

**341 FW 6*****Minimally Restrictive Conservation Easement Acquisition***

Supersedes Director's Orders
164 and 170, 04/08/05
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Series: Real Property
Part 341: Land Acquisition
Originating Office: Division of
Realty

6.1 What is the purpose of this chapter? This chapter:

- A.** Describes how employees may use administratively determined payments instead of a formal appraisal when acquiring minimally restrictive conservation easements in the Prairie Pothole Region of the United States, and
- B.** Describes the process for determining the payments.

6.2 What is the objective of this chapter? The objective of this chapter is to streamline the process for acquiring minimally restrictive conservation easements.

6.3 What are conservation easements, and what makes certain easements minimally restrictive? A conservation easement is a legal agreement that a property owner voluntarily enters into with us to protect or restore ecologically significant areas occurring on a tract of land. The easement contains permanent restrictions on the use or development of the land to protect its conservation values. Conservation easements may be minimally restrictive or restrictive.

A. Minimally restrictive conservation easement: A minimally restrictive conservation easement, such as the Service's wetland or grassland easements, takes very few rights away from the property owner and has a minimum impact on value. It limits property owner use and enjoyment of the property to a minor degree. For example, an easement may prohibit the landowner from destroying the wetlands or grassland, but still allow the landowner to use the property for grazing or haying. (See the [Division of Realty Web site](#) for examples of minimally restrictive wetland, habitat, and grassland easements.)

B. Restrictive conservation easement: A restrictive conservation easement limits the landowner's use of the property significantly. For example, a restrictive easement may prohibit any disturbance of the soil or vegetation, even haying or grazing. The landowner retains few rights in the property, and there is a significant impact on the value.

6.4 What is the policy? It is our policy to:

A. Acquire and protect critical migratory waterfowl, nesting marsh, and water bird habitat in National Wildlife Refuges and Waterfowl Production Areas (WPA) located in the Prairie Pothole Region of:

- (1) Eastern South Dakota ,
- (2) Eastern and northern North Dakota ,
- (3) Northeastern and north central Montana,
- (4) Western Minnesota, and
- (5) North central Iowa.

B. Buy minimally restrictive conservation easements to help meet the goal of protecting wetlands and grasslands that provide nesting cover and surface habitat for waterfowl and grassland-nesting bird species.

C. Use the procedures in this chapter to determine the amount to offer to private landowners in exchange for the property rights for minimally restrictive conservation easements.

D. Document and report our actions and the results of the offers we make for easements.

6.5 What is the scope of this chapter?

A. Although we use this policy primarily for the acquisition of minimally restrictive conservation easements in the Prairie Pothole Region, we may use it with any funding source or acquisition authority.

B. This policy does not apply to restrictive habitat easements or fee acquisitions.

6.6 What are the authorities for this policy?

A. Migratory Bird Hunting and Conservation Stamp Act ([16 U.S.C. 718d\(b\)\(3\)](#)).

B. Safe, Accountable, Flexible, Efficient Transportation Equity Act (P.L. 109-59, Section 1119).

6.7 What terms do you need to know to understand this chapter?

A. Adjusted Assessed Land Value (AALV). The AALV is an estimate we use to establish the market value of land. To determine the AALV, we use a multiplier to adjust the local tax authority's assessed land value. We get the multiplier by analyzing and comparing land sales to assessed land values in a defined market area. See [section 6.10](#) for more information.

B. Administratively Determined Payments. Administratively determined payments are the amounts we pay to acquire minimally restrictive conservation easements by computing variables related to land values and geographic areas instead of using a conventional "before and after" fee appraisal (see [section 6.11](#)).

C. Grassland Minimally Restrictive Conservation Easement. A grassland easement is a legal agreement that permanently protects and conserves grassland to maintain vegetative cover. The landowner cannot convert grassland to cropland or other uses, but the landowner can use it for grazing and mow it after July 15.

D. Habitat Minimally Restrictive Conservation Easement. We also use a habitat easement as a legal agreement to permanently protect and conserve grassland to maintain vegetative cover. Legacy Region 3 [also Interior Region 3] uses three different habitat easements (see sample habitat easements). Although there are legal differences between a habitat and grassland easement, for the purposes of this chapter, we use the terms synonymously. The landowner cannot convert habitat easement areas to cropland or other uses. We have different agreements (see sample habitat easements) to state whether the landowner may or may not mow or graze the areas.

