



NextLevel TRAILS

Real Estate Guidelines & Procedures Handbook

REAL ESTATE GUIDELINES & PROCEDURES

NOTE: This chapter will discuss real estate guidelines and procedures for the Next Level Trails (NLT) program. The procedures explained in this chapter should be read with extreme care. If the procedures are ignored, the applicant could encounter problems in receiving payment for eligible costs or claiming match value for land, regardless of the method of acquisition. The policies and procedures described herein are subject to the discretion of the Indiana Department of Natural Resources (DNR) in extraordinary circumstances.

ELIGIBLE ACQUISITIONS

Herein, the terms *land* and *property* are used interchangeably to describe rights in real estate acquired by either fee simple or easement. Land may be purchased or received as a donation as part of an NLT trail-development project from private or corporate landowners, public entities, or units of government. Land already owned by the NLT grant applicant for trail development at the time of

the application is not an eligible cost for payment through the NLT program, but the supported value may be eligible as part of the applicant's required match contribution. Acquisition of land is limited to that which is necessary for the NLT-approved trail development. Excess land not directly related to trail development is not an eligible cost, and excess value cannot be used as match.

STATE ACQUISITION POLICIES

All acquisitions must conform to local, state, and, where applicable, federal laws and regulations. It is the policy of the DNR that acquisitions be fair, equitable, and uniform in the treatment of persons whose land is acquired through any State assistance program.

All land acquisitions made by applicants under the NLT program are being made with State funds and are not required to conform to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) P.L. 91-646. Voluntary compliance with all or part of the Uniform Act is optional and may be required by local regulation or policy. If there is doubt about whether the project may involve federal funding in the future (e.g., if the project is not accepted under the NLT program), DNR suggests that the applicant errs on

the side of caution and ensures that at least the preliminary land acquisition requirements under the Uniform Act are met for all acquisitions.

The NLT program will allow local units of government with condemnation authority to exercise the right of eminent domain in the acquisition of land for the approved NLT trail development if they choose to do so. Allowable value claimed under eminent domain for match purposes will be discussed in the *Eminent Domain* section later in this handbook. Local units must comply with all local and State laws and regulations related to use of eminent domain. It is the policy of DNR that eminent domain should be used only as a method of last resort to acquire inholdings critical to the NLT development project.

PROGRAM COMMENCEMENT

The DNR recognizes that many potential NLT trail projects have been in the planning stages for years, and that applicants may have incurred expenses related to their project prior to the commencement of the NLT program. To simplify the timing of questions throughout the NLT program, it is the position of the DNR that the NLT program officially commenced on December 6, 2018. For approved NLT projects, the "grant commencement date" is the date the Grant Agreement is fully executed. The NLT grant "project

period" is the date of grant commencement to the grant expiration date as stated in the signed Grant Agreement.

Land acquisition and other project costs incurred prior to the commencement of the NLT program are not eligible for payment under the NLT program. However, these costs may be eligible for match purposes with DNR approval, provided that the costs are allowable under the NLT program.

LAND ACQUISITION COSTS

All documentation related to eligible costs for payment or match value should be retained by the applicant for submission to the DNR. Detailed reporting requirements are outlined in the *Grantee Handbook*. After land acquisition is completed, the DNR must certify all costs of land acquisition before releasing funds for the next phase of the project. The Grantee will need to submit the items on the Grant Process Checklist as found in the Grantee Handbook.

A. ELIGIBLE COSTS FOR PAYMENT

The following land acquisition costs are eligible for payment under the NLT program:

1. For the negotiated purchase of land from a willing seller, the purchase price eligible for payment is limited to the supported (appraised) value of land necessary for the NLT project.
2. For land acquired by bargain sale, the actual purchase price (below appraised value) is eligible for payment.
3. In the event that a negotiated purchase of land above the supported value is required, only the appraised value is eligible for payment through the NLT program.
4. Incidental acquisition costs (including those related to land donations), including but not limited to: cost of survey for parcelization or parcel splits; title work and legal fees for establishing title; closing costs; recording and filing fees; deed preparation; etc.
5. Buyer's agent fees (not seller's listing commissions) are limited to a maximum of \$1,000.00 per parcel acquired. Excess buyer fees are not eligible for payment or as match.
6. Appraisal fees and appraisal review fees by a qualified appraiser for property rights purchased.
7. Engineering reconnaissance fees to determine the feasibility of a proposed trail project involving land acquisition.

