



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

June 13, 2016

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources: Stewardship Grant for Ducks Unlimited Rush Lake Tews Project
in Winnebago County -- Agenda Item VI

REQUEST

On May 4, 2016, the Department of Natural Resources (DNR) requested approval under s. 23.0917(6m) of the statutes to provide a grant of \$270,400 from the land acquisition subprogram of the Warren Knowles-Gaylord Nelson Stewardship program to Ducks Unlimited for the acquisition of 150.55 acres in Winnebago County. The parcel, known as the Rush Lake Tews tract is located in the Town of Nepeuskun. Notice of an objection to the proposed grant was made on May 24, 2016.

ANALYSIS

DNR would award Ducks Unlimited up to \$270,400 in the form of a matching grant from the land acquisition subprogram of the stewardship program to reimburse them for a portion of the cost of acquiring 150.55 acres in the Town of Nepeuskun, Winnebago County. In addition, \$267,300 in funds from the Lower Fox River/Green Bay Natural Resources Damage Assessment (NRDA) trust fund [made up of funds from settlements with responsible parties related to contamination of the Lower Fox River system by the release of polychlorinated biphenyls (PCBs)] would be utilized as match for the project. Wetlands America Trust, Inc., the land trust affiliate of Ducks Unlimited purchased the property from Tews Acres, LLC, in October, 2015 for a purchase price of \$642,000. The purchase included the 150.55 acres included in the proposed stewardship grant, as well as an additional 10 or 11 acres, which was excluded from grant eligibility due to a lack of clear title.

According to the Department, the property is representative of the conservation and restoration targets of DNR's Glacial Habitat Restoration Area project (GHRA), a habitat

conservation program focused on preservation and restoration of grasslands and wetlands amid the established croplands of Columbia, Dodge, Fond du Lac and Winnebago counties. Of the 21 fiscal year 2015-16 Habitat Area NCO stewardship grant applications, this project was ranked second. The property includes over three-quarters mile of shoreline along Rush Lake, the largest prairie pothole lake east of the Mississippi River. Prairie potholes are wetland areas in shallow depressions formed when the glaciers receded. The lake provides an important brood water for mallards, blue-winged teal, and wood ducks as well as critical migratory habitat for several other waterfowl. The property has been a priority for DNR's GHRA partners (including the U.S. Fish and Wildlife Service and Ducks Unlimited) for waterfowl and grassland bird habitat. The acquired property would be managed in coordination with DNR plans for adjacent properties and the GHRA master plan. Nature-based outdoor recreation including hunting, fishing, trapping, hiking, and cross-country skiing would be allowed on the property.

2015 Act 55 reduced the amount of authorized bonding available for the stewardship program. Beginning in 2015-16, \$21 million annually is available for the land acquisition subprogram (of the \$33.25 million total available annually). Of that amount, the Department is required to set aside at least \$7 million (previously \$12 million annually) for matching grants that may be awarded only to non-profit conservation organizations (NCOs). Grants to NCOs (such as Ducks Unlimited) for land acquisition are generally provided for up to 50% of the land's current fair market value (75% in certain circumstances) plus certain other acquisition costs as determined in rule by DNR. At the end of each fiscal year, any remaining NCO allocation is available for grants to county forests in the subsequent year. For fiscal year 2015-16, DNR expects to award approximately \$5.6 million in grants to NCOs (including the proposed grant to Ducks Unlimited), leaving \$1.4 million which would be available for county forest grants in fiscal year 2016-17. This would be in addition to the \$5 million each year set-aside specifically for county forest grants.

Two appraisals were commissioned for the property. Appraisals were completed in May, 2014, for Ducks Unlimited (DU) and March, 2016, for DNR. Both appraisals utilized the market approach which involves evaluating properties recently sold in comparison to the property being appraised, with adjustments made to the sale prices of the comparison properties to reflect differences that may affect the per acre value (such as size, topography, location, water amenities, time of sale, and access). The first appraisal (for DU), utilized the market approach to establish a final value of \$602,200. The second appraisal (for DNR) also utilized the market approach to establish a final value of \$452,000. A DNR real estate supervisor conducted a review of the two appraisals and developed a third opinion of value based on this review of \$534,500. DNR approved the \$534,500 amount for the purposes of determining grant value.

TABLE 1

Appraisals	<u>Per Acre Value</u>	<u>Total Value</u>
Appraisal #1 (commissioned by Ducks Unlimited)	\$4,000	\$602,200
Appraisal #2 (commissioned by DNR)	3,000	452,000
Appraisal Review (DNR-in-house review)	3,550	534,500

