



## 341 FW 1, Policy and Responsibilities

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**Date:** February 29, 1996  
**Series:** Real Property  
**Part 341:** Land Acquisition  
**Originating Office:** Division of Realty

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**1.1 Purpose.** This part provides Service personnel with a basic understanding of the land acquisition planning process and provides the procedures to complete planning for projects where land acquisition is the proposed method of land protection.

**1.2 Scope.** Planning for acquisition of land, water, or other interests is initiated with the identification of a need to meet resource objectives that require a real property base. Acquisition involves obtaining full control (fee title) or partial control (easements, leases, or agreements). For purposes of this part, planning for land acquisition usually terminates when the decision document package is completed.

**1.3 Policy.** Official Service land acquisition policy is as follows:

**A. Land Acquisition Policy.** The Service will acquire lands and waters consistent with the legislation or other congressional guidelines and Executive orders for the conservation of fish and wildlife and related habitat and to provide wildlife-oriented public use for educational and recreational purposes.

(1) Basic Service policy is to acquire land only when other means, such as zoning or regulation, of achieving program goals and objectives are not appropriate, available, or effective. When lands are to be acquired, the minimum interest necessary to reach management objectives is to be acquired or retained. If fee title is required, full consideration will be given to extended use reservations, exchanges, or other alternatives that will lessen impact on the owner and the community. Donations of desired lands or interests will be encouraged.

(2) To carry out this policy, where there is evidence of a need for additional resource protection at any proposed or existing refuge, fish hatchery, research station, or similar facility, a Land Protection Plan shall be developed that conforms to Departmental and Service policies and applicable laws. The plan shall be simple and concise. It shall be prepared with appropriate public participation and shall include consideration of the sociocultural impacts.

(3) In terms of various authorizing acts and other congressional mandates, acquisition units are divided into two categories for the purpose of this land acquisition policy. They are:

(a) In those areas specifically authorized by Act of Congress, acquisition is carried out in accordance with the policies and procedures prescribed by the Congress in the authorizing legislation.

(b) Acquisitions in areas under general authorities such as the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, the Endangered Species Act, the Migratory Bird Hunting and Conservation Stamp Act, the Refuge Recreation Act of 1962, and the Emergency Wetlands Resources Act of 1986 shall be on a willing seller basis. However, the Service may acquire land through litigation (also termed condemnation) to prevent uses that would cause irreparable damage to the resources for which the unit was established to protect; to determine the legal owner (clear title); or to settle a difference of opinion of value. Requests to the Solicitor to initiate condemnation will be made only after receiving prior approval from the Director and notice to the landowner.

**B. Land Acquisition Policy for Urban Refuges.** The Service seeks to provide refuge visitors with an understanding and appreciation of fish and wildlife resources through environmental education and interpretation and through wildlife-oriented recreational experiences to the extent these activities are compatible with the purposes for which a refuge is established.

(1) The official Service land acquisition policy for urban refuges is to acquire lands and waters in or adjacent to metropolitan statistical areas to protect fish and wildlife resources and habitats that will provide the public wildlife-oriented recreation, education, and interpretation opportunities. A metropolitan statistical area is defined as a city with a population of at least 50,000, or a Census Bureau-defined urbanized area of at least 50,000 with a total metro-politan population of at least 100,000 (75,000 in New England).

(2) Some urban refuges may protect habitats of great significance to the conservation of fish and wildlife resources, including endangered and threatened species. However, the primary purpose for establishment of new urban refuges will be to foster environmental awareness and outreach programs, and to develop an informed and involved citizenry that will support fish and wildlife conservation. If Service lands already exist in the same urban area, the Service will only acquire additional habitat types of sufficient size to meet habitat needs as determined by the Regions, as well as by education, interpretation, and recreation needs that are not currently being met by the existing refuge or other State or county agencies. These refuges will provide public use benefits associated with fish and wildlife resources that include, but are not limited to, bird watching, fishing, scientific research, environmental

education, open space in an urban setting, and protection of cultural resources.

**(3)** General Service authorities and the Service's acquisition policy (i.e., to acquire the minimum interest necessary to reach management objectives) shall apply to these urban refuges. In areas specifically authorized by an Act of Congress, acquisition will be carried out in accordance with the policies prescribed by Congress in the authorizing legislation. Management, operational, and acquisition considerations for urban refuges will include:

**(a)** Education, interpretation, and wildlife-oriented recreation value;

**(b)** Opportunities for partnerships with State and local governments, private individuals, or citizens groups;

**(c)** Potential role of non-profit or volunteer groups for management purposes;

**(d)** Adequacy of buffer areas and habitat corridors where possible that contribute appreciably to the long-term preservation of habitats.

