

## LCCMR Policy Regarding Fee-title Land Acquisition at Appraised Value

It has always been LCCMR policy (although unwritten) that any funded fee title acquisition through the ENRTF would be purchased at up to 100% of appraised value or follow DNR governing statute for DNR acquisition of up to 110% if there are extraordinary circumstances.

Recently, this policy has been questioned because it is not in statute. In addition, there have been acquisitions paid for by local governments above the appraised value using ENRTF and additional funds.

Staff Recommends affirming long standing policy to align with statutes governing DNR acquisition.

The question remains if the LCCMR will allow the ENRTF to be a party to an acquisition purchase above the appraised value. For example, the appraised value is \$100,000 and the purchase is for \$200,000. Should the ENRTF be party to this acquisition for which the purchaser is paying twice the appraised value?

1. Acquire land at up to 100% of the appraised value. In some extraordinary circumstances up to 110%. If it is the DNR, the commissioner has to approve any amount over 100% up to 110%. Additional funds not allowed.

OR

2. Acquire land at up to 100% of the appraised value. In some extraordinary circumstances up to 110%. Allow other funds to be used to pay more than 110%.



## Conservation Easements

Proposed Review needed:

1. On the LCCMR website is a Conservation Easement Checklist however the following considerations also need to be met.
2. Property selection – who and how is it determine if it is the right property to conserve and that a conservation easement is the best tool to provide the desired conservation.
3. Who does a legal review of conservation easement document on behalf of the state?
  - as to form and execution
  - meets Session Law for the appropriation
  - meets LCCMR minimum standards needed in a conservation easement purchased with state funds
4. Who does a fiscal review of conservation easement acquisition?
  - Review appraisal, the amount to be paid, and transaction costs for a conservation easement to determine that the amounts are appropriate
  - Review specific terms and relative public value of the conservation easement terms such as altered property rights, land use restrictions, landowner obligations, future development restrictions, limits to subdivision, required natural landscape management, mining restrictions, allowable building envelopes, public access.
  - Public costs versus public benefit of the various term and conditions. For example, how much more would it cost to have some public access and how much is that worth to the public?
5. Who determines overall if the public benefit is commensurate with the public investment?
  - Review of the cost of the easement to determine if it is a reasonable amount of public funds to be spent in relation to the amount of public conservation benefit to be gain by the expenditure.
6. Ongoing conservation easement management – Who determines if adequate ongoing monitoring and enforcement of the conservation easement is set up. What public entity provides oversight in perpetuity?
7. Who oversees any future amendments and termination of easements?
8. Other examples - Great Outdoors Colorado (GOCO) uses a portion of Colorado Lottery proceeds to preserve, protect and enhance the state's wildlife, parks, rivers, trails and open spaces. Conservation easements are one of the methods they fund to protect conservation lands. Information provided by GOCO, additional information at: <http://www.goco.org/>
  - Due Diligence Checklist for a GOCO Land Acquisition Project
  - GOCO Easement Amendment Checklist
  - GOCO Conservation Easement Template
  - GOCO Stewardship Policy for Land Conservation Projects
  - GOCO Deed of Conservation Easement
9. The early ENRTF requests for funding for conservation easements were mostly for donated conservation easements where ENRTF were used to pay for all of the related costs in exchange

for the donation of the conservation easement. In some of the earlier LCCMR appropriations for the acquisition of conservation easements, significant amounts of funding were provided for NGO staff time, NGO staff travel costs, transaction costs and other NGO expenses related to finding and purchasing potential properties suitable for conservation easements. Over time there seems to be fewer donations and smaller donated discounts on the acquisitions of conservation easements. The related cost other than transaction costs and stewardship fees for monitoring and enforcement are not currently included in the reported cost for easements but there is a significant amount of ENRTF funds spent on them so they should be included

**LEGISLATIVE-CITIZEN COMMISSION ON MINNESOTA RESOURCES**

100 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ROOM 65 STATE OFFICE BUILDING  
ST. PAUL, MINNESOTA 55155-1201

Phone: (651) 296-2406  
Email: [lccmr@lccmr.leg.mn](mailto:lccmr@lccmr.leg.mn)  
Web: [www.lccmr.leg.mn](http://www.lccmr.leg.mn)  
TTY: (651) 296-9896 or 1-800-657-3550

Susan Thornton, Director

**Environment and Natural Resources Trust Fund (ENRTF) Requirements for Conservation Easement (I) Acquisition & (II) Monitoring, Management, and Enforcement**

