

SECTION 51. Subchapter IV is renumbered subch. VII.

SECTION 52. NR 51.61 is amended to read:

**NR 51.61 Applicability.** This subchapter applies to the department program to acquire ~~stream bank easements~~ property under s. 23.094, Stats., and to stream bank protection grants to nonprofit conservation organizations pursuant to s. 23.096, Stats.

SECTION 53. NR 51.62 (intro.) is repealed and recreated to read:

**NR. 51.62(intro.) Definitions:** In this subchapter:

SECTION 54. NR 51.62(1) is amended to read:

NR 51.62(1) "Management plan" means a written plan ~~prepared in accordance with the department's master planning process~~ describing conditions and activities which shall be enforced and allowed on ~~lands and easements~~ property acquired by the department under s. 23.094, Stats.

SECTION 55. NR 51.62(2), 51.63(2), 51.64, 51.65(1)(intro.), (2) and (4) to (6) and 51.66 are amended to read:

NR 51.62(2) "Landowner" means any individual, partnership, corporation, municipality, town, county or person holding title to or having an interest in land ~~who grants the department a stream bank easement.~~

NR 51.63(2) The extent to which the threat to water quality and fish habitat of the stream can be protected through the acquisition of ~~land rights~~ property. Streams shall satisfy this criterion to a reasonable extent to be considered further.

**NR 51.64 Management plans.** The department shall prepare a management plan for each stream or stream segment on which it intends to acquire ~~land or stream bank easements~~ stream bank property.

NR 51.65(1)(intro.) The following activities are prohibited on ~~land and easements~~ stream bank property acquired unless specifically approved by the department in the management plan:

NR 51.65(1)(c) Mowing, grazing or spraying the land with chemicals except to comply with noxious weed control laws in ss. ~~66.95523.235~~ and ~~66.9666.0407~~, Stats., or to control pests on an emergency basis when such control is necessary to protect public health.

(2) Whenever possible, the ~~area included in acquisitions and easements~~ property shall include land within at least 66 feet from either side of the stream. Riparian wetlands and lands at least 66 feet from the edge of the wetland shall be included ~~in acquisition and easement areas~~ whenever possible.

(4) A landowner subject to an easement may be required to seed native grass or a grass-legume mixture on the land at rates determined by the department to establish and maintain perennial cover ~~for the term of the easement~~, or to plant trees on the land subject to the easement.

(5) The department may allow installation and maintenance of management practices meeting USDA soil conservation service standards, such as cattle stream crossings, riprap and

cattle watering areas, if the management practice does not conflict with the purpose of ~~the~~ an easement.

(6) Public access to ~~the~~ an eased area may be a condition of ~~the~~ an easement if the public use does not conflict with the purpose of the easement.

**NR 51.66 Grants to nonprofit conservation organizations.** ~~Grants may be made~~ The department may award grants to nonprofit conservation organizations to acquire ~~land or easements~~ property on stream corridors which meet the criteria established in s. NR 51.63.

SECTION 56. NR 51.67 is repealed.

SECTION 57. Subchapter V is renumbered subch. VIII.

SECTION 58. NR 51.70(2) is amended to read:

NR 51.70(2) The department may designate state trails which meet the purposes of s. 23.175, Stats., as a part of the state trail system. The department may provide for or assist in the acquisition of state trails by nonprofit conservation organizations, and enter into agreements with nonprofit conservation organizations or ~~local units of government~~ governmental units for their development, administration and management.

SECTION 59. NR 51.72(2) is repealed.

SECTION 60. NR 51.72(3) to (5) are renumbered NR 51.72(2) to (4).

SECTION 61. NR 51.73(1), and (3)(intro.) are amended to read:

NR 51.73(1) The Ahnapee, "400", ~~Badger, Bearskin, Buffalo River, Chippewa Falls/Ambridge, Chippewa River, Elroy-Sparta, Friendship, Fox River, Gandy Dancer, Glacial Drumlin, Great River, Green Bay/Greenleaf, Green Bay/Wausau, Green Circle, Hillsboro, La Crosse River, Military Ridge, Mountain Bay, Nicolet, Old Abe, Pecatonia, Red Cedar, Saunders, Sugar River, Gandy Dancer, Tomorrow River, Tuscobia, Old Abe, Hillsboro, Saunders, Green Circle, Wiouwash and Urban, White River, Wild Goose, Wild Rivers and Wiouwash~~ state park trails are designated as state trails.

(3)(intro.) Nonprofit conservation organizations and ~~local units of government~~ governmental units may nominate, in writing, additional trails for state trail designation. Nominations shall document that nominated trails meet the purposes of this subchapter, and provide recreational opportunities for equestrians, bicyclists, cross country skiers or hikers, and that the trail is:

SECTION 62. NR 51.74(2)(intro.) and (a) to (d) are amended to read:

(2)(intro.) If all conditions of s. NR 51.73 are met, the department shall give higher priority to ~~granting applications for funding to~~ projects for those trails that meet the following:

- (a) Provide connections between other state trails.
- (b) Are of a length sufficient to provide at least one day's recreational experience.

- (c) Provide connections to resource areas of statewide significance or areas of outstanding natural scenery.
- (d) Provide for more than one use.

SECTION 63. NR 51.74(2)(f) is created to read:

NR 51.74(2)(f) Are related to brownfields redevelopment as defined in s. 23.09(19)(a)1., Stats.

SECTION 64. NR 51.74(3) is repealed.

SECTION 65. NR 51.74(4) and (6)(b) are amended to read:

NR 51.74(4) The department may grant funds under s. 23.175, Stats., to nonprofit conservation organizations for the acquisition of scenic easements on lands ~~within state trail acquisition areas~~ that provide exceptional scenic value adjacent to or in the vicinity of state trails.

(6)(b) Portions of the Ice Age trail eligible for funding under this subsection are those under the ownership and management of the department, or those dedicated to the department under the provisions of s. 23.293, Stats., and managed by another party under the provisions of a management contract with the department, or recognized by the department, ~~and~~ or certified by the national park service. Portions eligible for funding shall also meet the standards of the Ice Age national scenic trail. Sections where the trail overlaps developed, multi-use trails are not eligible for funding.

**Note:** Standards for the Ice age national scenic trail may be obtained from the DNR, Bureau of Parks and Recreation, Box 7921, Madison, WI 53707.

SECTION 66. NR 51.74(6)(c) is repealed.

SECTION 67. NR 51.74(6)(d) and (e) are renumbered NR 51.74(6)(c) and (d) and amended to read:

NR 51.74(6)(c) The department may expend the funds as grants. Nonprofit conservation organizations or ~~local units of government~~ governmental units managing portions of the Ice Age trail under the provisions of par. (b) may nominate maintenance projects on the appropriate department form, and include ~~a check for one half the cost along with a cost estimate and at least 2 quotes to support cost estimates for items above \$500.00. If the grant proposal is approved, the department shall cash the applicant's check, and write a check to the applicant for the full amount of the grant. If the project is not approved, or if funds are no longer available, the applicant's check shall be returned.~~ The grant amount shall be 50% of project costs. Eligible project costs are defined in s. NR 51.09.

**Note:** The appropriate department form may be obtained from the Bureau of ~~Parks and Recreation~~ Community Financial Assistance, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(d) ~~If the provisions of pars. (b) to (d) are met, the~~ The department shall give priority to those portions of the Ice Age trail providing significant public use, or where the maintenance expenditure will protect the resource or public safety or comfort, or those portions under the ownership of a ~~local unit of government~~ governmental unit or a nonprofit conservation organization

~~meeting the requirements of s. NR 51.03~~ and managed by a ~~local unit of government~~governmental unit or a nonprofit conservation organization and where the nonprofit conservation organization has a recorded interest in the land.

SECTION 68. NR 51.74(6)(e) to (g) are created to read:

NR 51.74(6)(e) Sponsors shall apply for federal and state permits, approvals, licenses and waivers necessary to implement the project. If a project is on land not owned by the sponsor, the landowner shall be a party to any permit application. Work on the project may not begin until all applicable permits have been obtained.

(f) Upon signing the grant agreement, the sponsor may request up to 100% of the grant amount. The department may require proof that the sponsor has the remaining funds needed for the project.

**Note:** Other conditions for grant payments are contained in s. NR 51.09.

(g) If the sponsor fails to fulfill any terms of the grant agreement, the department may seek reimbursement of all or a portion of the state's share.

SECTION 69. NR 51.75(title), (intro.), (5) and (13) are amended to read:

**NR 51.75 Management Grant contracts under s. 23.096, Stats.** (intro.) ~~Contracts~~  
Grant contracts between the department and ~~nonprofit conservation organizations~~ sponsors for state trail acquisition and management shall, in addition to the requirements in subch. ~~I, II~~, require the ~~nonprofit conservation organization~~ sponsor to:

(5) ~~Keep the state trail open for public use after completion of the land acquisition and development that would allow the state trail to be used.~~ If the state trail ever ceases to be used for state trail purposes, then all rights shall revert to the department without necessity of reentry. The department has no obligation to develop and operate the trail and all permanent improvements made to the trail by the ~~nonprofit conservation organization~~ sponsor or its agent shall become the property of the department.