**1.4 Objectives.** Land acquisition is a strategy used by the Service in achieving its goals and objectives for certain species and activities. The first six objectives (A-F) correspond to target categories in the Land Acquisition Priority System (LAPS). The last objective supports the Service's Urban Refuge Policy.

**A. Migratory Birds.** The objective is to maintain and manage an appropriate distribution and diversity of high quality waterfowl habitat. This habitat will maintain current distribution of waterfowl populations and sustain an abundance of waterfowl consistent with population objectives stated in the North American Waterfowl Management Plan.

**B. Endangered Species.** The objective is to prevent species from becoming extinct and to return them to the point where they are no longer listed on the Federal "List of Endangered and Threatened Wildlife and Plants." Commonly, a species becomes endangered because of a loss of essential habitat. Often, the species can be preserved no other way than by protecting habitat through land acquisition. These habitats are usually under stress from competing uses and can be costly, both socially and economically, to acquire. For the purposes of using the LAPS, habitat protection must be identified in an approved recovery plan prior to being submitted for budgeting.

**C. Nationally Significant Wildlife Habitat.** Projects in this category prevent permanent loss of nationally significant fish, wildlife, and plant resources. This includes all Service wildlife management actions related to essential habitat for these species and ensures the perpetuation of habitat important to fish and wildlife species. Criteria have been established to qualify projects for protection and an extensive national effort has been made by States and other outside consultants to identify such ecosystems and alternate means of protecting them. Candidate areas for protection cover an extremely

wide range of projects with respect to habitat, cost, and size. Proposed sites must contain a concentration of different species or a variety of species of a magnitude that sets them apart from similar sites around the country.

**D. Nationally Significant Wetlands.** The objective is to protect the Nation's more important, scarce, and vulnerable wetlands, particularly those representing a declining wetland type within an ecoregion and those having high public benefit. A variety of benefits are associated with wetland preservation. Habitat will be provided for endangered species, migratory birds, and/or a unique diversity of species including resident species, commercial and/or sport fishes, and wildlife-oriented recreation. Benefits will also be derived from continuation of or improvement in surface and groundwater quality and quantity and flood control. For the purposes of using LAPS, wetlands projects must be included in Regional Wetlands Concept Plans.

**E. Nationally Significant Fishery Resources.** The objective is to protect and facilitate restoration of depleted, nationally significant fishery resources.

(1) The term "nationally significant" refers to finfish resources comprising a continuum of one or more unit stocks; i.e., reproductively discrete stocks represented by a single or an assemblage of closely related species, anadromous in character, and/or interjurisdictional (interstate or national) in distribution.

(2) Target fishery resources are primarily those whose performance and contribution have been reduced to suboptimal levels by a wide variety of factors associated mainly with habitat degradation and excessive use. Emphasized are anadromous and Great Lakes resources represented by indigenous or native species within their original ranges. Although not a criteria for LAPS, land acquisition is also used to perfect or protect water supplies and watersheds.

**F. Significant Biodiversity.** The objective is to protect representative examples of nationally significant native ecological communities. Sites contain or provide potential for restoring nationally significant elements of our Nation's heritage. Biodiversity refers to the variety and variability among native organisms, communities, and the ecological complexes in which they occur.

(1) Biodiversity may be viewed at many levels, ranging from landscape complexes and complete ecosystems to the chemical structures that are the molecular basis of heredity. The term biodiversity, therefore, encompasses the numbers and relative abundance of different ecosystems, species, and genes native to any particular area of interest.

(2) Biodiversity acquisitions are those that contain all, or most, of their naturally occurring biotic components and functions. Emphasis is placed upon the native aspects of the biota. The native species are those that occur as a result of natural succession and are not the result of humans or their commensals. The objective of protecting biodiversity is to capture, protect, and, where possible, restore the native characteristics of the landscape, not to strive for areas of great numbers of species.

**G. Education, Interpretation, and Wildlife-Oriented Recreation.** This objective is in support of the goals of the Service's Urban Refuge Policy. The category is designed to protect fish and wildlife resources and habitats in or adjacent to metropolitan statistical areas that will provide the public with wildlife-oriented recreation, education, and interpretation opportunities that are compatible with the purposes for which specific refuges are established.

**1.5 Authorities.** Land protection/acquisition, like other Service activities, can only be accomplished in accordance with authority given by Congress and interpreted by regulations and guidelines established in accordance with such authority. A general description of applicable legislative authorities is contained in [Exhibit 1](#). More detailed descriptions of these authorities are given in [340 FW 1](#).

