

Attachment E. Land Acquisition Reporting Procedures

Outdoor Heritage Fund

(December 2011 – replaces September, 2011 version)

Section 1 – Grant acquisition procedures for all land

1. Valuation/Appraisal

- a. No appraisal is required if the land is valued at \$20,000 or less. However, the grant recipient must provide documentation on how the value was determined.
- b. For all other properties, an appraisal must be prepared by a Certified General Level 4 appraiser licensed in Minnesota.
 - i. The appraisal must be prepared in conformity with the guidelines titled "Uniform Standards of Professional Appraisal Practice" and Minnesota DNR "Supplemental Appraisal and Appraisal Review Guidelines".
 - ii. In order to ensure compliance with the applicable appraisal standards, your written assignment instructions to the appraiser must be included as an addendum of the appraisal report.
 - iii. The appraiser must use the DNR certification form.
 - iv. The DNR must be named as an intended user of the appraisal report.
 - v. The intended use shall include negotiation and grant reimbursement.
 - vi. If the value is less than \$100,000, a summary appraisal report is acceptable.
 - vii. If the value is greater than \$10 million, two appraisals are required and the DNR must be involved in writing the appraisal scope of work to be provided to the appraisers. Contact Cindy Nathan at: cindy.nathan@state.mn.us.

2. Appraisal Review

- a. The appraisal review must be prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" and the current Minnesota DNR "Supplemental Appraisal and Appraisal Review Guidelines".
- b. For properties valued up to \$1,000,000, an appraisal review must be conducted by the grant recipient.
 - i. The grant recipient may conduct an administrative review for properties valued up to \$500,000. The grant recipient must use the DNR administrative review checklist. All elements of the checklist must be met.
 - ii. Technical reviews are required for properties valued over \$500,000. The grant recipient shall contract for the appraisal review for properties valued up to \$1,000,000.
 - (a) The grant recipient must use a technical reviewer on the list provided by the DNR.
 - (b) The DNR must be named as an intended user of the appraisal review report.
 - (c) The intended use shall be to assure reliability and credibility of the appraisal for use in reimbursement of grant monies.
 - (d) The reviewer must use the DNR Reviewer Certification form.
 - (e) The appraisal must be recommended.
- c. For properties valued greater than \$1,000,000, the technical appraisal review will be conducted by the DNR.
 - i. The grant recipient must provide the acquisition packet information to Cindy Nathan prior to the review request.
 - ii. The DNR must be named as an intended user of the appraisal review report.
 - iii. The intended use shall be to assure reliability and credibility of the appraisal for use in reimbursement of grant money.

- iv. The acquisition packet and appraisal report (2 copies) shall be submitted to: Cindy Nathan, Minnesota DNR, 1601 Minnesota Drive, Brainerd, MN 56401.
- v. The reviewer must use the DNR Reviewer Certification form.
- vi. The appraisal must be recommended.
- vii. The grant recipient will be mailed the review once it has been completed.

3. Landowner Information

- a. The grant recipient must be working with a willing seller and the landowner must be made aware of the fact that the grant recipient intends to either retain ownership or convey the real property or an interest in the property to a governmental entity.
- b. The grant recipient must disclose any conflict of interests to the landowner.

4. Site Assessment

- a. The grant recipient shall conduct an appropriate site assessment of the real property to determine whether the real property is used or has ever been used for the manufacture, use, storage, or disposal of any hazardous waste or toxic substance, pollutant or contaminants. If contamination is suspected, a Phase 1 review is required. If appropriate based on the findings of the Phase 1, a Phase 2 review is required.
- b. The grant recipient must inspect any buildings and other improvements.
- c. The grant recipient must obtain a completed landowner's disclosure form from the landowner. The completed landowner's disclosure form must be provided to the appraiser and the appraiser reviewer.

5. Legal Description/Marketable Title

- a. The grant recipient must have a real estate professional review the legal description for the property being acquired. When appropriate, the grant recipient shall have the legal description reviewed by a surveyor. The grant recipient must have the property surveyed by a surveyor hired by the grant recipient, if it is needed in order to have a recordable legal description. The surveyor hired by the grant recipient must be licensed in Minnesota.
- b. The grant recipient must obtain marketable title for the property as shown either by a title opinion prepared by an attorney licensed to practice in Minnesota or by title insurance (not just a title commitment). Should a cure be required before transfer to the DNR, the grant recipient is responsible for the cure to title.

6. Reasonable Costs/Accountability of Overall Program

- a. Documentation of all costs is required for reimbursement.
- b. Grant recipients are subject to periodic audits of purchases, appraisals, and appraisal review procedures. DNR's audit team may include financial, appraisal, and legal staff.
- c. Audit findings may alter grant recipients future level of authority to conduct work or receive additional grants.

