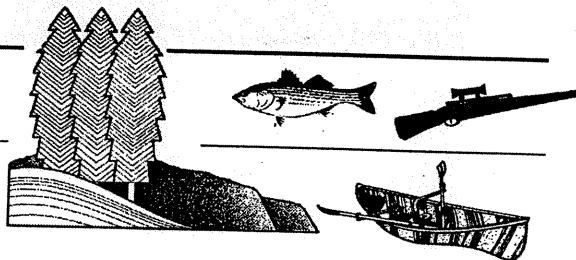


Assembly Committee on:

Natural Resources

State Representative

DuWayne Johnsrud, Chair



MEMORANDUM

DATE: October 30, 1995
TO: Members, Assembly Natural Resources Committee
FROM: DuWayne Johnsrud, Chair
RE: rule referral

The following Rules have been referred to our committee:

Clearinghouse Rule 95-085 Relating to the stewardship program.
Submitted by Department of Natural Resources.

Our current review period extends through November 28, 1995. A copy of the rule summary is enclosed. Please contact my office if you would like a copy of any rule.

REPORT TO LEGISLATURE

NR 51, Wis. Adm. Code
Stewardship program

Board Order No. PM-27-95
Clearinghouse Rule No. 95-085

Statement of Need

Chapter NR 51 is being revised for two primary reasons: 1) The Habitat Restoration Areas Program (HRA) is being revised to implement 1993 Act 343; and 2) the Nonprofit Conservation Organization (NCO) element is being recreated in response to NCO requests and to improve program administration. Major revisions to the NCO element include simplification of the application process and changes in the manner in which the department considers contributions of land as the NCO's share of acquisition costs. In addition, minor revisions are being made in other subchapters.

Modifications as a Result of Public Hearing

The Stewardship Advisory Council opposed the limit on the application of a donation of conservation property as a portion of the NCO's "sponsor match" to one year. The department has extended the time limit to "the current fiscal year and one additional year".

The Stewardship Advisory Council opposed s. NR 51.04(2)(c) which makes an NCO's "organization eligibility" contingent on department review of its financial capacity. SAC believes that the financial capacity and property management abilities do not pertain to an organization's eligibility but rather to its qualification to obtain a grant for a specific project. The department has changed the language of this section. Given the large size of the grants distributed through the Stewardship Program, the department feels it needs to know something about the organizations applying for those funds. The revised rule provides more flexibility than the current one, but still enables the department to consider whether or not an applicant will be able to carry out the conditions of the Grant and Management Contract.

Appearances at the Public Hearing and Their Position

No appearance slips were filed.

Response to Legislative Council Rules Clearinghouse Report

The suggested changes were made with the exceptions as follows:

Comment: The second sentence in NR 51.003(13) is substantive in nature and does not belong in the definitions.

Response: The definition should be left as is to be consistent with NR 51.002(1).

Comment: The LC asked if the contract referred to in NR 51.002(4) is authorized by statute to be recorded or should the interests of the state be established in a conservation easement rather than a contract?

Response: Section 23.096, Stats., requires that a contract be recorded.

Comment: The LC asked if the department has examined the requirements of ss. 32.19 to 32.27 Stats., to determine if all of the requirements are applicable under ch. NR 51 and whether the department or NCO pays for various expenses relating to relocation.

Response: The department has examined the requirements and found that some of the requirements are applicable; others are not applicable because a nonprofit conservation organization cannot condemn property. The department has added a note to explain. NR 51.002(1) clarifies that relocation payments are part of reimbursable acquisition costs, so the department will pay 50% of those costs.

Comment: The LC asked what "necessity of reentry" means in NR 51.03(14)

Response: "Necessity of reentry" allows for the reversion of title immediately to the department pursuant to the reversionary clause without the requirement or necessity of the department having to take actual possession.

Comment: NR 51.04(1)(a) should indicate how to determine which district office is the "appropriate" one.

Response: The application or application instructions define the appropriate district office.

Comment: The LC asked if there is any reason why, rather than deeming a grant contract to be a covenant and restriction running with the property as provided in NR 51.05(2), the terms of the grant contract could not be created as an easement.

Response: Section 23.096, Stats., requires a contract. The contract covers stewardship acquisition of fee title and easements.

Comment: In s. NR 51.06(l), the phrase "state officials" should be replaced by the phrase "the department".

Response: State officials could include auditors from other agencies as well as department auditors.

Comment: The definition of "landowner" in NR 51.42(51) appears comprehensive; why not replace the list with "any person"?

Response: The definition clarifies that a "person" who owns property can be a partnership, corporation or municipality.

Final Regulatory Flexibility Analysis

The revisions to ch. NR 51 affect program administration and will not have a significant economic impact on small businesses. Therefore, a final regulatory flexibility analysis is not required.

1995 Session

FISCAL ESTIMATE
-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
NR 51
Amendment No. if Applicable

Subject
Revision of NR51 - Stewardship Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
20.866(2)TZ

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF BILL - The revisions to NR51 affect program administration.

FISCAL IMPACT - No fiscal impacts are anticipated.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

NR/Janet Hanson, 266-0868

Authorized Signature/Telephone No.

