

2007 DRAFTING REQUEST

Bill

Received: **06/12/2007**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Friske (608) 266-7694**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Adl. Drafters:

Subject: **Nat. Res. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Friske@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Enforcement of easements on DNR lands

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /P1 | rkite 07/03/2007 | bkraft 07/05/2007 | jfrantze 07/05/2007 | _____ | cduerst 07/05/2007 | | |
| /1 | rkite 09/25/2007 | bkraft 09/28/2007 | nнатzke 09/28/2007 | _____ | sbasford 09/28/2007 | | |
| /2 | rkite 11/13/2007 | bkraft 11/13/2007 | rschluet 11/13/2007 | _____ | cduerst 11/13/2007 | | |

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| /3 | rkite 12/12/2007 | jdyer 12/12/2007 | jfrantze 12/12/2007 | _____ | sbasford 12/12/2007 | lparisi 12/12/2007 | |

FE Sent For: N/A

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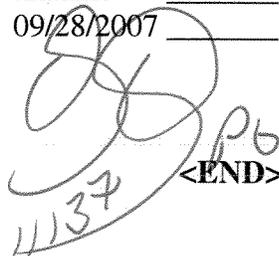
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12 bjk 11/13


1137
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9/28 nwn/sb
9/28

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| /? | rkite | /Pl bjk 7/5 | 7/5 | 7/5 | | | |
| | | /Pl jld 7/5 | 7/5 | 7/5 | | | |
| | | | PS | PS | | | |

FE Sent For:

<END>

Tradewell, Becky

From: Duerst, Christina
Sent: Thursday, May 31, 2007 3:42 PM
To: Tradewell, Becky
Subject: FW: Message for Becky Tradewell

From: Rep.Friske
Sent: Thursday, May 31, 2007 3:40 PM
To: LRB.Legal
Subject: Message for Becky Tradewell

I request the LRB draft a bill that would prohibit the State of Wisconsin from quashing easements on property it purchases or condemns private property.

Rep. Don Friske

Grant, Peter

From: Grant, Peter
Sent: Thursday, May 31, 2007 4:21 PM
To: Friske, Donald
Subject: Bill draft request

Representative Friske -

Regarding your bill request below, could you provide me with a little more information about the problem you are trying to solve? An example would help. Do you want to prohibit the state from condemning easements? What procedure does the state use now to quash easements? Thanks.

Peter Grant, Managing Attorney
Wisconsin Legislative Reference Bureau
608-267-3362
peter.grant@legis.wisconsin.gov

From: Tradewell, Becky
Sent: Thursday, May 31, 2007 3:55 PM
To: Grant, Peter
Subject: FW: Message for Becky Tradewell

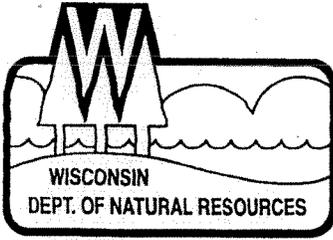
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Rep. Don Friske

TC / Timi 6/8/07
access people have before buy
is same after purchase
people use it
recreationally
eg JNR uses road w/ATV, used w/ permission of
paper co.
will call me back w/example



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
John Gozdziwski, Regional Director

Woodruff Service Center
8770 CTH J
Woodruff, Wisconsin 54568
Telephone 715-356-5211
FAX 715-358-2352

*J. Tom NEVER WROTE
THIS LETTER.*

October 15, 2004

Mr. and Mrs. Steven P. Margitan
5230 Cedar Falls Road
Hazelhurst, WI 54531

Dear Mr. and Mrs. Margitan:

This letter is in response to your inquiry regarding access to your property (SW ¼ SW, T38N, R5E, Section 11) through the State Lands of the Willow Flowage. Because both of your names and signatures appear on the aforementioned property's easement and Managed Forest Law Plan, this letter is addressed to both of you. Upon further investigation of your easement agreement that you provided to me, the Department has determined that Tomahawk Timberlands does not have any assignable easement rights extending southerly along Cedar Falls Fire Lane to Cedar Falls Road. While it is true that Tomahawk Timberlands retains access along this aforementioned route, (it appears that they did not retain) the authority to assign easement rights to another party across this portion of State-owned land.

NEVER PROVIDED DETAILED INFO ON MY EASEMENT

YES THEY DID PCA & SUBSEQUENT OWNERS.

