

# NATURAL RESOURCES COMMISSION

## TITLE 257, ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND

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## **CHAPTER 1 - ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND**

### **001. GENERAL PROVISIONS.**

001.01 PURPOSE OF RULES. These rules are adopted for the purpose of administering the Small Watersheds Flood Control Fund created by Neb. Rev. Stat. § 2-1503.01.

001.02 GENERAL AVAILABILITY OF FUNDS. Financial assistance from the Fund will be available only to local organizations that have programs qualifying for such assistance under these rules. The Commission, in its sole discretion, may allocate to any qualifying organization, from the Fund, such sum or sums as in the judgment of the Commission may be necessary for such local organization to acquire real property or easements needed to permit the local organization to effectuate the purposes of the Fund.

001.03 DEFINITIONS. All terms defined in Neb. Rev. Stat. § 2-1501 have the same definition when used in these rules. In addition:

001.03(A). "Fund" means the Small Watersheds Flood Control Fund created by Neb. Rev. Stat. § 2-1503.01.

### **002. FUND ADMINISTRATION.**

002.01 ELIGIBILITY FOR FUNDS. To be eligible for assistance from the Fund, the local organization must first enter into an agreement with the Department specifying a hydrologic unit and the total number of land rights to be acquired by the local organization in such unit. Such agreement will provide that the local organization will abide by the law and rules governing administration of the Fund, and that the Department in relation to the program of work has found that the conditions in Neb. Rev. Stat. § 2-1502(1) (b) have been met.

002.02 ACCEPTANCE OF APPRAISALS. An appraisal prepared in accordance with Neb. Rev. Stat. § 2-1502(1)(g) must accompany each formal request or application for funds. In the event the Commission or the Department determines that the appraisal is subject to question, the Department may hire an appraiser at State expense to aid the Commission in making its decision whether or not to approve the appraisal.

002.03 DAMAGE TO CROPS. When applicable, the local organization will also cause an appraisal to be made of all crops growing on the land to be purchased. Such crop appraisal will be subject to Commission approval and any rule, set forth herein, applicable to appraisals in general. The local organization will give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she will be given a reasonable period of time to harvest the same; or (2) selling such interest along with the land.

002.04 PURCHASE PRICE AND TOTAL COST OF ACQUISITION. For purposes of Fund administration the terms "purchase price" and "total cost of acquisition" will in the absence of a condemnation proceeding mean the amount actually paid by the local organization or the amount established by an appraisal conducted in accordance with Neb. Rev. Stat. § 2-1502(1)(g), whichever is the lesser amount. In the event of a condemnation proceeding, such terms mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price will be the sole responsibility of the local organization and will have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way pursuant to Neb. Rev. Stat. § 2-1502.

002.05 TITLE OPINION OR TITLE INSURANCE AND OTHER RELEVANT DOCUMENTS. Before any funds are paid out, the local organization must furnish to the Department a copy of a title opinion or title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. A title opinion must have been drafted following a title search by an attorney who is hired by the local organization and who is admitted to practice law in Nebraska. A title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska. The local organization will also furnish the Department with a copy of any purchase agreement or other written document demonstrating the terms and conditions of the proposed purchase.

002.06 EMINENT DOMAIN AWARDS. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved, except through the power of eminent domain, approval by the Commission of any court award exceeding the appraised value is required prior to disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local organization appeal such award if it is deemed excessive or to allocate a percentage of the court award as provided in Subsection 002.07(B)(2).

002.07 AMOUNT PAID.

002.07(A). The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way within the hydrologic unit described in the agreement and executed in accordance with Subsection 002.01. In addition, if based on reports from the local organization or other information available, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements, or rights-of-way needed for that project. However, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land will not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action will not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern includes, but is not limited to,

opposition to completion of the project including current or anticipated lawsuits; or the unavailability or loss of local, other State, or Federal funds.

002.07(B). The amount that will be approved by the Commission for payment out of the Fund will not exceed the purchase price as defined in Subsection 002.04. The Commission may, however, determine that an amount less than the purchase price should be paid from the Fund for any one of the following reasons:

002.07(B)(1). The dollar amount of all unapproved requests for funding assistance exceeds the availability of uncommitted funds. Prior to approving any additional requests for assistance under such circumstances, the Commission will, following consultation with all affected local organizations, determine whether the available funds could be most effectively utilized:

002.07(B)(1)(i) by deferring assistance until funds do become available to one or more local organizations that would not encounter serious problems because of such deferral;

002.07(B)(1)(ii) by allocating funds to all applicants on the basis of a percentage of purchase price; or 002.07(B)(1)(iii) by utilizing a combination of percentage allocation and deferral.

002.07(B)(2). A court of competent jurisdiction has made an award in condemnation in excess of the value established by the appraisal approved by the Commission. Provided that the dollar amount paid by the Commission in such cases will not be less than the amount specified in the approved appraisal or the amount determined in accordance with Subsection 002.07(B)(1), whatever amount is less.

