

Chapter NR 51

ADMINISTRATION OF STEWARDSHIP GRANTS

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NR 51.001 Purpose. The purpose of this chapter is to implement and administer the stewardship program.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.002 Definitions. (1) "Department" means the department of natural resources.

(2) "Fiscal year" means the period from July 1 to June 30.

(3) "Nonprofit conservation organization" has the meaning in s. 23.096 (1) (a), Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

(4) "Stewardship" or "stewardship program" means the conservation and acquisition programs specified in ss. 23.09 (2dm), (2p), (2q), (19) and (20) (d), 23.0915, 23.092, 23.094, 23.096, 23.175, 23.27 (4), (5) and (6) and 23.293(4), Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.003 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor, financial hardship and landowner demands. The department may not grant variances from statutory requirements, nor from appraisal and environmental audit requirements.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

Subchapter I — Nonprofit Conservation Organizations

NR 51.01 Purpose. The purpose of this subchapter is to establish procedures and standards for the administration of grants to nonprofit conservation organizations to acquire property for conservation purposes as set forth in s. 23.096, Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.02 Applicability. This subchapter is applicable to nonprofit conservation organizations who wish to apply for grants for the acquisition of land or permanent land rights as specified in s. 23.096, Stats., for any one of the following stewardship grant programs: s. 23.092, Stats., habitat restoration areas; s. 23.094, Stats., stream bank easements; s. 23.17, Stats., ice age trail; s. 23.175, Stats., state trails; s. 23.27, Stats., natural areas; s. 23.29, Stats., natural area heritage program; s. 23.293, Stats., ice age trail dedications; s. 23.09 (19), Stats., urban green space; and s. 23.09 (20), Stats., aids for the acquisition and development of local parks.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.03 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

(1) "Acquisition cost" means the fair market value of the property as determined by department-approved appraisals and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title insurance, recording fees and the cost of environmental inspections and audits. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes, nor any other cost not identified in this subsection.

(2) "Grant contract" means a contract between the sponsor and the department detailing how and assuring that lands acquired with grants under this chapter shall be managed in the best interests of conservation and public purposes for the purposes for which the grant was awarded.

(3) "Grantee" means the sponsor.

(4) "IRS" means the United States internal revenue service.

(5) "Parcel" means one contiguous block of land under one ownership.

(6) "Project" means one or more individually owned parcels that are contiguous or in close proximity which include features which are eligible for grants in this subchapter.

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(7) "Property" means fee title ownership or an easement in perpetuity in the land.

(8) "Sponsor" means the nonprofit conservation organization that is applying for and receiving a grant under s. 23.096, Stats., and this subchapter.

(9) "Stewardship grants" means grants awarded to nonprofit conservation organizations.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.04 General provisions. (1) Property transactions involving funds under s. 23.096, Stats., shall be subject to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. ILHR 202.

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

Under s. ILHR 202.01 (33), relocation assistance shall apply to all stewardship grants where the total of stewardship grants and all other public financial assistance or direct government acquisition costs in a project are greater than \$5,000 for a project with total costs of less than \$50,000; or greater than 10% of total project costs that exceed \$50,000.

Under s. ILHR 202.01 (7), "an owner occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power" is not a displaced person and is not entitled to relocation assistance. Tenants who occupy a property are entitled to relocation assistance even if the owner is voluntarily selling the property.

Under s. ILHR 202.01 (14) (b)4., a "tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project" but who can remain "permanently" on the property subject to normal rental conditions and provisions may not be a displaced person who qualifies for relocation assistance so long as they are not required by the sponsor to move.

(2) Negotiations between the sponsor and the landowner shall be conducted on a willing seller - willing buyer basis only without coercion or threat of condemnation.

(3) Appraisals are required for all grants.

(a) Appraisals of property required for grant eligibility under this chapter shall be consistent with and meet established department guidelines and standards in the department's land acquisition handbook, chapter 20.

Note: Copies of the department's appraisal guidelines are available from the DNR, Bureau of Property Management, Box 7921, Madison, WI 53707.

(b) Appraisals are subject to department review and approval.

(c) Appraisers shall be qualified as established in the department's land acquisition handbook, chapter 20, and meet all applicable state laws and regulations for appraisers.

(d) Acquisitions with a fair market value of more than \$200,000 shall require 2 appraisals. The department may require a second appraisal for property valued under \$200,000 if the property presents a difficult appraisal problem or if the first appraisal is unacceptable under department guidelines.

(4) Sponsors shall acknowledge the state's assistance in acquiring a project by placement of signs or in another manner approved by the department.

(5) Sponsors shall acquire and manage property acquired with a stewardship grant in accordance with all applicable state, local and federal laws and regulations.

(6) Property acquired with a stewardship grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

(7) Any property that is subject to a reversionary right or has restrictions or covenants that limit the ability of the property to be managed for conservation or public recreational purposes inconsistent with stewardship is not eligible for a stewardship grant.

(8) Grants for the stewardship program may not be made for any property owned by a unit of government or a nonprofit conservation organization prior to August 9, 1989.

(9) Grants may not be made for a parcel acquired prior to a grant application without prior written approval of the department unless the parcel was included in part II of a grant application previously approved by the department.

(10) Except as provided in s. NR 51.06 (2), sponsors may apply for grants under one or more stewardship programs, but the aggregate of all grants awarded may not exceed 50% of the acquisition cost of the property. No parcel may qualify over time for a second stewardship grant of any type.

(11) Grants may not be made for parcels or projects which have public access restrictions which limit the ability of the property to be managed in a manner or for the purpose consistent with the stewardship program.

(12) Sponsors shall treat all landowners fairly and keep them informed of the sponsor's intent to obtain a stewardship grant. The sponsor, as soon as it determines its intent to apply for a stewardship grant, shall inform the landowner in writing of the following information:

- (a) That the sponsor intends to apply for a stewardship grant;
- (b) That the property has to be appraised to qualify for a grant and that the grant shall be awarded based on appraised value, not on purchase price;
- (c) That if the purchase price is less than appraised value, the owner may be able to deduct the difference as a donation for tax purposes;
- (d) That the sponsor may not acquire the property if a mutually acceptable agreement with the landowner cannot be reached.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.05 Application procedures. (1) Applicants for grants under this chapter shall submit applications on the prescribed department form to the appropriate district office.

(2) Applications for grants, except as otherwise stated, shall be submitted by April 1 prior the state fiscal year for which funding is requested. Applications for grants received after April 1 shall be considered on a case-by-case basis to the extent that funds are available.

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(3) Applications may not be considered until all information submitted by the nonprofit conservation organization is to the satisfaction of the department.

(4) An application shall consist of 3 parts.

(a) *Part I.* The organizational application part shall include information on the nonprofit conservation organization's purposes and ability to acquire and manage lands for conservation and public benefits. This part of the application may be submitted at any time to obtain prior approval of the nonprofit conservation organization's qualification for stewardship grants.

(b) *Part II.* The project application part shall include information on the proposed project and how it will meet appropriate stewardship program goals. Projects can be submitted at any time to obtain approval of the grant eligibility of the project.

(c) *Part III.* The parcel application part shall include information on each parcel to be acquired.

(5) An application consisting of part I, or parts I and II may be submitted for preapproval to determine organization or project feasibility and approval or both prior to an actual acquisition effort.

(6) Applications shall be submitted on forms specified by the department. Incomplete applications are not eligible for grant awards. Applications shall include the following and other information required by the department:

(a) *Part I - organization qualifications.* The following information is required for part I:

1. The name and address of the nonprofit conservation organization, its officers and legal counsel.

2. A copy of the nonprofit conservation organization's bylaws, charter and articles of incorporation.

3. A determination letter from the IRS confirming the tax exempt status of the nonprofit conservation organization under 26 USC s. 501 (c) (3).