7. Conveyance to the DNR

- a. If the property is to be conveyed to the DNR, please provide the DNR with the following information that was gathered under these procedures: a copy of the site assessment information, including the disclosure form completed by the landowner from whom you purchased the property; the title information; any survey work; and the deed or, if not yet purchased, the option agreement. The documents are to be provided to the acquisition program coordinator for the division that will administer the property.

- b. If you want to arrange for a closing with the DNR that is close proximity in time to your closing with the landowner from whom you are acquiring the property, please contact the acquisition program coordinator upon obtaining a signed option from the landowner.

A copy of the DNR guidelines, forms, and list of appraiser reviewers can be found at the following location: http://www.dnr.state.mn.us/lands_minerals/appraisal_mgmt.html .

Section 2 – Reporting Requirements, Eligible costs, Conditions for Payment of Eligible Costs:

1. Reporting Requirements and Deed Restrictions

- a. The grant recipient must comply with the project requirements and reporting requirements specified in Laws of 2011, 1st Special Session, Chapter 6, Article 1, Section 2, Subdivisions 9 (Project Requirements) and 14 (Real Property Interest Report);
- b. A legal description of the interest in real property covered by the funding agreement;
- c. A reference to the underlying funding agreement; and
- d. The following statement must be referenced in the deed: *"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 Lessard-Sams Outdoor Heritage Council or its successor. The ownership of the interest in real property shall transfer 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 accomplishment plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."*

2. Eligible Costs are the Following:

- a. The value the grant recipient paid for the property up to 110% of the appraised value.
- b. Appraisals and Appraisal Reviews
- c. Surveys,
- d. Loan costs for holding the property,
- e. Property taxes paid by the grant recipient from the date of its acquisition,
- f. Attorney fees for the specific acquisition,
- g. Staff time spent on the specific acquisition,
- h. Abstracting and recording fees, and
- i. Penalty payments made for prepayment of a mortgage or loan.

3. Conditions for Payments of Eligible Costs

The Recipient may use funds available under this Agreement to cover any costs incurred in following the above land acquisition procedures and as otherwise set out in the Work Program attached as Exhibit A subject to the following conditions:

- a. The Recipient will not be entitled to use funds available under this Agreement for any land value costs in excess of 110% of the appraised value.
- b. In those instances set out above where DNR review and approval of an appraisal, legal description, title work or environmental assessment is required; the recipient assumes the risk that its costs will not be covered under this agreement if the recipient purchases the real property or interest in real property before receiving the required prior DNR certification or approval.
- c. Eligible costs incurred in the purchase of real property or an interest in real property must be documented by:

- 1) A copy of the site assessment document.
- 2) A copy of all appraisal(s) and appraisal review(s).
- 3) The legal description of the real property or interest in real property purchased and any required survey.
- 4) Evidence of title as required above or as otherwise agreed to by the Attorney General.
- 5) Evidence of the amount paid or to be paid for the real property or interest in real property.
- 6) A copy of the recorded deed or easement language.
- 7) Evidence of successfully recording a notice of funding restrictions.
- 8) A copy of a notification to the L-SOHC of the final disposition of the property for reporting purposes.
- 9) Parties to an easement must specify in the easement (document) all the provisions of their agreement (easement document) that are perpetual; an electronic copy of the terms of an easement acquired must be sent to the L-SOHC and the State. Please send a scanned copy of the signed easement.

Purchases of land or interest in land are eligible for reimbursement upon presentation to the State of items 1, 2, 3, 4, and 5 above, plus a fully executed purchase agreement, option exercise letter or similar commitment to purchase showing a closing date. The State will transfer funds to the Recipient no sooner than 10 working days prior to the date of closing. The Recipient will provide items 6, 7, 8 and 9 above to the State no later than 60 days following the receipt of funds, unless otherwise agreed upon by the State. A settlement statement and confirmation of payment from the bank must be provided within 10 days.

Memo

To: Acquisition Staff; Division Real Estate Program Coordinators
Cc: Division Directors, Regional Directors
From: Kathy A. Lewis, Assistant Director
Date: February 10, 2012
Re: Guidance on Working with Non-profit Land Trusts in Land Acquisitions

As discussed in meetings late last year, there has been a work group meeting frequently this past year with our third party partners to discuss the procedures in working together on land acquisitions. The attached document, titled "Guidance on Working with Non-Profit Land Trusts in State Land and Conservation Easement Transactions" has been finalized and was approved by the commissioner last week.