Joe Deak
266-2794

Date

5/21/95

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 51.22(5), 51.26(3)(j), 51.27(2) and 51.28(1)(a) to (c) and (2); to renumber NR 51.22(6) to (8) and 51.27(1); to amend NR 51.23, 51.24(1), 51.25(1), 51.26(2), (3)(intro.), (g) and (i), 51.28(1)(intro.), 51.73(1), 51.74(6)(d) and 51.84(3); to repeal and recreate NR 51.002 and 51.003 and NR 51 subchs. I and III; and to create NR 51.67 relating to the stewardship program

PM-27-95

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2), Stats.
Statutes interpreted: ss. 23.09(20)(d), 23.0915, 23.092, 23.094, 23.0955, 23.096, 23.17, 23.175, 23.28 and 30.277, Stats.

In this order:

Sections 1-2. Administration of grants to nonprofit conservation organizations - reorganizes, clarifies and streamlines the administrative framework for awarding grants to nonprofit conservation organizations in order to simplify the process for nonprofit applicants and expedite the review and evaluation of applications by the department.

Sections 3-13. Natural areas program - minor revisions to bring this subchapter in line with changes made in Sections 1-2 above. Also enables the department to award grants for projects which meet the stated criteria of the Natural Areas program, but which the department does not wish to designate or dedicate as a state natural area.

Section 14. Habitat areas program - revises the program to accommodate statutory changes which expand the scope of the program from habitat restoration to habitat restoration, enhancement and protection. Defines new criteria for the grants portion of the program and also simplifies the cost sharing section of the rules.

Section 15. Streambank Protection Program - accommodates statutory changes which make local units of government eligible to receive grants under the Streambank Protection Program.

Section 16 and 17. State trails - designates new state trails and makes minor revisions to improve administration of the program.

Section 18. Grants to Friends groups - revises the program to improve administration.

SECTION 1. NR 51.002 and 51.003 are repealed and recreated to read:

NR 51.002 Definitions. In this chapter:

(1) "Acquisition cost" means the fair market value of the property as determined by department valuation guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence costs, recording fees, interest on installment payments with prior written approval of the department, and the cost of environmental inspections and audits. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes, or any other cost not identified in this subsection.

(2) "Department" means the department of natural resources.

(3) "Fiscal year" means the period from July 1 to June 30.

(4) "Grant contract" means a recorded contract between the sponsor and the department setting forth the obligations of each.

(5) "IRS" means the United States internal revenue service.

(6) "Land management plan" means a plan approved by the department detailing how lands acquired with grants under this chapter shall be managed and maintained.

(7) "Natural heritage inventory database" means a database containing the location and biological status of each natural community and rare species that has been inventoried and evaluated by the natural heritage inventory program.

(8) "Nonprofit conservation organization" has the meaning in s. 23.0955 (1), Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

(9) "Parcel" means a tract of land which is being conveyed by one deed.

(10) "Project" means one or more parcels that are contiguous or in close proximity which include features which are eligible for grants in this chapter.

(11) "Property" means land or an interest in land.

(12) "Sponsor" means the nonprofit conservation organization that is applying for and receiving a grant under s. 23.096, Stats., and this chapter.

(13) "Sponsor match" means the portion of the acquisition cost which is not funded by the state. Eligible sources of sponsor match may include cash from the sponsor; funds generated by local or federal government; grants or contributions from foundations, businesses, private individuals or nonprofit organizations; property contributions from a third party if the contribution is made within 3 years of the acquisition; property acquired by the sponsor within 3 years of the acquisition if the property was not purchased with state funds; and property value donated by the property owner.

(14) "Stewardship" or "stewardship program" means the conservation and acquisition programs specified in ss. 23.09 (2dm), (2p), (2q), (19) and (20) (d), 23.0915, 23.092, 23.094, 23.096, 23.175, 23.27 (4), (5) and (6), 23.293(4), and 30.277, Stats.

(15) "Stewardship grant" means a grant of stewardship funds awarded to a nonprofit conservation organization.

NR 51.003 Variances. The department may approve in writing a variance from a requirement of this chapter if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor, financial hardship and landowner demands. The department shall seek the advice of the Stewardship Advisory Council before issuing variances to s. NR 51.03 (1). The department may not grant variances from statutory requirements.

SECTION 2: NR 51 subch. I is repealed and recreated to read:

Subchapter I -- Nonprofit Conservation Organizations

NR 51.01 Purpose. The purpose of this subchapter is to establish procedures and standards for the administration of grants to nonprofit conservation organizations for conservation purposes as set forth in s. 23.096, Stats.

NR 51.02 Applicability. This subchapter is applicable to nonprofit conservation organizations that wish to apply for grants as specified in s. 23.096, Stats., for any one of the following stewardship grant programs: s. 23.092, Stats., habitat areas; s. 23.094, Stats., stream bank protection; s. 23.17, Stats., ice age trail; s. 23.175, Stats., state trails; s. 23.27, Stats., natural areas; s. 23.29, Stats., natural area heritage program; s. 23.293, Stats., ice age trail dedications; s. 23.09 (19), Stats., urban green space; s. 23.09 (20)(d), Stats., aids for the acquisition and development of local parks; and s. 30.277, Stats, urban rivers.

NR 51.03 General provisions. (1) Grants shall be issued for 50% of the acquisition cost of the property. The remainder of the acquisition cost shall come from sponsor match with the following limitations:

(a) Up to 50% of the fair market value of a contribution of property may be used as sponsor match with the approval of the department, but only to the extent that stewardship grant assistance is needed to acquire the subject parcel. The amount of the property donation that can be used for the match equals 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 cash back in excess of the monies actually needed for the purchase.

