Form 1100-001
(R 9/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. Tuesday 3.B.1

SUBJECT: Updated Request for Final Adoption for Board Order LF-08-09 creating CH.NR 52 regarding public use of lands acquired under the Knowles Nelson Stewardship Program

FOR: JANUARY **BOARD MEETING**

TO BE PRESENTED BY: Pat Henderson and Doug Haag

SUMMARY:

Note: This item was originally scheduled for December 9th, 2009 however that meeting was canceled due to weather. NR 52.02 (10) was added to Definitions, located on page 6 of the memorandum and page 5 of the Board Order.

2007 Act 20 included reauthorization of the Knowles Nelson Stewardship Program which is the primary funding source for acquiring land for conservation and public outdoor recreation. Act 20 included a provision requiring that certain lands acquired with funds from the stewardship program under ss. 23.0915 and 23.0917, Stats., be open to the following nature based outdoor activities (NBOAs); hunting, trapping, hiking; fishing, and cross country skiing. The Act further defined the public access requirement, requiring that certain lands acquired with funds from the stewardship program are required to be open to the public for the five NBOAs unless it is necessary to prohibit one or more of these NBOAs to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns as defined by rule. The proposed rule deals only with the situations where the Legislature specifically authorized the department to provide exceptions to the public access requirement. The rule proposal incorporates the new law and harmonizes with existing law. Act 20 did not change other laws governing state land use, land acquisition or stewardship grant subcategories.

The proposed rule sets up a process and criteria for department decisions about when certain activities will be limited on parcels of land acquired with Stewardship funds as well as a system for the Natural Resources Board to monitor these decisions, process and criteria. The criteria, decision process and monitoring provide greater accountability and transparency for department decision making and create a framework under which citizens who disagree with a department decision have ready access to the independent appeal process in chapter 227, Wisconsin Statutes.

RECOMMENDATION: Final adoption of Board Order LF-08-09 creating CH.NR 52 regarding public use of lands acquired under the Knowles Nelson Stewardship Program.

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes ☐	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

R E Stuffer for Steve Ritter — 1-11-2010
Bureau Director, Date

Laurie Osterndorf — 1/12/10
Administrator, Date

1/14/10
Secretary, Matt Frank Date

cc: Laurie J. Ross - AD/8

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: January 8, 2010

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: NRB adoption for Facilities and Lands Rule Order LF-08-09,

I am requesting Natural Resources Board adoption of LF 08-09, creating CH. NR 52 regarding public use of lands acquired under the Knowles Nelson Stewardship Program.

2007 Stewardship Reauthorization

The 2007-2009 state budget reauthorized the Knowles Nelson Stewardship Program and increased funding to $86 million annually beginning in July, 2010. (2007 Act 20). The Stewardship Program is the primary funding source for land acquisition for conservation and public outdoor recreation in Wisconsin. The 2007 reauthorization of the Stewardship Program also directed the promulgation of rules to more explicitly lay out public access requirements.

The proposed rule reinforces the presumption, and the historical practice, that Stewardship lands must provide public access and that limitations are to be the exception rather than the rule. Through the 2007 reauthorization and other legislation enacted over the years, the legislature has also recognized that there are situations in which it is appropriate to have some limitations on public access.

2007 Act 20 further defined the public access requirement, requiring that lands acquired with funds from the stewardship program are required to be open to the public for hunting, trapping, fishing, hiking and cross country skiing (NBOA's-Nature Based Outdoor Activities) unless it is necessary to prohibit one or more of these NBOAs to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns as defined by rule. The rule proposal incorporates the new law and harmonizes it with existing law. Act 20 did not change other laws governing state land use, land acquisition or stewardship grant subcategories.

The History of Public Access under the Knowles Nelson Stewardship Program

Since its inception twenty years ago, the Stewardship Program has a solid record of providing public access for a wide range of outdoor enthusiasts. The Stewardship Fund has assisted in the purchase of more than 515,000 acres of land that is open to the public with 473,000 acres of that land open to public hunting and much of it open to public trapping, as well. Over the years, the legislature has enacted numerous laws designed to serve a multitude of goals that serve the public interest through the Stewardship Program, including land conservation and scenic beauty, protection of fish and wildlife habit, preservation of forest and plant communities, as well as providing a wide range of outdoor recreation opportunities for all of Wisconsin's citizens, both in rural and urban areas.

