Guidelines to Allocate Funds for Metropolitan Highway Rights of Way

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GUIDELINES TO ALLOCATE FUNDS
FOR METROPOLITAN HIGHWAY RIGHTS OF WAY

INTRODUCTION

The Metropolitan Council is charged with planning for the orderly and economic development of the Twin Cities Metropolitan Area. As part of that work, the Council plans for the direction transportation investments should take through the year 2040. The Council's Transportation Policy Plan outlines a metropolitan highway system consisting of interstate highways and other principal arterials. In some instances, counties or municipalities have attempted to protect a proposed highway right of way from development by adopting an official map. The official map process is led by municipalities following state statute. For state highway official maps, MnDOT works with the city to identify the specific limits on the new highway right of way. However, these local governments have not always had sufficient funds to acquire small parcels of land when development is proposed within the officially mapped area, which has sometimes forced them to grant building permits within a proposed highway right of way.

In 1982 the Minnesota Legislature acted to help counties and municipalities acquire these parcels by adopting the Metropolitan Right-of-Way Reservation Act (Minn. Stat. Sec. 473.167, Subd. 2). The law authorized the Metropolitan Council to levy a regional property tax of up to 5/100ths of a mill to establish a revolving fund for advance acquisition of metropolitan highway rights of way threatened by imminent development. The funds are used by the Council to make loans to counties, towns and cities, to be repaid at a later date to purchase property within rights of way of state trunk highways or highways on the metropolitan system Loans are made prior to the actual acquisition and construction schedules developed by the constructing agency.

The first proceeds of the tax (about $1 million annually) were available in July 1983. Since then several cities have received loans to purchase land within the rights-of-way of two planned highways. An annual status report on the revolving fund is prepared for the Council by staff to assist the Council in determining a levy amount by October.

The Right-of-way Acquisition Loan Fund (RALF) program was originally intended to purchase property for the completion of highways on new alignments. The metropolitan highway system in the Twin Cities has been constructed and opportunities for highways on new right of way are limited. The RALF program is currently used primarily to purchase property for the expansion of existing highways on the metropolitan highway system, including the construction of interchanges.

Although the law is fairly specific regarding eligibility and procedures, certain aspects require clarification. The Council established the guidelines below for distribution of these funds. These procedures have been modified since the original guidelines were adopted in December 1983.
Part A describes the procedures for advance acquisition loans to purchase land when development is imminent. Part B describes the procedures to use for hardship loans to purchase homestead properties.

In 2014, the Council took action to limit the eligibility of properties for the RALF program. The new eligibility requirements are stricter than those allowable under the statute. Under the new eligibility requirements, the Council may make loans:

- to avert the imminent conversion or the granting of approvals that would allow the conversion of property to uses jeopardizing its availability for highway construction as documented in Part A; or
- in hardship situations as documented in Part B

In addition, parcels acquired as part of the RALF program must be for projects that are consistent with the 2040 Transportation Policy Plan.

Part A: Eligibility and Loan Acquisition Procedures

I. Eligibility Guidelines

A. Any county, town or statutory or home rule city within (or partially within), the Seven-County Metropolitan Area is eligible to apply for a loan. The Minnesota Department of Transportation is not eligible.

B. Loans are available for the purchase of property within a proposed right-of-way of a state trunk highway shown on an official map adopted pursuant to Minn. Stat. 394.361 or 462.359. Loans are also available for the purchase of property within a proposed right-of-way of an interstate freeway or major arterial highway designated by the Metropolitan Council as a part of the metropolitan highway system plan and approved by the Council pursuant to Minn. Stat. Sec. 473.166., Subd. 1.

C. The Council may make loans:

- to avert the imminent conversion or the granting of approvals that would allow the conversion of property to uses jeopardizing its availability for highway construction

D. Property to be acquired must have a marketable title and may not be park land or land which is either on, or eligible for, inclusion on a historic register.

E Environmental Due Diligence Process: Property to be acquired must have an acceptable Phase I Environmental Due Diligence completed to identify any possible activities on the property which could cause soil/groundwater pollution and establish the chain of title for environmental contamination liability. The acquiring agency may be asked by MnDOT to obtain a Phase II Environmental Due Diligence based on the results of the Phase I findings.

II. Advance Acquisition Loan Application Procedures

A. Preliminary Approval

1. The applicant submits, for preliminary Council approval, an application including, as a minimum:

a. Resolution of local jurisdiction authorizing loan application and purchase of property.

b. Statement of need to acquire property, including evidence regarding imminent conversion.

c. Estimated amount of loan requested.

d. A legal description of the property to be acquired, its acreage, and a map showing the property in relation to the highway right-of-way.

2. For land within state trunk highways, Council staff will forward the application to MnDOT for advisory comments within 45 calendar days. At this time, MnDOT will have the option to acquire the land itself.

3. The Council, as part of #2, will request that MnDOT determine whether or to what extent the land lies within a proposed right-of-way. If MnDOT determines that any part lies outside the proposed right-of-way, MnDOT shall be requested to determine whether such part has economic value. If MnDOT determines such part to be an uneconomic remnant, the entire parcel shall be eligible for purchase with a right-of-way acquisition loan. If MnDOT determines such part to be an economic remnant, only such part as lies within the proposed right-of-way shall be eligible for purchase with a right-of-way acquisition loan. The Council shall accept MnDOT's determination regarding the economic value of excess property.