*NOTE: The following information provides guidance on requirements for conservation easement efforts undertaken using monies from the Environment and Natural Resources Trust Fund (ENRTF). These should be considered minimum requirements and may be modified in the future.*

**I. CONSERVATION EASEMENT ACQUISITION**

Project Requirements for ENRTF-Funded Conservation Easement Acquisition Efforts

All conservation easements, purchased or donated, acquired using money appropriated from the Environment and Natural Resources Trust Fund (ENRTF) must:

1. Give priority to high quality natural resources or conservation lands that provide multiple benefits and natural buffers to water resources.
2. Be on lands identified in an adopted state, regional, or local natural resource plan.
3. Be perpetual.
4. Specify all of the provisions of an agreement that are perpetual.
5. Specify the parties to an easement in the easement.
6. Include requirements in the easement document to address specific water quality protection activities such as keeping water on the landscape, reducing nutrient and contaminant loading, protecting groundwater, and not permitting artificial hydrological modifications.
7. Be provided in draft form to the office of the Legislative-Citizen Commission on Minnesota Resources in an electronic format prior to closing.
8. Have an ecological restoration and management plan that is consistent with the highest quality conservation and ecological goals for the site. Funding for implementation of the restoration and management plan must be included in the appropriation, otherwise the work plan must either identify another funding source or address why a portion of the money is not necessary to achieve a high quality restoration.
9. Include a long-term monitoring and enforcement plan and dedicate funding for ongoing monitoring and enforcing the easement agreement.
10. Ensure public accountability for the use of public funds by documenting the selection process used to identify parcels acquired and documenting all related transaction costs, including appraisals, legal fees, recording fees, commissions, other similar costs, and donations. This documentation must be provided to the LCCMR and to all parties involved in the transaction. The project manager must also report to the LCCMR any difference between the acquisition amount paid to the seller and the state-certified or state-reviewed appraisal. More information about how to provide this documentation can be found on the LCCMR website at [http://www.lccmr.leg.mn/pm\\_info/land\\_acq/transaction\\_costs\\_guidance.pdf](http://www.lccmr.leg.mn/pm_info/land_acq/transaction_costs_guidance.pdf).
11. Provide to the Legislative-Citizen Commission on Minnesota Resources and the Commissioner of Management and Budget an analysis of increased operations and maintenance costs likely to be

Jeff Broberg, Tom Cook, Sen. Gary Dahms, Sen. Kari Dziedzic, William Faber, Rep. Dan Fabian, Nancy Gibson, Bonnie Harper-Lore, John Herman, Sen. John Hoffman, Rep. Leon Lillie, Norman Moody, Rep. John Persell, Sen. David Tomassoni, Rep. Paul Torkelson, Rep. Jean Wagenius, Sen. Torrey Westrom

incurred by public entities as a result of the conservation easement acquisition and how these costs are to be paid.

12. Comply with all other requirements in Minnesota Statutes:
  - o 116P.15 - Land Acquisition Restrictions
  - o 116P.16 - Real Property Interest Report to the LCCMR
  - o 116P.17 - Acquisition of Lands or Interest in Lands; Commissioner Approval
  - o 116P.18 - Lands in Public Domain

Full text of Minnesota Statutes 116P.15-18 can be found at the end of this document.

How to Fulfill Conservation Easement Acquisition Requirements in Reporting to the LCCMR:

*Documented in Work Plan:*

1. Provide a list of proposed conservation easement acquisitions as described in work plan instructions.
2. For each proposed parcel, provide a description of ecological features, site importance, conservation value, and public benefits. Be specific.
3. Provide a parcel-scale map for each acquisition.
4. Stipulate a restoration and management plan will be prepared. Include an explanation of the components of the restoration and management plan.
5. Identify funding source(s) to implement the restoration and management plan.
6. Description of project selection process, including necessary project criteria and the decision-making process used to sort/rank projects. The adopted plan in which proposed acquisitions are included should be referenced and providing a link to the plan (if available) is sufficient to satisfy this requirement instead of providing the actual plan.
7. Stipulate that an analysis will be provided to LCCMR and MMB which identifies increased operations and maintenance costs likely to be incurred by public entities as a result of the acquisition and how these costs are to be paid.
8. Stipulate that written approval from the DNR commissioner will be obtained prior to the acquisition per 116P.17. Provide a copy of the written approval to LCCMR.
9. Description of the long term monitoring and enforcement program.
10. Explanation of the process used for calculating conservation easement monitoring and enforcement costs.
11. Statement of commitment regarding annual inspection and reporting on monitoring and enforcement activities undertaken with regard to ENRTF supported projects.
12. Statement of commitment regarding the permanence and separateness of a monitoring and enforcement fund and the perpetual nature of monitoring and enforcement activities for the easement.

