

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. CF-36-00

Legislative Council Rules Clearinghouse Number 00-135

Subject of Rules The Stewardship program

Date of Transmittal to Presiding Officers March 13, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
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An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

## REPORT TO LEGISLATURE

NR 1.445, 50 and 51, Wis. Adm. Code  
Stewardship program

Board Order No. CF-36-00  
Clearinghouse Rule No. 00-135

### Statement of Need

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 NR 50 which pertain to stewardship grants to local governments are being repealed and recreated in ch.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 changes to ch. NR 51 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, making shoreline enhancement eligible under the Urban Rivers program, and making 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.

### Modifications as a Result of Public Hearing

Modifications were made to clarify that it was not the Department's intent to limit participation by friends groups that support state trails managed by counties. Sections NR 51.03(3) and 51.904(8)(d) regarding income accruing to a property were clarified to ensure that it is not difficult or impossible for governmental units to enter property acquired with stewardship grants into the county forest law program.

The one area of controversy was the restriction that grants to local governments may only be awarded for "nature-based outdoor recreation". By enacting this restriction, the Legislature narrowed the scope of the program, particularly the Local Park Aids component. This represents a significant departure from previous Local Park Aids programs. The requirement elicited many negative comments from representatives of local government. They noted that the restriction will have a widespread negative impact on local parks, especially in smaller communities that have depended on match grants from Stewardship to fund their park projects, including athletic fields and playgrounds.

### Appearances at the Public Hearing and Their Position

November 1, 2000

Madison – no appearances

Wausau – no appearances

**Rhinelanders:**

In support:

I. Russell Hutter, 3998 Manor Loop Road, Rhinelanders, WI 54501  
Tiffany Lyden, Vilas Co. Lake Conservation Specialist, 330 Court Street, Eagle River, WI 54521

In opposition – none

As interest may appear:

Richard A. Held, 11594 Lakeland Drive, Arbor Vitae, WI 54568  
Gene Seidler, 2412 S. River Road, Rhinelanders, WI 54501  
Darlene Larson, Rhinelanders Parks & Recreation, City Hall, Box 658, Rhinelanders, WI 54501  
David Schmitz, 6452 Northwestern Drive, Rhinelanders, WI 54501  
Donald Chilson, Merrill Parks & Recreation, 1100 Marc Drive, Merrill, WI 54452

**Spooner**

In support – none

In opposition – none

As interest may appear:

Kevin Hagen, The Country Today, W5676 Hwy. 70, Spooner, WI 54801  
Mark Dahlberg, Village of Grantsburg, 316 S. Brad Street, Grantsburg, WI 54840

**November 2, 2000**

**Madison**

In support – none

In opposition – none

As interest may appear:

Travis Olson, DOA Coastal Management Program, P.O. Box 7868, Madison, WI 53707-7868

**Green Bay**

In support- none

In opposition – none

As interest may appear:

Fred Scharnke, East Central Wis. Regional Planning Commission, 132 Main St., Menasha, WI 54952  
George Pinney, Door County Parks Dept., 3418 Park Drive, Sturgeon Bay, WI 54235

## **Waukesha**

### **In support:**

Bill Seybold, 5858 South 112<sup>th</sup>, Hales Corners, WI 53130  
Janice Franke, 5858 South 112<sup>th</sup>, Hales Corners, WI

### **In opposition:**

Paul Leuthold, New Berlin Dept. of Streets, Parks & Recreation, 3805 S. Casper Dr., New Berlin, WI  
Ron Grall, Waukesha Parks & Recreation, 1900 Aviation Drive, Waukesha, WI 53188  
Elizabeth M. Paul, Town of Caledonia Parks & Recreation, 6922 Nicholson Road, Caledonia, WI  
Tom Barnes, 312 West Whitewater Street, P.O. Box 178, Whitewater, WI 53190  
Mark Schroeder, Village of Germantown Parks & Recreation, N112 W17001 Mequon Road,  
Germantown, WI 53022  
Jay Jansen, Port Washington Parks & Recreation, 201 N. Webster Street, Port Washington, WI  
Ray Maurer, Cedarburg Parks & Recreation, W63 N645 Washington Ave., Box 49, Cedarburg, WI  
Bill Kolstad, Brookfield Parks & Recreation, 2000 N. Calhoun Road, Brookfield, WI 53005  
Jack Schumann, Racine Parks Dept., 800 Center Street, Room 127, Racine, WI 53403  
Chad D. Brown, Town of Brookfield Parks & Recreation, 645 N. Janacek Road, Brookfield, WI

### **As interest may appear:**

Theodore Lind, Wis. Council of Sport Fishing, Milwaukee, WI  
Edward P. Rewohinski, 4212 South Pine Avenue, Milwaukee, WI 53207

## **Response to Legislative Council Rules Clearinghouse Report**

See attached response.