The DU appraisal completed in May, 2014, utilized the market approach to establish a final value of \$602,200. The property is zoned Agriculture A2, which allows agricultural uses, forestry uses, and single family residential. The appraisal noted that the A2 District is intended to accommodate both large and small-scale farms and hobby farms. Zoning allows for scattered residential lots, although agriculture is the predominant land use. The appraisal noted the subject property was approximately 32 percent tilled agricultural land and approximately 15 percent forested. However, it is also noted that the USGS topographic map classifies the subject parcel as 70 percent upland. The highest and best use was considered to be agriculture with secondary use benefits derived from recreation. Four sales of properties with similar highest and best use were utilized (three listings from Winnebago County: one from 2010 and two from 2012; and one listing from 2013 in Waushara County) for comparison. The original sale prices ranged from \$1,600 per acre to \$4,400 per acre. Adjustments were made between the subject property and each of the sales for location, access/utilities, land cover, land quality, and water features. After adjustments, the indicated range for the subject property was \$1,800 to \$4,700 per acre. Two of the sales were considered most similar to the subject property with regard to access, land cover, and makeup of wetland and agricultural land. These included Sale #1 for \$3,800 per acre in 2010 and Sale #4 for \$2,200 in 2013. The appraisal also considered an additional sale from 2010 for reference that was considered a similar sale due to similar makeup of tillable and forested land. The 207-acre property was sold for \$818,000 (\$3,952 per acre) in Fond du Lac County. These sales were assigned the most weight and the appraisal determined a final value of \$4,000 per acre or \$602,200. The appraisal notes that "the strongest markets in central Wisconsin have been quality agricultural properties" and that generally, there was an upward trend in the market value of agricultural property in 2014.

The DNR-commissioned appraisal, in March, 2016, utilized the market approach to establish a final value of \$452,000. The appraisal was done as a retrospective appraisal as of October, 21, 2015, the date when the property was conveyed to Wetlands America Trust, Inc. (the land trust affiliate of Ducks Unlimited). The appraisal noted the property was approximately 33 percent tillable land with the remainder low wetland. The highest and best use was determined to be rural residential/agricultural/recreational use. Four sales were utilized for comparison: two in Waupaca County in 2015; and two in Outagamie County (one in 2014 and one in 2015). The original sale prices ranged from \$3,000 to \$3,800 per acre. Adjustments were made between the subject property and each of the sales for location, land size, access, land cover, presence of wetlands, water features, and utilities. After adjustments, the indicated range for the subject property was \$2,800 to \$3,800 per acre. Three of the four sale prices, when adjusted, were within \$315 of each other, with the first sale being \$588 higher than the next higher. The appraisal considered this first sale an outlier (possibly due to timber harvest potential which would not apply to the subject parcel) and applied the least weight to it. One of the sales was made to DNR, and although based on an independent appraisal, was also given less weight. The final value was established at \$3,000 per acre or \$452,000 (rounded to the nearest thousand). The appraisal notes that sales of vacant land (such as the subject property) have begun to increase but that land values have not increased since the economic recession and have remained stable over the last five years.

The third opinion of value was performed as a review of the original two and to evaluate the significant difference in per acre values. In reviewing the first appraisal (commissioned by DU, at

\$602,200), the reviewer noted that the appraiser incorrectly identified the subject property as 70% upland, with the remainder wetland, rather than approximately 47 to 50% upland (the amount calculated based on the DNR wetland delineation map and soil types). The reviewer stated that this led to a higher opinion of value than was justified. Also, the reviewer noted that this appraisal was completed in May, 2014, and that the sales used for comparison were older (one from 2010, two from 2012, and one from 2013) lending them less credibility for determining a present value. Further, the reviewer pointed out that the appraisal should have determined the best use of the property to be rural residential/agricultural/recreational rather than agricultural as the property is only approximately one-third agricultural (the reviewer notes an earlier appraisal of the property included additional agricultural acreage). The reviewer, when determining a third opinion of value, chose not to use the third sale used in Appraisal 1 because the highest and best use in that appraisal was agriculture and the property was 83% tillable land which the reviewer deemed not comparable to the subject property. After considering the additional wetland acreage pointed out by the DNR review appraisal, the appraiser stated that they would consider their appraisal to be at the high end of the value range.

In reviewing the second appraisal (commissioned by DNR, at \$452,000), the reviewer noted that the appraiser made some adjustments that the reviewer did not believe were well supported which led to an artificially low determination of value. In addition, the reviewer noted that the fourth sale used in the comparison was, in the reviewer's opinion, the most similar to the subject property and sold for \$3,570 per acre, yet the appraiser's final value ascribed to the property was \$3,000 per acre. The reviewer also notes that the appraiser may have underestimated the percentage of the property that was upland, which the reviewer stated was another reason why the appraiser chose a value at the lower end of the range than was perhaps justified. Upon further review, the second appraiser indicated they felt their value was justified, but that a somewhat higher value, say \$3,250 per acre, would not be unreasonable.

Overall, the reviewer's opinion of value was based on what the reviewer considered the six best sales from both appraisals. As noted, the reviewer did not use the third sale from Appraisal 1 as it was not deemed comparable (too much agricultural land as compared to the subject property). The appraiser also did not use the second sale from Appraisal 1 due to its primary highest and best use of recreation and the property being almost all wetland, whereas the subject property had a mixed highest and best use which included a significant amount of agricultural land. The six sales used by the reviewer all had a mixed highest and best use of rural residential/agricultural/recreational similar to the subject property. According to the reviewer, it is important to note that the sales with more tillable land sold for higher prices. After making the various market adjustments, the appraiser arrived at an opinion of value of \$3,550 per acre, rounded to \$534,500 for the property, which was approved by DNR for use in awarding the stewardship grant.