B. ELIGIBLE COSTS FOR MATCH VALUE

The following land acquisition costs are allowable and eligible only for match purposes under the NLT program:

1. For property acquired by bargain sale, the donated land value (the difference between the purchase price and appraised value) may be used as match.
2. For property that is donated, the full supported value may be used as match.
3. The supported value of land acquired prior to the NLT project period may be eligible for match purposes, with DNR approval.
4. Excess purchase price (above supported value) may, in limited circumstances, be considered eligible for match purposes through the NLT program if the negotiated purchase avoided the need for eminent domain. This policy is subject to DNR review and approval.
5. In the event that eminent domain is used to acquire land (court- or mediation-ordered), only the court-approved appraised value can be used as match.

C. INELIGIBLE COSTS

Costs that are not eligible for payment or as match in an acquisition project include:

1. Seller's cost of sale or delivery of clear title that would normally be part of the supported value.
2. Fees for appraisals made for IRS tax purposes for a qualified donor. Establishment of value for an IRS-qualified donation is the responsibility of the donor.
3. In an eminent-domain action, except as noted herein, court- or mediation-ordered damage compensation to the landowner and cost of eminent domain (attorney fees, court costs, etc.) are not eligible costs, nor can they be used as match.
4. Costs related to failed purchases of land, including preliminary planning costs and the cost of surveys, appraisals, title work, option fees, etc.
5. Fees and costs necessitated by following the Uniform Act, including relocation assistance and damages, where state requirements would suffice.
6. Acquisition costs for property not directly related to trail development under the approved NLT project.

RELOCATION ASSISTANCE

As a State-funded trail-development program, NLT does not require relocation assistance for owners or residents of property acquired from willing sellers under the program. Relocation assistance is not an eligible cost for NLT grant payment or for use as match value.

TIMING FOR PURCHASES AND DATES WHEN COSTS ARE INCURRED

TRANSFER OF TITLE

According to Indiana law, land title is transferred on the date the deed is signed by the previous landowner and accepted by the buyer. If payment is to be requested for the eligible cost of a land purchase, the deed must not be signed by the seller and accepted by the buyer until the NLT grant commencement date. The applicant can, however, make a commitment to purchase the land prior to NLT grant approval as described below under *Timing for Purchases*.

TIMING FOR PURCHASES

The applicant may make a commitment to purchase land prior to the NLT grant commencement date. Commitment may occur if, (a) an option to purchase is exercised; (b) payment is made to an escrow agent even though the applicant has not received the deed from the escrow agent; (c) a contract to purchase is executed; (d) the deed is signed and placed in escrow although payment has not been made; or (e) other written promises to purchase have been made. Eligible costs incurred prior to the NLT project period are eligible for match only, subject to DNR review and approval. The following costs related to failed acquisitions are not eligible: preliminary planning costs, surveys, appraisals, title work, option fees, etc.

Confusion often arises in acquisition projects on the exact date when land-purchase costs are incurred. To be eligible for payment under the NLT program, purchase payment(s) to the landowner must be incurred within the NLT project period. Acquisition costs are incurred on the date when the earliest of any of the following transactions takes place:

1. Applicant accepts a deed or other appropriate conveyance and records the conveyance.
2. Applicant makes full payment for the property.
3. Applicant makes the first payment in a series of spaced or time payments.
4. Applicant makes the first or full payment as stipulated in an option agreement.
5. Applicant makes first partial or full payment to an escrow agent.
6. Applicant takes possession of the property.

TIMING FOR PURCHASE AGREEMENTS AND OPTIONS

The applicant may wish to acquire an option or enter into a purchase agreement on the property to prevent the land being sold prior to the approval of a project. A purchase agreement may be conditioned upon NLT grant approval but should not be closed upon until the NLT grant commencement date. Similarly, an option may be conditioned upon NLT grant approval but should not be exercised until the NLT grant commencement date. The date an option is exercised is normally the date the buyer advises the seller that he or she desires to complete the purchase under the terms of the option.