Stewardship serves a wide variety of outdoor recreational opportunities. One of the things we cherish most in Wisconsin is the richness of our natural resources and how much they enhance our quality of life. Wisconsin citizens enjoy the outdoors in a wide variety of activities ranging from hunting, fishing, trapping, hiking, biking, cross country skiing, wildlife viewing, canoeing, and horseback riding to

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camping, boating, snowmobiling, and ATV'ing, to name a few. It is the Department's responsibility to serve all of Wisconsin's citizens and maintain a wide range of outdoor recreation opportunities.

Wisconsin's Stewardship program is a national model which has significantly enhanced Wisconsin's strong hunting, fishing and trapping heritage. Whether through land preservation to forever protect existing hunting opportunities, opening up private lands to public hunting that were previously closed, or by restoring wildlife habitat to expand hunting opportunities which were previously limited, the Stewardship program has greatly expanded outdoor opportunities for sports men and women. No other state in the country has done a better job than Wisconsin in strengthening its hunting heritage through a public land purchase program supported by all state taxpayers.

Since its creation, the Stewardship fund has assisted in the purchase of more than 515,000 acres of land that is open to the public with 473,000 acres of that land open to public hunting and much of it open to public trapping as well. Lands that might be closed to hunting or trapping include state park lands, wildlife refuges, administrative facilities and land surrounding fish hatcheries, forest nurseries and administrative sites and lands within municipal boundaries subject to local ordinances.

Stewardship funds are conservatively estimated to have leveraged $200,000,000 additional dollars from government, land trust and federal sources. Land Trusts alone have completed over 400 separate real estate transactions protecting nearly 40,000 acres of land and local governments have completed over 500 transactions protecting more than 15,000 acres. Of the 55,000 acres protected by local government and land trust partners, 40,000 acres are open to some form of public hunting.

Accountability and Transparency

The rule preserves the success the Stewardship program has achieved in two critical areas- making timely decisions to take advantage of land buying opportunities, and leveraging state Stewardship dollars with dollars from other governmental and non-governmental partners to greatly expand the number of acres that are acquired for public benefit. The accountability and transparency provisions of the proposed rule retain the flexibility of the Stewardship program to take full advantage of public land acquisition opportunities.

The proposed rule establishes new accountability and transparency provisions that have not previously existed, creating new checks and balances over the Department's decisions regarding public access. The proposed rule sets up a process and criteria for department decisions about when certain activities will be limited on parcels of land acquired with Stewardship funds as well as a system for the Natural Resources Board to monitor public access decisions. The criteria, decision process and monitoring provide greater accountability and transparency for department decision making and create a framework under which citizens who disagree with a department decision can appeal the decision.

For example, the rule specifies internal procedures that the Department must use to provide an opportunity for public input whenever it considers limiting public access in a particular land acquisition.

For the first time, clear standards and a decision-making process are set forth in a rule that will be subject to oversight by the Natural Resources Board. With the enactment of the rule, the Board will enhance its authority to exercise oversight by modifying Department policy on public access to Stewardship lands through rule amendments or modifications as approved by the Board. The rule requires the Department to publish data and information regarding public access and to file regular reports with the Board, which will enhance the ability of the public and the Board to monitor the Department's performance.

In addition, for the first time, citizens or organizations who wish to challenge a public access decision can do so through a chapter 227 administrative appeal. Previously, in the absence of a rule, parties had no access to a review by an independent third party and could only appeal to the Department. Under the proposed rule, parties will be able to appeal a Department decision to an administrative law judge and ultimately to circuit court.

In addition to promulgating this rule, the Department is working hard to develop a more robust system so that all of our citizens can more easily find and access public land. These efforts include improving signage as well as enhancing website and internet information to make information instantaneously available.

Summary of the Rule:

Chapter NR 52 creates standards and criteria that will be used by the department to determine when it is necessary prohibit one or more NBOA to protect public safety, unique plant or animal communities or to accommodate usership patterns. The rule identifies the factors that will be considered in setting a prohibition and creates a process for reviewing land acquisition proposals for compliance with the law. Decisions to prohibit an NBOA will be based on sound science, legitimate safety issues and other factual data pertaining to incompatible uses. Chapter NR 52 requires that when one or more NBOAs are proposed to be prohibited the department will notify the public by internet posting with the capability for individual subscriptions to updates. The web posting will include a checklist indicating which NBOAs are available at the site and if NBOAs will be limited, the reason for the limitation. The public will have a chance to comment on the proposal to limit NBOAs. The department will evaluate the public comments and apply the standards and criteria identified in the rule when determining whether the limitation meets the intent of s. 23.0916, Stats. Further, department decisions under this chapter will be appealable under Ch. 227.