**1.6 Definitions.** The following definitions will assist in interpreting this part.

**A. Decision Document (DD).** A compilation of those documents prepared during detailed planning that demonstrates compliance with all applicable laws, Executive orders, regulations, and policies. It usually includes a National Environmental Policy Act (NEPA) document (an Environmental Assessment (EA) or Environmental Impact Statement (EIS)), or an Environmental Action Memorandum (EAM) for a Categorical Exclusion with an Executive Summary; Land Protection Plan; Realty Feasibility Report; Engineering Assessment; and Compliance Certificate. The DD is approved by the Regional Director.

**B. Director's Approval Memorandum.** A memorandum signed by the Director that approves the preliminary project proposal and authorizes the Regional Director to proceed with detailed planning on a project.

**C. Land Acquisition.** Acquisition of full or partial ownership rights to real property. Acquisition can be by such methods as direct purchase, exchange, transfer between Federal agencies, donation, condemnation, or withdrawing land from the public domain.

**D. Land Acquisition Priority System (LAPS).** An automated resource-based process that provides a uniform and objective approach to prioritizing refuge land acquisition. The LAPS is used to determine the national priority of a proposed acquisition. It is used in all aspects of the budget process and provides easily accessible historical and future data on specific projects. The LAPS provides a biological basis for ranking projects and redirects acquisition efforts toward those projects having the highest overall national value.

**E. Land Protection.** The elimination of undesired, incompatible, and usually detrimental impacts to fish and wildlife habitat. Federal land protection can be accomplished through management of lands acquired by fee acquisition, conservation easement, permit, lease, or cooperative agreement. Land protection may also be provided by local regulatory control such as zoning, ordinances, or regulatory permits.

**F. Land Ownership.** The rights inherent in the ownership of real property, wherein each right represents a distinct and separate privilege of ownership. These rights are guaranteed by law, but subject

to certain limitations and restrictions. They are the right to use real property, to sell it, to lease it, to enter it, give it away, and the right to refuse to exercise any of these rights. Acquisition may involve all or part of the property rights.

**G. Objective.** An attainable, quantifiable, or verifiable target toward which concerted effort is directed. It is a precise statement of purpose sufficiently detailed so as to be measurable in the degree of attainment. It includes at least two of the following elements: time limit (when it must be accomplished); standard of performance (percentage, amount, or dollars); or criterion of measurement (test, questions, opinion, or objective observation). Several specific objectives may be derived from a goal, which is a generalized statement of purpose.

**H. Land Protection Plan (LPP).** A separate document prepared during detailed planning that is intended to inform landowners and the local interested public of the land protection project and how and when it may affect them.

**I. Preliminary Project Proposal (PPP).** A conceptual presentation of a land protection proposal showing how it would meet certain Service objectives. This brief document is based on Service concept plans (i.e., North American Waterfowl Management Plan, Regional Wetlands Concept Plans, endangered species recovery plans) or congressional direction and serves as the basis for the Director's approval early in the planning process.

**1.7 Responsibilities.** Officials listed below are responsible for the functions indicated. A schematic of these responsibilities is illustrated on [Exhibit 2](#).

#### **A. Director.**

- (1) Determines Service land acquisition policies and priorities.
- (2) Prior to the initiation of legislative or budgetary actions, approves in writing all land acquisition PPPs except those for which approval authority has been assigned to the Regional Director.

#### **B. Assistant Director - Refuges and Wildlife (ARW).**

- (1) Makes recommendations relative to approval of land acquisition PPPs.
- (2) Evaluates and recommends Service land acquisition policies, strategies, and priorities.

#### **C. Division of Realty, Washington Office.**

- (1) Provides pertinent information to ARW concerning land acquisition planning and related issues.

- (2) Receives, coordinates, and reviews all acquisition proposals for the Washington Office for policy and procedural compliance.
- (3) Develops national LAPS analysis ranking.
- (4) Recommends land acquisition scheduling and budget formulation.
- (5) Ensures that all pertinent issues are presented during the decision-making processes.
- (6) Coordinates Migratory Bird Conservation Commission activities.

#### **D. Regional Director (RD).**

- (1) Is responsible for land acquisition activities for the Region.
- (2) Reviews and submits PPPs to the Director for approval. Approves PPPs for which approval authority has been assigned to the Regional Director.
- (3) Reviews and approves all components of the DD as appropriate. Provides three copies of the DD to the Washington Office ARW for filing.
- (4) Maintains proper coordination with affected Service programs to achieve a well-orchestrated land acquisition planning process.

#### **E. Assistant Regional Director - ARD/RW.**

- (1) Selects candidate areas to be studied based on Service resource plans.
- (2) Develops and maintains proper coordination with affected refuge management, ascertainment, and realty staffs to achieve a well-orchestrated land acquisition process.
- (3) Ensures Regional realty staff preparation of a PPP and LAPS documentation for the area(s) selected for subsequent submission to Washington Office ARW.
- (4) Ensures Regional realty staff preparation of appropriate detailed studies, appropriate compliance documentation, and development and distribution of the NEPA documentation and LPP.