(b) If approved by the department, any residual value of a property donation which is not utilized as sponsor match in an application may be used for sponsor match in subsequent applications, but only in the fiscal year in which the first application is 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 within the project boundaries for \$8,000. The appraised value of the purchased property is \$12,000. The total project value is \$32,000 and the matching 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.

(c) Contributions of property are eligible as sponsor match only if the donated property lies within the boundaries of a project which has been approved under the same component of the stewardship program as the property being acquired.

(d) The fair market value of property used as sponsor match shall be determined by department valuation guidelines.

(e) All sources of sponsor match shall be included in the application for a stewardship grant.

(2) One half of all receipts from the sale of any structures, improvements or personal property that were included in the appraisal and subsequent acquisition cost shall be reimbursed to the department.

(3) Income accruing to property receiving a stewardship grant shall be used to further the objectives of the project as stated in the grant contract.

(4) Reasonable entrance, service or user's fees may be charged to defray operation and maintenance costs subject to department review and approval.

(5) Sponsors shall agree to abide by all applicable state, local and federal statutes and regulations including but not limited to general and special zoning, land use permit requirements, disabled access, environmental quality and historical and archaeological preservation.

(6) Property transactions shall be subject to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. ILHR 202.

Note: The following information is from ch. ILHR 202.

Under s. ILHR 202.01(14), "an owner occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power" is not a displaced person and is not entitled to relocation assistance. Tenants who occupy a property are entitled to relocation assistance even if the owner is voluntarily selling the property.

Under s. ILHR 202.01(14)(b)4., a "tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project" but who can remain permanently on the property subject to normal rental conditions and provisions may not be a displaced person who qualifies for relocation assistance so long as they are not required by the sponsor to move.

Under s. ILHR 202.01(33), relocation assistance shall apply to all stewardship grants where the total of stewardship grants and all other public financial assistance or direct government acquisition costs in a project are at least \$5,000 for a project with total costs of less than \$50,000; or at least 10% in a project having total costs of \$50,000 or more.

(7) Sponsors shall treat landowners fairly and negotiations between the sponsor and landowner shall be conducted on a willing seller - willing buyer basis. The sponsor shall inform the landowner in writing that it may apply for a stewardship grant and that if it receives a grant the amount of the grant shall be determined by department approved valuation guidelines.

(8) Sponsors may not discriminate against any person in the use and enjoyment of the property on the basis of age, race, creed, color, handicap, marital status, conviction record, arrest record, sex, national origin, ancestry, sexual orientation or membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or this state.

(9) Sponsors shall acknowledge the state's assistance in acquiring fee title ownership of a property by placement of signs or in any other manner approved by the department.

(10) The department may enter land acquired with a stewardship grant in order to monitor compliance with the grant contract or carry out any management activity necessary to ensure the public's rights and safety.

(11) The department may enter property over which an easement was acquired with a stewardship grant, in a reasonable manner upon prior notice to the nonprofit conservation organization and the landowner, to monitor compliance with the land management plan and conditions of the grant contract. The recorded easement shall reference the potential for compliance inspections by the department.

(12) The sponsor may sell or transfer the property to a third party other than a creditor of the organization with the prior written approval of the department. All stewardship restrictions imposed by the grant contract and land management plan shall remain with the property and any subsequent owners shall execute a grant contract assignment which states that they have received and reviewed the grant contract and land management plan and shall abide by their provisions. Department approval of the transfer is not valid until the contract assignment is signed by and recorded in the appropriate register of deeds office.

(13) The sponsor shall notify the department of any change in the status or purpose of the nonprofit conservation organization as it relates to the acquisition and management of lands for conservation purposes.

(14) If the nonprofit conservation organization dissolves, all title, right and interest held by the sponsor in and to the property shall vest in the state, without the necessity of reentry, unless a transfer under sub. (12) is approved.

NR 51.04 Application procedures and eligibility for grant assistance. (1) **APPLICATION PROCEDURES.** (a) Applications for stewardship grant assistance shall be submitted to the appropriate district office on forms provided by the department. Applications may not be considered until information requested by the department has been received.

Note: Copies of application forms and instructions are available from the DNR, Bureau of Community Assistance, Box 7921, Madison, WI 53707.

(b) The department may approve applications as they come in, year-round to the extent that funds are available or the department may establish application deadlines for individual components of the stewardship programs in order to rate and rank competing applications.

(c) The department shall send written notification to sponsors of department decisions regarding their applications after all application materials have been received and acted upon by the department.

(2) **ORGANIZATION ELIGIBILITY.** A nonprofit conservation organization shall be eligible to receive a stewardship grant after it has provided evidence satisfactory to the department that it has the financial capacity and ability to acquire property and provide for its long-term management and maintenance.

(3) **PROPERTY ELIGIBILITY.** (a) The department may award stewardship grants only for property or a portion of property that is consistent with the goals of the stewardship program.

(b) Property shall be evaluated and grants awarded according to the specific criteria for each component of the stewardship program. The evaluation shall be based on the information submitted in

the application as well as site visits and technical review comments. In addition, eligible property shall meet applicable provisions of this subchapter.

(c) Additional factors which may be considered by the department when awarding grants include:

1. Projects which have regional or statewide significance may receive priority over projects which have only local significance.

