

APPENDIX L

June 23, 1997

Amended 3-20-04, 8-4-03

(Refer to Acts 26-578 and 26-599)

CAVE and KARST ACQUISITION and GRANT POLICY

Overview

Introduction

The NSS Board of Governors (Board) will consider acquiring properties for the Society that contain caves, cave entrances, or significant karst features when acquisition Proposals and Management Plans are presented that are in line with purposes of the Society. A cave purchase is a significant commitment of resources, which makes a very visible statement about the Society's values and the significance of the cave properties we acquire.

The NSS acquires cave properties on a selective and infrequent basis, preferring to support cave conservancies in their efforts to preserve and protect caves and karst resources. The NSS has neither the financial resources to acquire, nor the personnel to manage, every deserving cave property that is a candidate for ownership; therefore the Society must be selective in its acquisitions.

As an alternative to ownership or direct management, the Society generally prefers to award grants and/or provide support to cave conservancies to assist in their efforts to protect caves and karst resources. Grant requests will be evaluated by the same criteria, with the exception of national significance, as properties considered for NSS purchase.

Developing Proposals

Proposals and Management Plans will include information and rationale as described in Appendix Z of the NSS Board Manual.

The Criteria for Cave Ownership and procedures to follow when considering NSS ownership shall be made readily available to the NSS membership to help determine if a cave property meets these criteria before a Proposal and a Management Plan are prepared.

Evaluation Process

Stage One

The Cave and Karst Acquisitions Committee Chairman will evaluate the Proposal and Management Plan to determine if the proposed cave property acquisition meets the NSS Criteria for Cave Ownership, included in this policy document.

If the cave property does not meet these criteria, it will not be given further consideration for NSS ownership or funding. The NSS may refer the proponents of the acquisition to a state or regional cave conservancy, if one exists, for consideration of the proposal.

Stage Two

The NSS Cave and Karst Acquisitions Committee and the NSS Board of Governors shall assess the Proposal and the Management Plan for the cave property using the Evaluation Criteria for NSS Ownership, included in this document. At the same time, the NSS Board of Governors is encouraged to ask questions of the Cave Acquisition Committee and the authors of the proposal as a part of the decision making process. Each cave acquisition is unique, and will be evaluated on its own value and merit.

The purchase proposal and management plan shall be formally presented to the NSS Board for approval, and the Board shall base its purchase decision on the Standards and the Criteria for NSS Ownership, and on the best interests of the Society.

Alternatives To NSS Acquisition

The NSS Board should consider other acquisition options as alternatives to the NSS purchasing property. The Society shall use the standards, evaluation criteria, and review process that are outlined in this policy in considering such alternatives.

Examples:

Donation of the property to the NSS

The NSS will hold title to the property, and will manage the property. In this case, the NSS does not make a financial commitment for a land purchase, although the NSS is responsible for the costs of improving and maintaining the property.

Obtaining a conservation easement for the property

The current owner will continue to own and use the property, subject to the terms of a Conservation Easement held by the NSS.

Lease of property to the NSS

Temporary NSS ownership

This could be considered if an NSS-affiliated organization would like to purchase cave property, however needs time to establish sufficient funding and/or management structure. The NSS may consider entering into a written contract in which the Society buys the cave property on a short-term basis for later sale to an organization. In this case, the NSS serves as a facilitator and temporary owner in order to prevent the candidate property from being lost to the caving community.

Direct purchase by an NSS-affiliated organization

The NSS may provide a loan or grant, or enter into another financial agreement with an NSS-affiliated organization who is prepared to manage a property jointly with the NSS, or independently. In this case the NSS shall evaluate the property using the same elements of the NSS Criteria for Cave Ownership and the proposed management plan. However, the standards

for evaluating these caves may be based on regional or statewide attributes, rather than on the national perspective used for Society acquisitions.