During our conversation on February 24, 2004 (between Mr. Margitan and me), you mentioned an 'established pattern of use' by another landowner on Cedar Falls Fire Lane as evidence that you, your spouse, and your guests should also receive southerly access through State lands to Cedar Falls Road. The landowner referenced, Clarmont Mortensen, (has a permanent, perpetual easement attached to his deed to access his property from Cedar Falls Road via Cedar Falls Fire Lane.) This deeded easement was provided to Mr. Mortensen in 1986 by a previous owner of the property (not the State). During the same conversation, I explained to you that the Department would examine your easement with Tomahawk Timberlands and contact you if it appeared that the document did, in fact, provide southerly access across State Lands. As explained above, we conclude you do not.

NO HE DID NOT SAY THIS

NO HE DOES NOT

DNR. NEVER SPOKE WITH STEVE GUTHRIE

There are many users who spend time walking gated roads to hunt or scout hunting areas, place bait, or just hike or bicycle to enjoy the Willow Flowage property. I frequently receive negative comments when these users see privately owned, motorized vehicles pass them behind locked gates. I do my best to explain to users that nearly all of the property owners they see driving the roads have owned their properties long before the State purchased the surrounding land. This explanation, however, does little to alleviate the perception of unfairness that many users direct toward owners of private inholdings. Because you already have a permanent access easement from Tomahawk Timberlands, providing 'extra-alternative' access across State land would likely perpetuate this perception of unfairness that I'm working hard to allay.

SELLER FAMILY OWNERSHIP

HET WE ALLIED AS A LIC MOTORISED

BE BY WAY OF TAKE PARKED SHOW MANSION TRAIL

The Willow Flowage's Master Plan explains that the property was purchased to protect the area's remote and unspoiled character. The plan also explains that public motorized vehicle access is limited to only a few areas on the property in an effort to preserve and enhance the natural and undeveloped beauty while providing users with a sense of remoteness and solitude. As the Flowage Property Manager, it is my duty to uphold and implement the Master Plan to the best of my abilities.



YES IT WAS ALL
OTHER USERS WERE
PROVIDED A KEY

The action taken to simplify the padlock situation on Cedar Falls Fire Lane was not a purposeful act to create an undo hardship to you and your guests. The landowner-owned padlocks were replaced with State-owned locks and keys were provided to those individuals with legal access. Again, the Department could not locate any documentation that gives Tomahawk Timberlands the right to assign easement rights across State-owned lands. If you provide me with documentation stating the contrary, I will re-examine the situation.

In addition, our legal counsel for personnel matters, Dan Graff, advises me that your inquiry letter (from September 23rd) did not indicate an intent to divest ownership of the property in question. You are reminded of Mr. Graff's letter to you dated August 26th, 2004 indicating that divestiture was appropriate for reasons detailed in that letter. Be advised that the Department is prepared to utilize all available relief to secure an equitable and ethical solution to this matter.

Please feel free to contact me via phone, email, or in person if you have questions about this issue.

Sincerely,



Thomas Shockley
Willow Flowage Property Manager
(715) 358-9259
Tom.shockley@dnr.state.wi.us

My request is to have the Department of Natural Resources acknowledge my entire easement due to the following facts.

1. Real Estate Purchase Agreement (Tab 1). The Agreement between the DNR and PCA signed by the secretary, took into consideration the various private in holdings and both parties stated it was their **intent** to work with these private withholdings and the grantee's (DNR) would be accepting PCA's (and future owners Tomahawk timberlands) sufferance's.

- A. Explain ownership history of parcel
 - 1. Schlect family ownership from government.
 - 2. Steve Guthrie acknowledgement of prescriptive rights
 - 3. Easement Negotiation in case of dispute, (trade Easements).
 - 4. 1983 Gates after the tornado in 1979 and they were provide a key without key holder agreement.
 - 5. Key holder agreement for Mr. Mortenson on record with P.C.A.
- B. Point out and highlight important statements.
- C. Tab #6 Special Warranty Deed –under permitted exceptions, Documents not of record.
- D. Tab #17 PCA's Easement
- E. Tab #20 PCA's letter of agreement. "This clearly states that all buyers are to work with each other on access issues. The time frame given was unrealistic and Access Easement was actually drafted and reviewed between Tomahawk Timber Lands and the DNR, which was never executed. Both parties are working off good neighbor relations.