(13) If the trail is also a part of the Ice Age trail or the North Country trail and it qualifies for certification as a component of a national scenic trail, the managing cooperator shall, upon completion of the trail development, and where feasible, apply to the national park service for certification as a component of the Ice Age national scenic trail, or North Country national scenic trail and sign the trail accordingly.

SECTION 70. Subchapter VI of ch. NR 51 is repealed.

SECTION 71. Subchapter IX of ch. NR 51 is created to read:

**Subchapter IX**  
**Grants for State Property Development**

**NR 51.80 Purpose.** The purpose of this subchapter is to establish criteria and procedures for awarding stewardship grants to friends groups and nonprofit conservation organizations for development projects under s. 23.098, Stats.

**NR 51.81 Applicability and definitions.** This subchapter is applicable to friends groups as defined in, organized for, and under agreement with the department pursuant to s. 23.098 (1),

Stats., and s. NR 1.71, and nonprofit conservation organizations that apply for grants to undertake development projects on department properties.

**NR 51.82 Allocation of funds.** The department may allocate up to \$250,000 each year under the subprogram for property development and local assistance, under s. 23.0917(4), Stats., for grants to friends groups and nonprofit conservation organizations. The department may not obligate or encumber more than \$20,000 in each fiscal year for any one department property.

**NR 51.83 Eligible projects.** The department may award a grant for a project that meets all of the following requirements:

- (1) The project is for nature-based outdoor recreation as defined in s. NR 51.002(19);
- (2) The project addresses unmet needs consistent with department approved plans for the property, unless the project is for a state trail managed and maintained by a ~~local unit of government~~ governmental unit or other cooperator with a memorandum of agreement with the department;
- (3) The project is identified in a property's 6 year facilities plan, unless the project is described in s. NR 51.84(2)(e) or the project is for a state trail managed and maintained by a ~~local unit of government~~ governmental unit or other cooperator with a memorandum of agreement with the department; and
- (4) The project makes long-term capital improvements or installs durable equipment with an expected useful life of 20 years or more, unless it is described in s. NR 51.84(2)(e).

**NR 51.84 Priorities.** (1) Projects submitted by friends groups shall receive priority over projects submitted by nonprofit conservation organizations.

- (2) Priority shall be given to the following projects, not listed in order of priority:
  - (a) Projects where the stewardship grant leverages other funding in addition to the 50% sponsor match.
  - (b) Projects that expand recreation opportunities.
  - (c) Projects that address public health, environmental, safety or security problems.
  - (d) Capital improvement projects that expand or improve environmental education, interpretation programs, or outdoor skills development.
  - (e) Habitat restoration projects that are consistent with approved plans governing the management of the property.

(3) Additional factors that may be considered when awarding grants for projects on property owned and managed by the department are:

- (a) Whether the project enhances or is cooperative with a department capital improvement.
- (b) Whether the capital improvement or durable equipment project supports volunteer-based user services.

**NR 51.85 Application and grant award procedures.** (1) Applications for stewardship grants shall be submitted to the property manager on forms provided by the department.

Applications shall include a detailed description of the proposed project, a cost estimate, timetable and other information required by the department.

Note: A copy of the application form may be obtained from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison 53707.

(2) The department shall establish one or 2 application deadlines each year and shall evaluate and prioritize applications received by those deadlines according to the priorities in this subchapter. Funds shall be allocated to projects based upon their priority until funding is exhausted. Sponsors whose projects are not funded will receive an explanation of eligibility or priority ranking results. Sponsors may request that their projects be reconsidered in another fiscal year if the project is eligible for funding. Resubmissions will be judged without prejudice or preferential priority.

(3) Grant applications shall be developed cooperatively with the property manager.

(4) Any environmental assessments, historical or cultural assessments, permits and miscellaneous approvals required to implement the project shall be the responsibility of the department. Work may not begin until all applicable permits have been obtained.

(5) The department may award grants for up to 50% of project costs. The sponsor shall provide the other 50% of project costs. Up to 50% of the sponsor's share of project costs may be donated materials, equipment, services and labor, according to the provisions in s. NR 51.09(1)(c).

(6) The department may advance up to 100% of the grant payment to the sponsor once the sponsor provides documentation that it has its share of project costs.

(7) Projects may be completed in up to 3 phases and funded for a maximum of 3 fiscal years, subject to the project's annual priority ranking and availability of funds. No sponsor may receive more than \$60,000 under this subchapter for any one project that is completed in phases. A sponsor shall complete a usable component of the project at the end of each phase. The department may require that one phase be completed before it awards a grant for the next phase.

(8) Each sponsor that receives a grant award shall maintain accurate and complete financial records of project expenses in accordance with generally accepted accounting principles and practices. A final report, which documents project expenses, shall be submitted to the department property manager within 90 days of the completion of the project or by the date indicated in the grant agreement, whichever is sooner. If expenses for the project are less than estimated, the sponsor shall return unused grant funds with the final report.

Note: Copies of the department's financial reporting requirements and forms are available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

SECTION 72. Subchapter X of ch. NR 51 is created to read:

### **Subchapter X Baraboo Hills**

**NR 51.880 Purpose.** The purpose of this subchapter is to establish standards and procedures for implementation of a grant program for governmental units and nonprofit conservation organizations to acquire property under s. 23.0917(4m), Stats. Grants shall be used only to acquire property for conservation purposes in the Baraboo hills.

**NR 51.881 Applicability.** This subchapter is applicable to governmental units and nonprofit conservation organizations, lake sanitary districts as defined in s. 30.50(4q), Stats., and

public inland lake protection and rehabilitation districts applying for grants for the acquisition of property for the purposes set forth in s. 23.0917(4m), Stats.

**NR 51.882 Definitions.** In this subchapter, "Baraboo hills" means the area within the boundaries of the Baraboo Range national natural landmark, as officially designated by the national park service as of March 29, 1999.

Note: A map showing the boundaries of the Baraboo Range national natural landmark is available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

**NR 51.883 Application and grant award procedures.** (1) Sponsors shall submit applications on the prescribed department form. The department may consider applications as they come in, year-round, to the extent that funds are available, or if substantially oversubscribed for available funding, the department may establish application deadlines in order to evaluate and prioritize competing applications.

(2) Grants for the acquisition of property shall be distributed according to the standards and priorities in this subchapter.

(3) Grants shall be for any amount up to and including 100% of the lesser of the purchase price paid by the sponsor plus eligible acquisition costs, or the fair market value of property as established by department appraisal guidelines plus eligible acquisition costs.

(4) If a sponsor accepts a grant for any amount less than 100% of the fair market value of the property plus eligible acquisition costs, the remaining value shall be certified as matching property acquisition under sub. (7)(b).

(5) Acquisition of eligible property may occur at any time on or after October 29, 1999.

(6) The department shall notify successful sponsors and send a grant contract or grant agreement to the sponsor which shall be signed by both the department and the sponsor before any funds can be released to the sponsor.

(7) Grants may not be awarded until the following 2 criteria are met:

(a) The Wisconsin department of transportation has certified to the department that highway construction that will result in at least 4 traffic lanes has begun on the portion of USH 12 between the city of Middleton and the village of Sauk City.

(b) Matching property acquisition of sufficient valuation to equal or exceed the value of any grants given through this program shall be certified by the department according to department appraisal guidelines. Matching property acquisition shall meet the following requirements:

1. The acquisition shall provide for the perpetual protection of the conservation values of the property.

2. The funds used for the acquisition shall be federal non-transportation funds, governmental unit funds or nonprofit conservation organization funds.

3. The acquisition shall be in the Baraboo hills.

4. The acquisition shall have closed on or after October 29, 1999.

**NR 51.884 General provisions.** (1) In order to be eligible for funding under this subchapter, acquisition of property shall:

(a) Shall be located in the Baraboo hills. Property located within the acquisition boundary of any state park or state-owned natural area as of March 29, 1999 is not eligible for grants under this subchapter.

(b) Provide for the perpetual protection of the conservation values of the property. Temporary agreements do not qualify for funding.

(c) Contribute to protection of the forest resource in the Baraboo hills.

(d) Be from willing sellers.

(2) Property that is forested at the time of acquisition shall be maintained as forest. Forested lands may only be commercially harvested for timber in accordance with a forest management plan. If the property is acquired in fee by the sponsor, the forest management plan shall be approved by the department. If the acquisition is for an easement, the easement shall provide that if the landowner chooses to do forest management, it shall be done in accordance with a forest management plan approved by the party acquiring the easement.

(3) An easement acquired with grant funds may not prohibit the landowner from the future conversion of any unforested portions of the land to forest land appropriate to the site.

