

WISCONSIN LEGISLATIVE COUNCIL STAFF

OCT 13 2000
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FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[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)]

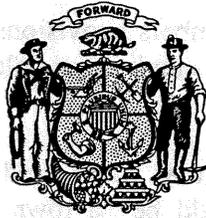
Comment Attached YES NO

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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."

Report to
Legislative Council Rules Clearinghouse
NR 1, 50 and 51, Wis. Adm. Code
Natural Resources Board Order No. CF-36-00

Wisconsin Statutory Authority

ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23,175, 23,197, 23,27, 23.20, 23,295, 30.24 and 30.277, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

1999 Wisconsin Act 9 reauthorized the Knowles-Nelson Stewardship program.

Section NR 1.445 is being created to implement the provisions of s. 23.091(8)(d), Stats., which requires county board approval if the department proposes to acquire land, using Stewardship funds, in a county where 66% or more of the land is owned or under the jurisdiction of a governmental entity.

Three sections of ch. NR 50 pertaining to Stewardship grants to local governments are being repealed and recreated in ch. NR 51. This will combine the rules for all Stewardship grants into one chapter.

The key issues addressed by ch. NR 51 changes include: creation of programs for the acquisition of development rights, bluff protection, and the Baraboo Hills. Further, it limits grants for local governments to "nature-based outdoor recreation" purposes, makes shoreline enhancements eligible under the Urban Rivers program, and make protection of the Mid-Kettle Moraine and "wild lakes" a program priority. Nonprofit conservation organization eligibility has been expanded to all Stewardship programs, including state park "friends" grants.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Janet Beach Hanson, Bureau of Community Financial Assistance - 266-0868
Tim Andryk, Bureau of Legal Services - 264-9228
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on September 14, 2000

LRB or Bill No./Adm. Rule No.
 NR 1.445, NR 50, and NR 51
 Amendment No. if Applicable

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
 DOA-2048 N(R10/94)

Subject

Knowles-Nelson 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 Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

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

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Government Units Affected:

- Towns Villages Cities
- Counties WTCS Districts
- School Districts Others

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF BILL/RULE - 1999 Wisconsin Act 9 reauthorized the Knowles-Nelson Stewardship Program and directed the Department of Natural Resources to use the emergency rule process for rule revisions until a permanent rule is adopted. This emergency rule will create section NR 1.445 and amend Chapter NR 50, and Chapter NR 51, Wis. Adm. Code.

NR 1.445 is being created to implement the provisions of s 23.0917(8)(d), Wis. Stats. This provision requires county board approval if the department proposes to acquire land, using Stewardship funds, in a county where 66% or more of the land is owned or under the jurisdiction of a governmental entity.

Three sections of NR 50 pertaining to Stewardship grants to local governments are being repealed and recreated in NR 51. This will combine the rules for all Stewardship grants into one chapter.

FISCAL IMPACT - None

Long-Range Fiscal Implications

Agency	Prepared By	Phone No.	Authorized Signature	Phone No.	Date
DNR	Joe Polasck	(608) 266-2794	Joe Polasck (ET)	(608) 266-2794	08/23/2000

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 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), 51.74(3) and (6)(c); to renumber NR 51.002(2), (3), (5), (7) to (9), (13), NR 51 subchs. I-V, NR 51.04(4), 51.05(1) to (3), 51.06(4)(a), (4)(b) 2. to 4., 51.26, 51.26(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, 51.94(1) and (3); to renumber and amend NR 51.002(4), (6), (11), (12), (14), (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), NR 51 subch. VII (title), NR 51.92, 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.), (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 NR 51 subch. VI; to create NR 1.445, NR 51 subch. I (title), 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, NR 51 subch. IV, 51.42(3), 51.46(3)(c) and (d), NR 51 subch. VI, 51.74(2)(f) and (6)(e) and (f), NR 51 subch. X to XV, relating to the stewardship program.

CF-36-00

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 227.11(2), Stats.

Statutes interpreted: ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

In this order: 9
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Section 1. Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.

Section 2. Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.

Sections 3-9. Revises and expands program definitions, including definitions for nature-based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.

Section 10. Implements a statutory change that expands grant eligibility to include non 501(c)(3) organizations.

Section 11. Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.

Sections 12-26. Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.

Sections 27-32. Makes minor revisions to bring the natural areas program in line with statutory changes.

Section 33. Establishes the administrative framework for the new bluff protection program. Defines "bluff" and sets program priorities.

Sections 34-49. Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.

Section 50. Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines "wild lake."

Sections 51-52. Makes minor revisions to the stream bank program to bring the program in line with statutory changes.

Sections 53-64. Makes minor revisions to the state trails program to improve grant administration.

Section 65. Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.

Section 66. Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.

Section 67. Clarifies and streamlines the administration of local assistance grants to governmental units.

Sections 68-70. Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature-based outdoor recreation. Lists eligible nature-based projects and sets grant priorities. Also implements a statutory change that allows "shoreline enhancements" to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.

Section 71. Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.

Sections 72-73. Makes minor revisions to improve administration of the Heritage state park and forest trust program.

SECTION 1. NR 1.445 is created to read:

NR 1.445 County board approval of land purchase. (1) **PURPOSE.** The purpose of this section is to implement the provisions of s. 23.0917(8)(d), Stats.

(2) **DEFINITIONS.** In this section:

(a) "Land" means any ground considered as real property, but does not include the beds of lakes or flowages below the ordinary high water mark.

(b) "Local government unit" has the meaning given in s. 66.299(1)(a), Stats.

(c) "Members-elect" has the meaning given in s. 59.001(2m), Stats.

(d) "Own" means to hold in fee title.

(e) "Under the jurisdiction of" means subject to supervision, management and control as those terms are used in s. 23.11(4), Stats.

(3) CALCULATION OF LAND AREAS; NOTIFICATION TO COUNTY. (a) Upon taking an option to purchase land, the department shall determine whether the requirements of s. 23.0917(8)(d), Stats., are applicable. The department shall develop and maintain information to allow a determination to be made.

