

CPW

Due Diligence and Real Estate Acquisition Summary

If a project is selected by the Parks and Wildlife Commission for further study and negotiations, the Colorado Division of Parks and Wildlife must examine in detail many different issues regarding the property. This process is called “due diligence.” Due diligence work can be costly and lengthy, and it involves entry onto the property. The following is a brief explanation of the different elements of due diligence to assist landowners in understanding the process. These are general descriptions of the process. Not all items necessarily will be involved in every transaction. At the end of this summary are two other matters in our process which are not due diligence.

Appraisal. For almost every transaction there will be an appraisal and an appraisal review. The appraisal will be performed by a licensed Colorado appraiser. The purpose of the appraisal is to establish the fair market value of the property interest being conveyed: e.g. the fee title value, the conservation easement value, or the access easement value. The Division must know this value because it cannot pay more than the appraised value for any property interest. The appraisal is for the benefit of, and addressed to, the Division. The appraisal is an educated estimate by the appraiser of the property value based upon recent sales of “comparable” properties. The appraisal must be done in a very specific format that satisfies stringent national appraisal standards. When the appraisal is complete, the Division commissions an appraisal review by a different licensed appraiser who closely reviews the original appraisal to see that all standards are satisfied.

Phase I Environmental Site Assessment. An environmental site assessment (ESA) is performed to determine whether any “recognized environmental conditions” exist on the property. It is performed by qualified persons (usually biologists) following standards set by the American Society for Testing and Materials. A Phase I ESA is a non-invasive site investigation: no digging, boring or soil samples are involved. The investigative components of an ESA consist of 1) interviews with persons familiar with the property and its historic uses; 2) site visits to examine closely the property; and 3) research of local, state, and federal records of the site and surrounding area for any previously identified environmental risks or hazards. The ESA must provide the Division with findings, conclusions, and opinions that no unacceptable environmental risks appear to exist on the property. If a recognized environmental condition is found on the property, further inquiries usually are necessary.

Minerals Assessment. This report, sometimes known as a “minerals remoteness report,” is part of due diligence for most Division acquisitions. The minerals assessment serves two purposes. First, it informs the Division of the likelihood or potential for future mining or other mineral extraction on the property. Second, a finding in the minerals assessment that the probability of

surface mining on the property is “so remote as to be negligible” may be necessary if the landowner seeks to declare a donation for tax purposes under the federal tax code. Minerals assessments are performed by qualified geologists who inspect various maps, lists, databases, and other published and on-line materials and who may visit the property and conduct interviews. The minerals assessment describes the geology of the property and property nearby and then reports specifically on the potential for extraction of minerals.

Baseline Documentation Report. A baseline report is required only if the Division is acquiring a conservation easement. The format of the report is less formal than an ESA and its purpose is simple: what is the present condition of the property? How many buildings are there and what are their uses? Where are the roads and are they paved? Where are there fences and of what type? Where are there cultivated fields or pastures? Are the cultivated fields irrigated and in what manner? Is there livestock on the property and in what numbers? This report establishes the “baseline.” In addition to a written report on these matters, the baseline includes numerous photographs taken from locations identified on an accompanying map. The baseline report is used in the future to determine whether the property is being maintained in a manner which complies with the terms of the easement. The baseline report is signed by both the landowner and Division at the time the easement is granted indicating that both parties agree with the conditions described in the baseline.

Title Examination and Title Insurance Policy. In almost every case, a title examination will be performed and a title policy (generally paid for by the landowner) will be required in order to insure the Division’s real estate interest. The Division needs to verify the ownership of the property and to learn about the title status of the property (e.g. easements, mineral leases). The title research reveals whether the property is subject to deeds of trust or other liens which must be dealt with by the property owner prior to closing.

Surveys. Occasionally, survey work is required prior to closing. Surveys usually occur only if there is a concern about a property boundary, or if it is necessary to define portions of a property that are not to be included in the transaction.

Other Matters – Approval Process. While not part of due diligence, landowners should know something about the real estate process within the Division. Most project proposals must be approved, in one form or another, by at least three different entities. All property acquisitions must be approved in advance by the Parks and Wildlife Commission. The Capital Development Committee of the Colorado Legislature must independently review most acquisitions and forward its recommendation to the Commission. Finally, all contracts (such as real estate purchase and sale agreements) must be reviewed and approved by the Department of Natural Resources Controller or by the Office of the State Controller.

Other Matters - Documents. Again, while not part of the due diligence process, the preparation, review and revision of the major documents involved in a land transaction are important and time-consuming. Almost all transactions require a purchase and sale agreement. In conservation easement transactions, a management plan will be developed between the parties which, when signed by the landowner and the Division, will describe how the property will be managed in the coming years. The Division usually is responsible for creation of these documents and all are reviewed by the Colorado Attorney General's office. Finally, there are the deed or easements that transfer the property interest. These documents are prepared, then reviewed and revised, in frequent consultation with the landowner or the landowner's attorney.