Chapter NR 195

RIVER PROTECTION GRANTS

NR 195.01 Purpose. The purpose of this chapter is to establish procedures for implementing a river protection grant program as provided for in s. 281.70, Stats. Grants made under this program will assist local organizations in protecting rivers by helping to provide information on riverine ecosystems, by improving river system assessment and planning, by increasing local understanding of the causes of river problems and by assisting in implementing management activities that protect or restore river ecosystems. This grant program is also intended to provide assistance in the formation of river management organizations and provide support and guidance to local organizations who are interested in helping to manage and protect rivers, particularly where resources and organizational capabilities may be limited.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.02 Applicability. (1) This chapter applies to all counties, cities, townships, villages, tribes, qualified river management organizations, other local governmental units as defined in s. 66.299 (1) (a), Stats., and qualified nonprofit conservation organizations as defined in s. 23.0955 (1), Stats., applying for financial assistance under s. 281.70, Stats., for a river planning or management grant.

(2) River management organizations qualified to receive grants under this chapter shall be a nonprofit organization under ch. 181, Stats., that meets all of the following conditions:

(a) It specifies in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more rivers for the benefit of the general public or demonstrates that the substantial purpose of its recent past actions was to support the protection or improvement of one or more rivers for the benefit of the general public.

(b) It does not limit membership or deny the right of any member or any class of members to vote.

(c) It requires payment of an annual membership fee of no more than $50.

(3) Rivers eligible for planning grants include any navigable natural river or river segment. Only rivers that are in a relatively undegraded condition and recommended for protection in a management plan produced by a federal, state or local resource management agency are eligible for management grants.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.03 Definitions. The following definitions are applicable to this chapter:

(1) "Acquisition costs" means the fair market value of the property as determined by department valuation guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence costs, recording fees, interest on installment payments with prior written approval of the department, and the cost of environmental inspections and audits. Acquisition costs 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) "Department" means the Wisconsin department of natural resources.

(3) "Grant period" means the time period stated in the grant agreement during which the grant recipient is eligible to expend program grant funds for a project.

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

(5) "Local share" means that portion of the cost of the project other than state funds administered by the department.

(6) "Management project"means implementing a specific activity or set of activities to protect or improve of the river ecosystems other than planning activities.

(7) "Nonprofit conservation organization" has the meaning in s. 23.096 (1) (a), Stats.

(8) "Parcel" means one contiguous block of land under one ownership.

(9) "Planning project" means specific activities related to the collection, assessment and dissemination of information on riverine ecosystems, to assist in developing organizations to help manage rivers, to assist the public in understanding riverine ecosystems and to create management plans for the long term protection and improvement of riverine ecosystems.

(10) "Project priority list" means a ranking by the department of river protection projects in the order of their scheduled receipt of funds.

(11) "Property acquisition" means fee title ownership or a conservation easement as defined in s. 700.40 (1) (a), Stats., in perpetuity in the land.

(12) "River" means any natural flowing, navigable water body within the boundaries of, or bordering, the state and includes streams, creeks and flowages.

(13) "River restoration project" means activities including, but not limited to, dam removal, dam modification, fish passage, removal of debris or channel obstructions, the introduction of structures or modifications to channels and stream banks or the removal or planting of vegetation, which will restore or enhance riverine ecosystems.

(14) "Riverine ecosystem" means all streams, channels, wetlands, groundwater and lands in the watershed tributary to a river and the terrestrial and aquatic life therein.

(15) "Sponsor" means the county, township, village, city, other local governmental unit as defined in s. 66.299 (1) (a), Stats., qualified river management organization, tribe or nonprofit conservation organization that is applying for and receiving a grant under s. 281.70, Stats., and this chapter.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.04 Eligible planning activities. Activities eligible for funding include:

(1) Organizational development projects which provide programs and materials to assist persons in forming a qualified river management organization or strengthen the capacity of an exist-

ing organization to protect or improve rivers and natural river ecosystems. Activities may include:

(a) Training, education or facilitated planning programs and workshops.

(b) Development, printing and dissemination of information, surveys, educational materials and brochures to describe the group, its purposes and attract membership.

