



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ENHANCING RECREATIONAL TRAILS FOR NON-MOTORIZED USE

FROM: Don Salm, Senior Staff Attorney

RE: State Statutes and Administrative Rules Related to Trails

DATE: August 4, 2008

The Joint Legislative Council created the Special Committee on Enhancing Recreational Trails for Non-Motorized Use and directed it to review all of the following:

1. Safety issues regarding conflicts between motorized and non-motorized uses.
2. Ways to avoid conflicts among trail uses.
3. Education programs to provide information about how to avoid trail use conflicts.
4. Increased enforcement by Department of Natural Resources (DNR) wardens, regarding safety, noise, and operational issues.
5. Availability of private land for non-motorized recreation and address ways to increase that availability.

This Memo provides background information for the study committee to use in discussing its assignment, focusing on the statutes and administrative rules that relate to state trails and to the acquisition, development, and management of public use trails by state agencies, primarily DNR. Local governmental units (counties, towns, villages, and cities) have a substantial role to play in trail acquisition, development, and management, and this Memo provides information summarizing the more limited number of statutes and administrative rules that relate to local trails.

TRAIL ACQUISITION, DEVELOPMENT, AND MANAGEMENT

Duties and Powers of DNR and Other State Agencies

1. Statutes: s. 23.175, Stats. [State Trails]

The DNR has the primary responsibility to acquire and develop the system of state trails at the state level, and to provide assistance for trail acquisition and development at the local level. The core duties of the DNR with respect to trails are specified in s. 23.175, Stats., and related administrative rules (see item 2. below). The statutory duties of the DNR are as follows:

23.175 State Trails. (1) DEFINITIONS. In this section:

- (a) "Political subdivision" means a city, village, town or county.
- (b) "State agency" means any office, department, agency, institution of higher education, association, society or other body in state government....

(2) DUTIES OF THE DEPARTMENT. The department shall:

- (a) Designate a system of state trails as part of the state park system for use by equestrians, bicyclists, riders of electric personal assistive mobility devices, cross-country skiers or hikers. The state trail system shall be named the "Aldo Leopold Legacy Trail System."
- (b) Encourage other state agencies, political subdivisions, organizations and individuals to participate in planning, establishing, developing and maintaining state trails.
- (c) Seek the advice of and consult with the state trails council regarding the planning, acquisition, development and management of state trails.
- (d) Provide information to any person involved in planning, establishing, developing or maintaining state trails regarding trail design, signs and any other aspects of the trails in which uniformity is desirable.
- (e) Encourage political subdivisions to develop land use plans that preserve rights-of-way for the future establishment of trails.
- (f) Prepare a trail management plan.
- (g) Coordinate the activities of all state agencies that own property that includes any existing or planned portion of a state trail and maintain regular contact with those state agencies.
- (h) Identify portions of state trails that are proposed to be located on property owned by state agencies.

(i) Coordinate its planning efforts relating to the location, establishment, development and maintenance of state trails with the efforts of statewide, nonprofit organizations established for the purpose of planning, establishing, developing and maintaining trails.

(j) Establish priorities for trail acquisition and development with a higher priority for trails that establish connections between existing trails.

(k) Establish the state trail cleanup program under sub. (5m).

(3) POWERS OF THE DEPARTMENT. The department may:

(a) Develop and construct state trails on lands under its ownership.

...

(5) STATE LAND. (a) A state agency may not refuse to permit the department to construct a portion of a state trail designated under sub. (2) on property owned by the state agency if the state agency determines that the trail does not conflict with other existing or planned uses of the property.

(b) Each state agency shall consider state trails in the long-range plans for property owned by the state agency.

(5m) STATE TRAIL CLEANUP PROGRAM. (a) The department shall establish a state trail cleanup program to encourage community and youth organizations and other persons to volunteer for projects to remove debris and litter along designated portions of state trails.

...

(6) OTHER TRAILS. This section does not limit the authority of the department to designate other trails under s. 23.115 [authority for DNR to designate trails on property that it owns].

This statute also contains several technical provisions related to authorization to expend funds and details regarding the trail cleanup program that are omitted from the statutory text above.

The DNR is directed in a separate statute to “encourage and supervise” a trail system for all-terrain vehicles (ATVs). The statute also authorizes a town, village, city, county, or DNR to designate corridors on land that it owns or controls for use as ATV trails. [s. 23.33 (8), Stats.]

