

SUBJECT: Request adoption of board order WM-04-08 relating to hunting on State Ice Age Trail areas.

FOR: AUGUST, 2010 BOARD MEETING

TO BE PRESENTED BY: Peter Biermeier (Parks & Recreation), Scott Loomans (Wildlife Management)

SUMMARY:

This proposal establishes a procedure to determine when hunting may be allowed on department-owned property in the State Ice Age Trail area system. Upon acquisition and during master planning, decisions about when to allow hunting will be made after considering the same factors that are used to evaluate the compatibility of hunting or other nature based outdoor recreational activities on other lands purchased under the authority of the stewardship program.

Under this proposal, hunting could be allowed during all state seasons for deer, elk, turkeys and small game. The rule also establishes options for allowing more limited hunting opportunities when necessary to maintain the primary use of Ice Age Trail area property as a footpath for pedestrian use providing premier hiking and backpacking experiences. The rule does not require that hunting be allowed.

The Ice Age Trail is a partnership of state and federal government, non-profit organizations, and volunteers managing 600 miles of national trail.

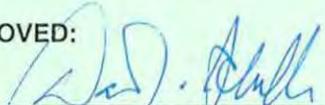
Department owned Ice Age Trail areas are part of the state park system where hunting is prohibited unless specifically authorized by rule. This rulemaking is needed to allow hunting at Ice Age Trail areas without the need for individual rulemaking for each property.

RECOMMENDATION: Request adoption of board order WM-04-08 relating to hunting on State Ice Age Trail areas.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

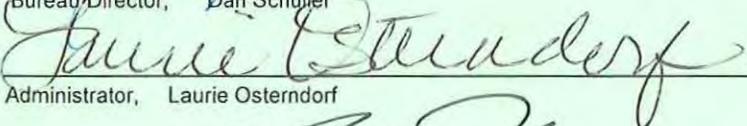
APPROVED:



Bureau Director, Dan Schuller

7-19-10

Date



Administrator, Laurie Osterndorf

7/20/10

Date



Secretary, Matt Frank

7-29-10

Date

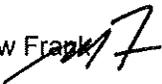
cc: Laurie J. Ross - AD/8
Tom Hauge WM/6

Peter Biermeier PR/6 - 6
Scott Loomans WM/6 - 6

Dan Schuller PR/6

DATE: July 12, 2010

TO: Natural Resources Board Members

FROM: Matthew Frank 

SUBJECT: Adoption of Board Order WM-04-08, modifications to chs. NR 10 and 45 related to hunting on State Ice Age trail areas

I am requesting adoption of WM-04-08, modifications to Chapters NR 10 and 45 Wis. Adm. Code relating to establishing general rule authority to allow hunting on State Ice Age trail areas that are owned by the department.

Background

The Ice Age trail is a national and state scenic trail located entirely in Wisconsin. The primary purpose of Ice Age Trail area properties is to be a footpath for pedestrian use.

The trail tells the story of the last ice age by preserving and interpreting Wisconsin's unique glacial features by means of a footpath. The trail and the state park system as a whole are established to provide recreation, preserve scenic and historical values, and for reasons of geological interest. When the trail is complete, it will span for more than 1000 miles across the state. The Wisconsin State Park System and its partners are continually working to open up new segments with almost 600 miles of trail open now.

State statutes and congressional authorization establish that planning, location, development and maintenance of the Ice Age Trail are conducted in cooperation with the National Park Service and the Ice Age Trail Alliance, a statewide nonprofit organization which is established for the same purposes. Partnerships also exist with other state agencies, local units of government, and private individuals for the location and maintenance of trail segments. Most properties are purchased with a mix of state stewardship dollars and federal money through the National Park Service.

There are approximately 70 individual properties which are identified as State Ice Age trail areas. Properties range in size from one acre to 1,200 acres with an average size of approximately 80 acres. The department owns many parcels outright but in some cases has purchased easements from private landowners.

A variety of hunting opportunities are currently available on certain State Ice Age trail area properties. Some properties are managed jointly with an adjacent State Wildlife Area, by wildlife management staff, and allow the full range of hunting seasons. Hunting is restricted on others for a variety of reasons such as their proximity to urban development, small size, or because they are managed as State Parks by parks staff.

Ice Age trail areas are both state parks and part of the National Scenic Trail System. The authority proposed in this rule is necessary in order for hunting to continue. At traditional state park properties each hunting opportunity is authorized individually by rule and this process takes at least one year. The department is actively acquiring Ice Age trail areas, some of which will be suitable for hunting or are being hunted, and some people have expressed a desire to allow that activity to continue upon purchase. This rule change will permit the department and board to be very responsive in allowing hunting on Ice Age trail areas where it does not detract from a property's primary purpose.

Rule Summary

Property which is purchased as part of the Ice Age trail and associated areas falls under the definition of state parks (Appendix A). Under s. 29.089 Stats., hunting is prohibited in state parks unless authorized by rule. This rule proposal allows the department to authorize hunting on state-owned portions of State Ice Age trail areas without going through individual rulemaking for each property.

