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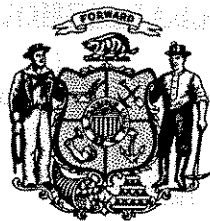
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-014

AN ORDER to create chapter NR 199, relating to establishing municipal flood control and riparian restoration rights.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-02-01 REPORT SENT TO AGENCY.

02-06-01 RECEIVED BY LEGISLATIVE COUNCIL.

RNS:REL:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 01-014

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. NR 199.02 (1), s. 66.299 (1) (a), Stats., has been renumbered as part of the ch. 66 recodification, and is now s. 66.0131 (1) (a), Stats. References to s. 66.299 (1) (a), Stats., throughout the rule should be changed to s. 66.0131 (1) (a), Stats. Also, the definition of "local governmental unit" is different in s. 66.0131 (1) (a), Stats., than in s. 281.665 (1) (a), Stats. Which definition should be used?
- b. In s. NR 199.03 (intro.), the part of the sentence before "in this chapter" should be deleted. Also, subs. (2), (3) and (4) should use the phrase "has the meaning given in" when referring to a statutory definition.
- c. In s. NR 199.05, the section title should not be presented with upper case lettering. This problem also occurs in the titles to ss. NR 199.06, 199.07, 199.08, 199.09 and 199.11.
- d. In s. NR 199.08 (1) (intro.), a period should be inserted after "3".
- e. In s. NR 199.10 (1) (intro.), "all of" should be inserted before "the following provisions."

4. Adequacy of References to Related Statutes, Rules and Forms

Section NR 199.10 (1) (e) refers to "department established criteria" for determining whether a first appraisal is unacceptable. Have these criteria been promulgated as rules? [See ss. 227.01 (13) and 227.10 (1), Stats.] If not, where may a person obtain them?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 199.08 (1) (b) 6. (intro.), it appears that the word "provided" should be replaced by the phrase "subject to the following conditions," to assist the reader in understanding that certain conditions apply to the purchase of property with conservation and flowage easements in order for the acquisition costs to be considered "eligible costs" by the department.

b. Section NR 199.10 (1) (a) provides that: "Property shall be acquired by the grant recipient pursuant to ss. 32.19 to 32.27, Stats.," under the eminent domain chapter. However, sub. (1) (m) states that: "No grant may be awarded to acquire property through the power of eminent domain." It appears that these subsections conflict. If differences exist between the enumerated sections of ch. 32, Stats., and the power of eminent domain, those distinctions should be clearly stated in the rule.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create ch. NR 199 establishing municipal flood control and riparian restoration grants.

WT-10-01

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 281.665, Stats.

Statutes interpreted: s. 281.665, Stats.

This order establishes the eligibility, requirements and procedures for filing applications and awarding grants for municipal flood control and riparian restoration. This program will provide cost-sharing grants to local municipalities and metropolitan sewerage districts to acquire land and structures, floodproof structures, purchase conservation and flowage easements, restore water bodies to a natural state and construct facilities for the collection and transmission of stormwater and groundwater.

SECTION 1. Chapter NR 199 is created to read:

**Chapter NR 199
MUNICIPAL FLOOD CONTROL GRANTS**

- NR 199.01 Purpose
- NR 199.02 Applicability
- NR 199.03 Definitions
- NR 199.04 General provisions
- NR 199.05 Eligible and ineligible project activities
- NR 199.06 Applications
- NR 199.07 Determination of project eligibility
- NR 199.08 Eligible and ineligible costs
- NR 199.09 Grant awards and payments
- NR 199.10 Grant awards for the acquisition of property
- NR 199.11 Variances

NR 199.01 Purpose. The purpose of this chapter is to establish procedures for implementing a municipal flood control and riparian restoration grant program as provided for in s. 281.665, Stats. Grants made under this program will help local governments minimize flooding and flood-related damages by acquiring property, floodproofing structures, creating open-space flood storage areas, constructing flood control structures and restoring the flood-carrying capacity and natural and beneficial functions of watercourses. Projects eligible under this program shall minimize harm to existing beneficial functions of water bodies and wetlands, maintain natural aquatic and riparian environments, use stormwater detention and retention structures and natural storage to the greatest extent possible and provide opportunities for public access to water bodies and to the floodplain.

NR 199.02 Applicability. (1) This chapter applies to all cities, villages, towns and metropolitan sewerage districts as defined in s. 66.299 (1)(a), Stats., applying for financial assistance under s. 281.665, Stats., for a grant under this chapter.

(2) Watercourses eligible for grants include any river, lake, flowage, wetlands, or stormwater channel.

NR 199.03 Definitions. The following definitions are applicable to terms used in this chapter:

(1) "Acquisition cost" means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property that are limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department and environmental inspections. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

(2) "Agriculture" means the uses described in s. 30.40(1), Stats.

(3) "Applicant" means the township, village, city or metropolitan sewerage district as defined in s. 66.299(1)(a), Stats., that applies for a grant under this chapter.

(4) "Conservation easement" means an easement as defined in s. 700.40 (1)(a), Stats.

(5) "Department" means the Wisconsin department of natural resources.