*Provided to LCCMR for Each Donated or Purchased Conservation Easement **Prior to Procurement:***

13. Copy of draft easement in advance of closing with sections related to ENRTF requirements identified.

*Provided to LCCMR for Each Donated or Purchased Conservation Easement **After Procurement:***

11. Copy of final, recorded easement with landowner name clearly identified and a listing of any and all features of the easement that are perpetual.
12. For purchased easements, a description of how the easement value and purchase price were determined.
13. Documentation that confirms the following:
  - a. Site assessment was completed.
  - b. Natural resources management plan was prepared and implemented.

- c. Baseline property report was prepared.
  - d. Long-term commitment to monitoring, management, and enforcement of the easement.
14. Land Acquisition Reporting (see "Land Acquisition Reporting" on the "Project Manager Info" page on LCCMR website):
- a. Initial Land Acquisition Report
  - b. Transaction Cost Report
  - c. Annual Land Acquisition Report

## II. CONSERVATION EASEMENT MONITORING, MANAGEMENT, AND ENFORCEMENT

### Project Requirements for ENRTF-Funded Conservation Easement Monitoring, Management, and Enforcement Efforts

1. Money received from the ENRTF for monitoring and enforcement, including earnings on the money received, shall be kept in a monitoring and enforcement fund held by the organization and dedicated to monitoring and enforcing conservation easements within Minnesota.
2. Within 120 days after the close of the entity's fiscal year, provide an annual financial report to the LCCMR on the easement monitoring and enforcement fund indicating:
  - a. the balance of the monitoring and enforcement fund;
  - b. any ENRTF contributions to that fund during the year;
  - c. earning contributions to the fund; and
  - d. any transfers out of the fund to support monitoring and enforcement activities.
3. Money appropriated for monitoring and enforcement of easements and earnings on the money appropriated shall revert to the state if:
  - a. the easement transfers to the state;
  - b. the holder of the easement fails to file an annual report and then fails to cure that default within 30 days of notification of the default by the state; or
  - c. the holder of the easement fails to comply with the terms of the monitoring and enforcement plan contained within the work program and fails to cure that default within 90 days of notification of the default by the state.

### How to Fulfill Conservation Easement Monitoring, Management, and Enforcement Requirements in Requirements to the LCCMR:

For Organizations **Using ENRTF Dollars** for a Monitoring and Enforcement Fund

*Documented in Work Plan or Provided as Supplemental Information to the Work Plan:*

1. Policies for safeguarding and eventual use of the fund to ensure monitoring and enforcement on the easements held by the organization.
2. Detailed description of how the monitoring and enforcement fund will be invested and who will manage the investment.
3. Written procedures whereby funds are transferred from the operating account into the monitoring and enforcement fund (a pooled fund restricted to the long-term management and enforcement of easements only in Minnesota as established by the organization's Board of Directors). The organization's general ledger shall reflect each transfer.
4. Documentation of the process for calculating the amount of money requested from the ENRTF for the monitoring and enforcement fund.
5. For each easement for which a request for reimbursement for the monitoring and enforcement fund will be made, an explanation of the need for ENRTF dollars for the fund will be submitted to the LCCMR prior to seeking reimbursement.

6. With each request for reimbursement a copy of the final, recorded conservation easement documenting completion of a project will be provided.

*Provided Annually Regarding the Monitoring and Enforcement Fund:*

7. Audit report specific to the monitoring and enforcement fund for the most recent period completed indicating
  - a. the balance of the monitoring and enforcement fund;
  - b. any ENRTF contributions to that fund during the year;
  - c. earnings contributions to the fund; and
  - d. any transfers out of the fund to support monitoring and enforcement activities.

For Organizations Using Non-ENRTF Dollars for a Monitoring and Enforcement Fund

*Documented in Work Plan:*

1. Description of the fund.
2. Statement of a legally binding commitment to support in perpetuity monitoring and enforcement of all conservation easements acquired through the use of any ENRTF funds.

