

**U.S. Fish and Wildlife Service, Region 2
Wildlife and Sport Fish Restoration Program**

DRAFT PROGRAMMATIC ENVIRONMENTAL ASSESSMENT
for a Streamlined Method for Approving Small Real Property Disposals
of State Real Property Acquired with Funds Administered by the
Wildlife and Sport Fish Restoration Program

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Introduction:

This Programmatic Environmental Assessment is for use as guidance applicable to small real property disposals. It will streamline decisions on proposed disposals of real property purchased (entirely or partially) with funds administered by the U.S. Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program

Comments on this Draft Programmatic EA must be received by October 31, 2013. They may be sent by email to: fw2fa@fws.gov

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Table of Contents	Page
Table of Contents	i
Acronyms and Definitions of Key Terms Used in this EA	iii
Chapter 1 - Purpose and Need for Proposed Action	1
1.1 Introduction.....	1
1.2 Purpose	1
1.3 Need	2
1.4 Decision to be Made	2
1.5 Background	2
Chapter 2 - Alternatives	3
2.1 Alternatives Considered But Not Carried Forward for Detailed Analysis	3
2.1.1 Complete Denial	3
2.2 Alternatives Carried Forward for Detailed Analysis	3
2.2.1 No Action Alternative - Site-specific EA Always Required	3
2.2.2 Proposed Action Alternative - Streamlined Assessment Process	4
Chapter 3 Affected Environment	10
3.1 Physical Environment	10
3.2 Biological Environment	11
3.3 Historic and Cultural Resources	11
3.4 Socio-Economic Conditions	11
Chapter 4 Environmental Consequences	12
4.1 No Action Alternative - Site-specific EA Always Required	12
4.1.1 Physical Impacts	12
4.1.2 Biological Impacts	12
4.1.3 Historic and Cultural Resources	12
4.1.4 Socio-Economic Conditions	13
4.1.5 Climate Change	13
4.1.6 Procedural Impacts	13
4.1.7 Cumulative Impacts	14
4.2 Proposed Action Alternative - Streamlined Assessment Process.....	14
4.2.1 Physical Impacts	14
4.2.2 Biological Impacts	14
4.2.3 Historic and Cultural Resources	15
4.2.4 Socio-Economic Conditions	15
4.2.5 Climate Change	16
4.2.6 Procedural Impacts	16
4.2.7 Cumulative Impacts	16
Chapter 5 List of Preparers	18
Chapter 6 Consultation and Coordination with the Public and Others	18

Table of Contents, Continued	Page
Tables	
Table 1. Acreage of WSFR-Interest Real Property	3
Table 2. Maximum Size of Real Property Disposals Allowed Under this Alternative.....	4
Table 3. Summary of Comparison of Alternatives	9
Table 4. Summary of Environmental Consequences by Alternative	17
Appendices	19
Appendix 1. WSFR Administered Grant Programs Currently Approved for Real Property Acquisitions	20
Appendix 2. Categorical Exclusions	21
Appendix 3. Excerpts from Relevant Portions of 43 CFR 12 and 50 CFR 80	23
Appendix 4. References	26

Acronyms and Definitions of Key Terms Used in This Environmental Assessment

Acronym or Word(s)	Definitions
Categorical Exclusions (cat exes)	A category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an EA nor an EIS is required. An agency may decide, based on its procedures and at its discretion, to prepare EAs even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect (40 CFR 1508.4). See Appendix 2 for additional information regarding categorical exclusions.
CFR	Code of Federal Regulations
Disposal or Disposition	When real property is no longer needed, useful, or does not meet the purpose for which it was originally acquired, the grantee or sub-grantee will work with WSFR to determine viable alternatives such as retention of title without Federal interest, sale of property, or transfer of title. All of these options would include compensating the WSFR Program. It is at the discretion of WSFR and the Regional Director to approve a disposition request (43 CFR 12.71).
DM	Department of the Interior’s Departmental Manual
EA	Environmental Assessment. A concise public document which a Federal agency is required to prepare under NEPA if no cat ex exists to cover the proposed action. The EA is prepared when the impacts are not expected to rise to the level of significance. If impacts rise to the level of significance, a more thorough analysis of impacts is required in a public document called an Environmental Impact Statement.
EIS	Environmental Impact Statement. A public document required under NEPA when significant impacts are expected to result from a proposed action. The final decision document is called a Record of Decision.
Encumbrance	A partial interest in real property that is a: (1) restriction of the owner’s property rights, such as easements, profits, reservations, leases, and deed restrictions; or (2) claim against the owner’s property rights as security for payment of a debt, such as a mortgage, judgment lien, or tax lien.
ESA	Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
Extraordinary Circumstances	Extraordinary circumstances exist when a normally categorically excluded action may have a significant environmental effect and require additional analysis and action. Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in 43 CFR 46.215; if it does, further analysis and environmental documents must be prepared for the action (43 CFR 205(c)(1)).

FONSI	Finding of No Significant Impact. A final decision document for an EA, if an EIS is not required.
Impacts, Cumulative	The impact on the environment which results from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).
Impacts, Direct	The impacts which are caused by the action and occur at the same time and place (40 CFR 1508.8a).
Impacts, Indirect	Impacts caused by the action which occur later in time or are farther removed in distance, but are still reasonably foreseeable. These may include growth inducing effects and other effects related to changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems (40 CFR 1508.8b).
Land (real estate)	Interchangeable with the term real estate. The part of the earth's surface that can be owned, whether it is upland, seasonally, or permanently submerged; anything firmly attached to the part of the earth's surface that can be owned, whether attached by people or natural processes; and any soil, gravel, minerals, gas, oil, ground water, trees, or other vegetation that is firmly attached to, or part of, the surface or subsurface.
Negligible	Small, unimportant, or of so little consequence as to warrant little or no additional attention.
NEPA	National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347).
NHPA	National Historic Preservation Act (16 U.S.C. § 470).
Programmatic EA	A public document that analyzes the similar actions of an entire program.
Region 2	U.S. Fish and Wildlife Service region encompassing the States of Arizona, New Mexico, Oklahoma, and Texas.

