

Land Acquisition Information for DNR grant applicants



Photo by Jeff Shaw

Information relevant to land acquisition funded through Wisconsin DNR grant programs, including:

Knowles-Nelson Stewardship Program

Surface Water Grant Programs

Municipal Flood Control Grants

National Recreation Trails Grants

Sub-recipient awards through various federal grant programs, including US Fish and Wildlife Service programs, Great Lakes Restoration Initiative funds, Joint Venture and the US Coastal Management program.



Bureau of Community Financial Assistance
Wisconsin Department of Natural Resources
December 1, 2018
DNR Publication Number CF-016-2018

TABLE OF CONTENTS

Introduction i

Important, early Considerations for grant-funded real estate acquisitions 1

Responsibilities and potential cost to applicants 1

 Site inspections..... 1

 Environmental hazard assessment..... 2

 Relocation..... 2

Appraisals 2

Real estate due diligence 4

 Title considerations and insurance..... 5

 Gap insurance 5

 Other interests..... 5

 Legal description and surveys..... 5

 Deed requirements..... 5

Other required reviews..... 6

APPENDIX A – Glossary of real estate terms..... 7

INTRODUCTION

This document describes some requirements of and guidance to applicants to DNR grant programs that fund land acquisition projects.

In this document, the term “land acquisition” refers to acquisition of both conservation easements and full fee simple interests in property.

Please note that this document does not provide comprehensive information about each grant program’s requirements. Refer questions about program-specific requirements to the DNR grant specialist for each program.

IMPORTANT, EARLY CONSIDERATIONS FOR GRANT-FUNDED REAL ESTATE ACQUISITIONS

Confidentiality of real estate transactions

Applicants should be aware that DNR grant applications and documents associated with them are subject to Wisconsin's open records laws. We recommend that you notify the seller that you are applying for grant assistance from the state, therefore information about the property and the proposed purchase will be public record. In some cases, the DNR will be required to notify the public about the project during the grant evaluation process.

If confidentiality is an important concern to the landowner or any other affected party, please advise the DNR grant specialist who can work with you to respect desires for confidentiality as long as possible in the grant process.

Required: a willing buyer – willing seller transaction

DNR grants for land acquisition must fund *arms-length sales*, meaning land or easements purchased from willing sellers, by willing buyers, where neither party is obligated to or has disproportionate control over the transaction. If the land has been condemned, dedicated as open space by zoning, purchased to satisfy compensatory mitigation, or if either party is otherwise legally obligated to the transaction, the project may not be eligible for grant cost share.

DNR's interest in grant-funded conservation easements

If you are acquiring an easement with a DNR grant, you will need to explain the state's interests in the easement to the landowner. In addition, the interests of the State must be referenced in the easement document itself. For additional information about easement requirements, see DNR Easement Guidelines available from a DNR grant specialist.

Land used as match

For grant programs that allow the value of land to be used as match, the standards of review and due diligence explained in this document apply to both the subject properties and land used as sponsor match.

RESPONSIBILITIES OF AND POTENTIAL COSTS TO APPLICANTS

Site inventory and inspection

The DNR expects all grant applicants to complete a thorough property inspection before applying for a grant. While it is likely that one or more DNR employee will visit the property in the grant evaluation process, the primary responsibility for a site inspection rests with the applicant, who should be able to provide accurate information regarding:

- Type and condition of natural or recreational resources as relevant to the grant program
- Existing land uses on the subject and adjacent properties
- Property boundaries and any known boundary encroachments
- Existing improvements on the property
- Evidence of contamination
- Observable easements and other encumbrances (power lines, gas lines, roads, etc.)
- Existing public access and public use: properties with no legal public access may not be eligible for grant funding.

Environmental hazard assessment

An environmental inspection is required for all property acquired with DNR grant assistance. The purpose of this inspection is to determine whether there is any environmental contamination or potential for contamination on the property.

The environmental inspection may be done by a representative of your organization using the *Environmental Hazards Assessment Report Form* ([DNR Form #1800-1](#)).