2007 Act 20 directs the Natural Resources Board to establish a process for the review of determinations under ss. 23.0916. Stewardship land is presumed to be open unless one of the exceptions provided by the Legislature is present. Consistent with the Board's policy role outlined in s. 15.05(1) (b), the proposed rule provides a process for the Board to monitor the Department's day to day actions under this rule and consider whether any changes in policy are needed. Each month the Department staff will provide the NRB with a report that summarizes all stewardship land purchases that have been made and the determinations on public access that have been made under the rule. The NRB will then have an opportunity to hear testimony from the public on this report on a biannual basis.

Public Hearing Summary:

In August the Natural Resources Board authorized public hearings on the draft rule, CH. NR 52. The Department held five public hearings during October. The locations of the hearings were: Eau Claire; Green Bay; West Bend; Rhinelander; and Madison. Approximately 113 people registered at the public hearings with about half of those provided testimony; an additional 175 people commented by e-mail and 28 by US mail service. Appendix 1 to this memo contains a detailed summary of, and response to all public comments. Major themes from the comments can be summarized as follows:

1. <u>Modify the rule to provide for more Natural Resources Board (NRB) review of individual decisions or to provide some appeal authority to the NRB of individual decisions made by the department.</u>

As discussed in the rule summary, the proposed rule is intended to be consistent with the NRB's policy making authority. Under s. 15.05 (1)(b), Stats., the NRB's authority is "policy making" and "not administrative". The NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for the Department to exercise its administrative authority in making individual determinations for each license, permit or grant application. All administrative duties and powers are vested in the Secretary, according to s. 15.05 (1)(b).

The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department.

2. Remove or modify certain sections of the rule related to factors that will be considered when making a determination to prohibit an NBOA.

The factors listed in the rule that guide the department's decision making for public access determinations were agreed upon by the Citizen Advisory Committee. The factors provide the criteria for the agency to decide when one of the statutory exemptions applies to a stewardship project. The department believes it is important to provide flexibility in the rule and follow, as closely as possible, the CAC recommendations on the factors.

3.Support the rule as written.

4.Add biking and mountain biking as a 6th NBOA.

The department recommends that Department master plans and other similar planning efforts at the local level continue to dictate public use for biking and all of the many other activities listed in NR 51.002(19).

4. Provide special consideration for state natural areas as the statutory purpose of this program is to protect unique plant and animal communities rather than to provide recreation.

s. 23.0916 Stats. does not give the Department any authority to exempt programs such as the natural areas program from the law

5. Recognize the need for local units of government to make local decisions about these activities based on local comprehensive plans, local ordinances and local safety issues.

The department does recognize the importance of local ordinances, local plans and local control in making decisions about public access and has included such references in the proposed rule. The Public Safety section includes a local ordinance as a factor to be considered when limiting public access under this exemption. In addition, the definition of "primary purpose" and the General Provisions section reference the importance of local and regional plans in helping to determine the primary purpose for the land acquisition.

6. Provide exceptions for southeast Wisconsin.

s. 23.0916 Stats., does not give the Department any authority to create geographical exceptions for southeast Wisconsin.

Response to Legislative Clearinghouse Report

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

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

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

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

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

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

Further, individual determinations for each grant property are final decisions subject to appeal according to s. 227.42, Stats., and 227.52, Stats. If the NRB were to make individual determinations, their determinations would be subject to appeal, which would be contrary to their role as a regulatory and policy setting citizens board in which their policy setting decisions are not appealable under the state constitution's sovereign immunity clause and as upheld by the courts in Lister v. Board of Regents, 72 Wis. 2d 282 (1976). The NRB's role and authority under

s. 15.05(1)(b), Stats., i.e. "not administrative", would have to be specifically modified if the NRB was going to act in an administrative capacity in making individual determinations for each grant property that would subject the NRB to contested case hearings and lawsuits challenging their decisions. The Board does not make administrative decisions on individual permits, licenses or grants. They remain the policy setting body for the DNR.