The Guidance Document sets forth the steps and methods by which DNR agrees to work with the land trusts (also known as third party partners) in a land acquisition. This work is distinguished from our grant programs for which we also recently adopted new procedures. This Guidance Document is for those instances in which the DNR seeks the assistance of the land trust in acquiring the property. The land trust will try to acquire the property, and, if acquired, the DNR will purchase the property from the land trust. These procedures do not apply to those situations where the land trust acquires property with the hope of selling it to the DNR, but the DNR has not asked for assistance from the land trust; in those instances, the land trust is acting at their own risk.

A key change in our process is that there must be a "Letter of Intent" to recognize that the DNR is interested in acquiring the property that is described in the letter and is requesting the assistance or partnership of the land trust. The purpose of this Letter of Intent is to set forth who is responsible for the tasks of a particular project and to also identify costs that would be reimbursed if the DNR does acquire the property from the land trust. This Letter of Intent and its related procedures will eliminate what we know as the "third party appraisal letter."

I've attached a template for the Letter of Intent and Instructions for Preparing a Letter of Intent. These documents are described as "working drafts" as there may be some changes as we work through our first few projects, but the documents are ready for use.

A training session is being scheduled to discuss the new procedures. As we adjust to these new procedures, please don't hesitate to ask questions and provide suggestions on further process improvements. Thanks!

Guidance on Working with Non-Profit Land Trusts In State Land and Conservation Easement Transactions

1/19/2012

Non-profit organizations with real estate expertise ("land trusts") serve a useful role in acquiring lands and interests in land having significant public values that meet the standards and priority of the Minnesota Department of Natural Resources (DNR). Because of often lengthy time requirements in the appropriations process and shortage of funds, the MN DNR may be unable to acquire land/interests in land in response to imminent threats to critical resources or opportunities presented for acquiring priority parcels. In addition, sometimes opportunities are presented first to land trusts by willing sellers, and often land trusts have active outreach programs in areas of priority for the DNR.

With the ability to act quickly in the private marketplace, the ability to work with sellers who may prefer a private entity, the ability to hold and manage lands, and the ability to assist with public and private funding, non-profit land trusts often can assist and support the DNR's land/easement acquisition programs. Land trusts often assume great financial and other risk in these partnerships. The partnerships are intended to be value-added to the state and the public, not duplicative or competing.¹

By seeking the assistance of land trusts, DNR is increasing efficiency and potentially saving the public money, staff time or both. Partnerships enable the DNR to pursue conservation opportunities on behalf of the public in a timely manner so that priority conservation lands are not lost. Land trusts, with their specific skills and resources, can help the DNR leverage its capacity to deliver valuable conservation projects to the public and efficiently deploy the DNR's resources.

The purpose of this memo is to clearly and carefully define the roles of non-profit land trusts and the DNR in acquiring land or interests in land for ultimate state ownership.

Land trusts operate in the fluid private market with relative ease. However, they are bound by certain inflexible rules (e.g. IRS), internal policies and procedures, and Land Trust Alliance's *Standards and Practices*.² DNR is bound by statutes, internal policies, and practices consistent with good real estate transactions as required by its appropriations and authorities.

Steps and Methods

1. When is assistance or a partnership needed?

- a. A parcel of priority to DNR becomes available or is threatened with conversion prior to appropriations/funds obligated;
- b. A willing seller is identified who prefers not to work with government but is willing for the land to become public;
- c. A land trust has an established or unique relationship with a landowner;

¹ This Guidance is not intended for acquisitions of properties that a land trust had acquired some time ago for its program which the DNR may now determine is a priority for DNR ownership and for which the land trust is a willing seller. In those situations follow the standard DNR acquisition process.