4. Within 90 calendar days from original receipt of preliminary application, the Council must consider the application, including any MnDOT comments, and will either disapprove or give preliminary approval and authorize the applicant to proceed with the application process.

B. Final Approval

1. After receiving preliminary approval, the applicant must obtain and submit to MnDOT an appraisal and a statement of administrative costs. On more complex appraisals of higher valued property, MnDOT may require two appraisals. The appraisals shall be made by an appraiser on the list of Qualified Appraisers Available for State Contracts. MnDOT will have 30 calendar days to certify the appraisal. No offer can be made to the property owner until MnDOT certifies the appraisal.

2. After MnDOT certifies the appraisal, the applicant may begin negotiations with the property owner. If the negotiated sale price is above the appraised value of the property (i.e., an administrative settlement), MnDOT must review it and approve or disapprove the sales price. In cases where the property to be acquired is not within a state highway right-of-way, the appraisal review would be performed by the constructing agency.

3. The applicant submits the appraisal certification, purchase agreement, (administrative settlement, if required), statement of administrative costs, and draft loan agreement to the Council as a final application.

4. The Council gives final approval or disapproval the loan. If the loan is approved, a loan agreement for the purchase price of the property and the costs incurred by the applicant may be executed.

5. The Council will provide MnDOT an electronic copy of the executed loan agreement.

III. Loan Agreement

After the Council approves a loan application, Council legal staff will prepare a final loan agreement that will include at least the following points and any others the Council might specify as a condition of approval.

A. Loans bear no interest.

B. Loans include the cost to purchase the property and will include all pre-approved administrative costs incurred by the acquiring public agency.

C. A private property owner may elect to receive the purchase price either in a lump sum or in not more than four annual installments without interest on the deferred installments. If the purchase agreement provides for installment payments, the Council shall make the loan in installments corresponding to those in the purchase agreement.

D. Advance acquisition loans may not include relocation costs of persons or property.

E. The recipient of a loan shall convey the property as described in the loan agreement for the construction of the highway to the constructing agency at the same price of the loan.

F. In the event the loan recipient is also the highway constructor (such as for a county highway), the loan shall be repaid at a time prior to actual construction.

G. Upon notification by the Council that the plan to construct the highway has been abandoned, or the anticipated location of the highway changed, the recipient shall sell the property at a market value in accordance with the procedures required for disposition of property.

H. All net rents and other money received because of the recipient's ownership of the property, and all net proceeds from the conveyance or sale of the property, shall be paid to the Council.

I. Every consideration should be given to renting and maintaining acquired improvements (including buildings) in a manner compatible with the surrounding environment until full project acquisition.

PART B: Hardship Loans

I. What is “Hardship?"

In 1985 the Minnesota Legislature amended the Metropolitan Right-of-Way Reservation Act to allow the Council to use the revolving fund for loans to purchase “hardship” properties in a proposed state highway project.

On occasion, a residential homeowner must sell his owner occupied home, but is unable to do so only because the property lies within the right-of-way of a planned road. This is known as a hardship situation. If certain factors are satisfied, the Metropolitan Council may lend a community the funds to buy the homestead property before the property is acquired for highway construction.

Hardship situations fall under one of the following two categories:

A. Health.

1. Advanced age, debilitating illness or injury, or other long-term handicap where present housing facilities are inappropriate or cannot be maintained by the owner.

2. Other extraordinary conditions which pose a significant threat to the health, safety, or welfare of the owner-occupants or household member for whom they are responsible.

B. Financial.

1. Litigation (probate).

2. Loss of employment and the need for distant relocation for other employment.

3. Retirement and financial inability to maintain current residence.

4. Pending mortgage foreclosure.

5. Job transfer to a distant site of employment.

6. Any documented circumstance similar in impact to those stated above.

II. Documenting Hardship

Qualifications for hardship acquisitions must be fully documented. Examples of acceptable documentation include, where appropriate:

A. A doctor's statement fully and clearly describing the medical reasons for which the patient should relocate.

B. A certificate from a real estate agent indicating the price for which the property was listed on the open market for at least 90 days. The agent must also certify that his good faith effort to sell the property was unsuccessful.

C. A financial statement explaining how financial difficulties constitute the basis for hardship.

D. A letter from employer affirming that the owner is to be transferred to a specified location, or similar documentation regarding loss of employment.

E. Court records and documents relating to any legal actions which provide support for the hardship basis.

F. Those portions of an income tax return supporting the hardship circumstance.

The above cannot be construed as being all inclusive for every situation. Since it is conceivable that there will be times when the above documentation would not constitute appropriate or sufficient documentation, it would be acceptable to provide alternative data that will accomplish the required verification.