4. A resolution adopted by the governing body of the nonprofit conservation organization:

a. Authorizing a representative to apply for grants on their behalf; and

b. Acknowledging the long-term ownership and management responsibilities of the stewardship program.

5. A general description of the nonprofit conservation organization including number of members, frequency of meetings, age of nonprofit conservation organization, purpose of the nonprofit conservation organization, and list of projects and activities completed by the nonprofit conservation organization in the last 5 years, if any.

6. A list of any current conservation lands owned by the nonprofit conservation organization and a general description of how the lands are managed and used.

7. A description of the nonprofit conservation organization's experience in or its plan to complete conservation acquisition and management projects.

8. A description of the nonprofit conservation organization's financial history including income, assets and liabilities for past 5 years, a current statement of liabilities and assets and a projection of income and sources for next 5 years. New organizations in existence less than 5 years shall provide information back to the date of the organization's origination. This information can be in the form provided in:

a. Reports to the IRS; or

b. A statement of net worth prepared and certified by a certified public accountant.

9. If the applying nonprofit conservation organization is a chapter or affiliate of a larger national organization, a description of the financial, contractual and other legal relationships and responsibilities between the local and national organization.

10. A letter of assurance that the nonprofit conservation organization shall abide by all stewardship laws and regulations.

11. A general description of the nonprofit conservation organization's abilities and plan to raise funds needed to match the proposed grants and for long-term property management of acquired properties.

12. Other information as may be requested by the department.

(b) *Part II - project proposal qualifications.* The following information is required for part II:

1. A description of the purpose for acquiring the land and how the project will meet applicable goals of the stewardship program under which the grant is applied for.

2. A description of the proposed development and land management plan and practices for the property, general time frame for project implementation and completion, and a description of how long-term management will be provided. Identification of any other groups or governmental units that will be involved in management, development or ownership and their role.

3. A copy of the appropriate county, township, topographic and local land use planning maps showing the proposed project.

4. An estimate of overall acquisition, development and annual maintenance costs, including the number of parcels and acres to be acquired and noting the number of improved parcels involved.

5. Description of any contacts with local units of governments and other local groups about the proposed project including information on support or opposition to the project from these groups.

6. A brief history of any past efforts to protect, acquire or manage the subject project or parts thereof for conservation purposes by any groups or governmental units.

7. A description of any plans to transfer, gift or sell the land to, or to enter into a management agreement for the property with any other individual, organization or governmental agency, including the state.

8. A list of any owner occupants or tenants that occupy the land or buildings and a statement of intended tenant occupational policy of the land and buildings.

9. A description of the nonprofit conservation organization's plan to raise funds needed to match the proposed grants if not provided in par. (a).

10. Other information as requested by the department.

(c) *Part III - parcel application; required for each parcel to be acquired.*
The following information is required for part III:

1. A copy of county, township, topographic, local land use plan and tax maps showing the property to be acquired.

2. A legal description of the property.

3. A description of the land including the owner's name and address, acres and a physical description of the property.

4. The name, phone number and address of the nonprofit conservation organization's negotiator and legal counsel.

5. A specific description of the proposed development and management of the parcel including long-term management.

6. The purchase price or an estimate of the purchase price and other acquisition costs.

7. Current status of negotiations, offer or option to purchase, appraisal and title work.

8. A copy of any proposed or executed option or offer to purchase.

9. Relocation information if the property is used as a residence, farm or business. The name of any tenant occupying any residence and the plans of the sponsor and tenants about future occupancy.

10. A copy of plans for and assurances that any proposed development and management for the property will be completed.

11. A statement that information provided in parts I and II of the application has not changed if part III is submitted as a separate application after prior approval of parts I and II. An amended parts I and II application shall be required if changes have occurred.

12. A description of the nonprofit conservation organization's specific plans and timetable to raise funds needed to match the proposed grant if not provided in part I or II.

13. Other information the department may request.

(7) Organization qualification eligibility. Nonprofit conservation organizations shall be eligible for stewardship grants if they meet the following criteria:

(a) Meet all applicable provisions of this subchapter.

(b) Provide evidence satisfactory to the department that the of financial backing is sufficient for the acquisition and long-term management of the property.

(c) Provide evidence of experience in land acquisition and land management or provide a written plan that ensures proper management and acquisition.

(8) Project and parcel eligibility. (a) Eligible projects and parcels shall meet all applicable provisions of this subchapter.

(b) Project eligibility shall be based on eligibility criteria for each program.

(c) Parcel eligibility shall be based on the importance of the parcel in meeting project objectives and the eligibility criteria for each program.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.06 Grant awards. (1) **AMOUNTS.** Grants shall be made subject to the following conditions:

(a) Except as provided in par. (b), grants shall be issued for the lesser of the actual cash outlay for acquisition costs by the sponsor or 50% of the acquisition cost of the property.

Note: Acquisition costs is defined in s. NR 51.03 (1).

(b) Grants, excluding the purchase price and relocation payments, may not exceed \$5,000 unless agreed to in writing by the department, in which case this portion of the grant may not exceed \$20,000.

(2) The sponsor, with the prior written approval of the department, may combine the acquisition of one or more parcels in one project or program and may apply for and the department may calculate grant awards for more than one parcel at a time. Application and approval of grants shall occur within 12 months of the acquisition of the first parcel.

(3) Grants may not be awarded until an appraisal meeting department appraisal guidelines is received, reviewed and approved by the department.

(4) Grants shall be awarded subject to execution of the grant contract. Payment may not be made until the grant contract has been signed and recorded, and a title report indicating sound title has been issued.

(5) Grants may be awarded upon the receipt of an environmental inspection report showing the property contains no undesirable environmental conditions or liabilities or potential liability or hazards that are unacceptable to the department.

(6) The department may make grant awards for only that portion of the property for which the stewardship grant is applied that is consistent with the goals of the stewardship program.

(7) Grant awards may not be paid out until a claim supported by appropriate receipt or other evidence of cost has been received by the department.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.
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NR 51.07 Grant contract. (1) Stewardship grants shall be subject to the execution of a grant contract with the department. The purpose of the contract is to place a permanent state interest on the land to ensure the land is managed in the a manner meeting the stipulations and conditions of the grant and the stewardship program.

(2) The grant contract shall be recorded in the office of the register of deeds in the appropriate counties.

(3) Grants may not be awarded until the interest of the state under the grant contract is placed in the chain of title. The instrument conveying the property acquired with stewardship grants to the sponsor shall establish the interest of the state under this contract. In the event an interest statement was not included in the original deed of transfer, the sponsor may record a deed to itself to establish an interest as part of the chain of title.

(4) The grant contract shall run with and burden the property.

(5) Grant awards shall be made subject to the execution of the grant contract.

(6) The contract shall contain but not be limited to the following:

(a) An agreement by the sponsor to operate and provide adequate, responsible land management and maintenance.

(b) A prohibition of the conversion of the property to any other use than that specified in the grant contract without the prior written approval of the department.

(c) One half of all gross receipts from the sale of any structures, improvements or personal property that were included in the appraisal and subsequent acquisition cost shall be reimbursed to the department.

(d) Reasonable entrance, service or user's fees may be charged to defray operation and maintenance costs subject to department review and approval.

(e) The sponsor agrees to abide by all applicable state, local and federal statutes and regulations including but not limited to general and special zoning, land use permit requirements, disabled access, environmental quality and historical and archaeological preservation.

(f) The sponsor may not discriminate against any person in the use and enjoyment of the property on the basis of age, race, creed, color, handicap, marital status, conviction record, arrest record, sex, national origin, ancestry, sexual orientation or membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or this state.

(g) The sponsor may not transfer, assign, pledge, encumber or mortgage any legal or equitable interest in the property without the prior written consent of the department. The sponsor may not permit the property to be encumbered with any liens, judgments or any encumbrances whatsoever.

