

Neotropical Migratory Bird Conservation Act

GRANT ADMINISTRATION POLICIES

For Recipients in the United States

August 2003

I. AUTHORITY AND GENERAL PROVISIONS The authority for the Neotropical Migratory Bird Conservation Act (NMBCA) grant program is Public Law 106-247-July 20, 2000. 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.

The complete Code of Federal Regulations (CFR) is available at <http://www.gpo.gov/nara/cfr/index.html>.

II. PURPOSE NMBCA Grant Administration Policies apply to all grants awarded to United States of America recipients under the authority of NMBCA.

III. ASSISTANCE AWARD DOCUMENT, REPORTS & OTHER REQUIRED DOCUMENTATION

- A. Assistance Award: When the U.S. Fish and Wildlife Service (USFWS) approves funding for a Project Proposal (Proposal), the USFWS Program Officer (Program Officer) will review the Proposal and assemble the pertinent documents. If the Program Officer finds any problem related to compliance with law, policy, or administrative procedures, he or she will contact the Recipient's Project Officer (Project Officer) to seek a resolution. If there are no problems or once any problems have been resolved, the Program Officer will send the grant recipient (Recipient) a signed grant or cooperative agreement, which is entitled "U.S. Fish and Wildlife Service Assistance Award," by certified first class mail, return receipt requested. Grant agreements will normally be mailed out within 45 days of approval of funding by the USFWS. This agreement does not require your signature.

If the Program Officer has not received a written notice declining the award or requesting a delay of the execution date from the Recipient within 10 business days of the date that a representative of the Recipient signs the Return Receipt, the funding period of the grant agreement will begin on the date designated on the grant agreement (including any allowable pre-agreement costs). The following constitutes an agreement because an authorized official of the Recipient signed one or both of the following: Assurances - Non-construction Programs (Standard Form 424B) or Assurances -Construction Programs (Standard Form 424D). These forms are associated with the Application for Federal Assistance (Standard Form 424). Item 18 of the Standard Form 424B and Item 19 of the Standard Form 424D state: "Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program." The NMBCA Grants Administration Policies for Recipients in the United States (August, 2003) are the policies that govern this grant program. In applying for a grant under this program the Recipient agrees to accept and abide by its terms.

- B. Reports and Other Documentation: If the Project period is less than one year, the Recipient must send to the Program Officer a final performance report within 90 days of the end of the Project period. If the Project period is one to two years, the Recipient must send to the Program Officer: (a) an intermediate performance report within 90 days of the first half of the Project period; and (b) a final performance report within 90 days of the end of second half of the Project period. If the Project period is two years or greater (due to extension), the Recipient must send the Program Officer: (a) an annual Performance Report within 90 days of the end of each year; and (b) a final performance report within 90 days of the end of the Project period.

Both annual and final performance reports must include or be accompanied by:

- a comparison of actual accomplishments with proposed project objectives for the period covered and explanation of any differences;
- Report of Federal Cash Transactions: The Recipient must send the following items through SMARTLINK on January 15, April 15, July 15, and October 15 of each year whether or not any cash transactions occurred: the Report of Federal Cash Transactions (Standard Form 272) through the PSC-272 which is the electronic method of submitting this report through SMARTLINK. [See Section IV.F.] The submission of the Standard Form 272 and the information on match in the performance reports will make it unnecessary for Recipients to submit the Financial Status Report (Standard Form 269) as authorized by 43 CFR 12.81(a)(6) and 43 CFR 12.952 (a)(1).

The final performance report must also include or be accompanied by:

- a comparison of each partner's proposed matching commitments with the amounts actually contributed;
- map(s) [*U.S. Geological Survey 7½ minute topographic*] indicating the boundaries of all interests in real property that the recipient, subrecipient, or match provider has purchased, restored, enhanced, or created with NMBCA funding or matching dollars or accepted as in-kind matching donations (only projects/activities outside of USA);
- (*as an alternative to the maps described above for habitat restoration, enhancement, or creation sites smaller than 247 acres [100 hectares]*) the coordinates of the center of each contiguous parcel in the UTM (Universal Transverse Mercator) coordinate system with the "North American Datum" (1927 or 1983) of the map from which coordinates were taken (or the North American Datum from the Ground Positioning System receiver that determined the coordinates) with each pair of coordinates referenced to the habitat modification; and
- an article of 500 words or less about the Project for the magazine Birdscapes to include the Project's name, location, partners, total NMBCA funding and partners' dollars, benefits to wildlife and people, unusual aspects, and a 35 mm slide(s) or photograph(s) with the photographer's name, organization, and a caption. [*Contact Director of Communications of USFWS Division of Bird Habitat Conservation at (703) 358-1784 or dee_butler@fws.gov. for more information and a copy of Birdscapes.*]

The following items must be provided as soon as practicable as indicated in the referenced Sections:

- If the Recipient, subrecipient, or match provider (a) acquires an interest in real property with NMBCA funding, (b) seeks reimbursement with NMBCA funding for such acquisition, or (c) acquires the real property with matching funds, the Recipient must send the Program Officer documentation as provided in Sections VII.A. through VII.E. For acquisitions outside of the United States of America the Recipient must send the Program Officer documentation as provided in Section VII.F.

The following item is required as soon as the interest in real property is identified as a potential acquisition and before any offer is made to the owner:

- The Recipient must send the Program Officer the acreage, boundaries, and map location of any interest in real property to be acquired with NMBCA funding if such real property was not identified in the original Project Proposal (Proposal) including substitution property.

