

Chapter NR 199

MUNICIPAL FLOOD CONTROL GRANTS

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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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

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.

History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.