

 **05hr_AC-Fo_Misc_pt06**



 Informational hearing May 23, 2006: Conservation easements

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Forestry...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2013)

Gary, Tim

From: skalbers@rucls.net
Sent: Tuesday, June 20, 2006 11:00 PM
To: Rep.Friske
Subject: Fwd: RE: Bidding for land purchases

Attachments: ATT2613588.htm



ATT2613588.htm
(10 KB)

Perhaps we should consider amending this section of the statute noted in Mark's memo, to include land? What are your thoughts. Sheryl

----- Forwarded message from Mark.Patronsky@legis.state.wi.us -----
Date: Tue, 20 Jun 2006 08:39:24 -0500
From: "Patronsky, Mark" <Mark.Patronsky@legis.state.wi.us>
Reply-To: "Patronsky, Mark" <Mark.Patronsky@legis.state.wi.us>
Subject: RE: Bidding for land purchases
To: Sheryl Albers <skalbers@rucls.net>

Rep. Albers---

I looked at the building commission statutes, which authorize the building commission to sell state-owned land through the bidding process, but do not require a bidding process to sell land to the state or for the state to purchase land. (see s. 13.48 (14)) Also, the DOA statutes for purchasing by low bid apply to materials, supplies, contractual services and equipment, but not to purchases of land. (see s. 16.75) These statutes don't say that the state must invite others to participate as bidders when the state is negotiating to purchase land, or that the other private bidders must also follow the state bidding statutes. It seems to me that the seller of land can determine how the sale will proceed.

Mark

From: Sheryl Albers [mailto:skalbers@rucls.net]
Sent: Monday, June 19, 2006 11:38 PM
To: Waldrop, Joyce
Cc: Patronsky, Mark
Subject: RE: Bidding for land purchases

It would seem to me that when the state is engaged in a bidding process that section of law would apply regardless of what agency is engaged in bidding. In this instance the state - the DNR - joined forces with a third party to become a bidder. So give me the rationale why that section of law has no application in this instance. Sheryl

From: Waldrop, Joyce [mailto:Joyce.Waldrop@legis.state.wi.us]
Sent: Monday, June 19, 2006 2:37 PM
To: Sheryl Albers
Subject: FW: Bidding for land purchases
Importance: High

See Mark's comments below.

Also we received the attached response to your request today at 2:09 PM.

Joyce
Chief of Staff/Committee Clerk
jwaldrop@legis.state.wi.us
Office of Representative Sheryl Albers
Ph. 608/266-8531
Fax 608/282-3650
<<Scan001.PDF>>

From: Patronsky, Mark
Sent: Monday, June 19, 2006 2:25 PM
To: Rep.Albers
Cc: Waldrop, Joyce
Subject: Bidding for land purchases

Rep. Albers----

Joyce forwarded to me your question about whether there is anything in statutes or administrative rules to require DNR to open a purchase to bidding when purchasing land or an interest in land with Stewardship funds. I have looked carefully at the DOA purchasing statutes, and the statutes and rules for the Stewardship program, and was not able to find anything suggesting such a requirement.

Please let me know if there is anything else you would like me to investigate regarding this issue.

Also, I offer my sympathies in what must be a stressful time for you.

Mark Patronsky

----- End forwarded message -----

This message was sent using IMP, the Internet Messaging Program.

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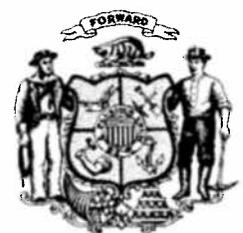
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Mark Patrosky



WISCONSIN STATE LEGISLATURE



Gary, Tim

From: skalbers [skalbers@rucls.net]
Sent: Wednesday, July 05, 2006 7:51 PM
To: Rep.Friske; Rep.Huebsch; Rosenak, Mary Jan; Waldrop, Joyce; 'Mark Graul'
Subject: FW: Judge Richard Niess' 7-3-06 Decision Order.pdf
Attachments: Judge Richard Niess' 7-3-06 Decision Order.pdf

Not the decision I had hoped for. An additional list of information not produced or supplied to us, referenced by other items I was afforded, was submitted to the judge, which included the Federal Forestry Funding Application, was also brought to the court's attention. However, none of the non-produced items are mentioned by the court, and therefore I don't know whether the judge has them, or whether the DNR was not forthcoming to the court.

Just attempting to keep you apprised.

Sheryl Albers

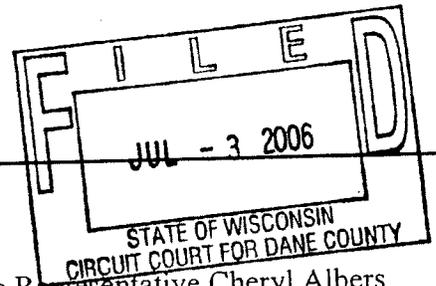
STATE OF WISCONSIN, EX REL,
CHERYL ALBERS,
Plaintiff,

DECISION AND ORDER

vs.

Case No. 06 CV 1894

STATE OF WISCONSIN,
DEPARTMENT OF NATURAL RESOURCES,
Defendant.



Statement of the Case

By letter dated May 12, 2006 but delivered May 15, 2006, State Representative Cheryl Albers presented the State of Wisconsin Department of Natural Resources ("DNR") with an open records request pursuant to §19.21, *et seq.*, Stats. relating to the DNR's proposed agreement to acquire, along with others, approximately 69,000 acres of land and conservation easements in the Wild River Forest Legacy Project from International Paper Co. The records requested were delineated into 12 broad categories spanning five years involving over 600 parcels of land in Forest and Florence counties.

One week later on May 22, 2006, the DNR responded, in pertinent part:

Given the expansive nature of your request and the desire to provide what we can before your public hearing on May 23, we are enclosing documents and information that were given the Natural Resources Board in open session. Once all the records pertaining to your request have been compiled, inspected and evaluated for release, you will be advised of their availability or reasons for withholding pursuant to §19.35(1)(a) and §19.85, Wis. Stats.

The Department anticipates that many of these documents may not be supplied immediately because this real estate transaction has not been closed. As with any real estate transaction-public or private-giving up a bargaining position could jeopardize the purchaser's financial interests. Please note that §19.35(1)(a) Wis. Stats., provides that the open meetings exemptions provided in §19.85, Stats., may be used as grounds for denying public access to a records if the Department makes a specific demonstration that there is a need to restrict public access at the time the request to copy a record is made. Pursuant to §19.35(1)(a) and §19.85 Wis. Stats., the Department may be denying access to a significant majority of these records

because competitive or bargaining reasons require keeping these records confidential at this time. The release of these documents could place the Department at a competitive disadvantage and jeopardize the state's interests and commitments since the transaction has not been finalized and consummated by all concerned parties. However, once this transaction has been consummated, all documents will be released.

Citing an alleged failure by the DNR to comply with her public records request "as soon as practicable and without delay" contrary to §19.35(4)(a), Stats., Representative Albers petitioned this court for a writ of mandamus granting her permission to inspect and copy the DNR records responsive to each request or, in the event the DNR objected to the disclosure of any particular records, an order under §19.37(1)(a), Stats. permitting Representative Albers and her attorney's access to the records subject to any restrictions or protective orders the court deemed appropriate. Compensatory damages, attorneys fees and costs were also sought in the petition.

Two days later, Representative Albers sought and was granted an alternative writ of mandamus ordering the DNR to either provide all of the records requested by petitioner or show cause why the DNR could not or would not provide such records at a hearing scheduled for June 20, 2006 at 8:00 a.m. On June 19, 2006, the DNR filed and served a motion to quash the alternative writ of mandamus, and a return to the open records request. While providing approximately 930 responsive documents for inspection and photocopying, the DNR declined to release property appraisal information documents, negotiation documents, drafts of the proposed conservation easement, and internal staff deliberations concerning drafts of the easement. Grounds for the DNR's refusal were several. First, citing Schopper v. Gehring, 210 Wis. 2d 208, 213 565 N.W. 2d 187 (Ct. App. 1987), the DNR contended that Representative Albers was not entitled to mandamus relief because her requests were insufficient due to their very broad scope as to time and subject matter. Additionally, the attorney-client privilege, as well as §19.32(2), Stats. relating to draft material, were cited. Finally, asserting that all of the records to which Representative Albers seeks access "concern negotiations for the purchase of public property and the investment of public funds" [Motion to Quash, Paragraph 17(c)], the DNR relied upon an exemption to the open meetings statute, citing §19.35(1)(a) and §19.85(1)(e), Stats. Combined, those statutes provide that exemptions to the open meetings law under §19.85 are indicative of public policy and may serve as grounds for denying public access to records, but only if the legal custodian (here the DNR) makes a specific demonstration that there is a need for restricting public access. Section 19.85(1)(e) allows for closed meetings for purposes of

"deliberating or negotiating the purchase of public property, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session."

In a letter dated June 19, 2006 letter to Representative Albers, the DNR further explained its position:

Documents the Department will not release at this time, based on the public policy expressed in Wis. Stat. §19.85(e), fall into the following categories: all documents that address valuation of the subject property; negotiation documents; attorney-

client privileged documents and drafts of the conservation easement and internal staff discussions about those drafts. Furthermore, the drafts themselves are not records under the statute; and privileged documents will likely be withheld indefinitely based on the attorney-client privilege.

The release of these categories of documents at this time could place the Department at a competitive disadvantage and jeopardize the state's interests and commitments, because the transaction has not been finalized and consummated by all necessary parties. Moreover, if the transaction is not completed as currently planned and further negotiations become necessary, the State's bargaining position will be jeopardized by release of the specified categories of records at this time. However, once this transaction has been completed, all records that are not privileged, or that are not required to be withheld for other reasons based on further review, will be released.

At the June 20, 2006 hearing on the alternative writ of mandamus, petitioner Albers sought in camera review of the withheld documents by her and her attorney, subject to a confidentiality protective order, while the DNR objected to in camera review by either petitioner Albers or the court. Both positions were rejected by the court and the withheld documents were ordered produced for in camera inspection by the court no later than noon, June 22, 2006. The DNR complied, submitting the documents under seal together with a Third Affidavit of Douglas J. Haag, also apparently under seal, addressing the need for confidentiality of each of the four categories of records withheld. The DNR also represented that it was still in the process of collecting records responsive to "petitioners numerous broad requests", indicating that "any such additional material will be addressed in the Department's final response to petitioner's May 12, 2006 request".

Based upon a careful review of the materials submitted under seal for in camera inspection, the arguments of both Representative Albers and the DNR, and the applicable statutory and case law, the court now sustains the DNR's decision to withhold the additional documents and denies the writ of mandamus. The court reasons as follows.

Applicable Law

The methodology to be applied by this court in reviewing the DNR's response to Representative Albers' open records request is succinctly set forth in Osborne v. Board of Regents, 254 Wis. 2d 266, 281-83, 647 N.W.2d 158, 165-66 (2002):

¶ 13 In Wisconsin, we have a presumption of open access to public records, which is reflected in both our statutes and our case law. [I]t is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.... The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied. Wis. Stat. § 19.31; see also Linzmeier v. Forcey, 2002 WI 84, ¶ 15, 254 Wis.2d 306, 646 N.W.2d 811 (recognizing the presumption that all public records should be open to the public); Mayfair Chrysler-Plymouth v. Baldarotta 162 Wis.2d 142, 155, 469 N.W.2d 638 (1991) (discussing presumption of open access to public records as having been long recognized in Wisconsin); **166 Hathaway v. Green Bay Sch. Dist., 116 Wis.2d 388, 392, 342 N.W.2d 682 (1984) ("Public policy and public interest favor the public's right to inspect

public records."); Newspapers, Inc. v. Breier, 89 Wis.2d 417, 426-427, 279 N.W.2d 179 (1979) (recognizing the legislative presumption that "where a public record is involved, the denial of inspection is contrary to the public policy and the public interest"). The open records law, Wis. Stat. § 19.35, *282 provides a requester with the procedure to exercise the right to inspect a public record and/or to make or receive a copy of a public record that appears in written form. Wis. Stat. § 19.35(1)(a) and (b).

[2] ¶ 14 The right to inspect public records, however, is not absolute. In certain circumstances, a custodian should deny a request to inspect public records. Access should be denied where the legislature or the court has predetermined that the public interest in keeping a public record confidential outweighs the public's right to have access to the documents. "Thus, the general presumption of our law is that public records shall be open to the public unless there is a clear statutory exception, unless there exists a limitation under the common law, or unless there is an overriding public interest in keeping the public record confidential." Hathaway, 116 Wis.2d at 397, 342 N.W.2d 682.

[3] [4] ¶ 15 After receiving an open records request, a custodian should turn to the statutes and to this court's established procedural standards to determine whether disclosure of the requested public records is proper. First, the custodian must determine whether any of the exceptions to open access apply, and then "weigh the competing interests involved and determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection." Breier, 89 Wis.2d at 427, 279 N.W.2d 179. If the custodian decides that the open records request should be denied, then the custodian must state the specific policy reasons relied on to make that determination. Mayfair, 162 Wis.2d at 157, 469 N.W.2d 638; Breier, 89 Wis.2d at 427, 279 N.W.2d 179; see also Wis. Stat. § 19.35(4). Further, pursuant to Wis. Stat. § 19.35(4)(b), *283 if the custodian "denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request."

[5] [6] [7] ¶ 16 In reviewing a mandamus action seeking to compel the custodian to disclose the requested public records, we first examine the sufficiency of the custodian's stated reasons for denying the request. Rathie, 142 Wis.2d at 687, 419 N.W.2d 296. The threshold question is whether the custodian stated legally specific reasons for denying the open records request. Mayfair, 162 Wis.2d at 158, 469 N.W.2d 638. It is not this court's role to hypothesize or consider reasons to deny the request that were not asserted by the custodian. Breier, 89 Wis.2d 417, 279 N.W.2d 179. If the custodian states insufficient reasons for denying access, then the writ of mandamus compelling disclosure must issue. Oshkosh Northwestern Co. v. Oshkosh Library Bd., 125 Wis.2d 480, 486, 373 N.W.2d 459 (Ct.App.1985).