Real Property	<p>One, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land. Examples of real property include fee simple and leasehold interests, conservation easements, mineral rights, rights of way, utility easements, etc.</p> <p>(1) a parcel includes (unless limited by its legal description) the air space above it, the ground below it, and anything physically and firmly attached to it by a natural process or human action. Something is physically and firmly attached if its removal would damage either the attachment or the point of attachment. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.</p> <p>(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel’s owner to travel across an adjacent parcel.</p> <p>(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing lease is often a type of real property known as a license.</p>
ROD	Record of Decision. A record of decision is a document prepared as the final step in the EIS process. The ROD states the decision, identifies the alternatives considered, and discusses mitigation plans.
Satellite Real Property	Interest in real property which is not directly adjacent to other real property holdings in a specific area. An example would be to provide public access to lakes and streams for anglers and boaters.
Section 7	The Section within the ESA that requires Federal agencies to consult with either the Fish and Wildlife Service or the National Oceanic and Atmospheric Administration on the effects of an agencies’ action to listed, candidate, and proposed species and proposed and designated critical habitat.
Service	U.S. Fish and Wildlife Service, Department of the Interior.
SHPO	State Historic Preservation Officer. SHPOs administer the National Historic Preservation Act program at the State level, review National Register of Historic Places nominations, maintain data on historic properties that have been identified but not yet nominated, and consult with Federal agencies during Section 106 reviews. SHPOs are designated by the governor of their respective State or territory. Federal agencies seek the views of the appropriate SHPO when identifying historic properties and assessing effects of an undertaking on historic properties.

<p>Significant or significantly</p>	<p>Significantly, as used in NEPA, requires considerations of both context and intensity (40 CFR 1508.27):</p> <p>(a) <i>Context</i>. The significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects require consideration.</p> <p>b) <i>Intensity</i>. This refers to the severity of impact. The following should be considered in evaluating intensity</p> <p>(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.</p> <p>(2) The degree to which the proposed action affects public health or safety.</p> <p>(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.</p> <p>(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.</p> <p>(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.</p> <p>(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.</p> <p>(7) Whether the action is related to other actions with individually insignificant, but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.</p>
<p>State Agency(ies)</p>	<p>For WSFR grant programs, State agencies are the only applicants eligible to receive grants. The State agency (grantee) may be a State fish and wildlife department or land-holding agency.</p>
<p>Subgrantee</p>	<p>The government or other legal entity (local governments and non-governmental organizations) to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Often WSFR funds are awarded to State agencies, who then subgrant the funds to qualifying entities for the acquisition of real property.</p>

THPO	Tribal Historic Preservation Officer. A Tribe may assume official responsibility for a number of functions with the purpose of the preservation of significant cultural or historic properties. Those functions include identifying and maintaining inventories of culturally significant properties, nominating properties to national and tribal registers of historic places, conducting Section 106 reviews of Federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties.
WSFR	Wildlife and Sport Fish Restoration Program, U.S. Fish and Wildlife Service.
WSFR-interest real property	State real property acquired, in whole or in part, with funding from grant programs administered by WSFR. Title is held by either the State agencies or subgrantees, but WSFR retains an interest in perpetuity.

Chapter 1 – Purpose and Need for Proposed Action

1.1 Introduction

The Wildlife and Sport Fish Restoration Program (WSFR), U.S. Fish and Wildlife Service (Service), manages a variety of grant programs, ranging from the more than half-a-century-old Wildlife and Sport Fish Restoration Programs, to relatively recent additions such as State Wildlife Grants. The Pittman-Robertson Wildlife Restoration Act (PR), passed in 1937, and the Dingell-Johnson Sport Fish Restoration Act (DJ), passed in 1950, authorized grant programs that provide funding to States and territories for on-the-ground wildlife and fisheries conservation. The majority of PR funds are spent on acquisition, development, and operation of wildlife management and public use areas involving about 68 million acres nationwide.

The WSFR Program also administers the State Wildlife Grant program, which supports national conservation through the implementation of State Wildlife Action Plans. These plans, developed in coordination with Government agencies, conservation organizations, and the public are integral to effectively address threats to priority habitats and species of greatest conservation need. Other WSFR grant programs that may be used for real property acquisitions include the National Coastal Wetlands Conservation Program and the Endangered Species Act Section 6 Cooperative Endangered Species Conservation Fund. See Appendix 1 for a current list of WSFR Programs that may be used to acquire real property.

The core value of all WSFR Programs is fostering cooperative partnerships between Federal and State agencies, working alongside hunters, anglers, and other outdoor interests to enhance recreational opportunities while advancing sustainable resource goals.

Approximately \$100 million in Federal funding is awarded each year through the WSFR grant programs to eligible State agencies in Arizona, New Mexico, Texas, and Oklahoma, some of which is used for real property acquisition. These lands are considered “WSFR-interest real property” because WSFR maintains a legal interest in perpetuity. When the real property is no longer needed, useful, or does not meet the purpose(s) for which it was originally acquired, disposition may be requested by the State agency.

1.2 Purpose

The purpose of the Proposed Alternative is to streamline WSFR’s process for approval of disposals of minimally sized parcels of real property acquired using WSFR grant funds when that real property is no longer serving its intended purpose, or when the real property may require a utility easement, lease, or other real property transfer action. Currently, these disposals do not qualify for approval under existing categorical exclusions (cat ex), as provided by the National Environmental Policy Act of 1969 (NEPA) , and therefore, every disposal of real property requires an environmental assessment to ensure all Federal laws are complied with and all program requirements are satisfied.

Typically, disposals of real property are requested by the State agencies because the lands involved are no longer needed, useful, or not meeting the purpose for which it was originally acquired. Exchanges, trades, or sales of WSFR-interest real property may also be used to

correct boundary problems such as access or encroachment with adjacent public and private landowners, allow for utility rights-of-way, or consolidate ownership (43 CFR 12, 50 CFR 80).

1.3 Need

There is a need for a streamlined and cost effective process for considering the environmental impacts of minor disposals, while maintaining the integrity of the NEPA process. The Region 2 WSFR Program occasionally receives requests for minor real property disposals for such things as roads, utilities, encroachments, or because the real property is no longer needed, useful, or does not meet the purpose for which it was originally acquired.

