



WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

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**

Comments to the Senate Environment Committee of the Wisconsin Legislature on NR52

Hello. My name is David Wernecke, executive director of the Baraboo Range Preservation Association - a land trust working with landowners and conservation organizations in and around the Baraboo Hills. Thank you for providing this opportunity to urge you to support Administrative Rule NR52 as unanimously approved by the Natural Resources Board.

For the past several years, I've been following the negotiations to clarify the process for determining access to lands protected through the Stewardship Program. There are many facets to the access issue and this rules process, I'll limit my comments to two of them.

First, I've been amazed that an issue has been made about access to lands purchased through the Stewardship Program. You are already aware that the vast majority of these lands have nearly full public access. This fact demonstrates that Wisconsin Department of Natural Resources staff have honored the Stewardship Program's goal of "providing the land base and recreational facilities needed for quality outdoor experiences." I understand that over 90% of land purchased with Stewardship Program monies is open to hunting and trapping. Please consider that all Wisconsin residents pay for the Stewardship Program and that not all hunt, fish, or trap game. Please also consider that many Wisconsin residents support the Stewardship Program and other conservation efforts simply because they believe it is the right thing to do regardless of whether they ever set foot in a public park or on a protected property or have an opportunity to hunt or fish on it. Increasingly, we are recognizing that nature provides us with many benefits which we depend on and which we can no longer take for granted. Many citizens also recognize the value of protecting tracts of land solely for the benefit of other species.

Second, a great deal of precious DNR staff time and other conservation worker's time have been spent on this minor issue. I hope that you will support the position the Natural Resources Board took in the proposed rule which recognizes and relies on the professional and skilled staff at WDNR. I was glad to see the recognition of this in the administrative rules' purpose statement: "Decisions ...will be reviewed by the department using professional judgment and will be based on sound science, legitimate safety issues, factual data and relevant information."

I hope the State Legislature recognizes that the judgment of WDNR staff needs to be relied on and honored as much or more than a clear scientific finding when deciding whether access should be restricted or not allowed, since conclusive proof is often not available when determining whether access will be detrimental or not to natural communities. I further hope that this Committee will not permit projects to be unnecessarily bogged down or denied simply on the basis that some individuals or specific organizations politicize a particular property or demand this conclusive proof and misuse additional appeal rights to this end. Hopefully, your support for this Administrative Rule and its resolution of the access issue will permit DNR staff, local governments, and conservation organizations return to their important work rather than have that work unnecessarily disrupted.

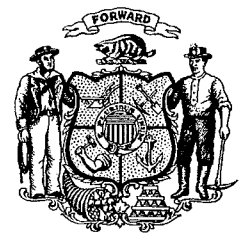
Wisconsin residents pay for an agency of knowledgeable and dedicated natural resource professionals to work for them. Wisconsin residents also rely on the judgment of local officials and conservation organizations they support. It's time for us to rely on the judgment of these professionals and let them get on with their important work.

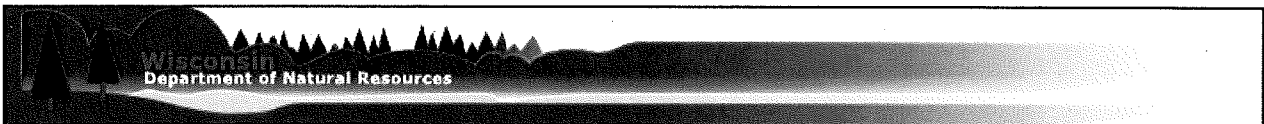
The Administrative Rule NR52 formalizes a process for putting access for hunting, fishing, trapping, hiking and cross country skiing at the forefront to respond to a legislative directive. The rule before you succeeds in addressing the access issue while maintaining some flexibility for considering appropriate limitations to access to parks in population areas and environmentally sensitive lands.

The Stewardship Program and its staff have served Wisconsin residents well, I hope you'll help this program and its staff to continue to do so by supporting Administrative Rule NR52 as unanimously approved by the Natural Resources Board.

Thank you for your consideration,

David Wernecke





Administrative Rule NR 52

Stewardship Land Access
s. 23.0916, Stats.



The Components of Stewardship

Land Acquisition Subprogram

DNR \$50 million
NCO \$12 million


Local Assistance Subprogram

Local Government/NCO
land acquisition
park development
\$11.5 million



NR 52 Rule Summary

- Gather information about a proposal to prohibit one or more NBOAs.
- Review the information and make a preliminary decision about the proposal.
- Share the information that was gathered and the preliminary decision with the public and accept public comment on the proposal.
- Review the public comment and evaluate any new information that was received.
- Make a final written determination.
- Provide reports to the Natural Resources Board on the Stewardship Program and decisions made under the rule.



s. 52.01 Purpose and Applicability

- The purpose of NR. 52 is to establish standards and criteria for prohibiting public access on lands acquired with funds from the Knowles Nelson Stewardship Program.
- Decisions will be made based on sound science, legitimate safety issues, factual data and relevant information.
- Most Easements, State Park acquisitions, fish hatcheries, fish, wildlife and game refuges are exempt from the law. Use of these lands is governed by existing statutes and administrative code.



s. 52.02 Definitions

- "Accommodate Usership Patterns" means to consider the factors found in s. 52.05(c) when making a determination to prohibit an NBOA.
- "NBOAs" means the nature based public outdoor activity of hunting, fishing, trapping, hiking or cross country skiing.



s. 52.02 Definitions – Cont.

- “Primary Purpose” means the recreational or conservation purpose for which the property is being acquired as guided by state statute and by state, regional or local plans that support the project.
- “Prohibit Access for an NBOA” means not to allow the activity in its entirety, or to restrict the activity so that a major or significant amount of the activity is not allowed.



s. 52.03 General Provisions

- Proposals to prohibit an NBOA shall include:
 - A description of the public uses proposed for the project.
 - A check list indicating which NBOAs will be provided.
 - An explanation of the primary purpose for the project.
 - A description of the NBOAs to be prohibited and the reason.
 - All uses are subject to federal, state and local laws.



s.52.04 Public Notice and Comment

- All proposals to prohibit NBOAs will be noticed to the public. The notice will include:
 - The name, address and phone number of the Department's contact person for the project.
 - The checklist described earlier.
 - A summary of NBOAs being prohibited and why.
 - The Department's assessment of the need to prohibit the NBOAs.



s.52.04 Public Notice and Comment

- The Public Comment period is 15 business days.
- The Department has a 15 business day evaluation period.
- The Department will create a final written summary on the proposal to prohibit an NBOA.



s. 52.04 Public Notice and Comment

The Department will submit a monthly report to the NRB regarding determinations made under this chapter and the NRB will hear public comment biannually.



s.52.05 NRB Determinations

- The Natural Resources Board has determined that it is necessary to prohibit one or more NBOA's to protect public safety, protect unique animal and plant communities and to accommodate ushership patterns.
- The Department will make administrative determinations for each individual proposal to prohibit an NBOA.



NR.52.05 Factors to Consider

Public Safety

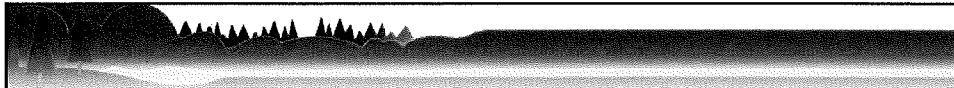
- The primary purpose for the project;
- Laws and ordinances that may impact NBOAs;
- Potential user conflicts that create a safety risk;
- Physical characteristics of the site;



Factors to Consider

Protect Unique Plant and Animal Communities

- The primary purpose for the project;
- To protect biological diversity;
- The potential to impact a natural area according to s. 23.28(3) Stats;
- The potential for an activity to increase over time and cause harm;
- The potential for an NBOA to lead to poaching rare plants or animals;



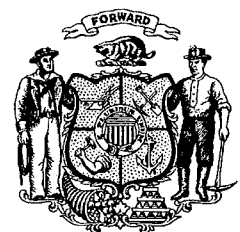
Factors to Consider

Accommodate Usership Patterns

- The primary purpose for the project;
- NBOAs available at the location at the time of purchase;
- User incompatibility that may occur;
- Feasibility of separating activities
- Size and shape of the parcel;
- The mix of NBOAs which will provide a quality experience;



WISCONSIN STATE LEGISLATURE



✓ Who pays off the bonds?

✗ What % of residents purchase hunting, fishing and trapping licenses?

25% - H, F
17,161 - Trapping : 36%

✗ How did the NBOA access provision become law?

✓ Describe the subprograms – land acquisition and local assistance

What % of funds for each?

What % of acreage for each?

✓ Who owns the land?

What % of lands are currently open for the 5 NBOAs?