The option or agreement may include special conditions or terms that govern whether or not the buyer will purchase. For example, one condition could be the availability of NLT funds for financing. An option is acceptable if it is exercised prior to NLT grant commencement date, so long as it specifies that acceptance is contingent upon the availability of NLT grant funding. In this instance, the date of NLT grant commencement would be the exercise or agreement date. If an option or agreement is signed prior to NLT grant commencement date, it should be of such term as to extend so that it may be exercised or closed upon after the NLT grant commencement date.

The purchase price in an option or agreement should be the amount negotiated after the land has been appraised and the fair-market value offered to the landowner as explained in the section on *Negotiated Purchases*. Only one payment toward the property may be made under an option or agreement. An option fee or purchase agreement good-faith deposit should be part of the purchase price of the property. If for any reason the option or agreement is not exercised, any deposit or option fees will not be considered an eligible cost or claimed as match under the NLT program. It is important that documentation of the option or deposit payment be kept for submittal to DNR to reconcile funding expenditures or project match before the next project phase is paid.

TIMING FOR LAND DONATIONS

Land donations may be transferred to the applicant before or after project approval. Land donations will be credited toward the applicant's match. No direct payment will be given for donated land value; however, the incidental cost of donations paid by the applicant during the NLT project period would be handled the same as for all other purchases.

CONTROL AND TENURE OF PROPERTY RIGHTS

ADEQUACY OF TITLE

For all forms of property acquisitions included in an NLT project, the applicant must have title or adequate control and tenure of the project land in order to provide reasonable assurances that a conversion to a use other than public trail use will not occur without DNR approval. The applicant is solely responsible to the NLT program for assuring that property acquired under the program, or used in NLT projects, has adequate title and control for the duration of the project life. At the time of NLT application, the applicant must submit a description of the character and nature of the title to be received for DNR review.

The preferable method of acquiring property is fee simple title by warranty deed, which gives the title holder an absolute right to the property within limitations imposed by law. Fee simple title should be examined for title defects and encumbrances by title search and title insurance or by an attorney's opinion of title to assure that the applicant is receiving clear title.

Similarly, it is essential that fee simple title conveyed by quitclaim deed be fully examined by the applicant to assure adequate control and tenure of the property being acquired. Any defects in title on property that is to be quitclaimed must be resolved prior to acquisition.

In some instances, acquisition of the trail corridor by fee simple title may be impossible or cost-prohibitive. Acquisition of easement rights is permissible provided that less than fee simple control of the trail corridor will not detract from the recreational use of the land. The underlying title to the easement area should be examined for any defects or encumbrances by title search and title insurance or by an attorney's opinion of title to assure that the applicant is receiving useable easement rights. Under extraordinary circumstances, DNR, at its sole discretion, may consider alternative methods of trail- corridor control and tenure proposed by the applicant. DNR must be consulted prior to submitting an application in these situations.

A survey may be required if there is reasonable doubt about the property's size or the exact location of boundaries. Accurate legal descriptions are essential to the applicant's ability to defend title to property acquired for the NLT project. The applicant is responsible for defending title to all land acquired or used as match within the NLT project. Furthermore, in the event that property acquired with NLT funds is found to have defective title, the applicant is responsible for providing replacement property of equivalent value, usefulness, and location acceptable to the DNR or reimbursing the NLT program for the loss. Loss of title to a portion of the NLT trail corridor may reduce the functionality of a greater portion of the trail; as such, the applicant will be responsible for remedying this loss, taking the full scope of the reduced functionality into account.

DOCUMENTATION FOR RECONCILIATION

The Grantee must submit a final description of the character and nature of the title received for DNR review as part of requesting certification and reconciliation of eligible cost or match value. This evidence of title must include the property conveyance instrument and either a written opinion from an attorney on the adequacy of title or a title insurance policy. Copies of the property titles, title insurance, attorney's opinion of title, deeds, leases, easements, or appropriate documents must be submitted for DNR review.