If your initial inspection indicates there may be contamination on the property, you may be asked to provide a “Phase-1” Environmental Assessment for a grant to be considered for the property. If that’s the case, your organization should evaluate the responsibilities associated with known environmental hazards and the potential costs you might bear for any required clean up.

Property types of special concern:

As you consider purchase, be aware that certain types of property are more likely to be contaminated than others. Those include:

- Lands previously developed and now vacant
- Lands with a history of industrial, warehouse or commercial uses
- Lands with visible dumps, debris piles, discarded storage drums or monitoring wells
- Orchards
- Railroad beds

Relocation obligations

Relocation cost assistance is mandated by state and federal law to protect landowners and tenants displaced by government-sponsored projects.

If a public grant exceeds 50% of project costs, or if the party responsible for involuntary displacement of a tenant is a public entity, that buyer is by law a “responsible party” in regards to relocation, and the tenant may be eligible for financial assistance from the responsible party.

Relocation costs vary greatly. Some grant programs include relocation as an eligible acquisition cost. If relocation costs will be an element of your grant request, alert DNR’s grant specialist early in the application process.

APPRAISALS

DNR grants for land acquisition are based on fair market value as determined by appraisal, reviewed by a DNR Review Appraiser and accepted for grant purposes.* Appraisers are responsible for understanding and meeting DNR’s appraisal standards, however, grant sponsors can help ensure acceptable appraisals by being familiar with DNR appraisal requirements.

Some important appraisal considerations:

All appraisals for grant-funded acquisitions will be reviewed for adherence to USPAP Professional Appraisal Standards and DNR’s appraisal guidelines. Grants involving federal funds may also require the appraisal to comply with the Uniform Appraisal Standards for Federal Land Acquisition, a.k.a. “Yellow Book” appraisal standards.

- It is common for multiple appraisals to be prepared in anticipation of a grant-funded land

purchase: sometimes the seller obtains an appraisal for his/her own purposes in addition to the appraisals procured by the grant applicant and/or the DNR. Grant award amounts will be based only on appraisals prepared for DNR use and accepted by DNR review.

- Some grant programs require two appraisals to determine fair market value of a subject property. When two appraisals are required to determine land value, DNR will calculate grant awards based on the lower of two acceptable appraisals.

*Note: For Knowles-Nelson Stewardship grants, award amounts are subject to a short tenure rule. If applicants purchase land owned by the seller for less than three years, grant awards must be calculated based on price paid by the seller or the accepted appraised value, whichever is lower.

Measures to encourage acceptable appraisals:

1. Contact DNR grant staff to discuss the appraisal assignment BEFORE ordering an appraisal. All grant programs encourage a pre-appraisal consultation between the appraiser and DNR's Reviewer to discuss the appraisal assignment. Ask a DNR grant specialist to help coordinate that pre-appraisal consultation.

This pre-appraisal consult is essential if the appraisal will be based on a hypothetical condition – examples include a value that assumes a zoning change that has not occurred, or a road access easement that has not yet been granted.

2. Chose a qualified appraiser familiar with DNR appraisal requirements. All appraisals must be completed by a Wisconsin Certified General Appraiser. Confirm in your appraisal contract that the appraiser is willing to cooperate with the DNR Review Appraiser to answer questions or address deficiencies in their appraisal per the reviewer's request. DNR grant programs cannot cost share on unacceptable appraisals, so consider an appraisal contract in which final payment for the appraisal is contingent on receiving an appraisal acceptable for DNR grant purposes.