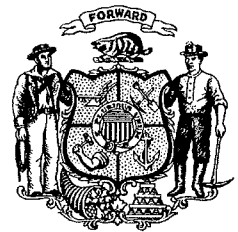
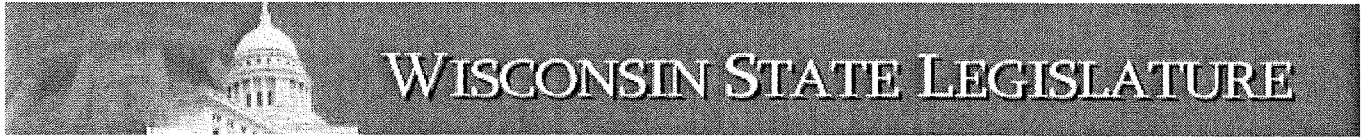
92% - DWR
88% - LUG, NCO

✓ How many grant programs does the Natural Resources Board make determinations on?

How do you reconcile the access provision with the obligations to State Natural Areas and the statutes that govern that program?

✗ Meyer/Welch

- How many acres has your organization purchased using Stewardship?



23.0917 CONSERVATION

Catagoria for State Acquisition
 Updated 07-08 Wis. Stats. Database 10
 Not certified under s. 35.18 (2), stats.

as a gift or devise, the amount equal to the appraised value of the land at the time it was transferred to the owner.

(g) "Remaining bonding authority" means the amount of moneys that has not been obligated.

(i) "Total bonding authority" means the total amount that may be obligated under a subprogram under the Warren Knowles-Gaylord Nelson stewardship 2000 program over the entire duration of the program.

(2) ESTABLISHMENT. (a) The department shall establish the following subprograms under the Warren Knowles-Gaylord Nelson stewardship 2000 program:

1. A subprogram for land acquisition for conservation and recreational purposes.

2. A subprogram for property development and local assistance.

3. A subprogram for bluff protection.

3m. A subprogram for recreational boating aids.

4. A subprogram for land acquisition in the Baraboo Hills for conservation purposes.

(b) Except as provided in sub. (5m), no moneys may be obligated from the appropriation under s. 20.866 (2) (ta) before July 1, 2000.

(3) LAND ACQUISITION SUBPROGRAM. (a) Beginning with fiscal year 2000-01 and ending with fiscal year 2019-20, the department may obligate moneys under the subprogram for land acquisition to acquire land for the purposes specified in s. 23.09 (2) (d) and grants for these purposes under s. 23.096, except as provided under ss. 23.197 (2m), (3m) (b), (7m), and (8) and 23.198 (1) (a).

(b) In obligating moneys under the subprogram for land acquisition, the department shall set aside in each fiscal year \$3,000,000 that may be obligated only for state trails and the ice age trail and for grants for the state trails and the ice age trails under s. 23.096. The period of time during which the moneys shall be set aside in each fiscal year shall begin on the July 1 of the fiscal year and end on the June 30 of the same fiscal year.

(bm) During the period beginning with fiscal year 2001-02 and ending with fiscal year 2019-20, in obligating money under the subprogram for land acquisition, the department shall set aside not less than a total of \$ 2,000,000 that may be obligated only to provide matching funds for grants awarded to the department for the purchase of land or easements under 16 USC 2103c.

(br) Beginning with fiscal year 2010-11 and ending with fiscal year 2019-20, in obligating moneys under the subprogram for land acquisition, the department shall set aside in each fiscal year not less than \$12,000,000 that may be obligated only to provide for grants awarded to nonprofit conservation organizations under s. 23.096.

(c) In obligating moneys under the subprogram for land acquisition, the department shall give priority to all of the following purposes and to awarding grants under s. 23.096 for all the following purposes:

1. Acquisition of land that preserves or enhances the state's water resources, including land in and for the Lower Wisconsin State Riverway; land abutting wild rivers designated under s. 30.26, wild lakes and land along the shores of the Great Lakes.

2. Acquisition of land for the stream bank protection program under s. 23.094.

3. Acquisition of land for habitat areas and fisheries under s. 23.092.

4. Acquisition of land for natural areas under ss. 23.27 and 23.29.

6. Acquisition of land in the middle Kettle Moraine.

(dm) Except as provided in subs. (4g) (b), (4m) (k), (5) and (5m), the department may not obligate under the subprogram for land acquisition more than the following amounts:

1. For fiscal year 2000-01, \$28,500,000.

1m. For fiscal year 2001-02, \$34,500,000.

2. For each fiscal year beginning with fiscal year 2002-03 and ending with fiscal year 2006-07, \$45,000,000.

3. For fiscal year 2007-08, \$43,500,000.

3m. For fiscal years 2008-09 and 2009-10, \$42,500,000.

4. For each fiscal year beginning with fiscal year 2010-11 and ending with fiscal year 2019-20, \$62,000,000.

(e) For purposes of this subsection, the department by rule shall define "wild lake".

(4) PROPERTY DEVELOPMENT AND LOCAL ASSISTANCE SUBPROGRAM. (a) Beginning with fiscal year 2000-01 and ending with fiscal year 2019-20, the department may obligate moneys under the subprogram for property development and local assistance. Moneys obligated under this subprogram may be only used for nature-based outdoor recreation, except as provided under par. (cm).

(b) The purposes for which moneys may be obligated for local assistance under the subprogram for property development and local assistance are the following:

1. Grants for urban green space under ss. 23.09 (19) and 23.096.

2. Grants for local parks under ss. 23.09 (20) and 23.096.

3. Grants for acquisition of property development rights under ss. 23.09 (20m) and 23.096.

4. Grants for urban rivers under ss. 23.096 and 30.277.

(c) The purposes for which moneys may be obligated for property development under the subprogram for property development and local assistance are the following:

1. Property development of department lands.

2. Property development on conservation easements adjacent to department lands.

3. Grants under s. 23.098.

(cm) Notwithstanding the purposes for which the department is authorized to obligate moneys under pars. (a), (b), and (c), the department may obligate moneys under the subprogram for property development and local assistance for any of the following purposes:

1. Construction of the Wisconsin agricultural stewardship initiative facility under s. 23.197 (7m).

1m. Construction of a visitor center and administration building at the Kickapoo valley reserve under s. 23.197 (2m).

2. Projects approved by the state fair park board under s. 23.197 (8).

3. Reconstruction of the chalet at Rib Mountain State Park under s. 23.197 (3m) (b).

6. Restoration of an area on the exposed bed of the former flowage on the Prairie River.

(d) In obligating moneys under the subprogram for property development and local assistance, all of the following shall apply:

1. The department may obligate not more than \$11,500,000 in fiscal year 2000-01 and not more than \$11,500,000 in fiscal year 2001-02 under the subprogram except as provided in sub. (5).

(5) For each fiscal year beginning with 2002-03 and ending with fiscal year 2009-10, the department may obligate not more than \$15,000,000 under the subprogram except as provided in sub. (5). For each fiscal year beginning with fiscal year 2010-11 and ending with fiscal year 2019-20, the department may obligate not more than \$21,500,000 under the subprogram except as provided in sub. (5).

2. Beginning with fiscal year 2000-01 and ending with fiscal year 2009-10, the department may obligate not more than \$8,000,000 in each fiscal year for local assistance.

2n. Beginning with fiscal year 2010-11 and ending with fiscal year 2019-20, the department may obligate not more than \$11,500,000 in each fiscal year for local assistance.

23.09 CONSERVATION

(b) Fish management projects and game management projects include but are not limited because of enumeration to: game food seeding; browse improvement cutting; prescribed burning for game habitat improvement; creating game cover brush piles; creation of impoundments, construction, nature trails; game and fish habitat creation or improvement; lake, stream and spring pond rehabilitation and improvement; construction of fish shelters; stream side fencing; rough fish control; and other approved fish and game management projects.

(c) State aid under this subsection to any county shall be distributed by the department according to the procedures adopted by the natural resources board. State aid granted to any county under this subsection shall be matched by the county and the state's share may not exceed one-half of the actual cost of the project. Personnel, equipment and materials furnished by the county may be included in computing the county share contribution.

(d) Application shall be made in the manner and on forms prescribed by the department. The department shall make such investigations as it deems necessary to satisfy itself that the project will best serve the public interest and need and shall also consider the relationship of the project to similar projects on other public lands. Upon approval of the project the department shall encumber a sum not more than one-half of the cost estimate of such project. The department may inform itself and require any necessary evidence from the county to substantiate the cost before payment is made.

(e) Recreation facilities developed under the assistance of this subsection shall not be converted to uses which are inconsistent with the purposes of this subsection without the approval of the department. The department shall require that the proceeds from the disposal of facilities developed under this subsection shall be used to further the objectives of this subsection.