IV. FINANCIAL ADMINISTRATION

A. Matching Donations:

1. *Definition of matching cash:* For NMBCA project activities in the United States the matching donation can be cash only. Matching cash is any cash that complies with the applicable Federal Cost Principles in OMB Circulars A-21, A-87, and A-122. Matching cash must be contributed to or by a Recipient to accomplish the purposes of the Project. The Recipient may obligate the cash itself for the purposes of the Project or may subaward it to a subrecipient (who may be the original provider of the matching cash) to accomplish the purposes of the Project. If money has been used to incur costs for project purposes before the USFWS receives the Proposal, it will be considered as a matching in-kind contribution regardless of how it is described in the letter committing it as match.
2. *Definition of matching in-kind contribution:* Matching in-kind contributions are not allowed as match for project activities carried out within the United States of America, but are allowable for project activities carried out outside of the United States. Should a Recipient from the United States conduct

project activities outside of the United States, using matching in-kind contributions as match for the amount of NMBCA funding being provided for the activities abroad, be aware that matching in-kind contributions over the 3:1 ratio cannot count as match for activities in the United States. A matching in-kind contribution is property or services that benefit a NMBCA-funded project or another Federally assisted project or program and which are contributed by either the grant recipient, a subrecipient, or a non-Federal third party without charge to the grantee, or a cost-type contractor under the grant agreement. Matching in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the goods and services directly benefiting and specifically identifiable to the project or program.

3. *Meeting the matching requirements:* At the end of the Project period, if the total amount of partner match, as listed in Section 13 of the Assistance Award, does not equal the amount committed in the Proposal, the amount of NMBCA funding will be disallowed by an equal proportion. When such a disallowance occurs, the Recipient must return to USFWS any NMBCA funding received in excess of the newly established allowable amount. The Recipient may not receive any new NMBCA grants until it returns these funds.

- B. Pre-Agreement Costs: USFWS authorizes pre-agreement costs not to exceed the “Amount entered for “This obligation” in the “FWS” column in Block 13 of the grant agreement. The Recipient or subrecipient must not have incurred pre-agreement costs before the date that the USFWS receives the Proposal for any part of the Project to be funded with NMBCA funding.

Costs are incurred on:

- the earlier to occur of placing an order, signing a contract, or performing or receiving a service; or
- the earlier to occur of (1) taking title to real property or (2) the purchaser becoming legally obligated to purchase an interest in real property with all contingencies placed on the purchaser’s obligations having been satisfied. *[An instrument for a legal obligation to purchase is typically called an exercised option, a purchase agreement, contract of sale, sales contract, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase, or sale agreement.]*

All pre-agreement costs are incurred at the applicant’s risk. Such costs are allowable only to the extent that they would have been allowable if incurred after the date that the USFWS signs the grant agreement and during the Project period. The USFWS is under no obligation to reimburse such costs if the applicant has not:

- received an award adequate to cover such costs;
- prior to incurring the cost of the acquisition of real property, equipment, supplies, or services, ensured that the acquisition or activities associated with the acquisition will comply with the following:
 - the National Historic Preservation Act Section 106 process for (a) any activity that will result in soil disturbance, and (b) any acquisition of an interest in real property on which soil disturbance will occur as a result of the acquisition; *[For acquisitions outside of the United States of America, the National Historic Preservation Act Section 402 (16 USC 470a-2) which applies to any property on the World Heritage List or on the applicable country’s equivalent of the National Register]*
 - USFWS’s requirement that a contaminants survey be conducted for any real property to be transferred to the Federal government;
 - other Federal laws, executive orders, regulations, and policies governing this program including the National Environmental Policy Act. *[See Section VIII.E.]*

USFWS is under no obligation to accept equipment, supplies, or services unless the applicant has prior to becoming contractually committed to acquire the equipment, supplies, or services ensured that all associated Project activities will comply with:

- the National Historic Preservation Act (NHPA) Section 106 process has been completed or will be completed for any soil disturbance that will occur as a result of the donation *[For acquisitions outside of the United States of America, the National Historic Preservation Act Section 402 (16 USC 470a-2)*

which applies to any property on the World Heritage List or on the applicable country's equivalent of the National Register] ;

- other applicable laws, executive orders, regulations, and policies governing this program including the National Environmental Policy Act. [See Section VIII.E.]

This section constitutes prior written approval for any pre-agreement costs that: (a) qualify under its provisions, (b) are in compliance with other applicable Federal, State, and local laws and regulations, and (c) are in compliance with other applicable provisions of NMBCA Grant Administration Policies.

- C. Program Income: Program income is gross income earned by the Recipient or subrecipient that is directly generated as a result of the Grant Agreement or earned by the Recipient or subrecipient as a result of the Grant Agreement. Program income includes, but is not limited to, income from fees for services performed, the sale of commodities, and the use or rental of personal or real property acquired under the Grant Agreement. Recipients and subrecipients must handle proceeds from the sale of interest in real property in accordance with Section VII.E.2.

The Recipient must report any program income earned during the Project period to the Program Officer. In accordance with Title 43 of the Code of Federal Regulations (CFR), sections 12.65 or 12.924 as appropriate (<http://www.access.gpo.gov/nara/cfr/index.html>), the USFWS authorizes the Recipient to use program income and to treat it as additional funds committed under the Grant Agreement. The Recipient must use the program income for the purposes and under the terms and conditions of the Grant Agreement. USFWS will not deduct it from the amount of the grant and will treat it as additional funds committed under the Grant Agreement for the purposes of the Project. The Recipient will have no obligation to the Federal Government for program income earned after the Project period.

- D. Financial Management System: The Recipient's and subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for State, local, and Tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>).

- E. Allowable Costs: The documents listed below establish principles for determining which costs are allowable or eligible based on the type of organization. Three of these documents are Cost Principles that apply to the use of both NMBCA funding and matching dollars unless otherwise indicated. Note that a subrecipient nonprofit organization uses one set of Cost Principles, a subrecipient State agency uses another, and a subrecipient educational institution uses yet another. Recipients and subrecipients must not use NMBCA funding or matching dollars for: non-Project-specific communications products; the cost of existing residences, structures, or buildings unnecessary for neotropical migratory bird conservation purposes; or a cost (consideration) in excess of \$1.00 to buy an option to purchase an interest in real property.
- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," (<http://www.whitehouse.gov/OMB/grants/index.html>)
 - OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
 - OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
 - 48 CFR 31.2, "Contracts with Commercial Organizations," (<http://www.access.gpo.gov/nara/cfr/index.html>)
 - Neotropical Migratory Bird Conservation Act (<http://international.fws.gov/pdf/PL%20106-247.pdf>)

Recipients and subrecipients that are institutions of higher education, other non-profit organizations, or commercial organizations must maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the Grant Agreement [43 CFR 12.921(b)(6)].

