

GRANT AGREEMENT
BETWEEN
U. S. FISH AND WILDLIFE SERVICE
AND
THE NATURE CONSERVANCY

PAK
9/20/00
This award has been
OBLIGATED in FFS

I. RECIPIENT

The Nature Conservancy
421 W. 1st Avenue, Suite 200
Anchorage, Alaska 99501

Project Officer: Randall H. Hagenstein
Phone: (907) 276-3133
FAX: (907) 276-2584
E-mail: rhagenstein@tnc.org

II. FINANCIAL DATA

Agreement Number: 98210-0-G702

Accounting Data: 2000-91080-411G-9676-0053

Tax Identification Number: 53-0242652

DUNS Number: 840632269

Amount Obligated from North American Wetlands Conservation Fund (NAWCF): \$846,200

Estimated Partners' Cash and In-kind Commitments: Recipient, \$1,795,150; Kachemak Heritage Land Trust, \$86,900; Alaska Division of Parks and Outdoor Recreation, \$116,000; City of Homer, \$41,000; and Exxon Valdez Oil Spill Council, \$1,234,100. Total - \$3,273,150.

Authorized Pre-award Cost Included in Amount Obligated from NAWCF: \$157,500 (See Section IX.C.)

Date on Which Obligation of Pre-award Costs may Begin: July 10, 2000

Catalog of Federal Domestic Assistance (CFDA) Number: 15.623 (NAWCF)

III. AUTHORITY

The U.S. Fish and Wildlife Service (FWS) and The Nature Conservancy (Recipient) enter into this Agreement under the authority of Public Law 101-233, the North American Wetlands Conservation Act, as amended (16 USC 4401 *et seq.*). This Agreement supports the **Kachemak Bay Wetlands Conservation Project**, which was recommended by the North American Wetlands Conservation Council on December 8, 1999, and approved by the Migratory Bird Conservation Commission on March 22, 2000.

IV. PURPOSE

The purpose of this Project is to strengthen the work of numerous partners operating to conserve wetlands and waterfowl within the Kachemak Bay area through the fee-title acquisition of an estimated 727 acres of important wetlands and associated uplands.

V. SCOPE OF WORK

This Agreement incorporates by reference the Recipient's Kachemak Bay Wetlands Conservation Project

Proposal (Proposal) dated August 2, 1999, as clarified in Randall H. Hagenstein's letter to Bettina Sparrowe dated October 8, 1999. The incorporated Proposal includes its budget and partners' letters of commitment. See Section XIV before deviating from the Proposal.

VI. PROJECT PERIOD

The project period starts on the date the FWS Contracting Officer signs this Agreement and ends two years later.

VII. MEASURABLE OUTCOMES

The Recipient must be able to demonstrate on-site accomplishment of all the Project's milestones, goals, and objectives as presented in the Proposal including the acres in the responses to Technical Assessments Questions 4 and 5.

VIII. REPORTS & OTHER REQUIRED DOCUMENTATION

The Recipient must provide the FWS Project Officer with the following:

- (1) Performance reports and associated documentation.

<u>Report</u>	<u>Period Covered</u>	<u>Due Date</u>
Annual	1 st year after FWS signs Agreement	90 days after 1 st period completed
Final	Entire project period	90 days after end of project period

The performance reports must include or be accompanied by:

- a comparison of actual accomplishments with the milestones and the other goals and objectives for the period including the number of acres acquired in the same categories as in the responses to Technical Assessment Questions 4 and 5 of the Proposal;
- explanation of any differences between actual accomplishments and the objectives for the period including the acres projected in each category in Technical Assessment Questions 4 and 5;
- computation of the cost per acre presented in the same categories as in the response to Technical Assessment Question 5;
- analysis and explanation of any cost overruns or high unit costs;
- Standard Form 269, Financial Status Report (Long Form), completed on a "cash" basis as explained on the back of the form (available at <http://www.whitehouse.gov/WH/EOP/OMB/Grants>) for projects with nonconstruction costs or a computer-generated table with identical information.

