

Applying for a Grant Involving the Acquisition of Land or an Interest in Land: What You Should Know

There are many sources of grant funding available for a variety of projects and proposals. In some cases the state will be applying for a grant for funds to purchase land for state ownership. In other cases, grant funds may be used to purchase land, title to which will be held by another entity, such as a municipality. In the latter case, where the state functions essentially as a pass-through to another entity, most of the same considerations apply. Grants often require that the land acquired be used in a particular fashion and provide that if it is not the grant recipient (state) must repay the grant funds. Since this requirement exists even where the state does not take title to the property the state needs a method to insure that the property is used as required by the grant. Therefore, when title does not vest with the State, the state will require indemnification by the entity ultimately holding title. If you are working with an NGO or other organization in the development of a grant proposal be certain that all parties are aware of this requirement prior to submittal of the grant application. (language attached)

Grant funding is a viable option for leveraging scarce state resources to address access issues or other management concerns. When developing a grant proposal do the preliminary research needed to ensure that your proposal protects the state's interests and provides adequate funding and a reasonable timeline to ensure successful implementation. Be certain that the long-term outcomes of your project benefit the state, local communities, and/or the public. Consider the following: (Note that many of the considerations described below apply to all state land acquisitions and are not unique to grant funded acquisitions.)

1. Review the grant requirements, identify and evaluate any long-term commitments or requirements required by the grantor of the grantee.
2. Review the enabling legislation and associated regulations for any potential obligations by the state. There are always terms and conditions. What are they? What is the objective of the program? Is it consistent with the desired use of the land?
3. Will the proposal have community support? Will the proposal have the Administration's support? Will the proposal have legislative support? Remember, you will need to secure legislative authorization to receive and expend any funds the state is awarded. Consider working with legislators in the affected area to evaluate and ensure their support prior to submitting the proposal. Depending upon the structure within your Division or Department, these actions may need to be elevated and pursued at a higher level. For instance, within DNR, Commissioner's office approval is required prior to proposal submittal.
4. Are there administrative requirements associated with this grant? What are they? Who will be responsible for fulfilling them? What is the cost to the Division or your program to fulfill these requirements? Can the proposal be structured in a way that minimizes this impact? Recognize that you will be required to submit

progress reports, financial reports and supporting documentation, and comply with the grantor's administrative requirements.

5. Conduct a preliminary review of the parcel being considered by looking at the status plats in order to provide an initial determination regarding obvious complications associated with title of the parcel. Are there existing easements that may compromise the parcel's benefit to the state, are there known HAZMAT problems, are there human use or access issues that may present management problems. Will acquisition of the parcel solve existing management problems, enhance public access, and/or provide economic benefits to the community? Who owns the subsurface estate? Note that the subsurface estate is the dominant estate and development of subsurface resources may present challenges for the project.
6. If the grant is worth pursuing, i.e. the benefits to the state and the public outweigh the costs, financially, programmatically, in the short-term and in the long-term, consider the following in developing your proposal and budget request:
 - a. The impact on Administrative Services Division; consult with procurement and financial services when developing a budget and or proposing subcontracting efforts.
 - b. Consult with your own administrative staff to ensure that they will be able to fulfill the administrative requirements of the grant. Include sufficient funds in your budget to cover their time. If this is a pass-through grant to a third party be aware that someone will have to write the grant or other instrument that conveys both the financial benefits as well as the financial and programmatic responsibilities to the third party.
 - c. The requirements of the Division of Mining Land and Water (MLW) as it takes title to state land. Land, or an interest in land, acquired by the state pursuant to a grant is taken into state ownership through the Realty Services Section of MLW and then assigned to the appropriate Department or Division for management. You will likely need:
 - i. Preliminary Title report
 - ii. Title review by Realty Services Section; consult with Chief, Realty Services Section to develop an estimate of the time and money needed to complete this step.
 - iii. Title Insurance (estimate cost, standard rates apply)
 - iv. Closing costs
 - v. Hazardous materials review, Level I; consult with the Division of MLW, to develop an estimate for the amount of time and money required to complete this step. Hazmat assessments' field components must be done when the site is free of snow. A HAZMAT assessment may be contracted to the private sector however, a land manager from DNR should physically inspect the site before purchase.
 - vi. Subsurface assessment.
 - vii. Appraisal to ensure that the parcel is purchased at no more than fair market value. If federal funds are involved, the appraisal will need to be done to federal standards. A review by a state or federal review appraiser will be required to ensure that it complies with