2. Hardship. The DNR's position creates a hardship for my access, as I need to go all the way around to access the parcel from my current location. This is the hardship in time and cost. In the event of an emergency it limits my options for personal injury and response to my home or cabin and my response as a public servant on the local fire department to respond to call in my Township or adjoining townships.

3. Inconsistency. The DNR is not being consistent in their treatment of individuals with access issues. Examples:

- A. Clair Mortensen Issue Mr. Mortensen has no clear easement yet he has been provided the right to use the South Entrance of Fire lane with no legal access
- B. William Wells Issues- Reimer Lake Rd., Oriole lake
- C. Camp Green Dale
- D. Randy Bohon Issue Caywood, Bearskull Rd.
- E. Caywood Issue
- F. Spikehorn
- G. Other family ownerships

H. SNOWMOBILE TRAIL + LETTER JUSTIFICATION

4. Good faith and Personal Record of upstanding Citizen
- A. Spingstead timber sale
 - B. Fire Control open Gates for FD
 - C. Bohon property leads to acquisition.
 - D. I cooperate with many DNR Representatives and report violations in their areas. Wardens, water regulations, Forestry, Fire, Land Control, BEAR AGE STUDY.
 - E. Forest Legacy I have submitted applications in two successive years for the Forest Legacy Easement. I was denied last year and I am hopeful it will be considered this year and funding will be available. I was hoping to work as a partner with the DNR, but it is not looking like that will happen.
 - F. Future Conservation Easements on this property other Family Lands, hopefully, but, unlikely, if this deal is not dealt with fairly.
 - G. I have another business opportunity and I am thinking of subdividing or developing a gravel pit on this property I would think both options are undesirable for the DNR.
 - H.

5. Alternatives

- a. Legislature (all ready familiar with situation), waiting for the go ahead
- b. Press Lakeland Times Bring issue to head
- c. Judgment in friendly court
- d. Impacts to DNR on my and other lands and future acquisitions and easements.
- e. Awareness of several questionable negotiations between DNR and friends.
- f.

Steve Margitan
5230 Cedar Falls Rd.
Hazelhurst, WI 54531
(715) 453-2131

Mr. Tom Shockley
Woodruff DNR Service Center
8770 Highway J
Woodruff, WI 54568

September 23, 2004

Dear Mr. Shockley,

I would like to know why I have not been contacted concerning the lock changes on the two DNR gates located on the South entrance of the Cedar Falls Fire Lane? I believe a key for those gates should be provided to me per my easement with Tomahawk Timberlands. I was courteous to provide you a copy of my easement to you, this spring and your failure to contact me regarding this issue, as other landowners were contacted was unprofessional, discriminatory and has created an undo-hardship.

I am aware that you provided a key to Tomahawk Timberlands and would appreciate the same courtesy. Furthermore, I would like to remind you of the Letter of Understanding signed by Dick Steffes, the Departments Real Estate Director, that recognizes the commitment and the fact that the Department would like to work with private withholdings regarding access.

If this request is denied, please provide a detailed synopsis of why this request is denied and an explanation of why the department has failed to meet its commitments pursuant to the Letter of Understanding. The failure to respond in an appropriate time frame may involve other actions including legal, legislative and public through local media, which could negatively influence future acquisitions, easements and access agreements. Finally, please be reminded this issue is between Steve Margitan, and the Department.

Thank you for your time and your prompt reply concerning this issue.