2. A higher priority may be placed on existing projects or large projects, which may be pursued in collaboration with others, where the multiple acquisition of adjacent parcels will provide greater benefit for natural resource conservation than single parcel projects.

3. The degree to which the site is threatened by development or other conversion of land use.

(d) Any property that is subject to a reversionary right or has restrictions or covenants that limit the ability of the property to be managed for the conservation or public recreational purposes of the stewardship program is not eligible for a grant.

(e) Any property which was acquired more than one year before a grant application is submitted for that property is not eligible for a grant. Eligible parcels which are not awarded grants in the fiscal year they are submitted due to insufficient funds, shall also be considered for funding in the following fiscal year.

(f) Property is not eligible unless the sponsor has developed a sound land management plan for the property which ensures the long-term viability of the project.

(4) The department may make a conditional decision to approve a project or award a grant, but withhold a final decision or grant payment until identified contingencies are satisfied.

NR 51.05 Grant contracts. (1) Stewardship grants shall be subject to the execution of a grant contract between the department and sponsor. The grant contract shall recognize the state's interest in the property acquired and ensure that sponsors shall provide adequate land management and maintenance, or in the case of easements shall monitor and enforce the conditions of the easement, in accordance with provisions contained in the grant contract and in a land management plan approved by the department. The grant contract shall be recorded in the office of the register of deeds in the appropriate county.

(2) All obligations, terms, conditions and restrictions imposed by the grant contract shall be deemed to be covenants and restrictions running with the property and shall be effective limitations on the use of the property from the date of recording of the grant contract and shall bind the sponsor and all successors and assigns in perpetuity.

(3) If the sponsor violates any condition of the grant contract identified as essential pursuant to s. 23.096 (5), Stats., and fails to correct it within 6 months after written notification from the department, it shall be a violation of the grant contract, and all title, right and interest held by the sponsor in and to the property shall vest in the state without the necessity of reentry. The following conditions of the grant contract are essential:

(a) Conversion of the property to any use other than that specified in the grant contract without the prior written approval of the department is prohibited.

(b) The sponsor may not convey any interest in the property to a third party nor allow any leases, permits or encumbrances without the prior written approval of the department. The department may take actions necessary to avoid the placement of liens, judgments or encumbrances against the property.

(c) Property tax payments shall be made on time and kept current unless property taxes are not required.

(d) The sponsor shall at all times maintain its tax exempt status as granted by the IRS. The sponsor shall keep the department informed of any changes in, or challenges to, its exempt status.

(e) Property acquired with a stewardship grant may not be closed to the public unless the department determines that it is necessary to protect species of plants, wild animals or other natural features or if the right of public access is not acquired as part of the rights purchased with an easement.

NR 51.06 Grant payments. The department may not approve grant payments until the following conditions have been satisfied:

(1) The sponsor has submitted a claim supported by appropriate evidence of cost. Financial records including documentation to support accounting records shall be available for review by state officials for a period of 3 years after final payment.

(2) The value of the property has been approved by the department according to department valuation guidelines.

Note: The department's valuation guidelines are available from the DNR, Bureau of Community Assistance, Box 7921, Madison, WI 53707.

(3) The sponsor has submitted an environmental inspection report showing the property contains no undesirable environmental conditions, potential liabilities or hazards that are unacceptable to the department. Inspection and audit reports are subject to department review and approval. If a report shows the property contains or may contain unacceptable environmental conditions or liabilities, the department may reject the grant application or require an environmental audit to determine the full extent of the problem.

Note: The department's environmental inspection report form is available from the DNR, Bureau of Community Assistance, Box 7921, Madison, WI 53707.

(4)(a) Except as provided in par. (b), title insurance or other evidence of marketable title has been approved by the department and the interests of the state under the grant contract have been declared in a recorded instrument of conveyance.

(b) Upon the request of the sponsor, the department may elect to pay out up to 100% of the grant award to a non-interest bearing escrow account before conveyance of the property to the sponsor if the department has approved the title commitment or an attorney's opinion of title merchantability and if the escrow holder has agreed to release the funds only under the following conditions:

1. The escrow holder has all necessary additional funds for the purchase and sale of the subject property;

2. The escrow holder insures title to or receives title insurance for the property subject only to exceptions contained in the title commitment which has been approved by the department; or the escrow holder receives a department approved title opinion.

3. The escrow holder insures that a legal instrument is recorded which vests title or a property interest in the sponsor and references the interest of the state in the property under the terms of the grant contract.

4. Funds shall be returned to the department within 30 days of the closing date if the closing does not occur as scheduled unless the department approves an extension.

(5) All statutory requirements, requirements of this chapter and contingencies contained in the grant contract have been satisfied.

SECTION 3. NR 51.22(5) is repealed.

SECTION 4. NR 51.22(6) to (8) are renumbered NR 51.22(5) to (7).

SECTION 5. NR 51.23 is amended to read:

NR 51.23 Eligible applicants. Nonprofit conservation organizations ~~meeting the definition in s. NR 51.002(2)~~ are eligible to apply for natural area grants.

SECTION 6. NR 51.24(1) is amended to read:

NR 51.24(1) The department shall allocate \$250,000 annually to nonprofit conservation organizations for ~~up to 50% match~~ grants to acquire lands on the current priority site list.

