



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>

April 24, 2017

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources: Stewardship Land Acquisition -- Xcel Energy Project in Dunn County -- Agenda Item I

On April 6, 2017, the Department of Natural Resources (DNR) requested approval under s. 23.0917(6m) of the statutes to purchase 990.55 acres in Dunn County from the Northern States Power Company, a subsidiary of Xcel Energy Company, utilizing up to \$2,096,200 in 2016-17 funds from the Warren Knowles-Gaylord Nelson Stewardship Program. The project, known as the Xcel Energy project, is located in the Town of Peru in Dunn County. Notice of an objection to the proposed DNR acquisition was made on April 12, 2017.

ANALYSIS

Background

The Department originally submitted the Xcel Energy project to the Joint Committee on Finance on August 4, 2016, and submitted an updated cover letter later that same date clarifying that reclamation costs of \$5,000 should have been included in the total stewardship funds requested. The Department submitted a letter to the Committee Co-Chairs on August 23, 2016, withdrawing the project from Committee review. The current request includes \$16,000 for appraisal costs, but DNR indicates they would pay the \$5,000 in reclamation costs from other property management fund sources, and total stewardship program funding requested is \$2,096,200 (\$2,080,200 purchase price and \$16,000 appraisal costs).

Under the current proposal, DNR would acquire 990.55 acres in Dunn County from Northern States Power Company for a purchase price of \$2,080,200. The proposed property is located entirely within the boundary of the Lower Chippewa River State Natural Area (LCRSNA) and would be incorporated into the LCRSNA upon purchase. The property lies across the river from DNR-owned land in the Dunnville Wildlife Area, north of DNR ownership in the Nine Mile Island State Natural Area, and intersects the Chippewa River State Trail. The parcel is currently

open to the public and accessible from several points.

According to the Department, the LCRSNA may contain the highest concentration of rare species in Wisconsin and contains many rare natural communities such as floodplain savannas, bluff prairies, and southern hardwood forests. The parcel includes 18,000 feet of shoreline on the south bank of the Chippewa River and approximately 25% of the property lies within the floodway of the Chippewa River. Several notable bird species have been observed on the property, including grasshopper sparrow, blue-winged warbler, and black-billed cuckoo. The Department notes that acquisition of the parcel will: assist with resource management of the entire LCRSNA; manage and protect exceptional natural resources and numerous rare species; and increase public recreation opportunities including hunting, trapping, fishing, hiking, birdwatching, snowshoeing and cross-country skiing. DNR also notes that the project has support from local partners including the Dunn County Fish and Game Association, The Prairie Enthusiasts, and the Rock Falls Sportsman's Club, among others.

Northern States Power Company acquired the property around 1973 as part of a larger acquisition of 4,100 acres with the intention of developing a nuclear power plant on the site. However, such a facility was never developed and the parcel remained in recreational and agricultural use. Recently, DNR indicates that Xcel Energy has taken a more active approach to timber management on the property by conducting species inventories and restoring degraded prairies and savannas.

Approximately 390 acres of the proposed parcel are currently enrolled in the managed forest law (MFL) program and classified as open for public access, with MFL order expirations varying until December 31, 2034. Withdrawal from the MFL program prior to the expiration of the MFL order generally requires payment of an MFL withdrawal fee of \$300 and withdrawal taxes related to the past tax liability for the years the land was enrolled in the program. The Department indicates that, if the parcel is sold, the seller would have to withdraw a portion of the remaining MFL land outside the subject property, as it would no longer meet the criteria necessary for continued participation in the MFL program. DNR estimates the withdrawal tax cost at approximately \$10,000.

Land purchased by the Department is automatically withdrawn from the MFL program and the Department does not pay withdrawal taxes. However, the Department makes aids in lieu of taxes payments to the city, village or town in which the purchased land is located in an amount equal to the tax that would be due on the estimated value of the property at the time it was purchased. Further, aids are adjusted annually to reflect changes in the equalized valuation of all land, excluding improvements, in the taxation district. The municipality then pays each taxing jurisdiction a proportionate share of the payment, based on its levy. For cases in which the property had been tax exempt in the year prior to acquisition, or enrolled in the forest crop law (FCL) or MFL program at the time of purchase, estimated value means the lesser of either the purchase price or an amount that would result in a payment of \$10 per acre. DNR estimates the aids in lieu of property tax payments on the proposed purchase would be approximately \$17,200 annually.

