

Acquiring an Interest in Land on Behalf of the State

The Department of Natural Resources (DNR) by statute has the authority to acquire property on behalf of the state. Very few state agencies have the statutory authority to acquire property directly. Often the statutes indicate lands can be acquired "through the proper agency" meaning DNR. If your agency does not have this authority, the title in real property transactions vests directly with the Department of Natural Resources which then issues a Management Right to transfer ongoing management of the property to your agency, the receiving agency. Because DNR, on behalf of the State, becomes part of the chain of title, the department through the Division of Mining, Land and Water has a responsibility to perform due diligence review for each transaction. The steps for this due diligence are described below.

Acquiring an interest in land requires a team effort. Important members of your team include, an attorney from Dept. of Law, an expert in title issues from Realty Services Section in DNR, a state surveyor, the State Review Appraiser, and an advocate in the Commissioner's office. Your team may also include a non-profit organization, which can provide assistance in negotiations and other aspects of the acquisition process. Be sure to develop your team from the beginning and take care to keep them apprised of the status of your project.

When acquiring land or an interest in land on behalf of the state the following issues must be considered and/or addressed:

NOTE: Some of the issue or steps which follow can be addressed concurrently. However, some steps are required before moving on to another step in the process.

1. All land is received by DNR through the Division of Mining, Land and Water, Realty Services Section. Realty Services is charged with Title Defense, ensuring that land received by the state has clear title and is free of encumbrances and liabilities and carries minimal risk of future liabilities. The Realty Services Section also has the responsibility of keeping a current list of real property assets that are reported to the legislature annually.
2. Through your director make the DNR Deputy Commissioner aware of the acquisition project using a written memo requesting approval. This memo should address the following issues:
 - a. Is the acquisition consistent with current policy?
 - b. How will the acquisition be reasonably incorporated into your organization's land management functions?
 - c. A rationale and request for support at the Commissioner's Office level. If you are acting on behalf of another agency, document that your project is supported by that agency's Commissioner's office.
3. As soon as you are aware that you will be working to acquire land or an interest in land (including an access easement, a conservation easement, or other partial

interest in land¹) notify the Realty Services Chief in writing with the following preliminary information:

- a. Confirmation of Commissioner's Office approval of the project.
- b. Project name.
- c. Funding source. (If this is a grant specify type and match required so that Realty staff can keep proper detailed records to support your efforts).
- d. The legal description.
- e. RSA with appropriate coding for Realty Services assistance (\$1,500 for each contiguous legal description).

The purpose of Realty Services involvement is to review the parcel you are interested in acquiring for any obvious problems such as liabilities for the state, or deficiencies in title (per item 1 above). Once initial contact is made, it is critical that you keep Realty staff in the loop as progress occurs throughout the project. You will be notified via e-mail of the staff person assigned to your project. Generally, the work is processed, first come, first served, but if there are other pending projects for your division, you will be asked to confirm whether you wish to change the priority order of all pending work.

4. Notify the Department of Law and ask that an attorney be assigned to your project. This is a very important step that should be taken as soon as possible. Legal review provides a second pair of eyes, to ensure that documents are legally correct and legal liabilities for the state are considered. You may also wish to utilize the Department of Law for negotiations with the landowner. Generally, the AG is able to negotiate from an objective position and provide a somewhat more neutral person for the seller to work with, particularly if the AG has worked on land acquisitions previously. Work with your attorney to define roles and responsibilities throughout the acquisition process.
5. Make sure that you have legislative authorization to receive and expend any funds, including grant funds that have been awarded for your acquisition. This may be accomplished by including the project in the capital budget (development of the budget takes place in Sept./Oct.) or by submitting an RPL to the Legislative Budget and Audit Committee of the Legislature (done when funds are needed and the legislature is not in session – note however that LB&A will not authorize capital funds (includes funds for land). Work with the Chief Budget Analyst to identify existing authorization or proceed to secure legislative authorization. Note that your efforts will be tied to the State budget cycle.
6. Land acquired on behalf of the state is assigned to a region of Mining, Land and Water for management. Even though the parcels you may be acquiring will become part of a state park, state recreation area, or critical habitat area, the regions are still responsible for management and/or assigning management to the appropriate entity. Brief the region on your proposed acquisition and discuss management intent, implications, problems or concerns in the beginning of the acquisition process so that these issues can be addressed early in the process.

¹ See policy guidance regarding conditions under which the State will agree to accept a limited interest in land such as a conservation easement.

Management agreements impose significant responsibilities on the receiving entity (DPOR, ADF&G, etc.).