² <http://www.landtrustalliance.org/training/sp>

- d. Land trust possesses unique expertise in structuring the transaction that will facilitate its completion;
 - e. A willing seller requires a non-refundable earnest money deposit or option payment;
 - f. A willing seller desires tax advantages from below-market sales or gifts for which timeliness is imperative, and the savings may be passed on to the DNR;
 - g. Multiple public and private funding sources may be required and assistance is necessary to secure the funds;
 - h. Funding may come over multiple years necessitating a property to be held before the DNR can fully acquire it; etc.
2. Priority. Determining priority of a parcel for the DNR is best done on a proactive basis with DNR sharing its lists of priorities with a land trust as a partner. Land trusts may be engaged in conversation about a specific priority that arises. When a parcel has become a priority at the level appropriate for the DNR to request assistance, DNR staff must obtain the necessary reviews and approvals and request land trust assistance in an expedient way.
3. Engaging a Land Trust – “Letter Of Intent” Once the need for assistance or a partnership is identified, and the priority determined, a letter requesting assistance is sent to the land trust by the Commissioner (or delegated representative). The DNR and the land trust will at a later date enter into a contract/option (or assignment of contract/option); the Letter Of Intent is non-binding and the DNR cannot make commitments until funds are obligated. The purpose of the letter is to provide a road map for the relationship specific to an individual project. Items to be addressed in this Letter Of Intent include:
- a. Identify the parcel, its location and its priority and program area;
 - b. Include ‘non-binding’ language in the event the land trust is unable to negotiate a purchase, the legislature does not appropriate the funds, or there are other impediments to the DNR accepting the property. In these instances, the land trust is free to sell the interest in land ;
 - c. Include a provision that if the land trust is successful in securing the parcel (either as contract/option vendee or acquisition) it is the intent of the DNR to enter into a purchase and sale option with the land trust (pending successful acquisition/assignment by the land trust);
 - d. Outline costs to be reimbursed by the DNR should funds be obligated (see Appendix A *Transactional Costs for Reimbursement*), and that the costs will be reimbursed upon transfer of the property to the DNR (until that point, all the risk is on the land trust);
 - e. Outline which party is responsible for securing the appraisal, title, survey, environmental report and other due diligence items;
 - f. Specify a time frame for DNR review of appraisals and other due diligence so that the land trust can meet a reasonable timeframe of the seller;
 - g. Include language referencing the Landowner Bill of Rights as it applies to the seller;
 - h. Identify a DNR point person to work on a specific project with the land trust from beginning to the conclusion of the acquisition;
 - i. Outline or refer to the expected funding mechanism (public, private or combination thereof) including need to cooperate on funder’s requirements.
4. Due Diligence. Adherence to the time frames outlined in a purchase option or contract is essential to completing a transaction for the benefit of the seller, land trust and DNR. Land trusts accept significant risk when entering into a relationship with a seller and need to work in lock step with the DNR (as the eventual owner) to lessen these risks and ensure meeting contractual obligations. A timely response by DNR during the due diligence phase is critical to success.
- a. Appraisal: An appraisal must be timely obtained and agreed to so both the land trust and DNR are working with the same fair market value and the land trust can commence negotiations. Non-

government organizations may run afoul of IRS private benefit rules if they pay more than fair market value. Best practices for land trusts dictate that they may not exceed the fair market value. DNR has more flexibility. Land trusts may need assurances that their value will hold with the DNR in the event of market fluctuations, and vice versa.

- b. **Title:** The land trust and DNR require secure ownership of property free of encumbrances and liens that will negatively affect their ownership. Land trusts will only want to enter into title that is acceptable to the DNR. Title issues must be resolved prior to the time at which the land trust is contractually bound by a seller to complete its due diligence or the land trust may be forced to terminate its purchase and lose the opportunity.
 - c. **Environmental Hazards Assessment:** Land trusts and the DNR must conduct an assessment of environmental risks and determine the presence/absence of hazardous materials on/under the property. These issues must be addressed prior to a land trust assuming title to the property and prior to signing off on contract due diligence. Land trusts will only want to enter into title when it knows environmental hazards are acceptable to the DNR.
 - d. **Property Condition:** The land trust and DNR should agree on the expected condition of the property when it is transferred to DNR for use by the public. Clean up, restoration, or other remediation may be accomplished by the seller, land trust or DNR.
 - e. **Survey:** Not all properties acquired by a land trust/DNR require a land boundary survey; however, the land trust and DNR should agree if one is necessary and who should accomplish it. In some cases, there may be a simple way to modify the legal description of the property and a survey will not be needed. A survey may be required if:
 - i. a single ownership is being divided (i.e., you are purchasing only part of a property) and the dividing line is not a section line, roadway or waterway like a stream;
 - ii. local zoning ordinances require a survey;
 - iii. you are purchasing a conservation easement that covers only part of a property, and it is not possible to establish an accurate legal description for the area covered by the easement without a survey. In situations where the easement follows section lines, roadways, or waterways, a survey is usually not necessary.
 - iv. there is a dispute over a boundary or encroachment;
 - v. you need to ensure that there is adequate access to the property;
 - vi. you need to know the exact location of an easement that already exists on a property you are purchasing.
5. External Approvals and Funding Assistance.
- a. **County board approval:** DNR and the land trust will work together to secure the necessary approvals from the local County Board.
 - b. **Public funding proposals:** The land trust and DNR will work together to identify and secure public funding resources.
 - c. **Private funding proposals:** The land trust will work in coordination with DNR to put together a strategy for raising private funding as necessary.
6. Property Management.
- a. **Property Management:** The land trust and DNR will agree to a framework of how the property will be managed during the interim between land trust acquisition and DNR ownership.
7. "Daylight" Needs and Confidentiality. The land trust and DNR will work in concert to communicate appropriately with the public, press, funders, and legislators. Transparency is critical yet willing seller privacy issues must also be respected and addressed in an ethical and legal manner.