This proposal directs the department to consider several factors when deciding to allow hunting and which opportunities to provide at an Ice Age Trail area property upon purchase. The same criteria will be considered again when hunting is considered as part of the master planning process. These criteria were initially developed by the department and a diverse group of stakeholders for ch. NR 52, Wis. Admin. Code, and relate to determining when a nature based outdoor recreation activity will not be allowed on lands acquired with stewardship funds.

Lands purchased for state parks are not subject to the statutory access requirements of other stewardship lands under s. 23.0916, Stats. The issues regarding allowing an activity while preserving the primary purpose and preventing user conflict are similar, however. Using these criteria to evaluate when hunting will be allowed on the Ice Age Trail areas takes advantage of the extensive public process and significant deliberation that went into its development. The factors to be considered are:

- The primary purpose for the project.
- User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
- The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement.
- The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination.
- The mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

This proposal creates several options for providing hunting opportunities where it is determined that hunting will be allowed. During the period prior to master planning for a property, one of the following options may be selected to allow hunting for deer, elk, turkeys or small game:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Deer hunting is allowed during all seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Archery deer hunting is allowed during the period beginning on November 1 and continuing through the remainder of the statewide archery deer season.
- Hunting for any species for which a season is open during the period beginning on November 1 and ending on March 31.

Under the proposal, hunting must be re-evaluated as part of a property master plan. The master planning process established in ch. NR 44, Wis. Admin. Code is an opportunity for more significant public involvement and professional evaluation of the management of recreational use for a property. Master plans must be approved and may be amended by the Natural Resources Board under ch. NR 44.04(3) Wis. Admin. Code. Plans are re-evaluated and may be amended. As part of the master planning process, a prohibition of hunting could be re-established, hunting could be prohibited, or it could be allowed. The options for allowing hunting for deer, elk, turkeys and small game which may be adopted as part of a property master plan are:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Hunting may be limited to the period beginning on November 1 and continuing through March 31.
- Deer hunting may be allowed but limited to seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Hunting may be limited to the use of archery gear only during seasons established in s. NR 10.01 except that it may only occur during the period beginning on November 1 and continuing through March 31.
- Hunting may be limited to portions of a property by posted notice.
- Hunting may be prohibited on the travelled portion of the trail.
- Hunting may be prohibited on the travelled portion of the trail and within 50 feet of the center of the travelled portion.
- Deer hunting may be allowed during the four day October firearm seasons established in s. NR10.01(3)(e) and (et).
- Hunting may be allowed during the first three spring turkey hunting periods in s. NR 10.01(2)(f).

The selection of a liberal hunting season option is anticipated in situations where little or no user conflict is anticipated and there will be little need to separate property users by time. In order to preserve the primary use of Ice Age Trail Area properties, it may be necessary to separate users by providing some of the more limited hunting opportunities listed above. For example, it would be possible immediately upon purchase or after master planning to allow hunting but limit it to the firearm and archery deer hunting that occurs beginning with the traditional November firearm deer season and continuing through the close of the late archery season. Limiting hunting to only those seasons occurring during the period beginning on November 1 and continuing through March 31 is another option which could be selected to prevent user conflict. Other options which could only be selected through the master planning process include allowing firearm deer hunting during the October season or limiting hunting to archery-only for all species. Allowing turkey hunting during the first three of the six spring turkey hunting periods is consistent with management of many traditional state park properties. It may ultimately be possible to offer hunting opportunities on more properties by providing as many options as possible rather than forcing managers to choose between recommending all hunting or none.

This rule also provides flexibility to avoid user conflict by separating property users by space. Under the proposal, portions of individual properties could be closed to hunting immediately upon purchase or as part of a property's master plan. This flexibility is consistent with current practice in traditional state parks, where hunting is not allowed in developed areas such as campgrounds.

The Ice Age trail traverses other department properties that are managed as public hunting or fishing grounds or for some other purpose. This rule would not change the types of activities that are currently allowed on those properties or on the trail where it traverses that property.

It is currently illegal to possess a firearm, air gun or bow in state parks unless the gun is unloaded and enclosed in a carrying case or a person is engaged in a legal hunting activity at that park. This proposal establishes an exemption from that requirement for hunters who are crossing the Ice Age trail where hunting is not allowed on the travelled portion of the trail but is allowed adjacent to the trail. This convenience will be afforded to anyone who wants to cross the trail, whether from adjacent public or private lands where hunting is allowed.

In implementation of this rule, the department believes that it will be important to provide sufficient notice of possible hunting decisions in advance of the property acquisition process. The department will evaluate providing individual notification over the internet, or through other means, to any person requesting to receive a notice of a proposal to allow or prohibit hunting on department lands that are proposed to be acquired as part of the State Ice Age Trail area. The department will also evaluate the feasibility of providing a news release or other notice of intended actions in a way that is consistent with how notices under ch. NR 150 Wis. Admin. Code are issued for acquisitions of stewardship lands following ch. NR 52 requirements. This proposed rule change does not require hunting decisions to be addressed immediately at time of acquisition, but rather anytime prior to master planning. Should the department recommend, when necessary to complete transactions in a timely way,

and the Natural Resources Board accept, hunting decisions may be deferred at time of acquisition until adequate public input can be noticed and received. It would be the Department's intent that this deferral would not be for a period beyond six months from the date of acquisition.

