

§ 1948.89

7 CFR Ch. XVIII (1–1–13 Edition)

(7) The land is not U.S. Forest Service land; and

(8) There is legal authority to undertake the proposed project.

(c) FmHA or its successor agency under Public Law 103-354 may acquire Federal real property not prohibited in paragraphs (b) (6) and (7) of this section for purposes contained in this subpart. Farm land (Class I and II) will not be considered unless there is no other suitable land available.

(d) If the State Director determines that no other suitable real property exists that can be obtained at a price which does not substantially exceed its fair market value, and if the appropriate State or local government lacks condemnation authority as evidenced by opinion from the Attorney General, and there is authority to undertake the proposed project, then the State Director shall follow the procedures set out in title 7, subtitle A, part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) and immediately open negotiations to directly acquire the real property through purchase or trade.

(e) The FmHA or its successor agency under Public Law 103-354 State Director may acquire real property by purchase to trade for other real property when FmHA or its successor agency under Public Law 103-354 has been requested to acquire real property by the Governor of the State in which the real property is located.

(f) The Governor shall submit, with this request, a commitment from the State to acquire real property, together with a plan of compensation to FmHA or its successor agency under Public Law 103-354 and evidence of the State's legal authority to enter into this agreement with FmHA or its successor agency under Public Law 103-354 to accept the real property and repay FmHA or its successor agency under Public Law 103-354 for the fair market value of the real property for the intended purpose.

(g) Real property acquired by FmHA or its successor agency under Public Law 103-354 shall be transferred to the State requesting by a quitclaim deed for a price equal to the fair market

value in accordance with the terms of a transfer agreement.

(h) After obtaining title to the real property and prior to transfer to the State, the property shall be managed by FmHA or its successor agency under Public Law 103-354 in accordance with part 1955, subpart B of this chapter.

(i) The State Director shall inform the Governor that FmHA or its successor agency under Public Law 103-354 real property acquisition is not likely to occur by purchase or trade if negotiations have failed to produce acceptable results within 90 days of the request for FmHA or its successor agency under Public Law 103-354 acquisition of real property.

§ 1948.89 Land condemnation by FmHA or its successor agency under Public Law 103-354.

(a) If FmHA or its successor agency under Public Law 103-354 attempts to acquire real property at the request of a Governor through purchase or trade and is unable to do so, FmHA or its successor agency under Public Law 103-354 may take action to condemn the real property by the following procedures:

(1) A request for condemnation shall be submitted by the FmHA or its successor agency under Public Law 103-354 State Director to the Administrator, FmHA or its successor agency under Public Law 103-354, Washington, DC 20250 at the request of the Governor of the appropriate State. A copy of the Governor's request for FmHA or its successor agency under Public Law 103-354 real property condemnation and the State Attorney General's opinion that State and local government condemnation authority is lacking shall be attached to the FmHA or its successor agency under Public Law 103-354 State Director's request.

(2) The Administrator shall forward all requests for Federal condemnation to the OGC, USDA with a recommendation for action.

(3) The Administrator, FmHA or its successor agency under Public Law 103-354 shall inform the Governor of any action on the request for condemnation.

(4) Real property condemned by FmHA or its successor agency under

Public Law 103-354 shall be transferred to the requesting State by a quitclaim Deed for a price equal to the fair market value of the real property in accordance with terms of a negotiated real property transfer agreement.

(5) After obtaining title to real property and prior to transfer to the State, the property shall be managed by FmHA or its successor agency under Public Law 103-354 in accordance with part 1955, subpart B of this chapter.

(b) FmHA or its successor agency under Public Law 103-354 may not condemn Indian Trust Land or U.S. Forest Service Land.

§ 1948.90 Land transfers.

(a) Transfers of real property acquired by FmHA or its successor agency under Public Law 103-354.

(1) A request for FmHA or its successor agency under Public Law 103-354 acquisition of real property by a Governor of a State constitutes an agreement by that State to receive said real property and to reimburse FmHA or its successor agency under Public Law 103-354 for the fair market value of said real property for the intended use.

(2) Terms and conditions, including reimbursement terms, for real property transfers shall be set forth in a Real Property Transfer Agreement between the Administrator, FmHA or its successor agency under Public Law 103-354 and the appropriate Governor. These terms and conditions will be agreed upon by FmHA or its successor agency under Public Law 103-354 and the State prior to FmHA or its successor agency under Public Law 103-354 attempting to acquire the property. These agreements shall be prepared after consulting with OGC, and forwarded for prior approval by the FmHA or its successor agency under Public Law 103-354 National Office.

(3) All funds from real property transfers received by FmHA or its successor agency under Public Law 103-354 shall be deposited in the U.S. Treasury.

(b) Transfer of real property acquired and/or developed with grant funds from a grant made under this subpart to a person.

(1) Real property acquired and/or developed under this subpart may be transferred to a person for the purposes

of construction of privately-owned housing.

(2) All transfers of real property to a person must be approved by the FmHA or its successor agency under Public Law 103-354 State Director of the appropriate State.

(3) Transfer of real property by a recipient of assistance under this subpart to a person must be by contract which: acknowledges the use of funds provided under this subpart to acquire or develop the site; specifies the date of performance prior to delivery of the deed; provides for FmHA or its successor agency under Public Law 103-354 concurrence before changes or modifications; and assures FmHA or its successor agency under Public Law 103-354 that the real property will be used for the purposes under which the grant was made.

(4) Proceeds derived from the sale of land acquired or developed through the use of a grant provided under this subpart must be divided between the grantee and Rural Development on a pro rata basis. A grantee may not recover its cost from sale proceeds to the exclusion of Rural Development. The amount to be returned to Rural Development is to be computed by applying the percentage of the Rural Development grant participation in the total cost of the project to the proceeds from the sale.

(5) All funds received by FmHA or its successor agency under Public Law 103-354 from real property transfers shall be deposited in the U.S. Treasury.

(42 U.S.C. 8401; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[44 FR 35984, June 19, 1979, as amended at 46 FR 33022, June 26, 1981; 56 FR 28038, June 19, 1991; 68 FR 61331, Oct. 28, 2003]

§ 1948.91 Inspections of development.

Inspections will be made by the FmHA or its successor agency under Public Law 103-354 State Engineer or other employee designated by the FmHA or its successor agency under Public Law 103-354 State Director to ascertain whether site development is proceeding in accordance with plans and specifications. Such inspections