In applying the Osborne analytical framework to the DNR's objections to Representative Albers' request, the only blanket exception under either the common law or statutes clearly applicable is the attorney-client privilege, which was interposed as an objection to the production of a discrete set of documents. In Wisconsin Newspress, Inc. v. School District of SheyboGAN Falls, 199 Wis. 2d 768, 782-783, 546 N.W. 2d 143, 1996 our Supreme Court explicitly ruled that the attorney-client privilege is an exception contemplated by the open records law, requiring no balancing test analysis. Accordingly, the court sustains the DNR's refusal to disclose those documents subject to the attorney-client privilege.

The DNR posits no clear statutory or common law exception to producing the remaining documents requested by Representative Albers. Rather, it argues that there is an overriding public interest in keeping these records confidential based upon the public policy expressed by our

legislature in the open meetings law provisions relating to deliberating on or negotiating the purchase of public property or the investment of public funds. Under §19.35(1), the legislature has provided that:

“...[the] exemptions to the requirement of a governmental body to meet in open session under the s.19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s.19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.”

Section 19.85(1)(e), in turn, authorizes a closed meeting of a governmental body for the purpose of:

“[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, and the conducting of other specified public business, whenever competitive or bargaining reasons require a closed session.”

In particular, the DNR contends that the release of those documents relating to valuations/appraisals of the subject property, negotiation of the purchase, and draft of the conservation easement and the internal staff discussions relating thereto jeopardizes the department's competitive situation and bargaining position, inasmuch as the subject transaction has not been finalized and consummated by all necessary parties, and further negotiations are therefore not foreclosed. In its June 22, 2006 “Supplemental Return of Documents for *In Camera* Inspection”, the DNR elaborates:

“A complex but uncompleted real estate negotiation such as this must be viewed and evaluated as a work-in-progress. For that reason it is impossible to segment or partition the documents individually because in all of the records in the categories the Department seeks to withhold at least until the closing of the property transaction are intertwined and inter-dependant (sic). Valuations affect negotiations and negotiations affect valuations. Evidence inserted or deleted in a conservation easement directly impacts the negotiated price.”

In support of this statement, the DNR has submitted under seal the Third Affidavit of Douglas J. Haig, which provides some background.

In reviewing the DNR's refusal to produce public records based upon a balancing of the public's right of inspection against the public's interest in non-disclosure, this court's mandate from the appellate courts is clear:

[7] When reviewing a denial of inspection, the trial court must determine whether the custodian's denial was made with the requisite specificity and, if so, whether the reasons given are sufficient to outweigh the strong public policy favoring disclosure. *See Aagerup*, 145 Wis.2d at 821-22, 429 N.W.2d at 773. As we have stated, the public's presumptive right to inspect public records may have to yield if outweighed by the public interest in nondisclosure. *Oshkosh Northwestern Co.*, 125 Wis.2d at 483, 373 N.W.2d at 461.

...

To meet the specificity requirement, the custodian must give a public policy reason that the record warrants confidentiality.

...

If the requisite showing of specificity is made, we then determine whether the reasons given for withholding are sufficient to outweigh the strong public policy favoring disclosure.

Village of Butler v. Cohen 163 Wis. 2d 819, 826-27, 422 N.W. 2d 579, 581-82 (Ct. App. 1991).

The DNR's refusal to produce, temporarily, the particular documents identified over and above the 930 pages already provided to Representative Albers fully satisfies this two-pronged test.

The DNR meets the specificity prong under Village of Butler, because it specifically gives "a public policy reason that the record warrants confidentiality." 163 Wis. 2d at 827. In particular, the DNR identifies the legislature's public policy embodied in §19.85(1)(e), which was imported into the open records analysis by the legislature in §19.35(1), Stats. and specifically identifies the jeopardy to that public policy engendered by disclosure of the identified records.

The real question presented by the DNR position revolves around the second prong of this court's review, i.e. "whether the reasons given for withholding are sufficient to outweigh the strong public policy favoring disclosure." Id. The answer is yes.

The legislature has invested the DNR with broad authority over conservation matters "for the protection, development, and use of forest, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state." §23.90(1) Stats. To accomplish these ends, the legislature has specifically authorized the DNR to acquire by purchase, lease or agreement, and receive by gifts or devise, lands or water suitable for state forests, state natural areas, or any other purpose for which gift lands are suitable as determined by the DNR. Additionally, the legislature has granted the DNR the authority to acquire any and all easements in the furtherance of public rights, including the right of access and use of land and waters for hunting and fishing and the enjoyment of scenic beauty. See §23.09(2)(d) and (10).

Thus, our legislature has specifically placed its public policy imprimatur upon the very type of land and easement purchase transaction which is the subject of the open records request at issue in this case.

Here, in fulfilling its legislative mandate by pursuing the acquisition of 69,000 acres of land and conservation easements in the Wild River Forest Legacy Project, the DNR has presented cogent reasons why the furtherance of this public policy is jeopardized by the production of documents central to its negotiation and bargaining strategy.

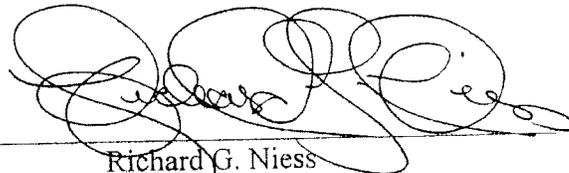
For just these types of situations the legislature has adopted §19.85(1)(e) and grafted it as public policy onto §19.35(1), Stats. In short, the legislature has determined that the public interest in full access to governmental proceedings and records must yield, at least temporarily, to the public's interest in allowing public entities, such as the DNR, to proceed with the acquisition of public

lands and easements through the use of public money, unimpaired in their competitive or bargaining position by premature disclosure of documents which inform their plan for negotiating the best deal possible. This undoubtedly reflects legislative recognition that, in all negotiations, knowledge is power, and that the public fisc is ill-served by requiring the public entity to lay all of its cards on the table while a transaction is in progress, with no concomitant such obligation imposed on other parties to the transaction.

Because the DNR's objections under §19.35(1) incorporating §19.85(1)(e) are sufficient to sustain its position that the public interest in withholding the specifically identified documents outweighs the public interest in full disclosure at this time, this court need not address the additional arguments raised by the DNR against disclosure, including (1) that the May 12, 2006 records request is insufficient under Schopper v. Gehring, 210 2d Wis. 208, 213, 565 N.W. 2d 187(Ct. App. 1978), and (2) that the draft material is statutorily exempt under Section 19.32(2), Stats.

For the above reasons, the DNR's objection to the production of certain specifically identified documents is sustained and Representative Albers' petition for writ of mandamus is denied.

Dated this 3 day of July, 2006.

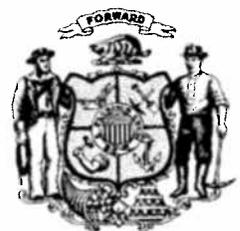
A handwritten signature in black ink, appearing to read "Richard G. Niess", written over a horizontal line.

Richard G. Niess
Circuit Judge

CC: AGA Maureen McGlynn Flanagan
Attorney John Kassner
file



WISCONSIN STATE LEGISLATURE





The Nature Conservancy in Wisconsin
633 West Main Street
Madison, Wisconsin 53703

tel 608/251-8140
fax 608/251-8535
nature.org/wisconsin

Date: July 5, 2006
To: Representative Sheryl Albers
From: Peter Peshek, Board Member, The Nature Conservancy in Wisconsin *PAP/jmp*
Re: Public access to the Wild River Legacy Forest and other related matters

Thank you for contacting me recently to request information related to the Wild Rivers Legacy Forest. As a board member of The Nature Conservancy and strong proponent of the project, I welcome your interest.

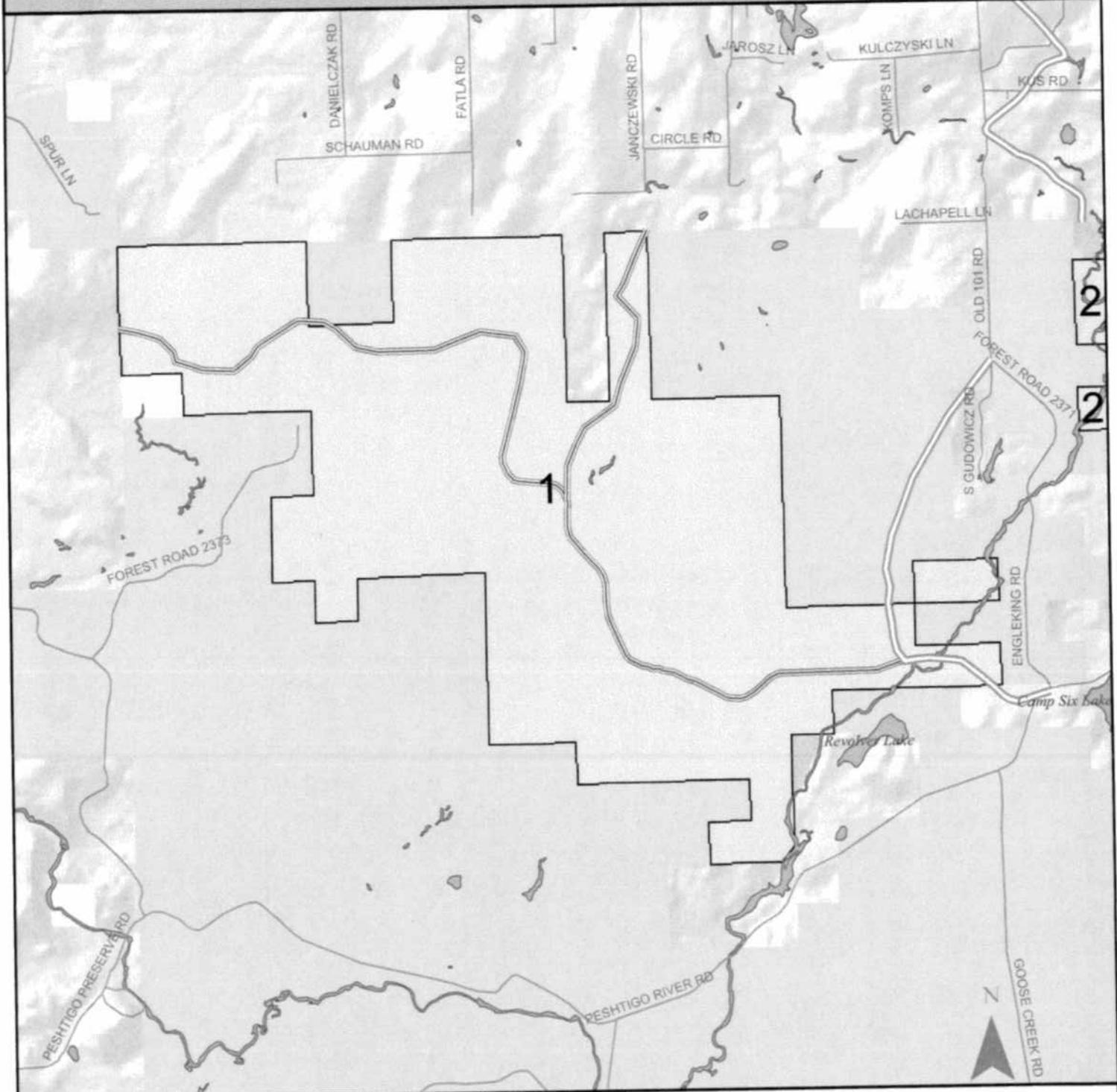
Attached are the final public access/use maps to each of the easement blocks within the Wild Rivers Legacy Forest. In each map you will find the location of designated recreation trails along with the surrounding land ownership adjacent to each easement block. The terms of the easements for each block are identical as they relate to access.

It is important to note that there will be no loss of ATV or snowmobile trails with the change in ownership on these lands. The Nature Conservancy worked with local county snowmobile representatives to ensure that, under the new easements, all trails that existed under Managed Forest Land (MFL) enrollment will be accessible to the public forever, even if a future owner withdraws the land from MFL.

In fact, public access is increased substantially under the terms of the new easements. Under MFL rules, property access to vehicular traffic (autos/trucks) is not guaranteed to the public. Under the new easements, miles of roads are now legally open to DOT licensed vehicles in perpetuity. This new public access is identified on the maps as "Access Corridor" in the map key.

You also expressed disappointment with the response you have received to your requests for information related to this land transaction. Be assured that The Nature Conservancy will be pleased to meet with you at your convenience to answer your additional questions to the best of our ability while respecting confidentiality requirements set forth by the seller.