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

- a comparison of each partner's matching and non-matching commitments as stated in the Proposal with the amounts actually contributed;

- a delineation of the boundaries of all interests in real property purchased with NAWCF or matching dollars or received as in-kind matching donations on a U.S. Geological Survey (USGS) 7½ minute topographic quadrangle map(s);
- a delineation of the boundaries of all habitat restoration, enhancement, or creation accomplished with NAWCF dollars or used as match for NAWCF dollars on a USGS 7½ minute topographic quadrangle map(s);
- *(as an alternative for habitat restoration, enhancement, or creation sites smaller than 247 acres [100 hectares])* a coordinate pair list of the approximate geographic center of each contiguous parcel in the UTM (Universal Transverse Mercator) coordinate system with the datum (NAD27 or NAD83) of the map from which coordinates were extracted or from any GPS receiver used to acquire the coordinates, with each polygon, point, or coordinate pair cross-referenced to an individual database accomplishment record which describes the actual habitat modification at a particular site;
- an article of 500 words or less about the Project for the North American Waterfowl Management Plan's newsletter, *Birdscapes*. More than 4,000 copies of the newsletter are distributed in Canada, the U.S., and Mexico. The article must contain the Project's name, location, partners, total number of NAWCF and partners' dollars, benefits to wildlife and people, and any special or unusual aspects. A 35 mm slide(s) or photograph(s) must accompany the article with the photographer's name and organization and a caption. The Recipient may direct questions to, and request a copy of *Birdscapes* from, the Director of Communications, North American Waterfowl and Wetlands Office at (703) 358-1884, or e-mail dee_butler@fws.gov.

[Items (2)-(8) below are more fully explained in the referenced sections of the Agreement.]

(2) A copy of the Summary Statement of Just Compensation given to each seller of real property interest purchased for the project with NAWCF or matching dollars or: (a) documentation that the Recipient or subrecipient qualifies for an exemption or waiver, and (b) a copy of a written offer of fair market value. (Sections XIII.A.1. and XIII.A.6.)

(3) A copy of the summary and signature pages of an approved appraisal [see (4) below] completed in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) for any interest in real property (a) purchased with NAWCF or matching dollars, or (b) received as a matching in-kind donation, except as specified in Section XIII.A.2. If the Recipient or subrecipient qualifies for an exemption or waiver, it must submit (a) documentation that it qualifies for the exemption or waiver, and (b) documentation in support of an offer of fair market value. (Section XIII.A.2. and XIII.A.6.)

(4) A copy of an appraisal review which approves or recommends approval of any appraisal required in Section XIII.A.2. as an adequate basis for the establishment of an offer of just compensation for any interest in real property purchased with NAWCF or matching dollars or received as a matching in-kind donation. (Section XIII.A.3.)

(5) A statement that the Recipient has reviewed and has complied with the relocation assistance requirements of 49 CFR, part 24, subparts C.& D. (See Section XIII.A.4. for specific contents of statement.) or documentation that the Recipient or subrecipient qualifies for an exemption or waiver. (Section XIII.A.6.)

- (6) A copy of the closing statement for each interest in real property purchased with NAWCF or matching dollars. (Section XIII.A.7.)
- (7) Copies of the deeds conveying title to all interests in real property acquired with NAWCF or matching dollars or received as a matching in-kind donation. (Section XIII.A.8.)
- (8) (a) A copy of a statute(s) or other legal instrument(s) that guarantees the long-term conservation of the wetlands, migratory birds, and other fish and wildlife of a Federal, State, or Tribal land-management system if the Recipient or subrecipient places in that system interests in real property purchased with NAWCF or matching dollars or received as an in-kind matching donation. (See Section XIII.B.1. for details); or
- (b) A copy of a recorded Notice of Grant (or Cooperative) Agreement for all interests in real property purchased with NAWCF or matching dollars or received as an in-kind matching donation that do not qualify under Item (8)(a) above. (Section XIII.B.2.)

