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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

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RELEASED

The Honorable Don Edwards
House of Representatives

Dear Mr. Edwards:

As agreed with your office, we inquired into the validity of Fish and Wildlife Service (FWS), Department of the Interior, payments to tenants residing in a boatyard acquired by FWS at Alviso, California.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 96-646, 42 U.S.C. 460 et seq.) gives certain rights and benefits to tenants residing on land acquired by the Federal Government. These rights include Federal agencies paying tenants to move personal property, or boats in this case; advancing rent differential relocation payments, not to exceed \$4,000, to assist tenants in vacating the federally acquired property; and paying cash settlements to tenants for moving their own personal property (boats) if tenants elect to receive such a settlement. Tenants also have the right to insist that the Federal Government find comparable housing for displaced persons before they must vacate.

As part of the San Francisco Bay National Wildlife Refuge acquisition, FWS purchased two tracts of land, totaling approximately 5 acres, in Alviso to establish a visitor/interpretive/maintenance center. These tracts cost \$345,000. Both tracts were being used as boat works, with the owners renting space on a month-to-month basis to a diverse group of individuals--boatbuilders; people living on boats which might never again be seaworthy; people living in shacks, trailers, and converted buses; people running businesses (such as boat moving, rigging, and oar making) out of the premises; and people storing miscellaneous items on the premises.

FWS determined that 90 days before negotiations for the two properties, there were 99 tenants involved who would be eligible for benefits under the act and estimated relocation payments to be \$132,000. However, FWS officials

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said they were faced with complicating circumstances in applying the act in the Alviso relocation situation. These included:

1. The diverse nature of the tenants, their generally limited financial resources, and the fact that many actually live on or adjacent to their boats.
2. Some boats were oceangoing trimarans (three-hulled boats) up to 26 feet wide--too wide to move by land, and for the same reason, difficult to obtain berthing.
3. Some boats were 40, 54, and 92 feet long. Moving uncompleted boats of this size had to be done on water, either by barging, towing, or sailing away.

--Barging required the use of heavy cranes, barges, a tugboat, and the construction of a cradle to support the boat on the barge. Most boatowners were opposed to this method because of the potential for hull damage, and in at least one case, there was some.

--Towing required cranes and a tugboat. In addition, to obtain insurance, (standard cost would be 10 percent of the boat's appraised value) the boat would need to be essentially 70- to 90 percent complete to be seaworthy and maneuverable in case a towline broke.

--Sailing away required time and money to complete construction and/or refurnishing. The FWS acquisition restricted the time available for preparing for such action and few boatbuilders had the money to do so.

4. Limited substitute facilities. There is commonly a 2- to 4-year waiting list at most bay area marinas. Very few alternate boatbuilding facilities were available, and after considerable searching, FWS could not locate any that would accommodate boatowners.

To resolve these difficult problems, FWS had to hire commercial moving firms, which cost up to \$75,000 to move some vessels, and had to pay cash settlements to some tenants for completing and moving their boats. Consequently, instead of costing \$132,000 to relocate tenants and boats, it cost FWS \$565,624, or \$433,624 more:

Rent differential payments (28 at \$4,000 each)	\$112,000
Business relocation payments (4)	11,500
Payments for moving approximately 50 boats and miscellaneous personal property	<u>442,124</u>
Total	<u>\$565,624</u>

FWS officials admit they did not know what they were getting into in relocating tenants and boats on the acquired property. FWS in deciding whether to acquire the property did not know what it would cost to relocate tenants and boats occupying the property. For example, FWS had estimated costs of \$25 to \$200 per boat move, but, in one case, the boat move cost \$75,000.

CONCLUSIONS

FWS payments to the tenants residing at the boatyard in Alviso, apparently were made according to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Also, as reported to you on August 18, 1978, we found no evidence of excessive payments to boatowners to relocate their boats. Relocating tenants and moving the boats from the boatyard, however, was much more difficult and costly--~~over four times~~ the original estimate--than FWS had anticipated, and the extra costs were not considered by FWS in its decision to acquire the boatyard.

RECOMMENDATION

We recommend that the Secretary of the Interior direct the Director, Fish and Wildlife Service, to determine in the future whether there are complicating circumstances which could cause relocation problems and increase relocation costs before acquiring lands with tenants. Any unusual relocating problems and extra costs should then be considered in deciding whether the land should be acquired.