- F. Advance Payments and Reimbursements: The Recipient's financial institution must be able to receive NMBCA funds through the electronic funds transfer process and be able to 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 (DPM). The SMARTLINK system is accessible via a personal computer and an Internet or dial-up networking connection. Detailed information regarding SMARTLINK is available on-line at <http://www.dpm.psc.gov/index.cfm>. The Recipient must complete and mail (no faxes or email) an original SF-1199A "Direct Deposit Sign-up Form", a "Supplemental Form-Direct Deposit" (as applicable) and a "Contact Information Form-Smartlink System" to:

U.S. Fish and Wildlife Service
Division of Bird Habitat Conservation
MBSP-4075
4401 North Fairfax Drive
Arlington, VA 22203

SMARTLINK enrollment forms are available from the Division of Bird Habitat Conservation's website <http://birdhabitat.fws.gov/smartlink/SMARTLINK.htm>. A SMARTLINK user manual and account access information will be provided to the Recipient by the DPM. Funds requested through the SMARTLINK system are delivered the next business day.

Recipient may receive advance payments provided they maintain procedures to minimize the time elapsing between the transfer of funds and disbursement by the Recipient and Subrecipient as established in 43 CFR 12.61 (State, local and Indian tribal governments) and 43 CFR 12.922 (institutions of higher education, other non-profit organizations, commercial organizations, or individuals).

States, state universities, and state hospitals must make cash advance drawdowns as close as possible to the time of making disbursements, but not more than 3 business days beforehand. An interest liability will be incurred from the day federal funds are credited to the account to the day of disbursement of the funds for project purposes. The rate of the interest liability for a State Recipient is the annualized rate equal to the average yields of 13-week Treasury Bills auctioned during a State's fiscal year as established by 31 CFR 205.12.

Local and Indian tribal governments must make cash advance drawdowns as close as possible to the time of making disbursements. Interest amounts up to \$100 per year may be retained by the grantee for administrative expenses as established in 43 CFR 12.61. Recipients shall remit interest earned on advances promptly, but at least quarterly, to the USFWS.

Institutions of higher education (non-state), hospitals (non-state) and other non-profit organizations' cash advance drawdowns are limited to the minimum amounts needed by the Recipient and must be timed to the actual immediate cash requirements in carrying out the purposes of the project. The timing and amount of cash advances shall be as close as administratively feasible to actual disbursement. Generally, advances shall be maintained in interest bearing accounts (see 43 CFR 12.922 (k) for exceptions). Interest amounts up to \$250 per year may be retained by the Recipient for administrative expenses as established in 43 CFR 12.922 (l). Interest earned on advances shall be remitted annually to the DPM (visit the DPM website at <http://www.dpm.psc.gov/funding/> for specific remittance instructions).

The Recipient is required to complete a quarterly Report of Federal Cash Transactions (Standard Form 272 or SF-272), as established in 43 CFR 12.81 (State, local and Indian Tribal governments) and 43 CFR 12.952 (institutions of higher education, other non-profit organizations, commercial organizations, and individuals). Recipient must use the electronic PSC-272 system available through SMARTLINK, an efficient way of reporting this data. The Recipient is required to submit the SF-272 fifteen calendar days following the end of each quarter. The quarters end on March 31, June 30, September 30, and December 31, thus the SF 272 must be submitted on April 15, July 15, October 15, and January 15.

At the end of the project period, the partner's matching commitment must at least equal the amount pledged in the award. The Recipient must provide a comparison of each partner's match and include it with the final

performance report as set forth in the NMBCA Grant Administration Policies (dated August 2003) under Sections III and IV.A. Reports & Other Required Documentation.

As established in 43 CFR 12.914 (State, local and Indian tribal governments) and 43 CFR 12.52 (institutions of higher education, hospitals and other non-profit organizations), special award conditions may be applied should the Recipient not conform to the terms and conditions of the entire award. The following restrictions may include, delayed payment; reimbursement only (no advances); manual review of payment requests; withholding authority to proceed to next phase of a project; requiring more detailed financial reporting and additional project monitoring. A history of failure to perform in accordance with the terms of the award may lead to suspension or debarment from receiving future awards.

V. SPECIAL PROVISIONS APPLICABLE TO ALL PROPOSALS

- A. **Equipment:** In managing and disposing of equipment acquired in whole or in part under the Grant Agreement, Recipients and subrecipients that are State, local, and Tribal governments must comply with 43 CFR 12.72 and institutions of higher learning, other nonprofit organizations, and commercial organizations must comply with 43 CFR 12.934. Key provisions on the use and disposal of equipment are presented below.

Equipment means tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Title to all equipment acquired for the Project will vest in the Recipient or subrecipient. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other recipients and subrecipients will follow the provisions of Section V.A. for the use, management, and disposal of equipment purchased with NMBCA funding or matching dollars or received as a matching in-kind donation (for projects outside of the USA).

The Recipient or subrecipient must 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 if such other use will not interfere with the work on the project for which the equipment was originally acquired. The Recipient or subrecipient must give first preference for such other use to other projects or programs sponsored by the Department of the Interior and second preference to projects and programs sponsored by other Federal agencies.

The Recipient must make a physical inventory of equipment at least once every two years and reconcile the results with the equipment records. The Recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment. The Recipient must ensure that adequate maintenance procedures are implemented to keep the equipment in good condition.

When acquiring replacement equipment, the Recipient or subrecipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to USFWS's approval. In some cases, a Recipient may no longer need, for the purposes of the Project, any original or replacement equipment acquired with NMBCA funding or matching funds or received as a matching in-kind donation (for projects outside of the USA). The Recipient must request disposition instructions from the Program Officer, who will determine whether the equipment can be used to meet the requirements of a Project or program authorized for support by the United States Department of the Interior. If no such requirement exists, the Program Officer will report the availability of the equipment to the General Services Administration, which will determine whether a requirement for the equipment exists in other Federal agencies. If a Federal agency does not need the equipment and it has a current per-unit fair market value of less than \$5,000, the Recipient or subrecipient may retain, sell, or otherwise dispose of it with no further obligation to USFWS. If such equipment has a current per-unit fair market value of more than \$5,000, the Program Officer will issue instructions to the Recipient no later than 120 calendar days after the Recipient's request. These instructions may include:

- ship or otherwise transfer the equipment to the Federal government or to an eligible third party;

(USFWS must reimburse the Recipient or subrecipient by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.)