IX. FINANCIAL ADMINISTRATION

- A. **NAWCF Funding:** The NAWCF provides funding for this Project via FWS not-to-exceed the "AMOUNT OBLIGATED ..." in Section II. This funding must be expended in accordance with the Proposal's Budget Table and the associated Budget Narrative unless modified as stipulated in Section XIV. In no event, does the funding provided by the NAWCF exceed 50 percent of the total cost of the Project.
- The amount under "Amount Obligated ..." in Section II. is currently obligated and will defray the cost of performance from the effective date through the project period. The Recipient must not incur costs to be charged to the FWS, nor is the FWS obligated to reimburse the Recipient in excess of the funding obligated under this Agreement.
- B. **Other Donations:** The partners listed in Section II. of this Agreement under "Estimated Partners' Cash and In-kind Commitments to Project" must make available the estimated amounts of cash and in-kind commitments for use on the Project as specified in the Proposal. All funds and in-kind donations used as a match against NAWCF funds for this Project must be from non-Federal sources and must not previously have been used as match for other Federal funds.
- C. **Pre-Award Costs:** FWS authorizes pre-award costs not to exceed the amount entered under "Authorized Pre-award Costs Included in Amount Obligated from NAWCF" in Section II. of this Agreement. FWS may reimburse the Recipient for such direct and indirect costs as were incurred from the "Date on Which Obligation of Pre-award Costs May Begin" in Section II. of this Agreement to the date the FWS Contracting Officer signs this Agreement only to the extent they would have been allowable if incurred after the date the FWS Contracting Officer signs the award. The amount entered as the "Authorized Pre-award Costs Included in Amount Obligated from NAWCF" in Section II. of this Agreement is included in the "not-to-exceed" amount in Section IX.A. of this Agreement.
- D. **Program Income:** Program income is gross income earned by the Recipient during the project period that is directly generated as a result of the award or earned by the Recipient as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use,

rental, or sale of real or personal property acquired under federally funded projects, and the sale of commodities or items fabricated under an award.

The Recipient must report any program income earned during the project period to the FWS Project Officer. FWS will not deduct it from the total project allowable cost and will treat it as additional funds committed under this grant agreement for the purposes of the Project if the Recipient sends a written request to the FWS Project Officer which:

(a) specifies the exact amount of program income which has been or will be earned during the project period, or, as an alternative, estimates an upper limit on what the Recipient anticipates will be earned during the project period;

(b) demonstrates how the Recipient or subrecipients will use the program income to further the Project Proposal's Purpose and Work Plan; and

(c) demonstrates that the costs of the work to be done with the program income are reasonable and consistent with the applicable Federal Cost Principles. (See Section IX.F.)

E. Financial Management System: The Recipient's, and any subrecipient's, financial management systems must adhere to the standards established in 43 CFR §12.60 or §12.921 as applicable. These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Recipient and any subrecipients must report these expenditures, receipts, and values with the performance reports and upon demand if special audits are required.

F. Allowable Costs: The following documents establish principles for determining which costs are allowable or eligible:

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>

Title 48 Code of Federal Regulations §31.2 "Contracts with Commercial Organizations," <http://www.arnet.gov>

North American Wetlands Conservation Act, U.S. Standard Grant Application Instructions, 1999, Eligible and Ineligible Costs, pp 39-41.

Unless otherwise indicated, the Cost Principles apply to the use of both NAWCF and matching dollars and in-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs. Thus, a recipient may be subject to different Cost Principles than its subrecipients. In addition to restrictions in the applicable Cost Principles, the Recipient or subrecipient must not use NAWCF or matching dollars for annual payments to landowners, research

studies, non-Project-specific communications products, or travel for Federal employees.

Those recipients and subrecipients that are institutions of higher education or other non-profit 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 this Agreement [43 CFR §12.921(b)(6)]. In the absence of these procedures and to satisfy this requirement, such a recipient or subrecipient must comply with the following procedure:

Any of the Recipient's staff, agents, or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles or Federal regulations before making a decision that will directly or indirectly result in expenditure of funds for the Project.