AGENCY COMMENTS

Interior officials agreed with our report and said they had taken action to implement our recommendation by requiring the development of a relocation plan prior to

acquisition of land which will cause displacement of persons from their dwellings, businesses, or farm operations.

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We contacted FWS officials in Washington, D.C.; Portland, Oregon; and San Francisco, California, and tenants of the boatyard in Alviso and analyzed the legislative provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Enclosed is our analysis of questions regarding the validity of FWS's relocation payments.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time we will send copies to the Secretary of the Interior and the Director, Fish and Wildlife Service, and make copies available to other interested parties.

Sincerely yours,



Henry Eschwege
Director

Enclosure

ANALYSIS OF QUESTIONS
REGARDING THE VALIDITY OF
FWS's RELOCATION PAYMENTS

QUESTION 1: The owners of the land purchased by the Fish and Wildlife Service (FWS) rented it for boat works. The tenants included not only boatbuilders, but also individuals who lived in unseaworthy boats, shacks, trailers, and converted buses, as well as people who ran businesses related to boating. Are the boats in question considered real or personal property as these terms are used in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 42 U.S.C. 4601 et seq.)?

ANSWER: Boats that are on the leased land, even if such boats are unseaworthy and are used by individuals as homes, would in all likelihood be considered personal property.

Section 202(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides in part:

"Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person * * * the head of such agency shall make payment to any displaced person, for--

"(1) actual reasonable expenses in moving himself, his family, business, farm operations, or other personal property;

"(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business * * *."

Since neither real nor personal property is defined in the act, such words take on their meaning at common law. Real property, under the common law and at present, consists of land and permanent, fixed, and immovable appurtenances, such as buildings not intended to be moved, trees, etc. (63 Am. Jur. 2d 11). Personal property, on the other hand,

consists of visible, tangible, and movable items, such as furniture, clothing, stocks, bonds, and jewelry. Personal property also includes one's rights or chattels that are connected to the land, such as buildings erected under an agreement that they may be removed (63 Am. Jur. 2d 24). Thus, the common law meaning of personal property would include boats, even if such boats are used by individuals as homes.

QUESTION 2: Under section 213(b)(2) of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, are FWS officials authorized to advance rent differential relocation payments to most tenants to assist them in vacating the federally acquired property?

ANSWER: In hardship cases, FWS officials may advance relocation payments to assist tenants in vacating federally acquired property. Otherwise, FWS officials must make authorized payments promptly after the tenants move.

"The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure"

* * * *

"(2) that a displaced person who makes proper application for a payment authorized for such person * * * shall be paid promptly after a move or, in hardship cases, be paid in advance." 1/ (Emphasis added.)

As provided in the statute, the heads of Federal agencies may establish regulations and procedures to assure that a displaced person who properly applies for an authorized payment is paid promptly after a move or, in hardship cases, is paid in advance.

In the Department of the Interior regulations concerning uniform relocation and real property acquisition policies for replacement housing payments (41 C.F.R. §§114-50.906, 114-50.902 (1977)), the amount of payment to the tenant for

1/Section 213(b)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646, 42 U.S.C. 4633).

rental housing replacement must be paid in a lump sum not to exceed \$4,000, unless otherwise requested by the tenant. The regulations do not state, however, whether this lump sum payment should be paid before or after the tenant moves, nor do the regulations define "hardship cases."

Since the act specifically provides that displaced tenants who make proper application for authorized payment can be paid in advance if they are considered hardship cases, we cannot object to advance payments to FWS tenants so long as the financial dilemma caused by displacement of the tenants could reasonably be classified as a hardship case, even if this results in most tenants receiving advance payments. Otherwise, FWS officials must make authorized payments promptly after the tenant moves.

QUESTION 3: Do sections 202(a)(1) and 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 authorize Federal officials to pay cash settlements to designated relocatees so that they can move their own personal property?

ANSWER: Yes. As provided in the statute, if displaced persons elect to receive a cash settlement, they may receive a moving expense allowance not to exceed \$300 and a fixed dislocation allowance of \$200 in lieu of payments for actual moving expenses.

"(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person * * * for "(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;"

* * * * *

"(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency

not to exceed \$300; and a dislocation allowance of \$200." 1/

Thus, tenants may receive actual moving expenses so long as the expenses are reasonable (§202(a)(1)), or they may elect to receive a cash settlement not to exceed \$500 (§202(b)).