(h) Property acquired with a grant under this chapter may not be closed to public use except as provided under subs. 1. and 2. Any violation of this provision shall be a violation of the contract.

1. The department determines that it is necessary to protect species of plants, wild animals or other natural features.

2. The right of public access is not acquired as part of the rights purchased with the grant.

(i) 1. Any subsequent sale of the property shall be subject to the grant contract and shall require the prior written approval of the department.

2. The new sponsor shall file parts I and II of the grant application with the department and provide a notarized statement prior to the property transfer that they have received and reviewed the existing grant contract and shall abide by its provisions.

3. Subsequent transfers and sales shall be to nonprofit conservation organizations qualified for stewardship grants or local, state or federal units of government.

4. The sponsor may not convey any easement, lease or permit on the property without the prior written approval of the department. One-half of the gross receipts from any permanent conveyance over and above the value of the grant award shall be refunded to the department.

(j) If the sponsor violates any provision or condition of the contract or the stewardship grant program under which it was awarded and fails to correct the violation within 6 months after written notification to the sponsor from the department, all title, right and interest in and to the property shall vest in the state without the necessity of reentry.

(k) Property tax payments shall be made on time and kept current. Tax payments over 12 months late shall be a violation of the contract.

(l) The organization shall at all times maintain its tax exempt status as granted by the IRS. The organization shall keep the department informed of any changes in, or challenges to its exempt status. Failure to comply shall be a violation of the contract.

(m) All obligations, terms, conditions and restrictions imposed by the grant contract shall be deemed to be covenants and restrictions running with the lands and shall be effective limitations on the use of the property from the date of recording of the grant contract and shall bind the sponsor and all successors and assigns.

(n) The sponsor shall notify the department of any change in the status or purpose of the nonprofit conservation organization as it relates to the acquisition and management of lands for conservation purposes and of any changes in the contractual relationship between a chapter or affiliate and its national organization.

(p) The department may enter the property at any time and carry out any management activities necessary to ensure the public's rights, safety and enjoyment in the parcel.

(q) The department may take actions necessary to avoid the placement of liens, judgments or encumbrances against the property.

(r) Should the sponsoring nonprofit conservation organization be dissolved, the property shall revert to the state unless, at the option of the department, a transfer under par. (i) is approved.

NR 51.08 Environmental inspection and review. (1) An environmental inspection report is required for each parcel for which a grant application is made.

(2) The environmental inspection report shall be made on forms and in a manner specified by the department.

Note: Copies of the department's guidelines for environmental inspection reports and forms are available from the DNR, Bureau of Property Management, Box 7921, Madison, WI 53707.

(3) Upon department review of the environmental inspection report showing the property contains or may contain undesirable environmental conditions, hazards or liabilities, or potential conditions, hazards or liabilities that are or may be unacceptable to the department, the department may:

(a) Reject the grant application; or

(b) With the written consent of the sponsor, order an environmental audit to determine the full extent of the problem.

(4) The costs of environmental inspections and audits may be included in the acquisition costs for grant purposes subject to ss. NR 51.03 (1) and 51.06 (1) (a).

(5) The environmental inspections and audits shall be completed by personnel approved by the department. Inspection and audit reports are subject to department review and approval.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

Subchapter II — Natural Areas Grants

NR 51.20 Purpose. The purpose of this subchapter is to establish procedures and standards for the administration of grants to nonprofit conservation organizations for natural area protection purposes as set forth in s. 23.096, Stats., under the natural areas or natural area heritage program.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.21 Applicability. This subchapter applies to nonprofit conservation organizations that wish to apply for grants for natural areas or natural area heritage program areas as specified in s. 23.096, Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.22 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

(1) "Dedicated state natural area" has the meaning specified in s. 23.27 (1) (b), Stats.

(2) "Dedication" has the meaning specified in s. 23.27 (1) (c), Stats.

(3) "Designated state natural area" has the meaning specified in s. 23.27 (1) (d), Stats.

(4) "Natural area" has the meaning specified in s. 23.27 (1) (e), Stats.

(5) "Natural heritage inventory database" means a database containing the location and biological status of each natural community and

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rare species that has been inventoried and evaluated by the natural heritage inventory program.

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

(7) "Priority site list" means a list of sites generated and revised periodically by the department based on the natural heritage inventory database, if appropriate, and on the department review of proposed sites for natural area projects.

(8) "State natural area" has the meaning specified in s. 23.27 (1) (h), Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.23 Eligible applicants. Nonprofit conservation organizations meeting the definition in s. NR 51.002 (2) are eligible to apply for natural area grants.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.24 Allocation of funds. (1) The department shall allocate \$250,000 annually to nonprofit conservation organizations for up to 50% match grants to acquire lands on the current priority site list.

(2) The department may provide up to an additional \$1,250,000 to nonprofit conservation organizations depending on the department's natural area acquisition needs and available funds.

(3) Beginning January 1 of each year, the department may use any funds not committed under subs. (1) and (2) for department acquisition of natural areas.

NR 51.25 Grant conditions. Grant awards shall be made with the following conditions:

(1) The property shall qualify for dedication and be dedicated as a state natural area under ss. 23.27 and 23.29, Stats., except for those sites that the department may, with good cause, exempt from the dedication requirement, those sites becoming designated state natural areas. Good cause includes, but is not limited to, sites that have deed restrictions or ephemeral natural values such as rookeries and bird concentration areas.

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

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.26 Application procedure. (1) **APPLICATION DEADLINES.** Deadlines are as stated in subch. I.

(2) **ACCEPTANCE OF APPLICATIONS FOR PROJECTS NOT ON PRIORITY SITE LIST.** A maximum of 25 applications for projects not on the current priority site list shall be accepted each fiscal year. None may be accepted, even on a case-by-case basis, after July 1 for 1990-1991 fiscal year and after June 1 for 1991-1992 and subsequent fiscal years.

(3) **PROJECT APPLICATIONS.** Applications shall include those items listed in s. NR 51.05 plus the following items to be included in Part II of the application described in s. NR 51.05 (4) (b):

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- (a) A list of the goals of the project in terms of natural area protection: What natural values will be protected by the project?
- (b) The boundary of the project mapped on a U.S.G.S. 7.5-minute quadrangle map;
- (c) A history of the land use within the project boundary;
- (d) A history of the land use surrounding the project;
- (e) A history of the past disturbances;
- (f) A discussion of the present threats to the natural values of the project;
- (g) A proposed management plan as described in s. NR 51.05 (4) (b)2. including detailed plans for restoration of those areas not of natural area quality within the project boundary;
- (h) Recent air photos;
- (i) A justification of the long-term viability of the site: Is the natural area protection goal realistic given the natural values to be protected, the size of the project, the surrounding land use, and the proposed management plan?
- (j) A detailed estimate of project costs as described in s. NR 51.05 (4) (b)4. and including restoration costs.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.27 Approval of projects. (1) The department shall evaluate each project as follows:

- (a) If the project is listed on the current priority site list, it shall be approved.
- (b) If the project is not on the current priority site list, the department shall review proposed projects that are eligible for natural area designation pursuant to s. 23.27 (1) (e) and (f), Stats. The criteria used to evaluate natural values of proposed projects are as follows:
 1. The quality of the natural value to be protected.
 2. The condition of the natural value to be protected, including an analysis of the degree to which the natural value has been damaged or altered from its optimal condition and character.
 3. The long-term viability of the natural value to be protected, including the extent to which the project meets the minimum area required by area-dependent species of concern; the adequacy of the project to maintain community function and dynamics; the impacts that fragmentation, isolation and size of community may have on its longevity; and the ability of the project to support minimum viable populations of species to be protected.
 4. The defensibility of the natural value and the project from adverse effects that threaten it.
- (c) The criteria used to evaluate and rank proposed projects are as follows:

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1. The rarity of the natural value to be protected.
2. The number of natural values to be protected.
3. The degree to which the natural value and the project are threatened and the degree to which they are already protected.
4. The value of the area for research and education.
5. The degree to which acquisition, as opposed to other protection tools, will protect the natural value.
6. The degree to which this type of natural value is already protected in the state.