- G. Advance Payments and Reimbursements: To receive payment, the Recipient must submit: (1) a completed Standard Form 270 (Request for Advance or Reimbursement), which is available at <http://www.whitehouse.gov/OMB/grants/index.html>; or (2) its computer-generated equivalent. The Recipient must prepare the Standard Form 270 or its equivalent on a cash basis for either an advance payment or a reimbursement as explained on the back of the form. The Recipient must enter the "Agreement Number" listed in Section II. and the period covered by the request on the Standard Form 270 or its computer-generated equivalent. Use the columns of Block 11a,b, and c on the Standard Form 270 (employing additional forms as necessary for continuation sheets) to differentiate outlays/requested amounts in the categories of the Project Proposal's Budget Table.

To receive advance payments, the Recipient must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Recipient [43 CFR §12.61(c) or §12.921(b)(5) as applicable]. To comply with this requirement, the Recipient agrees to ensure that the FWS Project Officer will receive a completed Standard Form 270 or its computer-generated equivalent 15-30 days before the date on which the Recipient or any subrecipient must disburse the funds.

In signing this Agreement, a Recipient institution of higher learning or other non-profit organization certifies that, if it requests an advance of funds, its financial management systems will meet the standards for fund control and accountability in 43 CFR §12.921 (available at <http://www.nara.gov/fedreg>).

NAWCF funds must be received through the electronic funds transfer process.

X. PROJECT OFFICERS

FWS Project Officer:

David K. Weaver, Ph.D.

North American Waterfowl & Wetlands Office

DOI - Fish & Wildlife Service

4401 N. Fairfax Drive, Suite 110

Arlington, Virginia 22203

Phone: (703) 358-1883 FAX: (703)358-2282

E-mail: david_k_weaver@fws.gov

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~~From Barney~~

11/02 ~~as of~~
12/01

Sarah Pearson Mott
Div. Bird Hab. Cons.
US FWS
4401 N Fairfax
MB SP 4075

The FWS Project Officer is responsible for administering the performance of work under this Agreement. However, no understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement is effective or binding upon the Government unless formalized by proper documentation executed by the FWS Contracting Officer. The Recipient must inform the Contracting Officer (see Section XIV) of any actions or inactions by either party to this Agreement which will change the required delivery or completion times stated in the Agreement.

On all matters that pertain to the terms of this Agreement, the Recipient must communicate with the Contracting Officer. Whenever, in the opinion of the Recipient, the Project Officer requests effort outside the scope of the Agreement, the Recipient must so advise the Project Officer. If there still exists a disagreement as to proper work coverage, the Recipient must notify the Contracting Officer immediately, preferably in writing. Proceeding with work outside the terms and conditions of the Agreement could result in nonpayment of Requests for Advance or Reimbursement.

XI. SPECIAL PROVISIONS - GENERAL

A. Property Standards: State, local, and tribal governments must comply with 43 CFR §12.71 through §12.74, and institutions of higher learning and nonprofit organizations must comply with 43 CFR §12.930 through §12.937 in managing and disposing of real property, equipment, supplies, and intangible property acquired in whole or in part under this Agreement. Key provisions on real property disposal specific to this grants program or stipulated in 43 CFR, part 12, are in Section XIII.C.

B. 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 the North American Wetlands Conservation Act. The Recipient must send two copies of any publication on the Project, its accomplishments, or data obtained as a result of the Project to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address is:

U.S. Department of the Interior
Natural Resources Library
Div. of Information & Library
Services, Gifts & Exchanges Section
1849 C Street, NW
Washington, DC 20240

The Recipient further agrees to include the above provisions of Section XI.B. in a subaward to any subrecipient.

C. Government Right to Publish and Use Data: Unless waived by FWS, 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.

D. Metric: For recipient institutions of higher education and non-profit organizations, 43 CFR §12.915

requires the following:

All progress and final reports, other reports, or publications produced under this award shall employ the metric system of measurements to the maximum extent practicable. Both metric and inch-pound units (dual units) may be used if necessary during any transition period(s). However, the Recipient may use non-metric measurements to the extent that the Recipient has supporting documentation that the use of metric measurements is impracticable or is likely to cause significant inefficiencies or loss of markets to the Recipient, such as when foreign competitors are producing competing products in non-metric units.