The current requirements are that every disposal requires the preparation of an Environmental Assessment (EA) under NEPA, in order to determine whether impacts are significant. For smaller or satellite WSFR-interest real property where the impacts are expected to be minor or negligible, the requirement to prepare an EA requires staff time and resources for disposals of real property which have insignificant or no impacts. The intent in developing this Programmatic EA is to allow the Service to approve small scale real property disposals in a more efficient manner when they meet the conditions outlined in Section 2.2.2 of this EA.

1.4 Decision to be Made

The Regional Director for Region 2 of the Service will determine, through the Chief of the WSFR Program, whether this Programmatic EA is adequate to support a Finding of No Significant Impact (FONSI) if the Proposed Alternative is selected for implementation. This determination will be based on whether the criteria provided in Section 2.2.2 apply and are sufficient to determine NEPA compliance. For actions that may have a significant impact on the human environment, the Service would not use this Programmatic EA. In those cases, WSFR would require the preparation of a site-specific EA for each proposed disposal of WSFR-interest real property. If impacts are expected to be significant, or during the EA process they are discovered to be significant, an Environmental Impact Statement (EIS) will be prepared, followed by a Record of Decision (ROD).

1.5 Background

Table 1 below outlines the approximate acreage by State and grant program that has been acquired, partially or in whole, with WSFR Program grant funds by State agencies in Arizona, New Mexico, Oklahoma, and Texas. The majority of this real property is being managed to provide habitat for fish and wildlife, and some are also managed to support various forms of wildlife-dependent recreation for the public. This includes smaller satellite sites that State agencies within the Region have acquired to provide public access to lakes and streams for anglers and boaters.

Table 1. Acreage of WSFR-Interest Real Property by Program

Grant Program	Arizona	New Mexico	Oklahoma	Texas	Regional Totals
Wildlife Restoration	19,661	101,662	109,774	205,229	436,326
National Coastal Wetlands	0	0	0	4,227	4,227
Section 6	6904	116	5,340	25,493	37,853
Sport Fish Restoration	180	401	1,304	9	1,894
Landowner Incentive	960	0	0	0	960
State Wildlife	0	0	3,979	0	3,979
Sport Fish & Wildlife Restoration	482	26,879	24,594	0	51,955
State Totals	28,187	129,058	144,991	234,958	537,194

The intent in developing this Programmatic EA is to allow the Service to streamline the review and decision making process for the real property disposal requests received that meet the conditions outlined in Section 2.2.2. The disposal requests include requests for road realignments, utility corridors, encroachment, and sale or exchange of real property that is no longer needed, useful, or does not meet the purpose for which it was originally acquired.

Chapter 2 – Alternatives

2.1 Alternatives Considered But Not Carried Forward for Detailed Analysis

2.1.1 Complete Denial.

All proposals for disposal of real property purchased with WSFR grant funds must be requested by the State Agency Director and approved by the Regional Director, Region 2. A request for disposal would not move forward without Regional Director approval. The types of real property disposals proposed are typically not ones that would generate disagreement between the State agency and Regional Director. Retaining a Federal interest in real property that no longer serve the original purpose is not a good use of grant funds intended for the benefit of hunters, anglers, wildlife, and the general public.

2.2 Alternatives Carried Forward for Detailed Analysis

2.2.1 No Action Alternative – Site-specific EA Always Required

Currently, neither the Department of the Interior nor the Service has an applicable categorical exclusion that appropriately covers disposals of real property with a Federal interest. Without a categorical exclusion, even minor disposals currently require the preparation of an EA, regardless of the anticipated context and intensity of impacts. If the status quo alternative is selected for implementation, WSFR would continue the process for requiring an EA for all proposed disposals.

A site specific EA would be prepared for every proposed disposal of WSFR-interest real property, followed by the signing of a FONSI or an EIS and ROD if impacts are determined to be significant. This alternative would necessitate staff time and resources on many projects with

insignificant effects. This alternative does not satisfy the described “Need” for the proposed action (Section 1.3).

2.2.2 Proposed Action Alternative – Streamlined Assessment Process

This alternative would be implemented by the Service in Region 2 if the Regional Director, through the WSFR Chief and in consultation with the appropriate State agencies, approves the proposed real property disposal under the criteria below. Under this alternative, a Streamlined Assessment process would be implemented, address the criteria defined below, and would be submitted with the request for disposal. This approach would allow WSFR and the State agencies to work through the NEPA process more efficiently, while not compromising the thorough examination of alternatives and impacts that NEPA requires.

Under this alternative, the Region 2 WSFR Program would be responsible for reviewing each proposed real property disposal to ensure that all of the following conditions have been met. Disposals that do not fit within the criteria of this Programmatic EA as outlined below, or proposals with potential significant impacts, would continue to require full NEPA analysis through a separate EA process.

Information required from State Agencies for the Streamlined Assessment Process:

1. *Purpose of Real Property.* The disposal is proposed as no longer needed, useful, or not meeting the purpose(s) for which it was originally acquired, as determined by the State agencies. The Streamlined Assessment must document this process.
2. *Disposition Instructions.* As required by 43 CFR 12.71 (Appendix 3), the State agencies would either: a) retain title; b) sell the property; or c) transfer the title to WSFR or a third party designated and approved by WSFR.

If the State agencies choose to provide replacement real property of at least equal or greater monetary (current market) and fish and wildlife values under the same grant program, the net proceeds from the disposal may be used to offset the cost of the replacement property. If the State agencies are not proposing to purchase replacement real property, the funds would return to the original grant program. Repayment of WSFR grant funds will follow appropriate legal and program policy requirements. If a third party (e.g., a utility company) is involved, State agencies are encouraged to require or implement additional mitigation and compensation measures to ensure the State agencies could continue to meet the purpose(s) for which the real property was originally acquired on the land remaining after the disposal, if any.

3. *Size and Location.* There are two types of disposals that are typically submitted for consideration; those that are part of a larger management area, and satellite sites such as fishing access points or other real property that are not adjacent to other lands with a WSFR interest.