Under the stewardship program, grants provided to local units of government and NCOs are generally based on 50% of the acquisition cost. Under s. 23.0917(7), acquisition cost is statutorily defined to include the sum of the land's current fair market value and other acquisition costs, as defined by DNR rule. Under administrative rule, acquisition cost is defined as the fair market value of the property as determined by DNR valuation guidelines and reasonable costs related to the purchase of the property as specified in the rule. The \$270,400 grant award would represent 50%

of the \$540,700 in total eligible estimated project costs. This includes the approved \$534,500 purchase price plus eligible related costs of \$6,200. Department staff indicate that the eligible related costs for the grant should have been \$9,700, rather than the \$6,200 indicated in the request, as shown in Table 2. This calculation reflects actual costs and corrects an error by including land survey costs which are eligible for reimbursement but were not included in the original calculation. A corrected grant award of \$272,100, to reflect the revised eligible costs (50% of the allowable purchase price and the associated costs as shown in Table 2) could be approved under Alternative #2. This would represent almost 45% of the approximately \$600,000 purchase price for the 150.55 eligible acres (Ducks Unlimited purchased roughly 161 acres for \$642,000 or about \$4,000 per acre).

TABLE 2

Corrected Eligible Grant Costs

Land survey	\$6,600
Title Evidence	1,540
Recording Fees	60
Required Signage (maximum \$2,000)	1,000
Legal Fees (maximum \$2,000)	<u>500</u>
 Total	 \$9,700

The corrected grant amount of \$272,100 would be slightly above the median between the two appraisals, and the reviewer identifies several factors indicating that the DU appraisal may be too high while the DNR-commissioned appraisal may be too low [Alternative 2]. Additionally, given the actual purchase price, the grant would be providing less than 45% of actual acquisition costs. On the other hand, the price paid by DU for the property may have been high. As the appraisal reviewer noted, the sales data used for the first appraisal was from several years ago and included sales with more agricultural land than the subject property. Further, as noted by the second appraisal, sale prices of vacant land may not have rebounded from the recession as well as other types of land. The Committee could consider approving the purchase based on the second appraisal, commissioned by DNR, at a per acre price of \$3,000, by providing \$230,700 [Alternative 3].

Another option could be to recognize that the value established by the appraisal commissioned by DNR may have been somewhat low. The reviewer pointed to the comparable sale of \$3,570 per acre as the most similar property to the subject property, yet the appraisal valued the subject at \$3,000 per acre. The DNR-commissioned appraisal felt this comparison sale was superior to the subject both in terms of water features and access and therefore felt the comparison sale may have gone for approximately 15% more than the subject property would garner. However, the DNR appraisal reviewer felt the two parcels were about the same in overall quality (with the comparison a little better in water features, but a little poorer in land quality). Another option would be to approve a grant amount between the lowest appraisal and the DNR review value. For example, a grant could be provided based on a per acre value of \$3,250, by providing

up to \$249,500 in stewardship grant funds for the purchase [Alternative 4].

TABLE 3

Alternatives

<u>Alternative</u>	<u>Per Acre Value</u>	<u>Allowable Purchase Price</u>	<u>Additional Eligible Costs</u>	<u>Total Eligible Costs</u>	<u>Total Grant Award</u>
1. DNR Request	\$3,550	\$534,500	\$6,200	\$540,700	\$270,400
2. Corrected Additional Costs	3,550	534,500	9,700	544,200	272,100
3. DNR Appraisal Value	3,000	451,700	9,700	461,400	230,700
4. Intermediate Value	3,250	489,300	9,700	499,000	249,500

As noted, the Lower Fox River NRDA trust funds are expected to cover \$267,300 of DU's approximately \$610,000 cost of acquiring the 151.55 acres. This leaves approximately \$343,000 in Ducks Unlimited costs incurred for the purchase. According to the Department, if the grant was denied (Alternative #5), Ducks Unlimited may be able to utilize some additional funding from NRDA trust funds to cover an additional portion of the project cost. However, DNR staff were unsure what this additional amount might be.

ALTERNATIVES

1. Approve the Department's request to provide a stewardship grant of up to \$270,400 in land acquisition NCO funds to Ducks Unlimited for the purchase of 150.55 acres in the Town of Nepeuskun, Winnebago County.
2. Approve the Department's request, as corrected to include total eligible related costs, to provide a stewardship grant of up to \$272,100 in 2015-16 land acquisition NCO funds to Ducks Unlimited.
3. Approve the Department's request, but specify that DNR may obligate no more than \$230,700 from the stewardship program for the grant.
4. Approve the Department's request, but specify that DNR may obligate no more than \$249,500 from the stewardship program for the grant.
5. Deny the request.

Prepared by: Erin Probst