(4) The application shall include a comprehensive description of the sponsor's plans for future monitoring and management of the property.

(5) Property acquired under the Baraboo hills grant program may not be converted to uses other than conservation.

**NR 51.885 Priorities.** (1) The department shall select property for financial assistance in accordance with the following priorities which are not listed in order of priority:

(a) Acquisitions with significant natural features identified in the natural heritage inventory or other plan identifying natural resources of regional or national significance.

(b) Acquisitions which are identified for conservation or recreation in a plan approved by a governmental unit.

(c) Acquisitions within or contiguous to a large forested block.

(d) Acquisitions maximizing the protection of other large forested blocks.

(e) Acquisitions showing little effect of human disturbance and supporting a wide variety of species appropriate to native forest tracts.

(f) Acquisitions affording opportunities for forest restoration.

(2) The department shall also consider the following other factors, not listed in priority order, but they shall be of lower priority than the priorities listed in sub. (1):

(a) Acquisitions that satisfy a relevant statewide or department regional priority need identified in the statewide comprehensive outdoor recreation plan need analysis.

(b) Acquisitions that provide and enhance outdoor, natural resource related recreation opportunities.



- (c) Acquisitions that involve a joint effort by 2 or more eligible sponsors.
- (d) Acquisitions that have substantial community support.
- (e) Acquisitions that have significant aesthetic value.
- (f) Acquisitions that implement elements of water quality plans or initiatives.
- (g) Acquisitions that are accessible, where accessibility is appropriate.
- (h) Acquisitions that have water frontage.
- (i) Acquisitions that connect to other conservation lands.
- (j) Acquisitions that protect sensitive wildlife habitat.

SECTION 73. Subchapter XI of ch. NR 51 is created to read:

#### **Subchapter XI - Governmental Units**

**NR 51.901 Purpose.** The purpose of this subchapter is to establish standards and procedures for grants to governmental units.

**NR 51.902 Applicability.** This subchapter is applicable to towns, villages, cities, counties, lake sanitary districts, as described in s. 30.50(4q), Stats., public inland lake protection and rehabilitation districts, and the Kickapoo reserve management board that apply to the department for urban greenspace grants under s. 23.09(19), Stats., subch. XIII, aids for the acquisition and development of local parks under s. 23.09(20), Stats., and subch. XII, acquisition of development rights grants under s. 23.09(20m), Stats., and subch. XV, and urban rivers grants under s. 30.277, Stats., and subch. XIV.

**NR 51.903 Definitions.** In this subchapter:

(1) "Basic facilities" means the minimum improvements necessary and reasonable to enable people to safely use recreational lands.

(2) "Force account" means with the resources of the sponsor, including personnel services or labor, equipment and materials.

(3) "Local share" means the portion of the acquisition or development cost that is not funded by the state. Eligible sources of local share may include cash from the sponsor; grants or contributions from foundations, organizations, businesses and private individuals; and funds from the federal government except as provided in s. 30.277(5), Stats. Local share may also mean property contributions from a third party if the contribution is made within the 3 years prior to the acquisition and is considered by the department to be part of the project or eligible for that stewardship grant program.

(4) "SCORP" means the statewide comprehensive outdoor recreation plan prepared by the department.

**Note:** A copy of the statewide comprehensive outdoor recreation plan is available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

**NR 51.904 General provisions.** (1) The sponsor shall manage property purchased and facilities developed with stewardship funds to preserve and enhance the conservation and recreation values of the property.

(2) Project boundaries for acquisition and development projects that are submitted with grant applications and approved by the department may not be altered without the approval of the department.

(3) Property uses inconsistent with the stewardship program. (a) The sponsor may not convert property purchased or facilities developed with a stewardship grant to uses that are inconsistent with the stewardship program or the grant agreement, without the approval of the department. The sponsor shall record this restriction in the appropriate county register of deeds office as part of the deed received by the sponsor for the property purchased.

(b) If a sponsor converts property to an inconsistent use not approved by the department, the sponsor shall return the property to the use specified in the grant agreement or the sponsor shall replace the property with a different property, approved by the department. The replacement property shall be of at least equal value and benefit to the stewardship grant program as the property that was converted.

(c) If a sponsor converts a facility to an inconsistent use not approved by the department, the sponsor shall return the facility to the use specified in the grant agreement, or replace the facility with one of equal value used for the same purpose, or return the stewardship grant funds to the department.

(4) Sponsors shall comply with applicable state and federal regulations concerning bidding and awarding contracts, land acquisition, relocation, wage and labor rates, general and special zoning, land use permit requirements, access for persons with disabilities, flood disaster protection, environmental quality, and historical and archaeological preservation.

(5) A sponsor shall agree to comply with stewardship grant program requirements for a property purchased with a stewardship grant in perpetuity. A sponsor shall be responsible for operation and maintenance of a facility purchased with a stewardship grant.

(6) A sponsor may charge reasonable entrance, service or user fees to pay for operation and maintenance costs.

(7) The department shall have access to and may conduct compliance inspections of acquisition and development projects for which grant assistance has been provided under this chapter. The department may require project sponsors to conduct self-inspections of these properties.

(8) The following requirements apply to acquisition projects:

(a) Applications shall include a comprehensive description of the project proposal and a management plan identifying proposed land use of the area to be acquired including areas to be restored or developed, operation and maintenance, public access provisions and future land uses. The plan shall include a site plan for the property that identifies items such as land forms, water features, forest types, trail systems and wildlife habitat.

(b) Title to property acquired with a stewardship grant shall vest in the sponsor, except when acquired by the Kickapoo reserve management board where title shall vest in the state.

(c) The sponsor shall reimburse to the department one-half of all receipts from the sale of any structures or improvements that were included in the acquisition cost.

(d) The sponsor shall use income accruing to the sponsor from a property receiving a stewardship grant to further the objectives of the project as stated in the grant agreement unless the department authorizes the income to be used to further the objectives of another stewardship project.

(e) Property acquired with a stewardship grant may be entered under the county forest law, according to s. 28.11, Stats. In such instances, the provisions of s. 28.11, Stats., relating to distribution of income derived from the property, shall apply and s. NR 51.904(8)(d) is not applicable.

(f) Sponsors shall acknowledge the state's assistance in acquiring fee title ownership of a property, and provide notice of public access, by placement of signs or in any other manner approved by the department.

(g) Sponsors shall treat landowners fairly and negotiations between the sponsor and landowner shall be conducted on a willing seller - willing buyer basis. Lands acquired through condemnation and facilities developed on lands acquired through condemnation are not eligible for grant funds.

(h) The department shall approve any easement document before grant payments are made.

(i) The department shall have access to property on which an easement is acquired with a stewardship grant, in a reasonable manner upon prior notice to the project sponsor and the landowner, to monitor compliance with the conditions of the grant agreement. The conditions of that access shall be contained in the easement agreed to by the landowner, or in the grant agreement if the agreement has been agreed to and signed by the landowner. The department may grant variances to this access requirement in extraordinary situations according to the procedure in s. NR 51.003.

(j) When a stewardship grant is awarded for acquisition of an easement, the sponsor shall prepare a baseline document, approved by the landowner and available to the department for inspection, before grant payments are made.

(k) The sponsor shall monitor any easement acquired with a stewardship grant at least once a year to ensure that the provisions of the easement are being satisfied. The sponsor shall compare the condition of the property with the baseline document, and shall enforce all easement provisions.

(l) The holder of any mortgage or land contract on easement property shall subordinate their rights to the terms of the easement before grant payments are made.

(9) The following requirements apply to development projects:

(a) Before development of public facilities begins, other state agencies may require formal project approval concerning health, safety and sanitation requirements, and historical and environmental considerations. Sponsors shall apply for federal and state permits, approvals, licenses or waivers necessary to implement the project. The sponsor may not begin work until all applicable permits have been obtained.

(b) The department may award stewardship grants for development projects on property not owned by the sponsor provided the sponsor has a lease of 20 years or more, and oversight and control of the property for at least 20 years.

**NR 51.905 General priorities.** Except in fiscal year 2001, factors that shall be considered in rating projects under ss. 23.09(19), (20) and (20m) and 30.277, Stats., include:

(1) Whether or not a community has or is developing a comprehensive plan pursuant to s. 66.1001, Stats.

(2) Whether the comprehensive planning incorporates intergovernmental cooperation.

(3) Whether the project is supported by or is part of a comprehensive plan prepared pursuant to s. 66.1001, Stats.

**NR 51.906 Application and grant award procedures.** (1) Project sponsors shall submit applications on prescribed department forms to the appropriate region office by May 1 of each year, except as provided in s. NR 51.943(2).

**Note:** Application forms are available from department region offices.

(2) The department shall evaluate and rank completed applications to determine which sponsors shall receive grants under ss. 23.09(19), (20) and (20m) and 30.277, Stats.

(3) The department shall fund projects in priority order within each grant program until all grant funds available within a program have been awarded.