- a. *Large Management Area*

- The WSFR-interest real property involved is part of a larger management area and the total acreage of the WSFR-interest real property proposed to be exchanged, traded, or sold, or that requires an easement, lease, or license, would not exceed the values in the following table:

Table 2. Maximum Size of Real Property Disposals Allowed under this Alternative

<i>Total Size of Area</i>	<i>Maximum Size of Real Property Disposals Allowed under this Programmatic EA</i>
Less than 10 acres	10 percent of the site
10 to 100 acres	1 acre
Greater than 100	1 percent of the site

This criterion is based on the Programmatic Section 4(f) Regulations, dated June 3, 2008, prepared by the Department of Transportation, Federal Highway Administration for Federally-aided highway projects that have minor involvements with public parks, recreation lands, and wildlife and waterfowl refuges (Federal Highway Administration, 2013).

b. Satellite Real Property.

The WSFR-interest real property involved is not part of a larger management area and the State agencies must determine and document that the acreage involved and the resulting impacts from the loss of the Federal interest on this real property would not be significant, based on factors in 6-9 below.

4. *Alternatives to Disposal.* The State agencies must document that there is no feasible and prudent alternative that would avoid the disposal of WSFR-interest real property and that the State agencies have assessed and exhausted all other feasible and prudent measures to avoid, minimize, or mitigate the disposal of and impacts to this real property. The State agencies must show that WSFR-interest real property is no longer needed, useful, or does not meet the purpose for which it was originally acquired and that there could be no alternatives to disposal.

In certain situations, a third party, such as a utility, will request use of WSFR-interest real property through an easement or ownership (and thereby a disposal). In these cases, the third party would coordinate with the State agencies to demonstrate that alternatives to avoid, minimize, and mitigate impacts have been adequately considered. The documentation should adequately discuss factors (e.g., possible increased project costs; social, economic, and environmental impacts; or community disruption) considered for each alternative in reaching the determination that these alternatives are not feasible or prudent alternatives to the proposed action that could minimize, mitigate, or avoid altogether disposal of the WSFR-interest real property.

5. *Impacts, Generalized.* The direct, indirect, and cumulative impacts of the proposed action on WSFR-interest real property would be negligible.

In addition to describing the direct impacts of the proposed action on WSFR-interest real property, the State agencies supporting documents should also describe any possible indirect or proximity impacts (such as increased noise, increased traffic, visual intrusion, air and water pollution, introduction of invasive species, other wildlife and habitat effects, economic impacts to the local economy, and/or other impacts deemed relevant) that could affect use of the WSFR-interest real property or any other lands in the vicinity of a proposed disposal. Impacts associated with the operation and use of a proposed facility, as well as temporary and long-term construction impacts,

should be described and discussed. WSFR would consider the nature and duration of the proposed project's direct, indirect, and cumulative impacts in determining whether approval of the project under this Programmatic EA is appropriate.

6. *Impacts, Specific.* Coverage under this Programmatic EA is limited to proposals with negligible impacts. All Federal and State laws and regulations will be adhered to under this streamlined process. The information received by the State agencies must demonstrate why the proposed real property disposal would not:

- a. Adversely affect federally listed, proposed, or candidate species, and/or designated or proposed critical habitat (property involved could not be proposed or designated critical habitat), as well as State listed species and habitats, and species of special concern;
- b. Have meaningful adverse impacts to wetlands;
- c. Have meaningful adverse impacts to floodplains;
- d. Result in a major decrease of public access or recreation;
- e. Adversely impact another Federal or State entity with a financial interest in the WSFR-interest real property;
- f. Result in disproportionate impacts to low income or minority communities; or
- g. Result in a decrease in the amount of land designated as wilderness by either the State or Federal government.

7. *Infrastructure.* The proposed real property disposal would not negatively impact any major development with a WSFR interest (such as buildings, shooting ranges, boat launches, fishing or viewing platforms, etc.). Also, provide for the full useful life of all infrastructure.

8. *Cultural or Historic Resources.* The real property disposal would not adversely affect historic or cultural resources.

A cultural resources survey will be conducted for every proposed disposal. State agencies would attach all documentation with the Streamlined Assessment when submitted; including, but not limited to: maps; previous or current archaeological surveys of the area involved (if applicable); and assessment of impacts to historic or cultural resources.

If historic and/or cultural resources do exist on the site proposed for disposal, WSFR will consult with the applicable Tribes and SHPO. If no avoidance, minimization, or mitigation measures will reduce the level of impact to the satisfaction of the SHPO, THPO, Tribes, and the Advisory Council on Historic Preservation, if involved, the disposal of that real property would be defined under 36 CFR 800 and Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) as an adverse impact to cultural resources due to the loss of Federal protection. As such, a proposed disposal would not be eligible to use this Programmatic EA and would require a separate, site-specific NEPA analysis.

9. *Controversy.* The State agencies would assess the level of controversy regarding the proposed real property disposal and would demonstrate that it would not be substantial. *Controversial* refers to circumstances where a substantial dispute exists as to the environmental consequences (impacts) of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed (43 CFR 46.30).

The mere unpopularity of a proposal would not be considered controversial. However, if there is any question of whether the proposed disposal constitutes a “substantial” opposition or controversy, the proposal would require a site specific EA.

10. *Any other site specific information.* Any information that WSFR should be made aware of regarding the proposed real property disposal; such as any illegal activities on site, possible contaminants, or other information that may not be specifically requested above.

2.2.2.1 Public Involvement

Under the Proposed Action, WSFR and State agencies would only consult with other agencies and the potentially affected public on individual minor disposals if impacts not described in this EA are anticipated to result from a proposed disposal. If all potential impacts are consistent with those described in this alternative, and the criteria have been met, no additional public or agency consultation would be conducted.

As the need presents itself, State agencies will engage the public and other agencies to give an opportunity to provide comments on individual proposed disposals. This communication would acknowledge that the proposal includes WSFR-interest real property and protections, specify which topics the State would ask the public to comment on, request comments, and detail how comments are to be received and any associated deadlines, as determined by the State. Depending on the nature and scope of the proposal and its anticipated impacts, various public information techniques may be used. These could include, but would not be limited to: newspaper notices; environmental newsletters; postings at public buildings, web sites, and email list-servs; contacting other units of government; contacting affected and adjacent landowners; sending individual mailings to potentially affected parties; and public meetings.