NSS Criteria for Cave Ownership

Science, Protection & Fellowship

The NSS shall only consider acquiring caves, or supporting cave acquisitions, that meet the purposes of the Society: to promote interest in and to advance in any way the study and science of speleology, the protection of caves and their natural contents, and to promote fellowship among those interested therein. The cave or karst land should have one or more significant attributes.

General Attributes

The property has national significance, by being outstanding in one or more of the categories by which caves are measured or evaluated: size, length, depth, biota, and/or geological, cultural, or historic value. Regardless of the particular measure that is used, the screening criteria would require that the cave's values and interest to the NSS be quantifiable, and comparable with those of other caves.

The property has outstanding examples of a broad class of caves or karstlands in a given category. The property must contain certain features or values that are considered excellent representative examples of these features, and that would add value and variety to the portfolio of property owned by the NSS. For example: an outstanding example of a New England marble cave, a New Mexico gypsum cave, a well developed lava cave, or alpine karst.

Procedures To Follow When Considering NSS Ownership and Support

Overview

After a proposal for acquiring or leasing a cave or karst property has met the NSS Criteria for Cave Ownership the proposal shall be evaluated in accordance with the following procedures. The information necessary for the evaluation should be contained in the Acquisition Proposal.

The requirements for accepting donated property do not need to be as stringent as those to assess purchases.

These requirements shall also be evaluated when evaluating a grant proposal.

Financial Assessment

Appraisal

Obtain one or more appraisals to determine the value of the property. The presence of a cave does not make a property more valuable, regardless of how desirable it may be to the NSS. Without an appraisal, a donor cannot properly receive a tax credit, the NSS cannot state its worth, and we cannot evaluate whether the price reflects fair market value. The NSS, as a guideline, shall not pay more than 10% over fair market value as documented by a credible appraisal. This is an IRS recommendation for non-profit corporations. Appraisals can be important negotiating tools. The NSS should consider hiring two appraisers, one selected by the NSS and one selected by the seller.

Professional land survey

Offers should be made contingent upon a survey that provides evidence that the cave and/or its entrance are included on the property to be purchased.

Acquisition expenses

- Establish whether the asking price is the fair market value of the property.
- Evaluate the total expenses of the purchase, and endeavor to obtain the property for the lowest price possible. Consider closing costs, survey expenses, legal fees, taxes, and the expenses of the NSS President and Treasurer closing the deal from a long distance.
- Determine if the expenditure is within the financial resources available to the NSS.
- Consider whether a portion of the property with lesser interest to the NSS can be sold later to recover some or all of the acquisition costs. In the case of donated property that may not meet the NSS standards for ownership determine whether the NSS may sell or transfer the property to a suitable entity or if the donation is restricted.

Sources of funds

Determine the source of funds for the acquisition expenses, and evaluate the effect of the expenditure on the ability of the NSS to continue to function and provide membership services effectively. Examples to consider for funding include: the NSS Cave Acquisition Restricted Fund; a fund raising appeal or project; donation by local cavers to the property; other NSS Restricted Funds; bank loan; and a loan or grant from the National Speleological Foundation, conservation organization or other foundation.

Operating costs

Evaluate and calculate the costs to improve and maintain the property. Consider utilities, gates, structures, mowing, road grading, fences, taxes and insurance.

Liability

Determine the Society's liability under the recreation use and landowner protection statutes of the state where the property is located.

Consider the liability risks for the NSS for the level of access proposed for the cave and property.

Inventory any hazards on the property or in the cave. These may include: pits, unstable terrain, hazardous wastes, lakes, buildings, bridges, wells, trash dumps. Determine whether these will

have an impact on insurance coverage. Consider obtaining an environmental assessment of the property. If there is any possibility that there has been hazardous or special waste disposal on the property, a Phase 1 Investigation should be conducted prior to closing. In this case, no offer should be made unless it is contingent upon hazardous or special waste not being present on the property.

