Grant Recipient], dated \_\_\_\_\_, Agreement Number: \_\_\_\_\_, a copy of which is kept at the Division of Bird Habitat Conservation (DBHC), U.S. Fish and Wildlife Service, 1849 C Street, NW, Washington, DC 20240 and at the office of [GRANT RECIPIENT] at [address].

This property was conserved in order to [STATE PURPOSE OF PROJECT].

[PARTNER] hereby agrees to be bound by the terms of the Grant Agreement as they relate to the Property, including the obligation to ensure the long term conservation of the Property and to obtain the consent of the U.S. Fish and Wildlife Service DBHC prior to the conveyance or encumbrance of any interest therein.

The terms of this Notice shall be binding upon [PARTNER] and its designees and successors.

In witness whereof the [PARTNER] has set its hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By:  
Its:

DULY AUTHORIZED

STATE OF (            )  
COUNTY OF (            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by my duly sworn did state that \_\_\_\_\_ is the \_\_\_\_\_ of the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission expires:

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