(b) In making a determination on the applicability of s. 23.0917(8)(d), Stats., to a pending option, the department shall calculate the sum of the following areas for the county in which the option was taken:

1. Land owned or under the jurisdiction of the board of commissioners of public lands;
2. Land contained in parks, forests or recreation areas owned or under the jurisdiction of a local governmental unit;
3. Land contained in parks, forests, fish and wildlife refuges, lakeshores, military reservations, recreation areas, and wild and scenic rivers owned or under the jurisdiction of the United States government; and
4. Land owned or under the jurisdiction of the department for the purposes listed in s. 23.09(2)(d), Stats.

Note: The Wisconsin Register of Waterbodies, which is the state's official electronic database for identification of surface waters of the state, will be utilized to determine the areas of lake or flowage bed within a county. The Register is maintained by the Bureau of Fisheries Management and Habitat Protection and is available for inspection at the Department's offices at 101 S. Webster Street, Madison, and at DNR service centers.

(c) The department shall divide the sum of the land areas included in par. (b) by the total area of land in the county. If the result of the calculation equals or exceeds 66%, the department shall provide the county with the location and legal description of the optioned property. The department shall advise the county of the procedural requirements for county notification of residents and a vote by the members-elect of the county board pursuant to s. 23.0917(8)(d), Stats.

(4) DEPARTMENT PROCEDURES AFTER COUNTY BOARD VOTE. The department shall note the county's action in its records filed at the Bureau of Facilities and Lands at the department's offices at 101 S. Webster Street, Madison. If the vote is for approval, the department may use the appropriation under s. 20.866(2)(ta) to purchase the lands in question. If the vote is against approval, the department may not use the appropriation under s. 20.866(2)(ta) to purchase the lands in question.

SECTION 2. NR 50.16, 50.165 and 50.22 are repealed.

See also 20.866(2)(ta)

*Incomplete:
d w ?
irrevocable right of way?
adm., etc.?*

~~treatment of subchapters~~ (2)
~~all screened up~~

Indicate placement
- i.e. before or after
NR 51.001?

SECTION 3. Chapter NR 51, subch. I (title) is created to read:

Subchapter I - General Provisions

SECTION 4. NR 51.002(1) is amended to read:

NR 51.002(1) "Acquisition cost" means the fair market value of the property as determined by department ~~valuation~~ appraisal guidelines, except as provided in s. 23.0917(7)(b) to (d), Stats., 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, historical and cultural assessments required by the department, and the cost of environmental inspections and audits assessments. 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.

Substance
(2)

SECTION 5. NR 51.002(2) to (9) are renumbered NR 51.002(6), (9), (13), (16), (17), (20), (21) and (23), respectively, and subs. (13) and (17), as renumbered, are amended to read:

NR 51.002(13) "Grant contract" means a recorded contract between ~~the sponsor~~ a nonprofit conservation organization or conservation organization and the department setting forth the obligations of each.

(17) "Land management plan" means a plan approved by the department detailing how lands acquired by a nonprofit conservation organization or a conservation organization with grants under this chapter shall be managed and maintained. The plan may be included as part of the grant contract or it may be a separate document approved by the department. In the case of an easement, the terms of the land management plan may be included in the easement itself.

Substance
(2)

SECTION 6. NR 51.002(10) is repealed.

SECTION 7. NR 51.002 (11) to (15) are renumbered NR 51.002(25) and (27) to (30), respectively, and subs. (25), (27), (29), and (30), as renumbered, are amended to read:

NR 51.002(25) "Property" means land or ~~an interest~~ rights in land.

(27) "Sponsor" means the city, village, town, county, nonprofit conservation organization, conservation organization, lake sanitary district, as defined in s. 30.50(4q), Stats., public inland lake protection and rehabilitation district, or Kickapoo reserve management board, that is applying for and receiving or has received a grant under s. 23.096, Stats., and this chapter this chapter.

(29) "Stewardship" or "stewardship program" means the conservation ~~and~~, property acquisition and outdoor recreation programs specified in ss. 23.09 (2)(d), (2dm), (2p), (2q), (2r), (19), and (20)(d) and (20m), 23.0915, 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.198, 23.27 (4), (5) and (6), 23.293 (4) and (5), 30.24 and 30.277, Stats.

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

(2)
renumbering
not necessary

SECTION 8. NR 51.002(2) to (5), (7), (8), (10) to (12), (14), (15), (18), (19), (22), (24) and (26) are created to read:

NR 51.002(2) "Acquisition project" means one or more parcels of land that are contiguous or in close proximity which include features or outdoor recreational opportunities that are eligible for grants in this chapter.

(3) "Baseline document" means an inventory of the features of a property which shall belong in consist of reports, maps, photographs and other documentation that provides an accurate representation of the property at the time an easement funded with a stewardship grant is executed. The baseline document is intended to serve as an objective information baseline for monitoring compliance with the terms of the easement. *substance* *2* *NR 51.03(18) - perhaps all of this note*

Note: For information on creating a baseline document, contact Gathering Waters, a nonprofit conservation organization that provides technical assistance on easements, 211 S. Paterson St., Suite 180, Madison, WI 53703, or the DNR Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707.

(4) "Conservation organization" means a nonprofit corporation formed under ch. 181, Stats., that meets all of the following conditions:

(a) One of the purposes of the organization is to protect, enhance or restore the state's natural resources for the benefit of the general public.

(b) The organization is not a nonprofit organization as that term is defined in s. 23.197(4)(a)1., Stats. *← a 501(c)(3) corp, trust or assoc.*

(5) "Cooperative agreement" means an agreement between a conservation organization and nonprofit organization under s. 23.197(4)(b), Stats., setting forth the obligations of each. *5*

(7) "Development project" means the development of structures, utilities, facilities, landscaping, or restoration or enhancement of natural communities for the purposes of nature-based outdoor recreation.