- E. Buy American: 43 CFR part 12, subpart E, contains specific "Buy American" requirements for recipients. It requires the FWS, as the awarding agency, 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.

XII. SPECIAL PROVISIONS - NAWCA HABITAT RESTORATION AND ENHANCEMENT

- A. Management for Project Purposes: The Recipient must ensure that any lands and waters on which habitat is restored, enhanced, and/or created in this Project are managed for the purposes for which they were intended in the Proposal. If these lands and waters cease to be used for these purposes in whole or in part, the Recipient agrees to compensate the Federal Government in cash for the NAWCF dollars used to restore, enhance, or create that habitat, plus interest at the then current prime rate. The Recipient must repay the Federal Government on terms and conditions satisfactory to FWS.
- B. Inspection: The Recipient must ensure that the owner of any habitat restored, enhanced, or created in the Project (including such work completed with matching funds or as a matching in-kind contribution) will work with the FWS Project Officer to develop a cooperative site-inspection schedule. The purpose of site inspections is to ensure that such habitat is managed for the purposes for which it was intended in the Proposal. Section XII of this Agreement will be in force for 25 years from the end of the project period unless limited by easements, leases, other legal instruments of shorter duration, or special considerations as may be described in the Project Proposal or approved by the FWS Project Officer.

XIII. SPECIAL PROVISIONS - NAWCA REAL PROPERTY ACQUISITION

- A. Acquisition of Interest in Real Property: If the Proposal includes the purchase or lease of interest in real property with NAWCF or matching dollars and/or the use of interest in real property as a match for NAWCF dollars, the following terms and conditions apply unless otherwise indicated:
1. Summary Statement of Just Compensation: Before delivery of the initial written offer to the owner or the owner's representative to purchase an interest in real property for the Project, the Recipient or subrecipient must establish an amount which it believes to be just compensation for the real property. The amount must not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. *[The amount must also not exceed the approved appraisal of the fair*

market value to comply with the requirement of the applicable Cost Principles as incorporated in 43 CFR 12 that costs be reasonable.] Promptly thereafter, the Recipient or subrecipient must make a written offer to the owner to acquire the property for the full amount believed to be the just compensation. (49 CFR §24.2 Initiation of negotiations, §24.102, & §104)

Along with the initial written purchase offer, the owner must be given a written statement of the basis for the offer of just compensation, which must include:

(a) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property must be separately stated.

(b) A description and location identification of the real property and the interest in real property to be acquired.

(c) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. [See Section IX.F. Allowable Costs.] Where appropriate, 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.

If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay (one year or longer except in rapidly changing real estate markets where shorter delays will be considered significant) has occurred since the time of the appraisal(s) of the property, the Recipient or subrecipient must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Recipient or subrecipient must promptly reestablish just compensation and offer that amount to the owner in writing.

The Recipient must provide the FWS Project Officer with a copy of the Statement of Just Compensation or documentation that it qualifies for an exemption or waiver as provided in Section XIII.A.6.: (a) at the time the Recipient requests payment for the purchase from NAWCF; and (b) as soon as feasible during the project period for real property purchased with matching funds or received as a matching in-kind donation.

2. Appraisals: The Recipient must ensure that appraisals are conducted and approved [see Section XIII.A.3.] for all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations except as noted below. It is the Recipient's or subrecipient's responsibility to pay for the appraisal with NAWCF dollars or matching or non-matching contributions unless the landowner releases the Recipient or subrecipient from such obligation. These appraisals must be completed in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) (Interagency Land Acquisition Conference, Washington, D.C., 1992).

Appraisals are not required for:

(a) less-than-permanent easements;

(b) acquisition by leasing where the lease term, including option(s) for extension, is 50 years or less;

(c) an acquisition for which the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data; or

(d) an acquisition that qualifies for an exemption or waiver as provided in Section XIII.A.6.