2. DNR Administrative Rules: ss. NR 51.70 to NR 51.75, Wis. Adm. Code [Establishment of State Trails]

The main DNR Wisconsin Administrative Code provisions implementing s. 23.175, Stats. (above), are found in subch. VIII [State Trails] of ch. NR 51, Wis. Adm. Code, summarized below:

Section NR 51.70 (1) [Purpose of Rules] The purpose of the administrative rule 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. The rule states that increasing demand for trail-based recreation, and promoting the preservation of public access to, travel within, and enjoyment 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.

Section NR 51.70 (2) [Designation of State Trails] The rule provides that the DNR: (a) may designate state trails which meet the purposes of s. 23.175, Stats., as a part of the state trail system; and (b) may provide for or assist in the acquisition of state trails by nonprofit conservation organizations, and enter into agreements with nonprofit conservation organizations or governmental units for their development, administration, and management.

The remaining provisions of subch. VIII are as follows:

Section NR 51.71 [Applicability of Rules] The rules on state trails 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.

Section NR 51.73 [Designation of State Trails] Specifies that in addition to trails identified in the rule, nonprofit conservation organizations and governmental units may nominate, in writing, additional trails for state trail designation, and that such nominations must document that: (a) nominated trails meet the purposes of the administrative rules and provide recreational opportunities for equestrians, bicyclists, cross country skiers, or hikers; and (b) the trail meets all of the following:

1. Is reasonably accessible to urban areas, **or** is 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.
2. Is 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.
3. Is likely to receive significant use as determined by the state comprehensive outdoor recreation plan, or similar study.
4. Is a reasonable expectation of completing the necessary land acquisition and development, and of successful management and operation.

Specifies that upon finding that these conditions are met, the DNR may designate the trail as a state trail. The DNR may designate state trails on its own properties if they meet these same criteria.

Specifies that DNR 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.

Section NR 51.74 [Grants for State Trails] This part of the Rule:

- Specifies that the DNR may make grants to nonprofit conservation organizations [NCOs] to acquire lands for a state trail if the proposed state trail is first designated by the Legislature or DNR under s. NR 51.73.
- Provides that if all conditions of s. NR 51.73 are met, DNR must give higher priority to projects for those trails that meet certain specified criteria.
- Specifies that DNR may grant funds under s. 23.175, Stats., to NCOs for the acquisition of scenic easements on lands that provide exceptional scenic value adjacent to or in the vicinity of state trails.
- Contains provisions related to acquiring lands for the Ice Age Trail, expending funds for the purchase of equipment and materials for the maintenance of the Ice Age Trail, and specifying portions of the Ice Age Trail that are eligible for funding under this provision.
- Contains provisions regarding applications for state and federal permits necessary to implement a project, the grant agreement, and DNR's ability to seek reimbursement of all or part of the state's share if an NCO fails to fulfill any terms of the grant agreement.

Section NR 51.75 [Grant Contracts] Specifies that grant contracts between the DNR and NCOs for state trail acquisition and management must, in addition to the general requirements in subch. II of ch. NR 51, require the NCO to meet additional conditions and criteria.

Land Acquisition by DNR

The DNR is given broad authority to acquire land for various enumerated purposes. The DNR may acquire the lands by purchase, lease, or "agreement" and may receive the lands by gifts or bequests. The statute enumerates purposes for which DNR may acquire lands, including for "state trails." [s. 23.09 (2) (d) 12., Stats.]

The DNR, by administrative rule, has adopted a chapter of the administrative code, ch. NR 1, that establishes Natural Resources Board policies. One provision in ch. NR 1 establishes the board's policies for acquisition of recreational land. These policies require DNR to place "a principal emphasis" on acquiring lands in the more heavily populated areas of the state. The policy also establishes an order of priority for acquiring recreational land in new acquisition projects, commencing with a highest priority for acquiring land to protect threatened and rare natural resources, to protect biological diversity, and to protect and restore critical fish and wildlife habitat. This is the first of six priorities. The fourth priority in descending order is "lands to accommodate broad, natural resource-based outdoor recreation and state recreational trails." The policy also requires that all new projects be subject to Natural Resources Board approval. [s. NR 1.40, Wis. Adm. Code.]