7. **DOCUMENT** everything throughout the project and maintain complete files.
 - a. Work with your administrative staff to ensure that the financial requirements of the grant are met. Throughout the process be sure to document your time and that of others in order to provide adequate documentation of any “in kind” match.
 - b. As you complete each of the acquisition steps, secure documentation for your files and those of Realty Services and Department of Law.
8. Contract for a preliminary commitment for title insurance. Check with the Alaska Land Title Association for a list of title companies available to complete this task. A preliminary commitment for title insurance costs approximately \$250.00. It is important that when drafting this contract you specify that the **SUPPORTING DOCUMENTATION IS REQUIRED**. Have Realty Services review your request for services to ensure that you will be receiving all the materials that you will need. Upon receipt of the preliminary commitment for title insurance and supporting documentation, provide a copy of the entire package to:
 - a. Realty Services Section (whoever has been assigned to your project)
 - b. Department of Law (whoever has been assigned to your project)
9. Check with Realty Services and Law to see whether the legal description of the property is adequate and a survey exists that is acceptable. Work with the technical services section in Division of Mining, Land and Water to determine whether a survey is needed. If a survey is needed, work with the Statewide Platting Supervisor to develop contract specifications to meet the specific needs of this acquisition.
10. Consider the ownership and economic development potential of the subsurface estate. The subsurface estate is the dominant estate and in some cases development activities could jeopardize the purposes for which the parcels is to be managed. The development potential can be assessed via contract or through consultations with the Division of Oil and Gas and the Division of Mining, Land and Water. In either case maintain a copy of your findings and consult with Realty Services and Department of Law as to the risks associated with subsurface ownership relative to your project, as well as potential mitigation measures, which could include purchase of the subsurface or a portion of the subsurface estate.
11. At a minimum you will need a Level 1 Hazardous Materials Assessment. Check with the Easement Management and Permits Manager (who has responsibility for hazardous materials reports and approvals) to identify specific requirements of the Division of Mining, Land and Water, and Dept. of Law. You will need to have the current landowner complete a questionnaire regarding historical and current use of the property (attached). You will also need to contract with Division of Mining, Land and Water or a third party to conduct a site visit, document past use and the current physical condition of the property, and prepare a comprehensive report of their findings. **DO NOT CONDUCT THE SITE VISIT WHEN THE GROUND IS COVERED WITH SNOW**. Have any Hazmat assessment completed by a contractor or third party reviewed and approved internally.

12. Once you have determined the title interest to be acquired and completed title work, Hazmat review, and survey determination, you will need to contract for an appraisal. An appraisal is used to determine market value of the title interest to be acquired. Most land purchased will be purchased at Fair Market Value as established by an approved appraisal. Contact the State Review Appraiser in the Division of Mining, Land and Water to discuss specific appraisal requirements of DNR and the granting entity for inclusion in the appraisal instructions. Your grant may have specific appraisal requirements, particularly if Federal funds are involved. In general, if federal funds are involved, the appraisal will need to be done to federal standards (UASFLA). A review by a state or federal review appraiser will be required to ensure compliance with federal appraisal standards. You may either have the appraisal done by DNR staff or contract out for an appraisal. If after consultation with the State Review Appraiser, it is determined that an outside contractor is needed, work with the review appraiser to develop appraisal instructions that will meet the requirements of the grant or funding source (some have specific report format requirement, some have specific appraiser qualifications, etc.). Note that you will have to follow procurement rules when contracting (see DNR Procurement Officer). You will also need an RSA with the appraisal unit for their services, including the preparation of appraisal instructions. The review appraiser can also help you develop an estimate of the time and cost associated with contracting for an appraisal and completing the review of the appraisal. Keeping a realistic timeline is important both from the standpoint of negotiating with the landowner and fulfilling the requirements of the granting entity.
13. When the appraisal is complete, secure (through an RSA) the services of the State Review Appraiser, or via contract a review appraiser acceptable to the funding entity, to review the appraisal for compliance with Federal (UASFLA), State, and grant requirements. Should problems be identified with the appraisal, your review appraiser will work with the appraiser to resolve most issues. Be sure to allow sufficient time for the reviewer and the appraiser to resolve any problems that may be identified and ensure that your contract with a review appraiser provides for this ongoing communication and consultation.
14. Once the appraisal has been approved it should be shared with your attorney, the Realty Services Section, and the landowner who may agree with the results or wish to contest various aspects of the appraisal. Work with your attorney and review appraiser to resolve any appraisal issues raised by the landowner. The attorney can help reach an agreed upon price based on the appraised Fair Market Value. Appraisers do not participate in price negotiations, but will respond to appraisal-related questions that arise. All appraisal-related questions and responses should be routed through the review appraiser.
15. Make certain that Realty Services has reviewed and is comfortable with the documented chain of title for your parcel and that it is clean and defensible. Realty Services will work with the title company to remove exceptions listed in the preliminary title policy as appropriate. Once the necessary items are resolved on the preliminary title policy, order a final title policy (review specifications with Law and Realty Services) to cover the purchase price of the parcel. THE STATE

OF ALASKA SHOULD BE NAMED AS THE INSURED OR CO-INSURED PARTY ON THE TITLE INSURANCE POLICY DEPENDING ON THE INTEREST ACQUIRED.