(c) Activities that are designed to develop partnerships or achieve organizational objectives to protect a river ecosystem.

(d) Activities necessary to assist groups in meeting the conditions of a qualified river management organization.

(2) Education projects that include the development and dissemination of materials and programs or other activities that increase the public awareness relating to protecting or improving the ways in which rivers are used, the quality of water in rivers, the quality of natural riverine ecosystems or the populations of fish and aquatic life and their habitat in rivers.

(3) Assessments and plan development that may include but are not limited to:

(a) Acquisition of new or updated information on the water quality, water quantity, fish, wildlife and other biological or environmental information about a river or its ecosystem and the assessment of this information.

(b) Descriptions and mapping of existing and potential land and water resource conditions, activities and uses within a riverine ecosystem that may affect its quality and the assessment of this information.

(c) Review, evaluation or development of ordinances and other local regulations related to the control of pollution sources, recreational use or other human activities that may impact fish and wildlife habitat, natural beauty or other components of the riverine ecosystem.

(d) Acquisition of sociological information such as census data and assessments of river use information that is necessary to the development of a long-term river management plan.

(e) The analysis, evaluation, reporting and dissemination of information obtained as part of the planning project.

(f) The development of alternative management strategies, plans and specific project designs necessary to identify appropriate river protection projects.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.05 Eligible and ineligible management activities. (1) Activities that are eligible for management grants include:

(a) Purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a), Stats., if the recipient enters into a contract under s. 281.71, Stats., and if the purchase will substantially contribute to the protection or improvement of the river's water quality or its natural ecosystem.

(b) Development of local regulations or ordinances that will protect or improve the water quality of a river or its natural ecosystem.

(c) Installation of practices to control nonpoint sources of pollution.

(d) River restoration projects including restoration of in-stream or shoreland habitat.

(e) An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to protect or improve the water quality of a river or its natural ecosystem.

(f) Education, planning and design activities necessary for the implementation of a management project.

(2) Activities not eligible for funding under this section include:

(a) Dam repair and operation.

(b) The purchase of property on which a dam is located unless for the purpose of facilitating dam removal.

(c) Dredging.

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

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.06 General provisions. (1) Accounting for all planning and management project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the grantee in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was made. All financial records, including invoices and canceled checks or bank statements that support all planning project costs claimed by the grant recipient shall be kept and made available for inspection for 3 years after final payment.

(2) The grant recipient shall submit to the department a claim for payment on forms provided by the department within 6 months after the project ending date. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative to expenditures being made within the grant period, within the scope of work and within estimated costs.

(3) 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.

(4) 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.

(5) All of the grant recipient's records pertaining to the project are subject to audit. Claims made for payment may be adjusted by audit.

(6) All projects shall have as an element a final report that is suitable for use by the general public.

(7) All water tests that require laboratory analyses and which is part of the project shall be analyzed by a laboratory that has been selected by the department.

(8) Any grant provided for funding of a project that includes acquisition of physical, biological or chemical data may be conditioned to require implementation of a quality control and quality assurance plan approved by the department. The methods and procedures to be used in the project are subject to department approval.

(9) Data and information acquired as part of the planning or protection project shall be reported to the department in a format specified by the department in the grant agreement.

(10) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek reimbursement of the state share previously distributed to the grant recipient.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

NR 195.07 Applications. (1) Applications from sponsors for funding of projects shall be made on forms provided by the department and shall be submitted to the region director for the region in which the project is located.

Note: The DNR region headquarters are located at:

1. Southeast — 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee 53212
2. South Central — 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast — 1125 N. Military Ave., Box 10448, Green Bay 54307-0448
4. Northern/Rhinelander — 107 Sutliff Ave., Rhinelander 54501
5. Northern/Spooner — 810 West Maple St., Spooner 54801
6. West Central — 1300 W. Clairemont Ave., Box 4001, Eau Claire 54702

(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 considered complete until the additional information requested by the department has been received.