SECTION 7. NR 51.25(1) is amended to read:

NR 51.25(1) The property shall qualify for dedication and be dedicated as a state natural area under ss. 23.27 and 23.29, Stats., except for those sites that the department may, with good cause, exempt from the dedication requirement, ~~those sites becoming designated state natural areas~~. Good cause includes, but is not limited to, sites that have deed restrictions or ephemeral natural values such as rookeries and bird concentration areas.

SECTION 8. NR 51.26(2), (3)(intro.), (g) and (i) are amended to read:

NR 51.26(2) Acceptance of applications for projects not on priority site list. A maximum of 25 applications for projects not on the current priority site list shall be accepted each fiscal year. ~~None may be accepted, even on a case-by-case basis, after July 1 for 1990-1991 fiscal year and after June 1 for 1991-1992 and subsequent fiscal years.~~

(3)(intro.) Applications shall include ~~those items listed in s. NR 51.05 plus the following items to be included in Part II of the application described in s. NR 51.05 (4) (b):~~

(g) A proposed land management plan ~~as described in s. NR 51.05 (4) (b)2.~~ including detailed plans for restoration of those areas not of natural area quality within the project boundary;

(i) A justification of the long-term viability of the site: Is the natural area protection goal realistic given the natural values to be protected, the size of the project, the surrounding land use, and the proposed land management plan?

SECTION 9. NR 51.26(3)(j) is repealed.

SECTION 10. NR 51.27(1) is renumbered NR 51.27.

SECTION 11. NR 51.27(2) is repealed.

SECTION 12. NR 51.28(1)(intro.) is amended to read:

NR 51.28 (4) In a given fiscal year, parcels within the boundaries of an approved project or projects on the current priority site list shall be funded unless there are more parcels than money available. ~~In that case, parcels shall be funded according to the following priorities:~~

SECTION 13. NR 51.28(1)(a) to (c) and (2) are repealed.

SECTION 14. NR 51 subch. III is repealed and recreated to read:

Subchapter III – Habitat Areas

NR 51.40 Purpose. The purpose of this chapter is to establish the administrative framework for the implementation of the habitat areas program to protect, enhance and restore wildlife habitat in Wisconsin. The goals of the program will be achieved through use of easements, fee title ownership, cost share agreements and establishment of habitat restoration areas.

NR 51.41 Applicability. This subchapter applies to the department's habitat areas program under s. 23.092, Stats., and grants to nonprofit conservation organizations pursuant to ss. 23.092 and 23.096, Stats.

NR 51.42 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

(1) "Cost share agreement" means a recorded agreement between the department and nonprofit conservation organization or landowner which identifies land management practices and their cost, installation schedule and maintenance requirements.

(2) "Cost share grant" means a grant to a nonprofit conservation organization or landowner for the installation of land management practices approved by the department.

(3) "Habitat restoration area" or "HRA" means a landscape scale area of manageable size, delineated by the department and selected according to the criteria and procedures specified in s. NR 51.43.

(4) "Land management practice" means a practice, technique or measure approved by the department which is determined to be an effective, practicable means of protecting, restoring or enhancing wildlife or fish habitat.

(5) "Landowner" means any individual, partnership, corporation, municipality, town, county, nonprofit organization or other person holding title to the land by fee title.

(6) "Project costs" means direct documented costs approved by the department in the cost share agreement. The amount the department agrees to reimburse for any land management practice may be based on an average cost determined as reasonable by the department. The department may request that the sponsor obtain bids for land management practices.

NR 51.43 Habitat restoration areas. (1) The goal of establishing habitat restoration areas is to increase the populations of specified wildlife and fish populations primarily through landscape scale habitat management.

(2) Habitat restoration areas shall be selected by the department using the following criteria:

(a) The practicability of achieving significant improvements in the quality and quantity of wildlife or fish habitat in the HRA.

(b) Likelihood of owners of critical habitat management sites to participate in the project.

(c) The probability of wildlife or fish populations for which habitat has been severely degraded to increase in abundance and establish a self-sustaining wild population.

(d) The level of public ownership of critical habitat types in the HRA.

(e) The level of interest on the behalf of nonprofit conservation organizations to assist in implementation.

(f) The level of opportunities to cooperate with existing federal, state and county administered land management programs.

(g) The presence of unique or endangered environmental resources.

(h) The usefulness of the area as an education demonstration area.

(3) The department shall give priority in selecting habitat restoration areas to the following sites and species in the following order:

(a) Southern, eastern and western Wisconsin sites suitable for restoring grasslands and wetlands to benefit gamebirds such as pheasants and dabbling ducks, and grassland songbirds in the following counties: Barron, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Jefferson, Polk, Rock, St. Croix, Walworth and Winnebago.

(b) Central Wisconsin sites suitable for restoring grasslands for rare species such as prairie chickens in the following counties: Adams, Clark, Juneau, Marathon, Portage, Taylor and Wood.

(c) Southwestern Wisconsin sites suitable for restoring smallmouth bass fisheries in the following counties: Grant, Iowa and Lafayette.

(d) Other sites where the habitat restoration projects will significantly benefit grassland, wetland and rare wildlife species.

(4) The department shall select habitat restoration areas for designation based on the criteria listed in subs. (2) and (3), availability of funding and the availability of department staff to accept new workloads associated with the project.

NR 51.44 Allocation of grant funds. The department shall allocate \$500,000 in each fiscal year to nonprofit conservation organizations for grants to undertake projects which meet the criteria of the habitat areas program. The department may provide additional funds for grants to nonprofit conservation organizations depending on the availability of funds.