E. Small Wetlands Acquisition Program (SWAP). The SWAP is a program that allows us to purchase fee land or permanent easements restricting activities permitted on wetlands and their surrounding upland to provide waterfowl nesting habitat.

F. Waterfowl Production Areas (WPA). WPAs are upland fields and wetlands we purchase and manage to provide grassland nesting habitat for waterfowl. The National Wildlife Refuge System manages WPAs.

G. Wetland Management District (WMD). After we buy WPAs, we group them into manageable units that we call WMDs.

H. Wetland Minimally Restrictive Conservation Easement. A wetland easement is a legal agreement that permanently protects wetland areas so they are not drained, filled, leveled, or burned. If these wetland areas dry up naturally, they can be used for farming, grazing, or haying.

6.8 Who is responsible for implementing this policy?

A. The Assistant Director – National Wildlife Refuge System is responsible for national oversight of the land acquisition program.

B. The Regional Directors for Legacy Regions 3 and 6 (Interior Regions 3 and 5):

- (1) Are responsible for the land acquisition program in their respective Regions,
- (2) Are responsible for providing the Annual Report on Wetland and Grassland Easement Acquisition Policy (RCS FWS-04-0001-AN) to the Director each year by December 31, and
- (3) May re-delegate the administrative responsibilities for acquiring minimally restrictive easements to the Regional realty officer, or others.

C. The Headquarters Chief – Division of Realty is responsible for:

- (1) Reviewing the annual report (RCS FWS-04-0001-AN) and implementing appropriate recommended changes, and
- (2) Ensuring that this policy is in place and accurate.

D. The Division of Realty Chiefs for Legacy Regions 3 and 6 (Interior Regions 3 and 5):

- (1) Approve the AALV multipliers used to compute payments to landowners,
- (2) Ensure sales data and other information used to develop multipliers is kept current and available for inspection,
- (3) Monitor easement acceptance rates to ensure that they remain within the target range of 40% to 70%, and
- (4) Develop annual recommendations for changes to the wetland and grassland indices.

E. The Wetland Management District (WMD) Managers:

- (1) Are responsible for managing the easements after we acquire them;
- (2) Are responsible for delineating the type, quantity, and location of wetland and grassland easements we acquire through the SWAP; and
- (3) Oversee preparation of and approve a delineation diagram for each acquisition proposal in accordance with:

(a) *U.S. Fish and Wildlife Service, Strategic Growth of the Small Wetland Acquisition Program, Guidelines for Fee and Easement Purchase (Legacy Region 3 [Interior Region 3])*,

(b) *U.S. Fish and Wildlife Service Wetland and Grassland Easement Evaluation Worksheets (Legacy Region 6 [Interior Region 5])*, or

(c) Other applicable guidance that the Regions may develop.

6.9 How does this policy streamline the valuation process for minimally restrictive conservation easements? This policy eliminates the need for a conventional fee appraisal, which was previously the only basis for determining the easement payment. Instead, we use an alternative method called the AALV to establish the basis for calculating the payment.

6.10 How does the Service calculate the AALV?

A. Counties normally maintain property value assessments at or near 100% of “full and true” value. There is typically a difference between actual land sale prices and the assessed value of

properties. Over a specific geographic area, we can measure the gap between market value and assessed value using standard statistical analysis.

B. A comparison of the two values produces a reliable multiplier. When we multiply this figure with the assessed value of a property, we can replicate a consistent and reliable estimate of market value. This estimate of market value is the AALV. We can get all the information we need for this computation (sale prices and assessed values) from county assessor offices and other sources in the market area. Table 6-1 shows an example of how to calculate an AALV.

Table 6-1: Example of Calculating an AALV	
Property X	
Assessed land value:	\$600 per acre.
Multiplier based on analysis:	1.4
AALV: \$840	$\$600 \times 1.4 =$
The AALV has a unit "market value" of \$840 per acre	

C. We use the same AALV multiplier throughout a specific geographic area to normalize assessed land values. Our defined market areas generally match the areas covered by the assessing entities (usually counties).

(1) We use land sales that have similar land types (similar economic use and geographic and physical aspects) as the proposed subject property to determine the multiplier. These properties are typically agricultural and pasture land.

(2) We should exclude properties from the analysis that could distort the multiplier, such as:

(a) Residential, rural residential, commercial, or other property types that are not similar to the one we are analyzing; and

(b) Sales where the buyer and seller do not appear to have acted independently in the transaction, where the buyer and seller are related, where the buyer or seller is a non-profit or governmental entity, or where the parties to the sale did not negotiate on an equal-footing.