(f) Any county may cooperate with and participate in approved projects in any other county under this subsection.

Cross Reference: See also ch. NR 50, Wis. adm. code.

(13) BONG AIR BASE. The department may acquire by gift, purchase or otherwise the federally-owned lands, improvements and appurtenances thereto within the Bong Air Base in Kenosha County which may be disposed of by the federal government to be used by the department for any of the purposes in sub. (2) (d). The department may establish zones within the boundaries of the Bong air base which offer a wide range of variable opportunities for active outdoor recreation consistent with sub. (2) (d) and may promulgate rules to control the activities within the zones.

(17m) GRANTS TO COUNTIES FOR THE DEVELOPMENT OF WILDLIFE HABITAT ON COUNTY FORESTS. (a) The county board of any county, which by resolution indicates its desire to improve the natural environment for wildlife on county lands entered under s. 28.11, may make application to the department for the allocation of funds appropriated for such purposes by s. 20.370 (5) (as).

(b) The annual allocation for each county shall not exceed 10 cents for each acre entered under s. 28.11, but any funds remaining from the appropriation made by s. 20.370 (5) (as) and unallocated to the counties on March 31 of each year may be allotted to any county in an amount not to exceed an additional 10 cents per acre under the procedure established in this subsection. These aids shall be used to undertake wildlife management activities provided in the comprehensive county forest land use plan and included in the annual work plan and budget.

(c) Wildlife management operations shall be limited to approved projects designed to benefit wildlife and the natural environment.

(d) Application shall be made as part of the comprehensive county forest land use plan prepared under s. 28.11. Before approving the plan, the department shall investigate all project proposals to make certain that the project is feasible, desirable and consistent with the plan. If the department approves the plan, the department shall pay the aids to the wildlife management fund account of the county. The county's wildlife management fund

shall be a nonlapsing account except as provided in pars. (h) and (hg).

(f) Completion of such projects authorized by the department shall be certified by a representative of the department. All records of receipts and expenditures from the county wildlife management fund account shall be available to the department for inspection and audit at any time.

(g) Any unauthorized expenditures from the county wildlife management fund account shall be restored to such fund upon demand by the department and if not restored shall become a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(h) If the amount of the unencumbered balance in a county's wildlife management fund account exceeds either of the following, the department may demand that the county repay the excess amount to the department:

1. The amount that is equal to the sum of the allocations received by the county for the 3 previous years.

2. The amount, as determined by the department, that is required for the purposes of this subsection.

(hg) If the unencumbered balance in a county's wildlife management fund exceeds both of the amounts specified in par. (h) 1. and 2., the department may demand that the county repay either excess amount.

(hr) If the county fails to comply with the department's demand under par. (h) or (hg), the applicable excess amount shall become a charge against the county, and the secretary of state shall include the amount in the state tax levy of the county in subsequent years.

(i) Expenditures under this subsection on any land withdrawn from s. 28.11 and the title to which is transferred by the county to other than a public agency shall be reimbursed to the department in an amount not to exceed the prorated value of the remaining useful lifetime of the wildlife habitat development.

(18) FOREST CROPLANDS AND MANAGED FOREST LANDS AIDS.

(a) In each fiscal year, the department shall make payments to each county that has more than 40,000 acres within its boundaries that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) on July 1 of that fiscal year.

(b) The amount of the payment made in a fiscal year to an eligible county shall equal the county's proportionate share of the moneys appropriated under s. 20.370 (5) (br) for the fiscal year. An eligible county's proportionate share shall equal the number of acres within its boundaries that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) on July 1 of the fiscal year divided by the total number of acres that are entered on the tax roll under s. 77.04 (1) or 77.84 (1) on that same date and that are within the boundaries of counties that are eligible for payments under this section, multiplied by the amount appropriated under s. 20.370 (5) (br) for the fiscal year.

(c) The department shall calculate and issue the payment for each eligible county by October 1 following each fiscal year.

(19) AIDS FOR THE ACQUISITION OF URBAN GREEN SPACE. (a) In this subsection:

1. "Brownfields redevelopment" means an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

2. "Governmental unit" means a city, village, town, county, lake sanitary district, as defined in s. 30.50 (4q), public inland lake protection and rehabilitation district or the Kickapoo reserve management board.

3. "Nature-based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

(b) Any governmental unit may apply for state aid for the acquisition of lands and rights in lands for urban green space.

Each application shall include a comprehensive description of the proposal for urban green space acquisition, plans for development and management of the land and any other information required by the department.

(c) The department may award grants from the appropriation under s. 20.866 (2) (tz) for the acquisition of land or rights in land for urban green space under this subsection for the following purposes:

1. To provide an open natural space within or in proximity to urban development.

2. To protect from urban development an area or naturally formed feature that is within or in proximity to an urban area and that has scenic, ecological or other natural value.

5. To provide land for noncommercial gardening to be used by inhabitants of an urbanized area.

(cg) The department may award grants from the appropriation under s. 20.866 (2) (ta) for the acquisition of land or rights in land for urban green space under this subsection only for the purposes of nature-based outdoor recreation.

(cm) In approving grants under this subsection and under s. 23.096 for urban green space, the department shall give higher priority for projects related to brownfields redevelopment.

(d) Except as provided in s. 23.096 (2m), grants under this subsection shall be for up to 50% of the acquisition costs of the land or the rights in land for the urban green space. The governmental unit is responsible for the remainder of the acquisition costs.

(e) As part of its approval of a grant, the department shall specify for which of the purposes listed in par. (c) the governmental unit may use the land or the rights in the land acquired with the grant. The governmental unit may not convert the land or the rights in the land acquired under this subsection to a use that is inconsistent with the uses as approved by the department.

(f) 1. Except as provided in subd. 2., title to land or to rights in land acquired under this subsection shall vest in the governmental unit.

2. Land or rights in land acquired under this subsection by the Kickapoo reserve management board shall vest in the state.

(g) The department may not approve a grant for costs associated with development, operation and maintenance of urban green space acquired under this subsection or for administrative costs of acquiring lands or rights in lands.

(h) The department may not approve a grant under this subsection unless the urban green space is identified in any master plan that the governmental unit may have.

(j) Any governmental unit that acquires an area for gardening with a grant under this subsection may charge fees for use of the garden that are sufficient to recover the costs of maintaining the area. The governmental unit may reduce or waive any fee charged based on the user's inability to pay.

(k) Except as provided in s. 23.0915 (2), the department may not expend from the appropriation under s. 20.866 (2) (tz) more than \$750,000 in each fiscal year for urban green space under this subsection and for grants for urban green space under s. 23.096.

(L) The department may not award a grant from the appropriation under s. 20.866 (2) (tz) to the Kickapoo reserve management board.

Cross Reference: See also ch. NR 50, Wis. adm. code.

(20) AIDS FOR THE ACQUISITION AND DEVELOPMENT OF LOCAL PARKS. (ab) In this subsection:

1. "Governmental unit" means a municipality or the Kickapoo reserve management board.

2. "Municipality" means a city, village, town or county.

3. "Nature-based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

(am) Any governmental unit may apply for state aids for the acquisition and development of recreational lands and rights in lands. State aids under this subsection that are expended from the

appropriation under s. 20.866 (2) (ta) may only be used for nature-based outdoor recreation. State aids received by a municipality shall be used for the development of its park system in accordance with priorities based on comprehensive plans submitted with the application and consistent with the outdoor recreation program under s. 23.30. An application under this subsection shall be made in the manner the department prescribes.

(b) Except as provided in s. 23.096 (2m), state aid under this subsection is limited to no more than 50% of the acquisition costs and the development costs of recreation lands and other outdoor recreation facilities. Costs associated with operation and maintenance of parks and other outdoor recreational facilities established under this subsection are not eligible for state aid. Administrative costs of acquiring lands or land rights are not included in the acquisition costs eligible for state aid under this subsection. Title to lands or rights in lands acquired by a municipality under this subsection shall vest in the municipality, but such land shall not be converted to uses inconsistent with this subsection without prior approval of the state and proceeds from the sale or other disposal of such lands shall be used to promote the objectives of this subsection.

(d) Except as provided in s. 23.0915 (2), the department may not expend from the appropriation under s. 20.866 (2) (tz) more than \$2,250,000 each fiscal year for local park aids under this subsection and for grants for this purpose under s. 23.096.

(e) The department may not award state aid under this subsection from the appropriation under s. 20.866 (2) (tz) to the Kickapoo reserve management board.

Cross Reference: See also ch. NR 50, Wis. adm. code.

(20m) GRANTS FOR ACQUISITION OF DEVELOPMENT RIGHTS. (a) In this subsection:

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

2. "Nature-based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

3. "Nonprofit conservation organization" has the meaning given in s. 23.0955 (1).