For each purchase, donation, or transfer of ownership of an interest in real property for the purposes of the project, the Recipient must ensure that the FWS Project Officer receives a copy of each appraisal's summary page(s) and its signature page. The summary page(s) must include the appraised fair market value. The FWS Project Officer must receive these copies: (a) at the time the Recipient requests payment for the purchase from NAWCF; and (b) as soon as feasible during the project period for real property purchased with matching funds or received as a matching in-kind donation. As an alternative to submitting a copy of each appraisal's summary and signature page(s), the Recipient may submit documentation that an acquisition qualifies for an exemption or waiver as provided in Section XIII.A.6..

3. Appraisal Reviews: The Recipient must obtain an appraisal review by sending any appraisal required in Section XIII.A.2. to the appropriate Joint Venture Coordinator or his or her designee. *[Alaska project Recipients must send appraisals directly to the Division of Realty in the Anchorage Regional Office.]* The Recipient must indicate whether the appraisal is for an interest in real property: (a) purchased with NAWCF funds, (b) purchased with matching funds, or (c) received as a matching in-kind donation. The Joint Venture Coordinator or his or her designee will then deliver it to the FWS Realty Office or its designee with enough lead time for the reviewing appraiser to review it and resolve any problems. This will generally be three months before the anticipated date of purchase or three months before the anticipated date of requesting payment from FWS for acquisition costs, whichever comes first.

For each purchase, donation, or transfer of ownership of an interest in real property for the purposes of the project, the Recipient must ensure that the FWS Project Officer receives a copy of the appraisal review: (a) at the time the Recipient requests payment for the purchase from NAWCF; and (b) as soon as feasible during the project period for real property purchased with matching funds or received as a matching in-kind donation. The reviewing appraiser must approve or recommend approval of an appraisal as an adequate basis for the establishment of an offer of just compensation for each interest in real property purchased with NAWCF or matching dollars or received as a matching in-kind donation except as specified in Section XIII.A.2.

In very limited extenuating circumstances associated with specific interests in real property, the FWS Project Officer may extend the required submission time for an appraisal review. Recipients and subrecipients must not use NAWCF or matching dollars to pay landowners any more than the valuation of the interest in real property as determined in an approved appraisal. Recipients and subrecipients also must not accept as match any valuation of an in-kind donation of real property that is in excess of the value determined in an approved appraisal.

4. Relocation Assistance: When a Recipient or subrecipient acquires an interest in real property with NAWCF or matching dollars or receives an interest in real property as a matching in-kind donation, the landowner selling the interest and/or the landowner's tenant(s) may be eligible for relocation assistance. Some of the potentially eligible expenses under certain conditions may include, but are not limited to: transportation of personal property including livestock, storage of personal property for up to 12 months, actual direct loss of tangible personal property as a

result of discontinuing a farm operation, searching for a replacement location, and purchase of substitute personal property.

If a Recipient or subrecipient anticipates that a landowner or tenant may be eligible for relocation assistance, the Recipient must notify the appropriate Joint Venture Coordinator or his or her designee. The Joint Venture Coordinator will then notify the Realty Office in the FWS administrative region where the project is located. Alaska project Recipients must notify the Division of Realty in the Anchorage Regional Office directly. If the Realty Office determines that the acquisition of an interest in real property will result in unanticipated relocation expenses, the FWS Project Officer will consider any request by the Recipient to redirect NAWCF or matching dollars currently obligated for the project to cover these expenses.

For each purchase, donation, or transfer of ownership of an interest in real property for the purposes of the project, the Recipient must provide the FWS Project Officer with a statement that the Recipient has reviewed the relocation assistance requirements of 49 CFR, part 24, subparts A, C, D, E, F, and Appendix A, unless it qualifies for an exemption (not possible for relocation payments or assistance due a tenant) or a waiver under Section XIII.A.6. and it has:

- (a) provided, and ensured that its subrecipients (if any) have provided, all relocation payments or other relocation assistance due landowners or tenants; or
- (b) not incurred and its subrecipients (if any) have not incurred any legal obligation to provide relocation payments or other relocation assistance.

The Recipient must submit the above statement: (a) at the time the Recipient requests payment for the purchase from NAWCF; and (b) as soon as feasible during the project period for real property purchased with matching funds or received as a matching in-kind donation.