(4) The department shall notify all sponsors as to their success in obtaining a grant and shall send a grant agreement.

(5) Property acquisition and development projects may not begin prior to the project period start date except as provided in s. NR 51.907(1)(b) for retroactivity of land acquisition costs and s. NR 51.907(2)(a)4. for retroactivity of engineering and planning fees.

(6) Project activities and costs incurred shall be within the project period, project scope and project amount as shown on the grant agreement.

(7) The sponsor may request a change in project period, scope or grant amount prior to the project period end date.

**NR 51.907 Grant awards.** (1) **LAND ACQUISITION PROJECTS.** (a) *Grant cost share.* Except for grants issued under s. 23.0917(4m)(i) and (j), Stats., for the Baraboo hills, the department shall award grants for up to 50% of the acquisition cost as determined according to s. 23.0917(7), Stats. The grant amount may not exceed 50% of the purchase price of the property and other eligible costs specified in s. NR 51.002(1). The remainder of the acquisition cost shall come from local share. The sponsor shall indicate all known sources of local share when the grant application is submitted.

(b) *Retroactive costs.* Land acquisition costs may be retroactive for up to one year before the grant application is submitted upon prior written approval of the department providing the sponsor can demonstrate a need to proceed at the time.

(c) *Donations.* 1. The sponsor may use up to 50% of the fair market value of a contribution of property as all or part of local share with the approval of the department, but only to the extent that stewardship grant assistance is needed to acquire the subject parcel.

2. Contributions of property are eligible as local share only if the donated property is eligible for the same stewardship grant program as the property being acquired. The donated property shall be encumbered by the conditions and restrictions of the stewardship program as described in s. NR 51.904(3).

3. The fair market value of property used as a donation shall be determined by appraisal according to department appraisal guidelines.

4. The amount of the property donation that can be used for the local share shall equal the value of the donation or the amount of cash needed by the sponsor for the purchase, whichever is less, so there will be no grant payment in excess of the moneys actually needed for the purchase.

5. If approved by the department, any carry-over value from an approved property donation that is not utilized as local share in an application may be used for local share in subsequent applications in the fiscal year in which the first application was submitted and the following fiscal year.

**Note:** For example, land valued at \$20,000 is donated to the project sponsor who then purchases another property under that stewardship program for \$8,000. The appraised value of the purchased property is \$12,000. The total project value is \$32,000 and the local share would normally be \$16,000. But because only \$8,000 was actually spent to purchase the land, and since a grant in excess of that would constitute a profit to the sponsor, the state share is reduced to \$8,000. The remaining \$8,000 in donor value may be used by the sponsor in subsequent applications in that fiscal year and the following fiscal year.

6. Property acquired through a lawfully required subdivision parkland dedication is not eligible to be used as local share.

(2) **DEVELOPMENT PROJECTS.** (a) *Grant cost share.* The department may issue grants for up to 50% of necessary development project costs that are consistent with the project scope and incurred during the project period. The sponsor shall indicate all known sources of the local share when the grant application is submitted. Eligible costs include, but are not limited to:

1. Labor costs including force account labor directly related to and required for completing the project. Costs shall be based on the actual wage rate paid by the sponsor including salary and fringe benefits.

2. Direct costs for materials and equipment used for project-related purposes over their useful life or in the case of force account materials or equipment time, the cost of the portion used for the project.

3. The cost of leased equipment used for project related purposes. The cost of the use of equipment owned by the sponsor may not exceed the county highway rates established annually by the department of transportation.

**Note:** The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Madison 53705.

4. Engineering or planning fees necessary to complete the project. These costs may be retroactive.

(b) *Donations.* The substantiated value of materials, equipment, professional services or labor donated for the project may be used as all or part of the local share of the project cost subject to all of the following:

1. All known sources of the local share shall be indicated when the grant application is submitted.

2. The maximum value of donated, non-professional, labor shall be equal to the prevailing federal minimum wage requirements.

3. The value of donated materials and professional services shall conform to market rates and be established by invoice.

4. The value of donated equipment use shall conform to the Wisconsin department of transportation highway rates for equipment.

**Note:** The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Madison 53705.

5. The value of an approved property donation may be used as local share for a development project.

(c) *Ineligible costs.* Costs not directly associated with or necessary for the implementation of the project are ineligible for grant funding. Ineligible costs include, but are not limited to:

1. Fines and penalties due to violation of, or failure to comply with, federal, state or local laws and regulations.

2. Indirect costs including administrative costs.

3. Costs for which payment has been or will be received from any other funding source.

4. Costs associated with operation and maintenance of parks and other outdoor recreation areas and facilities.

**NR 51.908 Grant payments.** (1) Sponsors may request an advance payment of up to 50% of the grant amount at the time the grant agreement is signed by the department and project sponsor.

(2) The department may approve final grant payments when the following conditions have been satisfied:

(a) The sponsor has submitted a claim supported by appropriate evidence of project expenditures. Accounting for all stewardship grants shall be in accordance with generally accepted accounting principles and practices. Financial records including documentation to support accounting records shall be available for review by state officials for a period of 4 years after final payment.

(b) For land acquisition projects, the value of the property has been approved by the department according to department appraisal guidelines.

**Note:** The department's appraisal guidelines are available from any DNR region office or the DNR Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

(c) All requirements and conditions under ss. 23.09(19), (20) and (20m) and 30.277, Stats., this chapter, and the grant agreement have been complied with.

(3) The sponsor shall submit all claims for payment on department prescribed forms.

(4) The sponsor shall submit claims for final reimbursement within 6 months of the project period end date.

(5) The department may withhold final payment of the grant amount until all project, legal and program requirements have been complied with.

SECTION 74. Subchapter XII of ch. NR 51 is created to read:

**Subchapter XII - Aids for the Acquisition and Development of Local Parks**

**NR 51.910 Purpose.** The purpose of this subchapter is to establish standards and procedures for the administration of grants under s. 23.09 (20), Stats., to governmental units and nonprofit conservation organizations to acquire property for nature-based outdoor recreation and to governmental units to develop property for nature-based outdoor recreation facilities.

**NR 51.911 Applicability.** This subchapter is applicable to governmental units applying for grants for the acquisition and development of property under s. 23.09 (20), Stats., and to nonprofit conservation organizations applying for grants for the acquisition of property under s. 23.096, Stats.

**NR 51.912 Definitions.** In this subchapter: "Aids for the acquisition and development of local parks" means the program created under s. 23.09(20), Stats., with funds appropriated under s. 20.866 (2)(ta), Stats.

**NR 51.913 Allocation of funds.** The department shall apportion funds to projects on a region allocation system. Seventy percent of the funds shall be allocated on the basis of each region's proportionate share of the state population. The remaining 30% shall be divided equally between the counties and then apportioned to each region based on the number of counties in the region.

**NR 51.914 General provisions.** (1) A sponsor may only use grant funds provided under this subchapter for nature-based outdoor recreation pursuant to s. 23.09(20)(am), Stats., and support facilities for nature-based outdoor recreation.

(2) Grant sponsors shall submit a local comprehensive outdoor recreational plan or documentation that the project has been identified in a comprehensive plan pursuant to s. 66.1001, Stats., to the department in order to be eligible for aids for the acquisition or development of local parks. A plan shall be consistent with the outdoor recreation program under s. 23.30, Stats.

(3) Cost overruns beyond the original grant award may be eligible if funds are available.

**NR 51.915 Eligible development projects.** Development projects eligible for grant funds include, but are not limited to:

(1) Support facilities for swimming in a natural waterbody, including beaches, swimming areas and bathhouses.

(2) Fishing and hunting facilities, such as fishing piers and trails.

(3) Boating facilities such as launching ramps and docks.

(4) Observation and sightseeing facilities such as overlooks, turnouts and trails.

(5) Picnic facilities, including tables, fireplaces, shelters and paths.

(6) Camping facilities, including tent and trailer sites, tables and fireplaces.

(7) Winter sports facilities, such as slopes and trails for sledding and tobogganing, cross-country ski trails, and facilities for ice skating.

(8) Urban recreation areas, such as undeveloped play areas, bicycling trails, walking and horseback riding trails.

(9) Support facilities, including entrance and circulation roads, utility and sanitation systems, erosion control work, parking areas, toilet buildings and educational facilities where there is a permanent professional naturalist staff and the facilities are for nature interpretation.

(10) Renovation or redevelopment of existing nature-based outdoor recreation facilities or areas which have received adequate and regular maintenance but are impaired, or have become outmoded.

(11) Habitat restoration projects.

(12) Permanent landscaping and burial of overhead wires.

(13) Open shelters and multi-purpose shelter buildings which support a nature-based outdoor recreation activity.

(14) Fences and lighting for the protection of park users.

(15) Park signs.

**NR 51.916 Eligible land acquisition projects.** Land acquisition projects eligible for funding include, but are not limited to:

(1) Property that provides opportunities for nature-based outdoor recreation including, but not limited to parks, forests and camping grounds.