(b) The department shall establish a program to award grants from the appropriation under s. 20.866 (2) (ta) to governmental units and nonprofit conservation organizations to acquire development rights in land for nature-based outdoor recreation. Except as provided [in] s. 23.096 (2m), the grants shall be limited to no more than 50% of the acquisition costs of the development rights.

NOTE: A missing word is shown in brackets. Corrective legislation is pending.




(21) CREATION OF NEW LAKES. The department may create new lakes on lands under its supervision and control.

(21m) ENVIRONMENTAL CLEANUP. The department may engage in environmental clean-up activities on the lands under its ownership, management, supervision or control.


(22) INFORMATION TO BE INCLUDED IN GEOGRAPHIC INFORMATION SYSTEMS. The department shall include physical and chemical information about groundwater and soil in its geographic information systems.

(22m) SITING OF ELECTRIC TRANSMISSION FACILITIES. The department shall implement the policy specified in s. 1.12 (6) in making all decisions, orders, and rules affecting the siting of new electric transmission facilities.


(26) AIDS TO COUNTIES FOR SNOWMOBILE PURPOSES. (a) The procedures in sub. (11) (a), (d), (e) and (f) shall apply to this subsection except that the department shall consult with the snowmobile recreational council before adopting snowmobile trail construction standards, the restriction in sub. (11) (a) as to county lands is not applicable, the restriction in sub. (11) (d) as to encumbrance of funds is not applicable and the restriction in sub. (11) (e) as to requests for state aids exceeding available funds is not applicable.

30.277 **30.277 Urban rivers grant program.**30.277(1b) **(1b) Definition.** In this section:30.277(1b)(a) 



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

30.277(1b)(b) 


(b) "Nature-based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

30.277(1m) 


(1m) Funding. Beginning in fiscal year 1992-93, from the appropriation under s. 20.866 (2) (tz), the department shall award grants to governmental units to assist them in projects on or adjacent to rivers that flow through urban areas. The department may award these grants from the appropriation under s. 20.866 (2) (ta) beginning on July 1, 2000.

30.277(2) **(2) Purposes of grants.**30.277(2)(a) 


(a) Grants awarded under this section from the appropriation under s. 20.866 (2) (tz) shall be used for projects that emphasize the preservation or restoration of urban rivers or riverfronts for the purposes of economic revitalization and encouraging outdoor recreation activities that involve the enjoyment of the state's natural resources. These outdoor recreation activities include, but are not limited to fishing, wildlife observation, enjoyment of scenic beauty, canoeing, boating, hiking and bicycling.

30.277(2)(b) 


(b) A grant awarded to a governmental unit under this section may be used to acquire land and may be used for a shoreline enhancement project. For purposes of this paragraph, "land" includes rights in land.

30.277(2)(c) 


(c) Grants awarded under this section from the appropriation under s. 20.866 (2) (ta) shall only be used for nature-based outdoor recreation.

30.277(3) 


(3) Criteria for grants. The department shall consider all of the following criteria in awarding grants for projects under this section:

30.277(3)(a) 


(a) The extent to which diverse outdoor recreational opportunities will be made available to all segments of the population.

30.277(3)(b) 


(b) The extent of preservation or restoration, under the project, of an urban riverfront.

30.277(3)(c) 


(c) The aesthetic value of the project.

30.277(3)(d) 


(d) The project's potential for increasing tourism.

30.277(3)(e) 


(e) Whether significant planning has occurred in the area subject to the jurisdiction of the governmental unit prior to its request for a grant under this section.

30.277(3)(f) 


(f) The level of support for the project demonstrated by the governmental unit, including financial support.

30.277(3)(g) 


(g) Whether the project involves a joint effort by 2 or more governmental units.

30.277(3)(h) 


(h) The potential benefits of the project to the overall economy of the area subject to the jurisdiction of the governmental unit.

30.277(3)(i) 


(i) The extent to which the project preserves or highlights an area with significant historical or cultural value.

30.277(3)(j) 


(j) The extent to which access by the public to the riverfront will be improved.

30.277(3)(k) 


(k) Whether the project is related to brownfields redevelopment, as defined in s. 23.09 (19) (a) 1.

30.277(4) 


(4) Cap on grants. No governmental unit may receive in any fiscal year more than 20% of the funds that are available for grants under this section.

30.277(4m) 

(4m) Grants for Kickapoo. The department may not award a grant under this section from the appropriation under s. 20.866 (2) (tz) to the Kickapoo reserve management board.

30.277(5) 

(5) Matching contributions. Except as provided in s. 23.096 (2m), to be eligible for a grant under this section, at least 50% of the acquisition costs for land or of the project costs shall be funded by private, local or federal funding, by in-kind contributions or by state funding. For purposes of this subsection, state funding may not include grants under this section, moneys appropriated to the department under s. 20.370 or money appropriated under s. 20.866 (2) (ta), (tp) to (tw), (ty) or (tz).

30.277(6) 

(6) Rules. The department shall promulgate rules for the administration of this section, including rules that specify the weight to be assigned to each criterion under sub. (3) and the minimum number of criteria under sub. (3) in which an applicant must perform satisfactorily in order to be awarded a grant. In specifying the weight to be assigned to the criteria under sub. (3), the department shall assign the greatest weight to the criterion under sub. (3) (k). The department shall promulgate a rule specifying the types of projects that qualify as a shoreline enhancement project under this section.

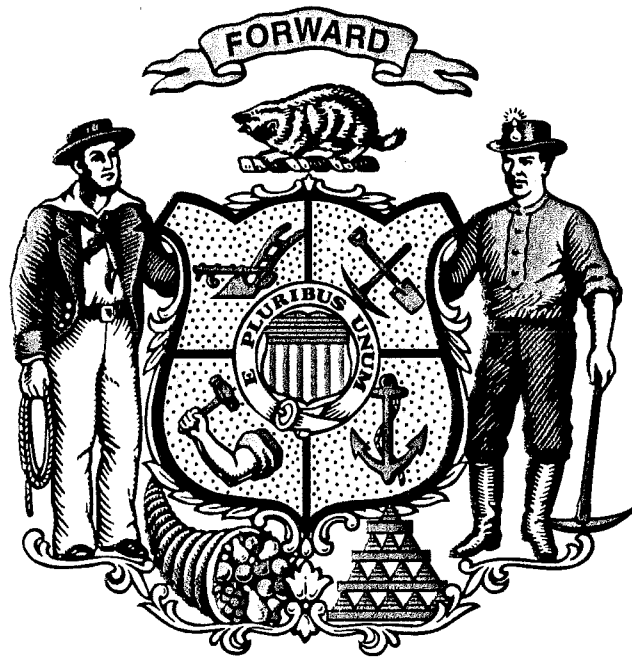
30.277 - ANNOT. 

History: 1991 a. 269; 1993 a. 16, 343; 1997 a. 27; 1999 a. 9; 2001 a. 38, 105; 2003 a. 33; 2007 a. 20.

30.277 - ANNOT.



Cross Reference: *See also ch. NR 50, Wis. adm. code.*



REPORT TO LEGISLATURE
NR 51, Wis. Adm. Code
LF-08-09
Clearinghouse Rule No. 09-077

Basis and Purpose of the Proposed Rule

2007 Act 20 included reauthorization of the Knowles Nelson Stewardship Program which is the primary funding source for acquiring land for conservation and public outdoor recreation. Act 20 included a provision requiring that certain lands acquired with funds from the stewardship program under ss. 23.0915 and 23.0917, Stats., be open to the following nature based outdoor activities: hunting, trapping, hiking, fishing and cross country skiing (NBOAs). The Act provides for exceptions if the Natural Resources Board determines it is necessary to prohibit one or more of the activities to protect public safety, protect unique plant and animal communities or to accommodate usership patterns. The Act also directed the Natural Resource Board to develop rules to implement the new requirements.

Chapter NR 52 creates standards and criteria that will be used by the Department and the Natural Resources Board to determine whether it is necessary to prohibit one or more NBOAs. The rule identifies factors that may be considered when a prohibition is proposed and creates a process for reviewing land acquisition proposals for compliance with the law. Decisions to prohibit an NBOA will be based on sound science, legitimate safety issues and on factual data and information pertaining to usership patterns. The rule requires that when one or more NBOAs are proposed to be prohibited the department will request public comment on the proposal. The Department will evaluate the information received during the public comment period and make a final written determination on the proposal. The Department will also provide a monthly report to the Natural Resources Board summarizing actions taken under NR 52 during the previous month and the Natural Resources Board will provide a chance for additional public comment on the Department's actions.