2.2.2.2 Documentation of Compliance with Criteria

Consistent with NEPA regulations (40 CFR 1500.4(i), 1502.20, and 1508.28), a site-specific analysis would be provided by the State agencies to WSFR for the proposed real property disposal. The written review must address each of the issues listed in the criteria above and specify the status of each issue. The review should also discuss whether the site-specific situation would “trigger” the need for additional review or consultation with Native American Tribes and other potentially affected parties (e.g., cultural site, site contamination, legal/illegal use of area, etc.). This information will help WSFR determine whether a full site-specific NEPA analysis is necessary or if the information supplied by the State agencies is adequate to determine that use of this process is appropriate.

This information can be presented in any format the State agencies choose. The package submitted would include an SF-424 Application for Federal Assistance (AFA); project statement; project maps; third party’s proposal (if involved); all comments received (if this step was needed) and draft responses to comments; cultural resources survey report; and proposed disposal option. WSFR

may request any additional information from the State agencies that may be needed to determine if a proposed real property disposal meets all of the criteria above and whether it can be covered by this Programmatic EA.

Under the Proposed Alternative, if a proposed disposal does not meet the criteria and is expected to have impacts or alternatives beyond what is covered in this programmatic EA, a site-specific EA would be required.

Table 3. Summary Comparison of Alternatives

	No Action Alternative	Proposed Action Alternative
Potential for the approval of proposals to dispose of WSFR-interest real property	Allowed, provided WSFR or the State agencies have prepared a site specific EA which documents negligible impacts from the proposed disposal. Any impacts above that level would require an EIS.	Allowed, if criteria are met. Effects must be demonstrated to be negligible. If a proposed disposal surpasses this threshold, a site-specific EA would be required if impacts are not expected to be significant, an EIS if they are significant.
WSFR approval process for disposals of WSFR-interest real property with negligible impacts.	Preparation of a site-specific EA is always required, at a minimum.	Documentation demonstrating consistency with criteria as defined in Section 2.2.2; will be approved under this Programmatic EA assuming all other compliance requirements have been met.
WSFR approval process for disposals of WSFR-interest real property with potential for significant impacts.	Preparation of a site-specific EA is always required, at a minimum. If impacts are determined to be significant, preparation of an EIS may be necessary.	Preparation of a site-specific EA is always required, at a minimum. If impacts are determined to be significant, preparation of an EIS may be necessary.
Speed of WSFR Approval for proposals with negligible impacts	Moderate –This alternative would not move quickly due to limited staff time. Requires the full EA process to be completed (3-6 months).	Fast , if the proposal demonstrates having only negligible impacts (2-3 months).
Speed of WSFR Approval for proposals with potential for significant impacts	Slow – This would depend on the potential impacts and the significance of the proposal, and a separate site-specific NEPA analysis would need to be completed.	Slow – This would depend on the potential impacts and the significance of the proposal, and a separate site-specific NEPA analysis would need to be completed. Same as No Action Alternative.

Chapter 3 – Affected Environment

3.1 Physical Environment

The types of real property that would be affected by these projects are those in Region 2 that have been acquired using WSFR grant funds. There are currently approximately 537,194 acres of real property that have been purchased by State agencies in Arizona, New Mexico, Oklahoma, and Texas with WSFR grant funds.

The majority of the real property managed by the various State agencies is to provide habitat for fish and wildlife, as well as various forms of wildlife-dependent recreation for the public. State agencies have also acquired a number of smaller sites within the Region to provide public water access to lakes and streams for anglers and boaters.

Additionally, the WSFR-interest real property includes a full array of infrastructure, some of which may also have been purchased or built using WSFR grant funds. The assets include fish hatcheries, maintenance buildings, office buildings, as well as educational and recreational facilities, such as classrooms, hunting blinds, fishing platforms, boat ramps, and marinas.

3.2 Biological Environment

3.2.1 Habitat

WSFR-interest real property in this Region consists of a full range of habitats, from shrub-steppe to coastal wetlands. Many of the lands purchased with WSFR funds, depending on the grant program, were purchased because they provide a priority habitat type. For example, real property purchased with Wildlife Restoration Grant funds may be used to provide habitat specifically for wild birds and mammals, while real property purchased with Coastal Wetlands Conservation Grants is intended to protect coastal wetland habitat.

3.2.2 Listed Species and Critical Habitat, and Species of Concern

A large portion of the WSFR-interest real property that could be affected by these proposed disposals are being managed to provide habitat for fish and wildlife. In some cases, these fish and wildlife species are federally and/or State listed as threatened or endangered, or otherwise designated as species of concern, such as Species of Greatest Conservation Need in a State's Wildlife Action Plan. The impacts to designated or proposed critical habitat for these species must also be evaluated. Designated critical habitat is protected on real property with a Federal interest.

For every grant proposal reviewed, WSFR is required to complete a Section 7 Consultation under the ESA. This consultation evaluates the potential impacts to listed, candidate, or proposed species and designated or proposed critical habitat. Thus, when each proposed disposal is submitted, a site-specific Section 7 review will always occur. If impacts are anticipated such that a No Effect or Not Likely to Adversely Affect determination cannot be made, a separate NEPA analysis may be required regardless of other factors.

3.3 Historic and Cultural Resources

3.3.1 Historic and Cultural Resources

A very small percentage of State agencies' WSFR-interest real property has been sufficiently inventoried to identify the presence of unrecorded cultural resources or culturally important sites. Most cultural resources, such as buildings, structures, and sacred sites have not been evaluated as historic properties (i.e., to determine if they meet the criteria for the National Register of Historic Places). Many project areas have the potential to contain reported and unreported cultural resources. As such, every proposed disposal of real property will be surveyed for historic and cultural resources for potential impacts.

3.4 Socio-Economic Conditions

3.4.1 Environmental Justice

Only a small number of WSFR-interest real property may be located within or adjacent to low income or minority populations. Most real property has been acquired to meet objectives such as habitat protection and management, and boating and fishing access. Many properties are in rural and remote locations. Disposal of real property no longer suited for these purposes is not likely to result in Environmental Justice issues. However, each case will be considered for potential impacts. For example, a State agency proposes to sell WSFR-interest real property to a private development company because it is no longer needed for the original purpose. This parcel is adjacent to a low income or minority community and it is the only extant open space available to the community (nearest other option is 50 miles away). In that specific case, eliminating the community's only open space could be viewed as a disproportionate impact to this community and would require further attention.