(2) Project approval date. The department shall approve or disapprove projects by November 15 of each year.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.28 Approval of parcels. (1) In a given fiscal year, parcels within projects on the current priority site list shall be funded unless there are more parcels than money available. In that case, parcels shall be funded according to the following priorities:

- (a) High priority on the current priority site list;
- (b) Medium priority on the current priority site list;
- (c) Low priority on the current priority site list.

(2) Parcel approval date. The department shall approve grants for parcels by November 15 of each year.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.29 Unfunded parcels. Parcels within projects on the current priority site list that are not funded due to insufficient funds may be resubmitted the following fiscal year and shall receive first priority within the appropriate priority groups listed in s. NR 51.28 (1).

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

Subchapter III — Habitat Restoration Areas

NR 51.40 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to nonprofit conservation organizations when acting as habitat restoration area grant recipients; to the department and nonprofit conservation organizations when acting as cost share agreement grantors; and to landowners when acting as cost share recipients under the stewardship program established in ss. 23.0915 and 23.092, Stats.

(2) **PURPOSE.** The purpose of this chapter is to establish the administrative framework for the implementation of the state's habitat restoration areas program. The goal of the program is to increase the populations of specified wildlife and fish populations primarily through landscape scale habitat management. The goal will be achieved through use of easements and cost share agreements with the emphasis on entering into easements.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

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NR 51.41 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

(1) "Cost share agreement" means the agreement established between the department or nonprofit conservation organization and the cost share recipient which identifies the land management practices and the cost, installation schedule and operation and maintenance requirements for the land management practices on the cost share recipient's land.

(2) "Department project" as used in s. 23.092, Stats., means an area delineated by the department with specific land acquisition objectives and approved under s. 23.14, Stats. Wildlife areas, fisheries areas and state parks are included within the definition. Extensive wildlife habitat project areas are specifically excluded for purposes of this rule.

(3) "Habitat restoration area" or "HRA" means an area of manageable size, delineated by the department, and selected according to the criteria and procedures specified in s. NR 51.42.

(4) "Land management practice" means a practice, technique or measure approved by the department and identified in habitat restoration area plans which is determined to be an effective, practicable means of enhancing wildlife or fish habitat compatible with wildlife or fish habitat goals as described in the department prepared plan.

(5) "Landowner" means any individual, partnership, corporation, municipality, town, county or other person holding title to the land by fee title or easement.

(6) "Records" means books, documents, papers, accounting records, audits, and other evidence and accounting procedures and practices.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.42 Habitat restoration area selection. (1) Habitat restoration areas shall be selected by the department using the following criteria:

(a) The practicability of achieving significant improvements in the quality and quantity of wildlife or fish habitat in the HRA.

(b) Likelihood of owners of critical habitat management sites to participate in the project.

(c) The probability of wildlife or fish populations for which habitat has been severely degraded to increase in abundance and establish a self-sustaining wild population.

(d) The level of public ownership of critical habitat types in the HRA.

(e) The level of interest on the behalf of nonprofit conservation organizations to assist in implementation.

(f) The level of opportunities to cooperate with existing federal, state and county administered land management programs.

(g) The presence of unique or endangered environmental resources.

(h) The usefulness of the area as an education demonstration area.

(2) The department shall give priority in selecting habitat restoration areas to the following sites and species in the following order:

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(a) Southern, eastern and western Wisconsin sites suitable for restoring grasslands and wetlands to benefit gamebirds such as pheasants and dabbling ducks, and grassland songbirds in the following counties: Barron, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Jefferson, Polk, Rock, St. Croix, Walworth and Winnebago.

(b) Central Wisconsin sites suitable for restoring grasslands for rare species such as prairie chickens in the following counties: Adams, Clark, Juneau, Marathon, Portage, Taylor and Wood.

(c) Southwestern Wisconsin sites suitable for restoring smallmouth bass fisheries in the following counties: Grant, Iowa and Lafayette.

(d) Other sites where the habitat restoration projects will significantly benefit grassland, wetland and rare wildlife species.

(3) The department shall compile a proposed project list of all high priority projects no later than July 1, 1990. The project list may be revised periodically.

(4) The department shall select habitat restoration areas for designation from the list based on the availability of funding and the availability of department staff to accept new workloads associated with the project.

Note: Nonprofit conservation organizations are encouraged to submit project proposals.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.43 Cost share eligibility. (1) Land management practices approved, installed and maintained to secure, enhance or establish wildlife or fish habitat are eligible for cost share assistance when installed and maintained in a habitat restoration area in:

(a) Croplands and undeveloped lands.

(b) Beds, banks and shores of surface waters.

(c) Restorable wetland basins.

(d) Ponds, flowages and lakes.

(e) Other sites determined by the department to meet the objectives of the program.

(2) The following practices, sites or activities are not eligible for cost share assistance:

(a) Land management practice installation, operation or maintenance started or completed prior to the signing of the cost share agreement.

(b) Lawns associated with residential land uses.

(c) Licensed game farms, fur farms, deer farms or shooting preserves.

(d) Lawns and other areas associated with retail businesses, schools, libraries, parks and similar institutional buildings and areas.

(e) Building and utility construction.

(f) Highway construction.

(g) Dredging of harbors and lakes.

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(h) Practices whose purpose is to accelerate or increase the drainage of land or wetlands.

(i) Other practices, activities or sites determined by the department not to meet the objectives of the program or plan.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.44 Allocation of cost share grant funds to nonprofit conservation organizations. (1) **PURPOSE.** The purpose of this section is to establish the administrative framework for awarding grants to nonprofit conservation organizations to cost share the implementation of land management practices in areas selected as projects according to the criteria established in s. NR 51.42.

(2) **ELIGIBLE APPLICANTS.** Nonprofit conservation organizations are eligible to apply for land management practice cost share grants.

(3) **APPLICATION PROCEDURE.** Applications for grant projects shall be submitted no later than April 1 prior to the state fiscal year for which funding is requested. The department shall review applications for completeness. An application shall be on department forms and include:

Note: Application forms may be obtained, at no charge, from the Bureau of Wildlife Management, Department of Natural Resources, Box 7921, Madison, WI 53707.

(a) A description of the applicant, including:

1. A description of the nonprofit conservation organization's financial and management resources available for the project, and

2. A description of the nonprofit conservation organization's experience in completing similar projects on schedule and within budget.

(b) A description of the land management practice proposed, including:

1. Identification of the property on which the practice is to be installed,

2. A project time schedule,

3. A detailed estimate of project costs, and

4. A description of procedures and persons responsible for management of the practice once installed.

(4) **ALLOCATION OF FUNDS TO NONPROFIT CONSERVATION ORGANIZATIONS.** The department shall allocate up to 50% of \$1,500,000 of the annual appropriation for habitat restoration areas to nonprofit conservation organizations. Funds that are unencumbered as of November 15 shall be released for department use consistent with the habitat restoration area program.

(5) **SELECTION OF GRANT PROJECTS.** If applications from nonprofit conservation organizations exceed the funds allocated for grants, the department shall select applications to receive funding based on:

(a) The likelihood of the grant project to restore and enhance wildlife or fish habitat in the habitat restoration area,

(b) The ability of the nonprofit conservation organization to complete the project within budget and on schedule based on past experience, and

(c) The amount, if any, of funds in excess of the required 50% match the nonprofit conservation organization is willing to dedicate to the project.