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

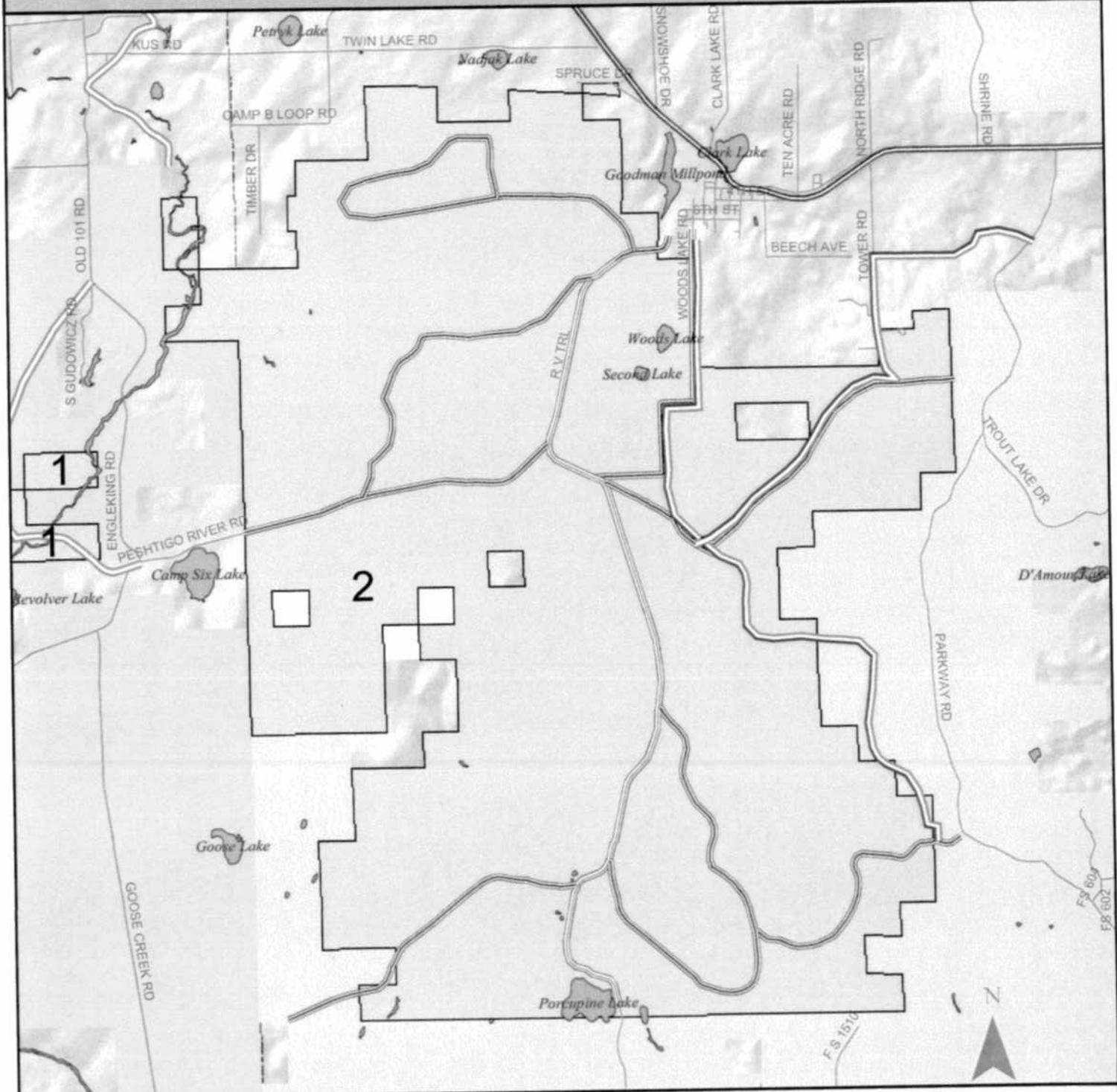
Recreation Corridors	DNR Managed Land	Easement Area	County Forest
ATV	WDNR Owned	Open Water	National Forest
Snowmobile	WDNR Easement	County Boundary	
Snowmobile and ATV	Board of Commissioners of Public Lands		
Access Corridor			



STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands

Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

Recreation Corridors

- ATV
- Snowmobile
- Snowmobile and ATV
- Access Corridor

DNR Managed Land

- WDNR Owned
- WDNR Easement
- Board of Commissioners of Public Lands

Easement Area

Open Water

County Boundary

County Forest

National Forest

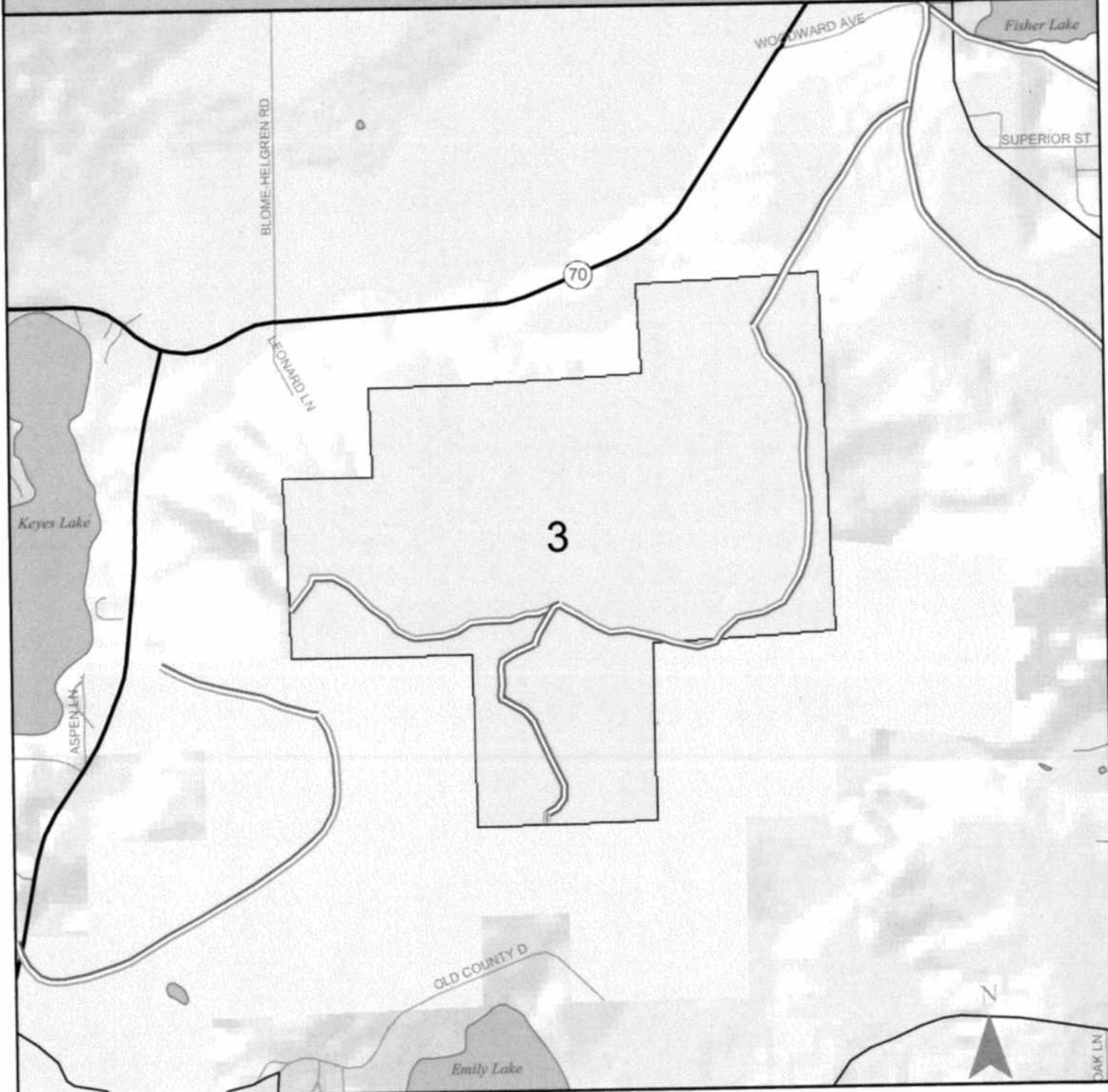


STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands

0 0.3 0.6 1.2 1.8 2.4 Miles

Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

Recreation Corridors

- ATV
- Snowmobile
- Snowmobile and ATV
- Access Corridor

DNR Managed Land

- WdNR Owned
- WdNR Easement

Easement Area

- Easement Area
- County Boundary

County Forest

- County Forest
- National Forest

Board of Commissioners of Public Lands

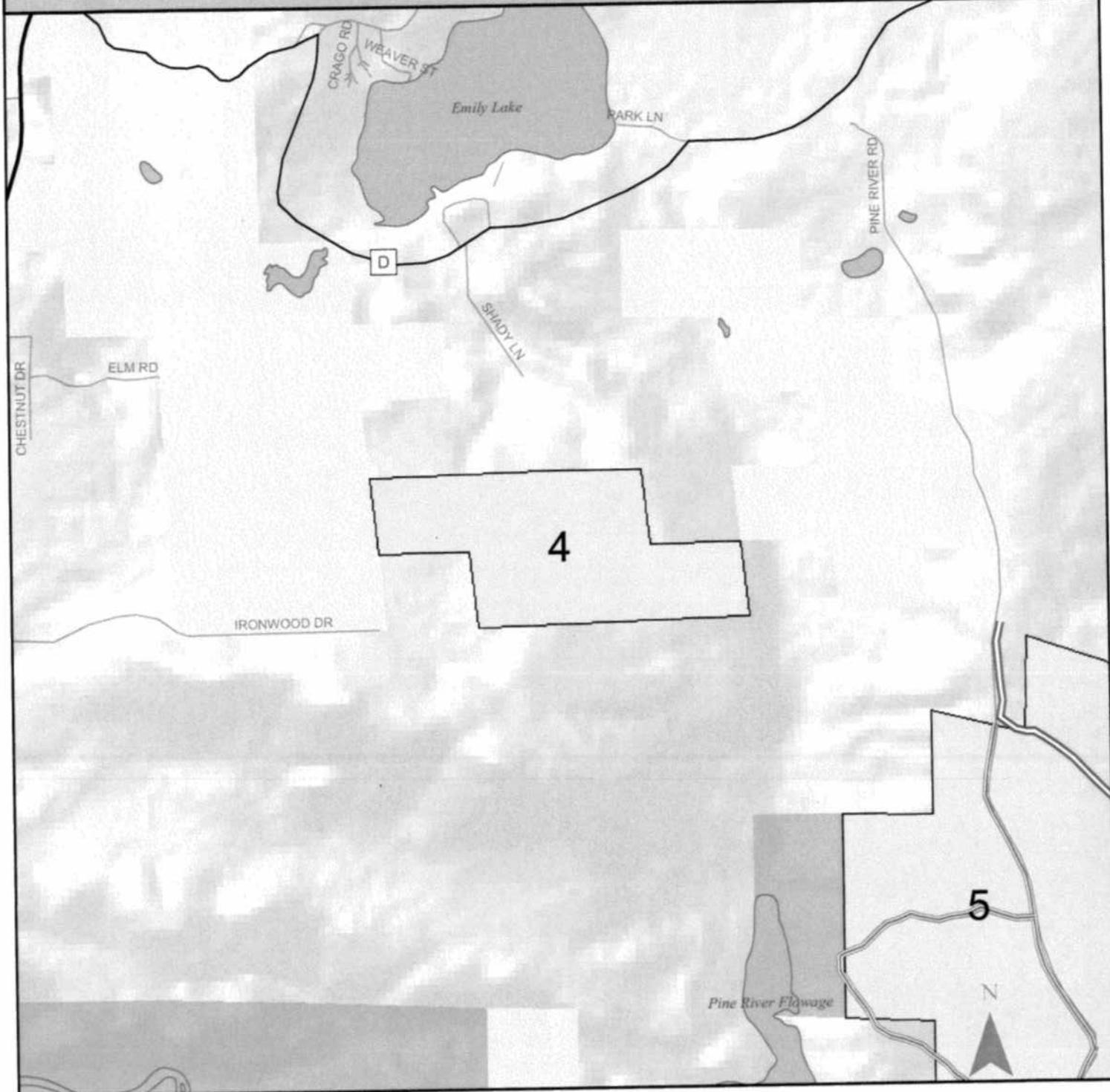


STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands



Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

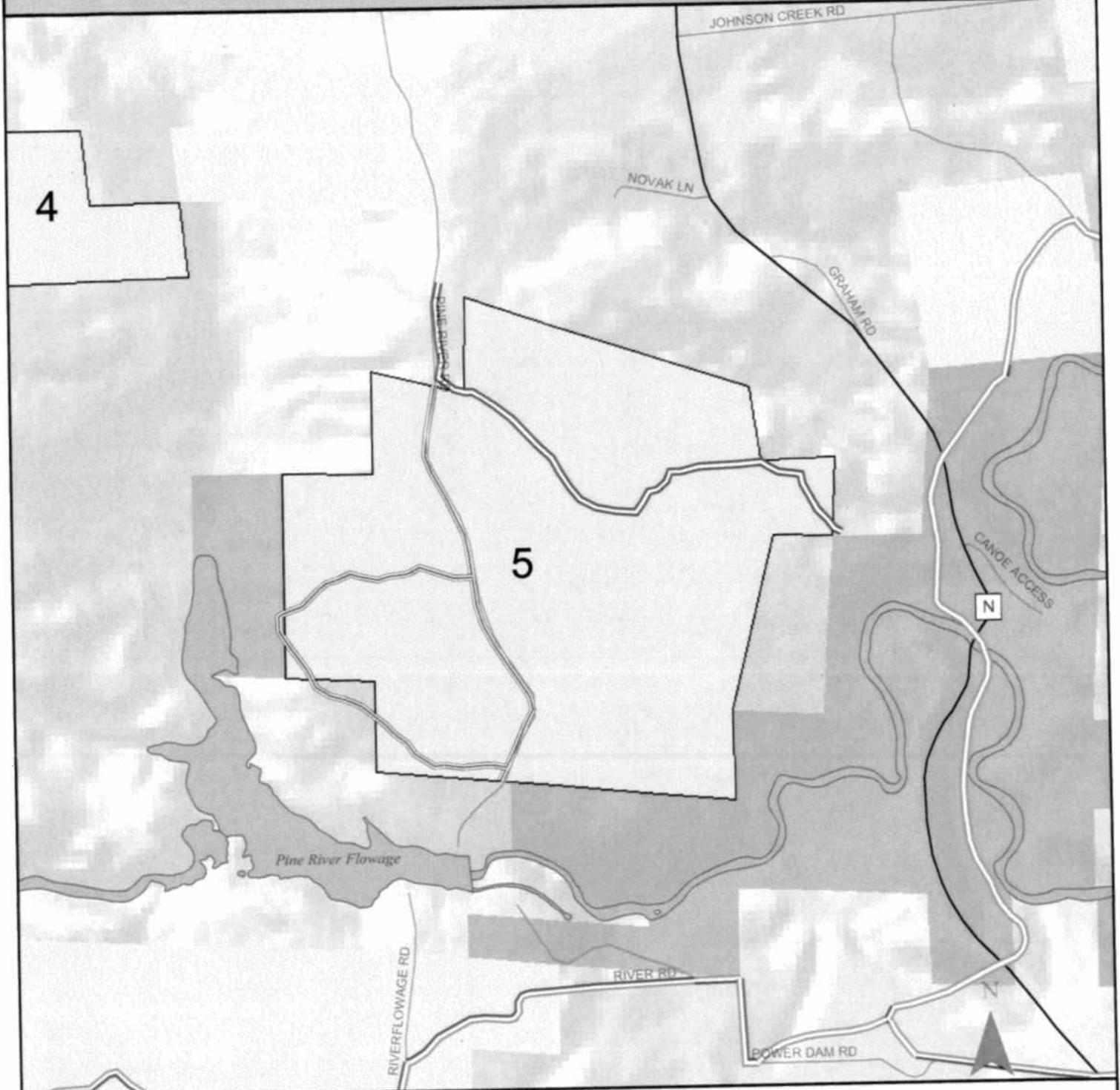
Recreation Corridors	DNR Managed Land	Easement Area	County Forest
ATV	WDNR Owned	Open Water	National Forest
Snowmobile	WDNR Easement	County Boundary	
Snowmobile and ATV	Board of Commissioners of Public Lands		
Access Corridor			



STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands

Jun 28, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS

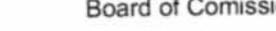


LEGEND

Recreation Corridors

- ATV 
- Snowmobile 
- Snowmobile and ATV 
- Access Corridor 

DNR Managed Land

-  WdNR Owned
-  WdNR Easement
-  Board of Commissioners of Public Lands

Easement Area

-  Easement Area
-  County Boundary

County Forest

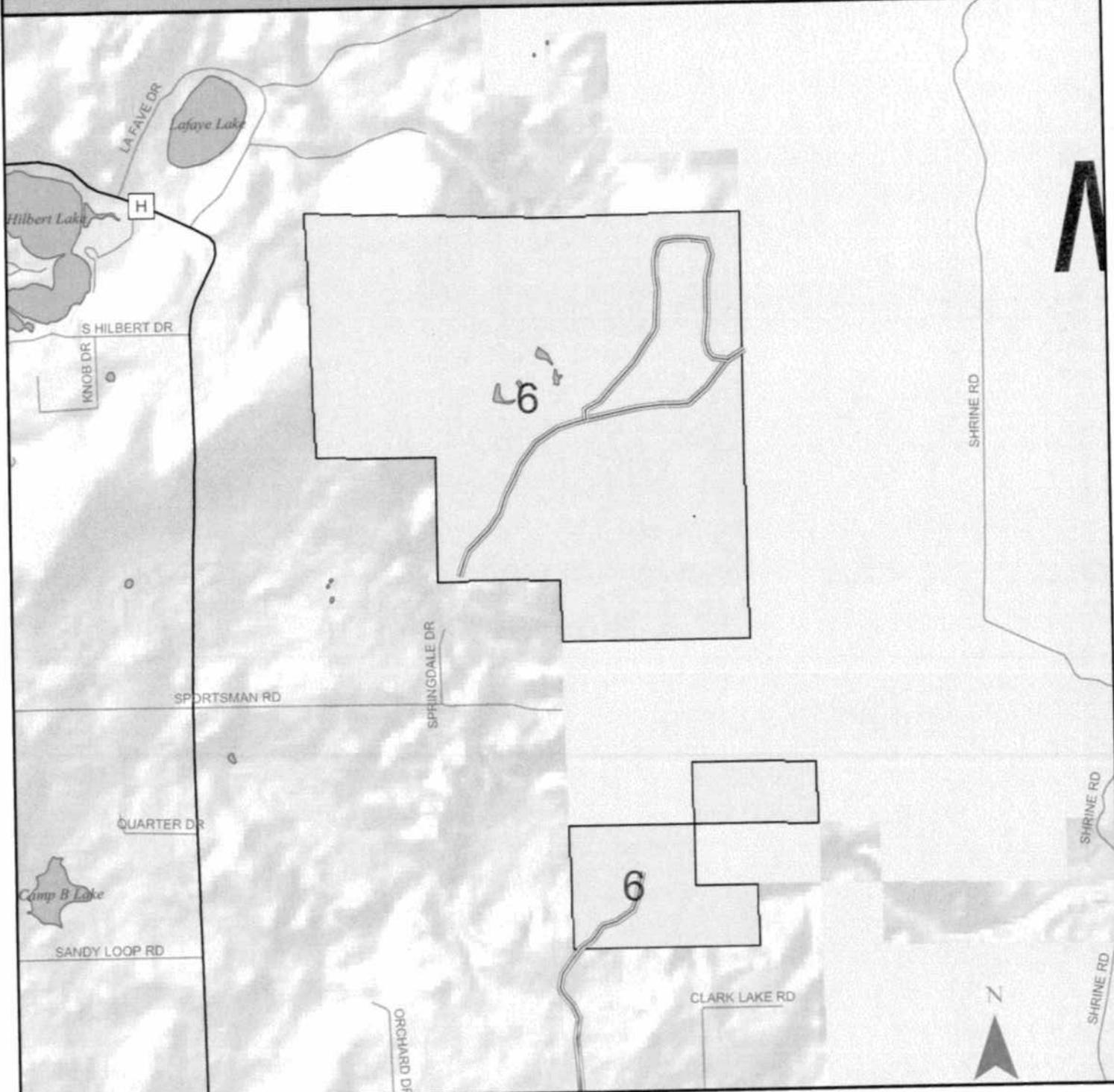
National Forest



STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands

Jun 26, 2008

MAP 6. ACCESS AND RECREATIONAL CORRIDORS

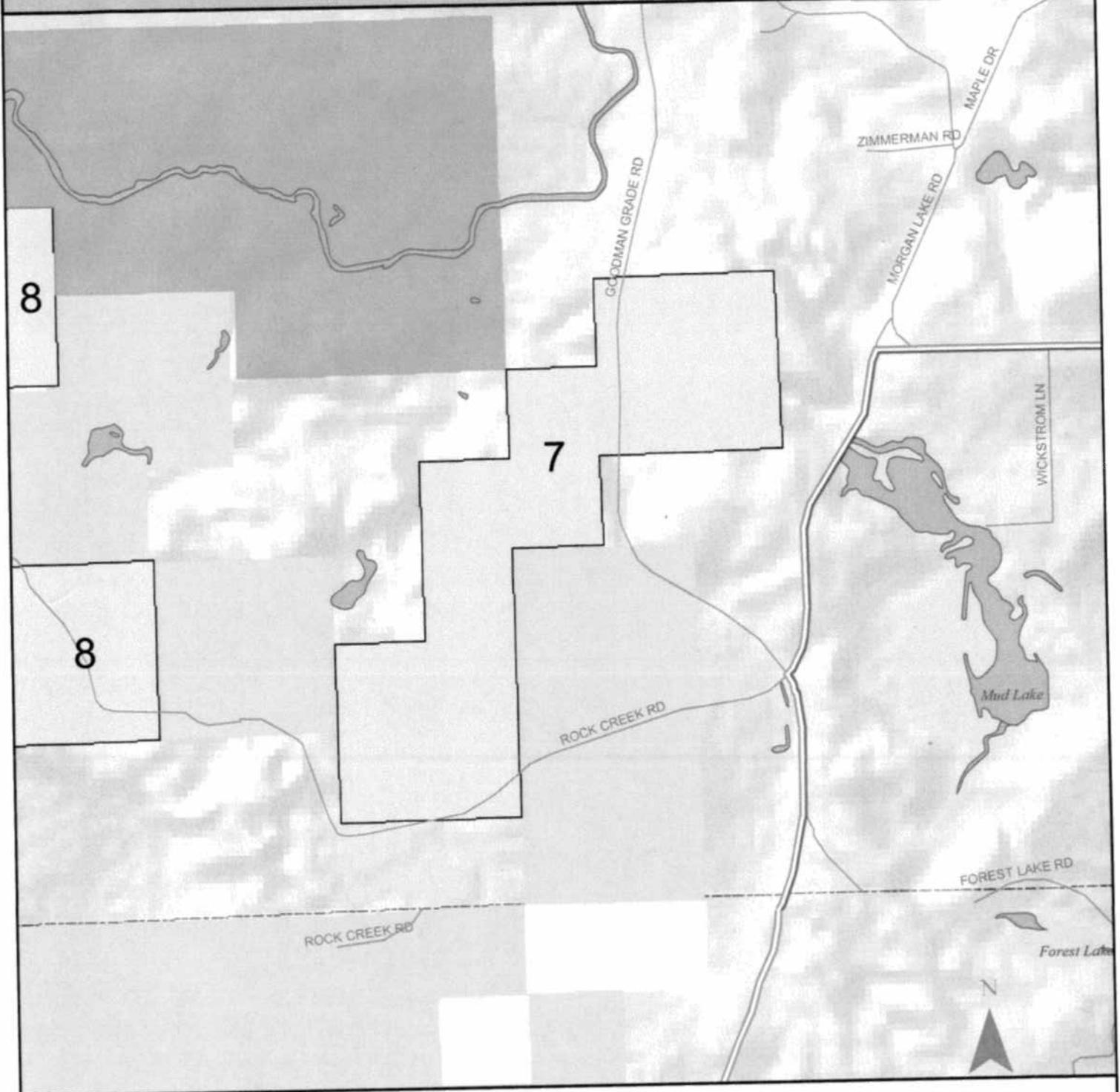


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| Recreation Corridors | DNR Managed Land | Easement Area | County Forest |
| ATV | WDNR Owned | Open Water | National Forest |
| Snowmobile | WDNR Easement | County Boundary | |
| Snowmobile and ATV | Board of Commissioners of Public Lands | | |
| Access Corridor | | | |



STATE OF WISCONSIN
 DEPT. OF NATURAL RESOURCES
 Bureau of Facilities and Lands
 Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

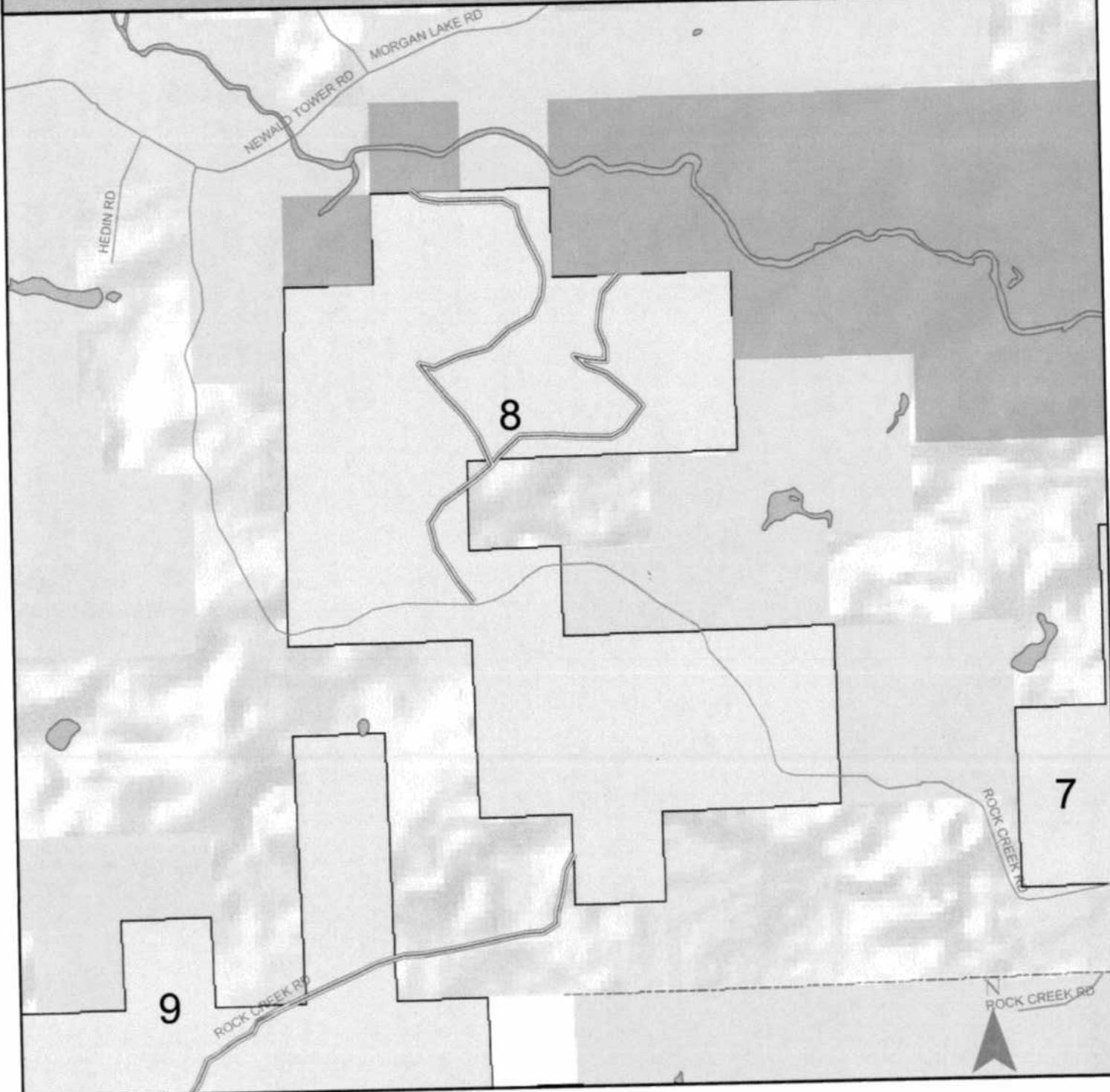
Recreation Corridors	DNR Managed Land	Easement Area	County Forest
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STATE OF WISCONSIN
DEPT. OF NATURAL RESOURCES
Bureau of Facilities and Lands

Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



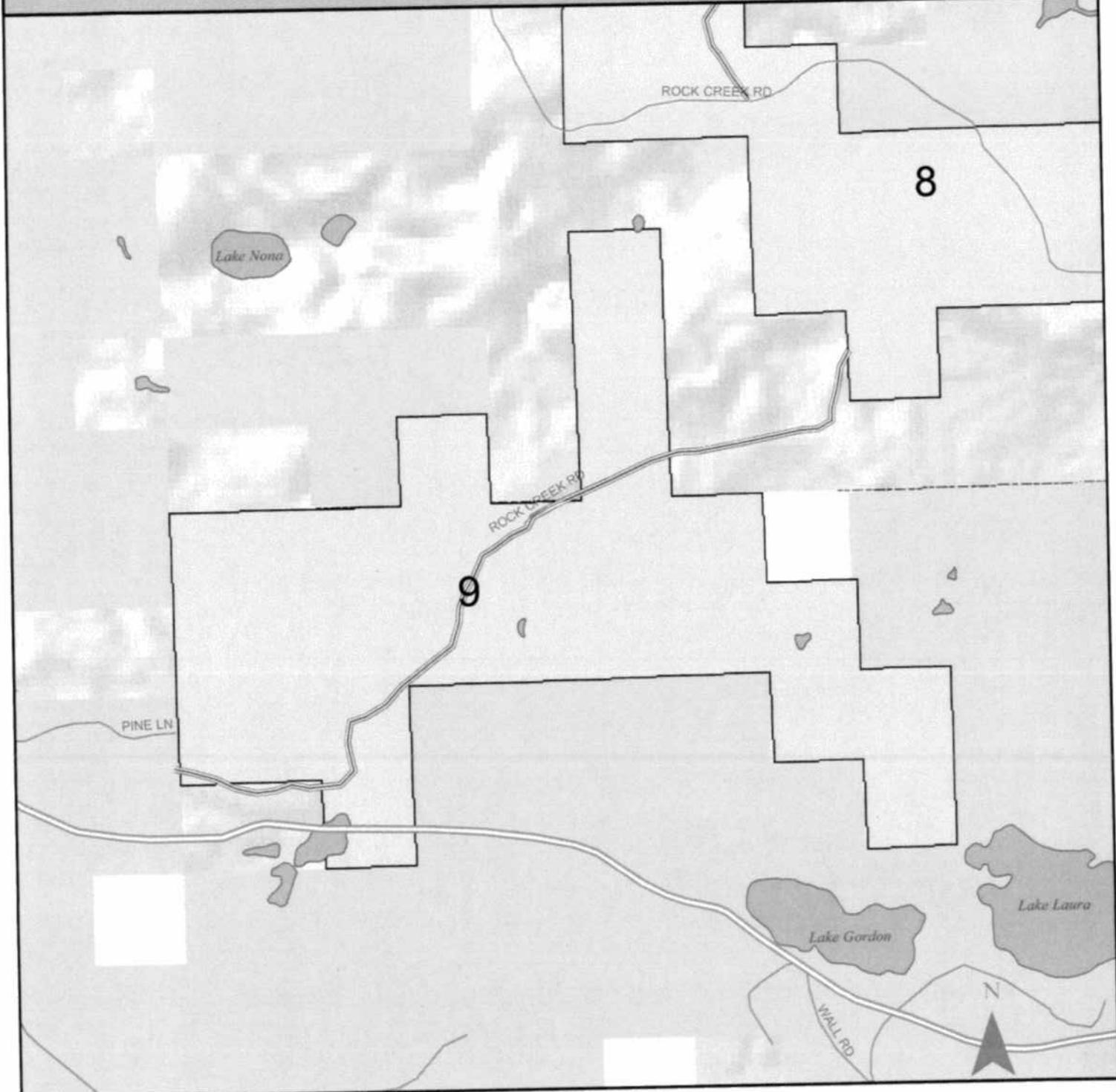
LEGEND

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STATE OF WISCONSIN
 DEPT. OF NATURAL RESOURCES
 Bureau of Facilities and Lands
 Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



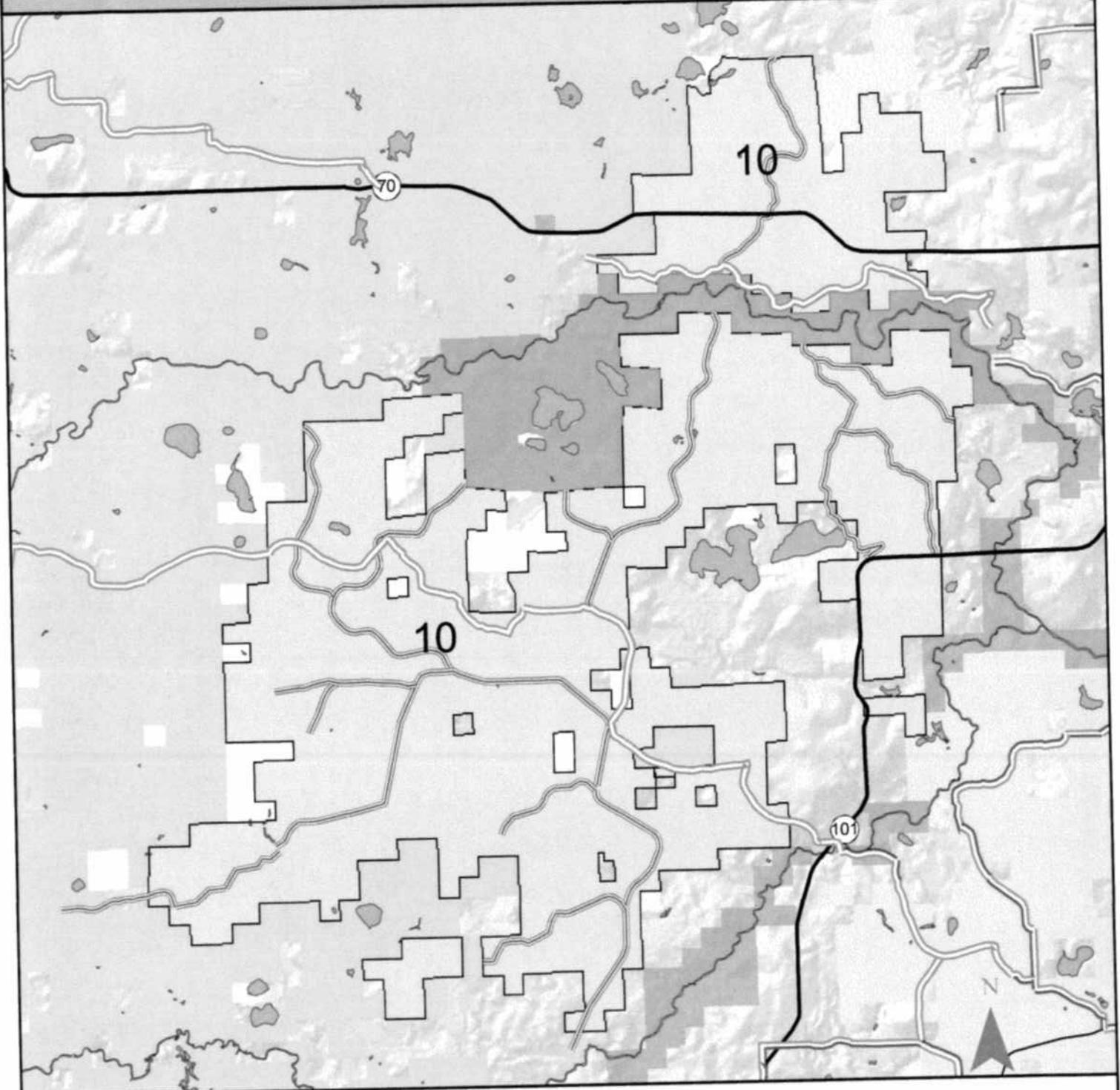
LEGEND

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STATE OF WISCONSIN
 DEPT. OF NATURAL RESOURCES
 Bureau of Facilities and Lands
 Jun 26, 2006

MAP 6. ACCESS AND RECREATIONAL CORRIDORS



LEGEND

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STATE OF WISCONSIN
 DEPT. OF NATURAL RESOURCES
 Bureau of Facilities and Lands

Jun 26, 2006



July 6, 2006
For Immediate Release

Contact
Cate Harrington, 608.251.8140, charrington@tnc.org
The Nature Conservancy in Wisconsin

Partnership Completes Wild Rivers Legacy Forest Acquisition

Senator Kohl earmarks \$2 million for project in Senate Appropriations Committee

MADISON –The Nature Conservancy, State of Wisconsin, International Paper, Conservation Forestry LLC, and Forest Investment Associates, today announced the completion of the largest land conservation transaction in state history. First announced in March 2006, the Wild Rivers Legacy Forest project will conserve 64,617 acres – 101 square miles – of forest, lakes and rivers in Florence, Forest, and Marinette counties in northeast Wisconsin.

Senator Herb Kohl, a member of the U.S. Senate Appropriations Committee, has succeeded in earmarking \$2 million in funding from the federal Forest Legacy Program in the Committee's recommended budget for FY07 for the project. The budget still needs to be approved by the full Congress and the President, but a positive vote by the Appropriations Committee is a good indication of future funding.

"This project ensures that the wild rivers and hardwood forests on this unique property will be forever conserved for future generations and remain a working forest, open for public recreation and keeping jobs in northeast Wisconsin," said Governor Jim Doyle.

"We would like to thank Governor Doyle and the Wisconsin Department of Natural Resources for their vision and hard work on the Wild Rivers Legacy Forest project, which is a win for conservation and for Wisconsin's economy," said Mary Jean Huston, state director of The Nature Conservancy in Wisconsin. "In a time of tight budgets and other pressing needs, this project takes a balanced approach to conservation—one that leverages public dollars with private capital to keep land in forest management, provides public access for recreation, and conserves wildlife habitat, water quality, and the character of the Northwoods we treasure."

At closing, the State of Wisconsin purchased the heart of the Wild Rivers Legacy Forest—5,629 acres of wild and scenic rivers, lakes and forests in Florence County that will be managed to protect their natural features and open to the public for recreation.

Conservation Forestry, LLC and Forest Investment Associates acquired 63,378 acres of forestland in the transaction. An innovative working forest conservation easement, crafted by The Nature Conservancy and the Department of Natural Resources, will keep the majority of this land open to the public for recreation permanently and guide forest management in a sustainable manner, ensuring that the forests remain healthy and diverse and continue to provide forest products and important forest industry jobs.

The \$83.675-million acquisition will be funded through private equity from Conservation Forestry, LLC and Forest Investment Associates, Wisconsin's Knowles-Nelson Stewardship Fund, and private funds to be raised by The Nature Conservancy. Other sources of public funding, including federal Forest Legacy funds, are being pursued.

"The Wild Rivers Legacy Forest purchase assures these private lands will always be open to the public for recreation, continued trail systems, and sound, sustainable timber planning and harvesting," said Butch Johnson, owner of Johnson Timber Company in Hayward. "This type of vision is important to the economy of northern Wisconsin and a great investment in the future of our state. Forest conservation easements are the best way to assure keeping private forests open to the public and not divided into smaller parcels which can easily be converted to non-accessible lands."

The Wild Rivers Legacy Forest encompasses vast acres of forest, more than 48 lakes and ponds, and over 70 miles of rivers and streams that flow into and contribute to water quality in Green Bay and the larger Great Lakes system. It provides important habitat for wildlife, including trout and migratory waterfowl and songbirds; rare species such as the pine marten; and wide-ranging mammals such as wolves and bear.

The property also offers exceptional recreation opportunities, including hunting, fishing in Class 1, 2 & 3 trout streams, snowmobiling, canoeing, kayaking, cross-country skiing, wildlife watching, and more.

"International Paper is proud to have a part in ensuring the continued protection of and access to these forestlands," said David Liebetreu, IP's vice president of forest resources. "Knowing that these lands will remain as sustainably managed working forests, while providing opportunities for people to enjoy hunting, fishing, exploring and other recreational activities, is a lasting legacy to International Paper's century of forestland ownership and stewardship."

The rapidly changing economics of the forest products industry are forcing an unparalleled change in ownership of the forests across the United States, including Wisconsin. This sale is part of

a larger effort by International Paper to sell as much as 6.8 million acres of forestland in the Midwest, the South, and the Northeast.

From 1997 to 2002, 94% of Wisconsin's private industrial forest lands, or about one million acres, changed hands. Some of these forests are being cut harder in a short period of time by the new owners or divided into smaller pieces and sold for development to provide maximum returns to investors.

"Collaborative partnerships like the Wild Rivers Legacy Forest are critical to maintaining large blocks of forest land and thereby ensuring these forests continue to support local and statewide economies, the full array of ecological values, and the settings in which we live, work and play," said Scott Hassett, Secretary, Wisconsin Department of Natural Resources.