#### **F. Senior Realty Officer and Staff.**

- (1) Prepares a PPP and LAPS documentation for the area(s) selected for subsequent submission to ARW.

- (2) Conducts appropriate detailed studies for land acquisition planning including preliminary realty information and appropriate land acquisition compliance documentation.
- (3) Develops and coordinates the NEPA documentation process with appropriate Service offices and affected public. Distributes the document to the affected public and other appropriate parties.
- (4) Develops LPP. Distributes LPP to the affected public and other appropriate parties.

#### **G. Refuge Managers and Project Leaders.**

- (1) Furnish information to the ARD/RW on new areas or additional lands for an existing area that would contribute to the objectives set out in acquisition concept plans.
- (2) Assist ascertainment biologists in developing the PPP and the EA or EIS, or in obtaining public participation once a decision is made to proceed with the land acquisition planning process.
- (3) Assist Regional realty staff by providing answers to management questions and becoming more familiar with any special concerns that a potential landowner may have. Aid appraisers and negotiators by familiarizing them with areas, introducing them to county commissioners and other key individuals, and setting up meetings with landowners.
- (4) Manage and develop lands acquired as a result of the land acquisition planning process.

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## **Exhibit 1, 341 FW 1,**

# **Legislation Relating to Fish and Wildlife Service Acquisition**

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### General Legislation Authorizing the Service to Purchase Land

1. Migratory Bird Conservation Act of February 18, 1929 (16 U.S.C. 715-715d, 715e, 715f-715r), as amended. This act provides authority to purchase refuge lands and interest therein for migratory bird refuges, both for inviolate sanctuaries and for other management purposes.
2. Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934 (16 U.S.C. 718-718h), as amended. This Act is the basic authority to purchase fee and easements for Waterfowl Production Areas.
3. Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), as amended. This Act authorized the acquisition of refuge lands for development, advancement, management, conservation, and protection of fish and wildlife resources; and Section 7(a)(1) of the Land and Water Conservation Fund Act (16 U.S.C. 4601-9) provides authority to use Land and Water Conservation Fund (LWCF) monies for acquisition under this Act.
4. Refuge Recreation Act of September 28, 1962 (16 U.S.C. 460k-460k-4), as amended. This Act authorizes the acquisition of lands and interests therein suitable for (1) fish and wildlife-oriented recreation; (2) protection of natural resources; (3) conservation of endangered or threatened species; or (4) carrying out two or more of the above. Acquisition may be made with LWCF monies.

5. Land and Water Conservation Fund (16 U.S.C. 4601-4601-11), as amended. Public Law 88-578, approved September 3, 1964, (78 Stat. 897) created the Land and Water Conservation Fund, derived from various types of revenue (primarily Outer Continental Shelf oil monies) and authorizes appropriations from the Fund for (1) matching grants to States for outdoor recreation projects and (2) land acquisition for various Federal agencies. P.L. 94-422, approved September 28, 1976, (90 Stat. 1313) authorized funds for, among other things, the National Wildlife Refuge System for acquisition of: (1) habitat of endangered and threatened species of fish, wildlife, and plants under section 5(a) of the Endangered Species Act; (2) areas authorized by section 2 of the Refuge Recreation Act; (3) areas under section 7(a)(5) of the Fish and Wildlife Act of 1956, except migratory waterfowl areas which are authorized by the Migratory Bird Conservation Act; and (4) any areas authorized by specific Acts of Congress.

6. Endangered Species Act of December 28, 1973 (16 U.S.C. 1531-1543), as amended. This Act authorizes the acquisition of land for the conservation of listed species with LWCF monies.

7. Emergency Wetlands Resources Act of November 10, 1986 (16 U.S.C. 3901-3931). This Act authorizes the purchase of wetlands or interests in wetlands, which are not acquired under the authority of the Migratory Bird Conservation Act, consistent with the wetlands priority conservation plan using LWCF monies.

8. North American Wetlands Conservation Act of December 13, 1989 (16 U.S.C. 4401-4412). Public Law 101-233 provides funding and administrative direction for implementation of the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, U.S., and Mexico. The Act converts the Pittman-Robertson account into a trust fund, with the interest available without appropriation through the year 2006 to carry out the programs authorized by the Act, along with an authorization for annual appropriation of \$15 million plus an amount equal to the fines and forfeitures collected under the Migratory Bird Treaty Act.

9. Food Security Act of 1985 (Title XII, Public Law 99-198, 99 Stat. 1354, December 23, 1985) as amended. This Act authorizes acquisition of easements in real property for a term of not less than 50 years for conservation, recreation, and wildlife purposes.