For further information on this issue, please see Appendix 2, attorney Tim Andryk's memo to Deputy Secretary Henderson, dated November 20, 2009.

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

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

The Clearinghouse commented on the location of substantive material in the Purpose and Applicability section of the rule.

The language in the Purpose and Applicability section of the rule discussing "restrictions" and "prohibitions," has been moved to the Definition section in a definition of the term "prohibition."

Stakeholder Involvement

In addition to the public hearings that were held in September and October, the Department conducted an extensive public process through an appointed Citizen Advisory Committee (CAC). In July of 2008, the department appointed a 28 member citizen advisory committee to provide input on developing these administrative rules. The CAC included members from a diverse group of recreational users. A complete listing of the members of the citizen advisory committee can be found at http://dnr.wi.gov/org/caer/news/PDF/stewmembers.pdf.

The citizen advisory committee met 6 times between July 2008 and January 2009. A professional facilitator was hired to manage the meetings and lead the group through a variety of exercises intended to identify important issues. The CAC developed recommendations on each of the NBOA public access exceptions identified in the statute and the department staff used these recommendations to prepare four concept papers on the following topics: A Process for the Review of Determinations Made Under s. 23.0916, Stats., Public Safety; Unique Plant and Animal Communities; and Usership Patterns. These concept papers were used by department staff to draft proposed CH. NR 52. The final drafts of these concept papers can be found at: http://dnr.wi.gov/stewardship/CAC/.

Small Business and Regulatory Flexibility Analysis:

Chapter NR. 52, Wis. Admin. Code relating to hunting, trapping, hiking, cross country skiing and fishing is applicable to the Department, local units of government and non-profit conservation organizations and to individuals and imposes no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule that affect small business. Therefore, under s. 227.19 (3m) Stats., a final regulatory flexibility analysis is not required.

Environmental Analysis:

The Department has determined that these rules are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

Conclusion

In conclusion the Department believes the proposed rule reflects the original vision of the Knowles Nelson Stewardship program to create a funding source that will provide for the preservation of Wisconsin's most unique and threatened land and water resources and meet the diverse outdoor recreational needs of Wisconsin's residents both in its most urban places and in the wildest most remote corners of the state.

Appendix I

Public Hearing Summary

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

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

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

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

The Department is not recommending that biking be included as an additional NBOA due to the fact that biking is an acceptable use/activity on Stewardship funded lands already (NR 51..002(19)). The Department believes biking and other similar activities should be evaluated and planned for through a master planning process for the property or the particular parcel being purchased with Stewardship funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Department Response: This term was removed from the rule.

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

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

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

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

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

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

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

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

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

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

conservation biologist can assess the risk that increased public use might pose to a unique plant or animal community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment: Add language that when making a decision to prohibit an NBOA on land being purchased by a local government that the local comprehensive outdoor recreation

plan be the primary basis for the agency decision when the reason to prohibit is to accommodate usership patterns.

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

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

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

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

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

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

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

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

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

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

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

End.

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: November 20, 2009

TO: Pat Henderson – AD/8

FROM: Tim Andryk – LS/8 TA

SUBJECT: NRB Stewardship Access Determinations

STATUTE

According to sec. 23.0916(2)(b), Stats., public access for a nature based outdoor recreation activity (NBOA) may be prohibited "if the natural resources board determines that it is necessary to do so in order to do any of the following:

1. Protect public safety.
2. Protect a unique plant or animal community.
3. Accommodate usership patterns, as defined by rule by the department."

QUESTION

Does s. 23.0916(2)(b), Stats authorize and require the Natural Resources Board (NRB) to make individual determinations that it is necessary to prohibit access for each grant property, or does it require the NRB to make broad policy determinations, commensurate with the NRB's policy making role, in order to prohibit access on Stewardship grant properties?

ANSWER

The NRB is required by sec. 23.0916(2)(b), Stats., to make a determination that it is necessary to prohibit public access in order for it to be prohibited on Stewardship grant properties. However, because the NRB's authority is "policy-making" and "not administrative" according to s. 15.05(1)(b), Stats., the NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for each grant property by the Department, since all of the administrative powers and duties are vested in the Secretary, according to s. 15.05(1)(b), Stats.