(6) "Development" means any artificial change to improved or unimproved real estate, including but not limited to the construction or placement of buildings or other structures; the construction of additions or substantial improvement to buildings or other structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials.

(7) "Flowage easement" means a holder's nonpossessory interest in real property granting the holder the right to flow the grantor's lands for flood storage or natural riverine hydrologic cycles.

(8) "Force account" means the performance of a development project with the resources of the grant recipient, including personnel services, equipment and materials.

(9) "Grant period" means the time period stated in the grant agreement during which the grant recipient is eligible to expend funds for a project and be reimbursed for those expenditures.

(10) "Grant recipient" means the township, village, city or metropolitan sewerage district as defined in s. 66.299(1)(a), Stats., that has received a grant under this chapter.

(11) "Land management plan" means a plan approved by the department detailing how lands acquired with grants under this chapter shall be managed and maintained.

(12) "Local share" means that portion of the project costs that is not funded by the department.

(13) "Mitigation" means implementing specific activities to remove structures from flood hazard areas or to protect structures from flooding.

(14) "Parcel" means one contiguous block of land under a single ownership.

(15) "Project priority list" means a ranking by the department of municipal flood control or riparian restoration projects in the order of their scheduled receipt of funds.

(16) "Property acquisition" means fee title ownership or an easement in perpetuity in the land.

(17) "Repetitive loss structure" means any structure with 2 or more flood losses, structural or contents, greater than \$1,000 in any 10 year period since 1978.

(18) "Riparian restoration project" means eligible activities which will restore the natural environment in order to enhance the natural beneficial uses and value of a watercourse.

(19) "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.

(20) "Substantial damage" means flood damages to any structure that equal or exceed 50% of the present equalized assessed value of the structure.

NR 199.04 General provisions. (1) The applicant shall submit with each application preliminary and detailed designs for each project to the department for review and approval.

(2) The grant recipient shall submit to the department an annual status report and a final project report that is suitable for use by the general public.

(3) The grant recipient shall perform all required water tests and other analyses at a department-approved laboratory.

(4) For projects utilizing physical, biological or chemical data, the department may require the grant recipient to implement a quality control and quality assurance plan approved by the department. The department shall approve all methods and procedures to be used in the project.

(5) The grant recipient shall submit to the department, in a format specified by the department, all data and information acquired as part of the project.

(6) If the project has not been satisfactorily completed per the grant agreement, the department may withhold further reimbursement and may seek reimbursement of the state share distributed to the grant recipient.

(7) 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.

lower case
NR 199.05 ELIGIBLE AND INELIGIBLE PROJECT ACTIVITIES. (1) ELIGIBLE ACTIVITIES. The following activities, in priority order, are eligible for funding under this section:

(a) Acquisition and removal of structures which, due to zoning restrictions, cannot be rebuilt or repaired.

(b) Acquisition and removal of structures in the 100-year floodplain.

(c) Acquisition and removal of repetitive loss or substantially damaged structures.

(d) Acquisition and removal of multi-family and mixed-use residential structures.

(e) Acquisition and removal of other flood damaged structures.

(f) Floodproofing and elevation of structures.

(g) Riparian restoration projects including removal of dams and other artificial obstructions, restoration of fish and native plant habitat and erosion and sediment control, including streambank restoration projects.

(h) Acquisition of vacant land, or perpetual conservation or flowage easements to provide additional flood storage or to facilitate natural or more efficient flood flows.

(i) Construction of structures for the collection, detention, retention, storage and transmission of stormwater and groundwater for flood control and riparian restoration projects.

(2) **INELIGIBLE ACTIVITIES.** The following activities are not eligible for funding under this chapter:

- (a) Dam repair and operation.
- (b) Design, installation, operation or maintenance of sanitary sewers, treatment plants or onsite sewerage systems.
- (c) Projects which would adversely affect a watercourse by causing increases in flood heights, velocities, sedimentation or erosion, reducing the amount or complexity of fish and wildlife habitat, reducing natural shore cover, or restricting navigation, or any other negative impact, except temporary impacts caused by dam removal or other approved restoration activities.
- (d) Projects which would dredge or channelize a stream or line a natural streambed with impervious materials.
- (e) Projects which conflict with land use, watershed or other resource management plans.
- (f) Projects or applicants which are not compliant with minimum state floodplain management requirements, as enumerated in ch. NR 116.
- (g) Creation or enhancement of stormwater management plans.
- (h) Projects for the purchase, installation or operation of mechanical pumping systems.

NR 199.06 APPLICATIONS. (1) An applicant shall apply for funding of projects on forms provided by the DNR bureau of community financial assistance and shall submit the application to the DNR bureau of watershed management, both located at PO Box 7921, Madison, Wisconsin, 53707-7921.

(2) The department shall review the application for completeness and may return the application with a request for more detailed information. The application is not complete until the department receives all requested information.

(3) To be eligible for grant awards, project applications shall be complete and received by the department, or postmarked, by July 15 for funding in the same fiscal year. The department shall publish the project priority list for funding by October 1 of each calendar year.