10. Agricultural Credit Act of 1987, Public Law 100-233. This Act authorized the Farmer's Home Administration to transfer fee title or assign interests in real estate to the Fish and Wildlife Service for the protection of floodplains, wetlands, and surrounding uplands.

#### Legislation Authorizing the Service to Accept Donations of Land

1. Migratory Bird Conservation Act of February 19, 1929 (16 U.S.C. 715d), as amended.

2. Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934 (16 U.S.C. 718d), as amended.

3. Fish and Wildlife Act of 1956 (16 U.S.C. 742f), as amended. Allows the Service to accept donations of real and personal property for both program and non-program purposes.
4. Fish and Wildlife Coordination Act of March 10, 1934 (16 U.S.C. 661), as amended.
5. Endangered Species Act of 1973 (16 U.S.C. 1534), as amended.
6. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668d-668j).
7. Wilderness Act of 1964 (16 U.S.C. 1131-1136, 78 Stat. 890). Authorizes the acceptance of gifts, bequests, and contributions in furtherance of the purpose of the Act.

### Legislation Authorizing the Service to Exchange Lands

1. National Wildlife Refuge System Administration Act of 1966, (16 U.S.C. 669d(a)(3)). This Act authorizes the Secretary of the Interior to acquire lands or interests therein by exchange for acquired lands or public lands under his/her jurisdiction that he/she finds suitable for disposition; or for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the system. The values of the property so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. This Act is the preferred authority for exchanges of land in the National Wildlife Refuge System.
2. Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934, (16 U.S.C. 718d(c)), as amended. This Act authorizes the acquisition of small wetland and pothole areas by exchange.
3. Fish and Wildlife Act of 1956 (16 U.S.C. 742f), as amended. This Act authorizes the acquisition of lands, or interest therein, for fish and wildlife programs by exchange. This Act is the basic authority for making exchanges for fish hatcheries and any other areas not in the National Wildlife Refuge System.
4. Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716), as amended. This Act authorizes the exchange of public land for non-Federal lands or interests therein and provides further that "lands so acquired within the boundaries of . . . wildlife refuge, . . . may be transferred to the appropriate agency head for administration as part of such system . . . in accordance with rules and regulations applicable to such system."
5. Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3101-3233) Section 1302(h). For the purposes of this Act, the Secretary of the Interior is authorized to exchange lands or interest therein including native selection rights on the basis of equal value except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

6. Alaska Native Claims Settlement Act of 1971 as amended (48 U.S.C. prec. 21 note) Section 22(f), as amended. For the purpose of effecting land consolidation, or to facilitate the management or development of land, or for other public purposes, the Secretary of this Interior is authorized to exchange land or interest in lands as in the Alaska National Interest Land Conservation Act, Section 1302)(h).

7. Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471-535, and other U.S.C. sections), as amended. "It is the policy of the Administrator of General Services Administration (G.S. A.): That surplus real property shall be disposed of by exchange for privately owned property only for property management considerations such as boundary realignment or provision of access or in those situations in which the acquisition is authorized by law, the requesting Federal agency has received approval from Office of Management and Budget and clearance from its congressional oversight committee to acquire by exchange, and the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other method of acquisition."

### Legislation Authorizing the Service to Transfer Land from Another Federal Agency

1. Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471-535 and other U.S.C. sections), as amended.
2. Transfer of Certain Real Property for Wildlife Conservation Purposes Act of May 19, 1948 (16 U.S.C. 667d; Public Law 80-537), as amended.
3. Fish and Wildlife Coordination Act of March 10, 1934 (16 U.S.C. 661-666c), as amended.
4. Bankhead - Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010), as amended.

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## 340 FW 1, Policies, Authorities, and Responsibilities

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**Originating Office:** Division of Realty

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**1.1 Purpose.** The purpose of this chapter is to set out the procedures to be followed by the Service in relation to real property management activities in accordance with statutes, regulations, and policies.

**1.2 Policy.** The Service will conduct all of its real property management activities in accordance with the statutes, regulations, policies, and procedures governing same.

### 1.3 Definitions.

**A. Real Property.** Any interest in land, together with the improvements, structures, and fixtures located thereon and appurtenances thereto, under the control of any Federal agency. (See FPMR 41 CFR 101-47.103-12.)

**B. Management.** The safeguarding of the Government's interest in property, in an efficient and economical manner consistent with best business practices.

**C. Holding Agency.** The Federal agency which has accountability for the property involved.

**D. Disposal Agency.** The executive agency designated by the Administrator of the General Services Administration to dispose of surplus real property, usually the GSA.

**E. Available Real Property.** Property no longer needed for program activities of the Interior bureau of office controlling it. May be determined excess if not needed by any bureau or office within Interior. (See IPMR 41 CFR 114-47.103-50.)