- sell the equipment providing for competition to the extent practicable with the highest possible return; *(If USFWS instructs the Recipient or subrecipient to sell the equipment or if USFWS does not issue disposition instructions within 120 calendar days after the request, the Recipient or subrecipient must sell the equipment and reimburse the USFWS an amount computed by applying to the sale's proceeds the percentage of Federal participation in the cost of the original project. However the Recipient or subrecipient will be permitted to deduct and retain from the Federal share \$500 or 10 percent of the proceeds, whichever is less, for the Recipient's or subrecipient's selling and handling expenses.)*
- otherwise dispose of the equipment.
(USFWS will reimburse the Recipient for any cost incurred in disposition.)

- B. **Supplies and Other Expendable Property:** The provisions of this section will apply to all supplies and other expendable property purchased with NMBCA funding or matching dollars or received as a matching in-kind donation (for projects outside of the USA). Title to such supplies and other expendable property will vest in the recipient or subrecipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Project and the supplies are not needed for any other federally sponsored project or program, the Recipient or subrecipient will retain the supplies for use on non-federally sponsored activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as presented in Section V.A. for equipment.
- C. **Information Releases:** News releases or other information on the Project published or released for publication by the Recipient or subrecipients must acknowledge that funding was made possible through NMBCA.
- D. **Government Right to Publish and Use Data:** Unless waived by USFWS, the Federal Government has the right to:
- (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.
- E. **Buy American:** 43 CFR part 12, requires USFWS to provide the following notice to each recipient: Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, as adopted in subsequent Appropriations Acts, please be advised of the following: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

VI. SPECIAL PROVISIONS APPLICABLE TO HABITAT RESTORATION & ENHANCEMENT

- A. **Management for Project Purpose:** The Recipient or subrecipient must ensure that any habitat restored, enhanced, and/or created is managed for the purposes for which it was intended in the Project. If the Recipient or subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, it agrees to pay USFWS for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to the Federal participation in the Project. A Recipient or subrecipient must determine the current fair market value by obtaining at the Recipient's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to USFWS's review and approval.
- B. **Inspection:** The Recipient must ensure that any habitats restored, enhanced, or created in the Project (including such work completed with matching funds or as a matching in-kind contribution (for projects outside of the USA)) are available for site-inspection by the USFWS or its designee to ensure that such habitat is managed for the purposes for which it was intended in the Project. The requirements of this Section will be in force for 25 years from the end of the Project period unless limited by easements, leases,

other legal instruments, or special considerations described in the Proposal or approved by the Program Officer.

VII. SPECIAL PROVISIONS APPLICABLE TO REAL PROPERTY ACQUISITION

Match providers who purchase interests in real property for NMBCA projects before the date that the USFWS Contracting Officer signs the grant agreement (pre-agreement period) must follow the requirements of Section VII.A. All other Recipients, subrecipients, or match providers who acquire an interest in real property for NMBCA projects (Purchasers) must choose to follow **EITHER** the “Exception” procedures in Section VII.B, **OR** the “Standard” procedures in Section VII.C., **OR** the Waiver procedures in Section VII.D. For acquisitions outside of the United States of America refer to Section VII.F.

- A. **Pre-agreement Commitments of Interest in Real Property as Match**: If the match provider becomes contractually committed to purchase an interest in real property for use as match before the date that the USFWS signs the grant agreement, it will be considered a completed transaction not subject to 49 CFR, part 24. For such pre-agreement commitments of interests in real property as match for a NMBCA project, if the fair market value of the interest in real property is estimated to be greater than \$50,000, the match provider (or future Recipient) must obtain an appraisal. The appraiser must be (i) State certified for transactions having a value of \$1 million or more, and (ii) State licensed or State certified for transactions having a value of less than \$1 million. The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). If the valuation of the interest in real property is uncomplicated and the fair market value is estimated at \$50,000 or less based on a review of available data, the match provider (or future Recipient) must obtain: (i) an appraisal completed in accordance with the USPAP or the UASFLA with a date of value not more than one year before the seller becomes contractually committed to sell; **OR** (ii) recent sale prices of at least three specific identified comparable properties; **OR** (iii) the assessed value with documentation of how it was determined including its relationship to the fair market value. Fair market value must be adequately supported in the Recipient’s file and copies of the file documentation must be acceptable to the Program Officer. If the Purchaser obtains an appraisal (even if it is not required), it must be used as the determinant of fair market value unless the Recipient can conclusively demonstrate that it is not accurate.

All appraisals pursuant to Section VII.A. must specify a date of value that is not more than one year before the date that: (a) a landowner becomes contractually committed to sell to a match provider, **OR** (b) a landowner donates, or becomes contractually committed to donate, an interest in real property to a match provider or to an entity that will manage such interest in real property for the Project purpose, **OR** (c) a landowner, match provider, Recipient, or subrecipient records, or becomes contractually committed to record, a Notice of Grant [or Cooperative Agreement to ensure that such interest in real property will be managed for the Project purpose. [See Section E.1.b.] All appraisals pursuant to Section VII.A. are subject to review by a USFWS reviewing appraiser, whose recommendations will determine the appraisal’s acceptability.

The Recipient must send the following items to the Program Officer as soon as practicable during the Project period:

- copy of summary and signature pages of an appraisal as described above in Section VII.A. **OR**, as an alternative if the valuation of the interest in real property is uncomplicated and the fair market value is estimated at \$50,000 or less based on a review of available data, (i) the documentation of recent sale prices of at least three specific identified comparable properties or (ii) the assessed value with documentation of how it was determined including its relationship to the fair market value;
- closing or settlement statement [*A closing statement is a written breakdown of the costs involved in the purchase of an interest in real property. It is usually prepared by a broker, escrow officer, lender or attorney, showing all cash received, all charges and credits made, and cash paid out. It is also called a “settlement statement” or “adjustment sheet.”*]; and
- copy of recorded deed or other instrument conveying title to the interest in real property to the titleholder as provided under the Project.