## **Final Regulatory Flexibility Analysis**

The proposed rules are applicable to municipalities, nonprofit conservation organizations, conservation organizations and Friends groups. The rules impose no compliance or reporting requirements on small businesses. Therefore, a final regulatory flexibility analysis is not required.

## LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Wisconsin Legislative Council provided written comments that are attached. Department staff agree with the Legislative Council comments and have made their suggested changes with the exceptions listed below:

**Comment:** 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. Three examples of substance in definitions cited are the second sentence of s. NR 51.002 (10), the third sentence of s. NR 51.002 (19) and the second sentence of s. NR 51.093(3).

**Response:** Staff agreed with all of the changes suggested in this comment with the exception of the three referenced above. In s. NR 51.002(10), the definition of "fringe benefits" is necessary for clarification purposes to grant recipients because fringe benefits are eligible as part of labor costs in development projects. In the definition of "nature-based outdoor recreation," in s. NR 51.002(19), the additional language is necessary because it gives eligible and ineligible examples of nature-based outdoor recreation to further clarify the meaning of the term, which has been a source of confusion to potential grant applicants. In the definition of "local share," in s. NR 51.903(3), the additional language is necessary to further clarify the term which has also been a source of confusion.

**Comment:** The rule unnecessarily renumbers provisions so as to retain sequential numbering.

**Response:** Staff believe that renumbering provisions to retain sequential numbering, while not strictly necessary, makes the provisions easier to read.

**Comment:** In s. NR 51.882, the definition of "Baraboo hills" should be revised to simply describe the geographic area known as the Baraboo Hills.

**Response:** Staff believe the legal description and map of the Baraboo Hills are too lengthy and confusing to include in the rule and that it is more user friendly to use the note referring to information available from the department for a description and map of the area.

**Comment:** 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?

**Response:** The definition of region is necessary. The intent of this language is that funds ultimately be apportioned on a department region basis for grant awards based on a calculation by county. This is possible because regions follow county lines. Staff reworded this section to make the intended method of allocation of funds more clear.

**Comment:** 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 subchapter XI provides this information for governmental units for grants under a variety of subchapters, but there is not a similar set of provisions for non-governmental project sponsors.

Response: Subchapter II serves the same purpose for non-governmental organizations as subchapter XI does for governmental units. Both provide general information on grant requirements for a variety of subchapters. While staff agree that the rules are not completely consistent throughout, they believe there is consistency where possible. The complexities in the differences between eligibility requirements for governmental versus non-governmental sponsors, the difference in individual program criteria, and the fact local governments are not eligible for as many program components make it difficult to maintain complete consistency throughout the rule.

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

Response: Staff believe that it is reasonable to only include conservation and recreation lands in the calculation because these lands are supporting the same public purpose as lands acquired by the Department under Stewardship 2000.

Comment: 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."

Response: Staff believe that separate definitions for "development" or "to develop" and "development rights" are necessary for clarification in this subchapter. By statute, development rights are eligible, but the rule prohibits development. In addition, the term "development project" is defined in the general provisions under subchapter I.

**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:

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 12-25. 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 26-31. Makes minor revisions to bring the natural areas program in line with statutory changes.

Section 32. Establishes the administrative framework for the new bluff protection program. Defines "bluff" and sets program priorities.

Sections 33-49. 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 51-56. Makes minor revisions to the stream bank program to bring the program in line with statutory changes.

Sections 57-69. Makes minor revisions to the state trails program to improve grant administration.

Section 70-71. 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 72. Establishes the administrative framework and sets priorities for the new Baraboo hills subprogram.