**F. Excess Real Property.** Property not required for program activities of the Federal Department or Agency having jurisdiction over it. (See 41 CFR 114-4.103-52.)

**G. Surplus Real Property.** Real property not required for the needs and responsibilities of any Agency of the Federal Government. (See 41 CFR 114-47.103-52.)

**1.4 Authorities.** The following Acts are the principal laws which provide much of the authority for the real property management activities of the Service. For more detailed information, consult the appropriate statute, or the Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service, dated April 1992, available in the U.S. Fish and Wildlife Service, Office of Legislative Services (101 FW 1, Appendix 1).

**A. Alaska Native Claims-Settlement Act of December 18, 1971 (43 U.S.C. 1601-1624), as amended.** This Act, applicable only to Alaska in authorizing conveyance of 17,806,800 hectares (44 million acres) to Alaska natives, causes some complex land ownership patterns and management problems. Through provisions of section 12(a)(1) and 14(f), the Service will have ownership of 809,389 hectares (2 million acres) of surface-only in pre-1971 refuges and one and 607,050 hectares (1.5 million acres) of surface-only in post-1971 refuges. Section 22(g) continues application of refuge laws and regulations on the surface estate conveyed from the pre-1971 refuges. These "22(g)" lands will be managed as "easement interest" lands. (See 50 CFR 29.21-1(b)). Section 22(g) also reserves the right of first refusal if these lands are ever sold by the patentee. Section 22(f) expands the Secretary's exchange authority in Alaska to include exchange for other than equal value if it is in the public interest.

**B. Colorado River Storage Project Act of April 11, 1956 (43 U.S.C. 620-620o, except certain sections classified to the Colorado River Basin Project Act), as amended.** Section 8 of this Act authorizes and directs the Secretary of the Interior in connection with the Colorado River Storage Project and participating projects to investigate, plan, construct, and operate facilities to mitigate losses of, and improve conditions for, fish and wildlife. Provides authority to acquire lands and to lease or convey lands and facilities to State and other agencies. Several refuges have been established under this authority.

**C. Federal-Aid Highways Act of 1968 (23 U.S.C. 101 et seq., and other U.S.C. titles), as amended--Public Law 90-495, approved August 23, 1968.** Provides in section 4(f) for a special effort to preserve natural beauty of such areas as public parks, recreation areas, refuges and historic sites in developing transportation systems, and directs the Secretary of Transportation to cooperate and consult with the Secretary of the Interior and other Federal agencies before approving any program or project which requires the use of any publicly owned lands from certain specified areas including parks and refuges. This Act is the basis for 4f statements.

**D. Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471-535), as amended.** This June 30, 1948, Act as amended, provides for management and disposal of Government surplus property (excess property not required for the needs of any Federal agencies) and excess property

(property under the control of any Federal agency which is not required for its needs). Public Law 94-519, approved October 17, 1976, (90 Stat. 2451), provided major changes to section 203 of the Act (40 U.S.C. 484) regarding procedures for disposal of surplus property. This is the basic authority for the transfer of excess Federal land to other Federal agencies.

**E. Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), as amended.** The Act of March 10, 1934, as amended by the Acts of August 14, 1946, August 12, 1958, and July 9, 1965, authorizes the Secretary of the Interior to assist Federal, State, and other agencies in development, protection, rearing, and stocking fish and wildlife on Federal lands, and to study effects of pollution on fish and wildlife. Provides for donating land and funds in furthering purposes of the Act and for appropriation of funds. Authorizes Federal water resource agencies to acquire lands or interests in connection with water use projects specifically for mitigation and enhancement of fish and wildlife, and provides for management of such lands by the U.S. Fish and Wildlife Service or State wildlife agencies. Excludes projects involving impoundments of less than 4.05 hectares (10 acres) and Tennessee Valley Authority projects.

**F. Migratory Bird Conservation Act (16 U.S.C. 715-715r), as amended.** The Act of February 18, 1929, as amended, establishes a Migratory Bird Conservation Commission to approve areas recommended by the Secretary of the Interior for acquisition with Migratory Bird Conservation Funds. The Commission consists of the Secretary of the Interior as chairman, the Secretaries of Transportation and Agriculture, two members of the Senate and two of the House of Representatives, and a member ex-officio from each State in which acquisition is being considered. The Commission through its chairman is directed to report by the first Monday in December of each year to Congress on its activities. The Secretary of the Interior is authorized to cooperate with local authorities in wildlife conservation, as well as conduct investigations, publish documents related to North American birds, and to maintain and develop refuges. Provides for cooperation with States in enforcement. Procedures are established for acquisition by purchase, rental, or gift of areas approved by the Commission as sanctuaries for migratory birds, and an amendment February 17, 1976, clarified that authority as applying to the purchase or rental of a partial interest. Public Law 95-552 signed on October 30, 1978, requires that the Secretary of the Interior consult with the appropriate units of local government and with the Governor of the State concerned or the appropriate State agency before recommending an area for purchase or rental under the provisions of the Act. Public Law 95-616 of November 8, 1978, authorizes acquisition of areas for purposes other than inviolate sanctuary.