- B. Acquisition of Interest in Real Property by “Exception” Procedure: During the Project period, 49 CFR, part 24, applies to any cost incurred for acquisition of an interest in real property with either NMBCA funding or matching dollars. It will also apply to any acquisition of an interest in real property during the pre-agreement period to be reimbursed with NMBCA funding. However, whether the cost of acquisition was incurred during the Project period or during the pre-agreement period, the Purchaser may qualify for an “exception” to many of the requirements of 49 CFR, part 24, by complying with the requirements of 49 CFR Section 24.2 *Displaced person* (2)(viii) and 49 CFR Section 24.101(a).

If an acquisition consists of an interest in real property that is a less-than-permanent easement or a lease where the lease term is less than 50 years including option(s) for extension, the Purchaser does not have to qualify for an “exception” procedure under 49 CFR 24.101(a) to exempt the acquisition from the requirements of the “standard” procedure (i.e., appraisal, offer of just compensation, payment of expenses incidental to transfer). However, for such an acquisition of a less-than permanent easement or less-than-50-year-lease, the Purchaser must still provide relocation assistance to qualifying landowners and tenants if the acquisition does not qualify for an “exception.”

If the acquisition qualifies for an “exception” procedure or consists of an interest in real property that is a less-than-permanent easement or a lease where the lease term is less than 50 years including option(s) for extension, the Recipient must also ensure that the Purchaser obtains an appraisal if the fair market value is estimated to be greater than \$50,000 based on a review of available data. The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) or the Uniform Appraisal Standards of Federal Land Acquisition (UASFLA) and must have a date of value not more than one year before the date that the seller becomes contractually committed to sell. All appraisals completed are subject to review by a USFWS reviewing appraiser, whose recommendations will determine an appraisal’s acceptability.

If a Purchaser qualifies for, and chooses to follow, the “exception” procedure when acquiring real property during the Project period, it must:

1. Determine the fair market value of the property and prepare documentation of fair market value. Documentation may consist of: (i) an appraisal completed in accordance with the USPAP or the UASFLA with a date of value not more than one year before the seller becomes contractually committed to sell (*An appraisal by a State-certified appraiser is required for transactions of \$1 million or more; an appraisal by either a State-licensed or State-certified appraiser is required for transactions having a value of \$50,000 to \$999,999.99.*); (ii) recent sale prices of at least three specific identified comparable properties; or (iii) the assessed value with documentation of how it was determined including its relationship to the fair market value. The dates of value of an appraisal or other data must not be more than one year before the seller becomes contractually committed to sell. Fair market value must be adequately supported in the Recipient’s file and copies of the file documentation must be acceptable to the Program Officer. If the Purchaser obtains an appraisal (even if it is not required), it must be used as the determinant of fair market value unless the Recipient can conclusively demonstrate that it is not accurate.
2. Before making an offer to the landowner, mail or hand deliver written notice to the landowner. The notice must:
 - b. Clearly advise the owner that the Purchaser is unable to acquire the property if negotiations fail to result in an amicable agreement.
 - c. Clearly inform the owner in writing of what the Purchaser believes to be the fair market value of the property. The Purchaser must have this notice personally served or sent by certified or registered first-class mail, return receipt requested, and must document it in the Purchaser’s files. The Purchaser must provide persons who are unable to read and understand the notice with appropriate translation and counseling. The notice must indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

3. Obtain documentation of owner's donation of part/all of the fair market value of the property. Once the Purchaser informs the owner in writing of what it believes to be the fair market value of the property, the owner may donate all or any lesser portion of the property's value to the Purchaser. The Purchaser's records must contain a written confirmation from the owner that confirms that he/she is donating a specific amount of the real property's fair market value. The Purchaser must send a copy of this confirmation to the Program Officer. This donation cannot be used as match for a NMBCA project activity within the United States (see Section IV.A.).
4. Comply with the following requirements if the Purchaser has eminent domain authority:
 - a. No specific site or property needs to be acquired, although the Purchaser may limit its search for alternative sites to a general geographic area. All owners are to be treated similarly where a Purchaser wishes to purchase more than one site within a geographic area on this basis.
 - b. 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.
5. Comply with Relocation Assistance requirements if tenants will be displaced as a result of the land acquisition. If any tenant(s) will be displaced [i.e., tenant must move from the real property or move his or her personal property from the real property as a result of a Project], the Recipient must provide relocation assistance advice, a notice of relocation eligibility (see 49 CFR 24.203), and relocation assistance to displaced tenant(s) as required in 49 CFR, part 24. The Purchaser must have the notice of relocation eligibility personally served or sent by certified or registered first-class mail, return receipt requested, and must document it in the Purchaser's files. The Purchaser must provide persons who are unable to read and understand the notice with appropriate translation and counseling. The notice must indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

Relocation assistance is not required if the property will be acquired subject to the rights of tenants (the leases will not be terminated before their stated expiration dates). The Recipient must provide the Program Officer with a copy of the notice of relocation eligibility and written confirmation that the Recipient/Purchaser has complied with other relocation assistance requirements of 49 CFR, part 24, or documentation for each property that the acquisition is exempt from relocation assistance requirements. The requirements of Section VII.B.5. apply to all interests in real property that the Purchaser becomes contractually committed to buy using NMBCA funding or matching dollars after USFWS signs the grant agreement and those interests in real property that the Purchaser becomes contractually committed to buy during the pre-agreement period using NMBCA funding even if these interests are less-than-permanent easements or leases where the lease term is less than 50 years including option(s) for extension.