(6) **GRANT AWARDS.** The state share of the project may be no greater than 50% of the cost share rates established in s. NR 51.49 for eligible project costs. Grant awards may not be paid out until a claim for reimbursement has been made under s. NR 51.52.

(7) **GRANT CONDITIONS.** Grant awards are subject to the conditions of this section, s. NR 51.06, and s. 23.096, Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.45 Habitat restoration area grant agreement. (1) The habitat restoration area grant agreement is an agreement between the department and nonprofit conservation organization for providing cost share funds for habitat restoration area projects. More than one habitat restoration area grant agreement may be awarded for a project.

(2) The period in which cost share agreements may be signed through the habitat restoration area grant agreement may be no more than one year. The department may extend this period upon written request of the grantee where the additional time will result in a significant improvement in the quality or quantity of wildlife or fish habitat or otherwise further the intent of the program and where the grantee has demonstrated satisfactory effort towards project management. The grantee may identify specific time periods for cost-sharing sign-ups within the project sign-up period if identified in the department's habitat restoration area plan.

(3) The grant period of the habitat restoration area grant agreement is the period when cost share funds may be expended. It may be no more than 2 years. The department may extend the grant period upon written request of the grantee where the additional time will result in a significant improvement in the quality or quantity of wildlife or fish habitat or otherwise further the intent of the program.

(4) The grantee shall contribute funds or in-kind services in an amount equivalent to the department expenditure for the grant.

(5) The department may unilaterally reduce the habitat restoration area grant to the amount the grantee has committed on cost share agreements and contracts at the end of the period of the signing of cost share agreements.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.46 Cost share agreements. (1) **PURPOSE OF AGREEMENT.** The cost share agreement is an agreement listing the approved land management practices and establishing the conditions and considerations under which a cost share recipient agrees to install the practices.

(2) **EFFECTIVE DATE.** For land management practices to be eligible for cost sharing, the habitat restoration area grant agreement and the cost share agreement shall be signed before practices may be initiated.

(3) **PARTIES TO THE AGREEMENT.** (a) The cost share agreement shall be between the department or nonprofit conservation organization and the individual landowner.

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(b) The department and nonprofit conservation organization shall enter into cost share agreements only during the period specified in the habitat restoration area grant agreement.

(4) CONTENT OF THE AGREEMENT. The cost share agreement shall contain or describe:

(a) The name and address of the cost share recipient.

(b) The land management practices cost shared and not cost shared to be applied and the cost share rates for the practices to be cost shared.

(c) The estimated total practice cost, cost share rate and estimated cost share amount.

(d) The installation period and the schedule for applying the practices.

(e) A statement of maintenance requirements including those specified in s. NR 51.47.

(f) A requirement to not adopt any land use practice which defeats the purposes of the wildlife or fish management practices, the cost share agreement or the habitat restoration area grant agreement.

(g) A provision stating the technical assistance to be provided by the department or nonprofit conservation organization as funding allows during the required operation and maintenance period of the land management practices.

(h) A nondiscrimination clause.

(i) A provision describing the procedure for amendment.

(j) Legal description of the entire property to which the cost share agreement applies.

(k) A requirement that prohibits any change in land use or management on the entire property described on the cost share agreement which may, in the opinion of the department, cause wildlife or fish habitat degradation counter to the habitat objectives of the approved habitat restoration area plan without approval of the department. The agreement shall require that if a change in land use or management occurs, the landowner shall repair the damage at his or her own expense or return any cost sharing funds awarded through the cost share agreement to the grantor.

(l) A requirement to amend the cost share agreement if practices are added or deleted and to add or delete practices only when they are consistent with habitat restoration area project objectives.

(m) A requirement that the landowner may not enroll his or her land into a licensed shooting preserve or game farm, fur farm or deer farm.

(n) A provision stating that the grantor and the department if it is not the grantor have the right to ensure that the practice is maintained. This right explicitly includes the rights of ingress and egress at reasonable times and the right to operate equipment necessary for maintenance.

(o) A list of any federal, state or local regulatory permits or approvals which may be needed to implement the practice.

(p) Other provisions deemed necessary and reasonable by the department.

(5) **AGREEMENT PERIOD.** The period of the cost share agreement shall include the installation period plus the operation and maintenance period.

(a) The installation period, during which all cost shared and not cost shared practices shall be installed, may not exceed one year. The department may grant an extension taking into account the following:

1. Economic hardship
2. Construction delay
3. Change in ownership
4. Addition of practices to the cost share agreement.

(b) The operation and maintenance period for cost shared land management practices shall be at least 10 years beginning when the last practice on the agreement has been installed unless otherwise provided in the agreement.

(6) **FAILURE TO FULFILL AGREEMENT.** If the cost share recipient fails to fulfill any terms of the cost share agreement, including failing to install, operate and properly maintain the practices of the agreement, the prorated share of the cost shared funds received by the cost share recipient shall be repaid to the department if the department is the grantor of the agreement. If a nonprofit conservation organization is the grantor of the agreement, it shall reimburse the department the full amount of the cost share agreement and may seek that amount from the cost share recipient.

(7) **INEFFECTIVE PRACTICES.** If a practice is rendered ineffective during the cost share agreement period due to circumstances beyond the control of the cost share recipient, repayment of cost share payments will not be required. The department, after review for the need for the practice, may authorize the replacement or modification of the practice subject to appropriations under s. 23.092, Stats.

(8) **CHANGE IN OWNERSHIP.** If a change in ownership occurs during the cost share agreement period, the new landowner is responsible for fulfilling all conditions of the cost share agreement as described in s. NR 51.47.

(9) **RECORDING OF COST SHARE AGREEMENTS WITH REGISTER OF DEEDS.** The department or nonprofit conservation organization shall record the cost share agreement and amendments in the office of the register of deeds for each county in which the property is located within 10 days after the signing the cost share agreement.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.47 Authorized land management practices. (1) APPLICABILITY. The cost share agreement conditions described in this section apply to land management practices included in cost share agreements or otherwise provided for in s. NR 51.46. Cost sharing is authorized when land management practices are installed on critical sites in a manner consistent with the habitat restoration area plan.

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(2) **LAND MANAGEMENT PRACTICES.** Land management practices shall be approved by the department and meet the wildlife or fish habitat objectives identified in the habitat restoration area plan. The department shall identify in the habitat restoration area grant agreement, if applicable, design criteria and standards and specifications, where appropriate; cost share conditions; and cost share rates for each approved alternative land management practice.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.48 Practices not cost shared. The following land management practices are not eligible for cost sharing but shall be requirements included in cost share agreements:

- (1) Practices to be funded through other programs.
- (2) Practices previously installed and necessary to support cost shared practices.
- (3) Other practices the department determines are not necessary to achieve the objectives of the habitat restoration area project.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.49 Cost share rates. (1) **STATE AND NONPROFIT CONSERVATION ORGANIZATION COST SHARE RATES.** The department shall pay the cost of installation of the land management practice except as otherwise provided in the cost share agreement or funded from other sources.

(2) **LANDOWNER SHARE.** The landowner share for purposes of a cost share agreement to implement land practices shall be the value of the landowner's cooperation in the installation, protection, maintenance and monitoring of the practice as required in the cost share agreement.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.50 Easements. (1) **HABITAT RESTORATION.** The department or nonprofit conservation organization may enter into easements with landowners for lands identified in habitat restoration area plans. The easements shall be perpetual. Easements may be used in conjunction with department approved land management practices.

(2) **CRITICAL HABITAT PROTECTION.** The department or nonprofit conservation organization may enter into easements to protect critical habitat threatened with degradation in any habitat restoration area established as a department project.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.51 Cost containment procedures. Nonprofit conservation organizations as grantors of cost share agreements shall agree to use average costs and a range of costs determined as reasonable by the department.