ANALYSIS

According to s. 15.05(1)(b), Stats., "the powers and duties of the board shall be regulatory, advisory, and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board." The NRB exercises their authority by adopting rules (regulatory) with broad policy determinations that include factors, criteria and a process for the Department to exercise it administrative authority in making individual determinations for each license, permit, or grant application.

The 2007 Stewardship statute, s. 23.0916(2)(b), Stats., doe not include a reference to the statute on the NRB's authority, s. 15.05(1)(b), Stats., so it does not specifically amend the requirement that the NRB's authority is 'policy making" and "not administrative". Consequently the two statutes must be interpreted in a harmonius fashion. Wyss v. Albee, 193 Wis. 2d 101, (1995). In order to prohibit access on Stewardship grant properties, the NRB is required to make the broader policy determinations that the

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Department is to follow in making individual (administrative) determinations for each grant property according to factors, criteria and a process established by the NRB through rule-making, under its regulatory authority.

Individual determinations for each grant property are final decisions subject to appeal according to s. 227.42, Stats., and 227.52, Stats. If the NRB were to make individual determinations, their determinations would be subject to appeal, which would be contrary to their role as a regulatory and policy setting citizens board in which their decisions and determinations are not appealable under the State Constitution's sovereign immunity clause, upheld in court in Lister v. Board of Regents, 72 Wis. 2d 282 (1976). The NRB's role and authority under s. 15.05(1)(b), Stats., ie. "not administrative", would have to be specifically modified if the NRB was going to act in an administrative capacity in making individual determinations for each grant property that would subject the NRB to contested case hearings and lawsuits challenging their decisions.

CONCLUSION

The proposed rules on access to properties purchased with Stewardship funds, ch. NR 52, Wis. Adm. Code, are intended to be consistent with the NRB's "policy-making" and "not administrative" authority, under s. 15.05(1)(b), Stats. As required by s. 23.0196(2)(b), Stats., in the proposed rules the NRB makes the determination that it is necessary to prohibit public access to protect public safety, protect a unique plant or animal community, or to accommodate usership patterns. The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department. In response to the report the NRB may, pursuant to its policy-making and regulatory duties, direct the Department to proceed with a rule change to ch. NR 52, and/or pursue a change in how the Department implements its administrative duties in making individual determinations for each grant property.

(b) For purposes of sub. (1) and s. 23.17, moneys expended under this subsection shall be treated as moneys expended for trails.

(2m) MONEYS FOR HANK AARON STATE TRAIL. (a) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside $400,000 to be used only for the development of the Hank Aaron State Trail.

(d) For purposes of adjusting expenditure limits under sub. (2) (a) to (c), the amount set aside under par. (a) shall be treated as moneys that were expended in fiscal year 1990–91 for wildlife habitat restoration under s. 23.092.

(e) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside $290,000 for the Hank Aaron State Trail.

(em) For purposes of sub. (1), moneys expended under par. (e) shall be treated as moneys expended for wildlife habitat restoration under s. 23.092.

(f) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside $670,000 for the Hank Aaron State Trail. For purposes of sub. (1) moneys expended under this paragraph shall be treated as follows:

1. As moneys expended for urban rivers, $400,000.

2. As moneys expended for stream bank protection, $200,000.

3. As moneys expended for urban green space, $70,000.

(g) None of the moneys set aside under this subsection may be expended for stadium parking or for any other purpose not directly related to the development of the Hank Aaron State Trail.

(2p) UPPER WHITING PARK. From the appropriation under s. 20.866 (2) (tz), the department shall provide to the village of Whiting $38,000 in fiscal year 1999–2000 for the development of Upper Whiting Park. Notwithstanding s. 23.09 (20) (b), the 50% matching requirement under s. 23.09 (20) (b) does not apply to the state aid provided under this subsection. For purposes of sub. (1), moneys provided under this subsection shall be treated as moneys for local park aids.

(2r) ACQUISITION OF GRANDFATHER FALLS RECREATION AREA. (a) Subject to par. (b), from the appropriation under s. 20.866 (2) (tz), the department shall expend the moneys necessary to purchase approximately 1,485 acres of land in Lincoln County that is commonly known as the Grandfather Falls Recreation Area.

(b) The department may not expend more than $2,138,000 for the land specified under par. (a).

(c) For purposes of sub. (1), moneys expended under par. (a) may be treated as moneys expended for any of the purposes specified under sub. (1) (a) to (k) or any combination of those purposes.