Sincerely,



*Hand Delivered
by Steve*

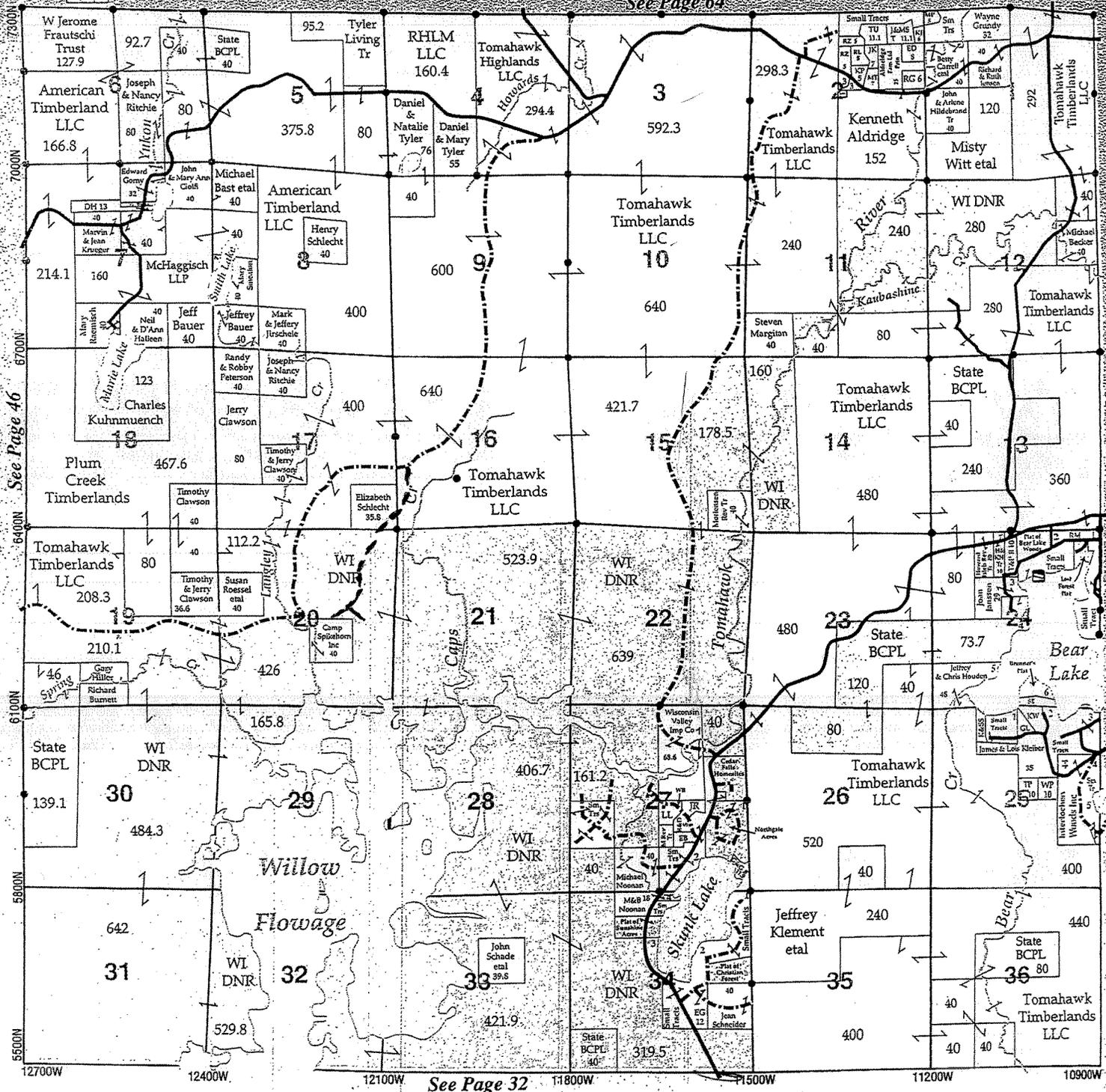


21. Minocqua (SE)

T.38N. - R.5E.

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See Page 44



See Page 32

"The bank for all people"