### **116P.15 LAND ACQUISITION RESTRICTIONS.**

Subdivision 1. **Scope.**

A recipient of an appropriation from the trust fund or the Minnesota future resources fund who acquires an interest in real property with the appropriation must comply with this section. For the purposes of this section, "interest in real property" includes, but is not limited to, an easement or fee title to property.

Subd. 2. **Restrictions; modification procedure.**

(a) An interest in real property acquired with an appropriation from the trust fund or the Minnesota future resources fund must be used in perpetuity or for the specific term of an easement interest for the purpose for which the appropriation was made. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or work plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.

(b) A recipient of funding who acquires an interest in real property subject to this section may not alter the intended use of the interest in real property or convey any interest in the real property acquired with the appropriation without the prior review and approval of the commission or its successor. The commission shall notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the trust fund or Minnesota future resources fund at least 15 business days before approval under this paragraph. The commission shall establish procedures to review requests from recipients to alter the use of or convey an interest in real property. These procedures shall allow for the replacement of the interest in real property with another interest in real property meeting the following criteria:

- (1) the interest must be at least equal in fair market value, as certified by the commissioner of natural resources, to the interest being replaced; and
- (2) the interest must be in a reasonably equivalent location, and has have a reasonably equivalent useful conservation purpose compared to the interest being replaced, taking into consideration all effects from fragmentation of the whole habitat.

(c) A recipient of funding who acquires an interest in real property under paragraph (a) must separately record a notice of funding restrictions in the appropriate local government office where the conveyance of the interest in real property is filed. The notice of funding agreement must contain:

- (1) a legal description of the interest in real property covered by the funding agreement;
- (2) a reference to the underlying funding agreement;

(3) a reference to this section; and

(4) the following statement: "This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Legislative-Citizen Commission on Minnesota Resources or its successor. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or work plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."

**116P.16 REAL PROPERTY INTEREST REPORT.**

By December 1 each year, a recipient of an appropriation from the trust fund, that is used for the acquisition of an interest in real property, including, but not limited to, an easement or fee title, must submit annual reports on the status of the real property to the Legislative-Citizen Commission on Minnesota Resources or its successor in a form determined by the commission. The responsibility for reporting under this section may be transferred by the recipient of the appropriation to another person who holds the interest in the real property. To complete the transfer of reporting responsibility, the recipient of the appropriation must:

- (1) inform the person to whom the responsibility is transferred of that person's reporting responsibility;
- (2) inform the person to whom the responsibility is transferred of the property restrictions under section 116P.15; and
- (3) provide written notice to the commission of the transfer of reporting responsibility, including contact information for the person to whom the responsibility is transferred. After the transfer, the person who holds the interest in the real property is responsible for reporting requirements under this section.

**116P.17 ACQUISITION OF LANDS OR INTEREST IN LANDS; COMMISSIONER APPROVAL.**

**Subdivision 1. Commissioner approval.**

(a) A recipient of an appropriation from the trust fund who acquires an interest in real property must receive written approval from the commissioner of natural resources prior to the acquisition, if the interest is acquired in whole or in part with the appropriation. Conservation easements to be held by the Board of Water and Soil Resources are not subject to commissioner approval under this section.

(b) The commissioner shall approve acquisitions under this section only when the interest in real property:

- (1) is identified as a high priority by the commissioner and meets the objectives and criteria identified in the applicable acquisition plan for the intended management status of the property; or
- (2) is otherwise identified by the commissioner as a priority for state financing.

**Subd. 2. Value assessment.**

Prior to acquiring an interest in real property with an appropriation from the trust fund, a recipient of an appropriation must submit the most recent tax assessed value and most recent tax statement of the real property and the amount the recipient plans to offer for the interest in real property to the commission and the commissioner of natural resources. Conservation easements to be held by the Board of Water and Soil Resources are not subject to the requirements of this section. The board shall keep a record of the tax assessed value of the real property at the time of acquisition and the most recent tax statement.

**116P.18 LANDS IN PUBLIC DOMAIN.**

Money appropriated from the trust fund must not be used to purchase any land in fee title or a permanent conservation easement if the land in question is fully or partially owned by the state or a political subdivision of the state or was acquired fully or partially with state money, unless:

- (1) the purchase creates additional direct benefit to the protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources; and
- (2) the purchase is approved, prior to the acquisition, by an affirmative vote of at least 12 members of the commission.