6. Submit the Following Documentation: The Recipient must submit the following to the Program Officer as soon as practicable:
 - documentation of value as described in paragraph VII.B.1.;
 - copy of written notice to landowner as described in paragraph VII.B.2.;
 - copy of documentation of landowner donation, if applicable, as described in paragraph VII.B.3.;
 - evidence of compliance with requirements in paragraph VII.B.4. if applicable;
 - documentation of compliance with relocation assistance requirements of 49 CFR, part 24, as described in paragraph VII.B.5. including copy of notice of relocation eligibility;
 - closing statement;
 - copy of recorded deed or other instrument conveying title to any interest in real property purchased with NMBCA funding or matching dollars.
- C. Acquisition of Interest in Real Property by "Standard" Procedure: If (a) a Purchaser becomes contractually committed to buy an interest in real property using NMBCA funding or matching dollars after the USFWS signs the grant agreement or becomes contractually committed to buy an interest in real property using

NMBCA funding during the pre-agreement period; and (b) the interest in real property will be acquired (i) in fee title (or fee title subject to retention of a life estate or a life use), or (ii) by leasing where the lease term including option(s) for extension is 50 years or more, or (iii) as a permanent easement; and (c) does not follow the “exception” procedure described in Section VII.B. above, the Purchaser must comply with the requirements of 49 CFR, part 24. All appraisals completed pursuant to this section are subject to review by a USFWS reviewing appraiser, whose recommendations will determine the appraisal’s acceptability.

The Recipient must send the following to the Program Officer as soon as practicable:

- a copy of summary and signature pages of an appraisal conforming to the Uniform Standards of Professional Appraisal Practice (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) with a date of value not more than one year before the date that the seller becomes contractually committed to sell [*Appraiser must be (i) State certified for a transaction having a value of \$1 million or more, and (ii) State licensed or State certified for a transaction having a value of less than \$1 million.*];
- copy of appraisal review;
- copy of summary statement of just compensation; [the summary statement must include 1. the amount offered as just compensation, 2. a description and location identification of the real property and interest in real property to be acquired, 3. an identification of the buildings, structures, and other improvements that are considered to be part of the real property for which the offer of just compensation is being made, and 4. the statement must identify any separately held ownership interest in the property, e.g. a tenant-owned improvement, and indicate that such interest is not covered by the offer. This statement should be sent to the landowner prior or concurrent to making the purchase offer.]
- copy of documentation of compliance with relocation assistance requirements of 49 CFR, part 24, including a copy of the notice of relocation eligibility (see 49 CFR 24.203 and 49 CFR 24.50).
- closing statement [*see definition in VII.A.. above*]
- copy of recorded deed or other instrument conveying title to any interest in real property purchased with NMBCA funding or matching dollars

- D. Waiver: Recipients may request that the Program Officer grant a waiver from the requirements of Section VII.B. or Section VII.C. To qualify for a waiver, the Recipient must provide a signed statement from the landowner and tenant whose property is being acquired. The Purchaser must provide landowners and tenants who are unable to read and understand the requirements that are the subject of the waiver with appropriate translation and counseling. The signed statement must confirm the following:
- a. The landowner or tenant understands the assistance or protections provided under 49 CFR, part 24 that pertain to the subject of the waiver request.
 - b. For waiver requests relating to relocation benefits, a USFWS Realty Specialist interviewed the landowner or tenant to explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
 - c. The requested waiver would not reduce any assistance or protection provided to the landowner or any tenant in 49 CFR, part 24.

E. Long-term Conservation:

1. Use for Project Purposes. The Recipient must ensure that any interest in real property purchased with grant funds or with matching funds is managed:
 - to achieve the purpose(s) of the Project as stated in the Proposal and the Grant Agreement;
 - consistent with any management plan, objectives, goals, or descriptions of desired habitat stated in the Proposal; and
 - for the long-term conservation and management of the affected ecosystem and the fish and wildlife dependent thereon.
- a. Federal, State, Tribal, or Local Government’s System of Land Management Systems: If an interest in real property purchased for or contributed for the Project will be included in a Federal, State, Tribal, or local government’s system of lands managed for long-term conservation, the Recipient must send the Program Officer copies of any statutes or other legal instruments that established and

otherwise govern the system. The Recipient must send the Program Officer these items as soon as it is feasible to do so during the Project period. If, in the Program Officer's opinion, the applicable statutes or other instruments do not ensure that the interest in real property will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon, a recorded Notice of Grant [or Cooperative] Agreement as described in Section VII.E.1.b. is required.

- b. Other Projects - Notice of Grant [or Cooperative] Agreement: If any interest in real property purchased for or contributed to the Project will not be included in a Federal, State, Tribal, or local government's land management system managed for long-term conservation, the Purchaser who commits the interest in real property to the Project must record a Notice of Grant [or Cooperative] Agreement in the county land records.
 - i. The Notice of Grant [or Cooperative] Agreement must:
 - identify the interest in real property to which the Notice of Grant [or Cooperative] Agreement applies and include a legal description;
 - identify the name and address of the Recipient, subrecipient, or match provider who commits the interest in real property to the Project;
 - reference the Grant Agreement and the address where it is kept on file;
 - state the purpose of the Project;
 - state that the Recipient, subrecipient, or match provider who commits the interest in real property to the Project confirms its obligation to manage the interest in real property pursuant to the Grant Agreement, its incorporated project proposal, and the purpose of the Project; and
 - state that the Recipient, subrecipient, or match provider who commits the interest in real property to the Project will not convey or encumber the interest in real property, in whole or in part, to another party without USFWS's consent.

The Recipient must send the Program Officer a copy of any required "Notice of Grant [or Cooperative] Agreement as recorded.
 - ii. In lieu of a Notice of Grant [or Cooperative] Agreement, the Purchaser may include the required elements of a Notice of Grant [or Cooperative] Agreement in the terms of any recorded easement, deed, or lease in which the Purchaser acquires an interest in real property for the purposes of the Project.
2. Real Property Disposal: The Recipient must use the interest in real property for the Project's authorized purpose as long as it is needed. The USFWS will be the final arbiter of when an interest in real property will be no longer needed for the Project's authorized purpose. Except as specified in the Proposal, the Recipient, subrecipient, or match provider who commits the interest in real property to the Project may not:
 - encumber the interest in real property without the approval of USFWS or its successor [*To encumber is to attach a claim, liability, or some other right to real property and make it binding on the same, such as a lien, mortgage, easement, or servitude.*];
 - dispose of the interest in real property, or any part of the same, without requesting the approval of USFWS or its successor or without requesting disposition instructions from USFWS or its successor.
 - a. Authorized Conveyance: In some cases, a Recipient, subrecipient, or match provider who commits the interest in real property to the Project will determine during or after the Project period that: it is no longer able or willing to retain title to or administer an interest in real property acquired in this Project for the Project's authorized purpose; or the interest in real property acquired in this Project is no longer needed for the Project's authorized purpose. The Recipient, subrecipient, or match provider must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of the following three instructions:
 - i. Retain title without further obligation to the Federal government after it compensates USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project.