APPENDIX A
Transactional Costs for Reimbursement

The following costs are typically incurred by a land trust in transactions requested by/in partnership with the DNR. The Letter of Intent for each project will specify which of the following eligible costs will be reimbursed by the DNR should funds be obligated and the property transferred to the DNR. A particular project may authorize reimbursement for all or some of the following costs. Some costs may not be necessary for a particular project (for instance, a survey may not be needed).

- **Due Diligence Expenses:**
 - Appraisal
 - Title commitment
 - Title insurance
 - Abstracting
 - Environmental hazards assessments
 - Building inspections, if applicable
 - Survey
 - Mineral evaluation (if mutually beneficial)
 - Outside legal fees, if applicable

- **Closing Costs (both costs for the land trust's purchase as well as subsequent re-sale to DNR):**
 - Recording costs
 - Closing fees
 - Wiring fees
 - Property tax pro-ration

- **Carrying Costs (during interim land trust ownership period):**
 - Reasonable interest-carry costs/cost of capital
 - Property taxes, including tax pro-rations paid at closing
 - Costs to properly secure the site, such as gates, etc.

- **Transactional Costs:**
 - Staff time, including indirect cost recovery at the land trust's approved federal rate or other agreed rate; or,
 - Overhead at an agreed rate

INSTRUCTIONS FOR PREPARING A LETTER OF INTENT

Working draft, 2/10/12

These instructions are to provide DNR staff with information on how to enter into a Letter of Intent. The document titled "Guidance on Working with Non-Profit Land Trusts in State Land and Conservation Easement Transactions," dated January 19, 2012, provides the following:

Once the need for assistance or a partnership is identified, and the priority determined, a letter requesting assistance is sent to the land trust by the Commissioner (or delegated representative). The DNR and the land trust will at a later date enter into a contract/option (or assignment of contract/option); the Letter Of Intent is non-binding and the DNR cannot make commitments until funds are obligated. The purpose of the letter is to provide a road map for the relationship specific to an individual project.

Template: The template for the Letter of Intent is attached.

Contacts: All proposals to DNR for a Letter of Intent are to be referred to the Acquiring Division Program Coordinator. This applies to anyone from the DNR or anyone from a land trust. The current acquisition division program coordinators are:

Ecological Resources and Waters Division, Peggy Booth (651-259-5088)
Fish and Wildlife Division, Pat Rivers (651-259-5209)
Forestry Division, Dave Schuller (651-259-5255)
Parks and Trails Division, Jennifer Christie (651-259-5633).

Fact sheet: A fact sheet needs to be prepared and sent through the DNR review and approval process. Discussions on the Letter of Intent can be taking place at the same time as the fact sheet is being processed, but the Letter of Intent should not be signed until the fact sheet has made it through the review and approval process. (The land trusts are aware that the fact sheet process needs to take place and that it will take some time to negotiate a Letter of Intent.)

Property and funding information (page 1 of Letter of Intent):

- 1) The letter should include the best legal description that is currently available. The description does not need to be reviewed by a surveyor in order to be included in the letter, but you can add a parenthetical identifying that the legal description needs further review. If the description is long, it can be added as an attachment, with the letter incorporating the attachment by reference.
- 2) The letter should identify whether the property is being acquired in fee or if a conservation easement is being acquired.
- 3) Identify the proposed use of the land and how the acquisition ranks in the division's priority for acquisitions.
- 4) The known funding sources should be identified. If there are known funding restrictions, they should be identified.

Costs (page 2 of Letter of Intent): Insert A of the template identifies the types of costs that could be covered by the DNR if the property is acquired by the land trust and the DNR subsequently purchases the property from the land trust. It is not a requirement that all of these costs will be covered for a project – this is an area for negotiation between the DNR and the land trust. Particular caution should be

exercised as to including the carrying costs and transaction costs. (These are the costs listed in Insert A after "wiring fees".)

