



## Minnesota Department of Natural Resources

### OPERATIONAL ORDER # 6

**SUBJECT:** Land Acquisition Procedure

**CONTACT:** Division of Lands and Minerals

**DATE:** December 12, 2005

**SUPERSEDES:** Operational Order #6 Land Acquisition Procedure dated July 5, 1977, and Operational Order #107 Land and Easement Acquisition Policy dated July 2000 (rescinded)

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#### PURPOSE

The purpose of this operational order is to outline responsibilities relating to the land acquisition programs of the Department of Natural Resources (DNR), and establish procedures to ensure strategic planning, oversight, and accountability. The planning needs to be a multi-disciplinary activity that strives for integrated resource management. The oversight needs to be at the levels of initiating unit and senior managers. Accountability procedures will guide how funding is spent.

Personnel are advised to refer to the Negotiator's Handbook for procedural information. Completed segments of the handbook have been provided to all DNR personnel involved in land acquisition. Additional material and updates will be available on the DNR intranet.

Frequently changing land acquisition laws, agreements and policies, and the type of interest and ownership status of the property being acquired often necessitate deviations from standard procedures. Therefore, the Division of Lands and Minerals is responsible for coordinating each acquisition transaction to fulfill all requirements existing at the time. Contact the Division of Lands and Minerals, Transactions Section or Appraisal Management Unit, whenever you are conducting a land acquisition.

#### DEFINITION

For the purpose of this order land acquisition means the acquisition by the DNR of an interest in land by purchase, gift, condemnation or transfer of custodial control between state agencies.

The DNR has authority to accept gifts of lands or interest in lands or personal property (Minn. Stat., sec. 84.085, subd.1). Policy and guidelines for working with donors is addressed in DNR Operational Order No. 101.

## **POLICY**

All matters involving land acquisition must be processed through the Division of Lands and Minerals. The Division of Lands and Minerals will maintain a progress record on each transaction.

It is vital that DNR staff do not informally obligate the DNR to acquire land or interest in land. Non-profit organizations and other partners that work with the DNR need to be informed that the formal process must be followed before a commitment is made by the DNR.

## **PROCEDURES**

### **I. DNR Biennial Land Acquisition Plan**

Prior to the beginning of each biennium, a plan needs to be developed for each acquisition funding source. A plan must include the following:

- 1) **Guiding Principles:** the purpose and authority for the expenditures and the direction provided in the applicable laws that govern the expenditures.
- 2) A summary of the land already covered by the program.
- 3) **Resource Connections:** identification of how the funding may be used to address and link the various resource concerns to the DNR's Conservation Agenda and any other individual acquisition plans a unit or division may have.
- 4) **Targets:** the expected results and benchmarks to gauge progress toward long-term goals. For some programs, the targets for a fiscal year will be very specific (e.g., acquisition of two parcels in an identified state park), and for other programs the targets will be more general (e.g., 1,000 acres in the north central glaciated plains region and 500 acres in the Minnesota and Northeast Iowa Moraine).
- 5) **Spending plans:** a spending plan for the amount of money available for the biennium. (For spending plans that rely on federal funds, the plans may need to be amended or revised based on the federal fiscal year as new funding becomes available.)
- 6) **Accomplishments in the previous biennium.**

Each plan must be reviewed and approved by the Senior Managers before the funds can be committed.

## **II. Initial Acquisition Contacts and Recommendations**

Department of Natural Resources personnel have the responsibility to refrain from discussing price with the landowner before an appraisal has been made (Minn. Stat., sec. 84.0274, subd.6 (b)).

### **A. DNR Contacts Owner**

Discipline personnel are encouraged to contact owners of property within authorized boundaries of DNR projects to inquire if they are willing to sell.

### **B. DNR is Contacted by Owner**

If a landowner contacts any DNR staff, all the information provided (including the landowner's wishes/perspective) will be given to the Regional Lands and Minerals Supervisor who will circulate the inquiry to Regional Management Team members for information and review purposes. The DNR shall endeavor to honor the landowner's desires.

## **III. Authorization to Acquire**

Statutory authority is required for all land acquisition. Selection of the lands to be acquired varies with the statutory authority.

For land acquisition involving state parks, state monuments, state recreational areas, state waysides and state forests, the legislature describes the lands or the boundaries within which lands are authorized to be purchased (Minn. Stat. Chap. 86A).

For land acquisition involving named state trails, the legislature describes the land (e.g. abandoned railroad right-of-way) or describes the place of beginning and general route the trail is to follow and place of termination.