(8) "Easement" means a conservation easement as defined in s. 700.40(1)(a), Stats.

(10) "Fringe benefits" means an employer's costs for an employee's social security, life and health insurance, unemployment insurance, worker's compensation insurance, retirement, authorized absences such as annual, sick, court or military leave. These costs must be equitably distributed to all employee labor activities. *needed to define is this even complete?* *substance*

(11) "Governmental unit" means towns, villages, cities, counties, and the Kickapoo reserve management board. *a* *or* *5*

(12) "Grant agreement" means an unrecorded contract between a sponsor and the department setting forth the obligations of each.

(14) "Habitat restoration project" means the implementation of a specific activity or set of activities to restore or enhance wildlife or fish habitat, natural communities or shorelines.

(15) "Indirect costs" *means* are those ordinary operating expenses of the sponsor not directly related to a specific stewardship project. The costs are generally administrative in nature, or are incurred for a common or joint purpose. *note* ✓

Note: Examples of indirect costs include, but are not limited to, utilities, administrative salaries, postage and other expenses that are not supported by time reports or other documentation that identifies the expenditure as directly assignable to a stewardship project.

(18) "Middle kettle moraine" means a corridor of land in southeastern Wisconsin between the northern and southern units of the Kettle Moraine state forest that is within the kettle interlobate moraine physiographic (or geologic) region. This corridor includes a northeast-to-southwest diagonal set of linear features composed of sand and gravel from 2 glacial lobes. It is characterized by distinctive glacially-formed features including kettle holes, kames, eskers, crevasse fills and glacial spillways. The corridor includes natural areas, wildlife habitat, aquatic systems, environmental corridors, outdoor recreation areas and connecting trails.

not a def. case a map. instead

Note: Information pertaining to the location of the kettle interlobate moraine physiographic region may be found in A Regional Natural Areas and Critical Species Habitat Protection and Management Plan for Southeastern Wisconsin, page 84, by the Southeastern Wisconsin Regional Planning Commission, or The Quaternary Geology of Ozaukee and Washington Counties, Wisconsin, Bulletin 19, pages 17-18 by the Wisconsin Geological and Natural History Survey. These publications are available from the Southeastern Wisconsin Regional Planning Commission, 916 N. East Avenue, Box 1607, Waukesha, Wisconsin 53187.

(19) "Nature-based outdoor recreation" means activities where the primary focus or purpose is the appreciation or enjoyment of nature. ~~These activities may include but are not limited to~~ hiking, bicycling, wildlife or nature observation, camping, nature study, fishing, hunting, picnicking, cross-country skiing, canoeing and multi-use trail activities. Support facilities for these activities may include but are not limited to access roads, parking areas, utility and sanitation systems, sanitary and shelter building, signs, interpretive items, and other features that enhance nature-based outdoor recreation or improved disabled accessibility. Ineligible activities include but are not limited to sports that require extensively developed open space such as dedicated sports fields, swimming pools and tennis courts.

substantive

(22) "Nonprofit organization" has the meaning in s. 23.197(4)(a)1., Stats.

(24) "Project period" means the period of time specified in a grant agreement during which all work shall be accomplished in order to be eligible for reimbursement.

(26) "Region" means one of 5 decentralized administrative offices of the department.

Note: The addresses of each of the region offices are as follows:

Southeast Region, 2300 N. Dr. Martin Luther King, Jr. Dr., Milwaukee, WI 53212

South Central Region, 3911 Fish Hatchery Rd., Fitchburg, WI 53711

West Central Region, 1300 W. Clairemont Ave., Eau Claire, WI 54702

Northeast Region, 1125 N. Military Avenue, Green Bay, WI 54307

Northern Region, 810 W. Maple St., Spooner, WI 54801

Northern Region, 107 Sutliff Ave., Rhinelander, WI 54501

SECTION 9. NR 51.003 is amended to read:

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 may seek the advice of the stewardship advisory council before issuing variances to s. NR 51.03 (1) a variance. The department may not grant variances from statutory requirements.

SECTION 10. NR 51.004 is created to read:

NR 51.004 Grants to conservation organizations. (1) Under s. 23.197(4), Stats., the department may award one stewardship grant per group to conservation organizations that have entered into a cooperative agreement with a nonprofit organization to apply for the grant. The cooperative agreement shall be on a form approved by the department.

(2) Stewardship grants to conservation organizations shall be for up to 50% of eligible project costs. The amount of a grant may not exceed \$20,000 which may be paid in multiple installments during the duration of the stewardship program under s. 23.197(4), Stats. A minimum grant amount of up to \$3,000 may be established by the department.

should be in this rule (2)

(3) The stewardship grant may be used for habitat restoration projects under s. NR 51.46 or for property acquisition for the purposes described in s. NR 51.05, except that conservation organizations may not receive grants for the Baraboo Hills under subch. X or bluff protection under subch. IV.

under this section? (3)

(4) A conservation organization and nonprofit organization that enter into a cooperative agreement to apply for a stewardship grant shall also enter into a grant contract with the department if a grant is awarded. The grant contract shall contain restrictions and conditions on the use of stewardship grant funds and on any property acquired with those funds.

(5) Title to property acquired with a stewardship grant awarded to a conservation organization shall vest in the nonprofit organization. ~~If the nonprofit organization or conservation organization violates any essential provision of the grant contract, as described in s. NR 51.07 (3), title to the land shall vest in the state.~~

(6) Conservation organizations applying for grants for property acquisition shall meet all the requirements of ch. NR 51. The property shall be evaluated according to the eligibility criteria and priorities in ss. NR 51.05 and 51.06.

(7) Applications for grants for habitat restoration projects shall be evaluated according to the standards in s. NR. 51.46.

