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CLEARINGHOUSE RULE 95-085

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Section NR 51.02 provides that subch. I of ch. NR 51 applies to aids for the acquisition and development of local parks under s. 23.09 (20), Stats. However, s. 23.096 (2), Stats., does not list the local parks program as a purpose for which the department may award grants to nonprofit conservation organizations to acquire property. Is there specific authority elsewhere in the statutes for department grant awards to nonprofit conservation organizations to acquire property for purposes of the local parks program?

b. Section NR 51.05 (3) (e) provides that a grant contract must state that a property acquired with a stewardship grant may not be closed to the public unless the department determines that it is necessary to protect species of plants, wild animals or other natural features or if the right of public access is not acquired as part of the rights purchased with the grant. The underscored phrase does not comport with the provision contained in s. 23.096 (3) (bn), Stats. What authority exists for the inclusion of this clause in s. NR 51.05 (3) (e)?

2. Form, Style and Placement in Administrative Code

a. Section NR 51.002 (4) defines the term “grant contract.” The material following the comma is substantive in nature and more appropriately belongs in s. NR 51.05. [See also the second sentence in s. NR 51.002 (13).]

b. Should the cross-reference to “this subchapter” in s. NR 51.002 (12) be to “this chapter”?

c. In s. NR 51.003, the notation “s.” should be inserted before the reference to “NR 51.03 (1).” [See also s. NR 51.67.]

d. The hyphen in s. NR 51.03 (6) should be replaced by “to.”

e. In s. NR 51.06 (5), the word “code” should be replaced by an appropriate cross-reference to a chapter, subchapter or section of the Administrative Code.

f. In s. NR 51.23, because the term “nonprofit conservation organization” is defined in s. NR 51.002 (8), the phrase “meeting the definition in s. NR 51.002 (8)” is unnecessary.

g. The new material in s. NR 51.26 (3) (intro.) should be inserted before the existing colon.

4. Adequacy of References to Related Statutes, Rules and Forms

a. An application form is referenced in s. NR 51.04 (1) (a). The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In s. NR 51.67, reference is made to “s. NR 50.05, which applies to local units of government for acquisitions and easements under the streambank protection program.” Is this reference correct? Neither the statement of purpose nor the statement of applicability in ss. NR 50.01 and 50.02 refer to s. 23.094, Stats., relating to the streambank protection program. If the intent of the reference merely is to incorporate the general requirements contained in s. NR 50.05, a simple reference to that section is sufficient.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 51.002 (intro.) can be simplified as “In this chapter:”.

b. “Nor” should be replaced by “or” in s. NR 51.002 (1).

c. A register of deeds under s. 59.51 (1), Stats., is directed to record documents “authorized by law to be recorded.” Is the contract referred to in s. NR 51.002 (4) authorized by statute to be recorded, or does the rule constitute an authorization for the contract to be recorded? Because the contract determines the state’s interest in the property “in perpetuity,” should the interests of the state be established in a conservation easement rather than a contract?

d. The definition of “parcel” in s. NR 51.002 (9) is unclear. Is “area” a better word than “block”? The meaning of “one” in “one ownership” is unclear. Does this mean that a parcel may only have a single owner? If a parcel has more than one owner, does this mean that any separately described but contiguous areas of lands that constitute a parcel must have identical owners? The effect of this definition is that a “parcel,” as defined in the rule, could include two or more contiguous parcels of land that are each conveyed by a separate deed. Is this the intent?

e. The meaning of “individually owned” in s. NR 51.002 (10) is unclear. Does this mean that a parcel may only have one owner? Is this superfluous, in light of the definition of “parcel”? If a parcel is not individually owned, then how is it owned?

f. Can the definition of “sponsor match” in s. NR 51.002 (13) be clarified by referring to “the portion of the acquisition cost”?

g. “Who” should be “that” in s. NR 51.02.

h. Section NR 51.03 (1) (b) could be clarified. This portion of the rule should indicate the purpose for which the value of a property donation is “utilized.” Also, the event which triggers the one-year time limit should be indicated.