(3) HORICON MARSH INTERPRETATIVE CENTER. (a) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside during fiscal year 1991–92 $250,000 for a project to develop a vacant building to be used as an interpretative and administrative center for the Horicon Marsh area. Expenditures under this paragraph shall be made in a manner that, for every $3 received by the department from private grants, gifts or bequests for the project, $1 will be expended from the moneys under this paragraph.

(b) The department shall expedite the planning, design and development of the interpretative and administrative center.

(3m) CREX MEADOWS WILDLIFE AREA EDUCATION CENTER. (a) From the moneys appropriated under s. 20.866 (2) (tz), the department shall set aside during fiscal year 1997–98 $250,000 for a project to construct and equip a wildlife education center for Crex Meadows Wildlife Area. Expenditures under this paragraph shall be made in a manner that, for every $3 received by the department from private grants, gifts or bequests for the project, $1 will be expended from the moneys under this paragraph.

(b) The department shall expedite the planning, design and development of the education center.

(c) For purposes of sub. (1), moneys set aside by the department under this subsection shall be treated as moneys for general property development.

(4) REVIEW BY JOINT COMMITTEE ON FINANCE. Beginning on December 31, 1995, the department may not encumber or expend from the appropriation under s. 20.866 (2) (tz) for a given project or activity more than $250,000 unless the department first notifies the joint committee on finance in writing of the proposed encumbrance or expenditure. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's notification that the committee has scheduled a meeting to review the proposed encumbrance or expenditure, the department may make the proposed encumbrance or expenditure. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the department that the committee has scheduled a meeting to review the proposed encumbrance or expenditure, the department may make the proposed encumbrance or expenditure only upon approval of the committee.

History: 1989 a. 31; 1991 a. 39, 269, 309; 1993 a. 16, 213, 343; 1995 a. 27; 1997 a. 27; 1999 a. 9.

23.0916 Stewardship land access. (1) DEFINITIONS. In this section:

(a) "Former managed forest land" means land that was withdrawn from the managed forest land program under subch. VI of ch. 77 on or after October 27, 2007.

(b) "Nature–based outdoor activity" means hunting, fishing, trapping, hiking, cross–country skiing, and any other nature–based outdoor activity designated by rule by the department for purposes of this section.

(c) "Stewardship grant" means a grant that consists in whole or in part of funding from the stewardship program under s. 23.0917.

(2) REQUIREMENT OF ACCESS; NONDEPARTMENT LAND. (a) Except as provided in par. (b) and sub. (4), any person receiving a stewardship grant on or after October 27, 2007, that will be used to acquire land in fee simple or to acquire an easement on former managed forest land shall permit public access to the land for nature–based outdoor activities.

(b) The person receiving the stewardship grant may prohibit public access for one or more nature–based outdoor activities, if the natural resources board determines that it is necessary to do so in order to do any of the following:

1. Protect public safety.

2. Protect a unique animal or plant community.

3. Accommodate usership patterns, as defined by rule by the department.

(3) REQUIREMENT OF ACCESS; DEPARTMENT LAND. (a) Except as provided in par. (b) and sub. (4) and ss. 29.089, 29.091, 29.301 (1) (b), and 29.621 (4), the department shall permit public access for nature–based outdoor activities by others on land that is acquired by the department in fee simple or is an easement acquired by the department on former managed forest land.

(b) The department may prohibit public access for one or more nature–based outdoor activities if the natural resources board determines that it is necessary to do so in order to do any of the following:

1. Protect public safety.

2. Protect a unique animal or plant community.

3. Accommodate usership patterns, as defined by rule by the department.

(4) FISH AND GAME REFUGES. The department or an owner of land that is in a fish or game refuge and that is subject to sub. (2) (a) or (3) (a) may prohibit hunting, fishing, or trapping, or any combination thereof.

(5) RULES. The natural resources board, by rule, shall develop all of the following:

(a) Provisions relating to public access for nature–based outdoor activities for all lands other than those subject to sub. (2) (a) or (3) (a) that are acquired in whole or in part with funding from the stewardship programs under ss. 23.0915 and 23.0917.

(b) A process for the review of determinations made under subs. (2) (b) and (3) (b).