Modifications as a Result of Public Hearings

The department is proposing significant modifications as a result of hearings. The first is the establishment of a statement of purpose at the request of people who wished to highlight that the primary purpose of the Ice Age Trail is to be a footpath for pedestrian use.

In the initial proposal on which the first three hearings were held, three criteria were to be considered when developing a recommendation to prohibit hunting on all or a portion of a property. Under this proposal, department staff will consider a set of criteria before making a recommendation to allow hunting. The list of factors to be considered has been expanded and is the same as those established for evaluating the prohibition of a nature based outdoor recreation activity on other stewardship lands. This proposal is more consistent with management of traditional state park properties because there is not a presumption that hunting is automatically allowed upon purchase.

Allowing hunting during all normal seasons was the only option under the initial proposal. Under this proposal, hunting could be allowed during all normal seasons but an extensive list of alternatives is established. The additional options create opportunities to prevent user conflict and maintain the primary purpose of the trail by separating users by time and/or location on the property.

Where hunting on the travelled portion of the trail is not allowed, this and the earlier proposal both allowed a person to cross the trail with an unloaded gun. In this version, a gun does not need to be unloaded when the trail is crossed by the shortest route possible. The department received a comment suggesting that a requirement to unload a gun such as a lever action rifle at trailside did not improve safety.

Public Involvement

Public Hearings

Hearings were held in three locations during the third and fourth weeks in April, 2008. The hearing locations were; DNR South Central Region Headquarters in Fitchburg, a video conference between the department's central office and UW Marathon County, and Havenwoods State Forest in Milwaukee. In July, 2010 an additional hearing was held in Fitchburg.

Table 1. Summary of Hearings on WM-04-08.

	Speaking in support	Speaking in opposition	Information only
Fitchburg	1	4	
Wausau	1	1	
Milwaukee	1	4	1
Fitchburg (2010)	2	3	1

The level of opposition to allowing hunting on Ice Age Trail areas varied among people who said they were generally opposed to the rule. Comments ranged from, "hiking and hunting are not compatible" to support for hunting in "appropriate areas", "when hikers are not present", "if the size of the property is appropriate", or "after study and planning".

People who generally supported the rule also supported hunting on these properties but at some times qualified their comments by saying that safety should be considered.

Written Comments

Fifty-two people submitted letters or emails during the comment periods. Additional written testimony was also provided at the public hearings.

Thirty-nine people commented that they had concerns, strong concerns, or were completely opposed to allowing hunting on State Ice Age trail areas. The most common reason for their concerns was that they believe hunting and trapping (trapping would not be authorized in this rule) are not compatible with the primary purpose of the trail which is hiking.

Thirteen people submitted comments in support of allowing hunting (and trapping) along the Ice Age Trail. Nearly all comments mentioned Stewardship Program funding and suggested that those lands should be open to hunting in most situations.

Response to Public Comments

Following is a sample of opinions expressed at the hearings and through written comments and the department's response.

This rule does not assure that the primary use of the Ice Age Trail continues to be as a footpath.

In order to provide further assurance that management will continue to be primarily for foot travel, the department has modified this proposal to restate language from Ch. NR 1.29 in the section which is created by this proposal.

Ch. NR 1.29 establishes that the Ice Age trail shall be managed primarily as a footpath for pedestrian use.

Another change that has been proposed following the hearings is that the presumption will be that a property is closed to hunting unless action has been taken upon purchase or through the master planning process to make it open. This rule will not require or encourage management practices such as stocking or improving habitat specifically for game species.

The proposed rules do not provide a reasonable method for determining when public hunting should be allowed on an Ice Age Trail area.

The rule now provides an extensive list of factors to consider when decisions to allow hunting are made. These factors shall be considered when initial decisions are made upon purchase and again when master planning is done for a property. The department shall consider the; 1) primary purpose for the project, 2) User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed, 3) the complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement, 4) the size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination, 5) the mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

Hunting and hiking are generally incompatible.

The 2005-2010 Wisconsin Statewide Comprehensive Outdoor Recreation Plan prepared by the department shows that, while hiking and hunting are activities that are competitive, their level of compatibility is not perceived as rising to the higher level of being antagonistic. This proposal recognizes the value based conflict identified during the hearing process and addresses it by creating opportunities to separate hunters from hikers by time, space, or both in situations where that may be needed.

There should be at least a few areas closed to hunting, state parks no longer guarantee a non-hunting experience.

This rule is not likely to change previous policy related to allowing hunting on Ice Age Trail area properties. Hunting has occurred prior to the understanding that they are in fact parks. Hunting may occur on future purchases but will not be allowed in all situations.

DNR should develop a practical planning process of land management on the trail.

The department believes it has done that by establishing the ability to separate hunters and hikers by time and space where necessary, using codified criteria, and allowing these decisions to be made both upon purchase and evaluated again during the more intensive master planning process.

There should be a 300 foot buffer on each side of the Ice Age Trail.