(8) The department may delegate administration of stewardship grants to conservation organizations as set forth in s. 23.197(4), Stats., to a nonprofit organization receiving the grant under s. 23.0956, Stats.

re number each subch. and the sections in them, separately, as you get to them

SECTION 11. Subchapters I to V and VII of ch. NR 51 are renumbered subchs. II, III, V, VII, VIII and XVI, respectively.

SECTION 12. NR 51.02 is amended to read:

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(2)

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:~~ specific purposes identified in s. 23.09 (2)(d) 1. to 7., 9., 11., 12. and 15.; s. 23.0917(4m), Stats., Baraboo hills; 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; s. 23.09(20m), Stats., acquisition of development rights; s. 30.24, Stats., bluff protection and s. 30.277, Stats., urban rivers.

new text

SECTION 13. NR 51.03(1)(intro.), (c) and (d) are amended to read:

NR 51.03(1)(intro.) ~~Grants shall~~ Except for grants issued under s. 23.0917(4m)(j), Stats., grants may be issued for up to 50% of the acquisition cost of the property. The amount of a grant shall be calculated in accordance with s. 23.0917(7), Stats. The remainder of the acquisition cost shall come from sponsor match with the following limitations:

then need separate provision for these grants (4)

(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 is eligible for the same component of the stewardship program purpose, identified in s. NR 51.02, as the property being acquired. The donated property shall be encumbered in perpetuity by the conditions and restrictions of that stewardship program purpose.

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

SECTION 14. NR 51.03(1)(f) is created to read:

NR 51.03(1)(f) Property acquired through a lawfully required subdivision parkland dedication is not eligible as sponsor match.

SECTION 15. NR 51.03(3), (6)(note), (7), (9), (11) and (12) are amended to read:

NR 51.03(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 unless the department authorizes the income to be used to further the objectives of another stewardship project.

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

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

Under s. Comm 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. Comm 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. Comm 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 \$25,000 for a project with total costs of less than \$50,000, or at least 40% 50% 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 department may require the sponsor shall to 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.

(9) 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.

(11) 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 conditions of the grant contract. The conditions of that access shall be contained in the easement agreed to by the landowner, or in the grant contract if it has been agreed to and signed 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 grant contract assignment is signed by the department and recorded in the appropriate register of deeds office.

SECTION 16. NR 51.03(15) to (20) are created to read:

NR 51.03(15) Within the land acquisition subprogram in s. 23.0917(3), Stats., the department may not award grants to governmental units, but it may consider projects involving both nonprofit conservation organizations and governmental units as partners when those projects meet department objectives. Pursuant to s. 23.096(4), Stats., the department may approve a transfer of title from the nonprofit conservation organization to the governmental unit for the purpose of long-term management.

under also identify (4) the subch. of this rule?

(16) For property acquired with a stewardship grant that is within the boundaries of a department project, the land management plan and public use shall be consistent with the department management plan and public use for the project. For properties adjacent to department projects, land management plans shall be compatible with department management plans.

(17) Land encumbered by an easement may not be converted to uses inconsistent with the easement.

(18) 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.

(19) 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 is responsible for seeking remedy for violations of easement provisions.

(20) 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.

SECTION 17. NR 51.04(1)(a) is amended to read:

NR 51.04(1)(a) Applications for stewardship grant assistance shall be submitted to the appropriate district region office on forms provided by the department. ~~Applications may not be considered until information requested by the department has been received. The department may request more detailed information and may withhold evaluation until the additional information requested has been received.~~

of the application

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SECTION 18. NR 51.04(3) is repealed.

SECTION 19. NR 51.04(4) is renumbered NR 51.04(1)(d).

SECTION 20. NR 51.05 and 51.06 are renumbered NR 51.07 and 51.08, respectively, and NR 51.07 (title) and 51.08 (title), as renumbered, are amended to read:

NR 51.07 Grant contracts for acquisition projects.

NR 51.08 Grant payments for acquisition projects.

SECTION 21. NR 51.05 is created to read:

NR 51.05 Eligible acquisition projects. (1) The department may award stewardship grants to nonprofit conservation organizations for acquisition of property or a portion of property for the following purposes:

(a) For natural areas under subch. III; the Ice Age trail and state trails under subch. VIII; stream bank protection under subch. VII; habitat areas and fisheries under subch. V; bluff protection under subch. IV; wild lakes under subch. VI; the Baraboo hills under subch. X; aid for local parks under subch. XII; urban green space under subch. XIII; urban rivers under subch. XIV and acquisition of development rights under subch. XV.

(b) For the Lower Wisconsin state riverway, and wild rivers designated under s. 30.26, Stats., including lands within or adjacent to their acquisition boundaries.

(c) For the middle kettle moraine.

(d) For state forests or state parks including lands within or adjacent to a state forest or state park or its acquisition boundaries.

(e) For public shooting, trapping or fishing grounds, state wildlife areas, state recreation areas, lands within or adjacent to their acquisition boundaries, or for projects that have similar purposes.

(f) For preservation of endangered or threatened species under s. 29.604, Stats.

(g) For fish hatcheries, defined in s. 95.60, Stats., as fish farms, involving cooperative work with the state.

(h) For acquisition of development rights to create agricultural, forestry or other buffers on lands adjacent to properties acquired for the purposes listed in this subsection.

(2) Property that is not eligible for grants includes:

(a) Any property that has restrictions or other covenants that prevent or limit the property from being managed for the conservation or public recreational purposes of the stewardship program or that would pre-empt the department's reversionary interests under s. 23.096(5), Stats.

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

(c) Property that is used or may be used for licensed game farms, fur farms, deer farms, shooting preserves, forest nurseries or experimental stations.

(d) Property used for commercial or industrial purposes, except for fundraising activities by project sponsors or as approved by the department.

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SECTION 22. NR 51.06 is created to read:

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NR 51.06 Acquisition project priorities. (1) Evaluation of acquisition projects shall be based on information submitted in the application as well as site visits and technical review comments. Property shall be evaluated and grants awarded according to criteria and priorities for the different purposes of the stewardship program identified in s. NR 51.05.