3.4.2 Recreation and Access

Recreation. Many of the WSFR-interest real property are open to a variety of public uses, including hunting, fishing, environmental education and interpretation, bird watching, and nature photography, but there are also some lands that are closed to the public or closed seasonally. Additionally, there may be infrastructure on a given property related to recreational uses. Each parcel of WSFR-interest real property is different and many can accommodate multiple public uses. Economic issues may also exist for areas that contain recreation and tourism elements. Guide services, hotels, restaurants and other consumer fixtures could be impacted and must be considered for each proposed disposal.

Access. Some of the WSFR-interest real property is already encumbered when purchased, such as utility right-of-way or allowing a neighbor a right-of-way to access an otherwise inaccessible private property. Some are closed to public access; others only open during specific seasons, and still others open to all manner of uses. The accessibility of a parcel could be the reason the State agencies propose disposal. In some cases, a lack of access would be a drawback for management and recreation, but in others a lack of access may provide the protection a given site needs if it was acquired for species or habitat protection. Each parcel of WSFR-interest real property is different and has different encumbrances or access issues.

3.4.3 Other Partners with Financial Interests

Often, WSFR-interest real property is also purchased with funds from other sources, such as the Land and Water Conservation Fund. For any proposed disposal of WSFR-interest real property, a State agency would have to ensure they were also meeting the requirements of any other financial interests involved for a given property.

Chapter 4 Environmental Consequences

4.1 No Action Alternative– Site-specific EA Always Required

4.1.1 Physical Impacts

The requirement to complete an EA for all disposals under the No Action Alternative ensures that any physical impacts will be factored into the decision making process.

4.1.2 Biological Impacts

The requirement to complete an EA for all disposals under the No Action Alternative ensures that the biological impacts will be factored into the decision making process.

4.1.2.1 Habitat Impacts

The requirement to complete an EA for all disposals under the No Action Alternative ensures that the impacts resulting from loss of habitat or other factors will be factored into the decision making process. The process to approve a disposal ensures that the project is in full compliance with Federal environmental laws and regulations, including Executive Orders 11990 (Protection of Wetlands) and 11988 (Floodplain Management), which both require no adverse effects to wetlands (EO 11990) and the other floodplains (EO 11988). In addition, for the disposal to be approved, the project must be designed to minimize impacts to the fullest extent possible.

4.1.2.2 Listed Species and Critical Habitats, and Species of Concern

The requirement to complete an EA for all disposals under the No Action Alternative ensures that the impacts to listed and priority species and critical habitats will be factored into the decision making process. A Section 7 consultation will be conducted for every proposed disposal, analyzing the impact to listed and proposed species, and critical and proposed critical habitat. Information on species of concern will be provided by the State agencies. That analysis will be integrated into the EA that will be developed for each disposal under this alternative.

4.1.3 Historic and Cultural Resources

Under this Alternative, a cultural resources survey would be required if the State agencies request to dispose of WSFR-interest real property, to ensure there would not be an adverse effect from the removal of the real property from Federal cultural resource protections.

If historic and/or cultural resources do exist on the site proposed for disposal, WSFR will consult with the applicable Tribes. If no avoidance, minimization, or mitigation measures will reduce the level of impact to the satisfaction of the SHPO, THPO, Tribes, and the ACHP, if involved, the disposal of that real property is defined under 36 CFR 800 and Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) as an adverse impact to cultural resources due to the loss of Federal protections.

4.1.4 Socio-Economic Conditions

A determination of the socio-economic conditions associated with a disposal of real property acquired with WSFR grant funds will be made under this Alternative. Under this alternative, a site specific EA will be developed which will analyze any impacts to socio-economic conditions.

4.1.4.1 Environmental Justice

WSFR would evaluate any State agencies request to dispose of real property relative to environmental justice concerns under this Alternative to ensure that no population would be disproportionately adversely impacted. Under this Alternative, an EA would always be needed and would, therefore, always have a public review and comment step to capture any potential impact.

4.1.4.2 Recreation and Access

Any changes to recreation would be analyzed in an EA. Existing legal access of third parties cannot and would not be denied under any of the alternatives. The site specific EAs required under the No Action Alternative would address the significance of any impacts to recreation or access.

4.1.4.3 Other Partners with Financial Interests

Under this alternative, WSFR and the State agencies will ensure that all financial interests and requirements stemming from those interests will be evaluated and not impacted, unless permission has been granted to do so and documented by the financial partner involved.

4.1.5 Climate Change

Any disposal considered under this Alternative will require a site specific EA which will include an analysis of any potential impacts to climate change.

4.1.6 Procedural Impacts

Under this alternative, WSFR would continue to process each proposed real property disposal by developing an EA or an EIS if required. The site-specific EA required under this alternative demands staff time and costs for WSFR and the associated State agencies involved, as well as extending the time horizon for the disposal itself (which may have associated costs/impacts also).

4.1.7 Cumulative Impacts

Disposal requests are not particularly common, and are only requested by State agencies under extreme circumstances. The disposal requests are usually spread out geographically over potentially long periods of time, thereby minimizing any potential for cumulative impacts to species and habitats.

4.2 Proposed Action Alternative – Streamlined Assessment Process

4.2.1 Physical Impacts

Under the Streamlined Assessment process, the State agencies would consider measures to avoid, minimize, and/or mitigate losses of physical infrastructure. Under this alternative, WSFR would require impacts to physical infrastructure to be negligible to use the Streamlined Assessment Process.

4.2.2 Biological Impacts

Information provided by the State agencies will allow WSFR to assess any biological impacts as a result of proposed disposals. The standard for use of the Streamlined Assessment Process is negligible impacts. If this level of impact is exceeded, a site-specific EA will be developed.

4.2.2.1 Habitat Impacts

Proposed disposals approved under this alternative could have minor or temporary impacts on fish and wildlife habitats on WSFR-interest real property, but should demonstrate an overall negligible impact to habitat. The conditions for use of this alternative ensure that the project is in full compliance with Federal environmental laws and regulations, including Executive Orders 11990 (Protection of Wetlands) and 11988 (Floodplain Management), which both require no adverse effects to wetlands (EO 11990) and the other floodplains (EO 11988). In addition, for the disposal to be approved, the project must be designed to minimize impacts to the fullest extent possible.