NR 199.07 DETERMINATION OF PROJECT ELIGIBILITY. After receiving the application, the department shall determine eligible projects by considering the factors identified in ss. NR 199.01 and 199.05. The department may accept the application as eligible and score it based on priority projects identified in s. NR 199.05 (1) or deny the application as ineligible.

NR 199.08 ELIGIBLE AND INELIGIBLE COSTS. (1) **ELIGIBLE COSTS.** Costs eligible for funding under this chapter are those reasonable and necessary project costs which the department determines are consistent with the approved project. Eligible costs shall be incurred during the project period except costs identified in pars. (a) 3 and (b) 4. Applicants may apply for a local assistance grant, an acquisition and development grant or both. Local assistance grants provide funding for administrative costs and acquisition and development grants provide funding for purchase of land or easements and construction or other development costs. Eligible costs for the 2 grant types are as follows:

(a) Eligible costs for local assistance grants may include, but are not limited to:

1. Labor costs, including force account labor, required for carrying out activities identified in the grant agreement. Costs shall be based on grant recipient rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

2. Direct costs for laboratory analysis, surveys, publications, mailings, professional service contracts, development activities and similar items.

3. Engineering or planning fees necessary to complete the project may be eligible, including previously incurred costs.

4. The cost of necessary materials, supplies and equipment used exclusively for project-related purposes over its useful life or the cost of the portion of supplies or equipment used for the project.

5. The costs of leased equipment and facilities used for project related purposes for the length of the project. The cost of the use of the equipment owned by the grant recipient may not exceed the county highway rates established annually by the department of transportation

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(b) Eligible costs for acquisition and development grants may include, but are not limited to:

1. Acquisition and removal costs.

2. Costs to build facilities and structures for the collection, detention, retention, storage and transmission of stormwater and groundwater for flood control and riparian restoration projects.

3. Structural floodproofing and elevation costs.

4. Engineering or planning fees to complete the project may be eligible, including previously incurred costs.

5. Relocation costs required in the property acquisition transaction.

6. Acquisition costs to purchase conservation and flowage easements, provided: *all...*

a. 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 a municipal flood control grant. Additional restrictions or conditions may be imposed by the easement or grant contract.

b. Agriculture, 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 the municipal flood control program and the project.

c. Any agriculture 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.

d. 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.

e. 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.

f. If a grant application is submitted for a property as part of an acquisition of conservation and flowage easements and that property is subsequently withdrawn from consideration, another property may be substituted if inclusion of that property would result in the same or higher ranking as the application received with the original property.

(2) **INELIGIBLE COSTS.** Those costs which the department determines are not directly associated with or necessary to implement the project are ineligible for grants. Ineligible costs include, but are not limited to:

(a) Fines and penalties due to violations of federal, state or local laws and regulations.

(b) Ordinary operating expenses of local government applicants, such as salaries and expenses of public officials, that are not directly related to the project.

(c) Indirect costs including administrative costs and costs to purchase vehicles or other property not directly related to the project.

(d) Costs for which payment has been, or will be, received from any other funding source.

NR 199.09 GRANT AWARDS AND PAYMENT. (1) **GENERAL PROVISIONS.** (a) The state share of the project cost may not be greater than 70% of the eligible project costs.

(b) A grant provided under this chapter for acquisition of easements or real property may not exceed the lesser of 70% of the purchase price by the municipality, or fair market value.

(c) In any fiscal year, the department may not provide to any applicant more than 20% of the funding available under this chapter.

(d) The applicant shall obtain all necessary permits and approvals for the project prior to grant award for acquisition or development.

(e) The grant period shall be for 2 years. The department may grant a one-year extension.

(2) **MATCH REQUIREMENTS.** (a) The local share of the project cost may not be less than 30% of the eligible project costs.

(b) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

1. All sources of local share donation shall be indicated when the grant application is submitted.

2. The maximum value of donated, non-professional labor shall be equal to the prevailing federal minimum wage requirements.

3. The value of donated equipment may not exceed the Wisconsin department of transportation highway rates for equipment.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

(c) For land acquisition projects, the substantiated value of donated contributions of real property may be used as part of the local share of the project cost subject to all of the following:

1. Contributions of property are eligible as grant recipient match only if the donated property lies within the boundaries of a project which has been approved under the same component of the municipal flood control program as the property being acquired.

2. The fair market value of a contribution of property may be used as local share. The amount of the property donation that can be used for match equals the value of the donation or the amount of cash needed by the applicant for the purchase, whichever is less, so there will be no cash back in excess of the moneys actually needed for the purchase.

3. The contribution is made within 3 years of the land acquisition and is considered by the department to be part of the project or eligible for the project.

(3) AMENDMENTS. (a) The grant recipient may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement prior to the end of the grant period. If funds are available, the department may issue a grant amendment.

(b) The grant recipient may request, for good cause, a grant agreement amendment for changes to the project scope or an extension of the grant period prior to the end of the grant period.

(4) AUDIT. (a) The department shall account for all project funds in conformance with generally accepted accounting principles and practices and shall retain the funds in a separate account. The grant recipient shall maintain supporting records of grant expenditures in sufficient detail to show that grant funds were used for the purposes for which the grant was made. The grant recipient shall keep all financial records, including invoices and canceled checks or bank statements that support all project costs claimed by the grant recipient, and the records shall be available for inspection by the department for 4 years after final payment.