(2) In awarding grants under s. 23.0917(3), Stats., the department shall give priority to all of the purposes listed in s. 23.0917(3)(c), Stats.

(3) Additional factors that may be considered by the department when awarding grants under s. 23.0917(3), Stats., include:

(a) Whether the project has regional, statewide or local significance.

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

(c) 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) A higher priority may be placed on projects that have been identified as important for natural resource protection in a comprehensive plan pursuant to s. 66.0295, Stats., another plan that has as one of its purposes the protection of natural resources, or the natural heritage inventory database.

SECTION 23. NR 51.07(4) is created to read:

NR 51.07(4) Additional conditions and restrictions may be contained in the grant contract

SECTION 24. NR 51.08(1) to (3), (4)(b)1. and (5), as renumbered, are amended to read:

NR 51.08(1) The sponsor has submitted a claim supported by appropriate evidence of cost. 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 3-4 years after final payment.

(2) The value of the property has been approved by the department according to department valuation appraisal guidelines or as required by s. 23.0917(7), Stats.

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

(3) The sponsor has submitted an environmental inspection or assessment report showing the property contains no undesirable environmental conditions, potential liabilities or hazards that are unacceptable to the department. Inspection and audit assessment 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 a more complete environmental audit assessment to determine the full extent of the problem.

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

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

SECTION 25. NR 51.08(6) to (8) are created to read:

NR 51.08(6) A land management plan has been approved by the department.

(7) The department has approved any easement documents associated with the project.

(8) If a sponsor has incurred a mortgage on the property, but has all the additional funds necessary to pay off the mortgage or land contract except the grant funds, the department may make the grant payment if other requirements have been met. The sponsor shall provide the department with evidence that the mortgage has been satisfied within 30 days of the grant payment.

SECTION 26. NR 51.09 is created to read:

NR 51.09 Eligible costs and grant payments for development and habitat restoration projects. (1) **ELIGIBLE COSTS.** Reasonable and necessary project costs that are consistent with the project scope and incurred during the project period are eligible for grant funds. 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 quotes for land management practices and other development project expenses. Eligible costs may include, but are not limited to:

(a) Labor costs directly related to and required for completing the project. Costs shall be based on the actual wage paid by the sponsor including salary and fringe benefits.

(b) Direct costs for materials and equipment used for project-related purposes or the cost of the portion of materials or equipment time used for the project.

(c) The cost of leased equipment used for project-related purposes.

(d) Engineering or planning fees necessary to complete a project may be eligible and may be retroactive.

(e) The substantiated value of materials, equipment, services and labor donated for the project may be used as all or part of the sponsor's share of the project cost subject to all of the following:

1. All known sources of the sponsor's share of project costs shall be indicated when the grant application is submitted.

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

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

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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.

(2) **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:

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

(b) Indirect costs including administrative costs.

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

(d) Costs associated with operation and maintenance of the property.

(3) **GRANT PAYMENTS.** (a) The department may provide an advance payment if the sponsor provides proof that it has its share of the project costs.

(b) Interim payments may be requested by the sponsor instead of an advance payment.

(c) The sponsor shall submit the final payment request form within 90 days after project completion or after the project period end date, whichever is sooner.

(d) The sponsor shall return any unexpended grant monies to the department within 90 days after project completion or the project period end date, whichever is sooner.

(e) Final payment of the grant amount may be withheld until all project, legal and program requirements have been satisfied. 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.

(f) For projects that continue longer than one year, the sponsor shall be required to submit one or more interim reports that contain details of progress and other information regarding the status of the project.

SECTION 27. NR 51.24 is repealed.

SECTION 28. NR 51.25 is renumbered NR 51.24, and as renumbered, is amended to read:

NR 51.24 Grant conditions. Grant awards shall be made with the following conditions:
(1) The condition that 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. Good cause includes, but is not limited to, sites that have deed restrictions or ephemeral natural values such as rookeries and bird concentration areas.

(2) A management plan shall be approved in writing by the department prior to grant approval.

SECTION 29. NR 51.26 (title), (1) and (3) are renumbered NR 51.25 (title), (1) and (2).

SECTION 30. NR 51.26(2) is repealed.

SECTION 32. NR 51.27 to 51.29 are renumbered NR. 51.26 to 51.28, respectively.

SECTION 33. Subchapter IV of ch. NR 51 is created to read:

Subchapter IV - Bluff Protection

NR 51.30 Purpose. The purpose of this subchapter is to establish the administrative framework for the implementation of the bluff protection program to preserve Great Lakes bluff land in Wisconsin under s. 30.24, Stats.

NR 51.31 Applicability. This subchapter applies to the department program to acquire Great Lakes bluff land under s. 30.24, Stats, and to bluff land protection grants to nonprofit conservation organizations pursuant to s. 23.096, Stats.

NR 51.32 Definitions. In addition to the definitions in s. NR 51.002, the following definition applies to this subchapter: "Bluff" means a hill, ridge, or similar landform significantly elevated above the surrounding landscape, having a broad, steep face or cliff, and adjoining the shoreline or coastal lowlands of Lakes Michigan and Superior. "Bluff" includes an elevated landform having a steep face or bedrock cliff associated with the escarpment of Niagara dolomite within 6 miles of the Lake Michigan shoreline in Door and Brown counties.

NR 51.33 Priorities. The department shall select bluff lands for protection in the following order of priority:

- (1) Bluffs harboring unique or unusual natural features, including high quality biotic communities, rare plant and animal species or significant geological formations.
- (2) Bluffs containing or representing significant historical or Native American archaeological features.
- (3) Bluffs affording significant scenic views of surrounding landscapes and waterscapes, or bluffs that are themselves an important scenic component of the landscape as observed from afar.
- (4) Bluffs providing opportunities for low-impact public recreation, including hiking and nature study.

