



Third Party Agreements

Document ID: 2017_23May_BPOL_006
Document Type: Guidance Interpretation Briefing White paper Best Practices
Date Issued: 05/23/2017
Date Expires: Expires when updated or moved to other policy document such as a Service Manual Chapter
Status: New
Contact: Peter Barlow, Fish and Wildlife Administrator, WSFR Policy Branch, 703.358.2119

Summary: This document gives WSFR staff best management practices for maintaining control of WSFR-funded real property assets on land that financial assistance recipients do not own.

Audience: WSFR Staff

Program: Wildlife Restoration, Sport Fish Restoration, and Hunter Education

Background: The Office of Inspector General (OIG) auditors cited deficiencies in current guidance for property where WSFR financial assistance recipients do not hold title, but where Federal financial assistance was used to improve property and/or habitat. WSFR recipients commonly build boat ramps or shooting ranges on property owned by a subrecipient or other third party including State agencies (other than the fish and wildlife agency), municipalities, or other partners. When State fish and wildlife agencies are working in similar partnerships, they must protect WSFR's investment with a legally binding instrument available in that specific State such as a lease agreement, Memorandum of Understanding (MOU), or Memorandum of Agreement (MOA).

Authorities: [Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts, \(50 CFR 80\)](#)

[Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, \(2 CFR 200\)](#)

[Useful Life of Capital Improvements Funded by Federal Assistance Grants, \(522 FW 18\)](#)

[OIG Report No. R-GR-FWS-0002-2012, Re: Loss of Control of Third Party Agreement on Real Property Bound by an MOU](#)

Guidance: Wildlife Restoration, Sport Fish Restoration, and Hunter Education program funding recipients often use WSFR funds on projects to improve or modify land that award recipients do not own. Recipients often lease land for a term of years, or acquire easements on property to limit development or other ownership rights. The legal instrument recipients use to protect or secure property is important to maintaining control of the WSFR-funded project and ensuring proper management of the Federal interest in the project. The State fish and wildlife agency may not be able to hold a lease or easement where a project is located

because another State agency owns the site. WSFR requires recipients to use an alternative legal agreement (e.g., a MOU or MOA) to protect the Federal interest. WSFR must not approve the use of an agreement that allows a subrecipient or third party to terminate participation within the period of the project's useful life, such as after a specified period without cause, or for circumstances beyond its control. Any reason to terminate an agreement within the period of useful life would violate requirements at 50 CFR 80.134(b), which require recipients to use a capital improvement for its authorized purpose during its useful life. Grant recipients and subrecipients or third parties must mutually agree on any provisions for termination or amendments, including responsibilities should the agreement be terminated early. Termination within the period of useful life on assets acquired with WSFR financial assistance requires the Regional Director's concurrence under 50 CFR 80.137. In the discussion below, we list award components that could affect or be affected by WSFR awards on property where the recipient does not hold title. WSFR must review third party agreements and will be assessing the agreement as to whether recipients have addressed the following:

Discussion:

A. Compliance - Include guidance for compliance with Federal and state laws, rules, and regulations, and proper citations to those authorities.

B. Conditions – Include conditions for party responsibilities, use criteria, and other requirements for things like range operations and maintenance (e.g. public access, hunter education use, adherence to safety standards, insurance requirements, field trials, etc.)

C. Credit - Consider whether you will require the third party to acknowledge or give credit to the Federal program(s) in all future reports or advertisements produced that pertain to the project.

D. Duration – Ensure the agreement's term is long enough to receive value for the investment.

E. Fees - Consider how to handle any fees charged after the capital improvement has been constructed.

Financial assistance recipients must:

- (1) Clearly describe the fees that subrecipients or third parties may charge for facilities,
- (2) Notify subrecipients or third party entities of the requirements for notifying the financial assistance recipient if they choose to change any fees, and
- (3) Include language into the third party agreement about whether user fees must be used for general operations and maintenance (O&M).

F. Maps/Site Plan - Include maps or a site plan. Maps should show the geographic location of the property, conforming to the definition of geographic location at 50 CFR 80. It is critical to include structures that existed on the property before the WSFR-funded improvements were built or erected, especially when monitoring. If there is no map of the improvements, WSFR cannot determine what was accomplished when field reviewers are monitoring the project. This is especially important for a future WSFR award manager that has no background or familiarity with the award.

G. Monitoring – Include a long-term monitoring plan. Recipients must:

- (1) Consider turnover in staffing or changing duties for those responsible for monitoring/maintaining the facility,
- (2) Clearly identify future site monitoring requirements,
- (3) Insert language into the agreement about State agency staff requirements for site inspections of land and facilities to ensure that they are fulfilling award purposes,
- (4) Communicate how they will manage financial and performance records, and
- (5) Clearly state the rules and processes for future site inspections in award documentation.

H. Notice of Federal Participation (NOFP) - Require and record a NOFP along with the instrument that allows for facilities or structures to be located on the property (e.g., lease, easement, or other legally binding agreement.) Alternatively, the terms of the NOFP could be incorporated into the instrument that allows the range/boat ramp/other WSFR-funded improvement to be located on the property. * Note this does not need to be recorded in the Recorder of Deeds' office.

I. Operation and Maintenance (O&M) Responsibilities - Provide O&M responsibilities of all parties involved. O&M may include (but is not limited to) mowing and vegetation control, litter removal, garbage can placement and removal services, restroom services and maintenance, other forms of concessionaire services, general maintenance of facilities and structures, and major maintenance/repairs of facilities and structures. The grant recipient may provide additional O&M responsibilities.

J. Proprietary Interest - Insert language into the agreement that by accepting Federal funds, the Financial assistance recipient retains a Federal interest in the project throughout its useful life. Should the subrecipient or third party destroy or alter the use of the project during its useful life, they must reimburse the recipient in proportion to the cost of the project minus depreciation according to depreciation requirements at 2 CFR 200.436.

K. Public Access - Ensure public access when applicable and define what public access means for the project (for example: 24 hours a day, 7 days a week; during normal business hours; a percentage of time; or over a defined period). Consider addressing the following questions:

- (1) Will facilities be closed for any reason(s)?
- (2) Will special events limit use of any facilities?
- (3) Are private/special events permitted?
- (4) Does the subrecipient or third party need approval from grant recipient prior to hosting private events?

L. Signage - If signs are displayed at the facility/structure, include language that gives credit to the Federal financial assistance program that provided funding and describe any State agency requirement to post signage and maintain signage at the completed project. Signs may include:

- (1) State agency name;
- (2) Appropriate WSFR Program symbol and name, and acknowledgement that the WSFR Program funded the project;
- (3) Acknowledgment or the logos of any partners;
- (4) Hours of public access;
- (5) Contact information in case of emergency;
- (6) Website address for more information.

M. Useful Life - Establish the useful life (see 522 FW 18.5 B), and what would happen in the event that a partner wants to limit use of or remove the WSFR-funded improvement before the end of its useful life. When determining useful life, recipients must:

- (1) Clearly define the entire project and area,
- (2) Define the useful life of each individual component or the entire project, and
- (3) Clearly identify the period of the useful life.