(b) The department may audit all of the grant recipient's records pertaining to the project. The department audit may result in an adjustment in the grant amount.

(5) PAYMENT. (a) The grant recipient shall submit to the department claims for payment of actual and eligible expenses on forms provided by the department. All costs claimed for payment shall be documented and shall be consistent with the eligibility provisions of this chapter and with the grant agreement.

(b) The grant recipient shall submit the final claim for payment no later than 3 months following the grant ending date. The grant recipient may submit a written request for an extension of the final claim period no later than 3 months after the grant ending date, showing good cause for the extension. If the grant recipient fails to submit the final claim prior to 3 months following the project ending date and does not receive department approval to extend the final claim period, the final claim payment may be denied.

(c) The department may approve final grant payments when the grant recipient has submitted a claim supported by appropriate evidence of project expenditures within the timeframe in this chapter.

(6) ENFORCEMENT. (a) The department may terminate any grant awarded under this chapter for violation of any term or condition of the grant contract and the department may seek reimbursement of the state share previously distributed to the grant recipient.

(b) The department may withhold final payment of the grant amount until all project, legal and program requirements have been complied with.

(c) The department may withhold 25% of the state share for final payment and may withhold final payment until the department determines that the project and any required audits have been satisfactorily completed.

NR 199.10 Grant awards for acquisition of property. (1) Property transactions shall be subject to approval by the department and the following provisions:

(a) Property shall be acquired by the grant recipient pursuant to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. Comm 202.

(b) Grant recipients are required to obtain appraisals for all property acquisitions funded by grants under this chapter.

(c) Appraisals of property required for grant eligibility under this chapter shall be subject to department review and approval according to department appraisal guidelines.

Note: The department's appraisal guidelines are available from any DNR regional office or from the DNR Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921

(d) Appraisers shall be state licensed, certified "residential" or "general" appraisers and meet all applicable state laws and rules for appraisers.

(e) The department may require a second appraisal for complex or unusual properties, if the first appraisal is unacceptable under department established criteria, or if it exceeds \$200,000.

(f) Grant recipients and subsequent owners shall acquire and manage property acquired with a grant in accordance with all applicable state, local and federal laws, rules and regulations.

(g) Property acquired with a grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

(h) 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.

(i) Grants may not be made for property acquired prior to a grant award without prior written approval of the department.

(j) When the grant recipient is purchasing property, the department may distribute the entire state share of the purchase cost to a non-interest bearing escrow account, subject to a department approved title insurance commitment for each property, to be released upon completion of an insured closing and conveyance of the property to the grant recipient. If the closing has not occurred within 90 days from the time funds are distributed to the escrow account, the department may cause the funds in the escrow account to be returned to the department.

(k) 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 or hazards that are unacceptable to the department.

(L) Any grant award, which involves the purchase of property shall be subject to a grant contract as prescribed in this chapter.

(m) No grant may be awarded to acquire property through the power of eminent domain.

(2) The purchase of property shall be subject to an executed grant contract before any state funds can be disbursed. Any grant contract shall contain but not be limited to provisions which:

(a) Provide for long term management of the property.

(b) Prohibit using the property as security for any debt unless the department previously approves the incurring of the debt.

(c) 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.

(d) Provide the department access to land acquired with a municipal flood control grant under this chapter to monitor compliance with the grant contract or carry out any management activity necessary to ensure the public's rights and safety. The department may require project grant recipients to conduct self-inspections of these properties.

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(e) When a municipal flood control grant is awarded under this chapter for acquiring an easement, the grant recipient shall prepare a baseline document, approved by the landowner and available to the department for inspection, before grant payments are made.

(f) Provide the department access to property on which an easement is acquired with a municipal flood control protection grant, in a reasonable manner upon prior notice to the easement holder and the landowner, to monitor compliance with the grant conditions. The conditions of that access shall be contained in the easement agreed to by the landowner. The department may grant exceptions to this access requirement in extraordinary situations according to the procedure in s. NR 199.11.

(g) Provide that the grant recipient may sell or transfer the property to a third party other than a creditor of the grant recipient with the prior written approval of the department. All restrictions imposed by the grant contract and land management plan shall remain with the property and any subsequent owners shall execute a grant contract assignment which states that they have received and reviewed the grant contract and land management plan and shall abide by their provisions. Department approval of the transfer is not valid until the contract assignment is signed by and recorded in the appropriate register of deeds office.

(h) Require that the instrument conveying the property to the recipient identify the interest of the state under par. (f) and be recorded together with the grant contract in the office of the register of deeds of each county in which the property is located.

(i) Require that if the recipient violates any essential provision of the grant or grant contract, interest in or title to the acquired property shall vest in the state, without necessity of reentry.

(j) Provide that the grant recipient shall notify the department of any change in the status or purpose of the grant.