There is not a widely accepted minimum "buffer" distance for hunting to be separated from a trail. A no hunting zone that would effectively be 200 yards would be impractical on some properties because the trail will not be identifiable at that distance. Since such a buffer has not been needed and would not be possible where the trail traverses private or other government lands, it may not be needed in this situation. The option to establish a 50' buffer was selected because it is consistent with rules prohibiting the discharge of firearms near a public roadway.

These lands are in the heart of the most populated areas of Wisconsin and a requirement to hunt smaller tracts that are needed to complete the trail will have a chilling potential to sellers.

There is not a requirement to allow hunting on Ice Age Trail area properties in this rule. The properties described here are ones where hunting is less likely to occur.

I would not hike on the trail when hunting seasons are open.

Most hunting seasons are statewide in nature and hunting may occur nearly anywhere that firearm discharge is not prohibited by local ordinances. By establishing the ability to close portions of an Ice Age Trail area property and providing the option of more limited times when hunting may occur, there may actually be less hunting occurring than on other types of department property or on private land.

Decisions to allow hunting should be made on a case-by-case basis, should not be a blanket allowance of hunting.

By making a decision for each property upon purchase and considering hunting again during master planning, this proposal sets up precisely the type of management strategy that this comment suggests.

Hunting should not be allowed until it is proven safe.

Again, by making individual decisions for each property upon purchase and considering hunting again during master planning, this proposal seems to set up the type of management strategy suggested in the comment.

Who will enforce rules and pay for increased management needs from these rules?

Hunting has occurred at existing properties and hunting regulations enforcement has occurred under existing budgetary conditions. The most significant increase in expense is anticipated to be for signage necessitated by more complex regulations. It is anticipated that these costs can be absorbed under current department budgets.

Please do not exclude hunters and fisherman from stewardship lands.

While ACT 20 does require access by hunters and anglers in most situations to stewardship lands, state parks are exempt from that requirement. This proposal does, however, try to include as many users as possible on these lands while still recognizing the primary use as a pedestrian foot path.

The department should have the right to close certain areas to hunting for safety.

This proposal does contain the ability to close certain properties or portions of properties for safety-related reasons as well as to reduce user conflict.

These lands should be open to trapping.

The department does not have statutory authority to allow trapping or bear hunting on state park lands. The department may only authorize deer, elk, wild turkey or small game hunting by rule.

Safety and endangered resource concerns may be mitigated by the use of limited hunts which would provide additional opportunities rather than deny the activity.

The department agrees with this statement and believes that this proposal is consistent with this statement.

We support the 50' firearms discharge prohibitions but that needs to be reconciled with the fact that there are private and public properties that operate successfully without that prohibition.

The department agrees with this statement and has modified the rule so the 50' provision is not automatically in effect but may be implemented as part of the property master plan. In many cases trails are not built on newly purchased property until the planning process is complete.

Requiring people to unload their firearm before crossing the trail will not add any safety factor to the rule.

The department has modified this proposal so that firearms do not have to be unloaded before crossing the trail.

Hunters and hikers should be kept separate as much as possible.

The department agrees that there will be situations where user conflict can be prevented by separating hunters and hikers by time or space. There will also be situations where separation may not be necessary. This proposal reflects those opinions and establishes the flexibility needed to deal with both situations.

Prior to the acquisition of a property, it may not be possible to tell members of the public, neighbors, or owners of land proposed to be acquired for the trail with absolute certainty that hunting will, or will not be, allowed.

Until the department considers all of the factors required under the rule and board action is taken, the department agrees that this will be a concern with some acquisitions. Providing the most public notice possible will help to alleviate some of these concerns. In implementing these rules, the department will evaluate providing individual notification over the internet, or through other means, to any person requesting to receive a notice of a proposal to allow or prohibit hunting on department lands that are proposed to be acquired as part of the State Ice Age Trail area. The department will also evaluate the feasibility of providing a news release or other notice of intended actions in a way that is consistent with how notices under ch. NR 150 Wis. Admin. Code are issued for purchases of stewardship lands under ch. NR 52.

Tom Gilbert, National Park Service Superintendent of the Ice Age and North Country National Scenic Trails, submitted extensive written comments by letter on April 25, 2008. Based on additional written comments from Mr. Gilbert in 2010, the department believes that many of the concerns he expressed have been addressed. Several of his suggested changes have been incorporated in the rule language and some of his concerns are discussed in the response to public comments above.

Rule Development

These rules were developed with advice from the Natural Resources Board and the Bureaus of Parks and Recreation, Wildlife Management, Law Enforcement, Facilities and Lands and Legal Services.

Small Business and Initial Regulatory Flexibility Analysis

The revisions to chs. NR 10 and 45, Wis. Adm. Code, pertain to hunting seasons and regulations. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Legislative Council Rules and Clearinghouse Report

The Legislative Council Clearinghouse had no comments.

Environmental Analysis

Bureau of Integrated Science Services has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

ML Chron out 7/6/07 amk

A

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: 07/05/2007

TO: Lori Osterndorf - AD/5

FROM: Michael Lutz - LS/5 *ML*

SUBJECT: The state Ice Age Trail and Ice Age trail areas are state parks

According to Wisconsin statutes and administrative code, the Ice Age Trail and Ice Age trail areas owned by the state of Wisconsin are state parks subject to the rules governing state parks.