(3) To be eligible for grant awards, project applications shall be received by the department by September 1, 2000, for funding in the 00–01 fiscal year, and by May 1 of each following year for funding in the subsequent fiscal year.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.08 Determination of project eligibility. (1) Following receipt of the application, the department shall make a determination of planning project eligibility. The department may accept the application and include the project in the priority list developed under s. NR 195.09, or deny the application based on consideration of the factors identified in s. 281.70 (4), (5) or (6), Stats., and s. NR 195.02.

(2) The total state share of the cost of a planning project may not exceed $10,000.

(3) The total state share of the cost of a management project may not exceed $50,000.

(4) The department shall notify the sponsor in writing of the basis for a determination of ineligibility.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.09 Priorities. (1) A project priority list shall be prepared or updated by the department each year.

(2) Priorities shall be set on a statewide basis.

(3) PLANNING GRANTS. When developing a priority list, the department shall rank all planning grant applications according to the following criteria:

(a) The degree to which the project assists creation or enhancement of a local river management organization and can demonstrate how the use of the funds will build the capacity of the organization to protect and restore the river and its ecosystem.

(b) The degree to which the project assists local decision–making or formation of a strategy to protect the quality of a river's ecosystem.

(c) The degree to which the project will enhance knowledge and understanding of a river's ecosystem.

(d) The degree to which the project is supported in a federal, state or local resource plan and makes efficient use of all other available funding sources.

(e) The degree of public support for the project.

(f) Whether it is a first time project.

(4) MANAGEMENT GRANTS. When developing a priority list, the department shall rank all management applications according to the following criteria:

(a) The degree to which the project will protect critical riverine ecosystems.

(b) The degree to which the project will restore the quality of a river ecosystem or aids in the linkage or concentration of critical habitat.

(c) The degree to which the proposed activities have a good likelihood of successfully meeting the project objectives and where the sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to management activities.

(d) The degree to which the project is supported in a federal, state or local resource plan and makes efficient use of all other available funding sources.

(e) The degree of public support for the project.

(f) Whether it is a first time project.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.10 Eligible and ineligible costs. (1) Reasonable and necessary project costs, which are consistent with the approved project, as determined by the department, and incurred during the project period, are eligible for grants. Eligible costs may include, but are not limited to:

(a) Labor costs required for carrying out activities identified in the grant agreement. Costs shall be based on sponsor rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for laboratory analysis, surveys, newsletters, brochures, mailings, professional service contracts, construction activities and similar items.

(c) Acquisition costs for the purchase of land or conservation easements.

(d) The cost of necessary 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.

(e) The costs of leased equipment and facilities for the length of the project.

(f) 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 application for a grant 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 shall conform to the Wisconsin department of transportation highway rates for equipment.

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.

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

(g) For land acquisition projects the substantiated value of donated contributions of 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 sponsor match only if the donated property lies within the boundaries of a project which has been approved under the same component of the rivers program as the property being acquired.

2. Up to 75% of the fair market value of a contribution of property may be used as local share, but only to the extent that river protection funds are needed to acquire the subject property. 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 sponsor for the purchase, whichever is less, so there will be no cash back in excess of the moneys actually needed for the purchase.

(h) Other costs determined by the department to be necessary to carry out an adequate project.

(2) INELIGIBLE COSTS. Costs not directly associated with or necessary for the implementation of the project as determined by the department are ineligible for grants. Ineligible costs include, but are not limited to:

(a) Fines and penalties due to violation of, or failure to comply with, 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) Purchase of boats, motor vehicles or office furniture.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.11 Grant awards. (1) The grant award may not exceed the state share of the estimated costs of the project as set out in the grant application.

(2) The state share of the project cost may not be greater than 75% of the eligible project costs.

(3) The local share of the project cost may not be less than 25% of the eligible project costs.

(4) Upon the written request of the sponsor, the department may distribute up to 75% of the state share of the project costs for a planning project to the grant recipient following acceptance of the grant agreement by the applicant.

(5) All the necessary permits and approvals for the project shall be obtained prior to grant award.

(6) The department may withhold 10% of the state share for a final payment and may withhold final payment until it has made a determination that the project and any required audits have been satisfactorily completed.

(7) A grant awarded under this section may be terminated by the department 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.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.12 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 sponsor pursuant to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. Comm 202.