NR 199.11 VARIANCES. The department may approve in writing a variance from a requirement of this chapter upon the written request of a grant recipient if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause and circumstance beyond the control of the grant recipient. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

JUN 06 2001

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. WT-10-01

Legislative Council Rules Clearinghouse Number 01-014

Subject of Rules Establishing municipal flood control and riparian restoration grants.

Date of Transmittal to Presiding Officers June 5, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 199, Wis. Adm. Code
Establishing municipal flood control and riparian restoration grants

Board Order No. WT-10-01
Clearinghouse Rule No. 01-014

Statement of Need

Chapter NR 199 is the proposed administrative code to administer the new Municipal Flood Control and Riparian Restoration Grant program. This program will provide grants to municipalities and metropolitan sewerage districts to acquire land and structures, floodproof structures, purchase easements, restore streams and construct flood control facilities. The proposed rule would provide 70% cost sharing grants. Applications would be ranked based on avoided flood damages, restoration or protection of natural and beneficial functions of water bodies, use of natural flood storage techniques or environmentally sensitive detention ponds, and enhanced recreational opportunities.

Modifications as a Result of Public Hearing

The rule was revised to include funding for flood insurance studies and other flood mapping projects.

Appearances at the Public Hearings and Their Position

In support:

Brian J. Karczewski, 567 N. 106th Street, Wauwatosa, WI 53226
Nathan Klassy, Monroe Director of Public Works, 1110 18th Ave., Monroe, WI 53566
Patrick Caffrey, La Crosse Director of Public Works, 400 La Crosse St., La Crosse, WI 54601
Greg Pederson, La Crosse Engineering Department, 400 La Crosse St., La Crosse, WI 54601

In opposition – none

As interest may appear:

Brad Wemecke, Monroe City Engineer, 1110 18th Avenue, Monroe, WI 53566
Kenneth M. Dentice, La Crosse Director of Inspection & Zoning, 400 La Crosse St., La Crosse, WI

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create Ch. NR 199 establishing municipal flood control and riparian restoration grants.

WT-10-01

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 281.665, Stats.

Statutes interpreted: s. 281.665, Stats.

This order establishes the eligibility requirements and procedures for filing applications and awarding grants for municipal flood control and riparian restoration. This program will provide cost-sharing grants to local municipalities and metropolitan sewerage districts to acquire land and structures, floodproof structures, purchase conservation and flowage easements, restore water bodies to a natural state and construct facilities for the collection and transmission of stormwater and groundwater.

SECTION 1. Chapter NR 199 is created to read:

Chapter NR 199

MUNICIPAL FLOOD CONTROL GRANTS

- NR 199.01 Purpose
- NR 199.02 Applicability
- NR 199.03 Definitions
- NR 199.04 General provisions
- NR 199.05 Eligible and ineligible project activities
- NR 199.06 Applications
- NR 199.07 Determination of project eligibility
- NR 199.08 Eligible and ineligible costs
- NR 199.09 Grant awards and payments
- NR 199.10 Grant awards for the acquisition of property
- NR 199.11 Variances

NR 199.01 Purpose. The purpose of this chapter is to establish procedures for implementing a municipal flood control and riparian restoration grant program as provided for in s. 281.665, Stats. Grants made under this program will help local governments minimize flooding and flood-related damages by acquiring property, floodproofing structures, creating open-space flood storage areas, constructing flood control structures and restoring the flood-carrying capacity and natural and beneficial functions of watercourses. Projects eligible under this program shall minimize harm to existing beneficial functions of water bodies and wetlands, maintain natural aquatic and riparian environments, use stormwater detention and retention structures and natural storage to the greatest extent possible and provide opportunities for public access to water bodies and to the floodplain.

NR 199.02 Applicability. (1) This chapter applies to all cities, villages, towns and metropolitan sewerage districts applying for financial assistance under s. 281.665, Stats., for a grant under this chapter.

(2) Watercourses eligible for grants include any river, lake, flowage, wetlands or stormwater channel.

NR 199.03 Definitions. In this chapter:

(1) "Acquisition cost" means the fair market value of the property, as determined by department appraisal guidelines, and reasonable costs related to the purchase of the property that are limited to the

cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department and environmental inspections. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