River Valley State Bank

8590 HWY 51 N • Minocqua • (715) 358-3434
www.rivervalleybank.com

Oneida, WI



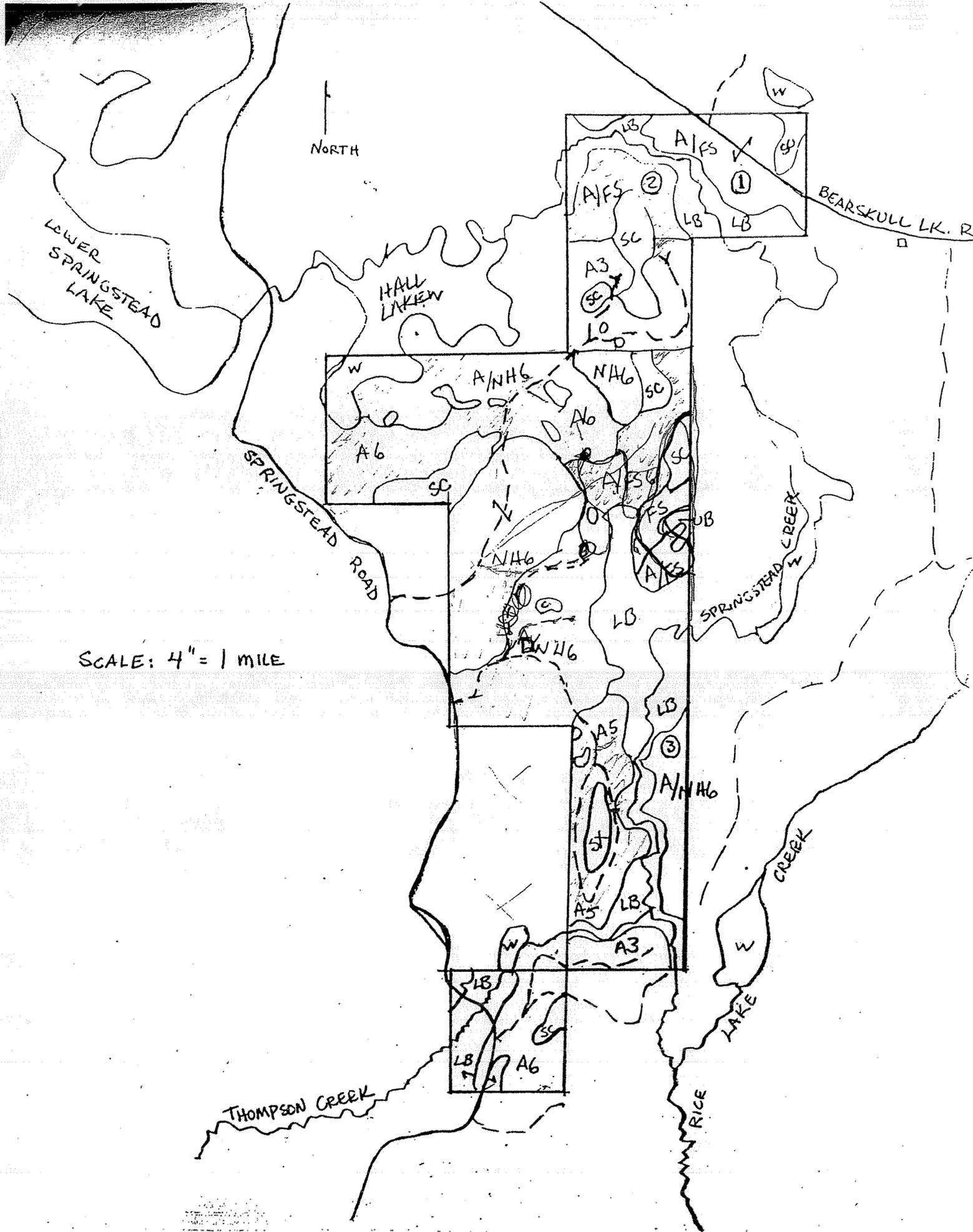
GODDING BUILDERS

Fred W. Godding
(715) 362-7385

4546 County C
Rhineland, WI 54501



CUSTOM WOOD CABINETS FURNITURE



SCALE: 4" = 1 MILE



State of Wisconsin
2007 - 2008 LEGISLATURE

Rm run
PI
LRB-2872
RNK:.....
bjk
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

D-Note ←

gen. cat. ✓

1 AN ACT ...; relating to: requiring the department of natural resources to grant
2 easements on certain lands.

Analysis by the Legislative Reference Bureau

✓ This is a preliminary draft. An analysis will be provided in a later version of this draft. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 23.39 of the statutes is created to read:

4 23.39 Easement for access to land. The department shall, upon request,
5 grant to a landowner an easement over land under the jurisdiction or control of the
6 department to allow a way of access to land owned by that person if all of the following
7 apply:

8 (a) The person was permitted a way of access over the land by the department's
9 predecessor in interest in the land.

1 (b) The person made regular use of the way of access over the land for at least
2 5 years before the department acquired the land.

3 (c) The department acquired the land for recreational use by the public.

4 (END)

e (3) B
4 (c) The person makes a request to DNE for
an easement no later than one year after
DNE acquired the land.

the department

the department

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2872 ~~edn~~ ^{pl dn}
RNK:.....