- federal appraisal standards. Consult with the State Review Appraiser to develop an estimate on the cost of the appraisal, identify any special appraisal requirements, and develop an estimate of the time and cost associated with completing the review of the appraisal. These tasks can either be done in house or contracted out depending upon availability of staff and resources.
- viii. NEPA compliance where federal funds are involved. Most land acquisitions will qualify for a Categorical Exclusion under NEPA but arrangements must be made with a federal agency to write this determination.
 - ix. A Purchase Agreement that outlines responsibilities of the parties involved in the transaction. This document will legally define the parcel, a timeline for the acquisition, tasks required by the parties to the agreement and who will pay for what tasks (i.e. survey, appraisal, taxes) and address contingencies that may arise throughout the process. This document and other closing documents will either be developed or reviewed by the Department of Law in order to ensure that state interests are protected. A purchase agreement is also a negotiating tool. Allow sufficient time for this step in developing your grant timeline.
 - x. Be aware that surveys, platting approvals, zoning changes, etc. may in some cases be needed. Consult with Realty Services, Law, and Surveys for help in identifying these issues and a strategy for meeting these needs.
 - xi. An analysis of existing conditions may be required either by the grantor or by the Realty Services Section in order to establish baseline conditions, facilitate monitoring, and document compliance with the terms of the grant/easement. Consult with Realty Services for help in determining need and the level of effort associated with such an exercise. Build in costs accordingly.
 - xii. Review of closing documents, deeds, conservation easements etc. by the Department of Law. Be sure to build time for this review into your proposal timeline.
 - xiii. A document from Realty Services Section assigning management rights to the appropriate Department or Division if the land is acquired by the State. Realty Services will execute this document but you may be expected to provide backup documents and support for this effort.
7. When writing the grant proposal establish realistic timelines for the accomplishment of proposal goals, objectives, and deliverables based upon the input from people whose services you will require.
 8. Develop a reasonable budget designed to fulfill the terms and objectives of the grant with minimal financial and workload impact to DNR. Ensure that DNR staff time is compensated or, if donated, calculated as an in-kind match. In some circumstances this may be appropriate but must be agreed upon by those

- impacted. Include an administrative overhead rate based on direction from financial services.
9. If the grant is a pass-through to another agency or organization, the above referenced considerations must still be addressed. In the case of National Coastal Wetlands Grants, the state receives the funds from USFWS, enters into a grant agreement with a third party, and is responsible for ensuring that those funds are used according to the terms of the grant in perpetuity. In this instance, to protect our interests, the State will hold a conservation easement on any property purchased by a third party with these funds in order to ensure that the recipient adheres to the terms of the grant and applicable federal law. Any change in the terms of the real property title will require the permission of the U.S. Fish and Wildlife Service. Other grantors may have similar requirements.
 10. Consult with Department of Law prior to submitting any grant application. Solutions to terms and conditions such as those described in #9 above are not always readily apparent and may become clearer with legal assistance. For this reason it is important to complete step #2 described above.
 11. Have your grant application reviewed by someone familiar with this grant program. A second pair of eyes is always beneficial.
 12. Secure approval from DNR Commissioner's office unless otherwise designated.
 13. Notify the Chief of Realty Services Section, the Hazmat Coordinator, and the DNR Appraiser of submittal of the grant application. Provide them copies or a one-page summary of the proposal for their records. Make sure you have met their needs.
 14. Once grant funds are awarded, work with those involved in the state budget process to ensure that a CIP request to receive and expend grant funds is included in the state budget request. This process takes place each September -November. Note that even if grant funds are awarded, without the appropriate receipt authority you cannot receive funds or implement the grant.
 15. Be aware that most grants will not reimburse pre-grant agreement costs. USFWS will only reimburse pre-grant agreement costs that are directly attributable to the grant's land acquisition. Staff time is not considered eligible.
 16. Keep those potentially affected by the grant informed of the progress of the proposal review, and if funds are awarded, let them know immediately what the anticipated timelines and expectations will be so that work can be assigned and scheduled in a timely manner.
 17. As you work through the grant implementation process, be sure to keep the Realty Services Section up to date on your progress. Have them review documents such as the purchase agreement, deeds, and conservation easements as they are being prepared. This will expedite the final review and ensure that there are no surprises toward closing the transaction.
 18. Maintain a file documenting the progress of the grant.