- (2) "Agricultural use" has the meaning given in s. 30.40 (1), Stats.
- (3) "Applicant" means the township, village, city or metropolitan sewerage district that applies for a grant under this chapter.
- (4) "Conservation easement" has the meaning given in s. 700.40 (1)(a), Stats.
- (5) "Department" means the Wisconsin department of natural resources.
- (6) "Development" means any artificial change to improved or unimproved real estate, including but not limited to the construction or placement of buildings or other structures; the construction of additions or substantial improvement to buildings or other structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials.
- (7) "Flowage easement" means a holder's nonpossessory interest in real property granting the holder the right to flow the grantor's lands for flood storage or natural riverine hydrologic cycles.
- (8) "Force account" means the performance of a development project with the resources of the grant recipient, including personnel services, equipment and materials.
- (9) "Grant period" means the time period stated in the grant agreement during which the grant recipient is eligible to expend funds for a project and be reimbursed for those expenditures.
- (10) "Grant recipient" means the township, village, city or metropolitan sewerage district that has received a grant under this chapter.
- (11) "Land management plan" means a plan approved by the department detailing how lands acquired with grants under this chapter shall be managed and maintained.
- (12) "Local share" means that portion of the project costs that is not funded by the department.
- (12m) "Metropolitan sewerage district" means a sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.
- (13) "Mitigation" means implementing specific activities to remove structures from flood hazard areas or to protect structures from flooding.
- (14) "Parcel" means one contiguous block of land under a single ownership.
- (15) "Project priority list" means a ranking by the department of municipal flood control or riparian restoration projects in the order of their scheduled receipt of funds.
- (16) "Property acquisition" means fee title ownership or an easement in perpetuity in the land.
- (17) "Repetitive loss structure" means any structure with 2 or more flood losses, each greater than \$1,000, in any 10 year period since 1978.
- (18) "Riparian restoration project" means eligible activities which will restore or enhance the natural beneficial uses and value of a watercourse.
- (19) "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.
- (20) "Substantial damage" means flood damages to any structure that equal or exceeds 50% of the present equalized assessed value of the structure.

NR 199.04 General provisions. (1) The applicant shall submit with each application preliminary and detailed designs for each project to the department for review and approval.

(2) The grant recipient shall submit to the department an annual status report and a final project report that is suitable for use by the general public.

(3) The grant recipient shall perform all required water tests and other analyses at a department-approved laboratory.

(4) For projects utilizing physical, biological or chemical data, the department may require the grant recipient to implement a quality control and quality assurance plan approved by the department. The department shall approve all methods and procedures to be used in the project.

(5) The grant recipient shall submit to the department, in a format specified by the department, all data and information acquired as part of the project.

(6) If the project has not been satisfactorily completed per the grant agreement, the department may withhold further grant funds and may seek reimbursement of the state share distributed to the grant recipient.

(7) 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.

NR 199.05 Eligible and ineligible project activities. (1) **ELIGIBLE ACTIVITIES.** The following activities, in priority order, are eligible for funding under this section:

(a) Acquisition and removal of structures which, due to zoning restrictions, cannot be rebuilt or repaired.

(b) Acquisition and removal of structures in the 100-year floodplain.

(c) Acquisition and removal of repetitive loss or substantially damaged structures.

(d) Acquisition and removal of other flood damaged structures.

(e) Floodproofing and elevation of structures.

(f) Riparian restoration projects, including removal of dams and other artificial obstructions, restoration of fish and native plant habitat, erosion control and streambank restoration projects.

(g) Acquisition of vacant land, or perpetual conservation or flowage easements to provide additional flood storage or to facilitate natural or more efficient flood flows.

(h) Construction of structures for the collection, detention, retention, storage and transmission of stormwater and groundwater for flood control and riparian restoration projects.

(i) Preparation of flood insurance studies and other flood mapping projects.

(2) **INELIGIBLE ACTIVITIES.** The following activities are not eligible for funding under this chapter:

(a) Dam repair and operation.

(b) Design, installation, operation or maintenance of sanitary sewers, treatment plants or onsite sewerage systems.

(c) Projects which would adversely affect a watercourse by causing increases in flood heights, velocities, sedimentation or erosion, reducing the amount or complexity of fish and wildlife habitat, reducing natural shore cover, or restricting navigation, or any other negative impact, except temporary impacts caused by dam removal or other approved restoration activities.

(d) Projects which would dredge or channelize a stream or line a natural streambed with impervious materials.

(e) Projects which conflict with land use, watershed or other resource management plans.

(f) Projects or applicants which are not compliant with minimum state floodplain management requirements, as enumerated in ch. NR 116, or with minimum national flood insurance program requirements, as enumerated in 44 CFR Parts 59-78.

(g) Creation or enhancement of stormwater management plans.

(h) Projects for the purchase, installation or operation of mechanical pumping systems.

NR 199.06 Applications. (1) An applicant shall apply for funding of projects on forms provided by the DNR bureau of community financial assistance and shall submit the application to the DNR bureau of watershed management, both located at PO Box 7921, Madison, Wisconsin 53707-7921.

(2) The department shall review the application for completeness and may return the application with a request for more detailed information. The application is not complete until the department receives all requested information.

(3) To be eligible for grant awards, project applications shall be complete and received by the department, or postmarked, by July 15 for funding in the same fiscal year. The department shall publish the project priority list for funding by October 1 of each calendar year.

NR 199.07 Determination of project eligibility. After receiving the application, the department shall determine eligible projects by considering the factors identified in ss. NR 199.01 and 199.05. The department may accept the application as eligible and score it based on priority projects identified in s. NR 199.05 (1) or deny the application as ineligible.

NR 199.08 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** Costs eligible for funding under this chapter are those reasonable and necessary project costs which the department determines are consistent with the approved project. Eligible costs shall be incurred during the project period except costs identified in pars. (a) 3. and (b) 4. Applicants may apply for a local assistance grant, an acquisition and development grant or both. Local assistance grants provide funding for administrative costs; acquisition and development grants provide funding for purchase of land or easements and construction or other development costs. Eligible costs for the 2 grant types are as follows:

(a) Eligible costs for local assistance grants may include, but are not limited to:

1. Labor costs, including force account labor, required for carrying out activities identified in the grant agreement. Costs shall be based on grant recipient rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

2. Direct costs for laboratory analysis, surveys, publications, mailings, professional service contracts, development activities and similar items.