RESERVATIONS, EASEMENTS, ADVERSE RIGHTS, AND DEED RESTRICTIONS

Oil, gas, mineral, or other reservations and rights held by others are permissible only if it is determined that the proposed NLT project would not be adversely affected. The applicant should describe any such reservations and how they will be dealt with to avoid impacting the recreational use of the trail corridor in the application project narrative. The acquisition of land that is subject to the reservation of surface rights extending more than 3 years must be justified. Land subject to severed chains of title for oil, gas, mineral, or other rights is not permissible under the NLT program. If at some later date the rights to subsurface reservation or other deed restrictions adversely affect recreational use of the land or facilities, the applicant will be responsible for acquiring replacement property of equivalent usefulness, value and location or returning the NLT funds used in the project.

Access rights, especially ingress/egress or crossing rights (excluding driveways), are relatively common. The applicant should describe any such access agreements and any potential impact to the recreational use of the trail corridor in the project narrative. A typical example is a landowner who wishes to retain access for agricultural equipment to cross or use a trail corridor bisecting a farm field. The location and appropriate use of any access rights should be clearly defined in a recorded instrument. Access rights providing for lateral use of the trail corridor should be kept to a minimum. Project design should take into consideration any crossings used by agricultural equipment or other heavy vehicles that could damage the trail surface.

Lateral utility rights of way and utility crossings are commonplace in trail development, especially in abandoned rail corridors or along public rights of way. The full impact of easements should be assessed in trail planning and appraisal stages of project development. Existing easements and rights of way should be fully reviewed and understood by the applicant.

Landowners sometimes specify restrictions in the deed transferring ownership of the property. Deeds that contain a reversionary clause whereby the landowner could repossess the property if it ceased to be used for the purpose specified in the deed restriction may make the acquisition ineligible. DNR should be consulted prior to submitting an application involving deeds with reversionary clauses or deed restrictions.

In certain situation a landowner may wish to retain a life estate, under which the landowner retains use of the property while living. Life estates that would prevent the immediate use of the property as trail corridor are ineligible.

Outstanding property rights and easements described in this section may affect the value of the land. An appraiser should be fully aware of and take into consideration the legal description of the property, the quality of title, and any restrictions to be placed on the rights transferred. An appraisal of a property's value involves full consideration of the rights remaining with the property and, where appropriate, the effect the loss of these rights has on its value.

ABANDONED RAIL CORRIDOR DEVELOPMENT AND RAIL BANKING

While it seems a logical choice for developing a recreational trail, acquiring an abandoned rail corridor is anything but easy. The quality of title to railroad corridor is almost always open to questions. Clear and convincing evidence of title usually requires researching the chain of title back to the railroad's original vesting deed(s). Railroad titles were commonly passed by quitclaim deed from one railroad to another without clear evidence of title or encumbrances on the title. State law (IC 32-23-11) may impact who the vested title holder is in the case of abandoned railroad property. Extensive research and quiet title actions may be necessary to perfect title to abandoned corridor. Abandoned railroad corridors are almost always a hodgepodge of mixed-fee titles, easements, encroachments, adverse possessions, and other possession rights that will need to be untangled by the applicant.

If the applicant is planning to develop NLT trail facilities on land involved in the rail-banking process, please contact DNR to determine the eligibility of your project proposal and provide a copy of any Surface Transportation Board decisions or approvals involved with the rail-banking process.

SUPPORT OF VALUE AND APPRAISAL

For real estate purposes, NLT is a value-driven program for the determination of eligible costs and match; therefore, supporting the value of land or easements being acquired is very important. It is important that land value and associated acquisition costs be established in advance of the application to calculate the funds necessary to complete the land acquisition phase of the NLT project. Inaccurate valuation may significantly complicate the completion of the project.

The applicant should have all real estate rights acquired or donated for NLT purposes appraised by a “qualified appraiser,” who by certification, licensure and experience is qualified for the particular valuation assignment. In limited circumstances, Real Estate Brokers may be qualified to support value; however, pursuant to Indiana Real Estate License Law, the Uniform Standards for Professional Appraisal Practice (USPAP) must be followed by a Real Estate licensee doing a non-Real Estate Settlement Procedures Act (RESPA) valuation assignment other than a listing presentation. USPAP must be followed by all qualified appraisers, and form-appraisal reports may be used. Uniform Appraisal Standards for Federal Land Acquisition (the “Yellowbook”) is not required for the NLT program.