III. Eligibility Requirements

For a jurisdiction (i.e.. an "acquiring authority") to be eligible for a hardship loan, the property to be acquired must meet all of the following requirements:

A. Be an owner occupied single family dwelling which may include the surrounding land of 10 or fewer acres.

B. Be located in any county, town or statutory or home rule city within the Seven-County Metropolitan area.

C. Be located within a proposed state trunk highway or principal arterial right-of-way.

D. The property may not include parkland or land that is either on or eligible for inclusion on a historic register.

E. In addition, the owner and/or applicant must document that a hardship exists.

F. Environmental Due Diligence Process: Property to be acquired must have an acceptable Phase 1 Environmental Due Diligence completed to identify any possible activities on the property which could cause soil/groundwater pollution and establish the chain of title for environmental contamination liability. The acquiring agency may be asked by MnDOT to obtain a Phase II Environmental Due Diligence based on the results of the Phase I findings.

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IV. Hardship Loan Application Procedures

A. Preliminary Approval

1. The Acquiring Authority submits to the Metropolitan Council for preliminary approval:

a. A statement that the eligibility requirements are met.

b. A written request from the property owner asking for hardship acquisition, setting forth the nature of the hardship.

c. Documentation of inability to sell property at the fair market value as a result of highway project development. (Submit realtor's certification that property has been on the market and unsold for 90 days.)

d. A statement that federal or state participation is not available.

e. A statement from the authority that relocation will be provided in accordance with Federal Statute 49 CFR Part 24.

f. MnDOT statement that the acquisition will not influence the environmental assessment of the project, including the "no build' alternative. A Phase I Environmental Due Diligence is required from the acquiring authority.

g. An estimate of the loan amount based on estimate of the fair market value of the homestead property plus relocation costs and less salvage value.

h. A legal description of the property to be acquired, its acreage, and a map showing the property in relation to the highway right-away.

i. Identification of any known or obvious cleanup problems (such as hazardous waste) on the property.

2. The Council staff will forward the application to MnDOT for advisory comments within 45 calendar days. At this time, MnDOT will have the option to acquire the property itself.

3. The Council, as part of #2, will request that MnDOT determine whether or to what extent the land lies within a proposed right-of-way. If MnDOT determines that any part lies outside the proposed right-of-way, MnDOT shall be requested to determine whether such part has economic value. If MnDOT determines such part to be an uneconomic remnant, the entire parcel shall be eligible for purchase with a right-of-way acquisition loan. If MnDOT determines such part to be an economic remnant, only such part as lies within the proposed right-of-way shall be eligible for purchase with a right-of-way acquisition loan. The Council shall accept MnDOT's determination regarding the economic value of excess property.

4. Within 90 calendar days from original receipt of the preliminary application, the Council will consider the application, including any MnDOT comments, and will either disapprove or give preliminary approval and authorize further negotiations by the applicant.

B. Final Approval

1. After receiving preliminary approval, the applicant will obtain and submit to MnDOT an appraisal and a statement of administrative costs. On more complex appraisals of higher valued property, MnDOT may require two appraisals. The appraisals shall be made by an appraiser on the list of Qualified Appraisers Available for State Contracts. MnDOT will have 30 calendar days to certify the appraisal. No offer can be made to the property owner until MnDOT certifies the appraisal.

2. After MnDOT certifies the appraisal, the applicant may begin negotiations with the property owner. If the negotiated sale price is above the appraised value of the property (i.e., an administrative settlement), MnDOT must review it and approve or disapprove the sales price.

3. The applicant submits the appraisal certification, purchase agreement, (administrative settlement, if required), statement of administrative costs and draft loan agreement to the Council as a final application.

4. The Council approves or disapproves the loan. If the loan is approved, a loan agreement for the purchase price of the property and the costs incurred by the applicant may be executed.

5. The Council will provide MnDOT an electronic copy of the executed loan agreement.

V. Loan Agreement

After the Council approves a loan application, Council legal staff will prepare a final loan agreement that will include at least the following points and any others the Council might specify as a condition of approval:

A. Loans bear no interest.

B. Loans include the cost to purchase the property and will include all pre-approved administrative costs incurred by the acquiring public agency.

C. A private property owner may elect to receive the purchase price either in a lump sum or in not more than four annual installments without interest on the deferred installments. If the purchase agreement provides for installment-payments, the Council shall make the loan in installments corresponding to those in the purchase agreement.

D. For Hardship acquisitions, RALF acquisition loans may include relocation costs of persons or property. Relocation will be provided in accordance with Federal Statute 49 CFR Part 24.

E. A real estate agent may not receive a commission or any other compensation from a property owner if the property is purchased with a hardship loan.

F. The recipient of a loan shall convey the property as described in the loan agreement for the construction of the highway to the constructing agency at the same price of the loan.

G. Upon notification by the Council that the plan to construct the highway has been abandoned or the anticipated location of the highway changed, the recipient shall sell the property at a market value in accordance with the procedures required for disposition of property.

H. All net rents and other money received because of the recipient's ownership of the property and all net proceeds from the conveyance or sale of the property, including relocation costs, shall be paid to the Council.

I. Every consideration should be given to renting and maintaining acquired improvements (including buildings) in a manner compatible with the surrounding environment until full project acquisition.