Other interests

Assess and consider the neighborhood around the proposed acquisition, and its possible effects on the cave and property, its ecosystem, the safety and enjoyment of the visitors to the property, and the success of the property as a nature preserve.

Important factors include: neighbors and their activities and interests, commercial development, zoning regulations, possible uses of adjacent land, and previous uses of the property.

Determine if the Society is prepared to deal with the burdens that ownership of the property may present.

Legal

In consultation with the NSS Legal Committee, and a local lawyer if necessary, explore thoroughly and assess the property's history and legal limitations. For example: restrictions, easements, rights of way, titles, mineral rights, water rights, back taxes, local development plans. All closings shall have a title search performed and title insurance will be purchased.

Management

Assess the Management Plan accompanying the Proposal for feasibility, suitability, and effectiveness. The Management Plan should identify the individuals or group committed to implementing the plan.

Consider the suitability of the group or individual expected to manage the property.

Determine if the neighbors are willing to contribute to the management or protection of the cave.

No Action Option

Consider the consequences, if any, of the NSS, or NSS-affiliated organization, not purchasing the cave property, and the opportunities that may be lost as a result. The NSS Board shall explore this topic thoroughly.

For example: consider other possible owners and uses of the land, and the effects on the cave and its environment, both positive and negative.

Benefits Assessment

The NSS Board must consider the benefits of ownership when a proposal for a cave acquisition or grant is presented.

Before a decision is reached, these benefits should be carefully weighed against the monetary costs and potential risks associated with cave ownership.

Potential benefits to the NSS, to NSS members, and to speleology may include:

Conservation

The cave may contain outstanding and/or unique biological resources that are worthy of protection and scientific study; substantial and unusual speleothems or minerals also worthy of protection and study; or cultural, historical, and/or archeological values that should be conserved. Purchasing the cave demonstrates our commitment to the conservation of these resources.

Study

The cave may be viewed as an underground laboratory where substantial science has been and continues to be conducted. For example, it may contain a significant population of invertebrates being studied by biologists, have a complex hydrological regime, be developed in an unusual or unique geological setting, or be mineralogically rich or unusual. Ownership of the cave by the NSS would enable studies to continue and would provide a natural facility where scientists can conduct studies in the future.

Recreation

The cave may represent a significant local or regional recreational resource that would be lost to the caving community, if not acquired by the NSS.

Recreation is not a charter purpose of the NSS, however maintaining access to caves may reduce recreational pressure on more sensitive caves in the area, and provide a benefit to NSS members.

Education

Ownership of a cave property may present an opportunity for the NSS to provide an educational program concerning caves, karst, and cave resources for both cavers and the public.

For example, non-caving groups could be taken to the cave and taught about cave geology, biology, and conservation. Inviting local groups, the media, and others who are not part of the caving community to experience the underground environment could further the Society's conservation goals.

Accepting Acquisition and grant Proposals

Review process

Cave and Karst Acquisition proposals and grant proposals shall follow the procedures described in this policy and in the checklist in Enclosure One.

All proposals and grant requests for the purchase and management of cave and karst properties shall be submitted to the Cave and Karst Acquisition Committee (CKAC) for review prior to consideration by the NSS Board of Governors. The CKAC shall comment on the proposal and if necessary, will return it to the proponent organization for revisions.

Upon receipt of an acceptable proposal, the CKAC shall submit the proposal and supporting documentation to the Administrative Vice-President (AVP) within 30 days of receipt. The Chairman of the CKAC shall also submit to the AVP a written discussion of the proposal, including a recommendation, and reasons for the recommendation. The AVP shall present the proposal and the CKAC discussion to the Executive Committee (EC), time permitting.

Following the EC discussion of the proposal, the Administrative Vice President shall, prior to the next NSS Board meeting, notify the Board of all positive and negative findings made by the CKAC concerning the proposal, the CKAC's recommendation to the EC, the concurrence or non-concurrence of the EC with the recommendation, and the reasons for the EC's decision.