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About The Nature Conservancy

The Nature Conservancy is a leading international, nonprofit organization that preserves plants, animals and natural communities representing the diversity of life on Earth by protecting the lands and waters they need to survive. To date, the Conservancy and its more than one million members have been responsible for the protection of more than 15 million acres in the United States and have helped preserve more than 102 million acres in Latin America, the Caribbean, Asia and the Pacific. In Wisconsin, the Conservancy has helped conserve more than 85,300 acres since 1960. On the Web at nature.org/wisconsin.

About the Wisconsin Department of Natural Resources

The Wisconsin Department of Natural Resources, in cooperation with its many partners, is dedicated to conserving and managing Wisconsin's natural resources, environment and outdoor heritage to sustain us and the generations that follow. On the Web at dnr.state.wi.us.

About Conservation Forestry, LLC

Conservation Forestry, LLC is a timber investment fund based in Woburn, Massachusetts with a strategy of investing in conservation related transactions while achieving its investment goals. On the Web at conservationforestry.net.

About Forest Investment Associates

Forest Investment Associates is in its twentieth year of providing investment management services to institutional and private investors in timberland. Operating out of its Atlanta, Georgia headquarters, the staff of FIA manages timberland portfolios for major corporate pension plans, state and municipal retirement systems, charitable trusts and endowment funds. On the Web at forestinvest.com.

About International Paper

Headquartered in the United States, International Paper has been a leader in the forest products industry for more than 100 years. The company is currently transforming its operations to focus on its global uncoated papers and packaging businesses, which operate and serve customers in the U.S., Europe, South America and Asia. These businesses are complemented by an extensive North American merchant distribution system. International Paper is committed to environmental, economic and social sustainability, and has a long-standing policy of using no wood from endangered forests. On the Web at internationalpaper.com.

Media Contacts:

For The Nature Conservancy: Cate Harrington, 608/251-8140, x139

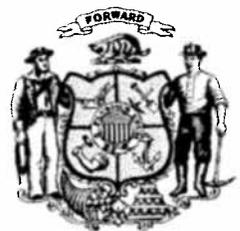
For the Wisconsin Department of Natural Resources: Paul DeLong, Chief State Forester, 608/264-9224; Laurie Osterndorf, Land Administrator, 608/267-7552

For Conservation Forestry, LLC, Paul Young at 603/552-2062

For International Paper, Media Contacts: Amy Sawyer, 901/419-4312



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE SHERYL ALBERS
FROM: Larry Konopacki, Staff Attorney
RE: Leases on Wild Rivers Legacy Forest
DATE: September 22, 2006

Earlier this year, the Department of Natural Resources (DNR) announced a plan to conserve 64,633 acres in Florence, Forest, and Marinette Counties through the purchase of land and conservation easements by the state. The project has been named the "Wild Rivers Legacy Forest."

At least 11 private individuals or groups hold leases within the project area. At least some of the lessees have constructed improvements on the leased property, including residential structures. The lessee who contacted you has apparently held a lease since the early 1980s and has a family cabin on the leased property. Based on the correspondence that you provided to me, the leased property is currently enrolled in the state's Managed Forest Land (MFL) program and the new owners intend to continue that enrollment.

The selling landowner, International Paper, has apparently terminated these leases and has given the lessees six months to vacate the property. You are concerned that these terminations were based on the DNR's determination that these residential uses constitute development for "commercial recreation" and are therefore not in compliance with MFL program requirements, a determination which you believe to be in error. You have requested an evaluation of MFL eligibility requirements and other issues that may affect the ability of the lessees to maintain their leases.

This memorandum examines the MFL program requirements as they relate to these lessees. As discussed below, the DNR's interpretation of the MFL program restrictions related to limits on development for "commercial recreation" does present some legal issues. However, the DNR also has separate broad, discretionary statutory authority over the criteria for MFL eligibility.

In addition, the express terms of the leases apparently allow termination by the landowner without the need to show cause. Therefore, if the landowner wants to terminate these leases, it may not matter whether the DNR's interpretation of MFL program requirements is in error. Lastly, the terms of the conservation easements negotiated between the Wild Rivers Legacy Forest project partners

apparently require termination of these leases. As a result, all of the project partners who agreed to the easement terms, including DNR, would be likely to be involved in any discussions about allowing these leases to continue.

I have not reviewed any of the leases at issue or the conservation easement terms agreed to by the Wild Rivers Legacy Forest project partners. Any assumptions made regarding these documents in this memorandum are based on the correspondence that you provided to me and should be independently verified if the lessees decide to take further action.

MANAGED FOREST LAND RESTRICTIONS

The MFL program provides tax incentives to enrolled private forest owners. In exchange, the property owner must prioritize the production of forest crops and use sound forestry practices. A property owner receives additional tax incentives for allowing public recreational access to enrolled land. The DNR can withdraw land from the MFL if it determines that program requirements have not been met. Landowners can incur significant penalties if land is removed from the MFL before the contract term expires. [ss. 77.82 to 77.91, Stats.]

One of the MFL program requirements prohibits land from being enrolled if it is “developed for commercial recreation, for industry or for any other use determined by the department to be incompatible with the practice of forestry.” [s. 77.82 (1) (b) 2., Stats.; (emphasis added).] These prohibitions are not further defined in statute, but they are defined in more detail by rule as follows:

“Developed for commercial recreation” means the alteration of the land or its features or the addition of improvements which impede, interfere with or prevent the practice of forestry. Note: This definition is not meant to preclude or prohibit a landowner from leasing land for hunting or other recreational activities compatible with the practice of forestry which are consistent with the open or closed area restrictions under s. 77.83, Stats.

[s. NR 46.15 (8), Wis. Adm. Code.]

“Developed for industry” means the alteration or use of the land for the purpose of conducting trade, production or manufacturing activities other than forest products production.

[s. NR 46.15 (10), Wis. Adm. Code.]

“Developed for use incompatible with the practice of forestry” means the alteration or use of the land for any purpose which impedes, interferes with or prevents the practice of forestry. Note: This definition does not prevent activities authorized in a department approved management plan.

[s. NR 46.15 (11), Wis. Adm. Code.]

Note that the DNR’s definition of “developed for commercial recreation” is very broad and is not limited to uses that are “commercial” or “recreational” in nature. This may explain why the DNR is

relying on the "commercial recreation" prohibition in explaining its determination that these leases violate MFL program rules.

While this broad definition may extend beyond the legislative intent behind the phrase "developed for commercial recreation," it may be a moot issue because the last clause of the same statutory prohibition authorizes the DNR to exclude property that is developed for any use "determined by the department to be incompatible with the practice of forestry." In other words, the DNR appears to have the authority to restrict MFL program enrollment in the manner they are asserting here, even if under a slightly different authority than the agency has cited in its correspondence with the lessees.

The DNR also has very broad authority to *withdraw* land from the MFL program. [s. 77.88 (1) (b), Stats.] In addition to being able to withdraw land that does not meet general *eligibility* requirements, like the prohibition on commercial recreation noted above, the agency may also withdraw land that is used "for a purpose which is incompatible with the purposes specified in s. 77.80."

Section 77.80, Stats., outlines the MFL purposes as follows:

The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

This is a very broad purpose statement that leaves considerable room for interpretation by the DNR. This broad authority to withdraw lands from the MFL program, combined with the broad authority to limit enrollment, supports DNR's determination that these leases are not allowed under MFL rules.

"COMMERCIAL RECREATION"

You specifically asked for an analysis of whether the DNR's position that these residential uses constitute development for "commercial recreation" is in error. As explained above, the question is likely to be moot because of the DNR's broad general authority to regulate enrollment in and withdrawals from the MFL program. Notwithstanding that authority, this section identifies some of the issues associated with the DNR's "commercial recreation" determination.

Challenge to the Rule

First, it could be argued that the DNR's definition of the phrase "developed for commercial recreation" under s. NR 46.15 (8), Wis. Adm. Code (quoted above), is broader than the statutes allow because it is not limited to uses that are "commercial" and "recreational." If the DNR were to rely on this definition to withdraw the property in question from the MFL program, a lessee may have an argument that the agency action is invalid because it may have been based on a rule that exceeds the agency's statutory authority. It is unclear what level of deference would be given to the DNR if a

reviewing court¹ found flaws in the agency's definition of "developed for commercial recreation" and that the agency applied the flawed definition in its determination. A lessee considering a challenge on these grounds should consult with private counsel.

However, even if the lessees succeed with such a challenge it may only buy them some time. This is because the DNR may be able to rewithdraw the land from the MFL program under the broad, general authority explained above. If a lessee challenged such a subsequent determination, a reviewing court would be likely to defer to the DNR in recognition of the agency's experience in forest management.

Not a Commercial or Recreational Use

Second, it could be argued that there are implicit "commercial" and "recreational" components in the definition of "developed for commercial recreation," regardless of what the agency's rule says. The lessees may be able to argue that their constructed improvements are not "commercial" or "recreational." It is unclear how a court would rule on this question.

Again, it may not greatly benefit the lessees even if they succeed with such a challenge. The DNR appears to have sufficient authority to rewithdraw the land for not meeting the purposes of the MFL program, as explained above.

Separate Human Residence Prohibition

Third, the lessees may have an argument that the prohibition on enrollment of land "developed for commercial recreation, for industry or for any other use determined by the department to be incompatible with the practice of forestry" under s. 77.82 (1) (b) 2., Stats., was not intended to include residential uses.

A reviewing court may look to an overall statutory scheme when attempting to interpret a particular passage. In this case, if the court decides that s. 77.82 (1) (b) 2., Stats., is ambiguous, it may look outside that section to construe its meaning. The statutory passage immediately following the prohibition on land developed for commercial recreation expressly prohibits the inclusion of "a parcel that is developed for a human residence" from the MFL program. [s. 77.82 (1) (b) 3., Stats.]

A court may find that the placement of this express "human residence" prohibition in the same statutory list as the "commercial recreation, industry and other incompatible uses" prohibition relied on by the DNR means that the latter was not intended to effect residential uses. This is a complicated legal

¹ A lessee considering a challenge to the DNR's position on MFL program eligibility should seek advice on the proper method and venue to raise such a challenge. A person challenging an agency interpretation of law, administrative decision, or administrative rule must follow detailed declaratory judgment, administrative review, and judicial review requirements contained in ch. 227, Stats., other statutory sections, and administrative code. Depending on the circumstances and the remedy sought, the proper venue for such a challenge may include local circuit court, Dane County Circuit Court, the state Division of Hearings and Appeals, or the originating agency. The use of the word "court" in this memorandum is intended to be interpreted generally and include all proper venues for challenging an agency determination or rule.

question of statutory construction that the lessees should discuss with private counsel if they choose to challenge the DNR. Ultimately, it is up to a court to make this interpretation.

An issue that may be raised in such a challenge is whether the human residence prohibition could *directly* apply to the leased property in question and separately require the land to be withdrawn from MFL. This question appears to be the source of some of the confusion surrounding this issue. The following two issues may arise in an analysis by a reviewing court:

Human Residence Prohibition May Not Apply

The DNR was directed by statute to promulgate rules defining "human residence." [s. 77.82 (1) (bn), Stats.] The definition in DNR rules includes a list of criteria that a structure must meet to be considered "developed for human residence" and, thus, subject to the prohibition against inclusion in the MFL program:

"Developed for human residence" means land that contains a building for habitation that is constructed or used as a domicile or that has a minimum of 5 of the following 8 characteristics:

- (a) 800 sq. ft. or more in total area, using exterior dimensions of living space, including each level and not including porches, decks or uninsulated screen porches.
- (b) Indoor plumbing including water and sewer, piped to either municipal or septic system.
- (c) Central heating or cooling, including electric heat, a furnace or heat with a circulation system.
- (d) Full or partial basement, excluding crawl spaces and frost walls.
- (e) Electrical service by connection to the lines of a power company.
- (f) Attached or separate garage, not to include buildings for vehicles used primarily for work or recreation on the property.
- (g) Telephone service based locally.
- (h) Insulated using common insulation products.

[s. NR 46.15 (9), Wis. Adm. Code.]

It appears that the residential structures at issue are not "used as a domicile" because they are not primary residences.² Therefore, a fact-specific analysis of each structure would have to be completed to determine if at least five of the eight listed characteristics apply to a particular structure. If five or more characteristics apply, the land on which a structure is placed would be ineligible for MFL program enrollment.

"Grandfathering" of the Residential Structures

There have been numerous questions about whether the residential structures on these leased properties were grandfathered during the transition from Forest Cropland status into the MFL program. Some or all of the lessees apparently believe that they were grandfathered, and even Senator Breske's letter to Mr. DallaGrana states that: "It should be noted, however, that some leases have been allowed to continue if the land was originally enrolled as Forest Crop Land and was switched to Managed Forest Land."

Steven Miller, the Director of the Bureau of Facilities and Lands at DNR, wrote the following in his July 28, 2006 letter to Mike Glime:

I talked again with our Forestry Division and they reaffirmed that there is no provision in the MFL law for allowing cabins previously allowed under Forest Crop to be allowed under MFL. Any cabin leases that would have been in effect upon conversion to MFL should have been cancelled.

The statutes appear to support the DNR's claim. Section 77.82 (4m), Stats., governs the conversion of Forest Croplands to the MFL program. This subsection requires the land to be converted to meet all of the general eligibility requirements for MFL enrollment, including the prohibitions against commercial recreation, human residences, and other uses incompatible with forestry described above. [s. 77.82 (1) (c) and (4m) (a), Stats.] On their face, these requirements do not grandfather any residential structures.

However, the note following the DNR's "developed for human residence" definition cited above states the following:

Note: "Developed for human residence" is not meant to include storage or workshop buildings. If there is living space as part of such buildings, the living space will be compared against the 8 characteristics. *This definition does not apply to lands converted from the forest crop law to the managed forest law under s. 77.82(4m), Stats., pursuant to petitions submitted before January 1, 1998, except that those entries must adhere to the*

² The rule prohibits structures that are "used as a domicile." A domicile is separately defined as "a place of permanent residence evidenced by voting, personal income tax or driver's license records." [s. NR 46.15 (12), Wis. Admin. Code (emphasis added.)]

traditional domicile and landscaping definitions concerning buildings on MFL³ lands. [s. NR 46.15 (9), Wis. Adm. Code; (emphasis added).]