State trails are state parks

2

The Wisconsin state trails are state parks. Wis. Stat. § 23.175(2)(a), states that the department shall "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." (emphasis added) Wis. Stat. § 23.175(2)(a) (2001-02).

The Wisconsin administrative code classifies the types of state parks as scenic parks, historical-memorial parks, roadside parks, recreation parks, and state trails. Wis. Admin. Code § NR 1.30(1) (current through Wis. Admin. Code (Apr. 2007)); Id. § 1.30(1)(a)-(c). The administrative code states that state trails are "continuous corridors not associated with a state park or other type of department property, utilized for recreation. Id. § 1.30(1)(e). The wording in Wis. Admin. Code § NR 1.30(1)(e) does not mean that state trails are not state parks, but that they are a classification of state park not associated with another state park.

Further, "an area may qualify as a state park by reason of its scenery, its plants and wildlife, or its historical, archaeological or geological interest." Wis. Stat. § 27.01(1). The Ice Age trail area also meets these criteria, being envisioned as a corridor to protect wildlife and the unique geological features of the Wisconsin Glaciation. The department has the power to carry out the purpose of selecting, acquiring, developing and administering state parks in Wisconsin. Id. 27.01(1); Id. 27.01(2). It may also take action as deemed advisable for the administration, development, maintenance or protection of the state park system or any part or parts thereof. Id. § 27.01(2)(m).

Lands owned by the department in the Ice Age trail and trail area are state trails, and thus state parks

Accordingly, because state trails are state parks, the Ice Age trail and Ice Age trail areas are state parks. Wisconsin statutes define the state Ice Age trail area as a "trail designated under Wis. Stat. § 23.17(2)". Wis. Stat. § 23.293(1)(c). Further, Wis. Stat. § 23.17(2) designates the "ice age national scenic trail, as provided for in 16 USC 1244(a)(10), plus the lands adjacent to each side of that trail designated by the department" as a "state scenic trail." Wis. Admin. Code § NR 1.29(2) defines the state Ice Age trail areas as "lands purchased by the department for the Ice Age trail." "The state Ice Age trail areas shall be managed for the Ice Age trail." Id. § NR 1.29(2)(b).

1



Defining state trails as state parks is also supported by looking at the history of state trails in Wisconsin. Prior to Clearinghouse Rule 04-092, Wis. Admin. Code § NR 1.30(1)(e) used the term park trails instead of state trails, indicating that these trails were historically thought of as park lands.

New land purchased for the Ice Age trail and trail area is state park land, and does not require further designation

Because the Ice Age trail and trail areas are designated as a state scenic trail in Wis. Stat. § 23.17(2), when the department acquires additional land for the Ice Age Trail, this land does not require designation as a state park. Wis. Stat. § 23.17(4) states "the department may acquire land for the ice age trail under s.23.09 (2)(d)10., and may develop the ice age trail on lands under its ownership along the trail route. In 1987, the Wisconsin legislature designated the Ice Age Trail as the state's first State Scenic Trail. The authority to make this designation comes from Wis. Admin. Code § NR 51.73. Wis. Admin. Code § NR 45.03(22) defines the state trails as those 42 linear state trails listed in Wis. Admin. Code § 51.73, and the Ice Age Trail is included in this list.

Land may be dedicated to the Ice Age trail program by contribution and gift, and by dedication

The department may accept contributions, gifts and land dedications for the Ice Age Trail, under Wis. Stat. § 23.293(4)-(13). Land owned by the state and managed by the department may be accepted for dedication under the Ice Age Trail program. Land owned by the state that is managed or under the control of another agency may be dedicated if the "appropriate agency transfers sufficient permanent and irrevocable authority over the management and control of that land to the department." Wis. Stat. § 23.293(8).

The "State Park System" consists only of state parks

The Bureau of Parks and Recreation (Parks Bureau) manages a number of different property types including recreation areas and the southern state forests. The argument exists that the "state park system" refers not just to parks but also to any type of property managed by the Parks Bureau. However, Wis. Stat. § 25.295(1)(a) states that the heritage state parks and forests trust fund consists of all contributions "made to the heritage state parks and forests trust fund." Wis. Stat. § 25.295(1)(b) further states that the trust fund consists of all moneys received from the sale of utility easements on property located in the state park system, a southern state forest, or a state recreation area.

Here the legislature clearly differentiated between the state parks system and southern forests and recreation areas, leaving little doubt that the state parks system consists only of parks and not other types of DNR properties. Interestingly enough, Wis. Stat. § 25.295 was created primarily to deal with payments received from utility easements on state trails. State trails are not specifically mentioned because there was no need to. They are already included in the reference to the state parks system.

In conclusion, because state trails are state parks, the Ice Age Trail and trail areas are Wisconsin State Parks and new trail acquisitions under Wis. Stat. § 23.17 and Wis. Stat. § 23.293 become state parks without further designation.