(2) Property with frontage on rivers, streams, lakes, estuaries and reservoirs that will provide water-based outdoor recreation.

(3) Property that provides special recreation opportunities, such as floodplains, wetlands and areas adjacent to scenic highways.

(4) Natural areas and outstanding scenic areas where the objective is to preserve the scenic or natural values, including areas of physical or biological importance and wildlife areas. These areas shall be open to the general public for outdoor recreation use to the extent that the natural attributes of the areas will not be seriously impaired or lost.

(5) Land within urban areas for day-use picnic areas.

(6) Land for nature-based outdoor recreation trails.

**NR 51.917 Ineligible projects.** Ineligible acquisition or development projects include, but are not limited to:

(1) Projects that are not supported by a local comprehensive outdoor recreational plan.

(2) Restoration or preservation of historic structures.

(3) Acquisition and development of areas and facilities that do not meet the definition of nature-based outdoor recreation specified in s. NR 51.002, such as spectator sports, playgrounds, swimming pools, dedicated sports fields, tennis courts and hockey rinks.



- (4) Development of areas and facilities to be used for professional athletics.
- (5) Development of amusement facilities, waterslides or the construction of facilities that are only marginally related to nature-based outdoor recreation.
- (6) Construction of park employee residences.
- (7) Development of areas and facilities to be used solely for game refuges or fish production purposes unless they are open to the public for general compatible recreation use, or if they directly serve priority public outdoor recreation needs identified in SCORP.
- (8) Construction of lodges, motels, luxury cabins or similar facilities.
- (9) Development projects in previously undeveloped recreation areas which consist solely of support facilities, unless the facilities are clearly required for proper and safe recreational use of the area.
- (10) Buildings primarily devoted to operation, maintenance or indoor recreation.
- (11) Acquisition and development of golf courses.

**NR 51.918 Priorities.** The department shall evaluate and prioritize projects for grant assistance in accordance with the following project priorities, which are not listed in order of preference:

- (1) Projects that provide basic facilities such as picnic and undeveloped play areas have priority over projects that provide more elaborate facilities.
- (2) Projects that enhance or preserve natural beauty.
- (3) Projects that provide for completion of a project already started where the sponsor has shown the ability to provide quality outdoor recreation facilities for its citizens without grant assistance.
- (4) Projects to develop areas previously acquired.
- (5) Projects to renovate existing facilities that are in danger of being lost for public use.
- (6) Projects where the sponsors have good performance records on other recreational projects.
- (7) Projects where the sponsors are financially able to adequately maintain and operate the area or facility.
- (8) Projects that offer safe, rapid and convenient access by all types of transportation modes appropriate for that type of facility.
- (9) Projects that, in relation to their costs, provide access for the greatest number of potential users and provide the greatest opportunities for nature-based outdoor recreation.
- (10) Projects that meet needs and deficiencies identified in SCORP; or a local comprehensive outdoor recreation plan; or a comprehensive plan pursuant to s. 66.1001, Stats.
- (11) Projects that provide multiple season, multiple activity use.

(12) Projects that are designed to serve the recreation needs of elderly persons, minorities and disabled persons.

(13) Projects that are shown to be regional or statewide in impact and importance.

(14) Projects that are ready to be implemented and can be completed in 2 construction seasons or less.

(15) Projects that involve the use of materials or products utilizing Wisconsin recycled products.

SECTION 75. Subchapter XIII of ch. NR 51 is created to read:

### **Subchapter XIII - Urban Green Space**

**NR 51.920 Purpose.** The purpose of this subchapter is to establish standards and procedures for administration of grants to acquire property for urban green space and nature-based outdoor recreation under s. 23.09 (19), Stats.

**NR 51.921 Applicability.** This subchapter is applicable to governmental units, lake sanitary districts under s. 30.50(4q), Stats., public inland lake protection and rehabilitation districts and nonprofit conservation organizations applying for grants for the acquisition of urban green space under s. 23.09 (19), Stats.

**NR 51.922 Definitions.** In this subchapter:

(1) "Community gardening" means a noncommercial activity in an urban community involving raising vegetables, fruits, flowers and herbs for personal consumption or use.

(2) "Urban green space" means open natural space within or in proximity to urban development that has scenic, ecological or natural value. It may also include land set aside for community gardening.

**NR 51.923 Allocation of funds.** The department shall distribute urban green space grants on a statewide basis except that 10% of the annual allocation shall be reserved for community gardening projects. If the department does not receive sufficient community gardening projects by the annual application deadline as specified in s. NR 51.906, remaining annual funds shall return to the general urban green space allocation.

**NR 51.924 General provisions.** (1) A sponsor may only use grant funds provided under this subchapter for nature-based outdoor recreation as specified under s. 23.09(19)(cg), Stats.

(2) The property to be acquired shall be identified in a plan approved by a governmental unit before a grant is approved.

(3) A sponsor that acquires property for community gardening may charge user fees that are sufficient to cover the cost of maintaining the area. Those fees may be waived based on the user's inability to pay.

**NR 51.925 Eligible projects.** Land acquisition projects which are eligible for grant funds include:

(1) Land to provide an open natural space within or in proximity to urban development.

(2) Land to protect from urban development an area or naturally formed feature that is within or in proximity to an urban area and that has scenic, ecological or other natural value.

(3) Land for community gardening to be used by inhabitants of an urbanized area.

**NR 51.926 Priorities.** (1) The department shall select projects for grant assistance through a ranking process when considering the following factors that are not listed in priority order:

(a) Planning factors include:

1. Projects that specifically implement a priority of the SCORP.
2. Projects that implement the approved master plans of 2 or more units of government or regional planning agencies.
3. Projects that preserve land that is listed on the natural heritage inventory database.
4. Projects that implement elements of water quality plans or initiatives.

(b) Project factors include:

1. Land that serves the greatest population centers.
2. Land that serves areas of rapidly increasing populations.
3. Land that is accessible, where accessibility is appropriate.
4. Land that has unique natural features, threatened or endangered species, or significant ecological value.
5. Land that provides open natural linear corridors connecting open natural areas.
6. Land with water frontage.
7. Land that contains or restores wetlands.
8. Land that protects sensitive wildlife habitat.
9. Land that protects an area threatened by development.
10. Land that preserves a natural community or could be restored to a natural community.
11. Land that can be shown to be of regional or statewide significance.
12. Land related to brownfields redevelopment.

(c) Administrative factors include:

1. Projects that are ready to be implemented.
2. Projects that continue eligible acquisition projects previously started.

(2) In the grant rating system, the priority for brownfields redevelopment shall receive additional preference pursuant to s. 23.09 (19) (cm), Stats.

**NR 51.927 Community garden project priorities.** In selecting community garden projects, the department shall consider:

- (1) Land located in areas with a high percentage of land developed.
- (2) Land adjacent to high density housing with residents with demonstrated special needs.
- (3) Land in areas where there is insufficient open space to meet existing demand.
- (4) Land that provides for expanding or replacing temporary garden plots.

SECTION 76. Subchapter XIV of ch. NR 51 is created to read:

#### **Subchapter XIV - Urban Rivers Grant Program**

**NR 51.930 Purpose.** The purpose of this subchapter is to establish standards and procedures for administration of grants under s. 30.277 (2), Stats., for the acquisition of property adjacent to urban rivers and development of shoreline enhancements to preserve, enhance or restore an urban river's natural resource values and provide opportunities for nature-based outdoor recreation.

**NR 51.931 Applicability.** This subchapter is applicable to governmental units applying for grants for the acquisition of property and development of shoreline enhancements under s. 30.277, Stats., and to nonprofit conservation organizations for the acquisition of property under s. 23.096, Stats.

**NR 51.932 Definitions.** In this subchapter:

- (1) "In-kind contributions" means the non-cash contributions of materials, equipment, services or labor provided by a third party that are reasonable and necessary for carrying out the project.
- (2) "Shoreline enhancement" means a development or habitat restoration project that serves public recreation or resource conservation purposes and is dependent on being on a shoreline.
- (3) "Urban area" means any area that is within or is characteristic of a city or village.
- (4) "Urban river" means a river within or in proximity to an urban area.

**NR 51.933 Allocation of funds and grant awards.** (1) The department shall distribute urban rivers grants on a statewide basis according to the provisions and priorities in this subchapter.

(2) No governmental unit may receive in any fiscal year more than 20% of the funds that are available for grants under this subchapter.

**NR 51.934 General provisions.** (1) Sponsors may only use grant funds provided under this subchapter to provide or enhance nature-based outdoor recreation as specified under s. 30.277(2), Stats.

(2) To be eligible for a grant under this subchapter, a sponsor shall fund at least 50% of the cost of the project by private, local or federal funding, by in-kind contributions or by state funding. For purposes of this subchapter, state funding may not include grants under this subchapter, moneys appropriated to the department under s. 20.370, Stats., or money appropriated under s. 20.866(2) (ta), (tp) to (tw), (ty) or (tz), Stats.