Assignment of tasks (page 2 of Letter of Intent):

- 1) Appraisal: The acquiring division program coordinator must contact the Appraisal Unit Supervisor (Cindy Nathan, 218-855-5126) to discuss the issue on who should obtain the appraisal. If the decision is that the land trust will obtain the appraisal, there is a need for a person with delegated authority in Lands and Minerals to grant that permission. Cindy will arrange for a copy of this authorization to be sent to the acquiring division coordinator. (This would normally be done by e-mail and would meet the requirement under Minn. Stat., sec. 84.0272, subd. 1 that the "commissioner shall cause the lands to be appraised.")
- 2) Appraisal review: If the acquiring division wants to consider the land trust as being the party responsible for the appraisal review, the acquiring division program coordinator must contact the Appraisal Unit Supervisor to discuss this issue. The default decision is for the DNR to do the appraisal reviews.
- 3) Survey: If there are questions on whether a survey may be needed, the acquiring division program coordinator must contact the Survey Unit Supervisor (Steve Feesl, 651-259-5387) to discuss this issue. The Lands and Minerals Division can contract out survey work through a master contract program or have the work performed by DNR staff.
- 4) Environmental assessment: The land trust and the acquiring division program coordinator need to discuss whether there are any known conditions or past use that would indicate the advisability of performing environmental assessment work.
- 5) Title examination: Each party is responsible for performing title work to their satisfaction before acquiring the land. The Attorney General's office will need to review title to any property before it is acquired by the State, but the Attorney General cannot be working on behalf of the land trust. Sometimes a land trust wants to know whether the State will find any title issues that would need to be addressed prior to the state's acquisition. In those instances, the DNR would request a preliminary title review from the Attorney General's office. If that is the situation, it needs to be noted in the task assignments that DNR will be obtaining a preliminary title opinion.
- 6) The time goals for completion of the appraisal work are estimates and may need to be adjusted after the work is bid out to appraisers.
- 7) The DNR contact person to work on acquiring the land from the land trust is the Lands and Minerals project manager identified by the fact sheet. The land trust needs to identify their key contact person for the project.

Signing Letters of Intent: Letters of intent are only to be signed by staff with delegated authority from the commissioner. The letter would usually be signed by the director of the division that is interested in acquiring the property.

Questions: If you have any questions concerning the preparation of a Letter of Intent, please don't hesitate to ask Lands and Minerals staff for assistance. The contacts are Assistant Director (Kathy Lewis, 651-259-5404) and Transactions Manager (Aaron VandeLinde, 651-259-5955).

K. Lewis, Lands and Minerals, 2/10/12



Minnesota Department of Natural Resources

Lands and Minerals Division

500 Lafayette Road, St. Paul, MN 55155-40

Working draft, 2/10/12

TEMPLATE – LETTER OF INTENT

[Date]

[To]

RE: Letter of Intent – [project name and county]

Dear

Thank you for agreeing to work in partnership with the Minnesota Department of Natural Resources (DNR) to preserve and protect Minnesota's natural resources. We have agreed to work together in acquiring for the State the following described property for natural resource purposes. The purpose of this letter is to identify our agreed upon duties and responsibilities for this proposed acquisition.

The property that the DNR is interested in acquiring is:

[Insert legal description, including County]

[Identify if this is a fee interest or conservation easement interest].

If acquired, the property will be used for a [identify management unit, e.g., wildlife management area]. This is a [high, moderate, or low] priority for the DNR.

The funding for this project is expected to be from [insert pre-identified funding source - DNR, land trust, or combination thereof]. [Identify any pre-identified funding restrictions.]

It is critical that this project only proceed forward with a willing seller. You must inform the landowner of the fact that the property or an interest in the property will be conveyed to the State. You must disclose the appraised value to the landowner prior to making the offer to purchase the property.

The acquisition of this parcel by the DNR is dependent on funding appropriations and a determination by the DNR that there is marketable title to the property and it is free from environmental nuisances, hazardous waste, pollutants and contaminants. Please take notice that it is possible that you may purchase the property and then find that the DNR will not proceed with purchasing the property from you due to lack of funding or the discovery of environmental issues or title issues. If the DNR is not able to proceed with a purchase of the property from you due to any of these situations, you are free to proceed to sell any interest that you acquire in the property.

If you are successful in acquiring the above-described property, and the DNR is able to proceed due to available funding with no issues as to title or environmental conditions, the DNR agrees to enter into an option and election to purchase agreement with you. As part of the acquisition, and in addition to the purchase price that the DNR agrees to pay, the DNR will agree to pay the following costs at closing:

[See Insert A for cost list]

The DNR will not reimburse the above costs if the DNR does not acquire the property from you.

The land acquisitions tasks are assigned as follows: [insert land trust or DNR for each task]

- Appraisal: _____ [If this task is assigned to the land trust, add Insert B below]
- Appraisal review: _____ [Add Insert C or D below]
- Survey: _____
- Environmental assessment: _____
- Title examination: _____
- Other: [describe] _____

[Add Insert B if land trust is assigned to prepare appraisal]

[Add Insert C if DNR is doing the appraisal review] OR [Add Insert D if the land trust is doing the appraisal review]

It is our mutual goal to have the appraisal completed by [insert date] and the appraisal review completed by [insert date]. [If needed, insert dates for other key milestones.]