3. Provide complete instructions for the appraisal assignment, those include:

- WI DNR and other known public funders listed as an intended users
- Name and contact information for the landowner or landowner's representative
- Location of the property, including county, township, and road
- Most recent deed and legal description of the property to be appraised
- A brief description of the property, improvements and land cover and the property rights to be appraised, including, if relevant:
 - Description of the subject if it is a partial interest rather than the entire property owned by the seller.
 - Description of any rights being retained by the seller, such as a life estate, hunting rights, etc.
 - Information about existing leases, liens or encumbrances on the property, including enrollment in any programs such as Conservation Reserve Program or Managed Forest Law. *Please note: DNR requests that sponsors provide a title commitment with appraisal instructions. DNR may require a title commitment or other evidence of all title encumbrances before an appraisal will be reviewed.*
- Current and previous year tax bills
- If the appraisal is for a conservation easement, a copy of the easement that has been approved by the DNR as eligible for grant funding.

Special appraisal situations – DNR recommends contacting grant staff prior to ordering any appraisal. In some circumstances, that pre-appraisal conversation will be especially important to address grant eligibility concerns. Those include:

- **Buildings and other improvements**
Buildings and other structures can have a significant impact on appraised value. Discuss with DNR grant specialists whether improvements can be included in the grant project before ordering an appraisal. The value of buildings may need to be excluded from grant cost share or surveyed out of the subject property.
- **Contamination**
Appraisals prepared for contaminated sites must acknowledge the contamination and reflect cost estimates for remediation. Appraisals cannot be considered final for grant purposes if they are prepared before the extent of contamination is determined and before a remediation plan and reliable cost estimates are completed.
- **Partial interest purchases**
If a sponsor plans either to purchase only part of the seller's ownership, or is seeking grant funds for only a specific footprint of a larger land purchase, that may affect the appraiser's approach. Sponsors should discuss those scenarios with DNR grant staff to make sure the appraisal will evaluate the subject property accurately.
- **Hypothetical Conditions**
In most cases, DNR will not accept an appraisal based on hypothetical conditions. The appraiser must contact DNR's Review Appraiser for prior written approval if the sponsor or appraiser determines that a hypothetical condition is necessary for the completion of the assignment. Common hypothetical conditions in grant-project appraisals include: a value based on a zoning change that has not occurred, or an access easement that has not yet been granted.

REAL ESTATE DUE DILIGENCE

Land purchased with DNR grant funds must be free of any encumbrance, claim or deed restriction that would either prevent the property from being managed according to the purposes of the grant program, or prevent DNR from exercising the state's interest in the property. To those ends, the DNR's evaluation will include title review: grant applicants must demonstrate that they will be able to take clear title to any property purchased with DNR grant assistance.

Title considerations and insurance

For all DNR grant programs, demonstration of clear title is a requirement of final payment. Also, DNR requires grant sponsors to obtain title insurance for grant-funded land and conservation easement acquisitions: the insured value must equal at least the amount of state grant funds paid for the land purchase.

Applicants are encouraged to obtain a title commitment in advance of ordering appraisal; if title issues that may affect value (such as access to public roads) are identified after the appraisal has been completed, the appraiser will be required to reconsider any effect on value and update the appraisal accordingly.

DNR will review title to:

- Confirm the property can legally be sold to the sponsor.

- Review all other existing interests in the property (utility easements, mineral rights, ingress easements, etc.) to determine if they pose an eligibility concern.
- Identify lien holders, mortgages, debts, court actions, back taxes, or outstanding judgments.
- Identify any encumbrance on the property that may prevent it from being used as intended by the sponsor. Property subject to restrictions or covenants inconsistent with grant purposes may not be eligible for a DNR grant.

While the title commitment will reveal information of public record about title to the property, it will not reveal *unrecorded* interests. Prior to committing to a purchase agreement, applicants should talk with sellers about any leases or verbal use agreements that may exist with neighbors, family, tenants or otherwise - e.g. cropping or building rental agreements, construction work liens, etc..

Gap insurance

A title commitment is valid only up to the date it is prepared. Gap insurance covers the time between preparation of the title commitment and recording of the deed, thus informing the buyer if any new defects or encumbrances were recorded against the property during that “gap.” *The DNR requires gap insurance for all land acquisition grants.*

Other interests on title: Managed Forest Law, Conservation Reserve Program and Wetland Reserve Program

Many properties around the state are encumbered with Management Forest Law orders, Conservation Reserve Program agreements, Wetland Reserve Program easements, or Voluntary Public Access leases. These interests in property are not necessarily barriers to grant eligibility. However, they may conflict with the intended purpose of DNR’s grant, and the appraisal must consider such encumbrances for potential impact on market value.