Cc: Steve Miller – FL/6

Fiscal Estimate — 2009 Session

<input type="checkbox"/> Original	<input checked="" type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number WM-04-08

Subject
 Hunting on State Ice Age Trail areas

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

ss. 20.370(1)(ea) and (1)(mu)

Assumptions Used in Arriving at Fiscal Estimate

These rule revisions would authorize hunting at state Ice Age trail areas after considering several factors. Hunting could be allowed during all hunting seasons established by the Department or more limited opportunities could be offered. This rulemaking is needed if hunting is to occur on Department-owned Ice Age trail properties because these lands are part of the state park system, where hunting is prohibited by statute unless the Department allows it by administrative rule.

State Fiscal Effect--

The primary costs associated with this rule are for signage that may be needed to delineate areas where hunting is allowed. Additionally, the Department typically identifies the boundaries of Ice Age trail areas and may provide information about allowable activities, but that is not a requirement of this rule. Signage is a current expense of property management and the extent to which costs will increase is expected to be minimal and can be absorbed into the current budget.

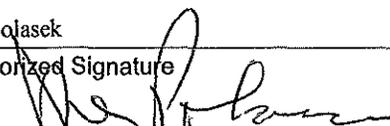
For reference, the Department has recently purchased standard size masonite signs for \$2.55 each from Badger State Industries and a regular supplier of sign posts for \$6.50 a piece. Including labor and mileage, it is estimated that each sign will cost \$20 to place. If signs were placed at each corner and one per quarter mile of a true 80 acre parcel, then 6 signs X \$20 = \$120 for signage per parcel. There are approximately 70 Ice Age trail areas with an average size of 80 acres. Therefore, 70 parcels X \$120 = \$8,400 in one-time signage expenses. Actual costs resulting from this proposal may be lower because signs may already have been placed on some properties and because signage is only required where hunting is prohibited. An exact estimate of costs is difficult to make because irregularly shaped parcels will require different levels of signage.

Local Fiscal Effect--

In some cases, local governments and other entities cooperate with the Department in the management of state trail properties. Since the proposed rules will apply only to Department-managed lands, there will be no local fiscal impact.

Long-Range Fiscal Implications

None. New properties will require signs and signs will require maintenance however these expenses are not new because posting property boundaries is a standard DNR practice. Long range fiscal implications will be minimal and can be absorbed within current budgets.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-15-10

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WM-04-08

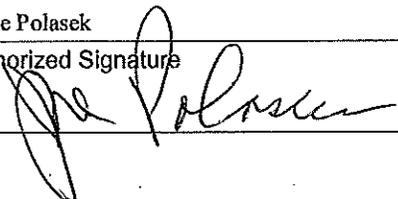
Subject
 Hunting on State Ice Age Trail areas

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$8,400 in one-time signage expenses

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE) (-
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$ 0	\$ - 0
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	0	- 0
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$ 0	\$ - 0

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07-15-10



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 08-022

AN ORDER to create NR 10.275 (4) and 45.09 (10), relating to hunting in state parks, including department managed portions of state trails.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-12-2008 RECEIVED BY LEGISLATIVE COUNCIL.

03-25-2008 REPORT SENT TO AGENCY.

RNS:MCP

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 10.275(4) and 45.09(10) relating to hunting in state parks, including department managed portions of State Ice Age Trail areas.

WM-04-08

Analysis prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: The department has interpreted the following statutes as establishing the state trail system, which includes State Ice Age trail areas, as part of the state park system and providing the authority to promulgate rules regarding hunting and the use of state trails: ss. 23.17(2), 23.175(2)(a), 23.293(1)(c), 27.01 and 29.089, Stats.

Statutory Authority and Explanation of Agency Authority: Statutes which establish that Ice Age trail areas are part of the state park system and which authorize the promulgation of rules that allow hunting in state parks include ss. 23.17(2), 23.175(2)(a), 23.293(1)(c), 27.01, and 29.089 Stats. These statutes specifically provide the department with authority to promulgate rules necessary to govern the conduct of state park visitors and to establish hunting seasons in state parks. These statutes also establish that Ice Age trail areas and other trails are included as part of the state park system. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Rule or Statute: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order. 2007 ACT 20 requires the department to promulgate administrative rules that establish conditions for access to lands purchased with stewardship funding for nature-based recreation, however, state park properties are exempt from that requirement.

Plain Language Analysis: Legal interpretation describes State Ice Age trail area properties and other trails as falling under the definition of state parks. Under s. 29.089, Stats., hunting is prohibited in state parks unless authorized by rule. Because of this determination, the authority proposed in this rule is necessary in order for hunting to continue on areas where it has been an accepted activity. This proposal would let the department authorize hunting on newly purchased property, without writing individual rules, after considering factors to determine the suitability of that activity. The proposal does not require that hunting be allowed. This rule change gives the department the ability to be very responsive in allowing hunting at State Ice Age trail area properties when a determination is made to allow it.

Prior to allowing hunting, the department must consider five factors which are established in the rule. The rule establishes that hunting may occur during any season established by the department for deer, elk, turkeys or small game, or that hunting may occur only during certain deer seasons or at certain times of the year.

This rule would allow opening portions of an Ice Age Trail area property so that hunting could occur only in those areas.

At state trails which are not part of the Ice Age Trail area system, hunting would continue to be prohibited except where allowed by administrative rule.