Summary of Public Comments

The Department held five public hearings between October 13, 2009 and October 22, 2009. The hearings were held in Eau Claire, Rhinelander, Madison, Green Bay and West Bend. In total 113 people registered at the hearings and comments were generally mixed between support for the rule as written and support for the rule with some changes requested. The table below summarizes the registrations at the hearings.

	Registered Support	Registered Opposition	No Position Taken	As Interest May Appear
Eau Claire	3	2	5	7
Rhinelander	1	0	5	4
Madison	7	2	7	7
Green Bay	7	1	8	2
West Bend	10	10	5	10
Total	28	15	30	30

In addition to the comments received at public hearing there were 175 comments submitted by e-mail and an additional 28 were received by mail. One comment was taken over the telephone. A memo from the Wisconsin Legislative Council to Senator Dale Schultz was also submitted for the public record by the Wisconsin Hunter's Rights Coalition. The topic of the memo is "Questions Regarding Access and Use of Land Purchased in Part With a Stewardship Grant".

There were more than 50 comments requesting biking and/or mountain biking be added as an additional NBOA. Most of these comments referenced the Statewide Comprehensive Outdoor Recreation plan as supporting and documenting high levels of participation in both trail and off-trail biking across the state. Many of these public comments also referenced studies that indicate mountain biking has about the same impact on the landscape as hiking.

The Department is not recommending that biking be included as an additional NBOA due to the fact that biking is an acceptable use/activity on Stewardship funded lands already (NR 51.002(19)). The Department believes biking and other similar activities should be evaluated and planned for through a master planning process for the property or the particular parcel being purchased with Stewardship funds.

There were also many general comments received about the importance of the Stewardship program, the need to have public hunting lands and the need to be flexible to allow conservation projects to be completed at the local level.

Specific public comments received and the Department's response to those comments can be found below.

Comment: The Natural Resources Board or a committee of the Board should make the final decision on proposals to prohibit an NBOA.

Department Response: The Department, in consultation with the Natural Resources Board, believes that individual determinations are administrative in nature and as such should be made by the Department (see reference to this subject elsewhere in the NRB memo).

Comment: The Definition for "unique plant and animal community" must be consistent with those used in the State Natural Areas Program.

Department Response: State Natural Areas program staff developed the definition included in the rule and believes it is consistent with the Natural Areas Program.

Comment: The primary purpose for which a property is purchased should not supersede the purpose of the Stewardship program or sub programs or be the justification for allowing prohibitions.

Department Response: The definition of primary purpose included in the rule cross references statutory Stewardship Program acquisition purposes, statutory Department acquisition purposes and statutory Stewardship program requirements that local government projects be based on Local Comprehensive Outdoor Recreation Plans. The primary purpose of a project is not a reason to prohibit an NBOA; it is one of the factors to consider when evaluating a proposal to prohibit an NBOA.

Comment: Grants should not be given to organizations with policies that prohibit or restrict hunting, fishing or trapping.

Department Response: The public access statute, s. 23.0916 Stats., does not give the Department authority to look at an organization's mission when making determinations to prohibit an NBOA.

Comment: Grants to local units of government with restrictive ordinances that prohibit NBOAs should be reviewed by DNR and conform to the Stewardship program.

Department Response: All proposals to prohibit an NBOA will be looked at by the Department. The rule lists local ordinances as one factor to consider under the "public safety" exemption. The Department has the ability to challenge local ordinances that prohibit or restrict hunting under s. 29.038 Stats.

Comment: Grants to expand existing lands must be treated as new projects when considering access restrictions and prohibitions.

Department Response: All proposals to prohibit NBOAs will be subject to the rule.

Comment: The term "affected party" is without merit and any citizen is affected when land is purchased with public dollars.

Department Response: This term was removed from the rule.

Comment: The rule should be amended to clarify that any restriction of a subset of hunting is a prohibition.

Department Response: Hunting subsets are considered in the rule. See s.52.03 (2) (a).

Comment: Previous land uses and current use of adjoining land including past and current public recreational uses should have no bearing on new purchases.

Department Response: The Department believes land uses on adjoining lands are an important safety consideration and that public use of adjoining lands is an important consideration when evaluating whether it is necessary to prohibit an NBOA to accommodate usership patterns.

Comment: It is critical that criteria used to determine which NBOAs will be allowed or prohibited is as clear as possible.

Department Response: The 3 reasons to prohibit an NBOA are given in statute. The factors to consider when making a decision for any of the 3 reasons developed in conjunction with the Citizen Advisory Committee consisting of stakeholder groups that utilize Stewardship program funding or the lands acquired under the Stewardship program.

Comment: The rule should be changed to allow appeals to the Natural Resources Board of Department decisions to prohibit an NBOA.

Department Response: The Department believes the appropriate appeal process is ss. 227.42 and 227.52 Stats.

Comment: The rule should not allow for the prohibition of an NBOA on the mere speculation that an activity may increase over time.

Department Response: The reasons to prohibit an NBOA are to protect public safety, protect unique plant and animal communities and to accommodate usership patterns. The likelihood that an activity might increase overtime is a factor to consider under the "protect plant and animal community" exception and is one of the ways that Department conservation biologist can assess the risk that increased public use might pose to a unique plant or animal community.

Comment: Request that NR52 include a reevaluation instrument for natural area properties that are open to all or any of the NBOAs.

Department Response: This issue is outside of the scope of the rule but Natural Areas staff is aware of the importance of reevaluating the use of public land for possible harm to unique plant and animal communities.

Comment: NR52 should analyze the distinctive character of each Natural Area property.

Department Response: Each individual proposal to purchase Natural Area lands under the Stewardship program is reviewed by Natural Areas staff.

Comment: The preamble to NR52 states that "The rules in this chapter are intended to maximize the number of compatible users and uses, to the extent practical, on lands subject to s. 23.0916 Stats." State Natural Areas should be excepted from this and language should be added accordingly.

Department Response: There is no exception in s. 23.0916 Stats., for the Natural Areas program.

Comment: The rule should anticipate the possibility of rare or new biological discoveries that might require that an NBOA be prohibited.

Department Response: Anytime an NBOA is proposed to be prohibited a determination must be made under the rule. It may not necessarily occur at the time of purchase.

Comment: State statutes that pertain to State Natural Areas, specifically s. 23.27 Stats., should be included in the definition of primary purpose.

Department Response: The definition of primary purpose pulls in the State Natural Areas land protection authorities.

Comment: There should be a process to prohibit an NBOA if it is found to have deleterious impact on a SNA.

Department Response: The rule creates a process for prohibiting an NBOA to protect unique plant and animal communities.

Comment: The decision to prohibit an NBOA on a state natural area should be scientific and not political. There should not be any appeal to the Natural Resources Board. The decision should be made by conservation biologists.

Department Response: The factors to consider under "protect unique plant and animal communities" are generally scientific in nature. Natural Areas program staff will play a role in all evaluations to prohibit an NBOA on Natural Areas lands.

Comment: The rule should be amended to exempt southeast Wisconsin.

Department Response: There is no exemption in s. 23.0916 Stats., for geographical exceptions to the law.

Comment: Restrictions of activities are a land management issue and owners should have the flexibility to make site by site decisions.

Department Response: Restrictions that prevent a major or significant amount of an NBOA will be subject to the rule. Lesser restrictions on non-Department land will be worked out with Department staff at the time of application or in subsequent land management plans for the property. Lesser restrictions on Department land will be dictated by property master plans, Chapter NR 45 or by other state statutes or administrative codes that guide the use of Department land.

Comment: The process for awarding grants should be timely so that land protection opportunities are not lost.

Department Response: The rule is drafted to try and limit delays.

Comment: Recreational opportunities should be considered at a regional level to evaluate supply and demand for different activities in order to provide the highest quality recreational opportunities for the maximum number of users.

Department Response: There is no consideration for this level of planning or evaluation in s 23.0916 stats.

Comment: While it is true that not every parcel is appropriate for mountain biking it is also true that excluding mountain biking from every parcel is not appropriate. We urge you to allow mountain biking on Stewardship lands, where appropriate.

Department Response: The Department is recommending that all activities other than the 5 NBOAs listed in s. 23.0916 Stats., are best dealt with in a master planning process for a parcel or project.

Comment: Simply overlaying the same public use onto every property regardless of size, shape and other considerations is not only unrealistic but potentially unsafe and ecologically unsound.

Department Response: The Stewardship public access law, s. 23.0916 stats., and NR 52 do allow for parcel to parcel considerations to determine whether all 5 NBOAs are required.

Comment: As a direct result of the broad and confusing implementation of NR 52 I will no longer permit hunters to access my lands in Door County. These 100 plus acres have had a usership pattern of hunting for decades, but they will no longer be available due to the confusion of NR52.