(3) In-kind contributions, as defined in this subchapter, shall meet all eligibility requirements of subchapter XI.

(4) Projects shall, either alone or in conjunction with other supporting plans, restore, enhance or preserve the environmental and natural resource values of an urban river or riverfront.

(5) Projects shall enhance or preserve diverse outdoor natural resource related recreation opportunities for all segments of the population.

(6) Projects shall be supported by a town, village, city, or county comprehensive outdoor recreation plan or comprehensive plan pursuant to s. 66.1001, Stats., which is being developed or has been completed by the governmental unit.

(7) The application shall include a copy of any relevant local comprehensive outdoor recreation plan, local green space plan, integrated resource management plan, riverfront restoration plan or appropriate sections of a comprehensive plan pursuant to s. 66.1001, Stats.

(8) Riparian flowage lands may be eligible for an urban rivers grant, if the project overall is more riverine in character than lake and if it is part of a comprehensive riverway plan, or if the acquisition is for the purpose of the removing the flowage and restoring the area to a natural river condition.

(9) Non-urban riverfront lands that are lying adjacent to an urban area or that are likely to be urbanized may be eligible for an urban rivers grant if the department determines acquisition of the land would contribute significantly to the overall success of an urban river project or comprehensive riverway plan of which it is a part.

(10) The following shoreline enhancements, not listed in priority order, are eligible for stewardship grants:

(a) Projects that support the outdoor recreation activities defined in s. NR 51.002 (19).

(b) Riparian buffer rehabilitation including establishment of native vegetation, which may include slope and site preparation, and control of exotic plant species.

(c) Shoreline stabilization, which may employ bioengineering practices, and other environmentally beneficial stabilization techniques.

(d) Engineering and design costs for approved shoreline enhancement projects.

(e) Removal of seawalls, retaining walls, overhead wires, roads, buildings and levees.

(f) Open shelters, multi-purpose shelter buildings and primitive campsites.

(g) Fences for protection of park users.

(h) Lighting for public safety.

(i) Park signs.

(j) Shoreline access.

(11) Shoreline enhancement projects associated with river corridor restoration following dam removal shall receive a priority for funding.

(12) Construction or repair of seawalls and lagoons, and environmental remediation or clean-up of site contamination are ineligible projects. Dredging projects are also ineligible unless the dredging is incidental to the overall project.

**NR 51.935 Priorities.** The department shall prioritize grant requests based on the extent to which the project, or the project in conjunction with supporting plans, satisfies each of the following criteria which are not listed in order of preference. As set forth in s. 30.277 (6), Stats., the criterion relating to brownfields under sub. (15), shall receive the greatest preference.

**Note:** For example, a grant request that satisfies 5 criteria to a substantially greater degree would receive higher priority for funding than a request that satisfies 6 criteria to a much lesser degree.

(1) The project satisfies a relevant statewide or department region priority need identified in SCORP.

(2) The project preserves land listed on the natural heritage inventory or restores or preserves an area with significant historical or cultural value.

(3) The project supports other federal, state or local natural resource management or pollution control lands or projects.

(4) The project implements elements of approved water quality plans.

(5) The project continues land acquisitions in an urban rivers project that was previously approved by the department.

(6) The project is within a designated scenic urban waterway under s. 30.275, Stats.

(7) The project restores, enhances or preserves natural resource values and environmental quality within the river corridor.

(8) The project provides and enhances diverse outdoor, natural resource related recreation opportunities for all segments of the population. Appropriate outdoor recreation opportunities include, but are not limited to fishing, wildlife observation, enjoyment of scenic beauty, boating, canoeing, hiking and bicycling.

(9) The project improves public access to the riverfront for all segments of the population.

(10) The project has substantial community support, including financial support.

(11) The project involves a joint effort by 2 or more governmental units.

(12) The project has significant potential for increasing tourism.

(13) The project has significant potential benefits to the overall economy of the governmental unit.

(14) The project has significant aesthetic value.

(15) The project is related to brownfields redevelopment, as defined in s. 23.09(19)(a)1., Stats.

SECTION 77. Subchapter XV of ch. NR 51 is created to read:

## Subchapter XV - Acquisition of Development Rights

**NR 51.940 Purpose.** The purpose of this subchapter is to establish procedures and standards for the administration of grants for the acquisition of development rights for nature-based outdoor recreation under s. 23.09(20m), Stats.

**NR 51.941 Applicability.** This subchapter is applicable to governmental units and nonprofit conservation organizations that apply to the department for grants to acquire development rights in land for nature-based outdoor recreation pursuant to s. 23.09(20m), Stats.

**NR 51.942 Definitions.** In this subchapter:

(1) "Acquisition of development rights program" means a voluntary land protection program enacted by a governmental unit that compensates landowners for limiting future development on their land.

(2) "Agriculture" means the uses described in s. 30.40(1), Stats.

(3) "Development" or "to develop" means construction or placement of buildings, structures, facilities, utilities or other improvements on property.

(4) "Development rights" means the rights of a landowner to develop their property to the greatest extent allowed under state and local laws.

**NR 51.943 Grant awards.** (1) The department may award grants to governmental units and nonprofit conservation organizations for the acquisition of easements that restrict future development and protect the conservation values of property in perpetuity.

(2) Application procedures are as stated in s. NR 51.906, except that in fiscal year 2001, applications received after May 1 shall be considered on a case-by-case basis to the extent that funds are available.

**NR 51.944 General provisions.** (1) If a sponsor submits a grant application for a property as part of an acquisition of development rights program, and that property is subsequently withdrawn from consideration, the sponsor may substitute another property if it achieves the same or a higher ranking as the property that was originally submitted.

(2) For easements acquired with a stewardship grant, the sponsor may not convert or approve conversion of land encumbered by the easement to uses inconsistent with the easement. Residential, industrial or commercial development is prohibited on those areas of easement property that are encumbered by a stewardship grant. Additional restrictions or conditions may be imposed by the easement or grant contract.

(3) Agriculture and forestry may be permitted on property encumbered by an easement as long as those activities are compatible with the purposes of the stewardship program and the acquisition project.

(4) Any agriculture within the area encumbered by an easement shall be carried out in accordance with the conditions, standards and specifications of a soil and water conservation plan approved by the natural resources conservation service office located in each county.

(5) Harvesting of timber within the area encumbered by an easement shall be carried out in accordance with the conditions of a forest management plan approved by the department.

(6) Vegetative buffers shall be established and maintained along lakes, ponds, wetlands, marshes, rivers, streams and ditches. Whenever possible, the area of the vegetative buffer shall

extend at least 75 feet from each edge of the surface water or wetland. There may be no activity that adversely affects the natural flow of surface or underground waters within the area of the easement.

**NR 51.945 Priorities.** The following types of property, not listed in priority order, shall receive priority for funding if the property provides for or enhances nature-based outdoor recreation:

- (1) Property with frontage on rivers, streams, lakes or estuaries.
- (2) Property that creates a buffer between land that has been permanently protected for natural resource and conservation purposes and potential or existing residential, commercial or industrial development.
- (3) Property that is within the boundaries of an acquisition project established by the department, a governmental unit or a nonprofit conservation organization where the uses of the property will complement the goals of the project and the stewardship program.
- (4) Property that is within an environmental corridor that connects 2 or more established resource protection areas.

**NR 51.946 Factors that shall be considered in project selection.** The department shall select projects for financial assistance by evaluating each project according to the following factors, not listed in order of priority:

- (1) Recreational opportunities provided or enhanced.
- (2) Proximity to other permanently protected land.
- (3) Natural, scenic, geological and archaeological values of the property.
- (4) The degree of development pressure.
- (5) Whether the project has been identified in a comprehensive plan pursuant to s. 66.1001, Stats., another plan that has as one of its purposes the protection of natural resources, or the natural heritage inventory database.
- (6) The amount of funding available from other sources.

SECTION 78. Subchapter VII is renumbered subch. XVI.

SECTION 79. NR 51.90 to 51.94 are renumbered NR 51.990 to 51.994, and NR 51.992 and 51.994(2) and (4) to (6) are amended to read:

**NR 51.992 Eligible projects.** The department shall award grants for the operation and maintenance of state parks, southern state forests or state recreation areas. All projects shall be consistent with property master plans or from a comprehensive list of potential projects, available through park and forest superintendent, which shall be prepared by the department annually be consistent with department approved plans for the property.

NR 51.994(2) The department shall establish an annual application deadline, ~~which shall be stated on the application form.~~ The department shall consider Applications applications for grants received after that deadline ~~shall be considered~~ on a case-by-case basis to the extent that funds are available.