The applicant is solely responsible to the NLT program for supporting and defending value claimed for payment or match purposes. For difficult or multi-parcel acquisitions, it is suggested that the applicant hire an independent review appraiser to work with the applicant and appraisers to assure that values are properly supported. Review appraisers are an eligible cost under the NLT program.

Appraisals prepared for local unit acquisitions should follow all applicable State and local requirements. For local unit acquisitions requiring the average of two appraisals, the NLT program will consider the average as the appropriate value estimates. If two appraisals are mandated for local unit acquisitions under State or local

requirements, then both appraisals will be considered eligible costs under the NLT program.

For the purposes of the NLT program, the INDOT Appraisal Guidelines are considered an appropriate appraisal guidance for the appraiser. However, certain elements of standard INDOT valuation approaches will not apply to the NLT program valuation requirements. Specifically, damages assessed under most INDOT approaches, such as severance, compaction, setback, etc. are applicable only as part of the appraised land value (contributory or detrimental) and only in the context of a recreational trail project.

Determination of damages or additional landowner compensation must be included in the appraiser’s final supported land value. Damages or compensation should be real and documented, not theoretical, and shall not be based on a factor of fee value unless the factor is supported for current trail-use projects in the location and context of the subject tract being appraised. The benefits of the proposed recreational trail are to be considered in the support of damages or compensation in the supported land value and will in many cases offset damages.

Trail-corridor easements should be valued in use and not be based on a factor of fee value.

At the time of application, the value of all acquisitions, donations, and applicant-owned trail corridor offered as match must be supported. Acceptable examples of valuation support could include an appraisal, statement of value, broker’s opinion, Appraisal Problem Analysis (APA) or Preliminary Cost Analysis, or other forms of support. If a statement of value is submitted, it is recommended that the appraiser providing the statement be hired to complete the full narrative appraisal or do the appraisal reviews. Alternative methods of supporting value should be discussed with DNR before submitting an application to assure that proposed method will meet the standard of the NLT program.

METHODS OF ACQUIRING LAND

NEGOTIATED PURCHASES

It is suggested that the following steps be taken by the applicant for the purpose of acquiring land through negotiated purchase. This process may conflict with the more-stringent provisions of the federal Uniform Act; the applicant should make appropriate decisions regarding the Uniform Act if deemed relevant to future plans.

1. Make initial contact with the landowner to see if the land might be available for sale and if they are willing to consider an offer. At this point, the price should not be negotiated since the purchase amount should be based on an appraisal. See example *Letter of Intent*. The Letter of Intent is provided as an example; applicants should seek legal counsel regarding the appropriate use of the language provided in the example. The applicant must inform the landowner whether the local unit might exercise the right of eminent domain if negotiations are not successful. It is the policy of DNR that if the local unit waives the right of eminent domain, it cannot go back and condemn at a later date.
2. Have the land appraised by a qualified appraiser. If the applicant has any questions about the value, the appraisal should be submitted to a review appraiser hired by the applicant for further analysis. The applicant is solely responsible to the NLT program for defending value and purchase price.
3. Inform the landowner in writing of the value of the property based on the results of the appraisal and offer to purchase the property for this price.
4. Based on the written offer at the appraised value, the final selling price is negotiated. If the purchase price is more than the appraised value, additional documentation explaining the difference in value will be needed, as explained later in this section. If the price is less than the appraised value, the acquisition is considered a “bargain sale,” as explained in later sections.
5. At this point, the applicant may sign an option to purchase or a purchase agreement, if desired, but the applicant should not complete the purchase of the property before the NLT grant commencement date (see Timing of Purchases section). The authorized agent of the applicant and the property owner must sign the option or purchase agreement, which should indicate both the negotiated purchase price and the appraised value of the property.

An NLT project application may be submitted during any of the above steps. Again, the land can only be acquired during the approved project period to be eligible for payment of acquisition costs.

Applicants should be aware that NLT guidelines and policies apply to any land acquisition intended as part of the NLT project regardless of whether NLT funds are used (early acquisitions, etc.). Applicants should follow the same sequences of steps for all acquisitions within the project to assure fair treatment for all landowners.

Land acquired by negotiated purchase is based on the fair-market value for the property as established by an independent appraisal prepared by a qualified appraiser hired by the applicant. An appraisal, if competently compiled by a qualified appraiser, should be an acceptable estimate of property value. It cannot be assumed, however, to be a final determination of value. The negotiations between a willing seller and a willing buyer will sometimes set a price that is higher than the appraisal, and this above-market value must be considered with the appraised value in establishing the reasonable limits of NLT eligibility.