Legal description and survey

Any land purchased with DNR grant assistance must have an accurate, recordable legal description. In some cases, DNR may require a survey to finalize a grant, those circumstances include:

- The grant will be used to acquire only a portion of a larger property
- There is an unresolved boundary dispute
- A survey is necessary to confirm legal access to the property
- A survey is necessary to complete an acceptable appraisal

Some grant programs cover a portion of survey costs.

Deed requirements

Land purchased with DNR grant assistance must be conveyed by a warranty deed if at all possible. If a warranty deed is not possible, applicants should contact their DNR grant specialist to discuss (lands sold to sponsors from a trust will be conveyed by Trustee’s Deed, e.g.). DNR will not cost share on property conveyed via quit claim deed, for it does not insure the right of the seller to transfer title.

NOTE: some grant programs require that specific language regarding the DNR’s interest in the property be inserted in the deed to the grant sponsor. Check specific grant program guidelines.

OTHER REQUIRED REVIEWS

Historical & archeological assessments

All state agencies in Wisconsin must determine whether, by their own actions or through the issuance of a grant, they might “cause or permit an adverse effect on a historic property.” Historic properties include, but are not limited to, archeological sites, historic structures, and burial sites.

For some types of grants, including those that include federal funds, DNR is required to forward application material to State’s cultural resource specialist, Wisconsin Historical Society, and/or Tribal Historic Preservation offices.

The results of historical and cultural reviews rarely prevent grant awards for land purchases, but may require additional reviews or assessments before any groundbreaking, building removal or management activity that may impact historical resources. Depending on the grant program, the cost of archaeological investigations may be reimbursable.

Endangered resources review

Endangered resource screenings are required for all projects that receive DNR funding. While evaluating each project, DNR grant specialists check natural heritage inventory records to determine if there are any listed species on the property.

Applicants planning construction, development or management activity on grant-funded land may need to adjust plans if listed species or rare ecological communities are present on the property and likely to be harmed by those plans.

National Environmental Policy Act (NEPA) review

Grants involving federal funds require NEPA review, designed to evaluate potential impact of the proposed land acquisition on the natural and human environments. Typically, this review is completed by DNR staff and involves an assessment of the project and its surroundings, the result of which is an internally-filed form. On some infrequent occasions, NEPA rules may require additional assessment, public notice and or an environmental impact analysis. DNR grant specialists will inform you if this will be required of a project.

APPENDIX A – Glossary of real estate terms

| <i>Term</i> | <i>Definition</i> |
|-----------------------------------|---|
| Appraisal or Appraised Value | An opinion of value and the factual data and analysis on which that opinion is based. |
| Assessed Value | A dollar amount assigned to taxable property by an assessor for taxation purposes. This value is frequently a statutorily-determined percentage of market value for a given year. |
| Certified Survey Map | A map prepared by a licensed surveyor in accordance with Section 236.34, Wisconsin Statutes, recorded in the register of deeds, that creates minor land divisions (consisting of 4 or fewer lots or outlots). |
| Chain of Title | The chronological order of conveyance of a parcel of land from the original owner (usually the government) to the present owner. |
| Contaminated Site | A site on which a hazardous substance has been released or is suspected of being released, and which has been reported to a government agency. |
| Conveyance | A written instrument that passes an interest in real property from one person to another; may be a deed, mortgage, lease, but not a will. |
| Deed | A written instrument which transfers a present interest in property to another. |
| Deed Restriction | A limitation recorded on a deed, which most commonly restricts use of a property; often runs with the property and passes from one owner to the next (see Restrictive Covenant). |
| Due Diligence | Process of thoroughly examining environmental conditions of a property and legal aspects of a real estate transaction to ensure risks associated with property acquisition are minimized. |
| Conservation Easement | A voluntary legal agreement between a landowner and a government agency, local unit of government, or a qualified nonprofit organization that conveys specific rights and permanently limits specified current and future uses of the land in order to protect conservation values. |
| Encroachment | Intrusion upon or use of the property of another without permission, often by gradual advances over a boundary; generally, includes construction on the property of another, such as a fence, road or building. |
| Encumbrance | A claim, lien, charge, or liability attached to and binding real property. Any right or interest in land held by someone other than the owner, but which will not prevent the transfer of fee title. |
| Environmental Site Inspection | A physical assessment of a site (land and improvements) to determine if environmental problems or contamination exist. |
| Fee Simple ownership or Fee Title | Full ownership of property, as opposed to a partial, non-possessory interest as an easement or reserved life estate. |