- ii. Sell the interest in real property under guidelines provided by USFWS and pay USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project (after deducting actual and reasonable selling or fix-up expenses, if any, from the sales proceeds). When USFWS authorizes or requires the Recipient, subrecipient, or match provider to sell the interest in real property, the Recipient, subrecipient, or match provider must establish proper sales procedures that provide for competition to the extent practicable and result in the highest possible return.
- iii. Transfer title to the interest in real property to the Federal Government or to an eligible third party provided that, in such cases, the Recipient, subrecipient, or match provider shall be entitled to compensation for its attributable percentage of the current fair market value of the interest in real property.

USFWS or its successor will direct the Recipient, subrecipient, or match provider to transfer the interest in real property to a specific Federal, State, or Tribal agency for long-term conservation under option iii. in Section VII.E.2.a. above if such transfer was specified in the Proposal, or such transfer helps achieve: the purpose(s) of the Project as stated in the Proposal and the Grant Agreement; and compliance with the requirement of Section VII.E.1.a. The Recipient, subrecipient, or match provider at its option, may waive its right to compensation on any transfer of an interest in real property that is directed by USFWS. The USFWS will not require that the Recipient, subrecipient, or match provider to pay the USFWS its attributable percentage of the current fair market value of the interest in real property if:

- the USFWS directs the Recipient, subrecipient, or match provider to transfer the interest in real property to a Federal, State, or Tribal agency for long-term conservation if such transfer was either specified in the Proposal or helps achieve the Purpose of the Project and compliance with the requirements of Section VII.E.1.a.; and
- the Recipient, subrecipient, or match provider does not receive any compensation in cash or in kind for the transfer.

If such a Recipient, subrecipient, or match provider is an institution of higher education, other nonprofit organization, or a commercial organization, it must first obtain USFWS's written approval for the use of the interest in real property in other federally sponsored projects. Use in other projects must be limited to those under federally sponsored projects that have purposes consistent with those authorized for support by the United States Department of the Interior. If use in other federally sponsored projects is not possible or appropriate, the Recipient, subrecipient, or match provider that is an institution of higher education, other nonprofit organization, or commercial organization must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of instructions (i) through (iii) as listed above.

- b. Unauthorized Conveyance or Administration Inconsistent with Project Purpose: The Recipient agrees to be bound by the alternative for redress that USFWS chooses from those listed below if the Recipient, subrecipient or match provider:
 - sells, transfers, encumbers, pledges as security or collateral for a debt, or otherwise disposes of any interest in real property acquired in whole or in part with NMBCA funding or matching funds or as a matching in-kind donation without the permission of USFWS; or
 - ceases administering the interest in real property interest in whole or in part for the authorized purpose of this Project in the opinion of USFWS and without USFWS's approval.

The following are alternatives for redress for either an unauthorized conveyance of an interest in real property or administration of an interest in real property in a manner inconsistent with the Project Purpose:

- i. USFWS may direct a Recipient, subrecipient, or match provider to convey to the USFWS or its designee an interest in real property that has a value equal to the percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project and that will serve the same purpose of long-term

conservation and management of the affected ecosystem and the fish and wildlife dependent thereon.

- ii. USFWS may direct a Recipient, subrecipient, or match provider to pay USFWS that percentage of the fair market value of the interest in real property attributable to the Federal participation in the Project.

In the case of alternatives (i) and (ii) above, the USFWS, at its option, may require the Recipient, subrecipient, or match provider to obtain at the Recipient's, subrecipient's, or match provider's expense an appraisal conforming to the most recent version of the Uniform Appraisal Standards of Federal Land Acquisition or their equivalent. A USFWS or other Federal reviewing appraiser must review and approve the appraisal before the amount of compensation is established.

- c. Duration of Authorized and Unauthorized Conveyance Provisions: Sections VII.E.2.a and b. will be in force in perpetuity for any interest in real property purchased with NMBCA funding or matching dollars or received as a matching in-kind donation unless limited to shorter periods by less-than-perpetual easements, leases, or other legal instruments. Any exception to the application of Section VII.E.2.a. and b. in perpetuity must be supported by the Proposal or the written permission of the Program Officer.

F. Real Property Acquisition Outside of the United States of America:

1. Real Property: Real property acquired with NMBCA funds or matching funds will be purchased at or below the appraised value. Recipient shall provide a third-party appraisal to the Program Officer for approval as soon as possible prior to the purchase of the real property. The appraisal shall be completed according to generally accepted standards and procedures currently in use in the applicable country.
2. Documentation: The Recipient shall submit to the Program Officer copies of the closing statement, and the recorded deed, registered escritura, or other instrument conveying title to any interest in real property purchased with NMBCA funds or matching funds or as a matching in-kind donation (outside of USA), within 90 days of the closing or as soon as practicable.
3. Displaced Persons: If any tenant(s) will be displaced by a project, the Recipient must provide relocation assistance to the displaced tenant(s), including reasonable moving or paying expenses associated with moving the tenant(s) and his or her personal property
4. Long-term Conservation: Real property purchased with NMBCA funds or matching funds or as a matching in-kind donation (outside of USA) shall be held and administered primarily for the long-term conservation of wildlife and other natural resources, in accordance with the project purposes.
5. Property Inspection: The Recipient shall allow representatives of the FWS to inspect the real property acquired with NMBCA funds or matching funds or as a matching in-kind donation (outside of USA), following reasonable advance notice, for the purpose of ensuring that the property is managed in accordance with the purposes of the project, and for the long-term conservation of wildlife and other natural resources.
6. Real Property Disposal: The Recipient must use the interest in real property for the project's authorized purposes. The FWS will be the final arbiter of when an interest in real property will be no longer needed for the project's authorized purposes. Except as specified in the proposal, the Recipient or subrecipient who commits the interest in real property to the project may not:
 - i) encumber the interest on real property without the approval of the FWS (encumber means to attach a claim, liability, or some other right to real property and make it binding on the same, such as a lien, mortgage, easement, or servitude).
 - ii) dispose of the interest in real property, or any part of the same, without requesting the approval of the USFWS.