When the applicant believes the negotiated price is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well-documented statement addressing this difference should be submitted to DNR for review. This statement should explain why the appraisal may not reflect the true value and what steps the applicant took to establish the true value. This statement should include a history of negotiations documenting discussions of price between the landowner and the applicant. The statement may indicate the importance of the proposed acquisition as opposed to other alternative sites, or other justification regarding the need to purchase the subject property at a higher amount. This statement should be supported by the qualified appraiser and/or review appraiser.

Sometimes an “administrative settlement” above market value is necessary to avoid an eminent-domain action. In these instances, a detailed and well-documented statement addressing the difference between the administrative settlement and the appraised value should be submitted to DNR for review. If DNR agrees that the administrative settlement represents a reasonable estimate of the property value, the amount above the appraised value may be eligible as match. If DNR denies the request, then only the appraised value will be eligible.

BARGAIN SALE

A landowner may be willing to sell real property for less than the full appraised value in what is known as a “bargain sale.” The difference between the purchase price and the fair-market value is considered donated land value. The purchase price and costs associated with the acquisition are eligible for payment under the NLT program. The donated value in a bargain sale will be considered eligible match, provided that the seller acknowledges the below-market nature of the sale in writing (e.g., a purchase agreement).

The bargain-sale purchase agreement should state that the seller has been advised of the fair-market value as determined by the appraisal and is willing to sell for less than fair-market value. The appraisal requirements for full purchases also apply to bargain sales.

LAND DONATIONS

A donation of property, whether in fee or by easement, is eligible as match under the NLT program. No direct payment will be given for land donations. Eligible costs of closing a land donation will be handled the same as for a purchase. The earlier section in this handbook on timing for land donations should be clearly understood.

A written offer to purchase/donate is not necessary when acquisition is by full donation. The legal act of donation itself precludes this necessity, which relates primarily to negotiated purchases and bargain sales. However, the donor should sign a statement of donation (with or without an appraisal).

Appraisal of the donation value should be by a qualified appraiser. The appraisal may be paid for by the applicant but should not be used by the donor for tax-deduction purposes. Establishment of value for an IRS-qualified donation is the responsibility of the donor; the cost of such an appraisal will not be compensated by the NLT program. Reasonable appraisals provided by landowners for IRS-qualified tax consideration may be used as the basis for NLT assistance. If an appraisal is provided by the landowner, it should be reviewed by an independent review appraiser hired by the applicant.

For the NLT application, one copy of either the appraisal or statement of value must be submitted for the donated parcels. It is important that the land value be established at the time of application. The donated land value will not be credited toward the applicant’s match until the NLT Grant Agreement is executed, the appraisal is approved by DNR, and the property is transferred.

EASEMENTS

Although fee simple acquisition of trail corridor is preferable, in some instances the acquisition of an easement for trail-development rights is the applicant’s best available option. Easements for NLT trail projects may be permanent (preferred) or for a specified term. A term easement must be for a period of at least 25 years, or equal to the facility life of any proposed development. Ideally, term easements should be renewable at the election of the applicant for a like term (any renewal fees are solely the responsibility of the applicant and should be negotiated in the original easement).

During the term of an easement, either permanent or term, the easement cannot be revoked at will or for cause by the landowner, and the land must be retained in public trail use for the duration of the easement period. Provisions stated in the easement should contain unrestricted surface-use rights and must not be detrimental to the proposed trail development or its long-term use.

Under the NLT program, easements will be valued for eligible cost or match at the appraised easement value based on the rights conveyed and the term of the easement rather than at a percentage of fee estate value.

If an easement has been or is to be executed prior to the submission of a NLT application, a copy of the easement should be sent to DNR for review. Advance approval of such agreements may help ensure eligibility for match purposes. Negotiations for easements should follow general negotiated land-purchase guidelines, including the requirements of the NLT program as stated herein. Similarly, if NLT assistance is being requested for the purchase of an easement, the transaction cannot take place until the NLT grant commencement date.