(4) ~~Grant awards may be given~~ The department shall award grants for 50% of the amount of matching funds provided by the friends group and are restricted by all other conditions of s. 27.016, Stats. The department may not expend more than \$30,000 for each friends group or state property in a given year. ~~Grant funds shall be deposited in a separate project account established by the friends group and may be used only for the project described in the approved grant application.~~

(5) The department shall evaluate all completed applications to determine which applications shall receive grants according to the priorities in this subchapter. ~~All~~ The department may advance ~~awarded grant monies may be advanced~~ funds to the successful ~~friends group applicant sponsor~~ once the ~~applicant sponsor~~ can show it has 100% of its share of the project monies ~~in a separate project account.~~

(6) Each friends group ~~which~~ that receives a grant award shall maintain accurate and complete financial records of project expenses for 4 years in accordance with department reporting requirements. Accounting shall be in accordance with generally accepted accounting principles and practices. Each sponsor shall submit a final accounting of project expenditures shall be submitted to the property manager within 60 90 days of the completion of the project or by the date indicated in the grant agreement, whichever is sooner. If the project is to provide for general operations or maintenance on the property, then with the approval of the department, the final accounting of project expenditures may consist of a year-end financial statement. If actual expenses for the project are less than estimated, the friends group shall return any unused grant funds it has received with the final report.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 2001.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(introduction.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_.

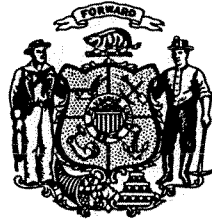
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Darrell Bazzell, Secretary

(SEAL)

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**CLEARINGHOUSE REPORT TO AGENCY**


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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-135**

AN ORDER to repeal NR 50.16, 50.165, 50.22, 51.002 (10), 51.04 (3), 51.24, 51.26 (2), 51.42 (2) and (6), 51.44, 51.45 (2) (d), 51.46 (2) (a) and (d), 51.67, 51.72 (2) and 51.74 (3) and (6) (c); to renumber NR 51.002 (2), (3), (5), (7) to (9) and (13), subchapters I to V of chapter NR 51, 51.04 (4), 51.05 (1) to (3), 51.06 (4) (a) and (b) 2. to 4., 51.26 (title), (1) and (3), 51.27, 51.28, 51.29, 51.42 (3), 51.46 (2) (b), 51.72 (3) to (5), 51.90, 51.91, 51.93 and 51.94 (1) and (3); to renumber and amend NR 51.002 (4), (6), (11), (12), (14) and (30), 51.05 (title), 51.06 (title), (1) to (3), (4) (b) 1. and (5), 51.25, 51.46 (2) (c), 51.74 (6) (d) and (e), subchapter VII (title) of chapter NR 51, 51.92 and 51.94 (2) and (4) to (6); to amend NR 51.002 (1), 51.003, 51.02, 51.03 (1) (intro.), (c) and (d), (3), (6), (7), (9), (11) and (12), 51.04 (1) (a), 51.40, 51.41, 51.42 (1), 51.43 (3) (c), 51.46 (title), (1) and (2) (intro.), (3) (intro.) and (4) to (11), 51.61, 51.62 (1) and (2), 51.63 (2), 51.64, 51.65 (1) (intro.), (2) and (4) to (6), 51.66, 51.70 (2), 51.73 (1) and (3) (intro.), 51.74 (2) (d) and (e), (4) and (6) (b) and 51.75 (title), (intro.), (5) and (13); to repeal and recreate subchapter VI of chapter NR 51; to create NR 1.445, subchapter I (title) of chapter NR 51, 51.002 (2) to (5), (7), (8), (10) to (12), (14), (15), (18), (19), (22), (24) and (26), 51.004, 51.03 (1) (f) and (15) to (20), 51.05, 51.06, 51.07 (4), 51.08 (6) to (8), 51.09, subchapter IV of chapter NR 51, 51.42 (3), 51.46 (3) (c) and (d), subchapter VI of chapter NR 51 and 51.74 (2) (f) and (6) (e) and (f) and subchapters X to XV of chapter NR 51, relating to the stewardship program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

09-14-00 RECEIVED BY LEGISLATIVE COUNCIL.

10-12-00 REPORT SENT TO AGENCY.

RS:DLL;jal;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

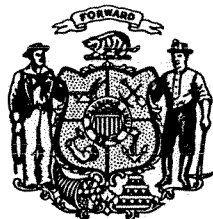
Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 00-135

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. SECTION 3 should indicate where subch. I (title) is to go--presumably before s. NR 51.001.

b. This rule repeatedly includes substantive requirements in definitions. Definitions should state only what a term means, as used in the rule; substantive requirements should be placed in separate provisions. [See s. 1.01 (7), Manual.] For example, in s. NR 51.002 (1), the rule is inserting an exception into the definition of "acquisition cost." The intent of this exception is to say that certain costs will be excluded from allowable acquisition costs in certain circumstances. Instead, the rule should specify in the appropriate substantive provision that those costs must be excluded from the calculation of acquisition costs. Also, in the definition of "baseline document" in s. NR 51.002 (3), the material beginning with the words, "which shall" is substantive. In this case, it appears that the entire definition should be omitted and incorporated into the few places in the rule where the term is used. Other examples of substance in definitions are the second and third sentences of s. NR 51.002 (17), the second sentence of s. NR 51.002 (10) (again, is a definition of "fringe benefit" needed?), the third sentence of s. NR 51.002 (19), the second sentence of s. NR 51.52; the second and third sentences of s. NR 51.903 (3) and the second sentence of s. NR 51.932 (1).

c. Similarly, provisions of definitions (and other provisions) that are merely explanatory or illustrative should be placed in a note following the provision. See, for example, the second sentence of s. NR 51.002 (15), the third sentence of s. NR 51.74 (6) (f) 1. and the fourth

sentence of s. NR 51.903 (3). Conversely, the note that follows s. NR 51.917 (1) makes a requirement of grant applicants and so should be placed in a substantive provision of the rule.

d. The rule unnecessarily renumbers provisions so as to retain sequential numbering. See, for example, SECTION 5. For a less cumbersome alternative to this practice, see s. 1.03 (7), Manual.

e. Terms should be in the singular when used in a general sense. For example, the definition of "governmental unit" should be "a town, village, city, county or the Kickapoo reserve management board." Note also the use of "or" instead of "and" in this example.

f. The definition of "middle kettle moraine" is not so much a definition as a general description. If no delineation of this area exists to which the rule can refer, as the definition of "Baraboo hills" does, perhaps the rule should either give a legal description of the area intended or a map of the area. Also, the parentheses should be replaced by commas.

g. The definition of "Baraboo hills" should be revised to simply describe the geographic area known as the Baraboo Hills. The exclusion of land within that area that is within established acquisition boundaries is substance, which should be omitted from the definition. Instead, another provision of subch. X should be created specifying that projects to acquire land within those acquisition boundaries are not eligible for grants under that subchapter. Also, "hills" should not be capitalized.

h. In several provisions, the rule states that the department may establish a certain requirement. In s. NR 51.004 (2), the requirement is a minimum grant amount; in s. NR 51.883 (1) and subsequent sections, the requirement is an application deadline. These are substantive policies that meet the definition of a rule. If the department is going to establish the requirements, it should specifically do so in the rule.

i. SECTION 11 incorrectly renumbers several subchapters in one SECTION. Each subchapter should be renumbered in a separate SECTION, in the order in which they occur in the rule.

j. In s. NR 51.02, the colon at the beginning of the list should not be stricken and the new material "s. 23.0917 (4m), Baraboo hills;" should be underscored.

k. In s. NR 51.03 (19), the phrase "is responsible for seeking" should be replaced by the phrase "shall seek a."

l. To the extent possible, the rule should be written in the active voice. Required actions should be in the form "X shall do Y." Too often, the rule states that something must be done but does not say who must do it. For example, s. NR 51.06 (1) should read: "The department shall base its evaluation of acquisition projects on . . . ." In s. NR 51.09 (3), about half the paragraphs are written in the active voice and half in the passive voice. Paragraph (b) should read: "The sponsor may request interim payments"; par. (c) should read: "The sponsor shall . . ." (instead of "should"); par. (e) should read: "The department may withhold final payment . . ."; and par. (f) should read: ". . . the department may require the sponsor to

submit . . . .” Section NR 51.914 (2) should state who must submit the specified plans or documentation. The entire rule should be reviewed for the use of the active voice. (The passive voice is acceptable when describing certain requirements, such as required attributes of a project. For example, “An eligible project shall be of statewide significance.”)

m. Material that follows an introductory clause should follow both grammatically and conceptually from the introduction, as a continuation of the sentence started in the introduction. Section NR 51.06 (3) (c) and (d) should be rewritten either to follow from s. NR 51.06 (3) (intro.) or as separate subsections of s. NR 51.06. See also s. NR 51.09 (1) (d) and (e). Section NR 51.907 (2) (a) 4. can be conformed to the grammatical structure of the introduction by inserting a period after “project” and making the remaining material into a separate sentence. Also, an introductory clause should end with a phrase such as, “all of the following” or “any of the following.” This is missing, for example, in s. NR 51.46 (3) (intro.). Also, s. NR 51.74 (2) (intro.) should be amended by adding, at the end, “meets one or more of the following,” and each of the following paragraphs should end with a period.