16. Have the attorney assigned to your project draft a purchase agreement to be reviewed by the Realty Services Section and the Landowner. Once agreement is reached on this document, you may have it signed by the appropriate individual (generally a Deputy Commissioner). This is a legally binding agreement that says we will buy the subject property at the agreed upon price. At this point, it is very important that the legal description is correct and that all issues associated with the acquisition have been resolved.
17. Your attorney will then work with the seller to draft a warranty deed, closing or escrow instructions and any other documents such as a conservation easement that are required by this transaction. These documents must be reviewed by the Realty Services Section prior to signature by the Deputy Commissioner.
18. Confirm with your administrative manager that the terms of the grant have been met particularly regarding the required percentage of matching funds.
19. As soon as you have a closing or settlement statement from the title company, you will need to draft a memo to the Chief Finance Officer, requesting that the State cut a warrant for the purchase price. You will need to include the CC from which to draw the funds and make sure that the memo is routed through an individual within your Division who has authorization to expend funds in the amount required. Be aware that it may take approximately three days to cut a check and have it delivered.
20. When all parties are satisfied that the documents are correct, the seller will execute the warranty deed, escrow instructions, and any other documents as appropriate. BEFORE asking the Deputy Commissioner to sign, take the time to have Realty Services and Law review and approve signature of the final documents. The State will then sign, accepting the warranty deed, with recording and transfer occurring according to the closing instructions. (Completeness of documents and sequence of recording these documents can be critical.)
21. KEEP COPIES OF ALL SIGNED DOCUMENTS. Be sure to provide Realty Services with copies of all signed documents for their files. After recording, conformed copies of recorded documents and the Title Insurance Policy should be sent to the Realty Services Section.
22. Work with your administrative manager to provide adequate documentation of all “in kind” contributions and other documentation that may be required by the grantor if grant funding is used in the purchase. Documentation of the state and/or non-federal match will be required in order to secure reimbursement of expenditures (including the cost of the land) from the Federal government. Should you not be able to document the required match, you place the department in a position where funds may need to be diverted from one program or project to support yours. Failure to perform according to the terms and conditions of a grant can potentially put future projects and other programs at risk.
23. Work with the appropriate regional office of the Division of Mining, Land, and Water and the Realty Services Section to develop a Management Agreement and strategies to ensure compliance with the terms of this agreement.

This document is meant to provide guidance to those acquiring an interest in land on behalf of the state. While this guidance is written primarily for State employees, the steps described will pertain to any acquisition. If the project is being facilitated by an NGO, these tasks are likely to proceed more smoothly if a close working relationship is developed with a State partner and the NGO. Each acquisition is unique and requirements of funding sources, final disposition of a parcel, the interest acquired may indicate a need for modifications to the methods described above. Work with your team to identify and pursue the most appropriate course of action for each parcel.

LAND ACQUISITION CHECKLIST

Item#	Task	Date	Contact or assigned individual
2	Commissioner's Office Approval.		
3	Notify Realty Services, request staff.		
4	Notify Dept. of Law, request AG.		
5	Legislative Authorization.		
6	MLW, Regional Office.		
7	Document		
7a	Administrative staff contact; identify terms and conditions of funding source.		
7b	Provide documentation to file, Realty Services and Law throughout process.		
8	Preliminary Commitment for Title Insurance.		
8a	Prelim to Realty Services.		
8b	Prelim to Dept. of Law.		
9	Legal description review.		
9a	Survey determination.		
10	Subsurface Assessment		
11	Level I Hazmat Assessment.		
12	Appraisal.		
13	Review appraisal.		
14	Share appraisal with team and landowner. Resolve appraisal issues.		
15	Negotiate and resolve value issues based on final appraisal.		
16	Complete title review.		
17	Order title policy with input from Law and Realty Services.		
18	Purchase agreement.		
19	Document production, warranty deed, closing instructions, conservation easement, etc.		

20	Realty Services and Law review closing documents. Seller reviews documents.		
21	Verify terms, conditions of grant are met.		
22	Memo requesting warrant.		
23	Final review of closing documents.		
24	Sign closing documents.		
25	Make copies of signed documents, review files for completeness and send copies to Realty Services.		
26	Work with admin mgr to ensure documentation of compliance with terms and conditions of any grant.		
27	Prepare a final narrative report for each grant including a summary of accomplishments, expenditures, and match.		
28	Work with region to develop Management Agreement and strategies to ensure compliance with terms and conditions.		