EMINENT DOMAIN

The NLT program will allow local units of government, if they have condemnation authority, to exercise the right of eminent domain in the acquisition of land for trail corridor. Local units must comply with all local and State laws (IC 32-24) and regulations related to the use of eminent domain. It is the policy of DNR for the NLT program that eminent domain should only be used by a local unit as a last resort in acquiring critical inholdings after all attempts to negotiate a purchase have been exhausted.

If eminent domain is to be exercised, the local unit of government with condemnation rights must provide a letter of intent indicating its willingness to use eminent domain to secure parcels for the proposed NLT trail project (see *Eminent Domain Memorandum*).

To discourage the wholesale use of eminent domain, only the court-approved appraised value (court- or mediation-ordered) may be used as match. This value will not be eligible for payment under the NLT program. Court- or mediation-ordered damages to the landowner and the cost of the eminent-domain action (attorney's fee, court cost, etc.) are not eligible for payment or use as match.

RECORDING NLT DEED RESTRICTIONS

NLT requires protective deed restrictions for property acquired or developed by the program. The purpose of these restrictions is to protect DNR's investment in the trail development improvements, and/or in the acquisition of property (in fee) or property rights (by easement). Please note that in order to comply with the Grantee Handbook, the applicant must submit deeds to the **fee simple** property acquired with NLT funds or donated for NLT trail development with a clause that reads:

“WHEREAS the property herein described was acquired under the State of Indiana’s Next Level Trails program. The intent of the Next Level Trails program is to preserve and develop important recreational trail resources throughout the State of Indiana for the use and enjoyment of the citizens of the State and others. Property acquired under the Next Level Trails program will be used solely for recreational trail purposes in perpetuity.”

This statement can be included in the original deed of conveyance to the applicant or can be recorded in a subsequent quitclaim deed from the applicant to the applicant.

Trail corridor improved with NLT funds should be protected by deed restriction wherever possible. If the property to be improved by the NLT grant was **owned by the applicant prior to application**, the following language should be inserted into the property deed, and re-recorded by quitclaim deed from the applicant to itself:

“WHEREAS the property herein described was developed for recreational trail purposes under the State of Indiana’s Next Level Trails program. The intent of the Next Level Trails program is to preserve and develop important recreational trail resources throughout the State of Indiana for the use and enjoyment of the citizens of the state and others. Property developed under the Next Level Trails program will be used solely for recreational trail purposes in perpetuity.”

Limited exceptions may apply to situations such as public road of way, or property that is already restricted by a State of Indiana Conservation Easement (Indiana Heritage Trust, President Benjamin Harrison Conservation Trust, or Bicentennial Nature Trust).

If the property rights acquired with NLT funds or donated for NLT trail development are under a **permanent easement** held by the NLT applicant, the recorded easement should contain a clause that reads:

“WHEREAS the easement area herein described was acquired under the State of Indiana’s Next Level Trails program. The intent of the Next Level Trails program is to preserve and develop important recreational trail resources throughout the State of Indiana for the use and enjoyment of the citizens of the State and others. Property rights acquired with these funds will be used solely for recreational trail purposes in perpetuity.”

If the property rights acquired with NLT funds or donated for NLT trail development are under a **term easement** held by the NLT applicant, the recorded easement should contain a clause that reads:

“WHEREAS the easement area herein described was acquired with the assistance of funding from the State of Indiana under the Next Level Trails program. The intent of the Next Level Trails program is to preserve and develop important recreational trail resources throughout the State of Indiana for the use and enjoyment of the citizens of the State and others. Property rights acquired with these funds will be used solely for recreational trail purposes for a term of no less than 25 years from the date of recording hereof.”

Easements (either term or permanent) granted (whether purchased or donated) to the applicant under the NLT program must be recorded by the County Recorder and Cross-Referenced to the Grantor’s vesting deed.

DEVELOPMENT ON PROPERTY ACQUIRED WITH NLT ASSISTANCE

FUTURE DEVELOPMENT CONDITIONS

Certain conditions apply to the use and development of the NLT-funded trail corridor beyond that which occurs during the NLT project period. Trail facilities constructed on NLT-funded corridor must remain open to the public and must comply with the requirements of the Americans with Disabilities Act of 1990, where applicable.