n. When a provision is both renumbered and amended, both treatments should be accomplished in a single SECTION placed in the rule in the order of the provision before it is renumbered. See, for example, the treatment of s. NR 51.06, which is renumbered s. NR 51.08 in one SECTION but amended in a later SECTION.

o. The treatment clause of SECTION 28 should read: “NR 51.25 is renumbered NR 51.24 and amended to read:” since the entire text of what is renumbered is also amended.

p. The introduction to definitions in subchapters should not refer to the other definitions that apply to the entire chapter, but should state, simply: “In this subchapter, . . . .” This is done correctly in some subchapters of ch. NR 51 and incorrectly in others.

q. The rule amends s. NR 51.46 (10) from a perfectly clear active voice construction to a vague passive voice construction. Whose failure to fulfill terms of the contract may prompt the department to seek reimbursement? If the intent is to expand this beyond failures of the sponsor, the rule should explicitly identify the other parties intended; otherwise, the structure should not be changed. Compare this provision to s. NR 51.74 (6) (f) 2.

r. The rule appears to be inconsistent in the amount of process specified in the various subchapters. Some subchapters include specific provisions regarding how applications for grants are made and reviewed, who may apply, what costs or activities are eligible, the amount of grants and matching requirements and other requirements. Other subchapters lack such provisions. It appears that subch. XI provides this information for applications by governmental units for grants under a variety of subchapters, but there is no similar set of provisions for nongovernmental project sponsors.

s. Section NR 51.62 (intro.) should be repealed and recreated to read: “In this subchapter:” and the phrase: “For the purposes of this subchapter,” should *not* be inserted in s. NR 51.62 (1).

t. If used, titles should be used consistently throughout a given section, subsection or paragraph. For example, since s. NR 51.74 (6) (f) is the only paragraph in s. NR 51.74 (6) that is given a title, either that title should be omitted or the other paragraphs in that subsection should be given titles. The same comment applies to s. NR 51.907 (1) (c). In contrast, s. NR 51.907 (2) (a) is the only paragraph in s. NR 51.907 (2) that does not have a title; a title should be provided for this paragraph.

u. SECTION 65 attempts to repeal, recreate and renumber a subchapter in one SECTION. Instead, two SECTIONS should be used, the first of which repeals subch. VI and the second of which creates subch. IX.

v. Subchapter IX of ch. NR 51 should include a definition of "friends group," which should simply cross-reference the definition in s. 23.098 (1) (b), Stats.

w. Section NR 51.83 should be rewritten along the lines of the following:

**NR 51.83 Eligible projects.** The department may award a grant for a project that meets all of the following requirements:

(1) The project is for nature-based outdoor recreation, as defined . . . (Note lack of quotes.)

(2) The project addresses unmet needs . . .

(3) Except for a project described in s. NR 51.84 (2) (g), the project is identified . . .

(4) Except for a project described in s. NR 51.84 (2) (g), the project makes or installs . . . .

x. In s. NR 51.85 (8), the word "should" should be replaced by the word "shall."

y. In s. NR 51.885 (2), the slashed alternative should be replaced by the word "or." See also s. NR 51.84 (2) (c).

z. In s. NR 51.904 (3), the introductory material should be renumbered as par. (a) and the following paragraphs renumbered accordingly. In sub. (5), the phrase "shall be responsible for operation and maintenance of" should be replaced by the phrase "shall operate and maintain."

aa. Section NR 51.904 (8) (title) could be recast as an introduction, stating: "The following requirements apply to acquisition projects:" The same applies to the following subsection. Also, the first sentence of s. NR 51.904 (9) (a) should be omitted and be placed in a note.

ab. In s. NR 51.904 (8) (j), the phrase "is responsible for seeking" should be replaced by the phrase "shall seek a."

ac. In ss. NR 51.915 and 51.916, specific reference should be made to “development projects” and “land acquisition projects” in the text of the rule. The titles to rule provisions are not considered rule text.

ad. In s. NR 51.926, the first sentence should be renumbered as sub. (1) and subs. (1) to (3) should be renumbered accordingly as should the paragraphs listed under the subsections. Subsection (4) then should be renumbered as sub. (2). It also appears that, in the introduction, the word “priorities” should be replaced by the word “considerations.”

ae. The third sentence of s. NR 51.994 (6) should begin: “A final accounting . . .”, as it reads in the current rule.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. To the extent that new forms are required by Clearinghouse Rule 00-135, the requirements of s. 227.14 (3), Stats., should be met.

b. Citations to statutory provisions in ch. 66, Stats., should be reviewed in light of the recodification of that chapter by 1999 Wisconsin Act 150.

c. The first cross-reference in s. NR 51.03 (1) (intro) should be to s. 23.0917 (4m), Stats.

d. In s. NR 51.03 (15), it would be helpful to the reader to cross-reference the subchapter of ch. NR 51 that relates to the land acquisition program referred to in the first sentence. Similarly, it would be helpful to tie the provisions of subch. XI, as specified in s. NR 51.902, to the other subchapters of ch. NR 51 that address the programs cross-referenced at the end of s. NR 51.902.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The cataloging of public lands under s. NR 1.445 (3) (b) omits at least two significant categories of public lands, those being landholdings of the University of Wisconsin System and transportation rights-of-way.

b. In s. NR 51.002 (10), the comma after the word “retirement” should be replaced by the word “and.”

c. In s. NR 51.002 (26), a reference is made to five decentralized administrative offices of the department. However, the note lists six offices.

d. In s. NR 51.002 (27), the comma after the word “board” should be deleted.

e. In s. NR 51.004 (8), the word “or” should be inserted before the second occurrence of the word “to.”



f. In s. NR 51.03 (15), it would be more conventional phrasing to refer to the "subprogram *under* s. 23.0917 (3)" rather than "in."

g. In s. NR 51.03 (20), the word "their" should be replaced by the word "its."

h. The last sentence of s. NR 51.04 (1) (a) would be clearer if the phrase "of the application" were inserted after "evaluation."

i. Throughout the rule, purposes for which grants may be awarded are stated as actions. This is not the case, however, in s. NR 51.05 (1). For example: "For the middle kettle moraine," in s. NR 51.05 (1) (c), is not a purpose; presumably, this provision should read something like: "For land acquisition in the middle kettle moraine." The other paragraphs of that subsection should be reviewed for similar problems.

j. Section NR 51.05 (1) (g) should read either, "For fish hatcheries involving cooperative work with the state," or "For fish farms, as defined in s. 95.60 (1) (a), Stats., involving cooperative work with the state." There is no need for both terms.

k. In s. NR 51.09 (intro.), should the word "may" in the second sentence be replaced by the word "shall"? Also, in the last clause, the word "may" should be deleted.

l. Section NR 51.32 should refer to "Lake Michigan or Superior" rather than "Lakes Michigan and Superior," since no bluffs adjoin both lakes.

m. In s. NR 51.46 (1), the phrase "shall be for" should be replaced by the phrase "shall be in an amount."

n. It appears that s. NR 51.53 (6) should end with the phrase, "the percent of the lake's shoreline or watershed captured by the acquisition."

o. The term "force account" is used in the rule as an adjective but is not defined as such. The definition should say that force account "means with the resources of the sponsor . . . ." However, it appears that the term is used only once, in which case it would be more appropriate to replace the term in the text of the rule with more descriptive language that does not require definition.

p. It appears that ss. NR 51.885 and 51.886 should be combined.

q. In s. NR 51.904 (8) (k), the word "their" should be replaced by the word "its." In sub. (9), the word "and" should be inserted before the phrase "historical and environmental considerations."

r. Section NR 51.913 states that funds shall be apportioned on a "department region allocation system," but then specifies a formula that relates to counties rather than department regions. It appears that the reference to a "department region allocation system" should be omitted. In that case, could the definition of "region" in s. NR 51.002 (26) be omitted, as well?

s. In s. NR 51.914 (3), it appears that the word "may" should be replaced by the word "are."

t. In s. NR 51.915 (intro.), the word "development" should be inserted before "projects." In the following section, the words "land acquisition" should be inserted before "projects."

u. The use of terms referring to community gardening in subch. XIII is inconsistent. The defined term is "noncommercial community gardening." Terms used in the subchapter include "noncommercial gardening," "community gardening" and "garden" (as in "garden project priorities"). A single term should be selected ("community gardening" is suggested), defined and used consistently in the subchapter. Also, the definition of the term is incomplete, since it does not explain the community aspect of the concept.

v. The paragraph break before s. NR 51.931 is missing.

w. Sections NR 51.942 (3) and (4) should be combined into a single definition, as follows: "Development rights' means the rights of a landowner to make improvements, including the construction or placement of buildings, structures, facilities or utilities, to the property to the greatest extent allowed under state and local laws."