NR 51.45 Grants for property acquisition. (1) Nonprofit conservation organizations may apply for stewardship grants to acquire property to protect, enhance or restore wildlife habitat.

(2) Projects which are not eligible to receive grants include:

(a) Property containing or planned to contain buildings or other facilities designed for intensive recreational use such as playgrounds, roads, picnic areas, boating and camping facilities, playing fields or shelters, unless the facility occupies only a small portion of the property and the department determines it does not diminish the property's wildlife habitat value.

(b) Timber plantations.

(c) Property which is intended for agricultural use.

(d) Licensed game farms, fur farms, deer farms or shooting preserves.

(3) Projects which have one or more of the following characteristics, not listed in priority order, shall receive preference for funding:

(a) Projects which protect, enhance or restore ecologically significant plant and wildlife communities, biological diversity, unique or outstanding ecosystems or rare wildlife and plant species.

(b) Sites which have been identified as regionally important for wildlife and plants in a comprehensive land use plan or the natural heritage inventory database.

NR 51.46 Cost share grants. (1) Nonprofit conservation organizations may apply for cost share grants to install land management practices which restore or enhance wildlife habitat.

(2) The following are not eligible for cost share assistance:

(a) Land management practices begun prior to the signing of the cost share agreement.

(b) Land management practices installed on licensed game farms, fur farms, deer farms or shooting preserves.

(c) Other practices, activities or sites which the department determines do not to meet the objectives of the habitat areas program.

(d) Indirect costs and ordinary operating expenses of the organization that are not directly related to the project.

(3) The department shall select applicants to receive cost share grants based on:

(a) The likelihood that the project will restore and enhance wildlife or fish habitat.

(b) The quality and value of the habitat that will be restored.

(4) Sponsors shall install and maintain land management practices in accordance with provisions contained in a cost share agreement which shall be recorded in the office of the register of deeds and with a land management plan for the property referenced in the cost share agreement.

(5) The cost share agreement shall bind each party's heirs, successors and assigns during the effective period of the agreement. If a change in ownership occurs during the effective period of the agreement, the new landowner or landowners shall be responsible for fulfilling all conditions of the cost share agreement.

(6) The period of the cost share agreement shall include the installation period plus the operation and maintenance period. The operation and maintenance period shall be at least 10 years beginning when the last practice has been installed unless otherwise provided in the cost share agreement.

(7) A request for a project extension to the cost share agreement shall be submitted prior to the project termination date.

(8) Sponsors shall apply for federal and state permits, approvals, licenses or waivers necessary to implement the project. Work may not begin until all applicable permits have been obtained.

(9) Land management practices allowed by a cost share agreement may be installed on property not owned by the sponsor if the landowner is a party to the cost share agreement.

(10) If the sponsor fails to fulfill any terms of the cost share agreement, including failing to install or properly maintain the practices of the agreement, the department may seek reimbursement of all or a portion of the state's share. If a practice is rendered ineffective during the period of the agreement due to circumstances beyond the control of the sponsor, the department may waive repayment of cost share expenses. The department may authorize the replacement or modification of the practice.

(11) The department may suspend or terminate a cost share agreement if there has been substantial nonperformance without good cause.

SECTION 15. NR 51.67 is created to read:

NR 51.67 Grants to local units of government. Grants totalling up to \$300,000 per year may be made to local units of government to acquire land or easements on stream corridors which meet the

criteria established in s. NR 51.63. These grants shall comply with the provisions of subch. IV and s. NR 50.05.

SECTION 16. NR 51.73(1) is amended to read:

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

SECTION 17. NR 51.74(6)(d) is amended to read:

NR 51.74(6)(d) The department may expend the funds as grants. Nonprofit conservation organizations or local units of government managing portions of the Ice Age trail under the provisions of par. (b) may nominate maintenance projects ~~by January 1, 1991 and by May 1 of 1991 and each year thereafter~~, on the appropriate department form, and include a check for one-half the cost along with a cost estimate and ~~at least 2 bids to support the cost estimate~~ at least 2 quotes to support cost estimates 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.

SECTION 18. NR 51.84(3) is amended to read:

NR 51.84(3) Applications shall be ~~coordinated with and approved by the property manager and district director before delivery to the bureau of parks and recreation~~ developed cooperatively with the property manager.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 28, 1995.

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

DEC 17 1995

WHEELER, VAN SICKLE & ANDERSON, S.C.

ATTORNEYS AT LAW

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**ALSO ADMITTED IN MINNESOTA

December 6, 1995

Mr. Craig L. Karr
Wisconsin Department of Natural Resources
P. O. Box 7921
Madison, WI 53707

RE: Revisions to NR 51

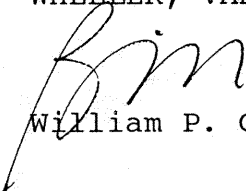
Dear Craig:

Thank you for your fax of Monday, December 4 concerning the revisions to NR 51.

The language proposed in the Secretary's memo to the Natural Resources Board looks fine. Thanks to you and the Department for considering the land trust community's views. Happy Holidays.

Very truly yours,

WHEELER, VAN SICKLE & ANDERSON, S.C.


William P. O'Connor

WPO/das

cc: Representative DuWayne Johnsrud

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(10) The department may enter land acquired with a stewardship grant in order to monitor compliance with the grant contract or carry out any management activity necessary to ensure the public's rights and safety.