**G. Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-711), as amended.** The Act of July 3, 1918, implemented the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds thereby establishing a Federal responsibility for protection of the international migratory bird resource. This Act authorizes the Secretary of the Interior to close areas of public or private land to the hunting of migratory birds. See 50 CFR 32.4 for a list of areas closed.

**H. Mineral Leasing Act of February 25, 1920, (30 U.S.C. 181 et, seq.; 41 Stat. 449), as amended.** This Act provides the authority for the leasing of minerals on public domain lands withdrawn for Service use (but not withdrawn from the mineral leasing laws). By regulation, the Secretary has restricted oil, gas, and coal leasing within the National Wildlife Refuge System. Receipts are deposited

in the U.S. Treasury with 50 percent paid to the general Treasury, except in Alaska where 90 percent is paid to the State and 10 percent into the Treasury (30 U.S. 191). Section 28 of the Act provided the Secretary with the authority to grant rights-of-way through any Federal lands for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom (30 U.S.C. 185).

**I. Mineral Leasing Act for Acquired Land of August 7, 1947, (30 U.S.C. 351-359; 61 Stat. 913).**

Provides the Secretary with the authority to lease minerals on acquired lands. By regulation, the Secretary has restricted oil, gas, and coal leasing within the National Wildlife Refuge System. Receipts go into the revenue sharing fund.

**J. National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended.**

This Act, (derived from sections 4 and 5 of Public Law 89-669 of October 15, 1966) constitutes an "Organic Act" for the National Wildlife Refuge System by providing guidelines and directives for administration and management of all areas in the system including "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas." The Secretary is authorized to permit by regulations the use of any area within the system provided "such uses are compatible with the major purposes for which such areas were established." Public Law 95-616 of November 8, 1978, amends the 1966 Act to permit the opening of more than 40 percent of an area acquired as a migratory bird sanctuary to hunting when it is determined to be beneficial to the species hunted. Contracts may be entered into for public accommodations and donations of funds may be accepted for land acquisition and management. An amendment of July 18, 1968, provides that proceeds from disposal of lands in the system acquired with "duck stamp" funds or by donation are to be paid into the Migratory Bird Conservation Fund and that the Migratory Bird Conservation Commission must be consulted before disposal of any such acquired land. A December 3, 1974, amendment entitled "National Wildlife Refuge System Administration Act Amendments of 1974," requires payment of the fair market value of rights-of-way or other interests granted, and the proceeds deposited in the Migratory Bird Conservation Fund and made available for land acquisition. Public Law 94-215, approved February 17, 1976, clarified that acquired lands or interests therein can be exchanged for acquired or public lands. An amendment, February 27, 1976, commonly referred to as the "Game Range Act," directs that all areas in the system on or after January 1, 1975, "shall be administered by the Secretary through the United States Fish and Wildlife Service" and cannot be transferred or disposed of unless otherwise directed by Acts of Congress. Exceptions are provided for areas administered as part of the system pursuant to cooperative agreements and for transfer or disposal and exchange of acquired lands.

**K. North American Wetlands Conservation Act (16 U.S.C. 4401-4412)--Public Law 101-233, enacted December 13, 1989.**

This Act provides funding and administrative direction for implementation of the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, the United States, and Mexico. Funds may be expended, upon approval by the Migratory Bird Conservation Commission, for cost sharing payments for wetlands conservation projects in Canada, Mexico and the United States. The Act created the North American Wetlands Conservation Council to recommend projects to the Migratory Bird Conservation Commission.

**L. Refuge Revenue Sharing Act (16 U.S.C. 715s; 49 Stat. 383), as amended.** Section 401 of the Act of June 15, 1935, established the procedure for making certain payments to counties from revenues derived from the sale of products from refuges located in the county. Major revisions were made August 30, 1964, by Public Law 88-523 requiring that all revenues received from refuge products such as animals, timber and minerals, or from leases or other privileges be deposited in a special Treasury account and net receipts distributed to counties for public schools and roads. The Act was amended again by Public Law 95-469, signed October 17, 1978. This amendment, which became effective with fiscal year 1979, expands the revenue sharing system to include National Fish Hatcheries, Service Research Stations, Administrative Sites, and includes in the Refuge Revenue Sharing Fund receipts from the sale of salmonoid carcasses. Counties where the Service has purchased land will receive the greatest of: 75 cents per acre; three-fourths of one percent of the appraised value of the land; or 25 percent of the net receipts of revenue produced from the land. Payments on Service land withdrawn from the public domain will remain at 25 percent of net receipts but the law also makes these lands eligible for the basic payments under Public Law 94-565, the payment in lieu of taxes legislation approved in 1976.