4.2.2.2 Listed Species and Critical Habitats, and Species of Concern

Approval of any proposed disposal would be done in full compliance with Section 7 of the Endangered Species Act of 1973. Consultation under Section 7 would be done for each proposal to evaluate effects to listed, candidate or proposed species, and designated or proposed critical habitat. A proposed project would not be approved under this Alternative if the disposal is likely to adversely affect, directly, indirectly, or cumulatively, any Federally listed, candidate, or proposed species or result in adverse modification of any designated or proposed critical habitat for such species. In that case, a site specific EA would be required.

For each proposal provided to WSFR for approval under this Alternative, the State agencies would submit a Section 7 evaluation (“Phase 1”), as part of the supporting documentation and in addition to the Streamlined Assessment. From there, WSFR would complete the internal consultation by completing either a Phase 2 Form or a Biological Assessment for more detailed effects. This process would help ensure that no proposals would “likely adversely affect” listed, proposed, or priority species or habitats. Documentation from the State agencies would also provide information on species of concern. The standard maximum level of impacts for this Alternative is “negligible”.

4.2.3 Historic and Cultural Resources

A cultural resources survey will be conducted for every proposed disposal. State agencies would attach all documentation with the Streamlined Assessment when submitted; including, but not limited to: maps; previous or current surveys of the area involved (if applicable); assessment of impacts to historic or cultural resources.

If historic and/or cultural resources do exist on the site proposed for disposal, WSFR will consult with the applicable Tribes. If no avoidance, minimization, or mitigation measures will reduce the level of impact to the satisfaction of the SHPO, THPO, Tribes, and the ACHP, if involved, the disposal of that real property is defined under 36 CFR 800 and Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) as an adverse impact to cultural resources due to the loss of Federal protections. As such, a proposed disposal would not be eligible to use this Programmatic EA and would require a separate, site-specific NEPA analysis.

4.2.4 Socio-Economic Conditions

A determination of the socio-economic conditions associated with a disposal of real property acquired with WSFR grant funds will be made if either Alternative is used. However, should it be determined that there may be significant impacts to current Socio-Economic Conditions; a site-specific EA will be conducted.

4.2.4.1 Environmental Justice

If any low-income and/or minority populations and communities are located immediately adjacent to an area of WSFR-interest real property for which a disposal is proposed, the State agencies are required under this alternative to analyze any potential proximity impacts to ensure that the disposal of the proposed real property would not result in any disproportionate, substantial, adverse impact to these populations or communities (i.e., having only negligible impacts). The analysis is a component of the Streamlined Assessment, which would be submitted with the proposal for the disposal.

4.2.4.2 Recreation and Access

Recreation. State agencies are required to demonstrate that negligible impacts to the recreation resources exist. Under the Proposed Alternative, the State agencies must demonstrate that replacement properties will provide comparable recreational opportunities or that these opportunities will not be impacted beyond the negligible standard. Depending on the situation, replacement real property may provide equal amounts of recreation in general, but not necessarily the same types of recreation. The State agencies will evaluate the impacts of the change in amounts of a specific type of recreation based on what they are required or otherwise desire to allow in a given location. Regardless, changes to the recreation resource in general are required to be negligible at most, or a site-specific EA is required.

Access. While existing legal access of third parties cannot and would not be denied under any of the alternatives, additional recreational and other access will not be impacted more than negligibly, or a site-specific EA would be required. This would be documented by the State agencies using the Streamlined Assessment Process.

4.2.4.3 Other Partners with Financial Interests

WSFR and the State agencies will ensure that all financial interests and requirements stemming from those interests will be evaluated and not impacted, unless permission has been granted to do so and documented by the financial partner involved.

4.2.5 Climate Change

Proposed disposals considered under the Proposed Alternative are very small in size (not more than one percent of any property), and would not increase greenhouse gases and adversely impact climate change.

4.2.6 Procedural Impacts

This Alternative presents a streamlined way to handle disposals, proposed by the State agencies. By using the Streamlined Assessment Process, time and effort would be saved by not having to prepare a full, site-specific EA for minor, small acreage disposals.

4.2.7 Cumulative Impacts

Because of the criteria for use included in this Alternative (see section 2.2.2), no more than negligible impacts would be expected to occur due to the approval of any individual proposal. Disposal requests are not particularly common, and are only requested by State agencies under extreme circumstances. The disposal requests are usually spread out geographically over potentially long periods of time, thereby minimizing any potential for cumulative impacts to species and habitats.

Table 4. Summary of Environmental Consequences by Alternative

	No Action Alternative – Site specific EA Needed	Proposed Action Alternative – Use of Streamlined Assessment Process
Physical Impacts	These impacts would be similar to those under the Proposed Alternative, but would not be required to meet the same “negligible impact” standard.	For use of this alternative, impacts there would either have to be no impacts or the impacts would be negligible.
Biological Impacts -Habitat -Listed & Species of Concern	These impacts would be similar to those under the Proposed Alternative, but would not be required to meet the same “negligible impact” standard.	For use of this alternative, impacts there would either have to be no impacts or the impacts would be negligible. State agencies would demonstrate those impacts in documentation provided to WSFR.
Cultural Resources	Cultural resource surveys would be required. Any impacts would be evaluated through the Section 106 process and mitigated when impacts would occur.	Cultural resource surveys would be required. If adverse impacts to cultural or historic areas are possible, a site specific EA would be required.
Socio-economic Conditions -Environmental Justice -Recreation & Access -Other Partners with Financial Interests	Site specific EAs would be required to assess the impacts on socio-economic conditions, environmental justice issues, and any changes to recreation or access. Other partners with financial interests would not be impacted unless express permission to do so had been granted.	For use of this Alternative, impacts would have to be negligible based on documentation provided by the State agencies. Other partners with financial interests would not be impacted unless express permission to do so had been granted.
Cumulative Impacts	Due to the small acreage size of most of the proposed disposals WSFR receives, it is not expected to be significant in either the short- or long-term.	Due to the very small acreage size of the proposed disposals under this Alternative, it is not expected to be significant in either the short- or long-term.

Chapter 5 – List of Preparers

Service staff in Region 2 prepared this document. They are listed as follows: Carlotta Ortiz, Realty Grants Manager; Brie Darr, Biologist/Grants Manager; and Stephen Robertson, Chief, WSFR Program. They can be reached at P.O. Box 1306, Albuquerque, NM 87103-1306.