3. Engineering or planning fees necessary to complete the project may be eligible, including costs incurred on or after October 29, 1999.

4. The cost of necessary materials, supplies and equipment used exclusively for project-related purposes over its useful life or the cost of the portion of supplies or equipment used for the project.

5. The costs of leased equipment and facilities used for project related purposes for the length of the project. The cost of the use of the equipment owned by the grant recipient may not exceed the county highway rates established annually by the Wisconsin department of transportation.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin department of transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(b) Eligible costs for acquisition and development grants may include, but are not limited to:

1. Acquisition and removal costs.
2. Costs to build facilities and structures for the collection, detention, retention, storage and transmission of stormwater and groundwater for flood control and riparian restoration projects.
3. Structural floodproofing and elevation costs.
4. Engineering or planning fees to complete the project may be eligible, including previously incurred costs.
5. Relocation costs required in the property acquisition transaction.
6. Acquisition costs to purchase conservation and flowage easements, subject to the following conditions:
 - a. 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 a municipal flood control grant. Additional restrictions or conditions may be imposed by the easement or grant contract.
 - b. 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 the municipal flood control program and the project.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. If a grant application is submitted for a property as part of an acquisition of conservation and flowage easements and that property is subsequently withdrawn from consideration, another property may be substituted if inclusion of that property would result in the same or higher ranking as the application received with the original property.

(2) **INELIGIBLE COSTS.** Those costs which the department determines are not directly associated with or necessary to implement the project are ineligible for grants. Ineligible costs include, but are not limited to:

- a. Fines and penalties due to violations of federal, state or local laws and regulations.
- b. Ordinary operating expenses of local government applicants, such as salaries and expenses of public officials, that are not directly related to the project.
- c. Indirect costs including administrative costs and costs to purchase vehicles or other property not directly related to the project.
- d. Costs for which payment has been, or will be, received from any other funding source.

NR 199.09 Grant awards and payment . (1) GENERAL PROVISIONS. (a) The state share of the project cost may not be greater than 70% of the eligible project costs.

(b) A grant provided under this chapter for acquisition of easements or real property may not exceed the lesser of 70% of the purchase price by the municipality, or fair market value.

(c) In any fiscal year, the department may not provide to any applicant more than 20% of the funding available under this chapter.

(d) The applicant shall obtain all necessary permits and approvals for the project prior to grant award for acquisition or development.

(e) The grant period shall be for 2 years. The department may grant a one-year extension.

(2) MATCH REQUIREMENTS. (a) The local share of the project cost may not be less than 30% of the eligible project costs.

(b) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the project cost subject to all of the following:

1. All sources of local share donation shall be indicated when the grant application is submitted.
2. The maximum value of donated, non-professional labor shall be equal to the prevailing federal minimum wage requirements.
3. The value of donated equipment may not exceed the Wisconsin department of transportation highway rates for equipment.
4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

(c) For land acquisition projects, the substantiated value of donated contributions of real property may be used as part of the local share of the project cost subject to all of the following:

1. Contributions of property are eligible as grant recipient match only if the donated property lies within the boundaries of a project which has been approved under the same component of the municipal flood control program as the property being acquired.
2. The fair market value of a contribution of property may be used as local share. The amount of the property donation that can be used for match equals the value of the donation or the amount of cash needed by the applicant for the purchase, whichever is less, so there will be no cash back in excess of the moneys actually needed for the purchase.
3. The contribution is made within 3 years of the land acquisition and is considered by the department to be part of the project or eligible for the project.

(3) AMENDMENTS. (a) The grant recipient may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement prior to the end of the grant period. If funds are available, the department may issue a grant amendment.

(b) The grant recipient may request, for good cause, a grant agreement amendment for changes to the project scope or an extension of the grant period prior to the end of the grant period. The department may amend the grant agreement or extend the grant period based on a grant recipient's request.

(4) AUDIT. (a) The grant recipient shall account for all project funds in conformance with generally accepted accounting principles and practices and shall retain the funds in a separate account. The grant recipient shall maintain detailed records of grant expenditures to show that grant funds were used for the purposes for which the grant was made. The grant recipient shall keep all financial records, including invoices and canceled checks or bank statements that support all project costs claimed by the grant recipient, and the records shall be available for inspection by the department for 4 years after final payment.

(b) The department may audit all of the grant recipient's records pertaining to the project. The department audit may result in an adjustment in the grant amount.

(5) PAYMENT. (a) The grant recipient shall submit to the department claims for payment of actual and eligible expenses on forms provided by the department. All costs claimed for payment shall be documented and shall be consistent with the eligibility provisions of this chapter and with the grant agreement.

(b) The grant recipient shall submit the final claim for payment no later than 3 months following the grant ending date. The grant recipient may submit a written request for an extension of the final claim period no later than 3 months after the grant ending date, showing good cause for the extension. If the grant recipient fails to submit the final claim prior to 3 months following the project ending date and does not receive department approval to extend the final claim period, the final claim payment may be denied.