(1) **BIDDING.** A nonprofit conservation organization shall require the landowner to request bids from contractors for the installation of a land management practice when determined necessary by the department. The landowner shall accept the low bid.

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(2) **MUNICIPAL WORK GROUP.** A municipal grantee shall hire or assign its employes to install a land management practice if the employes are able to perform the work more economically than the private sector.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.52 Reimbursement procedures. (1) **GENERAL REQUIREMENTS.** (a) *Refunds, rebates and credits.* The state share of any refunds, rebates, credits or other amounts that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, shall be paid to the department.

(b) *Reimbursement on cost share grant agreements.* The department shall pay to the grantee out of the grant award the balance of the nonprofit conservation organization share of the eligible project costs after project completion, department approval of the request for payment and department verification of the grantee's compliance with all applicable requirements of this chapter and the grant agreement. The payment request shall be submitted by the grantee promptly after project completion. Prior to payment under the grant, the grantee shall execute a release discharging the department, its officers, agents and employes from all liabilities, obligations and claims arising out of the project work or under the grant, subject only to the exceptions specified in the release.

(2) **HABITAT RESTORATION AREA COST SHARE GRANT AGREEMENTS.** (a) Cost share funds may be used to share in the actual cost required for the implementation of eligible land management practices identified in habitat restoration area grant agreements described in s. NR 51.45.

(b) Nonprofit conservation organizations shall comply with the following procedures when requesting reimbursement:

1. Reimbursement requests shall be submitted on forms provided by the department.

Note: Reimbursement request forms may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

2. All reimbursement requests shall be submitted to the department after the land management practice has been verified by the department as properly installed and its cost has been verified by the grantee and supported by the cost share agreement including any amendments.

Note: Verification forms may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

3. All other reimbursement shall be for land management practices or components of land management practices approved by the department.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.53 Nonprofit conservation organization record keeping. (1) Each nonprofit conservation organization as a grant agreement grantee or cost share agreement grantor shall maintain a financial management system which adequately allows for:

(a) Accurate, current and complete disclosure of payments to land-owners and contractors and receipts, canceled checks, invoices and bills to support payments made in the program in accordance with department reporting requirements and in accordance with generally accepted

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accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Effective control over and accountability for all project funds, property and other assets.

(c) Comparison of actual costs with grant amounts on a habitat restoration area basis.

(d) Procedures for determining the eligibility and allocability of costs in accordance with cost containment requirements of s. NR 51.51 for all practices installed by the landowner.

(e) Accounting records supported by source documentation including the following:

1. One separate project account for the total grant identified in the habitat restoration area grant agreement reflecting all receipts and expenditures of that grant.

2. Accounting records showing all receipts, encumbrances, expenditures and fund balances.

3. A complete file for each cost share agreement including the following documentation:

a. Approval of the land management practice by the department.

b. Cost share agreement and cost share agreement forms.

c. Verification of proper installation by the department.

d. Request for reimbursement by a landowner documenting costs incurred directly of for in-kind services by the landowner.

e. Evidence of payment for land management practice by a landowner including copies of checks or receipts.

f. Verification of practice completion in accordance with the cost share agreement including amendments and approval of cost share amounts by the department.

(f) A systematic method to assure timely and appropriate resolution of audit findings and recommendations by the department.

(g) A final accounting of project expenditures submitted to the department within 60 days of the completion of all habitat restoration area work.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.54 Record retention and auditing. (1) **RECORD RETENTION REQUIREMENTS.** (a) The nonprofit conservation organization or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department.

(b) The nonprofit conservation organization or its agent or contractors of the nonprofit conservation organization shall preserve and make all records available to the department:

1. For 3 years after the date of final settlement; or

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2. For a longer period if required by statute or contract; or
3. For 3 years after the date of termination of a grant agreement. If a grant is partially terminated, records shall be retained for a period of 3 years after the date of final settlement.
4. Cost share agreement records shall be kept for the duration of the maintenance period of the cost share agreement with the longest maintenance period to enable the nonprofit conservation organization to fulfill its responsibility under s. NR 51.44.

(c) The nonprofit conservation organization or its agent or contractors of the nonprofit conservation organization shall preserve and make the following records available to the department until any appeals, litigation, claims or exceptions have been finally resolved:

1. Records which relate to appeals, disputes or litigation on the settlement of claims arising out of the performance of the project for which funds were awarded; and

2. Records which relate to costs or expenses of the project to which the department or any of its duly authorized representatives has taken exception.

(2) **AUDITING.** (a) The department may perform interim audits on all grants.

(b) The department shall conduct a final audit after the submission of the final payment request. The department shall determine the time of the final audit. Any payments made prior to the final audit are subject to adjustment based on the audit.

(c) All audits shall include review of fiscal accountability and program consistency with the watershed plan.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.55 Suspension or termination of grant. (1) **SUSPENSION OF GRANTS.** (a) *Liability.* The department may suspend state liability for work done under a grant after notification is given to the grantee in accordance with the provisions of this subsection. Suspension of state liability under a grant shall be accomplished by the issuance of a "stop-work order."

(b) *Stop-work order issuance.* 1. The department may issue a stop-work order if there is a breach of the grant agreement.

2. Prior to the issuance of a stop-work order, the department shall meet with the grantee to present the facts supporting a decision to issue a stop-work order.

3. After discussion of the department's proposed action with the grantee, the department may issue a written order to the grantee, sent certified mail, return receipt requested, requiring the grantee to stop all, or any part of the project work for a period of not more than 45 days after the order is delivered to the grantee, and for any extended period to which the parties may agree.

(c) *Stop-work order components.* The stop-work order shall contain:

1. A description of the work to be suspended;

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2. Instructions as to the acquisition of materials or services by the grantee;

3. Guidance for action to be taken on contracts; and

4. Other suggestions to the grantee for minimizing costs.

(d) *Suspension period.* 1. Upon receipt of a stop-work order, the grantee shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to work covered by the stop-work order during the period of work stoppage.

2. Within the suspension period the department shall either:

a. Cancel the stop-work order, in full or in part,

b. Terminate grant assistance for the work covered by the stop-work order under sub. (2), or

c. Authorize resumption of work.

(e) *Stop-work order cancellation or expiration.* If a stop-work order is canceled or expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment may be made to the grant period, the grant amount or any combination of these items. The grant award may be amended accordingly, if:

1. The stop-work order results in an increase in the time required for completion or an increase in the grantee's cost properly allocable to the performance of any part of the project; and

2. The grantee asserts a written claim for adjustment within 60 days of cancellation of a stop-work order or authorization to resume work.

(f) *Ineligible costs during suspension period.* Costs incurred by the grantee or its contractors, subcontractors or representatives, after a stop-work order is issued by the department, which relate to the project work suspended by the order and which are not authorized by this section or specifically authorized in writing by the department, are not eligible for reimbursement.

(2) **TERMINATION OF GRANTS.** A grant may be terminated in whole or in part by the department. Grants may be terminated in accordance with the procedures of this subsection.

(a) The parties to a grant agreement may enter into an agreement to terminate the grant at any time. The agreement shall establish the effective date of termination of the grant, the basis for settlement of grant termination costs and the amount and date of payment of any money due either party.

(b) A grantee may not unilaterally terminate project work for which a grant has been awarded except for good cause. The grantee shall notify the department in writing within 30 days of any complete or partial termination of the project work. If the department determines that there is good cause for the termination of all or any portion of a project for which a grant has been awarded, the department may enter into a termination agreement or unilaterally terminate the grant pursuant to par. (c). The grant termination becomes effective on the date the grantee ceases project work. If the department determines that a grantee has ceased work on the project without good cause, the department may unilaterally

ally terminate the grant pursuant to par. (c) or annul the grant pursuant to par. (d).