Note: The following information is from ch. Comm 202 which describes relocation assistance procedures to use when individuals presently reside on the property being purchased. Under s. Comm 202.01(33), relocation assistance will apply to all project grants where the total of project grants and all other public financial assistance or direct government acquisition costs in a project are greater than $5,000 for a project with total costs of less than $50,000; or greater than 10% of total project costs that exceed $50,000. Under s. Comm 202.01(7), "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 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.

(b) Sponsors are required to obtain appraisals for all grants under this section.

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

(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 if the property presents a difficult appraisal problem, if the first appraisal is unacceptable under department established criteria or exceeds $200,000.

Note: The department's Real Estate Appraisal Guidelines may be a obtained from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

(2) Sponsors 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.

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

(4) 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.

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

(6) When the sponsor 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 sponsor. 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.

(7) No grant may be awarded prior to receipt of an environmental inspection report showing the property contains no undesirable environmental conditions or liabilities or potential liability or hazards that are unacceptable to the department.

(8) Any grant award, which involves the purchase of property, shall be subject to a grant contract under s. NR 195.13.

(9) A grant awarded under this section may be terminated by the department for violation of any term or condition of the grant contract. If the grant is terminated, funds awarded to the sponsor shall be returned to the department or any interest in or title to the property shall be subject to s. NR 195.13 (4).

(10) No grant may be awarded where the sponsor uses the power of eminent domain.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.13 Grant contracts for the acquisition of property. **(1)** The purchase of property shall be subject to an executed grant contract prior to disbursement of any state funds for the purchase of property. The sponsor shall provide the following information to the department for each parcel to be acquired:

(a) Topographic, zoning and local land use, and tax maps showing the property to be acquired.

(b) Legal description of the property including the owner's name and address, size of the property and a physical description of the property.

(c) Name, phone number and address of the sponsor's negotiator and legal counsel if different than the authorized representative.

(d) The sponsor's plans for long term management of the parcel.

(e) An estimate of the total acquisition costs.

(f) Current status of negotiations, offers or option to purchase, appraisal and title work.

(g) Copies of any proposed or executed option or offer to purchase.

(h) Relocation information if the property is used as a residence, farm or business.

(i) The name of any tenant occupying any residence and the plans of the sponsor and tenants about future occupancy.

(j) Plans for and assurances that any proposed development and management of the property will be completed.

(k) A statement that information provided in the application has not changed. An amended application will be required if changes have occurred.

(L) Any other information the department determines is necessary for purposes of this grant program.

(2) The grant contract shall recognize the state's interest in the property acquired and ensure that sponsors shall provide adequate land management and maintenance, or in the case of easements shall monitor and enforce the conditions of the easement, in accordance with provisions contained in the grant contract and in a land management plan approved by the department. The grant contract shall be recorded in the office of the register of deeds in the appropriate county.

(3) All obligations, terms, conditions and restrictions imposed by the grant contract shall be deemed to be covenants and restrictions running with the property and shall be effective limitations on the use of the property from the date of recording of the grant contract and shall bind the sponsor and all successors and assigns in perpetuity.

(4) If the sponsor violates any essential condition of the grant contract and fails to correct it within 6 months after written notification from the department, it shall be a violation of the grant contract, and all title, right and interest held by the sponsor in and to

the property shall vest in the state without the necessity of reentry. The following conditions of the grant contract are essential:

(a) Conversion of the property to any use other than that specified in the grant contract without the prior written approval of the department is prohibited.

(b) The sponsor may not convey any interest in the property to a third party nor allow any leases, permits or encumbrances without the prior written approval of the department. The department may take actions necessary to avoid the placement of liens, judgments or encumbrances against the property.

(c) Property tax payments shall be made on time and kept current unless property taxes are not required.

(d) The sponsor shall at all times maintain its tax–exempt status as granted by the U.S. internal revenue service. The sponsor shall keep the department informed of any changes in, or challenges to, its exempt status.

(e) Property acquired with a stewardship grant may not be closed to the public unless the department determines that it is necessary to protect species of plants, wild animals or other natural features or if the right of public access is not acquired as part of the rights purchased with an easement.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

NR 195.14 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a sponsor 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 sponsor. The department may not grant variances from statutory requirements.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.