Hunting is currently allowed at some state parks and trails by rule but, where it is not allowed, all firearms must be unloaded and enclosed in carrying case. This proposal would allow a person who is hunting on adjoining lands to cross the travelled portion of the Ice Age Trail, even if hunting is not allowed from the trail, without casing or unloading their firearm, airgun or bow.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

The Ice Age trail was authorized by Congress in 1980 as a component of the National Trails System. A portion of funding for property acquisition is federal but actual property acquisition, trail planning, development and management is conducted by the department and partners. Federal statutes do not place specific restrictions on the use of Ice Age Trail properties for hunting.

Comparison with rules in adjacent states: These proposed rule changes will result in regulations and policies that are consistent with the management of recreational trails in surrounding states. All of Wisconsin's surrounding states administer recreational trail systems that are used by hikers, bicyclists, and others. In all surrounding states, partnerships exist with local governments and friends groups who may conduct actual trail maintenance. The availability of hunting opportunities varies significantly even within each state.

Michigan's state trails are generally open to hunting and trapping but certain stretches are closed to hunting, especially in or near municipalities. Michigan informs trail users that hunting may be occurring in an area by posting signs at access points. Minnesota manages an extensive state trail system where hunting is generally allowed except that firearms discharge from or across the tread-way, the portion of the trail designed for travel, is prohibited. Iowa's trail system is administered by their DNR and transportation department and consists mostly of linear corridors. Hunting and trapping are allowed along specific stretches of Iowa trails which are described on the department's website and by posting of signs at trail intersections. Illinois provides significant hunting opportunities on designated park properties where there are hiking trails. Those hunting opportunities are available only on specific portions of those properties. Some portions of Illinois trails are closed to hiking during the firearm deer season and hikers are encouraged to wear orange during the squirrel season.

Summary of Factual Data and Analytical Methodologies: The rule changes included in this order do not deviate from current department policy on the management of trails or hunting in state parks and hunting in general. Wisconsin provides more than 2,000 miles of trails that allow a variety of uses. This rule specifically addresses State Ice Age trail areas which are owned by the department and managed under the authority of "State trails" under s. 23.175, Stats., and "Ice Age trail" under s. 23.17, Stats. State trails are also state parks under 23.175(2)(a), Stats. Other types of department lands, such as wildlife or fishery areas, or Ice Age Trail area property that is operated under a lease or agreement with other individuals or units of government are not affected.

There are approximately 70 individual properties which are identified as State Ice Age trail areas. Properties range in size from one acre to 1,200 acres with an average size of approximately 80 acres. Hunting currently occurs on a number of properties but not others because of their proximity to urban development or small size. While these are primarily trail properties intended for pedestrian travel on a trail tread, many properties do contain acreage that is not part of a linear trail and which may be suitable for hunting activities.

Under this proposal, Ice Age Trail area properties would be closed to hunting unless a decision to open them is made either upon acquisition or later as part of the master planning process under Ch. NR 44. Properties which are already owned by the department and where hunting is already occurring could remain open. This rule provides greater flexibility for Ice Age Trail area properties than the department currently has at state parks, where a separate administrative rule must be promulgated each time a new hunting opportunity is created.

This proposal directs the department to consider several factors when deciding to allow hunting at an Ice Age Trail area property. These criteria are provided so that the possibility of separating users by space can be considered. Other criteria include whether the lands are in an area where hunting is already occurring safely or if the property is located in a highly developed area. The specific criteria are:

- The primary purpose for the project.
- User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
- The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement.
- The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination.
- The mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

This proposal creates several options for providing hunting opportunities where it is determined that hunting will be allowed. During the period prior to master planning for a property, one of the following options may be selected to allow hunting for deer, elk, turkeys or small game:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Hunting is allowed during all deer hunting seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Archery deer hunting is allowed during the period beginning on November 1 and continuing through the remainder of the statewide archery deer season.
- Hunting for any species for which a season is open during the period beginning on November 1 and ending on March 31.

Under the proposal, hunting must be re-evaluated as part of a property master plan. The master planning process established in ch. NR 44, Wis. Admin. Code is an opportunity for more significant public involvement and professional evaluation of the management of recreational use for a property. Master plans must be approved and may be amended by the Natural Resources Board under ch. NR 44.04(3) Wis. Admin. Code. Plans are re-evaluated and may be amended. As part of the master planning process, a prohibition of hunting could be re-established, hunting could be prohibited, or it could be allowed for deer, elk, turkeys, or small game. The options for allowing hunting which may be adopted as part of a property master plan are:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Hunting may be limited to the period beginning on November 1 and continuing through March 31 for all species for which there is an open season.
- Hunting may be limited to deer during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Hunting may be limited to the use of archery gear only during all of the seasons established in s. NR 10.01 except that it may only occur during the period beginning on November 1 and continuing through March 31.
- Hunting may be limited to portions of a property by posted notice.
- Hunting may be prohibited on the travelled portion of the trail.
- Hunting may be prohibited on the travelled portion of the trail and within 50 feet of the center of the travelled portion.
- Deer Hunting may be allowed during the four day October firearm deer seasons established in s. NR10.01(3)(e) and (et).
- Turkey hunting may be allowed during the first three spring turkey hunting periods in s. NR 10.01(2)(f).