Date

bjk
+
jcd

(over DNR land)

This draft requires the Department of Natural Resources to grant an easement to a landowner so that the landowner has access to his or her land if that landowner was previously given a way of access over the land by DNR's predecessor in interest in the land. I have made a number of assumptions in this draft. I have assumed the following:

1. That the landowner would be required to request that DNR grant the easement.
2. That the landowner's request must be made in a timely way. For purposes of this version of the draft, I specified that the request must be made within 1 year of the date on which DNR acquired the land.
3. That the landowner is entitled to easement only if the way of access was regularly used for at least a minimum period of time. For purposes of this version of the draft, I specified that the landowner must have used the way of access for at least 5 years before DNR acquired the land.
4. That the easement would follow the land. If you want the only the person who owned the land at the time DNR acquired the land to have the easement, the draft will need additional language.

I have limited the draft so that the requirement to grant an easement applies only to DNR land that is acquired for "recreational use". If you want to extend the application of the draft to other lands, please let me know. For example, you might want the draft to apply to lands acquired by local units of government with stewardship funds.

The draft does not specify what evidence the landowner must provide to show that he or she was previously given access to the land. Do you want to require that the landowner must submit a written statement from the previous landowner?

Finally, you may wish to define the term "recreational use" in the next version of the draft.

I have prepared this draft in preliminary form to give you an opportunity to review the issues raised in this note and to give you the opportunity to make changes to the draft before preparing it in final form. Please feel free to contact me if you have any questions with regard to this draft.

its

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2872/P1dn
RNK:bjk&jld:pg

July 5, 2007

This draft requires the Department of Natural Resources (DNR) to grant an easement over DNR land to a landowner so that the landowner has access to his or her land if that landowner was previously given a way of access over the land by DNR's predecessor in interest in the land. I have made a number of assumptions in this draft. I have assumed the following:

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4. That the easement would attach to the land. If you want only the person who owned the land at the time DNR acquired the land to have the benefit of the easement, the draft will need additional language.

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Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

9-25-07

Per Tim Gary

Require that DNR may require written
evidence from predecessor that
landowner had been give access over
the land



State of Wisconsin
2007 - 2008 LEGISLATURE

Inserts

LRB-2872/21
RNK:bjk&jld:pg

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 Bill

SAV

regen. cat.

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insert Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 23.37 of the statutes is created to read:

4 23.37 Easement for access to land. The department shall, upon request,
5 grant to a landowner an easement over ~~land under the jurisdiction or control of the~~
6 department to allow a way of access to land owned by ~~that person~~ if all of the following
7 apply:

8 (1) The ~~person~~ was permitted a way of access over the ~~land~~ by the department's
9 predecessor in interest in the ~~land~~.

Insert 1-4

(a) landowner department
department

SECTION 1

1 (2) The person made regular use of the way of access over the land for at least
 2 5 years before the department acquired the land.

3 (3) The person makes a request to the department for an easement no later
 4 than one year after the department acquired the land.

5 (4) The department acquired the land for recreational use by the public.

(END) ✓

insert
2-5

(b) ✓
 landowner

department

(c) ✓
 (3) The person makes a request to the department for an easement no later than one year after the department acquired the land.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2872/1ins.
RNK:.....

Lbjk

INSERT ANALYSIS ✓

 This bill requires the Department of Natural Resources (DNR) to grant to a landowner an easement over land under DNR's jurisdiction or control (DNR land) to allow the landowner access to his or her own land if the landowner was permitted a way of access over the department land by DNR's predecessor in interest in the land. In order to be given the easement, the landowner must have made regular use of the way of access over the DNR land for at least 5 years before DNR acquired the land and DNR must have acquired the land for recreational use by the public. The bill requires the landowner to make a request to DNR for an easement within a year after DNR acquired the land. Under the bill, DNR may require the landowner to furnish written evidence that the landowner was permitted a way of access over the department land by the department's predecessor in interest. ✓

INSERT 1-4 ✓

NOA (1) In this section, "department land" means land under the jurisdiction or control of the department. ✓

INSERT 2-5 ✓

(3) A landowner making a request to the department for an easement under this section shall make the request no later than one year after the department acquired the land. ✓

(4) The department may require the landowner requesting an easement under this section to furnish the department with written evidence that the landowner was permitted a way of access over the department land by the department's predecessor in interest. ✓

end of inserts

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Redraft instructions - 10/19/07

Tim - Frieske - 2872 6-7694

strike part that requires person to make
regular use for 5 years....