This note implies that residential structures in place before a transition from Forest Cropland to MFL *are* treated differently. However, it does not provide clear direction on what that different treatment should be. This note does not have the force of law, although it still may be instructive to a court.

Regardless of whether the MFL statutes allow for grandfathering of structures, the DNR may have been doing so. It is unclear how a reviewing court would deal with the possible conflict between the MFL statutes and the DNR's rules and past practices. A lessee challenging the DNR's position should seek the advice of private counsel on these complex legal and factual issues.

CONCLUSION

In conclusion, the DNR's application of MFL statutes and administrative rules may raise some legal issues. It is unclear whether the DNR would rely on the same legal arguments if it decided to take action to withdraw the property in question from the MFL program. Even if the DNR held to its "commercial recreation" position, it is unclear whether a court would accept DNR's interpretation or side with the lessees in a challenge. Because the DNR has broad, general authority to regulate MFL enrollment, a successful challenge may only be a temporary solution for the lessees.

Notwithstanding the issue of MFL rules, the lessees could still be required to vacate the leased property. That is because the landowner can apparently still terminate the leases without cause and may choose to do so at any time. In addition, the lessees may have to convince all of the Wild Rivers Legacy Forest project partners, including DNR, to change the terms of the negotiated conservation easement, which apparently require lease termination.

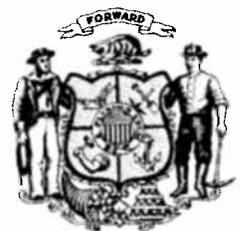
If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

LK:ksm

³ The reference in this rule note to "traditional domicile and landscaping definitions concerning buildings on MFL lands" may be an error. [s. NR 46.15 (9), Wis. Adm. Code; (emphasis added).] It appears that the Forest Cropland program is where "traditional" domicile and landscaping rules can be found, not the MFL program.



WISCONSIN STATE LEGISLATURE



SUBJECT: LAND AND EASEMENT ACQUISITION - WILD RIVERS AND FOREST LEGACY PROGRAM - FLORENCE, FOREST AND MARINETTE COUNTIES.

FOR: APRIL 2006 BOARD MEETING

TO BE PRESENTED BY: Richard Steffes and Paul DeLong

SUMMARY: When International Paper Company (IP) announced in July of 2005 it was selling its nationwide ownership of 6.8 million acres, the Department sought protection of the 69,000 acres in northeast Wisconsin. IP rebuffed the Department's attempt to buy a sustainable forestry easement and select fee title parcels. IP cited the value enhancement its Wisconsin acreage may have in a sale of its more than 500,000-acre Lake States ownership and required competitive bidding of all interested parties. The Department was subsequently approached by two groups requesting we be a part of their bids. IP required that the Department work with only one bidder.

In briefings with the Natural Resources Board, staff explained the competitive requirements and confidential conditions imposed by IP. The Board directed the Department to negotiate within perimeters to seek protection of the most pristine acres and to maintain by easement public access and a working forest. The agreement, which was negotiated with assistance by The Nature Conservancy, meets the direction and leadership put forth by the Board and Governor Doyle. In addition to fee title on pristine areas and public access for outdoor recreation, the forest legacy easement is specifically crafted to help maintain the exceptional ecological value of this hardwood/hemlock forest. The easement further protects the economic value of this forest to the local area and the state as a sustainable producer of forest products as well as a large scenic area for outdoor recreation.

The Department has reached an agreement with The Nature Conservancy and International Paper Company to purchase 5,610 acres of land for the Pine-Popple Wild Rivers project in Florence County. In addition, the Department has an agreement to purchase a sustainable forestry easement on 59,024 acres in Florence, Forest and Marinette Counties for the Forest Legacy Program. The total area protected by fee title purchase and by easement is 64,634 acres. Conservation Forestry, LLC will own the land encumbered by the easement after the transaction is complete.

At closing, expected in July of 2006, the Department plans to convey \$33,000,000. The state will receive 5,610 acres in fee title for the wild rivers and lakes. In addition, it will receive an easement for sustainable forestry on 44,457 acres. The Nature Conservancy will spend \$6,075,000 for an easement on the 14,567-acre "Goodman Block" in Marinette County. The Department has an agreement to purchase that easement from The Nature Conservancy, allowing time in the interim for the Department and The Nature Conservancy to seek other funds to cover the cost. Specifically, the Federal Forest Legacy Program has a goal of protecting forestland and funding will be sought from the federal government to support this project. The Nature Conservancy plans to conduct fundraising as well. The Stewardship law provides for the Department to borrow ahead using FY07 and FY08 funding for the anticipated July 2006 closing. In order to obligate \$33,000,000 for this transaction, the Natural Resources Board will need to determine that current funding is insufficient for the project, that the project covers a large area or is uniquely valuable for conservation and that delay of the cost is not reasonably possible.

RECOMMENDATION: That the Board approve use of fiscal year 2007 and 2008 funds for the project and approve the purchase of 5,610 acres of land and an easement on 44,457 acres for \$33,000,000. Further, that the Board direct the Department to seek Federal Forest Legacy funding for \$6,075,000 for an additional easement on 14,567 acres in Marinette County.

LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment of Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:

Real Estate Director, Richard E. Steffes - LF/6

Administrator, Laurie Osterndorf - AD/5

Administrator, Paul DeLong - AD/5

Secretary, Scott Hassett - AD/5

Date

Date

Date

Date

cc: S. Miller - LF/6
R. Steffes - LF/6

J. Gozdziński - NOR/Spooner
R. Kazmierczak - NER/Green Bay

CORRESPONDENCE/MEMORANDUM

DATE: April 17, 2006 FILE REF: WR-596* & WR-596 E

TO: Governor Doyle

FROM: Scott Hassett

SUBJECT: Proposed Land Purchase for the Pine-Popple Wild Rivers and Forest Legacy Easement on International Papers Land,
File # WR-596* & WR-596 E,
Approval Requested by March 29, 2006

1. PARCEL DESCRIPTION:

Pine-Popple Wild Rivers
Forest Legacy Program
Florence, Forest and Marinette Counties

*Grantor:

International Paper Company
c/o David Kluesner
16 North Carroll Street, Suite 800
Madison, WI 53703-2716

Acres: 5,610 fee title and 59,024 easement for a total of 64,634 acres protected

Price: \$39,075,000

Appraised Value: \$39,100,000 (Additional information in Section 5)

Interest: Purchase of both fee title and a Forest Legacy Easement with public access

Improvements: None. No future development is allowable in the easement area.

Location: The tract is located in northeast Wisconsin about 40 miles northwest of the City of Marinette. From the south end at Porcupine Lake to the north end near the Pine Wild River, the property spans 27 miles.

Land Description: The subject area is rolling to hilly with a few steeper areas. It is in a heavily forested area with large acreages in the Nicolet National Forest and county forests.

Water: There are 70,000 feet of frontage on a number of trout streams and wild rivers. In addition, the land protection project encompasses 48 lakes and ponds.

<u>Covertypes Breakdown:</u>	<u>Type</u>	<u>Acres</u>
	Wooded Lowland	14,219
	Wooded Upland	50,415
	TOTAL	64,634

Zoning: Forestry, Conservation

Present Use: Forestry

Proposed Use: Public Recreation, Resource Protection and Sustainable Forestry

Tenure: International Papers acquired in 2000. Lake Superior Land Company, a subsidiary, held most of this land for many years.

Agreement Date: March 28, 2006

*Comments: Because of closing requirements and timing, the Department may actually acquire land and easements from The Nature Conservancy and/or Conservation Forestry.

2. JUSTIFICATION:

The Department has reached an agreement with The Nature Conservancy and International Paper Company to purchase 5,610 acres of land for the Pine-Popple Wild Rivers project in Florence County. In addition, the Department has an agreement to purchase a sustainable forestry easement on 59,024 acres in Florence, Forest and Marinette Counties for the Forest Legacy Program. Acreages protected are as follows: Florence County, 42,176 (of which 5,610 acres are in fee title along the Pine and Popple Wild Rivers and a cluster of wild, undeveloped lakes and 36,566 acres are covered by a forest legacy easement; Forest County, 6,188 acres under easement and Marinette County, 16,270 acres under easement. The total area protected by fee title purchase and by easement is 64,634 acres. Conservation Forestry, LLC will own the land encumbered by the easement after the transaction is complete.

The Pine-Popple Wild Rivers project is located in northeastern Wisconsin. It was established by the Legislature in 1969 to "afford the people of this state an opportunity to enjoy natural streams, to attract out-of-state visitors and assure the well-being of our tourist industry. It is in the interest of this state to preserve some rivers in a free flowing condition and to protect them from development." The Pine-Popple Wild Rivers are popular for canoeing, kayaking, sightseeing, fishing, camping and outdoor recreation activities. Lands within 150 feet of the rivers are managed to maintain and enhance a wild and natural condition. Lands more than 150 feet from the rivers are managed for forestry production and wildlife and public recreational purposes. This transaction provides the state 5,610 acres along the Pine and Popple River shoreline. Of the 5,610 acres, 2,580 acres are currently within the project boundary and the remaining 3,030 acres are being added to protect the wild lake cluster next to the Pine River.

The "Goodman" Forest refers to approximately 69,000 acres of undeveloped forest and wetlands in Florence, Forest, and Marinette Counties. Distributed in three large blocks of industrial timberland, it is forested primarily with hemlock, hemlock-hardwood, and northern hardwood stands which have a long history of select cutting. Extensive undisturbed, old growth cedar, hemlock, spruce, and tamarack swamps occur in lowland areas. The property also contains a number of exceptional aquatic resources including a number of wild lakes, large spring ponds, and several miles of undeveloped, free flowing rivers. Several exceptional quality cold-water streams are tributaries to these larger river systems. The "Goodman" tracts are among the few large blocks of contiguous, northern hardwood dominated forest remaining in northern Wisconsin in private ownership.

Forestry on this land pre-dates 1900. Under the careful management of the long-term previous owner, the Goodman Lumber Company, the original old growth forest on these lands was never clear cut and burned, unlike so much of the rest of northern Wisconsin. Consequently, a portion of these lands still possess some characteristics of Wisconsin's pre-settlement landscape. Goodman Lumber was one of the first companies to practice long-term, sustained yield northern hardwood forestry using select-cutting practices. In fact, the Goodman Lumber Company was instrumental in helping to refine this management practice with pioneering research conducted on their land.

Since the Goodman Lumber Company first sold these lands over twenty years ago, the lands have traded hands often. These changes in ownership have resulted in significant changes to the resource base. However, despite numerous land transactions, they have remained intact and have not been subdivided. The International Paper Corporation (IP) currently owns these lands, but is now divesting.

There are many undeveloped lakes and ponds scattered throughout the property. Most of these are remote access lakes in a wilderness type setting. Many are shallow, marshy lakes supporting well developed beds of aquatic macrophytes. Several of the larger lakes provide important staging areas for migratory waterfowl and marsh bird habitat. Eagles, ospreys, and loons make extensive use of the area's lakes and rivers both for nesting and feeding. Fishery values on the lakes are somewhat limited due to occasional winterkill conditions. Savage Lake (150 acres) is significant in that very few "wild" lakes of this size class remain in northern Wisconsin. The complex of lakes centered near Savage and Robago Lakes ranked high on the wild lakes priority list.

Over nine miles of the Pine River and three miles of the Popple River, both state and federally designated Wild & Scenic Rivers, flow through the property. These free flowing river segments are essentially undeveloped with forestland located on both sides of the river. Past forest management has maintained a higher residual basal area (or denser forest cover) throughout much of the river zone. Large, long-lived conifers such as old growth hemlocks and upland cedars are common canopy associates of the mature forest cover along the river corridor. The lands contain an unbroken mosaic of native ecosystems that create a landscape pattern more characteristic of pre-settlement forest landscapes.

These high gradient, rocky, river segments are popular with whitewater enthusiasts especially during high water conditions. There are numerous riffle areas, many challenging rated rapids (including some class III), and several named falls with interesting rock formations where the river has eroded down to bedrock. Both rivers support productive trout fisheries in their middle sections, especially near the mouths of cold water tributary streams. Furbearers, including the river otter, are abundant. Rare aquatic invertebrates have been found in the Pine River system. The Pine and the Popple Rivers are a high priority for land acquisition.

Several outstanding Class 1 trout streams cross the property. Woods Creek, in particular, is an excellent quality cold water stream that supports a naturally reproducing population of native brook trout. This stream originates and flows through several noteworthy old growth cedar swamps that provide spring seepage. The watershed of these headwater streams is almost completely wooded wild land with extensive wetlands and very limited amounts of agriculture. Several undeveloped spring ponds occur on the property. These aquatic features form the headwaters of several of the cold water streams mentioned above. Their associated fens and rich conifer swamps provide good potential habitat for a number of rare species.

Current land ownership patterns across the northern forest are trending towards greater forest fragmentation and smaller average tract sizes making large-scale ecosystem management increasingly difficult. As this trend continues, the remaining large blocks of contiguous ownership are becoming critically important for those species that require extensive forests with contiguous canopy cover. These areas provide essential habitat for many species of neotropical migratory songbirds that are declining in other areas of the Midwest. This area is especially important to those species associated with mature upland conifer and lowland conifer cover. These same habitats provide critical habitat for a unique suite of "boreal" species of birds (gray jay, boreal chickadee and spruce grouse) that require mature conifers for feeding and winter thermal cover. The potential for providing mature northern hardwood forest habitat in the future is also quite possible given a change in the current management regime. Interior forest raptors, including the state threatened red shouldered hawk have been reportedly heard on the property in the past. The Department and its associated conservation partners have identified the Goodman block as an "Important Bird Area".