For land acquisition involving scientific and natural areas, public accesses and Fish and Wildlife programs, the Commissioner and administering Division staff in accordance with the Outdoor Recreation Act of 1975 and any other applicable law make selection and approval of specific projects and the land to comprise the project. This method of land acquisition also applies to river campsites, river accesses, portages and scenic easements and other land acquisition for the DNR where the lands are not specifically described in the statute.

## **IV. Land Acquisition Fact Sheet**

A DNR land acquisition of a specific parcel or parcels commences with the preparation of a fact sheet that lists the lands to be acquired, the legal authority for their acquisition, the qualities of the land that make it a desirable acquisition, and other information on the parcel (see Minn. Stat., sec. 84.0272). The fact sheet needs to identify the funding source or sources that will be used to purchase the parcels, and the fact sheet package must identify if federal aid will or will not be used.

The following staff must sign a completed fact sheet:

- 1) The DNR staff who prepared the fact sheet.
- 2) The staff of the division initiating the acquisition who is assigned to supervise or coordinate acquisition activity (in some division this is a regional manager and in some division a central office program coordinator).
- 3) The division director of the division initiating the acquisition.
- 4) The regional director for the region in which the lands are located.
- 5) The director of the Lands and Minerals Division.

See Appendix A for a list of designees in the absence of the directors identified in 3) through 5).<sup>1</sup>

All signing parties must conduct timely review of the fact sheets. The signing parties must ensure that the acquisition described in the fact sheet fits into the biennial plan, the capital budget plan, and the DNR's Conservation Agenda. If any of the above-described parties believe that the proposed acquisition does not fit into these plans, they should:

- a) not sign the fact sheet, and
- b) notify the director of the division initiating the acquisition of their concerns within one week of receipt of the fact sheet.

The acquisition cannot proceed until a signing party's concerns are addressed.

It is also the responsibility of the division initiating the acquisition to ensure that the acquisition described in the fact sheet fits within the budget.

The signed fact sheet is submitted to the Lands and Minerals Division for the next steps in the DNR land acquisition process.

## V. Valuation

- A. An appraisal will be made as required to determine the market value of the "land acquisition" (Minn. Stat., sec. 84.0274, subd. 5(d)).

Appraisals must be conducted to federal standards if it is intended that the funding for the lands being acquired will be submitted for federal reimbursement. (See Lands and Minerals Supplement titled "Guidelines to Basic Requirements for Appraisal and Review of Appraisals for Acquisitions Involving Federal Aid.")

If the commissioner determines that lands or interests in the lands have a value less than \$5,000, the commissioner may acquire the lands for the value determined without an appraisal as a minimal value acquisition (Minn. Stat., sec. 84.0272, subd. 3(a)).

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<sup>1</sup> If the acquisition involves the purchase of buildings that will create asset preservation obligations, the Lands and Minerals Division will provide a copy of the fact sheet to the Management Resources Bureau.

- B. Valuation of trout stream easements are based either on the formula for trout stream easement payment rates (Minn. Stat., sec. 84.0272, subd. 2) or by an appraisal.
- C. Valuation of prairie bank easements shall be made based on the formula prescribed for payment rates under this program (Minn. Stat., sec. 84.96, subd. 5). Easement language shall be determined by the administrating discipline.
- D. Contract appraisers when used will be hired through the Division of Lands and Minerals.
- E. The landowner must be given the opportunity to accompany the appraiser on the inspection of the property (Minn. Stat., sec. 84.0274, subd. 5(d)).
- F. At any time prior to certification of the state's appraisal of the property, the landowner has the right to retain a qualified independent appraiser to conduct an appraisal and to have that appraisal considered along with the state's in certifying the selling price (Minn. Stat., sec. 84.0274, subd. 5(e)).

## **VI. Appraisal Data**

Appraisal data is classified as confidential data on individuals or protected nonpublic data until certain actions take place. Before releasing appraisal data, refer to Minnesota Statutes section 13.44, subd. 3.

## **VII. Appraisal Review**

A staff or contract reviewer, as determined by the Division of Lands and Minerals, will conduct a technical or administrative review of an appraisal submitted for land acquisition. The reviewer will provide the Division of Lands and Minerals with a review report.

Appraisal reviews must be conducted to federal standards if it is intended that the funding for the lands being acquired will be submitted for federal reimbursement. (See Lands and Minerals Supplement titled "Guidelines to Basic Requirements for Appraisal and Review of Appraisals for Acquisitions Involving Federal Aid.")