MASTER PLANNING

The DNR undertakes a comprehensive planning process for each of the properties that it owns. This plan is known as a "master plan" for the property. The process for master planning is set forth in

ch. NR 44, Wis. Adm. Code. The master plan for each property is intended to establish the goals and objectives for that property and the specific provisions for development and management of the property. The master planning process also emphasizes involvement of interested parties in the development of master plans.

The administrative rule specifies: (1) the procedures to be followed by DNR in developing a master plan and the information to be considered by the DNR; and (2) the required content for a master plan. One of the key provisions of the master plan process is the land management classification, which involves identifying various areas within a particular property and developing management objectives for each of the areas. [s. NR 44.06, Wis. Adm. Code.]

The master planning process further defines areas within a DNR property according to the “recreational use setting subclassification.” The rule identifies four different recreational settings that each provide different types of recreational experiences. The recreational settings subclassifications range from “Type 1,” which is intended to provide a “remote, wild area,” to a “Type 4” setting, which is intended to provide “opportunities for intensive recreational use.” In a Type 1 recreational use setting, trails are primitive and minimally developed. In a Type 4 recreational use setting, there are no limits on recreational trails although the master plan must specify the type of trail and authorized use. A Type 2 recreational setting has primarily primitive trails but also some lightly or moderately developed trails. A Type 3 recreational use setting allows a greater degree of trail development, as specified in the master plan. [s. NR 44.07, Wis. Adm. Code.]

The statutes and administrative code do not specify any master planning process for local units of government.

USES OF STATE-OWNED PUBLIC LAND

Under Natural Resources Board policy, all DNR land is open for “traditional outdoor recreational uses,” which is described in the administrative rules to include hunting, fishing, trapping, walking, nature study, and berry picking. In addition, the board policy allows other types of recreational uses, which are listed in the rule as including camping, bicycling, equestrian uses, field trails, and snowmobiling or other motorized activities, as specifically authorized in the master plan for the property. [s. NR 1.61, Wis. Adm. Code.]

The DNR is directed by statute to designate trails, campgrounds, picnic areas, and other “special use areas” on property that it controls. The DNR is directed also to indicate these special use areas, such as trails, on maps available at the district office, on signs at the office for the property, or on signs placed on the trails and other special use areas. [s. 23.115, Stats.]

The Department of Transportation (DOT) is authorized by statute to incorporate trails into a highway improvement project or to establish trails as a separate highway project. The trails may include a portion of a hiking trail, cross-country ski trail, bridle trail, or bicycle trail and the trail may be under the management of a state agency, local unit of government, or nonprofit organization. The DOT is authorized to include facilities for a safe crossing of the highway. [s. 84.06 (11), Stats.]

The University of Wisconsin has administrative rules for use of land that it owns. The use of snowmobiles, ATVs, off-road vehicles, and horses is prohibited unless specifically approved. The

approval may include designation of times and places where the activity is allowed. [s. UWS 18.06 (19), Wis. Adm. Code.]

TRAIL ADVISORY GROUPS

The statutes establish two councils that advise DNR in matters related to trails. A “council” under the statutes is established to advise the head of the state agency in which it is created. The council functions on a continuing basis to study issues within its jurisdiction and to recommend solutions and policy alternatives.

The State Trails Council, appointed by the Governor, consists of nine members who are knowledgeable in various recreational uses of trails. The DNR is directed to seek the council’s advice and consult with it regarding “planning, acquisition, development, and management of state trails.” [ss. 15.347 (16) and 23.175 (2) (c), Stats.]

The Snowmobile Recreational Council consists of 15 members that must be selected to provide geographical diversity within the state. Members are appointed by the Governor and confirmed by the Senate. The council is directed to undertake studies and make recommendations not only to the DNR but also to the Legislature, the Governor, and DOT on matters related to snowmobiles and snowmobiling. [ss. 15.347 (7) and 350.14, Stats.]

The DNR has a program for aids to counties for snowmobile purposes, but without the directive for DNR to encourage and supervise a system of snowmobile trails as provided for ATVs. [ss. 23.09 (26) and 23.33 (8), Stats.]

TRAIL FUNDING

Acquisition, development, operation, and maintenance costs for state and local recreational trails are funded through a variety of sources including taxes, user fees, and a number of state or federal grant programs and appropriations.

The major funding mechanisms for Wisconsin state recreational trails are described in this part of the Memo.¹

Trails for Non-Motorized Activities

State recreational trails for non-motorized activities are generally funded through the state parks account of the Conservation Fund. The primary revenue sources for the parks account include state park motor vehicle admission fees, campsite fees, and trail user fees.