Department Response: The rule was not intended to have any impact on private lands.

Comment: I am sure you are aware that in many urbanized areas local ordinances prohibit or severely restrict any hunting, trapping or the discharge of firearms primarily for public safety reasons.

Department Response: Local ordinances are a consideration in the rule.

Comment: I feel that the proposed changes which include limiting funding for only projects that include hunting, fishing, trapping, hiking and skiing goes too far. Stewardship funds have helped the town of Menasha and other municipalities to continue a strong tradition of providing quality park and recreation opportunities to our residents.

Department Response: The rule does not eliminate the Stewardship programs that direct funding to local units of government however proposals to prohibit NBOAs under these local funding programs are subject to the rule.

Comment: While ensuring plentiful hunting and trapping opportunities in our state is a worthwhile goal, local governments need to retain the flexibility to decide what is best for their own park systems and local communities.

Department Response: The rule does not eliminate the Stewardship programs that direct funding to local units of government however proposals to prohibit NBOAs under these local funding programs are subject to the rule.

Comment: Add language stating that a local ordinance banning the discharge of firearms within a community creates a presumption that banning hunting on lands purchased with Stewardship funds is necessary to protect public safety.

Department Response: Local ordinances are a consideration in the rule.

Comment: Add language stating that the existence of a local ordinance banning the discharge of firearms will not be viewed by DNR as a negative factor when evaluating grant applications submitted by local governments.

Department Response: NR 52 will not be used to rank or prioritize projects.

Comment: Add language that when making a decision to prohibit an NBOA on land being purchased by a local government that the local comprehensive outdoor recreation plan be the primary basis for the agency decision when the reason to prohibit is to accommodate usership patterns.

Department Response: The definition of primary purpose in the rule does cross reference the statutory requirement that grants to local units of governments be based on local comprehensive outdoor recreation plans.

Comment: Local governments should not be penalized by a denial or restriction of Stewardship funding for having ordinances protecting public safety or for fulfilling local planning obligations.

Department Response: NR 52 will not be used to rank or prioritize projects.

Comment: We are concerned that these changes will negatively affect our ability to achieve our stated goal of assisting the City of Green Bay in acquiring land in the Baird Creek Parkway and to help enhance the Parkway's value as an ecological, recreational and educational resource for Northeastern Wisconsin.

Department Response: All proposals to prohibit an NBOA are subject to the rule and it is impossible to anticipate how the rule will affect any particular project or program until a specific proposal to prohibit an NBOA is evaluated under the rule.

Comment: The proposed rule should consider land that was already acquired with Stewardship funds limiting hunting, fishing and trapping on property that is not suitable for these types of activities.

Department Response: The rule does consider adjoining land uses under the "public safety" and "accommodate userhsip pattern" exceptions.

Comment: As NR52 is being created I believe bicycling should be included in an expanded definition of nature based activities.

Department Response: The Department believes biking and other similar activities should be evaluated and planned for through a master planning process for the property or the particular parcel being purchased with Stewardship funds.

Comment: Mandating that bicycling is a legitimate outdoor activity to be considered on Stewardship funded land will help ensure off-road opportunities throughout Wisconsin.

Department Response: The Department believes biking and other similar activities should be evaluated and planned for through a master planning process for the property or the particular parcel being purchased with Stewardship funds.

Modifications Made

The Department made the following modifications to the rule:

- A variety of formatting and editorial changes to conform to drafting guidelines and clearinghouse comments.
- Added s. 52.05(10) and renumbered the section accordingly.
- Modified s. 52.03 to include a cross reference to NR 1.41, approval of department real estate transactions.
- Added language to s. 52.03(b) requiring that the department be notified of any changes that might result in a prohibition being required or no longer needed.
- Removed language regarding "affected party" in s. 52.04.
- Added language in s. 52.05 clarifying the role of the NRB and the Department in making determinations to prohibit NBOAs.

Changes to Rule Analysis and Fiscal Estimate

None.

Response to Legislative Council Rules Clearinghouse Report

The department has responded to the Legislative Clearinghouse Report by incorporating suggested changes where appropriate. The department's response to the Clearinghouse on the issues raised, but not responded to in the rule follows below.

The Clearinghouse raised a question on the statutory authority that exists for individual grant decision making by the department.

Under the rule, the Natural Resources Board (NRB) is not delegating decision making responsibility to the department. The NRB is making the broad determination required by s. 23.0916, Stats., in the rule, the department is administering it.

The proposed rules on access to properties purchased with Stewardship funds, ch. NR 52, Wis. Adm. Code, are intended to be consistent with the NRB's "policy-making" authority. Under s. 15.05(1)(b), Stats, the NRB's authority is "policy making" and "not administrative". The NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for the Department to exercise its administrative authority in making individual determinations for each license, permit or grant application. All administrative duties and powers are vested in the Secretary, according to s. 15.05 (1)(b).

As required by s. 23.0196(2)(b), Stats., in the proposed rules the NRB makes the determination that it is necessary to prohibit public access to protect public safety, protect a unique plant or animal community, or to accommodate usership patterns. The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department. In response to the report the NRB may, pursuant to its policy-making and regulatory duties, direct the Department to proceed with a rule change to ch. NR 52, and/or pursue a change in how the Department implements its administrative duties in making individual determinations for each grant property.

The 2007 Stewardship statute, s. 23.0916(2)(b), Stats., does not include a reference to the statute on the NRB's authority, s. 15.05(1)(b), Stats., so it does not specifically amend the requirement that the NRB's authority is "policy making" and "not administrative". "All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her, under the direction of the Board." Consequently the above two statutes must be interpreted in a harmonious fashion. *Wyss v. Albee*, 193 Wis. 2d 101, (1995). In order to prohibit access on Stewardship grant properties, the NRB is required to make the broader policy determinations that guides the Department in making individual (administrative) determinations for each specific grant property according to factors, criteria and a process established by the NRB through rule-making, under its regulatory authority.

Further, individual determinations for each grant property are final decisions subject to appeal according to s. 227.42, Stats., and 227.52, Stats. If the NRB were to make individual determinations, their determinations would be subject to appeal, which would be contrary to their role as a regulatory and policy setting citizens board in which their policy setting decisions are

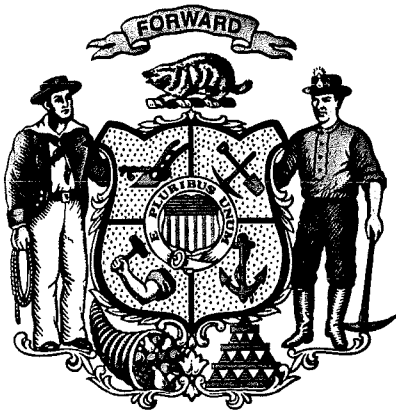
not appealable under the state constitution's sovereign immunity clause and as upheld by the courts in Lister v. Board of Regents, 72 Wis. 2d 282 (1976). The NRB's role and authority under s. 15.05(1)(b), Stats., i.e. "not administrative", would have to be specifically modified if the NRB was going to act in an administrative capacity in making individual determinations for each grant property that would subject the NRB to contested case hearings and lawsuits challenging their decisions. The Board does not make administrative decisions on individual permits, licenses or grants. They remain the policy setting body for the DNR.

The Clearinghouse raised a question about using the term "assessment" in 52.04 (1)(d).

The department believes that the term "assessment" is proper in this section of the rule rather than using the term "initial determination". Later in the rule, it is made clear that the department will be making a determination on each project. It does not make sense procedurally to make a determination decision twice for each stewardship project.

Final Regulatory Flexibility Analysis

No specific direct effect on small business is anticipated. This rule provides further guidance for the implementation of existing programs. No new funding or business activity will be created.



**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES**

The Wisconsin Department of Natural Resources proposes an order to create ch. NR 52, to ensure lands acquired with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., are open to public hunting, trapping, fishing, hiking and cross country skiing.

LF-08-09

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted: s. 23.0916, Stats.

Statutory Authority: ss. 23.0916, 227.10, and 227.11, Stats.

Explanation of agency authority: s. 23.0916, Stats. directs the department to promulgate rules that create provisions relating to public access for nature based outdoor activities for department lands and non-department land acquired in whole or in part with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats.

Related statute or rule: ss. 23.0915 and 23.0917, Stats., establish the stewardship program. General guidelines for department land acquisition are located in ch. NR 1 and ch. NR 51 provides guidelines for the administration of the stewardship program for non-department land acquisition authorized in ss. 23.0915 and 23.0917, Stats.