| | |
|-----------------------------------|--|
| Fee Title Acquisition | The outright purchase of land including the transfer of title to the property and all the rights associated with ownership. |
| Gap Insurance | Also known as "owners extended coverage" or "gap endorsement"; title insurance that covers the period of time between preparation of the title commitment and when the deed is recorded. |
| Improvement | Any structure or other development on a property, including buildings, roadways, utilities, boardwalks, signs, etc. |
| Legal Description | A method of geographically identifying a parcel of land. |
| Lien | A claim on a property as security for payment of a debt. All liens are encumbrances, but not all encumbrances are liens. |
| Market Value | An appraiser's opinion of the price a property should bring in an open market, as of a certain date, under specific conditions defined in the appraisal. |
| Municipality | A city, town or village having its own incorporated government for local affairs. |
| Offer to Purchase | A contract between the buyer and seller of real property setting forth the price and terms of the sale. Once the contract is signed by both parties, they are each obligated to the sale according to the terms of the contract. |
| Option to Purchase | An agreement in which a property owner gives a buyer the right, but not the obligation, to buy a property within a specified time period. |
| Parcel | A piece of land, regardless of size, in one ownership. |
| Phase I Environmental Assessment | Investigation of a property to identify areas of known or potential environmental contamination. Typically includes, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the property in question. Sampling and analysis of media do not occur during the Phase I EA, but are planned for based on the results of the Phase I. |
| Phase II Environmental Assessment | The Phase II Environmental Assessment is conducted to physically confirm the presence or absence of environmental contamination at a site. It is not meant to determine the nature and extent of contamination. The Phase II EA should include, but is not limited to: field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the property. |
| Quit Claim Deed | A form of conveyance whereby whatever interest the grantor possesses in the property described in the deed is conveyed to the grantee without guaranteeing or warranting the interest. |
| Recording | The act of entering documents affecting or conveying interests in real estate in the County Register of Deeds office. Until it is recorded, a deed, mortgage or other document is not usually effective against subsequent purchasers or mortgagees. |
| Restrictive Covenant | A private agreement restricting the use and occupancy of real estate. It is attached to the deed or recorded as a separate document and is binding on subsequent purchasers. |
| Title | Legal documentation that shows an owner has the right of ownership of a property. |

| | |
|-------------------------|---|
| Title Commitment Report | Report prepared by a title insurance company prior to closing on a property that shows all the information that appears in the public record about a property. |
| Title Insurance Policy | Insurance against loss resulting from defects of title to a specifically described parcel of real property. Defects may run to the fee (chain of title) or to encumbrances. |
| Trustees Deed | A legal instrument, which when executed and delivered, conveys or transfers property title to a trustee. |
| Warranty Deed | A deed that conveys fee title to real property. Under a Warranty Deed, the Grantor is bound to defend the Grantee's title to the property. Until the widespread use of title insurance, the grantor's warranty was very important to the grantee. When title insurance is purchased, the grantor's warranty is less important as a practical means of recovery for defective title. |
| Zoning Ordinance | A regulation enacted by a local government dividing a city or county into areas (zones), and specifying the uses allowable for the real property in those areas. |