We note that the regulations implementing subsection (b) provide that the amount of moving expense allowance, not to exceed \$300, is to be determined according to a schedule established by FWS. The \$200 relocation fee is fixed. Moreover, if two or more individuals, not families, are living together in a single-family dwelling and are displaced, they are considered as one displaced person for purposes of this entitlement. (41 C.F.R. 114.50.701 (1977).)

In the event displaced persons wish to move themselves rather than hire a commercial mover, subsection (a)(1) does not preclude them from receiving actual reasonable expenses to move themselves, their family, or personal property, even if this expense exceeds the \$500 limitation provided in subsection (b). In this circumstance, however, the actual reasonable expenses recoverable may not exceed the estimated cost of moving commercially, unless FWS determines a greater amount is justified. (41 C.F.R. §114-50.601-2(b)(1) (1977).) The regulations also do not preclude FWS from making partial payments to tenants for moving expenses so long as the payments appear reasonable and are based on work actually accomplished that is reasonably necessary to effect the move. The partial payments also must be consistent with those expenses the regulations consider to be allowable. (See 41 C.F.R. 114-50.601-1 and 114-50.601-2 (1977).)

QUESTION 4: If displaced persons are unable to vacate the federally acquired premises by the agreed date because no housing facilities are available, does section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provide that the displaced persons have a right to insist that the Federal Government find comparable housing before they must vacate the federally acquired premises?

1/Section 202(a)(1) and 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646, 42 U.S.C. 4622).

ANSWER: It appears that designated relocatees do have a right to insist that the Federal Government find comparable housing before they must vacate federally acquired property. Section 206(b) provides:

"No person shall be required to move from his dwelling on or after * * * (January 2, 1971) on account of any Federal project unless the Federal agency is satisfied that replacement housing in accordance with section 205(c)(3) is available to such person." 1/

Thus, section 206 of the act requires FWS officials to be satisfied that replacement housing is available in accordance with section 205(c)(3).

Section 205(c)(3) provides that, prior to displacement, a relocation assistance advisory program must assure the availability of decent, safe, and sanitary dwellings at affordable rents or prices unless the head of the Federal agency prescribes by regulation situations when such assurances may be waived:

"Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to assure that within a reasonable period of time, prior to displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived."

1/Section 206(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646, 42 U.S.C. §4626).

In other words, FWS should determine that, before displacement, decent, safe, and sanitary housing is available in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of the families or individuals being displaced. (41 C.F.R. 114.50-500 (1977).)

Nevertheless, in the case of an emergency or other extraordinary situation where immediate possession of real property is of crucial importance, the head of FWS may waive the requirements for assuring the availability of replacement housing. A waiver, however, must be supported by appropriate findings and a determination of the necessity for the waiver. The findings and the determinations must be (1) supported, (2) submitted in writing, and (3) made a part of the record. (41 C.F.R. 114.50-500(b) (1977).)

As a last resort, where the survey and analysis of available replacement housing discloses that there is none and that such housing cannot otherwise be made available, the head of FWS may take action to develop replacement housing authorized by section 206(a):

"If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available, he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project." 1/

In other words, if the Secretary of the Interior determines that there is no comparable housing available, and no way of making comparable housing available, the law authorizes him/her to use funds authorized for the project to provide such housing. Under the broad authority of this section, the implementing regulations permit the Secretary to consider such possibilities as constructing new housing, acquiring and rehabilitating existing housing, relocating existing housing, and

1/Section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646).

stimulating the development of the required supply of housing through the use of seed money loans under section 215 of the act. The Secretary may carry out the action he/she decides upon by entering into cooperative agreements or other transactions with any other Federal or State agency, as he/she deems appropriate. The Secretary may also enter into contracts with any individual, firm, association, or corporation for services in connection with such activities. (See 41 C.F.R. Subpart 114-50.50.0 (1977).)

In sum, the statute and the regulations show that the burden is on the Secretary of the Interior and FWS to provide adequate replacement housing if the (1) designated relocatees can show that no such housing is available and that there is no properly documented waiver evidencing an emergency situation that required immediate possession of the real property or (2) Secretary issued no properly supported waiver and provided no housing as a last resort. Thus, it seems likely that, in these situations, displaced tenants have a right to insist that the Federal Government find them comparable housing before compelling them to move.