Plain language analysis: Chapter NR 52 creates standards and criteria that will be used by the department and the natural resources board to determine whether it is reasonable to prohibit one or more nature based outdoor activities, defined as hunting, trapping, hiking, fishing and cross country skiing. The rule identifies three primary reasons for prohibiting one or more of these activities. The three reasons are; to protect public safety, to protect unique plant and animal communities and to accommodate usership patterns. The rule also requires that when one or more nature based outdoor activities is proposed to be prohibited the department will notify the public by posting the information on the department's website. The public will have a chance to comment on the proposal to buy the land and prohibit the activity. The department and the natural resources board will evaluate the public comments and apply the standards and criteria identified in the rule when determining whether the prohibition meets the intent of s. 23.0916, Stats.

Summary of, and comparison with, existing or proposed federal regulations: The Land and Water Conservation Fund is a federal funding program administered by the national park service. This program provides funding for the acquisition of land and the development of facilities for public outdoor recreation. The program does not include a specific requirement that lands and facilities be open to all nature based activities, rather the use of the funds is directed by the Statewide Comprehensive Outdoor Recreation Plan which identifies general trends in outdoor

recreation and identifies broad regional and statewide needs for land acquisition and recreational facility development.

The US fish and wildlife service administers several programs that provide funding to the department for land acquisition and facility development. Most of these funds are targeted to a specific purpose such as the protection of habitat for endangered species, coastal areas and wetlands. In addition there are funds for motor boat access acquisition and development; for wildlife habitat protection and management and for fisheries habitat protection and development. Generally land acquired with funds from the fish and wildlife service must be open to the public. There are some limited restrictions on the types of activities that are allowed to occur on these federally funded properties.

Comparison with rules in adjacent states: Minnesota, Michigan, Iowa and Illinois all have land acquisition programs that allow for the purchase of land, either through easements or fee simple purchases. Many of these programs are similar to the stewardship program. However, these programs do not have the requirement that they be open to the public for hunting, fishing, trapping, hiking, and cross-county skiing.

Minnesota: The Natural and Scenic Areas Grant Program was created to increase, enhance and protect Minnesota's natural and scenic areas. The program provides \$500,000 in matching grants each year for fee simple purchases and conservation easements of environmentally important lands. There is no requirement of public access for nature based outdoor recreational activities. http://www.dnr.state.mn.us/grants/land/natural_scenic.html

Michigan: The Michigan Natural Resources Trust provides approximately \$35 million in financial assistance each year to local governments and the Michigan DNR to purchase land or rights in land for public recreation or for environmental protection or scenic beauty. It also provides financial assistance for the development of land for public outdoor recreation. This program lists public access and hunting and fishing opportunities as a scoring criteria and special initiative but does not require the land to be open to these specific activities. http://www.michigan.gov/dnr/0,1607,7-153-10366_37984_37985-124961--,00.html

Iowa: The Resource Enhancement and Protection (REAP) grant program in Iowa was created to enhance and protect Iowa's natural and cultural resources. This program provides up to \$20 million in funding annually to acquire land for recreational purposes. Iowa's program does not specifically require the land to be used for hunting, fishing, trapping, hiking, or cross country skiing. <http://www.iowadnr.gov/reap/index.html>

The Wildlife Habitat Promotion with Local Entities provides funding to county conservation boards for the acquisition and development of wildlife habitat. Land acquired through this program must be open to hunting and trapping and other compatible uses such as fishing, hiking, nature studying, cross-county skiing, etc. <http://www.iowadnr.gov/grants/wildlife.html>

Illinois: The Open Space Lands Acquisition and Development Program in Illinois provides approximately \$20 million in funding assistance annually to local government agencies for acquisition and development of land for public parks and open space. There is no specific requirement for access for hunting, trapping, fishing, hiking and cross country skiing. <http://www.dnr.state.il.us/ocd/newoslad1.htm>

Summary of factual data and analytical methodologies: 2007 Act 20 included reauthorization of the stewardship program which is the primary funding source for land

acquisition for conservation and public outdoor recreation. Reauthorization included a provision requiring that certain lands acquired with funds from the stewardship program under ss. 23.0915 and 23.0917, Stats., be open to hunting, trapping, hiking, fishing and cross country skiing. The Act provided for exceptions if the natural resources board determines it is necessary to prohibit one or more of the activities to protect public safety, protect unique plant and animal communities or to accommodate usership patterns. After the budget was approved, the department administered the stewardship program according to an interim protocol adopted by the natural resources board in December of 2007. The interim protocol can be found at <http://dnr.wi.gov/stewardship/interim.html>.

The natural resources board also established a subcommittee to evaluate the new law and gather public opinion about the law. The sub-committee held three listening sessions in April of 2008 and invited public comment by personal testimony, e-mail, and written comment. Over 130 people testified in person and the subcommittee received almost 500 communications in total. Information gathered at these listening sessions can be found at <http://dnr.wi.gov/stewardship/rule.html>.

The natural resources board stewardship program subcommittee reported the results of these listening sessions to the full board on June 19, 2008. The subcommittee's full report can be found at <http://dnr.wi.gov/stewardship/rule.html>.

In July 2008 the department appointed a 28 member citizen advisory committee to provide input on developing these administrative rules. The citizen advisory committee included members from a diverse group of recreational users. A complete listing of the members of the citizen advisory committee can be found at <http://dnr.wi.gov/org/caer/ce/news/PDF/stewmembers.pdf>.

The citizen advisory committee met 6 times between July 2008 and January 2009. A professional facilitator was hired to manage the meeting and lead the group through a variety of exercises intended to identify important issues. The department prepared 4 concept papers on the following topics: A Process for Review of Determinations Made Under s. 23.0916, Stats., Public Safety, Unique Plant and Animal Communities and Usership Patterns. The papers were presented to the committee by department staff and the committee discussed the various concepts included in the papers and recommended changes. The final draft of these concept papers can be found at <http://dnr.wi.gov/stewardship/CAC/>.

All of the above mentioned information has been reviewed by the department to assist with the drafting of these administrative rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: These rules and the legislation which grants the department rule making authority do not have a significant fiscal effect on the private sector or small businesses.

Effect on small business: No specific direct effect on small business is anticipated. This rule provides further guidance for the implementation of existing programs. No new funding or business activity will be created.

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Section 1. Ch. NR 52 is created to read:

Chapter 52. STEWARDSHIP LAND ACCESS

52.01 Purpose and Applicability. (1) Pursuant to s. 23.0916, Stats., lands acquired in whole or in part with funding from the stewardship program are open for public hunting, trapping, hiking, fishing and cross country skiing unless public access is prohibited pursuant to this chapter. Decisions to prohibit public access for these activities will be reviewed by the department using professional judgment and will be based on sound science, legitimate safety issues, factual data and relevant information. A restriction of a nature based outdoor activity may be considered a prohibition if the restriction prevents a major or a significant amount of the nature based activity from occurring.

(2) The purpose of this chapter is to implement s. 23.0916, Stats., which directs the department to establish standards and criteria for prohibiting public access for hunting, fishing, trapping, hiking and cross-country skiing, defined as nature based outdoor activities under s. 23.0916 (1) (b), Stats. This chapter applies to land acquired in whole or in part with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats. The rules in this chapter are intended to maximize the number of compatible users and uses, to the extent practical, on lands subject to s. 23.0916, Stats.

(3) Pursuant to s. 23.0916 (5) (a), Stats., the natural resources board has determined that ss. NR 1.61 and NR 51.07 (3) (e) govern public access on all other lands funded in whole or in part with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats that are not referred to in sub. (1) or (2).

52.02 Definitions. In this chapter

(1) "Accommodate Usership Patterns" means to consider the factors found in s. NR52.05 (1) (c) when making a determination to prohibit an NBOA.

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

(3) "Department land" means land acquired by the department in fee title, or with an easement on former managed forest land on or after October 27, 2007, with stewardship program funds under s. 23.0917, stats.

(4) "Former managed forest land" has the meaning given in s. 23.0916 (1) (a), Stats.

(5) "Hunting" means shooting, shooting at, taking, catching or killing any wild animal, other than by trapping, or pursuing for the purpose of shooting, shooting at, taking, catching or killing any wild animal.

(6) "Natural values" has the meaning given in s. 23.27 (1) (f), Stats.

(7) "NBOA" means the nature based public outdoor activity of hunting, fishing, trapping, hiking or cross-country skiing as described in s. 23.0916 (1) (b), Stats.

boating, bicycling?

(8) "Non-department land" means land acquired in fee title, or with an easement on former managed forest land on or after October 27, 2007, by a non-profit conservation organization or local unit of government with the assistance of a stewardship program grant under s. 23.0917, stats.

(9) "Primary purpose" means the recreational or conservation purpose for which the property is being acquired as guided by ss. 23.09 (2), 23.09(20) (am), 23.0915, and 23.0917, Stats., by s. NR 51.05, and by state, regional or local plans that support the project.