NR 51.34 Factors to consider. The department shall consider the following factors when evaluating bluff protection projects:

- (1) The condition and quality of the bluff's biological, archaeological or historical features or their ability to recover from past disturbance, or both.
- (2) The existing and potential threats to the bluff features' long-term viability caused by human activities, including development and land use changes.

(3) The existing and potential threats to the bluff caused by natural factors such as extensive erosion due to high water levels.

(4) The size of the bluff.

(5) The potential for the bluff site to be linked with other protected bluff lands or significant natural features.

(6) The extent to which bluffs containing similar features are already protected.

(7) The accessibility of the bluff for public use and the ability of the site to sustain that use.

NR 51.35 Grants to protect bluff land. (1) Nonprofit conservation organizations may apply for grants to protect Great Lakes bluff land.

(2) Bluff projects shall be evaluated and grants awarded according to the priorities and factors in ss. NR 51.33 and 51.34.

SECTION 34. NR 51.40 and 51.41 are amended to read:

NR 51.40 Purpose. The purpose of this ~~chapter~~ subchapter 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~~ acquisition of property, habitat restoration 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., and conservation organizations pursuant to s. 23.197(4), Stats.

SECTION 35. NR 51.42(2) is repealed.

SECTION 36. NR 51.42(1) is renumbered NR 51.42(2) and amended to read:

NR 51.42(2) "~~Cost share agreement~~ Habitat restoration contract" means a recorded ~~agreement~~ contract between the department and a nonprofit conservation organization, nonprofit organization, or conservation organization or landowner ~~which identifies setting forth the obligations of each and identifying land management practices and their cost, installation schedule and maintenance requirements.~~

SECTION 37. NR 51.42(3) is renumbered NR 51.42(1).

SECTION 38. NR 51.42(3) is created to read:

NR 51.42(3) "Habitat restoration grant" means a grant of stewardship funds to a nonprofit conservation organization, nonprofit organization or conservation organization to undertake a habitat restoration project that includes the installation of land management practices.

SECTION 39. NR 51.42(6) is repealed.

SECTION 40. NR 51.43 (3)(c) is amended to read:

NR 51.43(3)(c) Southwestern Wisconsin sites suitable for restoring smallmouth bass fisheries and grassland bird habitat in the following counties: Grant, Iowa and Lafayette.

SECTION 41. NR 51.44 is repealed.

SECTION 42. NR 51.45(2)(d) is repealed.

SECTION 43. NR 51.46(title), (1) and (2)(intro.) are amended to read:

NR 51.46 (title) ~~Cost share~~ Habitat restoration grants. (1) ~~Nonprofit conservation~~ Conservation organizations may apply for ~~cost share~~ habitat restoration grants to install land management practices which restore or enhance wildlife habitat. Habitat restoration grants shall be for up to 50% of the cost of the habitat restoration project. Project sponsors may request an advance payment of up to 50% of the grant amount or they may request interim payments.

80% for 50(c)(3) orgs. are out of this program?

(2)(intro.) The following are not eligible for ~~cost share~~ grant assistance:

SECTION 44. NR 51.46(2)(a) is repealed.

SECTION 45. NR 51.46 (2)(b) and (c) are renumbered (2)(a) and (b), respectively and sub. (b), as renumbered, is amended to read:

NR 51.46(2)(b) Other practices, activities or sites which the department determines that do not meet the objectives of the habitat areas program.

SECTION 46. NR 51.46(2)(d) is repealed.

SECTION 47. NR 51.46(3)(intro.) is amended to read:

(3)(intro.) ~~The department shall select applicants.~~ Sponsors shall be selected to receive ~~cost share~~ habitat restoration grants based on:

all of the following

SECTION 48. NR 51.46(3)(c) and (d) are created to read:

NR 51.46(3)(c) The sponsor's ability and financial capacity to complete the project and maintain it over the period of the habitat restoration contract.

(d) The cost effectiveness of the proposed budget for the project.

SECTION 49. NR 51.46(4) to (11) are amended to read:

NR 51.46(4) Sponsors shall install and maintain land management practices in accordance with provisions contained in ~~a cost share agreement~~ the habitat restoration contract 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~~ habitat restoration contract.

(5) The ~~cost share agreement~~ habitat restoration contract 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~~ habitat restoration contract.

(6) The period of the ~~cost share agreement~~ habitat restoration contract 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~~ habitat restoration contract.

(7) ~~A request for a project~~ The department may grant a time extension to the ~~cost share agreement shall be submitted prior to the project termination date~~ habitat restoration contract.

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

(9) Land management practices allowed by a ~~cost share agreement~~ habitat restoration contract may be installed on property not owned by the sponsor if the landowner is a party to the ~~cost share agreement~~ habitat restoration contract and provided that the contract is at least as long as the expected life of the project as specified in the contract.

(10) If ~~the sponsor fails to fulfill any~~ terms of the ~~cost share agreement~~ habitat restoration contract are not fulfilled, including failing to install or properly maintain the practices of the ~~agreement~~ contract, 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~~ contract 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~~ habitat restoration contract if there has been substantial nonperformance without good cause.

SECTION 50. Subchapter VI of ch. NR 51 is created to read:

Subchapter VI - Wild Lakes

NR 51.50 Purpose. The purpose of this subchapter is to establish the administrative framework for acquisition of property to preserve wild lakes.

NR 51.51 Applicability. This subchapter applies to the department program to acquire wild lake shoreland property, including islands, under s. 23.0917, Stats., and wild lake grants to nonprofit conservation organizations pursuant to s. 23.096, Stats.

NR 51.52 Definitions. In addition to the definitions in s. NR 51.002, the following definition applies to this subchapter, "Wild lake" means a lake or flowage of at least 5 acres, or significant portions thereof, identified in the Wisconsin register of waterbodies, where human

influence, such as structural development of its shorelands, is not significant or can be removed at costs deemed warranted by the department. If the waterbody is not found in the Wisconsin register of waterbodies database, department staff will make a determination on whether to add the waterbody to the register as a lake or flowage.