The DNR staff person who will work with you on this project is: [insert name and contact info]
We understand that the person from your organization who will be working with DNR staff on this project is: [insert name and contact info]

Again, thank you for your interest in working with us to preserve Minnesota's natural resources for future generations.

Sincerely,

Director, Division of [insert division name]

Cc: Lands and Minerals (Asst. Director, Appraisal Unit Supervisor, Transactions Manager, Project Manager)

INSERT A

[Instructions: The following is a list of possible costs that the DNR may agree to pay for the project. Select the costs that you are willing to pay for this project; delete the remainder. Then insert the selected cost list into the form letter.]

- Appraisal costs
 - Appraisal review costs
 - Environmental assessment
 - Building inspections
 - Survey
 - Mineral evaluation
 - Abstract updates
 - Title commitment
 - Title insurance
 - Recording costs
 - Closing fees
 - Wiring fees
 - Property taxes, pro-rated as of date of closing
 - Reasonable costs for carrying during interim land trust ownership
 - Property taxes incurred during interim land trust ownership
 - Costs to properly secure the property during interim land trust ownership
 - Staff time
 - Indirect cost recovery at following rate: _____
 - Overhead at the following rate: _____
-

INSERT B

[Instructions: insert the following text into the form letter if the land trust is assigned the task of preparing the appraisal.]

The DNR has approved your proceeding to hire an appraisal to prepare an appraisal of the property. The appraiser must be a licensed, certified general real property appraiser in the State of Minnesota or an appraiser currently under contract with the DNR to do appraisal work. Please advise the appraiser as to the following:

1. The DNR must be named as an intended user in the appraisal.
2. The appraisal must be in conformity with the guidelines titled "Uniform Standards of Professional Appraisal Practices" and "Minnesota DNR Supplemental Appraisal and Appraisal Review Guidelines (7/15/09)".
3. In order to ensure compliance with the applicable appraisal standards, your written assignment instructions to the appraiser must be included as an addendum of the appraisal report.
4. The appraiser must complete the DNR certification form and include it in the appraisal report.

5. The property must be valued as though the DNR is purchasing the property directly from the landowner. The appraiser must be instructed to include this assumption as a "Hypothetical Condition" in the appraisal.
6. The appraiser must agree to work with the Minnesota DNR throughout the appraisal process including the appraisal review.
7. If the land trust or appraiser have any questions about the DNR Guidelines, or other appraisal concerns, please have them contact Cindy Nathan at 218/855-5126.

If federal aid is likely to be part of the funding, the "Uniform Appraisal Standards for Federal Land Acquisitions" is a required appraisal standard. Appraisals for projects involving federal aid must be reviewed by the DNR, and the value cannot exceed one million dollars.

INSERT C

[Instructions: insert the following text if DNR is doing the appraisal review and the land trust did the appraisal.]

When the appraisal has been completed, please ask the appraiser to submit three reports directly to Cindy Nathan, Division of Lands & Minerals of the DNR for an administrative or technical appraisal review.

INSERT D

[Instructions: insert the following text if the land trust is doing the appraisal review.]

The appraisal review must be prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" and the current Minnesota DNR "Supplemental Appraisal and Appraisal Review Guidelines".

For properties valued at no more than \$500,000, you may do a technical review or an administrative review. For administrative reviews, the reviewer must use the DNR administrative review checklist and all elements of the checklist must be met.

Technical reviews are required for properties valued over \$500,000. You will be required to use a technical reviewer on a list provided by the DNR. The DNR must be named as an intended user of the appraisal review report. The intended use shall be to assure reliability and credibility of the appraisal. The reviewer must use the DNR Reviewer Certification form. The appraisal must be recommended.

84.0274 LANDOWNERS' BILL OF RIGHTS.

Subdivision 1. **Citation.** This section may be cited as "the landowners' bill of rights."

Subd. 2. **Policy.** It is the intent of this section to clarify the responsibilities of the state in the natural resources land acquisition process and to provide additional protections to landowners in their dealings with the state.

Subd. 3. **Condemnation limits.** No lands shall be acquired by the commissioner of natural resources by means of condemnation unless the owner requests that the owner's lands be condemned or the condemnation is specifically authorized by law.

Subd. 4. **Rights cumulative.** The protections for landowners and responsibilities of the state set forth in this section shall not limit, but shall be in addition to all rights and responsibilities contained in state or federal law.