If either the CKAC or the EC believes that the proposed acquisition, or grant, is both desirable and feasible, the AVP shall present an appropriate motion to the Board.

If the CKAC cannot make a recommendation (e.g. the chairmanship is vacant, there is a lack of consensus among CKAC members), then the AVP shall present the proposal and his/her evaluation to the EC and the BOG.

CAVE and KARST ACQUISITION and GRANT POLICY

Enclosure One

Checklist for Acquisitions and Supporting Documents

1. Does the property have national or regional significance (this should be stated in the management plan)?
2. Does the cave or karst acquisition support the purposes of the NSS as stated in its Constitution?
3. How does the acquisition rank relative to other NSS expenditures? Is its significance commensurate with the required investment?
4. Is the cave located under the land to be purchased? Property rights extend into the earth, if the mineral rights have not been severed. Are we actually acquiring the cave or just an entrance to it? Can we obtain long-term permission to enter the neighboring property through our cave entrance? Are the neighbors willing to contribute to the management of the cave?
5. Is there a Management Plan in conformance with Appendix Z? Required by Board Act.
6. Appraisal. Without an appraisal, a donor cannot properly receive tax credit, the NSS cannot state its worth, and we cannot evaluate whether the price reflects fair market value. The NSS shall not pay more than 10% over fair market value as documented by a credible appraisal. This is an IRS recommendation for non-profit corporations. The presence of a cave does not make a property more valuable, however more desirable it may be to the NSS. Paying more than fair market value inflates land prices and reduces the total amount of money available to the caving community to protect and acquire cave and karst properties. Appraisals can be important negotiating tools. An independent party can state that the property is worth less than asking price. To provide a better sense of independence, the NSS may wish to consider hiring two appraisers, one selected by the NSS and one selected by the seller. Their appraisals can be used as negotiation limits.
7. Professional Land Survey. Offers should be made contingent upon a survey demonstrating that the cave and/or entrance is part of the property to be purchased. This is less important when considering a donation.
8. Mineral Rights. Mineral rights refer to the right to explore for and/or extract metal ores, oil, and rock. Quarries can mine our caves if we do not own the mineral rights. Further, it is unclear in case law whether we have legal access to caves on property on which we only hold surface rights. Case law is clear that we cannot prevent owners of mineral rights and their designees from exercising their rights. The NSS does not favor to purchase land without mineral rights.

9. Water Rights. Water rights refer to the right to exploit water and vary from state to state. If water plays an appreciable role in the values of the cave property, then it is critical that water cannot be diverted away from our property without NSS legal recourse.

10. Phase 1 Investigations. If there is any possibility that there has been hazardous or special waste disposal on the property, a Phase 1 investigation should be conducted prior to closing. No offer should be made unless it is contingent upon no hazardous or special waste being present on the property.

11. Title Search and Title Insurance. All closings will have a title search performed and title insurance will be purchased.

Grants from the NSS

When an organization requests a grant from the NSS for cave or karst acquisition, it is reasonable for the NSS to want assurance that the grant money is used for the intended purpose. As such, upon approval of the grant by the NSS Board of Governors, the NSS and the grantee will enter into a written agreement such that at the NSS's discretion, the grantee will repay the full grant amount if 1) within one year, the grantee fails to take legal ownership of cave/property; or 2) within ten years, the grantee sells, transfers, or otherwise fails to manage the property in good faith as outlined in the Management Plan in effect at the time of the agreement execution.

Donations of Cave and Karst Properties to the NSS

The standard for acceptance of donated property does not need to be as stringent as that of purchase or grant support. However, the recurrent and closing costs should be considered. It is important that the NSS ensure that the property does not entail a great liability to the NSS because of unnatural hazards associated with the property. In the case of a property that may not meet the NSS criteria for purchase, the BOG should consider whether the donation is restricted. In other words, can the NSS sell or transfer the property to a suitable entity?