The property is zoned conservancy district and general agriculture district by Dunn County. Conservancy district zoning allows for most recreational uses including hunting, fishing, trapping,

preservation of scenic areas, wildlife preserves, hiking trails and bridle paths as well as some agricultural uses such as the harvesting of wild crops and sustained yield forestry. This type of zoning does not permit development. The conservancy district zoning is established to preserve such areas as lowland swamps, marshes and wetlands, floodplains and stream beds, slopes bluffs, wooded areas, and other areas of aesthetic value. General agriculture district zoning allows for agriculture uses, commercial uses serving agriculture and residential uses, with a minimum residential lot requirement of eight acres.

Between 50-60 acres of the property are considered tillable land and some of this land was, at time of appraisal, rented to a local farmer. DNR staff indicate they would continue the farming agreement for at least the next five years, but that the long-term goal for the land would likely be habitat restoration. Approximately 480 acres of the property contain wetlands, including various ponds and creeks. Further, much of the property is located in a flood hazard zone, which may limit the potential uses of the property aside from recreational uses. The remainder of the property is primarily wooded with a variety of tree species including red pine, white pine, black oak, silver maple, ash, river birch, burr oak, and others. The property also includes several restored areas including a dry sand prairie restoration and flood plain savanna. As noted, the property includes approximately 3.5 miles of Chippewa River frontage. The paved Chippewa River State Trail runs along the length of the property near the western property boundary. It is assumed that access to the trail would remain open to the public if the property were sold.

In addition, DNR currently holds a Voluntary Public Access (VPA) lease on approximately 600 acres of the parcel to be purchased. Similar to a conservation easement, the lease provides public access for hunting, fishing, trapping, and wildlife observation. The agreement also requires Xcel Energy to establish parking lots for hunting areas and allows DNR to post signs along the outside boundaries of the area regarding the public's access to the property. Unlike a conservation easement, under which the rights are held in perpetuity, the lease provides the specified privileges only for the length of time specified in the lease agreement. The lease currently covers 2,025.75 acres, including 600 acres of the parcel to be purchased and the remainder elsewhere in the LCRSNA. The lease expires on August 31, 2017. However, either party may cancel the lease through a 60-day written notice to the other party. The Department has held the lease since August, 2011, and paid \$50,000 for each three-year term, a total of \$100,000, from U.S. Department of Agriculture Farm Service Agency grant funds.

2015 Act 55 reduced the amount of authorized bonding available for the stewardship program. Beginning in 2015-16, \$21 million of the \$33.25 million total available annually is available for the land acquisition subprogram. Of that amount, \$9 million is available for DNR land acquisitions. Under current law, DNR may obligate not more than one-third of this allocation (\$3 million) for the purchase of DNR land in fee simple, with at least two-thirds of allocated bonding authority available for county forest grants or DNR acquisitions of easements. Through April 13, 2017, DNR has obligated \$757,500 in fiscal year 2016-17 land acquisition funds for the purchase of 220 acres in fee title, leaving \$2,242,500 available for fiscal year 2016-17 fee title land acquisitions. In addition, the Department has obligated \$256,200 for the purchase of easements on 83 acres in fiscal year 2016-17 to date.

Appraisals Summary and Valuation Considerations

Three appraisals were commissioned for the Xcel Energy property by the Department. Two appraisals were conducted in March, 2016, and one was conducted in May, 2016. In addition, a DNR appraisal reviewer conducted a review of the three appraisals and estimated an opinion of value based on this review. All three appraisals utilized the market approach, which involves evaluating properties recently sold in comparison to the property being appraised. Adjustments may be made to the sale prices of the comparison properties to reflect differences that may affect the per-acre value, including such criteria as size, topography, location, water amenities, time of sale, and access. At the time of the appraisals, the subject property was not listed for sale and had no other known offers to purchase.