(3) In the State of Minnesota, the Department of Revenue publishes the annual County Sales Median Ratios (CSMR). The CSMRs are statistically derived factors for each county that define the correlation between assessed value and actual market value. You may use the CSMR as the AALV multipliers for the counties in the State of Minnesota.

D. A subject property may have an assessment anomaly when the assessed unit value varies significantly from the assessed unit values of similar properties in close proximity. When a subject property has an assessment anomaly, substitute the assessed unit value of the subject property as follows:

(1) In the States of Montana, Iowa, North Dakota, and South Dakota, use the lowest assessed unit value used in the AALV multiplier market analysis.

(2) In the State of Minnesota, use the lowest assessed unit value of adjoining or nearby properties exhibiting similar characteristics and land use as the subject property.

6.11 How does the Service determine minimally restrictive easement payments? To determine payments for wetland or grassland easements, we must use the AALV unit value for the subject property **and** the approved wetland or grassland indices. (See [Exhibit 1](#) for a sample wetland and grassland index.)

A. Wetland Easements:

(1) We base payments for wetland easements on the:

- (a) AALV unit value,
- (b) Wetland index (WI) (see [Exhibit 1](#)), and
- (c) Number of wetland acres encumbered.

(2) Wetland areas include all delineated wetlands regardless of cropping history. This includes Conservation Reserve Program lands and temporary wetlands that are currently farmed. We allow a 50% reduction below the lowest wetland index value for wetlands we identify as “difficult to drain.” Such “difficult to drain” wetlands are typically larger than 20 acres in size with open water. Table 6-2 below shows how we calculate the payment for wetland easements.

Table 6-2: Calculating Wetland Easement Payment
$\text{AALV Unit Value} * \text{WI} * \text{Number of Wetland Acres}$ <p>For example: Property Y in ND has an AALV of \$345 per acre and 23 acres of wetlands. The WI (from Exhibit 1) is 64%.</p> $\$345 * 0.64 * 23 = \$5,078$ <p>The easement payment is \$5,078.</p>

B. Grassland Easements: We base payments for grassland easements on the:

- (1) AALV unit value,
- (2) Grassland index (GI) (see [Exhibit 1](#)), and
- (3) Number of grassland acres encumbered. (Table 6-3 shows how we calculate the payment for grassland easements.)

Table 6-3: Calculating Grassland Easement Payment
$\text{AALV Unit Value} * \text{GI} * \text{Number of Grassland Acres}$ <p>For example: Property Z in ND has an AALV of \$410 per acre and 160 acres of grassland. The GI (from Exhibit 1) is 44%.</p> $\$410 * 0.44 * 160 = \$28,864$ <p>The easement payment is \$28,864.</p>

6.12 What does the Service do to ensure the accuracy and consistency of easement payments and the integrity of the process?

A. The Regional Directors for Regions 3 and 6 are responsible for oversight of the following activities that help ensure our easement payment process is accurate and fair:

- (1) Documenting the methodology and analysis the Regions use in computing the multipliers to determine the AALV.

(2) Approving the Region's use of county and sub-county multipliers.

(3) Approving the computation of easement payments using the county/sub-county multipliers and indices.

(4) Ensuring the Realty office maintains records of ownership, sales, property characteristics, and corresponding assessed values of record. The Realty office must also compile the sales and assessor information into sales data binders and keep the resulting multipliers current and available for inspection.

(5) Certifying each easement payment calculation before signing the Statement of Just Compensation.

(6) Reviewing the payment schedule (indices) on an annual basis to ensure that our offers are supporting a landowner acceptance rate of 40 to 70%, and

(7) Sending recommendations for adjusting the indices to the Director each year by December 31 in the Annual Report on Wetland and Grassland Easement Acquisition Policy (RCS FWS-04-0001-AN). This report describes the extent of program activity and provides an analysis and assessment of payment methodology and level of landowner acceptance rates.

B. Unless the Director advises to the contrary within 30 days of receiving the report, the Regional Directors may implement the annual recommended modifications to the wetland and grassland indices.

For information on the content of this chapter, contact the Division of Realty. For additional information about this website, contact [Krista Bibb](#), in the Division of Policy, Economics, Risk Management, and Analytics, Policy and Regulations Branch (PRB).