

Municipal Flood Control Grant Program Property Acquisition Appraisal Guide

Applicants applying to the Department of Natural Resources for a “property acquisition” grant must follow specific appraisal procedures in order to be eligible to receive grant awards. These procedures are designed to ensure fairness, meet federal and state government requirements, and also protect the interests of the property owner (seller) and the state. Failure to comply with these procedures may disqualify a grant applicant from the grant award selection. The DNR Grant Program Manager can answer any questions you have regarding these guidelines.

Municipal Flood Control Grant Program “Property Acquisition” means fee title ownership or an easement in perpetuity in the land as defined in *s. NR 199.03(16), Wis. Adm. Code.*

NOTE: Structure must meet the definition of s. NR 199.03(19), Wis. Adm. Code, as follows:

***“Structure”* means any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, buildings, storage tanks, bridges, dams, channels and culverts.**

Municipal Flood Control acquisition and development will *require removal of the structure* on the property to be acquired for the development of permanent open space for flood storage or flood water flowage to a watercourse.

Eligible flood control acquisition and development projects must meet one of the following criteria: (*see reference NR 199.05*)

- **Flood damaged structures to be removed on the property to be acquired cannot be rebuilt or repaired due to zoning restrictions.**
- **Structures to be removed on the property to be acquired are in the 100 year floodplain.**
- **Structures to be removed on the property to be acquired have repetitive loss or substantially damaged structures due to flooding.**
- **Flood damaged structures to be removed are other than buildings on the property to be acquired. (*see above definition of structure: ex. bridges, dams, channels, culverts*)**
- **Acquisition of vacant land to provide additional flood storage or to facilitate natural or more efficient flood flows to a watercourse.**

- **Acquisition of a perpetual conservation easement for permanent open space use and protecting natural resources to facilitate natural or more efficient flood flows to a watercourse. (Conditions of easement to be reviewed and approved by the DNR Grant Program Manager to assure that the requirements of ch. NR 199 and s.700.40 Uniform conservation easement act are met.)**

- **Acquisition of a flowage easement allowing the holder nonpossessory interest in real property granting the holder the right to flow the grantor's lands for flood storage or natural reverie hydrologic cycles (see reference NR 199.03(7)) to facilitate natural or more efficient flood flows to a watercourse. (Conditions of easement to be reviewed and approved by the DNR Grant Program Manager to assure that the requirements of ch. NR 199 are met.)**

Notification to property owner (seller)

The DNR recommends that the property owner (seller) be notified that your municipality may be receiving grant assistance from the state. Because your municipality cannot purchase the property with flood damaged structures, vacant land, or easement unless assured of receiving a grant award, you may wish to include the following clause in the Offer to Purchase:

"Name of Municipality is applying for a grant under the Municipal Flood Control Grant Program. This offer is contingent upon receipt of a Municipal Flood Control Program grant award."

If you are acquiring a perpetual conservation easement or flowage easement with a Municipal Flood Control Program grant, the DNR requires disclosure of the grant conditions to the owner (seller) so the owner (seller) understands the extent of the DNR's involvement in the project. You must include the conditions of the easement with your application for a grant award for review by the DNR Grant Program Manager.

All negotiations must be conducted on a "willing seller - willing buyer" basis without any threat of condemnation. **NO FUNDS** will be issued for property acquired through the "Power of Eminent Domain." (see reference s. NR 199.10(1)(m))

Displaced Person Relocation Payments

This grant guidance relates to relocation of owner-occupant. The DNR advises the grant applicant to seek guidance from the Department of Commerce on a case by case basis to determine if an owner-occupant in a Municipal Flood Control Grant project qualifies as a displaced person under COMM 202.01(14)(a); or is disqualified under COMM 202.01(14)(b)6, and requiring a waiver of relocation assistance. The municipality applying for payment reimbursement using Municipal Flood Control Grant funds will provide Commerce's approval letter and a copy of the relocation plan to the DNR Grant Program Manager for proof of reimbursement claim for displaced person relocation payments cost. Following is the Dept. of Commerce web site for relocation assistance:

<http://commerce.wi.gov/CD/CD-bcf-rpr.html>

Property Boundaries

It is important to verify all property boundaries early in the property acquisition process. At the least, you will need to walk the boundaries to see if they and the corners are accurately marked. The best way to verify boundaries is with a survey. If there are any questions about the boundaries or potential encroachments, a survey should be obtained. It may help avoid disputes later. If you receive a grant award, the Department will cover 70% of the cost of a survey.