The highest and best use of the property is considered to be recreational and agricultural use with at least one potential home site. The DNR appraisal reviewer noted that the uniquely large size of the property means this type of property is not well represented in the real estate market. One of the appraisers noted that larger parcels tend to sell for a lower price per acre than smaller parcels. However, the reviewer notes that, if the property were to be sold on the open market, it likely would be sold as smaller parcels. As there are no restrictions on the subject property that would hinder it from being sold as smaller recreational tracts, the reviewer concluded that the size of the parcel should only be considered minimally in the valuation.

With regard to Appraisal #1, the appraisal with the lowest indicated value (\$1,600 per acre), the DNR reviewer noted that none of the six sales of vacant land utilized in the appraisal had water frontage, whereas the subject property has significant river frontage. The original sale prices of the six comparison properties ranged from \$1,400 to \$3,700 per acre with adjusted prices ranging from \$1,100 to \$2,000, and the appraiser chose a value near the midpoint of the range at \$1,600. The reviewer argued that one of the six sales selected by the appraiser, the parcel that sold for \$1,400 per acre, was an outlier that sold below market value. Without that sale, the reviewer estimated the value range would be from \$1,400 to \$2,200, with a mid-range value of approximately \$1,800 per acre. Again, the reviewer noted this would not include an adjustment for water frontage that would, in the reviewer's opinion, lead to a higher price per acre. Finally, the appraiser discounted the final value of the parcel due to: the MFL withdrawal penalty the seller would have to bear for the resulting withdrawal of some of the seller's remaining MFL lands; and the VPA lease being in place through August, 2017, although it could be argued the VPA lease was perhaps more relevant when the Department first submitted the project in August, 2016, with a full year left on the lease. Overall, the appraisal reviewer notes that the Department "gave little consideration to this report when negotiating the purchase of the property."

Appraisal #2 included five sales and two listings for market comparison, and it resulted in an indicated value of \$1,700 per acre. The reviewer points out that the appraiser indicated the price of average land sales for tracts larger than 80 acres in Dunn County between 2006 and 2015 ranged from \$2,200 to \$3,300 per acre, but that the appraiser's indicated value of \$1,700 falls significantly below this historical average price per acre range. Further, the reviewer argues that the unadjusted sales range of \$1,500 to \$2,200 and adjusted range of \$1,200 to \$1,800 also fall below historical averages.

Appraisal #3 utilized four sales for comparison and reported an indicated value of \$2,400 per acre. The appraiser concluded that no adjustments were necessary for market conditions, as the market was substantially similar. The range of sale values used was \$1,700 to \$2,600 per acre. The appraiser noted that given the significant river frontage on the subject property and the attractive nature of the overall tract, a value above the mid-range is appropriate. The reviewer notes that the value range of the sales utilized in this appraisal fall within historical ranges.

Additionally, the review appraiser points to the price paid for the Department's acquisition of approximately 300 acres for the Lower Chippewa River State Natural Area in Eau Claire County and Dunn County, of \$1,900 per acre, for a purchase price of \$572,000 in 2015, as a useful comparison. The parcel also had Chippewa River frontage (4,800 feet versus 18,000 feet in the subject property). The reviewer notes the parcel was located entirely in the floodplain and therefore had no potential building site. While the prior purchased property had similar recreational composition to the Xcel Energy project, the Xcel parcel would be considered superior with regard to potential residential sites and water frontage, according to the reviewer.

Noting the value range from all three appraisals of \$1,600 to \$2,400, the reviewer argues that appraisal #1 and appraisal #2 are below an appropriate market value range for the property. The reviewer found appraisal #3 had a value range that was appropriate (\$1,700 to \$2,600) but that the appraiser subjectively chose a valuation on the high end of the range. Additionally, the reviewer states that there is not sufficient market data to predict the valuation effect on the sale price of the property from the MFL contracts including the MFL penalty, the VPA lease, and the public trail; these issues would be negotiated between buyer and seller. Finally, the reviewer concludes that, based on the market data collected through the appraisals and outside sources, and issues that would be the subject of negotiations, the subject property value would fall in a range of \$2,000 to \$2,300 per acre.