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Note: The Wisconsin Register of Waterbodies, which is the state's official electronic database for identification of surface waters of the state, is maintained by the Bureau of Fisheries Management and Habitat Protection and is available for inspection at the Department's offices at 101 S. Webster Street, Madison, and at DNR service centers.

Note: The fact that a lake is located in proximity to an urban area does not exclude it from the definition of wild lake.

NR 51.53 Priority wild lake identification. The department shall consider the following priorities for stewardship grants or department projects for acquisition of property, not listed in order of priority.

no process specified - developing list a priority or responding to applications?

- (1) Existence of no or low levels of structural development on adjacent shoreland.
- (2) Lakes or flowages with larger surface area.
- (3) The extent to which water quality, and fish and wildlife habitat are threatened by development.
- (4) The extent to which the lake provides habitat for rare species or harbors high quality natural communities.
- (5) The extent to which the lake provides quality habitat for fish and wildlife.
- (6) The extent to which threats to water quality, and fish and wildlife habitat can be protected through acquisition of property as determined by the percent of shoreline and lake's watershed captured by the acquisition.
- (7) Degree to which the acquisition adds to previously acquired shorelands along the lake or the extent that the acquisition continues or completes a previously started project.
- (8) Extent to which the acquisition reduces fragmentation of terrestrial or aquatic habitat as evidenced by the proximity to other public lands, clusters of lakes, and linkages to other surface waters.
- (9) Other unique features, including but not limited to natural scenic beauty, archaeological, geological or cultural features.

NR 51.54 Grants for wild lakes. (1) Nonprofit conservation organizations are eligible to apply for grants to acquire property to protect wild lakes.

(2) Wild lakes projects shall be evaluated and grants awarded according to the priorities listed in s. NR 51.53.

(3) Application shall be made on forms provided by the department. Application procedures and deadlines in subch. II apply to this subchapter.

SECTION 51. NR 51.61, 51.62(1) and (2), 51.63(2), 51.64, 51.65(1)(intro.), (2) and (4) to (6) and 51.66 are 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.

NR 51.62(1) For the purposes of this subchapter, "Management "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.

(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:

(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 to nonprofit conservation organizations to acquire ~~land or easements property~~ on stream corridors which meet the criteria established in s. NR 51.63.

SECTION 52. NR 51.67 is repealed.

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intro.

SECTION 53. 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 54. NR 51.72(2) is repealed.

SECTION 55. NR 51.72(3) to (5) are renumbered NR 51.72(2) to (4).

SECTION 56. 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, Pecatonica, 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 57. NR 51.74(2)(d) and (e) are amended to read:

NR 51.74(2)(d) Provide for more than one use, or

(e) Contribute to a geographically balanced system of trails, or

Dir format (2)
(CP NR 51.73 - p 22)

SECTION 58. 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 59. NR 51.74(3) is repealed.

SECTION 60. 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 61. NR 51.74(6)(c) is repealed.

SECTION 62. 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 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 or a nonprofit conservation organization ~~meeting the requirements of s. NR 51.03~~ and managed by a local unit of government or a nonprofit conservation organization and where the nonprofit conservation organization has a recorded interest in the land.

SECTION 63. NR 51.74(6)(e) and (f) 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) Grant payments. 1. 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. Other conditions for grant payments are contained in s. 1 NR 51.09.

2. 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 64. 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 cooperater 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 65. Subchapter VI of ch. NR 51 is repealed and ~~recreated to read:~~

SEC - Subch IX
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 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. Grants may be awarded for projects that meet all of the following requirements:

- (1) Are for *the project* "nature-based outdoor recreation" as defined in s. NR 51.002(19);
- (2) Address *the project* unmet needs consistent with department approved plans for the property;
- (3) Except for s. NR 51.84(2)(g), *the project* are identified in a property's 6 year facilities plan; and
- (4) Except for s. NR 51.84(2)(g), are long-term capital improvements or durable equipment with an expected useful life of 20 years or more.

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 visitor/public health, environmental, safety or security problems.

(d) Projects that enhance or are cooperative with a department capital improvement.

(e) Capital improvement or durable equipment projects that support volunteer-based user services.

(f) Capital improvement projects that expand or improve environmental education and interpretation programs and outdoor skills development.

(g) Habitat restoration projects that are consistent with approved plans governing the management of the property.

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) Grants may be awarded for up to 50% of project costs. The other 50% of project costs shall be provided by the sponsor. 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)(e).

(6) Up to 100% of the grant payment may be advanced to the sponsor once it 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, should 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 66. 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. As used 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, and not within the acquisition boundary of any state park or state-owned natural area 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 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 an applicant 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) Successful sponsors shall be notified by the department and sent a grant contract or grant agreement which shall be signed by both the department and the sponsor before any funds can be released to the sponsor.

(7) No grants shall 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) Provide for the perpetual protection of the conservation values of the property. Temporary agreements do not qualify for funding.

(b) Contribute to protection of the forest resource in the Baraboo Hills.

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

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

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

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

- (4) Acquisitions maximizing the protection of other large forested blocks.
- (5) Acquisitions showing little effect of human disturbance and supporting a wide variety of species appropriate to native forest tracts.
- (6) Acquisitions affording opportunities for forest restoration.

NR 51.886 Other factors. The department shall also consider the following factors, not listed in priority order, but they shall be of lower priority than the priorities listed in s. NR 51.885:

- (1) Acquisitions that satisfy a relevant statewide or department regional priority need identified in the statewide comprehensive outdoor recreation plan need analysis.
- (2) Acquisitions that provide and enhance outdoor, natural resource related recreation opportunities.
- (3) Acquisitions that involve a joint effort by 2 or more eligible applicants.
- (4) Acquisitions that have substantial community support.
- (5) Acquisitions that have significant aesthetic value.
- (6) Acquisitions that implement elements of water quality plans or initiatives.
- (7) Acquisitions that are accessible, where accessibility is appropriate.
- (8) Acquisitions that have water frontage.
- (9) Acquisitions that connect to other conservation lands.
- (10) Acquisitions that protect sensitive wildlife habitat.