(c) The department may approve final grant payments when the grant recipient has submitted a claim supported by appropriate evidence of project expenditures within the timeframe in this chapter.

(6) ENFORCEMENT. (a) The department may terminate any grant awarded under this chapter for violation of any term or condition of the grant agreement and the department may seek reimbursement of the state share previously distributed to the grant recipient.

(b) The department may withhold final payment of the grant amount until all project, legal and program requirements have been complied with.

(c) The department may withhold 25% of the state share for final payment and may withhold final payment until the department determines that the project and any required audits have been satisfactorily completed.

NR 199.10 Grant awards for acquisition of property. (1) Property transactions shall be subject to approval by the department and all of the following provisions:

(a) Property transactions shall be subject to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. Comm 202.

Note: Under s. Comm 202.01 (14), "an owner occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power" is not a displaced person and is not entitled to relocation assistance. Tenants who occupy a property are entitled to relocation assistance even if the owner is voluntarily selling the property.

Under s. Comm 202.01 (14) (b) 4., a "tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project" but who can remain permanently on the property subject to normal rental conditions and provisions may not be a displaced person who qualifies for relocation assistance so long as they are not required by the sponsor to move.

Under s. Comm 202.01 (33), relocation assistance shall apply to all stewardship grants where the total of stewardship grants and all other public financial assistance or direct government acquisition costs in a project are at least \$5,000 for a project with total costs of less than \$50,000; or at least 10% in a project having total costs of \$50,000 or more.

(b) Grant recipients are required to obtain appraisals for all property acquisitions funded by grants under this chapter.

(c) Appraisals of property required for grant eligibility under this chapter shall be subject to department review and approval according to department appraisal guidelines.

Note: The department's appraisal guidelines are available from any DNR regional office or from the DNR Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707-7921

(d) Appraisers shall be state licensed, certified "residential" or certified "general" appraisers and meet all applicable state laws and rules for appraisers.

(e) Acquisitions with a fair market value of more than \$200,000 require 2 appraisals. The department may require a second appraisal for property valued under \$200,000 if the property presents a difficult appraisal problem or if the first appraisal is unacceptable under department guidelines.

(f) Grant recipients and subsequent owners shall acquire and manage property acquired with a grant in accordance with all applicable state, local and federal laws, rules and regulations.

(g) Property acquired with a grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant agreement.

(h) 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.

(i) Grants may not be made for property acquired prior to a grant award without prior written approval of the department.

(j) When the grant recipient is purchasing property, the department may distribute the entire state share of the purchase cost to a non-interest bearing escrow account, subject to a department approved title insurance commitment for each property, to be released upon completion of an insured closing and conveyance of the property to the grant recipient. If the closing has not occurred within 90 days from the time funds are distributed to the escrow account, the department may cause the funds in the escrow account to be returned to the department.

(k) 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 or hazards that are unacceptable to the department.

(l) Any grant award, which involves the purchase of property shall be subject to a grant agreement as prescribed in this chapter.

(m) No grant may be awarded to acquire property through the power of eminent domain.

(2) The purchase of property shall be subject to an executed grant agreement before any state funds can be disbursed. Any grant agreement shall contain but not be limited to provisions which:

(a) Provide for long term management of the property.

(b) Prohibit using the property as security for any debt unless the department previously approves the incurring of the debt.

(c) 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.

(d) Provide the department access to land acquired with a municipal flood control grant under this chapter to monitor compliance with the grant agreement or carry out any management activity necessary to ensure the public's rights and safety. The department may require project grant recipients to conduct self-inspections of these properties.

(e) When a municipal flood control grant is awarded under this chapter for acquiring an easement, the grant recipient shall prepare a baseline document, approved by the landowner and available to the department for inspection, before grant payments are made.

(f) Provide the department access to property on which an easement is acquired with a municipal flood control protection grant, in a reasonable manner upon prior notice to the easement holder and the landowner, to monitor compliance with the grant conditions. The conditions of that access shall be contained in the easement agreed to by the landowner. The department may grant exceptions to this access requirement in extraordinary situations according to the procedure in s. NR 199.11.

(g) Provide that the grant recipient may sell or transfer the property to a third party other than a creditor of the grant recipient with the prior written approval of the department. All restrictions imposed by the grant contract and land management plan shall remain with the property and any subsequent owners shall execute a grant agreement assignment which states that they have received and reviewed the grant contract and land management plan and shall abide by their provisions. Department approval of the

transfer is not valid until the contract assignment is signed by and recorded in the appropriate register of deeds office.

(h) Require that the instrument conveying the property to the recipient identify the interest of the state under par. (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.

(i) Require that if the recipient violates any essential provision of the grant or grant agreement, interest in or title to the acquired property shall vest in the state, without necessity of reentry.

(j) Provide that the grant recipient shall notify the department of any change in the status or purpose of the grant.

NR 199.11 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a grant recipient if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause and circumstance beyond the control of the grant recipient. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 23, 2001.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)