CONDITIONS FOR UTILITY USAGE

A common future development consideration for trail corridor is the lateral or perpendicular use for the placement of utilities, including water, sewer, electric, natural gas, and communications. The use of NLT-funded trail corridor for utilities should be balanced against the primary purpose of the corridor as recreational trail.

Perpendicular utility crossings generally have minimal impact on the recreational use of the trail corridor, and should be handled by the grant recipient with notification to DNR. Proposed utility crossings affecting trail corridor acquired by easement will require the consent and approval of the fee-estate title holder, unless specifically allowed under the terms of the trail easement.

Trail corridors are often well-suited for the placement of lateral utility corridors, but certain conditions apply under the NLT program. Land acquired in fee simple under the NLT program (including any land used as match) is intended specifically for the purpose of recreational trail use. It is DNR policy that trail corridor acquired in fee simple with NLT funds is by default restricted to recreational trail use unless there is an identified pre-existing utility easement or right of way; therefore, proposed lateral utility use of NLT-funded trail corridor requires the approval of DNR. DNR may approve the placement of the lateral utility right of way only if there is no adverse effect on the recreational functionality of the trail corridor, and there is a public benefit to the utility usage.

Proposed lateral utility use of trail corridor acquired by easement will require the consent and approval of the fee-estate title holder, unless specifically allowed under the terms of the trail easement.

Lateral utility usage has high monetary value in the establishment of corridor valuation; therefore, DNR policy is that placement of any new utilities on the NLT corridor should be compensated at the market rate. Compensation received for new utility uses should be retained by the applicant for long-term stewardship of the NLT trail project.

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LAND ACQUISITION CHECKLIST

PURCHASES (FEE OR EASEMENT) AND BARGAIN SALES

1. Make contact with the landowner regarding availability of the property and permission to appraise or enter the property for survey and mapping purposes. Obtain contact information for the owners and any tenants.
2. Have the land appraised according to the NLT Land Acquisition standards by qualified appraiser with the appropriate level of certification and competence for the assignment. The landowner must be given the opportunity to accompany the appraiser.
3. Applicant reviews the appraisal for appropriate value conclusion and NLT program compliance.
4. Offer to purchase the property for the approved appraised value.
5. Negotiate the selling price.
 - a. If the owner wishes to donate part of the land value, the acquisition will be a bargain sale, and the seller must complete a purchase agreement acknowledging the bargain sale below market value.
 - b. In cases where the negotiated sale price is higher than the appraised value, documentation explaining the difference in value must be submitted to the DNR as justification for the higher price. Grant assistance may be provided for the increased amount, subject to DNR approval.
6. A purchase agreement or option may be executed once the price has been determined for a negotiated purchase.
7. NLT grant approval must be received prior to transferring title to the applicant in order to be eligible for payment (rather than as match).
8. Obtain title insurance, an abstract, or attorney's opinion regarding title to the land and any encumbrances. It is often difficult to properly appraise a property until title work is available to the appraiser.
9. The applicant pays for the land, closing, and incidental acquisition costs. These costs are eligible for match or payment under the NLT program. The cost to a seller to transfer merchantable title (i.e., cost of a mortgage release) is the responsibility of the seller. These costs are not eligible for payment under the NLT program.
10. Record the deed with a clause stating that the land will remain for public trail use in perpetuity, or for the term of the easement (see Recording NLT Deed Restrictions section).

DONATIONS

1. After the landowner offers to donate the property, clarify whether the landowner intends to donate with an appraisal or without an appraisal. If the landowner desires an appraisal, obtain permission to appraise. Obtain contact information for the owners and any tenants.
2. Have the land appraised according to the NLT Land Acquisition standards, with the donor being given the opportunity to accompany the appraiser. Do not accept title prior to NLT grant approval.
3. Obtain title insurance, an abstract, or attorney's opinion regarding title to the land and any encumbrances. It is often difficult to properly appraise a property until title work is available to the appraiser.
4. The applicant pays for the closing and incidental acquisition costs. These costs are eligible for match or payment under the NLT program. The cost to a seller to transfer merchantable title (i.e., cost of a mortgage release) is the responsibility of the seller. These costs are not eligible for payment under the NLT program.
5. Record the deed with a clause stating the land will remain for public trail use in perpetuity.