VIII. MODIFICATIONS

A. Prior Approvals

The Recipient must request prior written approval of the Program Officer for any change of a provision of the Grant Agreement and any of the following changes of the Proposal:

- changes in the scope and objective of the Project (regardless of whether there is an associated budget revision requiring prior approval) including but not necessarily limited to, changes in the Project Purpose, extension of the Project period except as provided below, changes in the Project area, a change in the proposed titleholder of any interests in real property purchased or donated for the Project, a cumulative decrease of any proposed acreage achievements in for example acquisition or restoration activities, and changes in the matching contributions;
- the transfer of amounts budgeted for the direct costs of Acquisition, Restoration, or Enhancement to indirect costs;
- the transfer from a non-administrative or non-overhead direct-cost budget item to a direct-cost category labeled as administration, overhead, or an equivalent designation;
- the inclusion of costs that are not allowed in accordance with the Federal Cost Principles or the policy of the NMBCA Grants Program; and
- the inclusion of costs that require prior approval in accordance with the applicable Federal Cost Principles, including (i) changes in the specific parcels or interests in real property to be acquired, and (ii) identification of the specific parcels or interests in real property to be acquired for projects where such parcels or interests were not identified in the original proposal.

The Recipient must consult with the Program Officer as soon as he or she becomes aware of any potential change in the scope or acreage objectives of the project. The Recipient must initiate such consultations whether the potential change is the initiative of the Recipient or dictated by forces beyond the Recipient's control. An example of the latter is an unforeseen escalation of land prices that will: (a) reduce the number of acres or the interests in real property that can be acquired in the project (e.g., easements instead of fee title); or (b) change the types of habitats that can be acquired in the project.

The Recipient must send all requests for prior approval to the Program Officer at least 30 days in advance of the desired implementation. The Recipient must include a narrative justification with any request for changes in the Grant Agreement or Proposal. A request for prior approval of any budget revision must be accompanied by a revised budget table in the same format as in the original Proposal. Any proposal for changes in parcels of real property to be acquired will require a determination by the Secretary of the Interior that the interests in real property should not be included in the National Wildlife Refuge System as required by Section 6 of NMBCA. The Program Officer does not have the authority to increase the Federal funding awarded to this Project.

- B. **Change of Project Officer**: Although prior approval is not required, the Recipient must notify the USFWS of a change of the Recipient's Project Officer or his or her address, telephone/fax number, or E-mail address. Project Officers must be familiar with the details of a proposal and the progress in completing the Project. Project Officers must also be available to discuss the project with the Program Officer by telephone or E-mail. The Program Officer reserves the right to request another Project Officer if it anticipates or experiences significant problems in contacting or obtaining information from the designated Project Officer.
- C. **One-Time Extension of Project Period**: Recipients may initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the conditions listed below apply. For one-time extensions, the Recipient must notify the Program Officer in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date, specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:
- the extension requires additional Federal funds; or
 - the extension involves any change in the approved objectives, scope, or purpose of the Project.

Any extension after this one-time Recipient-initiated extension will require the Program Officer's prior written approval.

- D. Case by Case Exceptions: Except as required or authorized above, USFWS waives all other cost-related or administrative prior approvals authorized in 43 CFR 12.70 and 43 CFR 12.925. In addition to the above potential modifications of the Grant Agreement, the Recipient may request that the Program Officer grant, in unusual situations, an exception to any requirement of the Grant Agreement that is derived from the Federal grant regulations in 43 CFR, part 12, or NMBCA program policy. The Program Officer will only approve such exceptions on a case-by-case basis and when the request is supported by a persuasive written justification. To ensure that consistent criteria are applied to all subsequent requests for exceptions and modifications, the Program Officer must develop decision criteria to be applied to current and future requests before approving or disapproving the request.
- E. National Environmental Policy Act, National Historic Preservation Act, Contaminants: The Program Officer requires written confirmation from USFWS Regional Directors or their designees that a contaminants survey, National Environmental Policy Act requirements, and the National Historic Preservation Act's (NHPA) Section 106 process has been completed or is in the process of being completed. If a proposal includes work over a large area where specific project sites were not identified in the Proposal or if the Recipient or subrecipient proposes different project sites than those identified in the Proposal, the Recipient must contact the USFWS Regional Historic Preservation Officer as soon as sites are identified. The Regional Historic Preservation Officer will ensure that any additional requirements regarding contaminants, NEPA, or NHPA are addressed. If these consultations identify (a) potentially significant impacts regarding contaminants, archaeological sites, or the larger environment or (b) the need for additional surveys or documentation, the Recipient must consult with the Program Officer before making any commitments to acquire or work on the site(s). *[See Section IV.B. for pre-agreement costs.]*

For activities *outside* of the United States of America Section 402 (16 U.S.C. 470a-2) of the National Historic Preservation Act applies. Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the Program Officer must be made aware of and take into account any effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

- IX. TERMINATION USFWS may terminate this award in whole or in part if a Recipient materially fails to comply with the terms and conditions of an award. If the USFWS Program determines that the Recipient will materially fail to achieve the Project's acreage objectives as stated in the Proposal the USFWS may terminate the grant in whole or in part. If a Recipient, without prior consultation with the Program Officer, incurs costs to implement a project that will materially fail to achieve the project's objectives, the USFWS may terminate the grant in whole or in part. The USFWS 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 USFWS 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 USFWS determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety. In any termination of an award, USFWS must consider the Recipient's responsibilities for property management (if any) and to submit financial, performance, and other reports required by this document.
- X. AUDIT REQUIREMENTS Recipients that expend \$300,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (<http://www.whitehouse.gov/OMB/grants/index.html>).

XI. CERTIFICATIONS Through acceptance of a NMBCA Assistance Award the Recipient's Project Officer 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 or cooperative 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 (DI2010 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 (DI2010 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 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

For Grantees other than individuals

The grantee 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 grantee'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 grantee'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—
 - (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).

For grantees who are individuals

- (1) The grantee certifies that, 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;
- (2) 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.