**M. Transfer of Certain Real Property for Wildlife Conservation Purposes Act of May 19, 1948, Public Law 80-537, (16 U.S.C. 667b-667d; 62 Stat. 240), as amended.** As amended by the Act of June 30, 1949, the Act of September 26, 1972, and by Public Law 94-432, this statute provides that upon a determination by the Administrator of the General Services Administration, real property no longer needed by a Federal agency can be transferred without reimbursement to the Secretary of the Interior if the land has particular value for migratory birds or to a State agency as surplus land for wildlife conservation.

**N. Wilderness Act of 1964 (16 U.S.C. 1131-1136; 78 Stat. 890)--Public Law 88-577, approved September 3, 1964.** Directs the Secretary of the Interior, within 10 years, to review every roadless area of 2,024 or more hectares (5,000 or more acres) and every roadless island (regardless of size) within national wildlife refuges and national parks and to recommend to the President the suitability of each such area or island for inclusion in the National Wilderness Preservation System by later special Acts of Congress. Provides criteria for determining suitability and contains provisions related to activities that can be undertaken on a designated area. Authorizes the acceptance of gifts bequests and contributions in furtherance of the purposes of the Act and requires an annual report at the opening of each session of Congress on the status of the wilderness system.

## **1.5 Responsibilities**

**A. The Director** is responsible for setting policy and oversees all Service programs, including activities relating to the management of real property.

**B. The Assistant Director - Refuges and Wildlife** has overall responsibility for real property management activities.

**C. The Chief, Division of Realty** is responsible for developing policy and procedures to implement the laws and regulations pertaining to real property management. The Chief ensures that real property management activities are accomplished in accordance with legislation, regulations, policies, and procedures.

**D. Regional Directors** must ensure that Part 340 of the FWM is adhered to within the Regions. The Regional Directors have authority to approve Regional issuances that supplement the FWM in accordance with [010 FW 1.4](#).

**E. Senior Staff Realty Officers** must conduct realty activities in accordance with the policies and guidelines contained in this part.

**1.6 Relationship to Other Directives.** Chapters of the FWM are the primary source for policy and procedural guidance relating to realty activities. Other sources of information and guidelines, and their relationships to Part 340 are described below.

**A. Code of Federal Regulations.** The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive Departments and agencies of the Federal Government. Title 50 contains land use management regulations for rights-of-way, mineral operations and revenue sharing. Title 43 contains regulations pertaining to the Office of the Secretary of the Interior and regulations relating to the public lands. Title 41 Chapter 101 contains the Federal Property Management Regulations and Chapter 102 contains the Interior Property Management Regulations. Any conflicts between the CFR's and the chapters of the Service Manual pertaining to real property management activities should be brought to the attention of the Chief, Division of Realty.

**B. Regional Issuances.** Regional issuances may be used to supplement chapters in the FWM, pertaining to real property management activities.

(1) Regional issuances are used only when a Regional Director determines through consultation with the Assistant Regional Director - Refuges and Wildlife, that additional guidance is required to address a situation unique to that Region.

(2) Regional issuances may be more restrictive than those in the FWM, but in no case do they relieve restrictions or requirements specified in the FWM.

(3) One copy of each Regional issuance should be provided to the Washington Office, Division of Realty.

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**For additional information regarding this Web page, contact [Krista Holloway](#), in the Division of Policy and Directives Management, at [Krista\\_Holloway@fws.gov](mailto:Krista_Holloway@fws.gov)**

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## Exhibit 2, 341 FW 1, Land Acquisition Planning Process

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**FWM#: 237 (new)**  
**Date: February 29, 1996**  
**Series: Real Property**  
**Part 341: Land Acquisition**  
**Originating Office: Division of Realty**

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## SERVICE MANUAL (300 Series)

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## [Fish and Wildlife Service Manual](#)

The manual contains the standing and continuing directives of the Service. It has regulatory force and effect within the Service. See [011 FW 1](#). To learn how to write a manual chapter, see [011 FW 2](#), and for publication and clearance information, see [011 FW 3](#).

## [Director's Orders](#)

Director's Orders are limited to temporary delegations, emergency directives, special assignments, and initial policy or guidance for evolving activities. See [012 FW 1](#).

## [National Policy Issuance System](#)

This system promulgates the Director's national policies for managing the Service and its programs. A description of the system is published as [NPI #89-01](#).

## [Handbooks](#)

Handbooks are used to explain how to comply with directives. Although they do not have regulatory effect, they may be used to convey good or acceptable practices. ([010 FW 1](#))

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