State of Wisconsin
2007 - 2008 LEGISLATURE

RM run
LRB-2872
RNK:bjk&jld:wnw
Stays

2007 BILL

D-Note

SA ✓

regen. cat.

1 AN ACT to create 23.37 of the statutes; relating to: requiring the Department
2 of Natural Resources to grant easements over certain lands.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources (DNR) to grant to a landowner an easement over land under DNR's jurisdiction or control (DNR land) to allow the landowner access to his or her own land if the landowner was permitted a way of access over the DNR land by DNR's predecessor in interest in the land. In order to be given the easement, the landowner must have made regular use of the way of access over the DNR land for at least five years before DNR acquired the land and DNR must have acquired the land for recreational use by the public. The bill requires the landowner to make a request to DNR for an easement within a year after DNR acquired the land. Under the bill, DNR may require the landowner to furnish written evidence that the landowner was permitted a way of access over the DNR land by the department's predecessor in interest.

Under the bill, a

is entitled to an easement if the landowner

if

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 23.37 of the statutes is created to read:
4 23.37 Easement for access to land. (1) In this section, "department land"
5 means land under the jurisdiction or control of the department.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2872/2dn

RNK:.....

Date

l b j k

five

This redraft eliminates the requirement that, in order to obtain an easement over DNR land, a landowner must have made regular use of a way of access over the land for at least 5 years before DNR acquired the land. Consequently, the bill does not specify how frequently DNR's predecessor in interest must have allowed access over the land before DNR is required to grant the easement to the landowner. Is this consistent with your intent? ✓

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2872/2dn
RNK:bjk:rs

November 13, 2007

This redraft eliminates the requirement that, in order to obtain an easement over DNR land, a landowner must have made regular use of a way of access over the land for at least five years before DNR acquired the land. Consequently, the bill does not specify how frequently DNR's predecessor in interest must have allowed access over the land before DNR is required to grant the easement to the landowner. Is this consistent with your intent?

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Phone: (608) 266-7291
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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Per Tom Gary in Rep. Fruska's office -
Redraft LRB-2872 to give landowners
add'l time to make request for easement
if land was acquired 365 days before
effective date -
then give landowners one year from
effective date -



2007 BILL

Regen

1 AN ACT *to create* 23.37 of the statutes; **relating to:** requiring the Department
2 of Natural Resources to grant easements over certain lands.

generally ✓
Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources (DNR) to grant to a landowner an easement over land under DNR's jurisdiction or control (DNR land) to allow the landowner access to his or her own land. Under the bill, a landowner is entitled to an easement if the landowner was permitted a way of access over the DNR land by DNR's predecessor in interest in the land and if DNR acquired the land for recreational use by the public. The bill requires the landowner to make a request to DNR for an easement within a year after DNR acquired the land. Under the bill, DNR may require the landowner to furnish written evidence that the landowner was permitted a way of access over the DNR land by the department's predecessor in interest.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 23.37 [✓] of the statutes is created to read:
4 **23.37 Easement for access to land.** (1) In this section, "department land"
5 means land under the jurisdiction or control of the department.

BILL

1 (2) The department shall, upon request, grant to a landowner an easement over
2 department land to allow a way of access to land owned by the landowner if the
3 landowner was permitted a way of access over the department land by the
4 department's predecessor in interest in the department land, and the department
5 acquired the land for recreational use by the public.

6 (3) A landowner making a request to the department for an easement under
7 this section shall make the request no later than one year [✓] after ^{the date on which} the department
8 acquired the land.

9 (4) The department may require the landowner requesting an easement under
10 this section to furnish the department with written evidence that the landowner was
11 permitted a way of access over the department land by the department's predecessor
12 in interest.

✓
Insert
2-12
→

(END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2872/3ins.
RNK:.....

INSERT 2-12

SECTION 1. Nonstatutory provisions.

(1) Notwithstanding the time limit for making a request to the department of natural resources for an easement specified under section 23.37 (3) of the statutes, as created by this act, a landowner who makes a request for an easement over land acquired by the department of natural resources within 365 days before the effective date of this subsection is eligible to receive the easement if the landowner makes the request to the department no later than the first day of the 13th month beginning after the effective date of this subsection.

Parisi, Lori

From: Gary, Tim
Sent: Wednesday, December 12, 2007 2:14 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2872/3 Topic: Enforcement of easements on DNR lands

Please Jacket LRB 07-2872/3 for the ASSEMBLY.