A state park admission fee is generally charged to all motor vehicles entering state parks.² State park motor vehicle admission fees are \$7 (resident) and \$10 (nonresident) for daily admission, and \$25

¹ For more information on state trail funding as a portion of the much larger State Conservation Fund, please consult Wisconsin Legislative Fiscal Bureau Informational Paper 59, titled *Conservation Fund*, and published January 2007.

(resident) and \$35 (nonresident) for an annual admission sticker. State park campsite fees are charged for the use of campsites in state parks and forests. In general, fees vary from \$12 to \$15 per night for resident campers to \$14 to \$17 for nonresident campers. A campsite reservation fee is \$10.

A state trail pass is required for all individuals age 16 or older who wish to use certain designated trails for biking, horseback riding, in-line skating, or cross-country skiing. The fee for the state trail pass is currently \$4 daily or \$20 annually. A trail pass is generally not required for walking or hiking on state trails.

Local trails for non-motorized activities may be funded through user fees collected cooperatively through the state trail fee program or through locally established user fees. Local trails utilizing the cooperative state trail fee program must submit a portion of the fees (approximately 30%) to DNR and may use the retained portion for operation of the trail. Alternatively, a local government operator may elect to establish its own fee for trail use.

Trail expenditures from the state parks account are largely used for the operation and maintenance staff and materials for state recreation system trails.

Snowmobile Trails

Snowmobile fuel tax revenue is the primary source of funding for snowmobile trails. This revenue is deposited in the “snowmobile account,” which is one of a number of accounts in DNR’s Conservation Fund. The snowmobile fuel tax is determined by a formula that consists of the annual total of the amount of motor fuel tax assessed on 50 gallons of gasoline as of the last day of March of the prior fiscal year multiplied by the number of registered snowmobiles as of the same date, with that result multiplied by 1.4.

The second largest source of revenue for the snowmobile account is snowmobile registration fees. A fee of \$30 is charged for each snowmobile registered for general use in Wisconsin. The registration is valid for two years. There are alternative fees for antique snowmobiles and those operated for public or commercial use. Wisconsin registration is not required for snowmobiles registered in other states or countries if they are in this state for 15 consecutive days or less. However, nonresident snowmobiles must display a nonresident snowmobile trail pass when utilizing public snowmobile trails in Wisconsin. Nonresident snowmobile trail passes cost \$18 per snowmobile.

Additional snowmobile account funding is derived from snowmobile registration transfer fees, snowmobile safety course instruction fees, and certain snowmobile sales tax receipts.

Expenditures from the snowmobile account include grants to local government units for the operation, maintenance, development, acquisition of trails, and law enforcement in support of the 18,540 miles of interconnecting snowmobile trails throughout the state.

² No admission fees are charged to any vehicle transporting an individual with a senior citizen recreation card or conservation patron license within a state park.

ATV Trails

The primary source of revenue for ATV trails is derived from ATV registrations. A person may not operate an ATV in Wisconsin unless it is registered with DNR. ATV registration fees are \$30 for a two-year public operation permit or \$15 for a private operation permit. The private operation permit allows operation on private property only and is valid until the ATV ownership is transferred. An annual nonresident trail pass is required for ATVs not registered in Wisconsin and used on Wisconsin's public trails. The nonresident trail pass costs \$18.

The second largest source of revenue for ATV trails is derived from the ATV fuel tax. The ATV fuel tax revenue consists of the annual total of registered ATVs as of the last day of February of the prior year multiplied by the amount of motor fuel tax assessed on 25 gallons of gasoline as of the same date.³

Additional ATV trail funding is derived from ATV safety certificate program fees and certain ATV sales tax receipts.

Expenditures from the ATV account include state and local aids for trail development and maintenance as well as law enforcement, safety, and educational projects related to ATV trail use.⁴

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³For example, if there were 205,000 registered snowmobiles as of February 28, 2006, and based on the then current motor fuel tax rate of 30.9 cents per gallon, the 2007 appropriation would equal \$1,583,625. (205,000 ATVs x 25 gallons per ATV x \$0.309 = \$1,583,625.)

⁴ For more information on acquisition and development funding sources, both public and private, please refer to DNR publication PUB-PR-464 2003, titled *Funding for Wisconsin Trails: a Catalog of Suggested Funding Sources for Trail Projects*, included in the information distributed with this Memo.