Some might argue the proposed purchase price is too high, and that as the land has been owned by Northern States Power Company for many years and the company has not sold large portions of it, nor divided the land to sell smaller parcels, there is no urgency to state acquisition. As noted, the Department argues the proposed purchase would consolidate existing state ownership in the LCRSNA and provide increased public recreational access in perpetuity. If the request were denied, the Department indicates it would approach Xcel Energy regarding continuation of the VPA lease for an additional three years. However, DNR officials indicate that extending the lease would be dependent on available funding and acceptance of the land owner/seller. As the owner/seller is seeking to divest ownership, DNR staff indicate the seller may not want to enter into a new agreement, as a lease would restrict the use of the property and potentially lower its value to prospective buyers. The Department does plan to negotiate a continuation of the lease on the remaining portion of the property that is currently subject to the lease but not part of the proposed purchase (1,425 acres). However, another three-year lease would not prevent future sale of the property.

When the request was withdrawn in August, 2016, the Department indicated to this office that it was withdrawing the project in order to "answer questions that have been raised about the transaction," and address concerns raised by members of the Committee. However, the current request is identical in all substantive respects to the request from August, 2016. Additionally, when

asked whether the Department considered taking the opportunity after withdrawing the project to go back to the seller and renegotiate a potentially lower price prior to resubmitting the project to the Committee, Department officials stated they elected to resubmit the project as originally approved by the Natural Resources Board. However, Department staff could have gone back to the Natural Resources Board for approval of a lower-priced version of the project and, if approved by the Board, submitted that version of the project to the Committee.

If the Committee decides to approve the project, a range of values could be considered. Alternative 1B would provide \$1,586,000, or approximately \$1,600 per acre, consistent with the value reported by appraisal #1. Alternative 1C would provide \$1,695,000, or approximately \$1,700 per acre, consistent with the value reported by appraisal #2. Alternative 1D would provide \$1,898,000, or approximately \$1,900 per acre, consistent with the price paid for the 2015 DNR acquisition of 300 acres in the LCRSNA. Alternative 1E would provide \$1,799,000, or approximately \$1,800 an acre, if the Committee wished to reflect a discounted price for the large size of the parcel when compared with the \$1,900 an acre paid for the prior 300-acre LCRSNA purchase. The alternatives are summarized in the following table.

	<u>Indicated Land Value</u>	<u>Value Per Acre</u>	<u>Appraisal Cost</u>	<u>Total Potential Stewardship Cost</u>
Valuations for Committee Consideration				
DNR Request (Alt 1A)	\$2,080,200	\$2,100	\$16,000	\$2,096,200
Appraisal #1 (Alt 1B)	1,570,000	1,600	16,000	1,586,000
Appraisal #2 (Alt 1C)	1,679,000	1,700	16,000	1,695,000
Prior LCRSNA DNR Purchase (Alt 1D)	1,882,000	1,900	16,000	1,898,000
Discounted for Large Parcel Size (Alt 1E)	1,783,000	1,800	16,000	1,799,000
Valuations for Informational Purposes				
Appraisal #3	2,370,000	2,400	16,000	2,386,000
DNR Reviewer	\$1,981,100 to \$2,278,300	\$2,000 to \$2,300	16,000	\$1,997,100 to \$2,294,300

ALTERNATIVES

1. a. Approve the Department's request to utilize up to \$2,096,200 in 2016-17 stewardship land acquisition funds to acquire 990.55 acres in fee title from Northern States Power Company.

b. Approve the Department's request, but specify that DNR may obligate no more than \$1,586,000 in stewardship funds for the purchase.

c. Approve the Department's request, but specify that DNR may obligate no more than \$1,695,000 for the purchase.

d. Approve the Department's request, but specify that DNR may obligate no more than \$1,898,000 for the purchase.

- e. Approve the Department's request, but specify that DNR may obligate no more than \$1,799,000 for the purchase.
2. Deny the request.

Prepared by: Erin Probst