(6) REPORTING REQUIREMENT. The department shall prepare a biennial report that identifies all land subject to this section that has been acquired during the preceding fiscal biennium and upon which public access for any nature–based outdoor activity is prohibited. For each acquisition, the report shall specify for which of these nature–based outdoor activities public access is prohibited and shall include the reason for the prohibition. The department shall submit the report to the joint committee on finance and to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3). The department shall submit the report no later than November 15 for the preceding fiscal biennium and shall submit the first biennial report no later than November 15, 2009.

History: 2007 a. 20; 2009 a. 28.

23.09165 Stewardship programs information and public access notice. (1) DEFINITIONS. In this section:

(a) "Department land" has the meaning given in s. 23.0917 (1) (c).

(b) "Land" has the meaning given in s. 23.0917 (1) (d).

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

(d) "Stewardship land" means land that is acquired in whole or in part with funding from one or both stewardship programs.

(e) "Stewardship program" means the stewardship program under s. 23.0915 or 23.0917.

(2) LAND MAPPING AND DIRECTORY. Within 48 months after October 27, 2007, the department shall establish and maintain an interactive mapping tool at the department's Web site that identifies all stewardship land that is open for public access. Public access to the mapping tool at the Web site shall be available without charge.

(3) NOTICE OF ACCESS TO STEWARDSHIP LAND. (a) An owner of stewardship land acquired on or after October 27, 2007, shall, within 6 months after the disbursement of the stewardship program funds, provide notice of public access to the stewardship land by the placement of signs adequate to give notice. The owner of stewardship land acquired before October 27, 2007, shall provide notice of public access to the stewardship land by the placement of signs adequate to give notice within 48 months after October 27, 2007. The area of each sign shall be at least 108 square inches, and each sign shall be made of a durable substance. The signs shall be placed at major access points to the stewardship land.

(b) If the stewardship land that is acquired on or after October 27, 2007, is surrounded by department land, the department shall, within 6 months after the disbursement of stewardship program funds, provide notice of public access to the stewardship land by the placement of signs adequate to give notice at the major access points to the department land. If the stewardship land that is acquired before October 27, 2007, is surrounded by department land, the department shall provide notice of public access to the stewardship land by the placement of signs adequate to give notice at the major access points to the department land within 48 months after October 27, 2007. The area of each sign shall be at least 108 square inches, and each sign shall be made of a durable substance.

(c) The signs required under pars. (a) and (b) shall list either the primary activities that are restricted or prohibited on the stewardship land or the primary activities that are permitted on the stewardship land. The signs shall include either the name of the owner of the stewardship land or a person to contact regarding the stewardship land. Signs shall also be placed at the specified major access points that give notice that the stewardship land was acquired in whole or in part using stewardship program funds. The department may specify the amount of detail that is required on the signs to assure that the signs provide sufficient and useful information.

(d) If the stewardship land described under par. (a) or (b) has a cumulative acreage of 10 acres or more, the signs under par. (a) or (b) shall also include one of the following:

1. The postal address or telephone number of the owner of the stewardship land.

2. The postal address or telephone number of a person to contact regarding the stewardship land.

3. An Internet Web site address where a person can locate the information listed in subd. 1. or 2.

(f) If an owner of any stewardship land fails to comply with the requirements of par. (a), that person is not eligible for any subprogram or grant or other state aid under the stewardship programs until the department determines that the person is in compliance with par. (a).

(g) If the department is notified that a sign required under par. (a) or (b) needs replacing, within 28 days after receiving that notification the department shall determine if the sign needs to be replaced. The department shall replace any sign required under par. (b) within 28 days after determining that the sign needs to be replaced. Within 7 days after determining that a sign required under par. (a) needs to be replaced, the department shall notify the owner of that determination. The owner of stewardship land that placed signs as required under par. (a) shall be ineligible for any subprogram or grant or other state aid under the stewardship programs if the sign is not replaced within 3 months after receiving the notice.

(h) If the department authorizes a nonprofit conservation organization to charge a fee for hunting on stewardship land, the fee for the hunting season may not exceed the sum of the fee for a daily resident vehicle admission receipt under s. 27.01 (7) (f) 2. and the issuing fee for a daily vehicle admission receipt under s. 27.01 (7) (gr).

(4) CONTACT INFORMATION. An owner of stewardship land shall provide information requested by the department that will enable the department to contact that owner.

(5) APPLICABILITY. This section does not apply to the following stewardship land:

(a) Easements used for trails.