Subd. 5. **Owner's rights.** When the state proposes to purchase in fee or any lesser interest in land which will be administered by the commissioner of natural resources, the landowner shall have the following rights:

(a) the right to be informed of the specific intended use of the property and of any change in the intended use of the property which occurs during the acquisition process. The owner shall also be informed that the documents regarding the purchase will be public records if the land is purchased by the state;

(b) the right to be paid a fair price for the property. The price shall include the fair market value of the land plus:

(1) all necessary incidental costs such as abstracting and recording fees related to the sale. The costs of clearing title defects, paying taxes, and attorney's fees are not reimbursable; and

(2) any penalties incurred by the owner where the property is security for a loan or advance of credit that contains a provision requiring or permitting the imposition of a penalty if the loan or advance of credit is prepaid;

(c) the right to payment, at the owner's election, in a lump sum or in up to four annual installments;

(d) the right to have the property fairly appraised by the state. The state's appraiser shall physically inspect the property and the owner shall be allowed to accompany the appraiser when the appraisal is made. The state's appraiser shall certify in the appraisal report to having physically inspected the property and having given the landowner an opportunity to accompany the appraiser on inspections. Notwithstanding section 13.44, subdivision 3, before an offer is made, the landowner shall be informed of the value determined pursuant to section 84.0272;

(e) the right to retain a qualified independent appraiser to conduct an appraisal at any time prior to certification of the state's appraisal of the property and to be reimbursed for appraisal fees as provided in section 117.232, subdivision 1, if the land is sold to the state and to have that appraisal considered along with the state's in certifying the selling price;

(f) the right to have the state acquire the property by means of condemnation upon the owner's request with the agreement of the commissioner;

(g) the right to receive or waive relocation assistance, services, payments and benefits as provided in sections 117.52 and 117.521;

(h) the right to accept the state's offer for the property and contest the state's offer for relocation and moving expenses;

(i) the right to continue occupancy of the property until full payment is received, provided that when the owner elects to receive payment in annual installments pursuant to clause (c), the owner may retain occupancy until the first payment is made; and

(j) the right to seek the advice of counsel regarding any aspect of the land transaction.

Subd. 6. State's responsibilities. When the state proposes to purchase land for natural resources purposes, the commissioner of natural resources and, where applicable, the commissioner of administration shall have the following responsibilities:

(a) The responsibility to deal fairly and openly with the landowner in the purchase of property;

(b) The responsibility to refrain from discussing price with the landowner before an appraisal has been made. In addition, the same person shall not both appraise and negotiate for purchase of a tract of land;

(c) The responsibility to use private fee appraisers to lower the state's acquisition costs to the greatest extent practicable; and

(d) The responsibility to acquire land in as expeditious a manner as possible. No option shall be made for a period of greater than two months if no survey is required or for nine months if a survey is required, unless the landowner, in writing, expressly requests a longer period of time. Provided that, if county board approval of the transaction is required pursuant to section 97A.145, no time limits shall apply. If the state elects not to purchase property upon which it has an option, it shall pay the landowner \$500 after the expiration of the option period. If the state elects to purchase the property, unless the landowner elects otherwise, payment to the landowner shall be made no later than 90 days following the state's election to purchase the property provided that the title is marketable and the owner acts expeditiously to complete the transaction.

Subd. 7. Disclosure. When the state proposes to purchase lands for natural resources purposes, the landowner shall be given a written statement in lay terms of the rights and responsibilities provided for in subdivisions 5 and 6. Before a purchase can be made, the landowner must sign a statement acknowledging in writing that the statement has been provided and explained to the landowner. Within 60 days following the date of final approval of Laws 1980, chapter 45B, the commissioner of natural resources shall submit a proposed form for the statement to the Legislative-Citizen Commission on Minnesota Resources. The commission shall review the proposed form for compliance with the intent of this section and shall make any changes which it deems proper.

Subd. 8. Exception for railroad right-of-way acquisitions. When the commissioner of natural resources acquires abandoned railroad right-of-way from a railroad, railroad holding company, or similar entity, any or all of the provisions of this section may be waived by mutual agreement of the commissioner and the landowner.

Subd. 9. Exception for nonprofit organizations and governmental entities. When the commissioner acquires land or interests in land from a nonprofit organization or governmental entity, any or all of the provisions of this section may be waived by mutual agreement of the commissioner and the nonprofit organization or governmental entity.

Subd. 10. **Right of first refusal agreement.** The commissioner may enter into a right of first refusal agreement with a landowner prior to determining the value of the land. No right of first refusal agreement shall be made for a period of greater than two years and payment to the landowner for entry into the agreement shall not exceed \$5,000.

History: 1980 c 458 s 1-7; 1986 c 386 art 4 s 5; 1986 c 444; 1988 c 690 art 1 s 1; 1989 c 335 art 1 s 68,269; 1Sp2005 c 1 art 2 s 15,16; 2006 c 243 s 21; 2007 c 129 s 47; 2007 c 131 art 2 s 2