5. Expenses Incidental to Transfer of Title: Unless an acquisition qualifies for an exemption or waiver under Section XIII.A.6. the Recipient or subrecipient must reimburse the owner of the real property for all reasonable expenses the owner necessarily incurred for:

- (a) recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Recipient or subrecipient. (However, the Recipient or subrecipient is not required to pay costs solely required to perfect the owner's title to the real property.); and
- (b) penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- (c) the pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Recipient or subrecipient must pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Recipient or subrecipient.

6. Exemptions and Waivers: Some recipients and subrecipients may qualify for an exception (exemption) to the requirements on appraisals, appraisal reviews, expenses incidental to transfer

of title, just compensation, and relocation assistance to a landowner (but not to a tenant) if the transaction is voluntary and the following conditions apply:

[Conditions a and b are required of any recipient or subrecipient seeking an exemption.]

(a) Prior to making an offer for the property, the Recipient or subrecipient clearly advises the owner in writing that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement.

(b) The Recipient or subrecipient in a written and signed communication informs the owner of what it believes to be the fair market value of the property. This offer must be adequately supported in the file and copies of the file documentation must be acceptable to the FWS Project Officer. It may consist of recent sale prices of specific identified comparable properties, or other similar factual data. An appraisal is not required if the acquisition qualifies for an exemption. However, if the Recipient or subrecipient obtains an appraisal even though it is not required, it must be used as one of the determinants of the offer of fair market value. If an appraisal is completed no more than one year prior acquisition, and if it reflects nationally recognized appraisal standards, and if a qualified reviewing appraiser approves the appraisal as an adequate basis for the establishment of an offer of just compensation, the appraisal would normally be the sole determinant of the offer of fair market value.

[Conditions c and d are also required for any recipient or subrecipient that has eminent domain authority and that is seeking an exemption.]

(c) No specific site or property needs to be acquired, although the Recipient or subrecipient may limit its search for alternative sites to a general geographic area. Where a Recipient or subrecipient wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(d) 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.

The Recipient or subrecipient wishing to qualify for an exemption must provide copies of communications with landowners that demonstrate compliance with conditions a and b including documentation in support of an offer of fair market value.

Recipients may request that the FWS Project Officer grant a waiver from the requirements on appraisals, appraisal reviews, offers of just compensation, expenses incidental to transfer of title, and relocation assistance. To qualify for a waiver, the Recipient or subrecipient must provide a signed statement from the landowner (or tenant) whose property is being acquired. This written 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. *For waiver requests relating to relocation benefits, the written statement must also confirm that a FWS 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 [49 CFR §24.205(c)].

(b) The requested waiver would not reduce any assistance or protection provided in 49 CFR, part 24 related to just compensation or relocation assistance.

As an alternative to a separate statement, landowners may include this statement in the purchase and sale agreement, provided that the Recipient provide a copy to the FWS Project Officer when requesting the waiver. If a landowner includes such a statement in the purchase and sale agreement, a tenant (if any) must still provide a signed statement as described above in this paragraph.

7. Closing Statement: The Recipient must submit to the FWS Project Officer a copy of the closing statement on all interests in real property purchased with grant or matching funds. The Recipient must submit the closing statement at the time it requests reimbursement for the purchase of the interests in real property. If the Recipient requested an advance of funds for the purchase of the interests in real property, the closing statement must be submitted no later than 90 days after closing in the case of post-award acquisitions or 90 days after FWS signs the Agreement in the case of acquisitions that occurred prior to the date of signature of the FWS Contracting Officer. The FWS Project Officer will use the closing statement to confirm that the amount paid by the Recipient or subrecipient is consistent with the approved appraised value, the documentation of fair market value, and the Recipient's responsibilities for costs incidental to transfer.
 8. Title: The Recipient must ensure that title to any interest in real property purchased or contributed for the Project is recorded in fee simple, free and clear of all easements, reservations, exceptions, restrictions, and encumbrances except where: (a) the Proposal indicates that easements or leases will be acquired; (b) the Proposal indicates that the title to the interest in real property is, or will be, subject to easements, reservations, exceptions, restrictions, and encumbrances and these are specified in the proposal; or (c) the FWS Project Officer determines that any existing easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased or donated for the Project. The Recipient must provide the FWS Project Officer with (a) a copy of the deeds conveying title to all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations, and (b) copies of any Notice of Grant [or Cooperative] Agreement recorded pursuant to Section XIII.B.2. The Recipient must provide the FWS Project Officer with these items as soon as it is feasible to do so during the project period.
- B. Long-term Conservation: The Recipient must ensure that any interest in real property purchased or contributed for the Project is managed: (a) to achieve the purpose(s) of the Project as stated in the Proposal and Section IV. of this Agreement; (b) consistent with any management plan, objectives, goals, or descriptions of desired habitat stated in the Proposal; and (c) for the long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.
1. Federal, State, or Tribal Land Management Systems: In some projects, an interest in real property purchased or contributed for the project is included in a Federal, State, or Tribal system of lands managed for long-term conservation. In such projects, the Recipient must provide the FWS Project Officer with copies of any statutes or other legal instruments that established and otherwise govern the system. The Recipient must provide the FWS Project Officer with these