SECTION 67. 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 grants under ss. 23.09(19), (20) and (20m) and 30.277, Stats.

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 the performance of a development project with the resources of the sponsor, including personnel services, 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

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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 3 years of the acquisition and is considered by the department to be part of the project or eligible for that stewardship grant program. For development projects, additional sources of local share are described in s. NR 51.907(2).

(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) Property purchased and facilities developed with stewardship funds shall be managed 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 shall not be altered without the approval of the department.

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

(a) If property is converted to an inconsistent use not approved by the department, it shall be returned 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.

(b) If a development project is converted to an inconsistent use not approved by the department, it shall be returned to the use specified in the grant agreement, or replaced by the sponsor, or the stewardship grant funds shall be returned 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) Reasonable entrance, service or user fees may be charged 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) 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

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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) One-half of all receipts from the sale of any structures or improvements that were included in the acquisition cost shall be reimbursed to the department.

(d) Income accruing to a sponsor from property receiving a stewardship grant shall be used 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) 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.

(f) 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.

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

(h) 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.

(i) 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.

(j) 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 is responsible for seeking remedy for violations of easement provisions.

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

(9) Development projects: (a) Before development of public facilities begins, formal approval may be required from state agencies concerning health, safety and sanitation requirements, historical and environmental considerations. 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.

(b) Stewardship grants may be awarded 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. 66.0295, Stats.
- (2) Whether the comprehensive planning incorporates intergovernmental cooperation.
- (3) Whether the project is supported by or part of a comprehensive plan prepared pursuant to s. 66.0295, 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. *- refers to subch. of this rule*

(3) Projects shall be funded in priority order within each grant program until all grant funds available within a program have been awarded.

(4) The department shall notify all applicants as to their success in obtaining a grant. Successful sponsors shall be sent 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) A change in project period, scope or grant amount may be requested by the sponsor prior to the project period end date.

NR 51.907 Grant awards. (1) **LAND ACQUISITION PROJECTS.** (a) Except for grants issued under s. 23.0917(4m)(i) and (j), Stats., for the Baraboo Hills, grants shall be awarded 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. All known sources of local share shall be indicated when the grant application is submitted.

(b) 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. Up to 50% of the fair market value of a contribution of property may be used 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) Grants may be issued for up to 50% of necessary development project costs that are consistent with the project scope and incurred during the project period. All known sources of the local share shall be indicated 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 ~~may be eligible and~~ 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) All claims for payment shall be submitted on department prescribed forms.

(4) Claims for final reimbursement shall be submitted within 6 months of the project period end date.

(5) Final payment of the grant amount may be withheld until all project, legal and program requirements have been complied with.

SECTION 68. 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. As used 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. Funds shall be apportioned on a department region allocation system, with 70% of the funds distributed on the basis of each county's proportionate share of the state population and 30% distributed equally to each county.

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

(2) A local comprehensive outdoor recreational plan or documentation that the project has been identified in a comprehensive plan pursuant to s. 66.0295, Stats., is required to be submitted 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 not be eligible.

NR 51.915 Eligible development projects. 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. Projects eligible for funding include, but are not limited to:

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(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.

Note: A copy of a local comprehensive outdoor recreation plan shall be submitted to the department by a governmental unit in order for the governmental unit to be eligible for a grant under this subchapter. Plans shall be consistent with the outdoor recreation program under s. 23.30, Stats.

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(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. 66.0295, 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 69. 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. As used in this subchapter:

(1) "~~Non~~commercial community gardening" means an activity 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. Urban green space grants shall be distributed on a statewide basis except that 10% of the annual allocation shall be reserved for noncommercial gardening projects. If sufficient noncommercial gardening projects are not received 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) Grant funds provided under this subchapter may only be used 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 a community garden 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.

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

NR 51.926 Priorities. The department shall select projects for grant assistance through a ranking process in accordance with the following project priorities which are not listed in order of preference:

(1) Planning considerations include:

- (a) Projects that specifically implement a priority of the SCORP.
- (b) Projects that implement the approved master plans of 2 or more units of government or regional planning agencies.
- (c) Projects that preserve land that is listed on the natural heritage inventory database.
- (d) Projects that implement elements of water quality plans or initiatives.

(2) Project considerations include:

- (a) Land that serves the greatest population centers.
- (b) Land that serves areas of rapidly increasing populations.
- (c) Land that is accessible, where accessibility is appropriate.
- (d) Land that has unique natural features, threatened or endangered species, or significant ecological value.
- (e) Land that provides open natural linear corridors connecting open natural areas.
- (f) Land with water frontage.
- (g) Land that contains or restores wetlands.
- (h) Land that protects sensitive wildlife habitat.
- (i) Land that protects an area threatened by development.
- (j) Land that preserves a natural community or could be restored to a natural community.
- (k) Land that can be shown to be of regional or statewide significance.
- (l) Land related to brownfields redevelopment.

(3) Administrative considerations include:

- (a) Projects that are ready to be implemented.
- (b) Projects that continue eligible acquisition projects previously started.

(4) 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 Garden project priorities. In selecting garden projects, the department shall consider:

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- (1) Land located in areas with a high percentage of land developed.

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(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 70. 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. As used 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. In-kind contributions shall meet the same test of eligibility as any other cost item.

(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) Urban rivers grants shall be distributed 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) Grant funds provided under this subchapter may only be used 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, at least 50% of the cost of the project shall be funded 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) 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.

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

(5) Projects shall be supported by a town, village, city, or county comprehensive outdoor recreation plan or comprehensive plan pursuant to s. 66.0295, Stats., which is being developed or has been completed by the governmental unit.

(6) 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. 66.0295, Stats.

(7) 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.

(8) 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.

(9) 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.

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

(11) 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