The selection of a liberal hunting season option is anticipated in situations where little or no user conflict is anticipated and there will be little need to separate property users by time. In order to preserve the primary use of Ice Age Trail Area properties, it may be necessary to separate users by providing some of the more limited hunting opportunities listed above. For example, it would be possible immediately upon purchase or after master planning to allow hunting but limit it to the firearm and archery deer hunting that occurs beginning with the traditional November firearm deer season and continuing through the close of the late archery season. Limiting hunting to only those seasons occurring during the period beginning on November 1 and continuing through March 31 is an example of an option which could be selected to prevent user conflict. Other options which could only be selected through the master planning process include allowing firearm deer hunting during the October season or limiting hunting to archery-only for all species. Allowing turkey hunting during the first three of the six spring turkey hunting periods is consistent with management of traditional state park properties. It may ultimately be possible to offer hunting opportunities on more properties by providing as many options as possible rather than forcing managers to choose between recommending all hunting or none.

This rule also provides flexibility to avoid user conflict by separating property users by space. Under the proposal, portions of individual properties could be closed to hunting upon acquisition or as part of a property's master plan. This flexibility is consistent with current practice in traditional state parks, where hunting is not allowed in areas such as campgrounds.

In places the Ice Age trail traverses other department properties that are managed as public hunting or fishing grounds or for some other purpose. This rule would not change the types of activities that are currently allowed on those properties or on a trail where it traverses that property.

It is currently illegal to possess a firearm, air gun or bow at state parks unless the gun is unloaded and enclosed in a carrying case or a person is engaged in a legal hunting activity at that park. This proposal establishes an exemption from that requirement for hunters who are crossing the Ice Age Trail even if hunting is not allowed on the trail tread where it is being crossed. This exemption is limited to the Ice Age Trail and does not apply to other state trails.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operation standards contained in the rule.

Agency Contact Person: Scott Loomans, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921. (608) 267-2452.

Section 1. NR 10.275(4) is created to read:

NR 10.275(4) ICE AGE TRAIL. (a) *Purpose.* Section 23.175(2)(a) Stats., requires the department to designate department owned lands purchased for the Ice Age Trail as a state park. The State Ice Age Trail areas are managed primarily as a footpath for pedestrian use. Where s. 29.089, Stats., prohibits hunting in state parks unless the department has authorized hunting by rule, this subsection is created to establish a procedure to determine when portions of state ice age trail areas may be opened to hunting including the factors to be considered in making these determinations.

(b) *Applicability.* The provisions of this subsection apply to State Ice Age Trail areas as established in s. 23.17, Stats., when the property is owned by the department.

(c) Prior to adoption of a master plan for a State Ice Age Trail area property under ch. NR 44, the natural resources board may authorize hunting pursuant to s. 29.089(3) on a property or portion of a property by posted notice by selecting one of the options established in subd. 1. after considering the factors in subd 2.

1. *Times when hunting may be allowed.*
 - a. during all of the seasons established in s. NR 10.01.
 - b. deer hunting may be allowed during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
 - c. deer hunting may be allowed during archery deer hunting seasons except that hunting may only occur during the period beginning on November 1.
 - d. during the period beginning on November 1 and ending on March 31 for all species that have open seasons.

2. *Factors to be considered.*
 - a. The primary purpose for the project.
 - b. User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
 - c. The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and/or reduce the need for enforcement.
 - d. The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination.
 - e. The mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

(d) Upon approval of the master planning process under ch. NR 44, the natural resources board may:

1. Close to hunting a property that was opened prior to adoption of a master plan, continue a closure that has already been established, or may authorize hunting pursuant to s. 29.089(3) on the property or a portion of the property under the seasons established in s. NR 10.01 after considering the factors in par. (c) and the impact of hunting on other users of the property.

2. Establish one or more of the following conditions for hunting on a property:

- a. hunting may be limited to the period beginning on November 1 and continuing through March 31 for all species that have an open season.
- b. deer hunting may be allowed during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- c. hunting may be limited to the use of archery gear only during all of the seasons established in s. NR 10.01 except that it may only occur during the period beginning on November 1 and continuing through March 31.
- d. hunting may be limited to portions of a property by posted notice.
- e. hunting may be prohibited on the travelled portion of the trail.
- f. hunting may be prohibited on the travelled portion of the trail and within 50 feet of the center of the travelled portion.
- g. deer hunting may be allowed during the four day October firearm season established in s. NR10.01(3)(e) and (et).
- h. turkey hunting may be allowed during the first three spring turkey hunting periods in s. NR 10.01(2)(f).

(e) When traversing another department property, portions of the Ice Age trail are subject to the hunting and trapping rules of that property unless otherwise posted.

Section 2. NR 45.09(10) is created to read:

NR 45.09(10) Nothing in this section shall prohibit the possession of an uncased bow or uncased and loaded firearm or air gun for the purpose of crossing the travelled portion of the Ice Age Trail within State Ice Age Trail areas by the shortest route possible.

Section 3. Effective dates. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Section 4. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)