Appraisals

One appraisal is required for property valued below \$350,000; two are required for property valued over \$350,000 with the correct variance box checked at the end of the Municipal Flood Control application form. The Department may also request or order additional appraisals if the appraisals submitted by the grant applicant are not adequate. (see reference s. NR 199.10(1)(e))

NEW APPRAISAL GUIDELINES

DNR has determined that it is in the best interest of the program to provide some flexibility with the appraisal process. In addition to utilizing FEMA appraisals with the correct box checked at the end of the application, as described below, applicants may appraise property in its pre-flood condition under certain circumstances and the Department may accept form appraisals that adhere to the Uniform Standards for Professional Appraisal Practice. In all cases it is strongly advised that the grant applicant contact the appropriate DNR Review Appraiser and the Municipal Flood Control Grant Manager in Madison prior to obtaining an appraisal. Appraisals will be reviewed by the DNR Appraisal Reviewer and grant awards will be based on an approved appraisal. [NOTE: Two appraisals must be submitted if the grant award is expected to be more than \$350,000 per property. Both appraisals will be reviewed by the DNR Appraisal Reviewer.]

PROJECTS UTILIZING FEMA FUNDS

Sometimes, when a property is damaged by flood water, the landowner is eligible for assistance from the Federal Emergency Management Agency (FEMA). In Wisconsin, these federal funds are administered by the Dept of Military Affairs. Grant funding provided through the DNR's Municipal Flood Control can be matched to FEMA funds. The Dept of Military Affairs also requires an appraisal to determine the fair-market value of properties under consideration. When both FEMA and DNR grants are provided for the same property, the DNR will accept the fair-market value of the property as determined by the FEMA Appraisal Reviewer. The DNR will not require a separate appraisal from the project sponsor. Until ch. NR 199 is revised, the DNR will issue a variance to these project sponsors with the appropriate box checked at the end of the application form – making it possible to receive DNR grant funds even though an appraisal went to a FEMA review process. Applicants will be asked to provide a copy of the appraisal and any technical review completed for that appraisal.

CAUTION

Before any appraisal reports are started discuss the property with the DNR appraisal reviewer and the Municipal Flood Control Grant Manager in Madison. All appraisals for applications selected for grant awards are subject to DNR review and approval by the appropriate DNR Region Real Estate Review Specialist unless FEMA funds are involved in the purchase. The FEMA appraisal reviewer will be fine if FEMA funds are used for the purchase. DNR cannot accept an appraisal that fails to conform to the guidelines established for the Municipal Flood Control Program.

1. After discussing your project with the DNR Appraisal Reviewer choose a qualified appraiser. The Department recommends using a licensed residential appraiser or a Wisconsin Certified General Appraiser. Choose an appraiser who is familiar with the real estate market and area where your property is located. Find out if the appraiser has previously completed acceptable work in public acquisition; is familiar with the real estate market in your area; and, if the appraisal is for a perpetual conservation easement or flowage easement, has experience completing these types of easement appraisals. An Appraiser List is provided on the web site for your reference: www.dnr.state.wi.us/org/caer/cfa/Ef/flood/grants.html or contact the DNR Grant Program Manager for a hard copy to be mailed to you.

2. **Any appraisal commissioned by the owner (seller) of the property will be rejected.**
3. It is highly recommend that your selected appraiser contact the DNR Region Real Estate Review Specialist and discuss the appraisal assignment BEFORE starting the appraisal. The DNR Region Real Estate Review Specialist will work with your appraiser to ensure compliance with the guidelines. Your DNR Grant Program Manager can provide you with the name of the DNR Region Real Estate Review Specialist for your appraiser to contact.
4. Be sure your appraiser understands the appraisal requirements for the Municipal Flood Control Program before you hire the appraiser. Indicate to the appraiser that the appraisal must be approved by the DNR, as well as your municipality, before a grant award may be issued. The appraiser should also agree to fully cooperate with the DNR Region Real Estate Review Specialist and the DNR Grant Manager regarding additional information that may be requested as a result of the DNR appraisal reviews.
5. Obtain quotes from several different appraisers as the cost can vary significantly, although only one appraisal for properties under \$350K will be reimbursable.
6. When contracting with an appraiser, it is important to provide good instructions regarding the project assignment. (Changing the project assignment later may result in an additional charge.) Give the appraiser all the information she/he needs to do an accurate appraisal of the property:
 - a. Whether the appraisal is for a fee simple acquisition or an easement
 - b. Location of the property including county and township
 - c. Maps: ortho photo, plat, CSM, soils
 - d. Correct legal description, tax key number and survey
 - e. Correct acreage and land cover
 - f. Description of any improvements that should be included in the appraisal
 - g. For easement appraisals: copy of easement and summary of major conditions, including the size and location of any building envelopes
 - h. Existing liens or encumbrances on the property
 - i. Any special rights being retained by the owner
 - j. Potential or prior property contamination (see Environmental Hazards Assessment below)