items as soon as it is feasible to do so during the project period. If, in FWS'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 XIII.B.2. will be required.

2. Notice of Grant [or Cooperative] Agreement: In other projects, an interest in real property purchased or contributed for the project may not be included in a Federal, State, or Tribal land management system managed for long-term conservation. In such projects, the Recipient or subrecipients must record a Notice of Grant [or Cooperative] Agreement in the appropriate local government office. The Notice of Grant [or Cooperative] Agreement must: (a) reference the Agreement; (b) state the project purpose; (c) state that the interest in real property will be managed in perpetuity for the Project purpose [unless otherwise provided in the Proposal or permitted by the FWS Project Officer]; and (d) state that the interest in real property will not be encumbered or conveyed, in whole or in part, to another party without FWS's consent.
- C. Real Property Disposal: If the Recipient or subrecipient is no longer able or willing to retain title to or administer any part of the interests in real property acquired for this Project for the Project's authorized purpose as stated in Section IV. of this Agreement, it must request disposition instructions from FWS or its successor.
1. Authorized Conveyance: When a Recipient or subrecipient requests disposition instructions for real property interest acquired in this Project, FWS will give (at its option) one or more of the following instructions (a) through (e): *[43 CFR §12.71, 43 CFR §12.932, 43 CFR §12.972(b)]*
 - (a) The Recipient or subrecipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the Project.
 - (b) The Recipient or subrecipient may be directed to sell the property under guidelines provided by FWS and pay the Federal Government for that percentage of the current fair market value of the 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 the Recipient or subrecipient is authorized or required to sell the interest in real property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
 - (c) The Recipient or subrecipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Recipient or subrecipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

[Option (d) is only for institutions of higher education and other non-profit organizations.]

 - (d) The Recipient or subrecipient may be directed to use the property in other federally-sponsored projects. Use in other projects must be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department of the Interior.

transfer between direct and indirect costs. The Recipient must send a revised proposal with any request for prior approval of budget transfers if the FWS Project Officer requests one.

The Recipient must send all requests for prior approval to the FWS Project Officer who will make a recommendation to the Contracting Officer. The Contracting Officer will make the final determination and notify the Recipient in writing.

XV. GENERAL PROVISIONS

General provisions applicable to this Agreement are in 43 CFR, part 12, entitled, "Administrative and Audit Requirements and Cost Principles for Assistance Programs." General provisions for acquisition of interests in real property and relocation assistance are also in 49 CFR, part 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." These regulations are available at <http://www.nara.gov/fedreg> and are hereby incorporated by reference.

XVI. CERTIFICATIONS AND ASSURANCES

Certifications and Assurances applicable to Federal Grants and Cooperative Agreements executed by the Recipient are a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

THE NATURE CONSERVANCY

U.S. FISH & WILDLIFE SERVICE



Signature

Signature

Elliot Marks

Nedra A. Stallone

Typed or Printed Name

Typed or Printed Name

Vice President
NW and HI Regional Director

Contracting Officer

Title

Title

September 19, 2000

9-20-00

Date

Date