## **VIII. Negotiations**

The Division of Lands and Minerals assigns negotiation responsibilities to Lands and Minerals staff or, in a few instances, staff from the division initiating acquisition. The Division of Lands and Minerals will advise a negotiator that a market value has been certified. The negotiator will contact the division initiating acquisition to receive approval to make the offer to the landowner. Any special terms or conditions to the acquisition must receive approval from the division initiating acquisition and the Attorney General's Office prior to optioning the property.

If the land or interest in land to be purchased exceeds \$1,000,000 in value, the commissioner must approve the acquisition before an option may be negotiated.

## **IX. Options**

If the landowner agrees to sell the parcel to the DNR for the agreed-upon purchase price, the landowner signs an option. The Division of Lands and Minerals will notify appropriate DNR personnel when an option is obtained and approved by the Attorney General's Office.

## **X. Notification**

The DNR will notify the appropriate county official of all proposed land acquisitions and easements, including donations. The DNR discipline initiating the transaction is responsible for the notification. For each transaction, the timing as to when the notification will occur will vary, but it will normally occur after an option has been signed but before there is an election to purchase.

County board approval is required for the purchase of wildlife management area lands, wildlife management area easements, scientific and natural areas, and lands purchased with Reinvest in Minnesota (RIM) match funds (Minn. Stat., secs. 84.033, subd. 3, 84.944, subd. 3, and 97A.145, subd. 2).

## **XI. Land Acquisition Survey**

The Land Survey Unit of Lands and Minerals Division will conduct the land survey for an acquisition when it has been determined that a land survey is needed. If a survey is needed, it is usually performed during the option period.

The Land Survey Unit will provide the division initiating acquisition with copies of the survey plat and legal description when the survey is completed.

## **XII. Election to Purchase**

The negotiator consults with the division initiating acquisition before Lands and Minerals exercises election to purchase as provided in the option. When a notice of election to purchase is signed by the Director of the Lands and Minerals Division, the DNR is committed to complete the purchase of the land except under limited circumstances (e.g., the landowner is unable to deliver marketable title, the landowner has delinquent taxes and refuses to pay, etc.).

A notice of election to purchase will not be signed until the funds to purchase the property have been encumbered.

## **XIII. Attorney General's Office**

The Division of Lands and Minerals will coordinate with the Attorney General's Office on any legal matters pertaining to land acquisition.

#### **XIV. Fiscal Unit**

The Division of Lands and Minerals will encumber funds and make payment for the land acquisition and related incidental costs.

#### **XV. Possession of Property**

The Division of Lands and Minerals will notify appropriate DNR personnel and other agencies when a land acquisition has been completed.

#### **XVI. Federal Aid**

The Division of Lands and Minerals will provide the appropriate Federal Aid Coordinator with documentation required for federal reimbursement.

Certain federal regulations regarding title, use, and disposition apply to land acquired with federal funds ("interest") through federal grants or cooperative agreements. The division initiating acquisition is responsible for notifying the Division of Lands and Minerals of federal interest in land and providing them written federal requirements (applicable regulations and federal guidance) to be met regarding the land transactions.

#### **XVII. Offers Above Certified Value**

Any offer above the certified value but not more than 10 percent requires the prior approval of the Director of the Division of Lands and Minerals and must be supported by a memo recommending approval signed by the director of the division initiating acquisition .

Any offer above the certified value by more than 10 percent requires the approval of the Commissioner. The director of the division initiating acquisition must submit to the Division of Lands and Minerals a memo recommending approval and supporting reasons. The Director of Lands and Minerals will add recommendations and submit the information to the Commissioner for review and approval.

Approved by:

/s/ Gene Merriam, Commissioner

Date: December 12, 2005

## Appendix A

### Minnesota Department of Natural Resources Land Acquisition Designees

<u>Unit</u>	<u>Designees</u>
Ecological Service	Assistant Director
Enforcement	Major
Fish and Wildlife	Deputy Director
Forestry	Assistant Director
Lands and Minerals	Assistant Director
Management Resources	Assistant Administrator
Parks and Recreation	Assistant to the Director
Region: Central	Deputy Commissioner*
Region: Northeast	Deputy Commissioner*
Region: Northwest	Deputy Commissioner*
Region: South	Deputy Commissioner*
Trails and Waterways	Acquisition & Development Section Manager
Waters	Assistant Director

\*After consulting with regional staff in charge in absence of Regional Director.