(11) The department may enter property over which an easement was acquired with a stewardship grant, pursuant to conditions in the easement agreed to by the landowner, in a reasonable manner upon prior notice to the nonprofit conservation organization and the landowner, to monitor compliance with the ~~land management plan and conditions of the grant contract.~~ ~~The recorded easement shall reference the potential for compliance inspections by the department.~~ The department may grant exceptions to these entry requirements in extraordinary situations according to the procedure in s. NR 51.003.

(12) The sponsor may sell or transfer the property to a third party other than a creditor of the organization with the prior written approval of the department. All stewardship restrictions imposed by the grant contract and land management plan shall remain with the property and any subsequent owners shall execute a grant contract assignment which states that they have received and reviewed the grant contract and land management plan and shall abide by their provisions. Department approval of the transfer is not valid until the contract assignment is signed by and recorded in the appropriate register of deeds office.

(13) The sponsor shall notify the department of any change in the status or purpose of the nonprofit conservation organization as it relates to the acquisition and management of lands for conservation purposes.

(14) If the nonprofit conservation organization dissolves, all title, right and interest held by the sponsor in and to the property shall vest in the state, without the necessity of reentry, unless a transfer under sub. (12) is approved.

NR 51.04 Application procedures and eligibility for grant assistance. (1) APPLICATION PROCEDURES. (a) Applications for stewardship grant assistance shall be submitted to the appropriate district office on forms provided by the department. Applications may not be considered until information requested by the department has been received.

Note: Copies of application forms and instructions are available from the DNR, Bureau of Community Assistance, Box 7921, Madison, WI 53707.

(b) The department may approve applications as they come in, year-round to the extent that funds are available or the department may establish application deadlines for individual components of the stewardship programs in order to rate and rank competing applications.

(c) The department shall send written notification to sponsors of department decisions regarding their applications after all application materials have been received and acted upon by the department.

(2) ORGANIZATION ELIGIBILITY. ~~A nonprofit conservation organization shall be eligible to receive a stewardship grant after it has provided evidence satisfactory to the department that it has the financial capacity and ability to acquire property and provide for its long term management and maintenance.~~ A nonprofit conservation organization shall be eligible for the stewardship program once it has provided evidence satisfactory to the department that it meets the criteria identified in s. NR 51.002(8).

(3) PROPERTY ELIGIBILITY. (a) The department may award stewardship grants only for property or a portion of property that is consistent with the goals of the stewardship program.

(b) Property shall be evaluated and grants awarded according to the specific criteria for each component of the stewardship program. The evaluation shall be based on the information submitted in the application as well as site visits and technical review comments. In addition, eligible property shall meet applicable provisions of this subchapter.

(c) Additional factors which may be considered by the department when awarding grants include:

1. Projects which have regional or statewide significance may receive priority over projects which have only local significance.

2. A higher priority may be placed on existing projects or large projects, which may be pursued in collaboration with others, where the multiple acquisition of adjacent parcels will provide greater benefit for natural resource conservation than single parcel projects.

(d) The department may award a stewardship grant to a sponsor after the sponsor has provided evidence satisfactory to the department that it has the financial capacity and the ability to acquire property and provide for its long-term management and maintenance.

3. The degree to which the site is threatened by development or other conversion of land use.

(d) Any property that is subject to a reversionary right or has restrictions or covenants that limit the ability of the property to be managed for the conservation or public recreational purposes of the stewardship program is not eligible for a grant.

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: December 4, 1995
TO: Natural Resources Board
FROM: George Meyer *GBM*
SUBJECT: Revisions to NR 51

FILE REF:

At its September meeting, the Board adopted revisions to Chapter NR 51, Wis. Adm. Code, pertaining to grants to nonprofit conservation organizations under the Stewardship program.

The Assembly Committee on Natural Resources has requested that we make two changes to those revisions (see attached letter from Representative Johnsrud). The proposed changes are attached.

Under "Secretary's Matters" at the December Board meeting, I will request that you approve these changes. This will enable us to expedite the approval process by returning the rules package to the Assembly Committee for their consideration at their next meeting on December 12th.

The two changes requested are as follows:

1. In cases where a grant is for an easement, the rules as originally revised, require that the DNR is able to enter the eased property in order to monitor the sponsoring organization's compliance with the conditions of the grant contract. The Assembly Committee has requested that the rules state that entry conditions be laid out in the easement and that under extraordinary conditions the department may grant exceptions to this entry requirement. This change is contained in paragraph (11). Paragraph (10) was changed to mirror the new language in paragraph (11). The intent of paragraph (10) does not change.
2. The rule as proposed has a one step approval process for determining the eligibility of a group to receive a grant. The Committee prefers a two step process. In the first step, the department would determine if the group meets basic eligibility requirements as stated in the statutes. During the second step, the department would determine whether the group has the capacity to meet the conditions of the grant contract. The first step could occur at any time; the second step would occur when the organization submits an application for a property.

Recommended changes in revisions to NR 51:

(10) ~~The department may enter land acquired with a stewardship grant~~ The department shall have access to land acquired with a stewardship grant in order to monitor compliance with the grant contract or carry out any management activity necessary to ensure the public's rights and safety.