(10) "Prohibit access for an NBOA" means not to allow the activity in its entirety, or to restrict the activity so that a major or significant amount of the activity is not allowed.

Note: A temporary restriction of an NBOA for department approved land management practices is not considered a prohibition of an NBOA.

(11) "Stewardship program" means the Knowles-Nelson Stewardship Program authorized under ss. 23.0915 and 23.0917, Stats.

(12) "Unique animal or plant community" means a natural community composed of different plant and animal species, along with their associated geological and archaeological features, that exist together in a specific area, time and habitat. A unique animal or plant community is one identified as endangered, threatened, rare or ecologically sensitive. A unique plant or animal community may also be critical species habitat or an ecological reference area. The sources for identifying unique animal and plant communities include reports or databases, such as the natural heritage inventory, wildlife action plan, regional planning commission reports or other publications accepted by conservation biologists.

Note: References for, or copies of such databases, publications and reports may be viewed or obtained at the Department of Natural Resources, Bureau of Endangered Resources, 101 S. Webster Street, PO Box 7921, Madison, WI 53707-7921.

52.03 General Provisions. (1) DEPARTMENT LAND. (a) All department land transactions are subject to s. NR. 1.41.

(b) The department shall incorporate an evaluation of the requirements of s. 23.0916 (3), Stats., in master plans under ch. NR 44, feasibility studies and other planning documents that include land acquisition as an implementation strategy. This paragraph applies to new plans as well as any plan updates that may be undertaken for existing department projects that are subject to s. 23.0916 (3), Stats.

(2) NON-DEPARTMENT LAND. In addition to the requirements of ch. NR. 51, stewardship program grant applications to acquire non-department lands subject to s. 23.0916 (2), Stats., shall include all of the following:

(a). A description of the public uses proposed for the property being acquired and a checklist indicating which of the specific NBOAs shall be permitted on the property. The checklist shall be in a format determined by the department and shall include at a minimum:

1. An indication as to whether a specific NBOA shall be allowed on the property.

2. For hunting, the checklist shall include information for allowing waterfowl, small game, turkey and big game hunting and shall include gun and archery hunting.

3. For trapping, the checklist shall include information for allowing water trapping and upland trapping.

4. For fishing, the checklist shall include information for permitting shore fishing and boat fishing.

5. For hiking, the checklist shall include information for allowing trail hiking and hiking off-trail.

6. For cross-country skiing, the checklist shall include information for allowing groomed trail skiing and off-trail skiing.

(b). An explanation of the primary purpose for the acquisition. The primary purpose for the acquisition shall be based on ss. 23.09 (2), 23.09(20) (am), 23.0915, or 23.0917, Stats. and s. NR 51.05 and on state, regional or local plans that support the acquisition. The application shall include the name of the plan being used and a description of the formal or informal public input received.

(c). A description of the NBOAs to be prohibited on the property and the reason for the prohibition. The reason for the prohibition shall be consistent with s. NR 52.05 and the applicant shall address in the application the specific factors in s. NR 52.05 that apply.

(3) DETERMINATIONS MADE IN ACCORDANCE WITH S. 23.0916, Stats., and S. NR 52.05. (a) When a determination has been made in accordance with s. 23.0916, Stats., and s. NR 52.05 to prohibit one or more NBOAs on department land the feasibility study and master plan for the project where the NBOA will be prohibited shall be amended to describe the prohibited activity and a rule change may be initiated to enforce it.

(b) The stewardship grant contracts executed between the department and sponsor under s. NR 51.07 that are subject to s. 23.0916 Stats., and this chapter, shall describe any determination to prohibit one or more NBOAs and require the sponsor to contact the department if any of the factors identified in s. 52.05 changes such that a prohibition may be necessary, or is no longer necessary. The department shall evaluate those changes to determine the applicability to this chapter.

(4) Public use of lands purchased in whole or in part with funding from the stewardship program under s. 23.0917, Stats., shall be subject to all applicable federal, state and local laws.

52.04 Public Notice. (1) In addition to the public notice requirements of ch. NR. 150, the department shall provide individual notification over the internet to any person requesting to receive a notice of any proposal to prohibit an NBOA on department or non-department land subject to s. 23.0916 (2) or (3), Stats. Any public notice regarding a proposal to prohibit an NBOA shall include all of the following:

(a) The name, address and phone number of the department's contact person for the project.

(b) The checklist described in s. NR 52.03 (2) (a).

(c) A summary of the NBOAs to be prohibited and the factors that were considered under s. NR 52.05.

(d) The department's initial assessment of the need to prohibit the NBOA pursuant to ss. 23.0916(2) (b) or (3) (b), Stats.

(2) (a) Public comments concerning the proposal to prohibit an NBOA shall be submitted in writing to the department. The comment period shall be 15 business days beginning on the day immediately following the day the department sends out the notice electronically.

(b) Objections must show the proposed prohibition of an NBOA to be inconsistent with ss. 23.0916(2) (b) or 23.0916(3) (b), Stats., and s. NR 52.05.

(c) If an objection is received during the 15 business day comment period the department shall have up to 15 additional business days following the close of the comment period to evaluate the public comment, including any objections. The department may contact the parties during this 15 day evaluation period to gain more information about the proposal to prohibit an NBOA.

(d) The department may extend the 15 business day department evaluation period in par. (b), to further the purpose of s. 23.0916, Stats., when such extension will not affect the purchase closing or acquisition deadline.

(e) The department shall create a written summary of its determination on the proposal to prohibit one or more NBOAs at the conclusion of the public comment and evaluation periods in pars. (c) and (d). The department's written determination shall be based on ss. 23.0916(2) (b) or (3) (b), Stats., and s. NR 52.05 and the department shall provide the written summary to anyone that submitted an objection in accordance with par. (a), and to the person that requested the stewardship program funding.

(f) The department shall submit to the natural resources board at each meeting a report that summarizes stewardship program land purchases and determinations made by the department under this chapter. The natural resources board shall hear public testimony concerning the department's report to the board three months after the effective date {revisor adds date} of this section and biannually thereafter.

Note: Public testimony to the natural resources board under par. (f) is for information only and is for the purpose of allowing the natural resources board to review the determinations made under par. (d). Appeal rights for individual determinations are found in par. (g).

(g) The department's determination made under par. (e) is subject to appeal rights under ss. 227.42 and 227.52, Stats.

52.05 Natural Resources Board Determinations. (1) In accordance with s. 23.0916, Stats., the natural resources board has determined that it is necessary to prohibit one or more NBOAs on department or non-department land for one or more of the following reasons listed below. In accordance with s. 15.05 (1) (b), Stats., the department shall make administrative determinations for each individual proposal to prohibit an NBOA, under the direction of the board, utilizing the process established in ss. NR 52.03 and 52.04, and based on the following reasons and factors.

(a) To protect public safety. One or more of the factors to consider when evaluating a proposal to prohibit an NBOA to protect public safety include:

1. The primary purpose for the project.
2. Laws and ordinances that may impact one or more NBOAs on the property.

Note: NBOAs may be affected by local laws or ordinances and may change as local laws or ordinances change.

3. Potential user conflicts that may create public safety issues and impact one or more NBOAs on the property.
4. The physical characteristics of the property including size, shape, groundcover, topography or proximity to inhabited buildings that create public safety issues and influence NBOAs on the property.

(b) To protect a unique animal or plant community. One or more of the factors to consider when evaluating a proposal to prohibit an NBOA to protect a unique animal or plant community include:

1. The primary purpose for the project.
2. The necessity to prohibit an NBOA to protect and enhance the biological diversity, composition and ecological functions of natural communities exhibiting relatively little human disturbance or that have the capacity to be easily restored to such conditions.
3. The potential for an NBOA to impact the natural values of the site, according to s. 23.28 (3), Stats.
4. The potential for an NBOA to accelerate or increase over time and cause damage to the natural values of a site.
5. The potential for an NBOA to increase the risk of poaching rare plant or animal species, or the removal or destruction of rare geological or archeological features.

(c) To accommodate usership patterns. One or more of the factors to consider when evaluating the necessity to prohibit an NBOA to accommodate usership patterns include:

1. The primary purpose for the project.
2. The NBOAs available at the location of the acquisition at the time of purchase or that existed previously, if any.
3. User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
4. The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement.

5. The size, shape and location of the property as well as surrounding land uses, including the use of other nearby public lands which may or may not have been funded with stewardship funds.

6. The mix of NBOAs that, to the extent practicable, will provide a quality experience for all compatible users and uses.

Section 2. Effective dates. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Section 3. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 26th, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Mathew J. Frank, Secretary

(SEAL)