(c) Grants may be terminated by the department in accordance with the following procedure:

1. The department shall give 10 days written notice to the grantee of its intent to terminate a grant in whole or in part. Notice shall be served on the grantee personally or by mail, certified mail - return receipt requested.

2. The department shall consult with the grantee prior to termination. Any notice of termination shall be in writing and state the reasons for terminating the grant. Notices of termination shall be served on the grantee personally or by mail, certified mail - return receipt requested.

(d) The department may annul a grant if:

1. There has been substantial nonperformance of the project work by the grantee without good cause;

2. There is substantial evidence the grant was obtained by fraud; or

3. There is substantial evidence of gross abuse or corrupt practices in the administration of the grant or project.

(e) Upon termination, the grantee shall refund or credit to the department that portion of the grant funds paid or owed to the grantee and allocable to the terminated project work, except an amount as may be required to meet commitments which became enforceable prior to the termination. The grantee may not make any new commitments without department approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded under the grant.

(3) **TERMINATION SETTLEMENT COSTS.** (a) The reasonable costs resulting from a termination order, including a previously issued stop-work order on that project work or grant, shall be eligible in negotiating a termination settlement.

(b) The department shall negotiate appropriate termination settlement costs with the grantee. The department shall pay reasonable settlement costs.

(4) **RESPONSIBILITIES OF NONPROFIT CONSERVATION ORGANIZATIONS.** Suspension or termination of a grant or portion of grant under this section may not relieve the grantee of its responsibilities under in ss. NR 51.43 and 51.44.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.56 Enforcement. The following sanctions may be imposed by the department for noncompliance with the provisions of s. 23.092, Stats., this subchapter or any grant agreement entered into or amended in accordance with the provisions of this subchapter:

(1) The grant may be terminated or annulled under s. NR 51.55.

(2) Habitat restoration area project costs directly related to noncompliance may be declared ineligible.

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- (3) Watershed project work may be suspended under s. NR 51.55.
- (4) Other administrative or judicial remedies may be instituted as legally available and appropriate.
- (5) The department may seek recovery of grant payments in whole or in part.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

Subchapter IV — Stream Bank Easement Program

NR 51.60 Purpose. The purpose of this subchapter is to establish the administrative framework for the implementation of the state's stream bank easement program to protect water quality and fish habitat of streams.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.61 Applicability. This subchapter applies to the department program to acquire stream bank easements under the program established in s. 23.094, Stats., and to stream bank easement grants to nonprofit conservation organizations pursuant to s. 23.096, Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.62 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

- (1) "Habitat management practice" means a practice, technique or measure identified in stream bank easement area plans which is determined to be an effective, practicable means of enhancing fish habitat.
- (2) "Landowner" means any individual, partnership, corporation, municipality, town, county or person holding title to or having an interest in land who grants the department a stream bank easement.
- (3) "Stream bank easement area" means an area of at least 66 feet from either side of the stream, whenever possible, delineated by the department, and selected according to the criteria and procedures specified in s. NR 51.63.
- (4) "Stream bank easement area plan" means a written strategy to implement the stream bank easement program on a selected stream.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.63 Stream selection. (1) Streams shall be selected as priority streams by the department using the following 2-step process.

(a) *Initial list.* The department shall prepare an unranked initial list for stream bank easements of potential streams having merit for selection on the basis of need for protection from degradation of water quality caused by agricultural or urban runoff. When it is necessary to update the initial list, counties shall be afforded an opportunity to nominate streams for inclusion.

(b) *Department selection.* The department shall select streams from the initial list based on selection criteria in sub. (2).

(2) *Selection criteria.* The department shall base its selection of priority streams on the following criteria not listed in order of priority other

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than as provided in sub. (3). Counties shall also be afforded an opportunity to nominate priority streams.

(a) The practicability of protecting water quality and the quality and quantity of fish habitat in the stream bank easement area.

(b) The significance of the stream bank easement area to the quality of downstream resources.

(c) Likelihood of landowners within the stream bank easement area to participate in the project.

(d) The immediacy of threat to water quality.

(e) The probability of specified fish species populations to decrease in abundance and water quality to deteriorate further.

(f) The level of protection that will be afforded department projects.

(g) The level of presence of unique or endangered environmental resources.

(3) The department shall give higher priority to those streams that are affected by a federal, state and county administered programs that protect water quality or fish habitat, including but not limited to those specified in s. 23.094 (2) (b), Stats.

(4) The department shall select projects on priority streams that provide the highest level of protection to the values stated in sub. (2).

(5) Final selection of high priority streams shall be announced by the department on a biennial basis or other time frame determined by the department.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.64 Stream bank easement area plans. Stream bank easement area plans shall be prepared by the department for all high priority streams selected by it. The plan shall consist of a resource assessment, a statement of prohibited practices, an evaluation plan and shall address the degree of public access to be afforded.

(1) **RESOURCE ASSESSMENT.** The department shall prepare a resource assessment analyzing the problems or threats to the stream resource under consideration for easements.

(2) **PROHIBITED PRACTICES.** The department, as required under s. 23.094 (3), Stats., shall prepare a statement of prohibited practices, indicating those which are specifically approved according to the following:

(a) Alteration of vegetative cover or other natural features. An exception may be made when necessary to reestablish native grasses or protect vegetative cover deemed essential to prevent erosion.

(b) Planting or production of agricultural crops. An exception may be made when necessary for management of resident wildlife species (i.e. food patches, nesting cover).

(c) Mowing or spraying with chemicals. An exception may be made when necessary to control noxious weeds so designated in ss. 66.955 and 66.96, Stats., and for purple loosestrife control pursuant to s. 23.23, Stats.

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(3) **EVALUATION PLAN.** The department shall prepare as a portion of each stream bank easement area plan an evaluation plan identifying procedures and schedules for determining progress and accomplishment.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.65 Easement construction. (1) Stream bank easements shall be permanent and contain, but not be limited to, the following provisions:

(a) Those practices permitted by the landowner and practices normally prohibited which are exempted from prohibition by the department, pursuant to s. NR 51.64 (2) shall be included.

(b) An agreement by the department to purchase and install fencing which it deems necessary on the subject parcel shall be included.

(c) Easements shall contain a statement of public rights to enter upon and utilize the described lands to the extent necessary for the full enjoyment and use of the rights and privileges granted by the easement consistent with the easement area plan.

(d) A statement of prohibition of public access to specified areas to protect critical habitat or to other areas within the easement where access is denied for public safety shall be included, if needed.

(2) The department shall have the right:

(a) To develop waters within the easement by installation and maintenance of practices identified in the stream bank easement area plan, and

(b) To post signs and posters along the subject lands as are deemed necessary to delineate them for public use.

(3) The landowner reserves the right:

(a) To use the land insofar as the right is not inconsistent with the prescribed public rights, and

(b) To use the water in the stream for domestic purposes including watering cattle and other stock in a manner consistent with the prescribed management practices in the stream bank easement area plan.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.66 Grants to nonprofit conservation organizations. (1) Grants may be made to nonprofit conservation organizations to acquire priority stream bank easements on high priority streams selected according to the criteria established in s. NR 51.63.

(2) Grants to nonprofit conservation organizations shall be consistent with the provisions of subch. I.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

Subchapter V — State Trails

NR 51.70 Purpose. (1) The purpose of this subchapter is to encourage and provide for the establishment of a balanced system of state trails, for use by equestrians, bicyclists, cross-country skiers or hikers as provided in s. 23.175, Stats. Increasing demand for trail-based recreation, and promote the preservation of public access to, travel within, and enjoyment

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and appreciation of the outdoor resources, will be provided by establishing state trails which are:

- (a) Near urban areas or near or within scenic, historic and culturally significant areas,
- (b) Likely to receive significant use, and
- (c) Of more than local significance.