002.07(C). If for any of the reasons previously provided, the Commission determines that an amount less than the purchase price should be allocated from the Fund for the acquisition of any interest in real property, the local organization will remit to the Department a pro rata share of the proceeds of any subsequent sale of such property. The pro rata share will be equal to the percentage of the total cost of acquisition of such property made from any State allocation from the Fund.

002.08 DOCUMENTATION OF PURCHASE. Within 30 days after the local organization receives payment from the State, the local organization will forward to the Department a copy of the deed, easement, court decree, or any other document or material deemed by the Department to be necessary in the particular case. Such deed, easement, court decree, etc. will be verified by the clerk of the court or the register of deeds.

002.09 CONSERVATION PLAN. Within 120 days after the title or titles, as applicable, have been acquired, the local organization will prepare a detailed Conservation Plan, a copy of which will be sent to the Department.

002.10 ANNUAL INSPECTION. At least once each year, a Department staff member and a representative of the appropriate local organization will inspect each parcel of land for which fee title has been acquired and will compare it to the respective Conservation Plan. A report of the staff member's findings along with any suggestions or recommendations to the local organization will be filed with the Department and the local organization.

002.11 ANNUAL FINANCIAL STATEMENT. Each local organization holding fee title to lands purchased with Fund monies will submit a complete financial statement to the Department by August 1 of each year. Such statement will set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, and management of the lands. This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

002.12 ANNUAL LEASE. When appropriate, a Department staff member will work with a local organization in preparing the annual lease for such property as was acquired with Fund monies. Unless otherwise approved by the Director, leases will commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease will be deemed effective unless and until it has been approved in writing by the Director.

002.13 USE OF LEASE REVENUES. In addition to the uses for rental and lease revenues as set forth in Neb. Rev. Stat. § 2-1502(2), such revenues may be used for reasonable and necessary conservation costs and expenses incurred by the local organization in the management of such lands. Because the Department is responsible for overseeing the management of such lands, the local organization will consult with and keep the Department informed of all matters relevant to such management.

002.14 DISPOSITION OF PROPERTY. For lands or rights-of-way purchased wholly or partially with Fund monies, the local organization, within 10 years from the purchase date, will either grant or retain for public purposes or sell at a public auction such lands or rights-of-way.

002.15 SALE SCHEDULE. The Department will maintain a schedule of the proposed dates of sale for lands purchased with Fund monies. Prior to July 1 of each calendar year, the Commission will review this schedule, consult with local organizations holding title to such lands, make any additions or revisions as necessary, and adopt a sale schedule for the next ensuing fiscal year.

002.16 NOTIFYING PUBLIC BODIES OF PROPOSED SALES. For purposes of Neb. Rev. Stat. § 2-1502(2), the Department will notify the Governor and the appropriate public districts, cities, counties, political subdivisions, and agencies of the State or Federal government of the land(s) scheduled to be sold in at least the next 12 months. Such notification will indicate the proposed date(s) of sale and will summarize the process by which public

entities may acquire such lands for public purposes.

002.17 NOTICE OF INTENT TO ACQUIRE OR RETAIN. Any public district, city, county, political subdivision, or agency of the State or Federal government that is interested in acquiring or retaining for public purposes land(s) purchased with Fund monies must notify the Department of such interest by the deadline set in the Department's notice.

002.18 APPRAISAL AND NOTIFICATION TO PUBLIC BODIES OF APPRAISED FAIR MARKET VALUE. Whenever a public entity indicates in accordance with Subsection 002.17 that it is interested in acquiring or retaining lands purchased with Fund monies, the Department will have an appraisal prepared for such lands in accordance with Neb. Rev. Stat. § 2-1502, and notify such public entity of the appraised fair market value. Such notification will indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Subsection 002.20 and Neb. Rev. Stat. §§ 2-1502 to 2-1503.03.

002.19 ACQUISITION BY PUBLIC BODIES. Any public district, city, county, political subdivision, or agency of the State or of the Federal government that desires to acquire or retain for public purposes land(s) purchased with Fund monies must notify the Department of such desire by the deadline set in the Department's notice. A report explaining the public purpose to be made of such property must be simultaneously submitted to the Department. Such report will include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report will also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. Reimbursements to the Department will be in accordance with Neb. Rev. Stat. § 2-1502(2) and made within 90 days of Commission approval of either retention by the local organization or acquisition by a public body. The local organization transferring title to the acquiring public body will be reimbursed in the amount of any remaining portion of the appraised fair market value.

002.20 CRITERIA FOR ACQUISITION BY PUBLIC BODIES.

002.20(A). Whenever a public entity indicates in accordance with Subsection 002.19 that it desires to acquire or retain lands purchased with Fund monies, the Commission will determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Subsections 002.24 through 002.29. In making such determination, the Commission will consider the following factors:

002.20(A)(1) the nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby;

002.20(A)(2) the nature of probable alternative uses for such property and their relative importance in the community and the

State;

002.20(A)(3) the adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses;

002.20(A)(4) the relative economic impacts that could be anticipated in the community because of the proposed public purpose and probable alternative uses;

002.20(A)(5) the legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose; and

002.20(A)(6) the compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.