Section 73. Clarifies and streamlines the administration of local assistance grants to governmental units.

Sections 74-76. 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 77. 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 78-79. 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. 66.0131(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), Stats., 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), Stats., to purchase the lands in question.

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

SECTION 3. Chapter NR 51, subch. I (title) should be placed before s. NR 51.001 and 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.~~

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~~ property acquired by a nonprofit conservation organization or a conservation organization with grants under this chapter shall be managed and maintained.

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.

(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.

SECTION 8. NR 51.002(2) to (5m), (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 including 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.

**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.

(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.

(5m) "Current owner", for the purposes of s. 23.0197(7)(b) to (d), Stats., means the owner who sells the property to the sponsor.

(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 and authorized absences such as annual, sick, court or military leave. These costs must be equitably distributed to all employee labor activities.

(11) "Governmental unit" means a town, village, city, county or the Kickapoo reserve management board.

(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" are those ordinary operating expenses of the sponsor not directly related to a specific stewardship project

**Note:** Indirect costs are generally administrative in nature, and are typically incurred for multiple purposes. 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.

**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", under s. 23.0917(4), Stats., 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.

(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 the 5 department administrative areas within the state.

**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. A grant shall be at least \$2,500 and 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.

(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.

(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 department shall evaluate the property according to the eligibility criteria and priorities in ss. NR 51.05 and 51.06.

(7) The department shall evaluate applications for grants for habitat restoration projects according to the standards in s. NR. 51.46.

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

SECTION 11. Subchapter I is renumbered subch. II.

SECTION 12. NR 51.02 is amended to read:

**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.

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

NR 51.03(1)(intro.) ~~Grants shall be issued~~ Except for grants issued under s. 23.0917(4m), Stats., the department may issue grants for up to 50% of the acquisition cost of the property. Acquisition cost as defined in s. NR 51.002(1) 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 s. NR 51.002(1). 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:

(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 or the property is entered into the county forest law program under s. 28.11, Stats. If the property is entered into the county forest law program, income derived from the property shall be distributed according to s. 28.11, Stats.

(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 under s. 23.0917(3), Stats., and s. NR 51, subchs. I through VIII, 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.

(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) For easements acquired with a stewardship grant, the sponsor may not convert or approve conversion of land encumbered by the easement to uses inconsistent with the easement.

(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 shall enforce all easement provisions.

(20) The holder of any mortgage or land contract on easement property shall subordinate its 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 of the application until the additional information requested has been received.

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

**NR 51.07 Grant contracts for acquisition projects.**

**NR 51.08 Grant payments for acquisition projects.**

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~~ The department has approved the value of the property 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.

(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 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:

(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 farms as defined in s. 95.60 (1)(a), Stats., doing 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.

**SECTION 22. NR 51.06 is created to read:**

**NR 51.06 Acquisition priorities.** (1) The department shall base its evaluation of acquisition projects 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.

(4) 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.

(5) 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. 66.1001, 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(6) to (8) are created to read:

NR 51.08(6) The department has approved a land management plan. The plan may be part of the grant contract or it may be a separate document incorporated by reference into the grant contract. For easements, the land management terms may be included in the easement.

(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 25. 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.

(a) Eligible costs may include, but are not limited to:

1. 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.

2. 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.

3. The cost of leased equipment used for project-related purposes.

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

(c) 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.

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) The sponsor may request interim payments 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) The department may withhold final payment of the grant amount 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 department may require the sponsor to submit one or more interim reports that contain details of progress and other information regarding the status of the project.

SECTION 26. Subchapter II is renumbered subch. III.

SECTION 27. NR 51.24 is repealed.

SECTION 28. NR 51.25 is renumbered NR 51.24 and 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 31. NR 51.27 to 51.29 are renumbered NR. 51.26 to 51.28, respectively.

SECTION 32. 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 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 Lake Michigan or Lake 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 33. Subchapter III is renumbered subch. V.

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 in an amount 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.

(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 par. (b), as renumbered, is amended to read:

NR 51.46(2)(b) Other practices, activities or sites ~~which the department determines that do not to 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 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~~ contract. 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, 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 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.

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.

- (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 the lake's shoreline or 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) The department shall evaluate and award grants for wild lakes projects 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.