i. Has the department examined the requirements of ss. 32.19 to 32.27, Stats., as referenced in s. NR 51.03 (6), to determine that all of those requirements should be applicable to transactions under ch. NR 51? For example, s. 32.195, Stats., requires the condemnor to pay various incidental expenses. Is it the intention that the nonprofit conservation organization or the department pay for all of these expenses? Also, s. NR 51.03 (6) could be clarified to indicate whether the department or the nonprofit conservation organization is required to comply with the statutes and rules related to relocation assistance.

j. Section NR 51.03 (11) requires the department to obtain permission of the sponsor before entering property in which an easement was acquired with a stewardship grant. Would it be more appropriate for the department to obtain authority to enter the property as part of the conservation easement? The term “easement property” could be clarified. The first sentence refers to “easement grant conditions,” should this be “stewardship grant conditions”?

k. The second sentence of s. NR 51.03 (12) does not conform with the requirement of s. 23.096 (4) (a) 2., Stats. What is the effect if a subsequent owner does not provide a notarized statement regarding receipt of the grant contract?

l. In s. NR 51.03 (14), what does “necessity of reentry” mean?

m. Section NR 51.04 (1) (a) should indicate how to determine which district office is the “appropriate” one.

n. Section NR 51.04 (1) (b) should be deleted and “for projects” should be inserted after “applications” in the first sentence of s. NR 51.04 (1) (a). Subsection (b) is unnecessary, because of the definition of “projects.” The remaining paragraphs should be renumbered accordingly.

o. If s. NR 51.04 (1) (c) is meant to require the department to consider the applications on a “case-by-case basis,” “may” should be changed to “shall.” Also, the meaning of “case-by-case” is unclear. Under what circumstances would an application not be considered on a case-by-case basis?

p. Section NR 51.04 (2) (a) and (b) should be deleted. These requirements are both provisions of the definition of “nonprofit conservation organization.” Paragraph (c) then can be consolidated with sub. (2) (intro.).

q. Should “grant awards” in s. NR 51.04 (3) (a) be replaced by “stewardship grants”?

r. Should “component of the” or a similar phrase be inserted after “each” in the first sentence of s. NR 51.04 (3) (b)?

- s. Should s. NR 51.04 (3) (e) refer specifically to the fiscal year?
- t. Is there any reason why, rather than deeming a grant contract to be a covenant and restriction running with the property as provided in s. NR 51.05 (2), the terms of the grant contract cannot be created as an easement?
- u. In s. NR 51.05 (3) (d), a comma should be inserted prior to the phrase “its exempt status.”
- v. In s. NR 51.06 (1), it appears that the phrase “state officials” should be replaced by the phrase “the department.”
- w. The term “habitat restoration area” is defined in s. NR 51.42 (3), but the term “habitat areas” is used in the subchapter title before s. NR 51.40, and in several other places in the rule. The use of terminology should be made consistent.
- x. Section 23.09 (4), Stats., provides that the department may share the costs of implementing land management practices with landowners or with nonprofit organizations. Consequently, should the definition of “cost share grant” in s. NR 51.42 (2) also refer to a landowner?
- y. The purpose for the definition of “landowner” in s. NR 51.42 (51) should be clarified. The list of persons who may own land is comprehensive, and there appears to be no reason why that list could not be replaced by “any person.” If the purpose of the definition is to clarify that a landowner is a person who owns an easement, as well as fee title, that purpose could be made explicit.
- z. In s. NR 51.43 (4), it appears that the cross-reference should include a reference to sub. (3).
- aa. Is the allocation of funds under s. NR 51.44 on a fiscal year basis? Also, what are the “additional” funds referred to in the second sentence of that section? Are they subject to a matching requirement?
- ab. Is “third” necessary in s. NR 51.46 (6)?
- ac. How will the requirement contained in s. NR 51.46 (7) be enforced?