These forest lands are located within and immediately adjacent to the northeastern boundary of the Nicolet National Forest. This forest ownership compliments the adjacent Nicolet National Forest and abutting county forests. Together these lands constitute a huge block of mature hardwood forest surrounding some of the Nicolet's largest and least disturbed remnant stands.

The Goodman Lumber Company originally constructed a well-designed system of railroad grades for logging purposes. Old maps show railroads still in place in 1936. Now abandoned, these old grades provide the basic road infrastructure for recreation and timber management access. Most of these grades were well constructed and are currently in good condition. Several are used as Florence County snowmobile routes in the winter months. Because high quality sawlogs are usually milled close to their source, the forest lands are a potentially vital resource for the local timber economy. Logs are refined into high value, secondary forest products such as furniture, cabinetry, and wood flooring providing additional jobs and income to local residents and businesses. Pulpwood is trucked to paper mills in Wisconsin and upper Michigan. If the forest lands and water frontage were to be subdivided and sold to private owners, all or portions of the land now open to public recreation and forest management activities could be lost or greatly diminished.

The Department has reached an agreement with a number of parties for this transaction. Because the Department neither had the program need nor funding to purchase the entire International Paper Company ownership in fee title, The Nature Conservancy led negotiation efforts to secure a buyer for the underlying management rights and reached agreement with International Paper Company for purchase of about 69,000 acres for \$83,675,000. The Nature Conservancy will assign its right to purchase to the Department and to Conservation Forestry, a Timber Investment Management Organization based in Woburn, MA. Of the 69,000 acres, 64,634 acres will be protected and kept open to the public and in forestry. The remaining 4,366 acres are primarily scattered land some distance from the main blocks of land. That land is not included in this land protection project.

The Natural Resources Board has been briefed regarding this transaction and has directed the Department to proceed. The Board also directed the Department to seek other funding in support. The Board's direction and leadership has been very strong. This transaction is the largest in Wisconsin's land conservation history. The easement is stronger than past forest legacy easements in that it prescribes forestry practices for a variety of tree species and age groups with accompanying ecological benefits. Conservation Forestry, which will own 59,024 acres subject to the state's easement, has agreed to this innovative land protection/working forest approach. The Department initially approached the International Paper Company and attempted to directly purchase an easement. However, International Papers would not agree to sell an easement.

At closing, expected in July of 2006, the Department plans to convey \$33,000,000. The state will receive 5,610 acres in fee title for the wild rivers and lakes. In addition, it will receive an easement for sustainable forestry on 44,457 acres. The Nature Conservancy will spend \$6,075,000 for an easement on the 14,567-acre "Goodman Block" in Marinette County. The Department has an agreement to purchase that easement from The Nature Conservancy, allowing time in the interim for the Department and The Nature Conservancy to seek other funds to cover the cost. Specifically, the Federal Forest Legacy Program has a goal of protecting forestland and funding will be sought from the federal government to support this project. The Nature Conservancy plans to conduct fundraising as well.

The purpose of the Forest Legacy Program is to:

- preserve and protect the land for continued sustainable forestry and resource management and to maintain the undeveloped character of the property by precluding buildings, deforestation or any significant topographical change;
- manage the property as part of the grantor's commercial timber harvest base while providing open space;
- provide for the public the right to access the property for public outdoor recreational uses.

In recent years, some of the recreational land with water frontage on this property has been sold by industrial forest companies and the price of forest fragmentation is increasing in the region. This trend is changing the face of the "northwoods" so treasured by local people and visitors and could decrease the importance of both the timber and tourism industries in the northern economy.

Public outdoor recreation is an important component of this Forest Legacy Easement. Certain trails and roads on the easement area will be open for access while the entire property will be open for hiking, fishing, hunting, and berry picking. Designated snowmobile trails are allowed in the easement area. Access to the easement lands is via the public road system.

Acquisition of fee title and a Forest Legacy easement is recommended to protect and preserve the integrity of these northern forest lands in perpetuity, to prevent forest fragmentation and to promote the sustainable use of the northern forests. The tracts which comprise the easement area are critical in connecting and providing buffers to existing state and other public lands in addition to providing land for public outdoor recreation opportunities. The property included in this easement will be managed as sustainable forest land with many opportunities for public recreation. The land within the easement is important for maintaining ecological values as well as preventing forest fragmentation. It also connects public lands owned by the U.S. Forest Service, the three counties and the Department of Natural Resources.

3. FINANCING:

FY 07 and FY 08 State Stewardship bond funds are anticipated (Federal Forest Legacy funds will be sought for Phase II).

	Funds allotted to program:	Balance after proposed transaction:
Stewardship	\$90,000,000	\$51,000,000

4. ACQUISITION STATUS OF THE PINE-POPPLE WILD RIVERS:

Established: 1969
Acres Purchased to Date: 5,271.98 acres
Acquisition Goal: 8,332.7 acres*
Percent Complete: 63.3%
Cost to Date: \$1,712,453

*Acreage goal will be increased to account for this transaction.

4a. ACQUISITION STATUS OF THE FOREST LEGACY PROGRAM:

Established: 2002
Acres Purchased to Date: 35,295.6 acres
Acquisition Goal: 35,340.0 acres*
Percent Complete: 99.9%
Cost to Date: \$7,244,000

*Acreage goal will be increased to account for this transaction.

5. APPRAISAL:

Appraiser: Terry Gardon and Dan Heath (staff appraisers)
Valuation Date: November 7, 2005
Appraised Value: \$39,100,000
Highest and Best Use: Forestry and recreational subdivision
Allocation of Values:

- Fee title: 5,610 acres @ \$2,500/acre: \$14,025,000
- Easement: 59,024 acres @ \$425/acre: \$25,075,000
- Total: \$39,100,000
- Twenty-five (25) comparable sales cited, ranging in size from 720 to 390,827 acres.
Range of values for the easement: \$361 to \$566 per acre.
Fee value range: \$2,126 to \$2,904 per acre.

Appraisal Review: Richard Steffes – February 1, 2006

Comments: The Department also retained Steigerwaldt Land Services, Inc. to analyze this land. Steigerwaldt Land Services estimated the easement value at a range of \$400 to \$800 per acre. This would be \$23,600,000 to \$47,219,000 for 59,024 acres. An overall fee title value for the 69,000 acres ranged from \$82,800,000 to \$110,400,000. Steigerwaldt Land Services estimated timber only value at \$68,467,000 to \$82,160,000.

RECOMMENDED:

Richard E. Steffes

Date

Bureau of Legal Services

Date

APPROVED:

Laurie Osterndorf

Date

Wild Rivers Forest Reserve

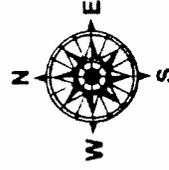
■ Fee Title
5,600 Acres

▨ Full Easement
54,900 Acres

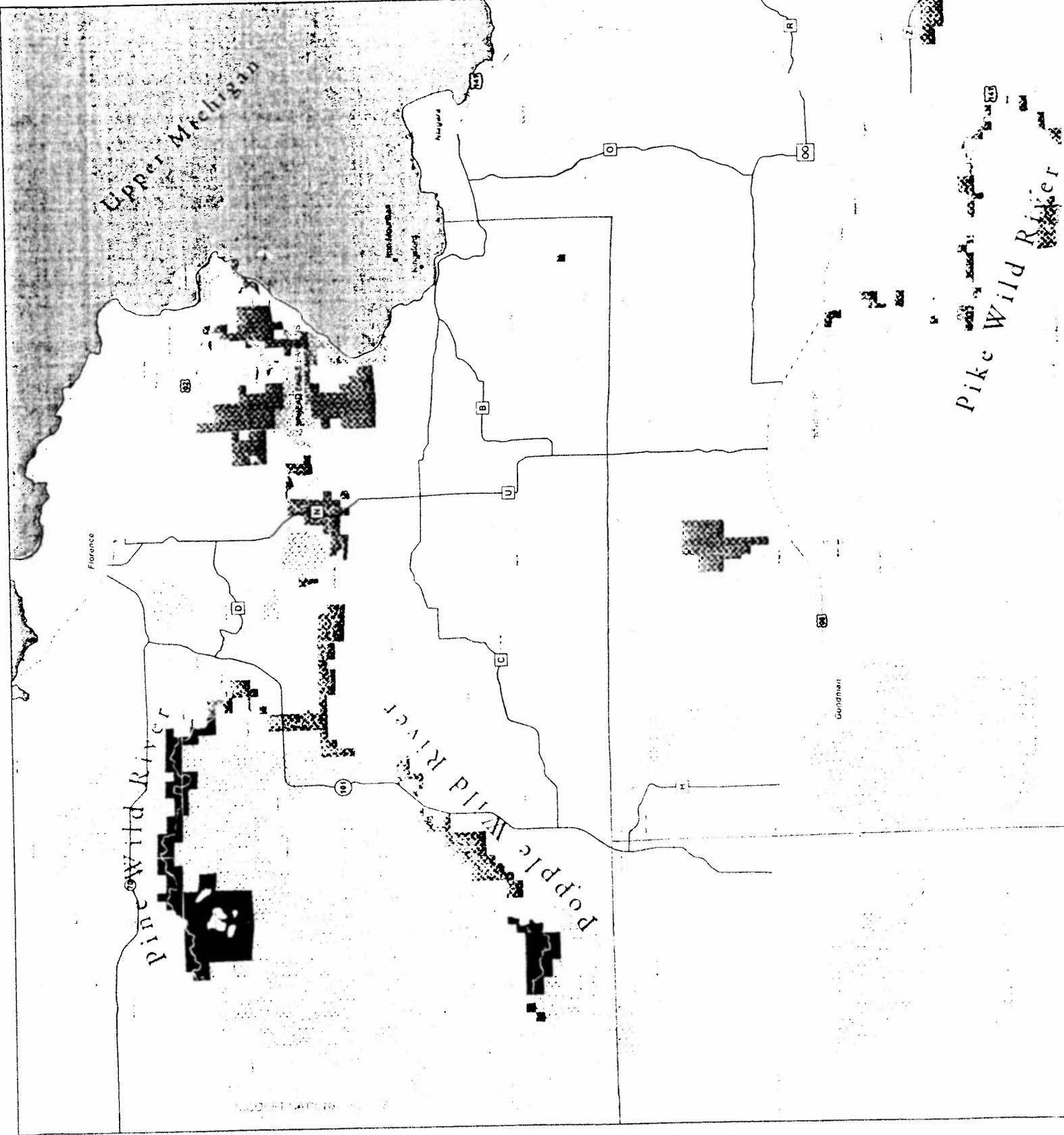
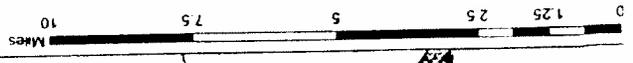
County Forest
National Forest

DNR Managed Land

▩ Owned Land
▨ Eased Land

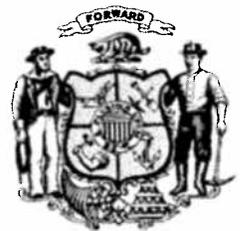


STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
BUREAU OF FORESTRY AND WILDLIFE
LANSING, MICHIGAN 48224





WISCONSIN STATE LEGISLATURE



DNR Single Source Contracting with Out of State Companies

- I. Is this the proper use and procedure under the Knowles-Nelson Stewardship Fund Statutes?
 - A. International Paper (IP) public announcement of the disposition of its Wisconsin forest land assets...on what authority is the State of Wisconsin "bound" by confidentiality agreements.
 - B. Public debate aside on whether this was a proper and wise use of taxpayer money...the conservation objectives of the State and The Nature Conservancy could have been realized in a more open and democratic process.
 - C. When and to whom did the state commit the Funds to in this process?

- II. Wisconsin Department of Natural Resources contribution
 - A. Providing out of State companies due diligence on proposed acquisition
 1. Committing personnel, time and resources at taxpayer expense.

- III. Valuation Process
 - A. What were the methods the State used to determine the amount of State funding
 1. Actual initial contribution is \$39 million... "eventually" to be \$33 million
 2. Knowles-Nelson Bonding cost to be an additional \$1.5-2 million per year for 20 years
 3. **Total cost of Wisconsin Taxpayer subsidy to private entities is \$63- 75 million over 20 years.**
 - B. "Benefits"
 1. State will own 5,610 acres along the Pine and Popple Rivers that already have a wild and scenic designation that restricts the development.
 2. "Permanent" development easement over 58,000+ acres
 3. Because this land was already in a 50 year MFL program, public access issues will be the same as they have historically been, nothing has changed other than some comfort in knowing that these lands are now less likely to be ever developed.
 - C. "Draw backs"
 1. **FOREST FRAGMENTATION** Some 4,800+acrs or 7% of land acquisition can be **Sold Off** by the private out-of-State timber managers at the expense of Wisc. Taxpayer
 2. State will own only 5,610 acres along the Pine and Popple Rivers already encumbered by development constraints due to their wild and scenic designation.

3. Because this land was already in a 50 year MFL program, public access issues will be the same as they have historically been, nothing has changed other than some comfort in knowing that these lands are now less likely to be ever developed

IV. Conservation Forestry Inc

A. History

1. Qualifications/Experience in managing Northern Hardwood Forests are non-existent
2. Never owned or managed forestland in the Lake States or elsewhere
3. No track record

V. Forest Investment Associates Inc

A. History

1. Large Timber Investment Management Organization (TIMO) based in Atlanta, Georgia
2. Significant holdings in timber primarily in the southeast. Have timber holdings in the northeast that has northern hardwoods.
3. No track record of managing timber in Wisconsin