002.20(B). Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission will consult with the local organization holding title and other interested organizations and individuals. If the amount invested in such property from the Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body will be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization will have independent authority to disapprove the purchase of the property by another public body, and any such disapproval will result in the property being offered for sale at public auction as scheduled.

002.21. DESIRE TO ACQUIRE BY TWO OR MORE PUBLIC ENTITIES. In the event that two or more public entities want to purchase or retain the same land or right-of-way, the Commission will evaluate each separately in accordance with Subsection 002.20. If following such evaluation, more than one of the proposed purchases by public bodies is deemed preferable to offering the property for sale at public auction, the Commission will evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

002.22. ACQUISITION OR RETENTION OF LESS THAN FULL PARCEL.

002.22(A). The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Subsection 002.20 and if:

002.22(A)(1) it would have no anticipated adverse effect on the marketability of the remainder of the full parcel; and

002.22(A)(2) no additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

002.22(B). The local organization will be responsible for any surveys that are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel will reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

002.23. AGREEMENT TO RETAIN IN PUBLIC USE. As a condition to acquiring or retaining for public purposes any lands acquired with Fund monies, the acquiring or retaining public body must enter into an agreement with the Department. Such agreement, which will remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed 50 years, will specify the following terms and conditions:

002.23(A) the property will, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Subsection 002.19;

002.23(B) no use will be made of the property that is incompatible with the purposes for which it was originally acquired;

002.23(C) such public body will not utilize the property or any part thereof for income production unless such income results from activities necessary to the maintenance of the property or to serving the public purposes for which the property was acquired or retained; and

002.23(D) any other terms or conditions that the Commission deems appropriate. A copy of such agreement will be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

002.24. PUBLIC AUCTION. When any lands involving the Fund are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Subsections 002.19 through 002.23, will be by public auction. Prior to such sale the Department will:

002.24(A) cause an appraisal to be made of such land;

002.24(B) retain the services of a public auctioneer; and

002.24(C) cause legal notice thereof to be published pursuant to Subsection 002.27.

002.25. PUBLIC AUCTIONEERS. In retaining the services of an auctioneer, the Department will select the auctioneer.

002.26. SALE OF IMPROVEMENTS. When any improvements on lands are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department will cause legal notice to be published pursuant to Subsection 002.27.

002.27. NOTICE OF SALES. Notice of all sales governed by these rules will be published in a newspaper (including electronic version) of general circulation in or near the county in which such land(s) and/or improvement(s) is (are) located and also in a newspaper (including electronic version) with statewide circulation. Such notices will be published once each week for three consecutive weeks, the last publication of which may not be published less than seven days prior to the date set for the auction or for the opening of sealed bids. Such notices will list and describe the land(s) and/or improvement(s) to be sold and the easements and/or rights-of-way, if any, which will be retained by the local organization, and will state the date, time, and place for the opening of the sealed bids. If appropriate, such notice will state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties must also be provided.

002.28. SEALED BIDS. In order to be eligible for consideration, sealed bids for improvements must state which improvement(s) the bid is for and must be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit will be returned to the bidder within 30 days after the day on which the bids are opened. All sealed bids must be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids will remain sealed until the time set for their opening, at which time the two highest bids will be read.

002.29. CONDUCT OF AUCTION. The public auction (including internet sales services) for each tract of land to be sold will remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

002.30. EARNEST MONEY DEPOSIT. The highest bid for a tract of land received at public auction must, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than 20 percent of the bid.

002.31. PURCHASE AGREEMENT. The highest bidder will enter into a purchase agreement with the local organization stating that the balance due must be paid within 30 days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement must describe all applicable terms for the sale, including all terms specified by the Commission pursuant to Neb. Rev. Stat. § 2-1503.03. Failure to comply with this rule or with the conditions of the purchase agreement will result in

the forfeiture of said bidder's deposit.

002.32. APPROVAL OR REJECTION OF BIDS. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission will review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria that may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization will be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it will direct the local organization to proceed with the sale. Upon receiving full payment, the local organization must convey title to the purchaser, reserving as applicable, such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission pursuant to Neb. Rev. Stat. § 2-1503.03. In the event that the Commission determines that a bid is inadequate, the bidder's deposit will be returned within 10 days after such determination, the land will be leased for an additional year, and the land will be rescheduled for sale according to these rules.

002.33. SALE EXPENSES. Any expenses incurred by the Department or incurred by the local organization and approved by the Department in conducting this sale will be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local organization and the Department in accordance with Subsection 002.07(C).

Enabling Legislation: Neb. Rev. Stat. §§ 2-1501 to 2-1503.03