Contaminated Property

The fair market value of property can be significantly impacted by contamination on the property itself or on adjacent property. Under no circumstances should a property that is suspected of being contaminated be appraised for a grant application. Information on “Clean Closure” with prior contaminated properties may be made within your grant application on the Environmental Hazards Assessment DNR form 1800-001. This information may effect the selection of your application for a grant award. See additional guidance regarding contaminated property provided on the web site: www.dnr.state.wi.us/org/caer/cfa/Ef/flood/grants.html

General property acquisition requirements (*reference ch. NR 199.10*):

1. Grant recipients and subsequent owners shall acquire and manage property acquired with this grant in accordance with all applicable state, local, and federal laws, rules and regulations.
2. Property acquired with this grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant agreement.
3. Any property that is subject to a reversionary right or has restrictions or covenants which would prevent the property from being managed for purposes consistent with this grant program is not eligible for a grant.
4. No grant may be awarded prior to receipt of an environmental inspection report showing that the property contains no undesirable environmental conditions, liabilities, potential liabilities of hazards that are unacceptable to the department. (part of application DNR form 1800-001 “Environmental Hazards Assessment.”)

5. No grant may be awarded to acquire property through the power of eminent domain. (See Wisconsin Statutes, Chapter 32.08, Eminent Domain for the status of property under condemnation.)
6. Grantee will provide a long-term management plan of the property to the department as a final payment stipulation.
7. Grantee will prohibit using the property as security for any debt unless the department previously approves the incurring of the debt.
8. Grantee will prohibit closing the purchased property to the public except where the department has determined that closure is necessary to protect wild animals, plants or other natural features.
9. Grantee will provide the department access to land acquired with grant to monitor compliance with the grant agreement or carry out any management activity necessary to ensure the public's rights and safety.
10. Grantee will provide the department access to property on which an easement is acquired with this grant in a reasonable manner upon prior notice to the easement holder and the landowner, to monitor compliance with the grant conditions.
11. Grantee will obtain prior written approval from the department to sell or transfer the property.
12. Interest in or title of the acquired property shall vest in the state, without necessity of reentry, if the grantee violates any essential provision of the grant or grant agreement.

Acquisition of conservation and flowage easements are subject to the following conditions (*reference ch. NR 199.08(1)6.*):

1. Property encumbered by an easement may not be converted to uses inconsistent with the easement. All structural development, including residential, industrial or commercial development, is prohibited on those areas of easement property that are encumbered by this grant.
2. Agricultural, forestry, recreation and related open space uses may be permitted on property encumbered by an easement as long as those activities are compatible with the purposes of this grant and the project.
3. Any agricultural use within the area encumbered by an easement shall be carried out in accordance with the conditions, standards and specifications of a soil and water conservation plan approved by the natural resources conservation service office located in each county.
4. Harvesting of timber within the area encumbered by an easement shall be carried out in accordance with the conditions of a forest management plan approved by the department.
5. Vegetative buffers shall be established and maintained along lakes, ponds, wetlands, marshes, rivers, streams and ditches. Department best management practices shall be employed to the greatest extent possible for the project. Whenever possible, the area of the vegetative buffer shall extend at least 75 feet from each edge of the surface water or wetland. There may be no activity that adversely affects the natural flow of surface or underground waters within the area of the easement.

Deed Restriction (*reference ch. NR 199.04(7) and ch. NR 199.10(2) (h)*): Any property acquired through either fee simple title or purchase of an easement in perpetuity shall be maintained as a permanent open-space use. The grant recipient shall record this condition as a permanent deed restriction when the property acquisition occurs. Require that the instrument conveying the property to the recipient identify the interest of the state under ch. NR199.10 (2) (f) and be recorded together with the grant agreement in the office of the register of deeds of each county in which the property is located.