Chapter 6 – Consultation and Coordination with the Public and Others

This EA has been prepared in consultation with the Arizona Game and Fish Department, New Mexico Department of Game and Fish, Texas Parks and Wildlife Department, and Oklahoma Department of Wildlife Conservation.

Comments on this Draft Programmatic EA must be received by October 31, 2013. They may be sent by email to: fw2fa@fws.gov

Or by mail to:
USFWS, Wildlife and Sport Fish Restoration Program
PO Box 1306
Albuquerque, NM 87103

APPENDICES

Appendix 1 – WSFR Administered Grant Programs Approved for Real Property Acquisitions

CFDA	Programs and Subprograms Likely to Fund Real Property Acquisition
15.605	Sport Fish Restoration program
15.605	Sport Fish Restoration – Recreational Boating Access subprogram
15.611	Wildlife Restoration program
15.614	National Coastal Wetlands Conservation Grant program
15.615	Cooperative Endangered Species Conservation Fund – Nontraditional subprogram
15.626	Enhanced Hunter Education and Safety program
15.634	State Wildlife Grants – Mandatory subprogram
15.634	State Wildlife Grants – Competitive subprogram

Appendix 2 - Categorical Exclusions – Actions categorically excluded from further NEPA review (43CFR 46.205)

Categorical Exclusion means a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4. The list of Departmental categorical exclusions can be found at 43 CFR 46.210. The list of Service categorical exclusions can be found at 516 DM 8.5.

Before using a categorical exclusion to cover an action, an evaluation of the subject project must be done in order to determine if any “extraordinary circumstances” could result, “...under which actions otherwise covered by a categorical exclusion require analyses under NEPA” must be made (43 CFR 26.205). A categorical exclusion can be used unless extraordinary circumstances apply. If any extraordinary circumstances apply, then a categorical exclusion cannot be used and an EA must be written. The list of extraordinary circumstances can be found at 43 CFR 46.215.

The categorical exclusions commonly used by WSFR for real property acquisition, include (but are not limited to) the following:

43 CFR 46.210(c): Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

43 CFR 46.210(f): Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

516 DM 8.5(A)(1): Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

516 DM 8.5(A)(4): The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

516 DM 8.5(B)(2): The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

516 DM 8.5(B)(7): Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

516 DM 8.5(B)(9): Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

516 DM 8.5(B)(10): The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

516 DM 8.5(C)(6): The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

516 DM 8.5(E)(1): State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

516 DM 8.5(E)(2): Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2 (now 43 CFR 46.210).

Categorical exclusions are used to determine circumstances, actions, or projects that fall outside the requirement for NEPA compliance, or generally do not need more than an environmental action statement or checklist to complete the requirements.

Appendix 3 – Excerpts From Relevant Portions of 43 CFR 12 and 50 CFR 80

Excerpt from 43 CFR Subpart C 12.71, Real Property

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition institutions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of purchase of the real property to the current fair market value of the property.

Excerpt from 50 CFR Subpart J, Real Property

80.130 Does an agency have to hold title to real property acquired under a grant?

A State fish and wildlife agency must hold title to an ownership interest in real property acquired under a grant to the extent possible under State law.

(a) Some States do not authorize their fish and wildlife agency to hold the title to real property that the agency manages. In these cases, the State or one of its administrative units may hold the title to grant-funded real property as long as the agency has the authority to manage the real property for its authorized purpose under the grant. The agency, the State, or another administrative unit of State government must not hold title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Ownership interests include fee and leasehold interests but not easements.

80.131 Does an agency have to hold an easement acquired under a grant?

A State fish and wildlife agency must hold an easement acquired under a grant, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share holding or enforcement of an easement only in the following situations:

- (1) The State or another administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.
- (2) The agency may subgrant the concurrent right to hold the easement to a nonprofit organization or to a local or tribal government. A concurrent right to hold an easement means that both the State agency and the subgrantee hold the easement and share its rights and responsibilities.
- (3) The agency may subgrant a right of enforcement to a nonprofit organization or to a local or tribal government. This right of enforcement may allow the subgrantee to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subgrantee's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

80.132 Does an agency have to control the land or water where it completes capital improvements?

Yes. A State fish and wildlife agency must control the parcel of land and water on which it completes a grant-funded capital improvement. An agency must exercise this control by holding title to a fee or leasehold interest or through another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life even if the agency did not acquire the parcel with grant funds.

80.133 Does an agency have to maintain acquired or completed capital improvements?

Yes. A State fish and wildlife agency is responsible for maintaining capital improvements acquired or completed under a grant to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

80.134 How must an agency use real property?

- (a) If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant.
- (b) If a grant funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the grant during the useful life of the capital improvement. The agency must do this even if it did not use grant funds to:
 - (1) Acquire the parcel on which the capital improvement is located; or
 - (2) Build the structure in which the capital improvement is a component.
- (c) If a grant funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use it for the purpose authorized in the grant during the grant period. The agency must do this even if it did not acquire the parcel or construct the capital improvement with grant funds.
- (d) A State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the grant.

80.135 What if an agency allows a use of real property that interferes with its authorized purpose?

- (a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its

authorized purpose.

(b) If the agency cannot fully restore the real property to its authorized purpose, it must replace the real property using non-Federal funds.

(c) The agency must determine that the replacement property:

(1) Is of at least equal value at current market prices; and

(2) Has fish, wildlife, and public-use benefits consistent with the purposes of the original grant.

(d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.

(e) The agency must obtain the Regional Director's approval of:

(1) Its determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new grants in the program or programs that funded the original acquisition.

80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?

If a State fish and wildlife agency does not use grant-acquired real property for its authorized purpose, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as match for the grant; and

(b) The unauthorized use is for a purpose other than management of the fish- and wildlife-related resources for which the agency has authority under State law.

80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose under the grant, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose, or

(b) Request disposition instructions for the real property under the process described at 43 CFR 12.71, "Administrative and Audit Requirements and Cost Principles for Assistance Programs."

Appendix 4 – References

23 CFR 774. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites.

40 CFR 1500-1508. The National Environmental Policy Act of 1969, as amended. 43 CFR 12. Administrative and Audit Requirements and Cost Principles for Assistance Programs.

50 CFR 80. Administrative Requirements, Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts.

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