Indemnification paragraph:

Land acquired by the State of Alaska using federal grant monies comes with restrictions. For instance, the land must be used and maintained in accordance with the public law creating the federal grant, as well as other federal laws and regulations and the grant agreement. Most federal grants require that if the land is not so used and maintained, the State may be responsible for reimbursing the federal government for the grant monies. The State is willing to assume this responsibility when taking fee title to land. However, when the State is acquiring a conservation easement using federal grants, the State will REQUIRE that the following paragraphs be part of the conveyance documents:

Rights of the State

Subject to the terms and conditions of this Easement, the State shall be entitled to enforce the terms of the following restrictive covenants against the Grantor as fee simple owner of the Property:

- a. To prohibit or enjoin any activity on the Property that is inconsistent with Public Law 101-646, 50 C.F.R. §84, and other applicable federal laws and regulations and the Grant Agreement.
- b. To enter the Property at reasonable times in order to monitor the Grantor's compliance with and otherwise enforce the terms of the Easement. The State shall give the Grantor at least seven (7) days prior written notice of such entry and will not unreasonably interfere with the Grantor's use and quiet enjoyment of the Property.
- c. To require, enforce or undertake restoration of the areas or features of the Property which may be damaged by any activity or use that is inconsistent with Public Law 101-646, 50 C.F.R. §84, and other applicable federal laws and regulations and the Grant Agreement.

Costs and Liabilities

- a. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.
- b. The State shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property as a result of this Easement.
- c. The Grantor shall hold harmless, indemnify, and defend the State and its employees, officers, trustees, governors, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any

way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter relating to or occurring on or about the Property, regardless of cause, except to the extent due to the negligence of the Indemnified Parties; or (2) breach of the Grantor's obligations specified in this Easement.

Disposition of the Property

The Grantor may not dispose of the Property, or encumber its title or other interest in the Property without prior written permission from:

Commissioner
Department of Natural Resources
State of Alaska
550 West 7th Ave.
Anchorage, AK 99501

and

federal agency administering the grant

or their duly authorized designees.

In the event that the Grantor disposes of the Property or encumbers its title or other interest in the Property without the written permission of the State and federal government as provided herein and the federal government requires that the State reimburse it a portion or all of the Grant proceeds, the Grantor shall reimburse the State that same amount.

Use and Maintenance of the Property

The Property shall be used or maintained in a manner consistent with Public Law _____, ___ C.F.R. §__, and other applicable federal laws and regulations and the Grant Agreement. In the event the Property is used for reasons inconsistent with Public Law _____, ___ C.F.R. §__, and other applicable federal laws and regulations and the Grant Agreement, the Grantor shall, at the request of the State, cease the violative activity and correct any adverse effects caused by the inconsistent activity using non-federal monies. In the event the Grantor refuses to correct adverse effects and the State is required by the federal government to correct said effects, the Grantor shall reimburse the State its costs for correcting the adverse effects using non-federal monies.