(11) ~~The department may enter property over which an easement was acquired with a stewardship grant,~~ 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 nonprofit conservation organization and the landowner, to monitor compliance with the land management plan and conditions of the grant contract. The recorded easement shall reference the potential for compliance inspections by the department. The conditions of that access shall be contained in the easement agreed to by the landowner. The department may grant exceptions to this access requirement in extraordinary situations according to the procedure in s. NR 51.003.

(12) The sponsor may sell or transfer the property to a third party other than a creditor of the organization with the prior written approval of the department. All stewardship restrictions imposed by the grant contract and land management plan shall remain with the property and any subsequent owners shall execute a grant contract assignment which states that they have received and reviewed the grant contract and land management plan and shall abide by their provisions. Department approval of the transfer is not valid until the contract assignment is signed by and recorded in the appropriate register of deeds office.

(13) The sponsor shall notify the department of any change in the status or purpose of the nonprofit conservation organization as it relates to the acquisition and management of lands for conservation purposes.

(14) If the nonprofit conservation organization dissolves, all title, right and interest held by the sponsor in and to the property shall vest in the state, without the necessity of reentry, unless a transfer under sub. (12) is approved.

NR 51.04 Application procedures and eligibility for grant assistance. (1) APPLICATION PROCEDURES. (a) Applications for stewardship grant assistance shall be submitted to the appropriate district office on forms provided by the department. Applications may not be considered until information requested by the department has been received.

Note: Copies of application forms and instructions are available from the DNR, Bureau of Community Assistance, Box 7921, Madison, WI 53707.

(b) The department may approve applications as they come in, year-round to the extent that funds are available or the department may establish application deadlines for individual components of the stewardship programs in order to rate and rank competing applications.

(c) The department shall send written notification to sponsors of department decisions regarding their applications after all application materials have been received and acted upon by the department.

(2) ORGANIZATION ELIGIBILITY. ~~A nonprofit conservation organization shall be eligible to receive a stewardship grant after it has provided evidence satisfactory to the department that it has the financial capacity and ability to acquire property and provide for its long term management and maintenance.~~ (a) An organization shall be eligible for the stewardship program once it has provided evidence satisfactory to the department that it is a nonprofit conservation organization.

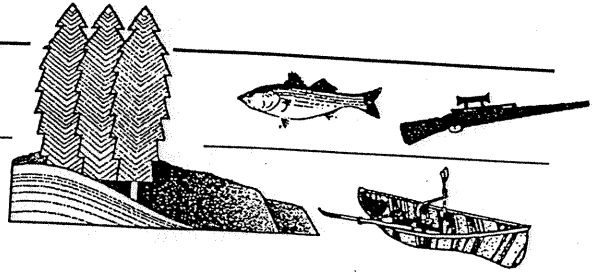
(b) The department may award a stewardship grant to a sponsor after the sponsor has provided evidence satisfactory to the department that it has the financial capacity and the ability to acquire property and provide for its long-term management and maintenance.

Assembly Committee on:

Natural Resources

State Representative

DuWayne Johnsrud, Chair



November 28, 1995

Craig Karr, Director
Bureau of Community Assistance
Department of Natural Resources
GEF II, 8th Floor
INTER-DEPARTMENTAL

Dear Craig:

Thank you for taking time to meet with me recently.

As you know, Clearinghouse Rule 94-085, relating to the stewardship program has been referred to the Assembly Committee on Natural Resources. I intend on holding a public hearing on the rule on Wednesday, November 29, 1995 to address a couple of issues outstanding on an otherwise agreeable rule.

While it remains somewhat unclear if committee members might want additional changes, the changes that I would like to see to the rule are as follows:

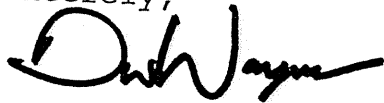
■ Section NR 51.03(11). The proposed rule authorizes the Department to enter property over which an easement was acquired with a stewardship grant. I propose that the authorization for any person to enter property should be negotiated with each landowner and organization and the Department to accommodate the needs and concerns of the landowner. Standard notification requirements, hours and days of potential entry should be part of the easement negotiation process. However, the Department must be willing to grant occasional exceptions to the entry requirements in extraordinary situations. Unquestionably, this will greatly increase the comfort level of landowners who might not otherwise donate property for easements.

■ Section NR 51.04(2). The proposed rule makes a nonprofit conservation organization eligible for a stewardship grant after it has provided evidence to the Department that it has the financial capacity and ability to acquire property and provide for its long-term management and maintenance. I propose changing this so that a nonprofit conservation organization that is incorporated in Wisconsin, has approval of its tax-exempt status by the Internal Revenue Service and meets the other requirements of s. 23.0955, Stats., is "eligible" to receive a stewardship grant. Even though the organization may not yet have the financial capacity to acquire and manage property, this "eligibility" for stewardship grants will enable it to commence the process of raising money for its share of

the project. The Department can determine later whether the organization has met the conditions to receive a stewardship grant. Unless this change is made, a nonprofit conservation organization will be severely disadvantaged in its ability to raise funds and solicit donations of property. Finally, the Department may wish to generate a letter notifying the organization of their status as "eligible" with a qualifying statement in the body describing that even though the eligibility requirements have been met, receipt of a stewardship grant is not guaranteed.

I truly appreciate your consideration of these suggestions. If I might be of additional assistance on this matter, please do not hesitate to contact me.

Sincerely,



DuWayne Johnsrud
State Representative
96th Assembly District

DJ/tml