(2) The department may designate state trails which meet the purposes of s. 23.175, Stats., as a part of the state trail system. The department may provide for or assist in the acquisition of state trails by nonprofit conservation organizations, and enter into agreements with nonprofit conservation organizations or local units of government for their development, administration and management.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.71 Applicability. The provisions of this section are applicable to all state trails established under s. 23.175, Stats., and the Ice Age trail as established under ss. 23.17 and 23.293, Stats.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.72 Definitions. In addition to the definitions in s. NR 51.002, the following definitions apply to this subchapter:

- (1) "Ice age trail" means the trail established under s. 23.17, Stats.
- (2) "Local unit of government" means a city, village, town or county.
- (3) "Certified" means the recognition and signing by the national park service of completed segments of the Ice Age trail as provided for in the Ice Age national scenic trail comprehensive plan for management and use, national park service, 1983.
- (4) "North Country trail" means the national scenic trail established under public law 96-199.16, USC 1244 (2) (8).
- (5) "State trail system" means the recreational trails designated by the legislature or the department pursuant to s. NR 51.73.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.73 Designation. (1) The Ahnapee, "400", Bearskin, Buffalo River, Chippewa River, Elroy-Sparta, Glacial Drumlin, Great River, La Crosse River, Military Ridge, Pocatonia, Red Cedar, Sugar River, Gandy Dancer, Tussockia and Wild Goose state park trails are designated as state trails.

- (2) The Ice Age trail as established in 23.293, Stats., is a state trail.

(3) Nonprofit conservation organizations and local units of government may nominate, in writing, additional trails for state trail designation. Nominations shall document that nominated trails meet the purposes of this subchapter, and provide recreational opportunities for equestrians, bicyclists, cross country skiers or hikers, and that the trail is:

- (a) Reasonably accessible to urban areas, or

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(b) Within or in close proximity to areas of significant natural beauty, historical or cultural significance, state or national parks, forests or recreational areas, or provides connections to existing state trails, and

(c) Of a width sufficient to provide the purposes for which acquired, generally not less than 33 feet wide in rural areas and not less than 10 feet wide in urban areas, nor have more than 25 acres per mile averaged over a 5 mile distance.

(d) Likely to receive significant use as determined by the state comprehensive outdoor recreation plan, or similar study, and

(e) There is a reasonable expectation of completing the necessary land acquisition and development, and of successful management and operation.

(4) Upon finding that the conditions in sub. (3) are met, the department may designate the trail as a state trail.

(5) The department may designate state trails on its own properties if they meet the criteria in sub. (3).

(6) The department may remove a state trail, except the Ice Age trail, from state trail designation upon finding that it is not being reasonably operated and maintained by the owner or operator, or is not reasonably likely to meet the purpose of the state trail system.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.74 Grants for state trails. (1) The department may make grants to nonprofit conservation organizations to acquire lands for a state trail if the proposed state trail is first designated by the legislature or the department under s. NR 51.73.

(2) If all conditions of s. NR 51.73 are met, the department shall give higher priority to granting applications for funding to those trails that:

(a) Provide connections between other state trails,

(b) Are of a length sufficient to provide at least one day's recreational experience,

(c) Provide connections to resource areas of statewide significance or areas of outstanding natural scenery,

(d) Provide for more than one use, or

(e) Contribute to a geographically balanced system of trails.

(3) The department may allocate 50% annually of the funding under s. 23.175, Stats., to nonprofit conservation organizations. Beginning on January 1 of each year, the department may use any uncommitted balance for development of department-owned state trails.

(4) The department may grant funds under s. 23.175, Stats., to nonprofit conservation organizations for the acquisition of scenic easements on lands within state trail acquisition areas.

(5) In addition to the provisions in sub. (1), the department may acquire lands for the Ice Age trail out of monies appropriated under s. 20.866 (2), Stats., and dedicate them under the provisions of s. 23.293, Stats. The department may acquire lands for the Ice Age trail as pro-

vided for in s. 23.293, Stats., only in project areas approved by the natural resources board.

(6) (a) The department may expend funds received under the provisions of s. 20.370 (1) (kb), Stats., for the purchase of equipment and materials for the maintenance of the Ice Age trail. Purchase may include leasing under the provisions of s. 16.754 (1) (d), Stats.

(b) Portions of the Ice Age trail eligible for funding under this subsection are those under the ownership and management of the department, or those dedicated to the department under the provisions of s. 23.293, Stats., and managed by another party under the provisions of a management contract with the department, or recognized by the department and certified by the national park service.

(c) Labor is not a qualifying maintenance expense.

(d) The department may expend the funds as grants. Nonprofit conservation organizations or local units of government managing portions of the Ice Age trail under the provisions of par. (b) may nominate maintenance projects by January 1, 1991 and by May 1 of 1991 and each year thereafter, on the appropriate department form, and include a check for one-half the cost along with a cost estimate and at least 2 bids to support the cost estimate. If the grant proposal is approved, the department shall cash the applicant's check, and write a check to the applicant for the full amount of the grant. If the project is not approved, or if funds are no longer available, the applicant's check shall be returned.

Note: The appropriate department form may be obtained from the Bureau of Parks and Recreation, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(e) If the provisions of pars. (b) to (d) are met, the department shall give priority to those portions of the Ice Age trail providing significant public use, or where the maintenance expenditure will protect the resource or public safety or comfort, or those portions under the ownership of a local unit of government or a nonprofit conservation organization meeting the requirements of s. NR 51.03 and managed by a local unit of government or a nonprofit conservation organization and where the nonprofit conservation organization has a recorded interest in the land.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 51.75 Management contracts under s. 23.096, Stats. Contracts between the department and nonprofit conservation organizations for state trail acquisition and management shall, in addition to the requirements in subch. I, require the nonprofit conservation organization to:

- (1) Acquire the lands for a trail, where applicable.
- (2) Specify which uses shall be permitted and managed for,
- (3) Construct, maintain, operate and repair as necessary a recreational trail for the purpose of horseback riding, bicycling, cross-country skiing, hiking or other compatible uses as authorized by the department.
- (4) Prohibit hunting on the state trail unless specifically authorized by the department.

(5) Keep the state trail open for public use after completion of the land acquisition and development that would allow the state trail to be used. If the state trail ever ceases to be used for state trail purposes, then all

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rights shall revert to the department without necessity of reentry. The department has no obligation to develop and operate the trail and all permanent improvements made to the trail by the nonprofit conservation organization or its agent shall become the property of the department.

(6) Open the state trail to the general public, subject to reasonable rules and regulations, as the managing cooperator deems necessary for the management and operation of the state trail and as approved in writing by the department.

(7) Develop the state trail to conform with department state trail standards (department Manual Code 2540.5) or other reasonable standards as approved by the department.

(8) Assume the responsibility for all fencing, signing and similar activities which are related to the development, maintenance and operation of the state trail.

(9) Prepare all necessary plans, specifications and environmental reports, including citizen participation, for the state trail, and submit them to the department for written approval prior to the commencement of any development or improvement. Any changes of use or development of the state trail shall be performed in accordance with general plans submitted to and approved by the department.

(10) Provide the necessary maintenance including but not limited to, grading, landscaping and controlling vegetative growth on the state trail and any parking areas or use areas to keep the property in a good state of useability and sightliness.

(11) Provide or arrange for the necessary enforcement and security of the state trail to ensure efficient, safe use, and to preserve and protect public health, safety and welfare.

(12) Provide liability insurance if requested by the department.

(13) If the trail is also a part of the Ice Age trail or the North Country trail, the managing cooperator shall, upon completion of the trail development, apply to the national park service for certification as a component of the Ice Age national scenic trail, or North Country national scenic trail and sign the trail accordingly.

(14) Permit the department to inspect the trail to ensure compliance with the provisions of the contract.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.