(b) Easements for which the primary purpose of the easement is not public access.

(c) Land acquired or managed under s. 23.17.

History: 2007 a. 20; 2009 a. 28.

23.0917 Warren Knowles–Gaylord Nelson stewardship 2000 program. (1) DEFINITIONS. In this section:

(a) "Annual bonding authority" means the amount that may be obligated under a subprogram for a fiscal year.

(am) "Available bonding authority" means the annual bonding authority as it may be adjusted under sub. (4g) (b), (4m) (k), (5) or (5m).

(b) "Baraboo Hills" means the area that is within the boundaries of the Baraboo Range National Natural Landmark.

(c) "Department land" means an area of land that is owned by the state, that is under the jurisdiction of the department and that is used for one of the purposes specified in s. 23.09 (2) (d).

(d) "Land" means land in fee simple, conservation easements, other easements in land and development rights in land.

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

(e) "Obligate" means to encumber or otherwise commit or to expend without having previously encumbered or otherwise committed.

(f) "Owner's acquisition price" means the amount equal to the price the owner paid for the land or if the owner acquired the land

WISCONSIN LEGISLATIVE COUNCIL
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CLEARINGHOUSE RULE 09-077

Comments.

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. Based on s. 23.0916 (2) (a), Stats., an acquisition date of "on or after October 27, 2007" should be included in the definition of "non-departmental land."

b. In s. NR 52.04 (2), the department should clarify its authority to limit public comments to those made by "affected" parties. Additionally, if the authority exists, the department should provide additional guidance regarding the determination of whether a party is sufficiently "affected" to merit consideration of that party's comments.

c. Section 23.0916 (2) and (3), Stats., generally provide that nature-based outdoor activities must be allowed on certain lands unless the Natural Resources Board determines that it is necessary to prohibit public access for one or more nature-based outdoor activities. However, s. NR 52.04 (2) (a) provides that if no objection is received within a 15-business day comment period following the submission of a proposal to prohibit a nature-based outdoor activity, the department will allow the project to proceed. Thus, in the situation in which no objection is received to a proposal to prohibit a nature-based outdoor activity, the statutory presumption of open use of the property is reversed into a presumption that some activities will be prohibited without a specific determination made by the Natural Resources Board. What statutory authority exists for this rule provision?

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2. Form, Style and Placement In Administrative Code

a. In the related statute section of the rule analysis, the department should use the word "establish" instead of "establishes." A space should be placed between "ch." and "NR 1."

b. In s. NR 52.01 (1), the department should move the substantive material in the last sentence to a different section of the rule and provide more explanation regarding the treatment of "restrictions" under ch. NR 52. Also, in sub. (1), the word "Department" should be replaced by the word "department."

c. Section NR 52.02 (intro.) should read "In this chapter:".

d. In s. NR 52.02 (1), the department should refer to "s. NR 52.05 (1) (c)." [But see comment 2. k., below.]

e. The rule should include a definition of "department" in s. NR 52.02.

f. Section NR 52.02 (3) should refer to the definition in s. 23.0916 (1) (a), Stats.

g. In s. NR 52.02 (4), should the department use the same definition of hunting used in ss. NR 46.02 (10) and 46.15 (17)?

h. In s. NR 52.02 (5), the word "given" should be inserted after the word "meaning."

i. In s. NR 52.02 (8), the word "and" should be inserted before "23.0917" and the word "by" should be inserted before the reference "s. NR 51.05."

j. In s. NR 52.02 (9), the department should refer to "ss. 23.0915 and 23.0917, Stats."

k. In s. NR 52.03 (1), the notation "(a)" should be deleted. When any section, or part of a section, is divided into smaller subunits, at least two subunits should be created. Similarly, in sub. (2), the notation "(a)" should be deleted, the subdivisions should be renumbered as paragraphs, and the subparagraphs should be renumbered as subdivisions. [See also the creation of one subsection in s. NR 52.05.]

l. In s. NR 52.03 (2) (a) 2., the word "or" should be inserted before "23.0917." In subd. 3., the word "Grantee" should be replaced by the word "applicant." In sub. (3) (b), the notation "Wis. Adm. Code" is unnecessary and should be deleted.

m. In s. NR 52.04 (1) (d), the cross-reference should read "s. 23.0916 (2) (b) or (3) (b), Stats.". [See, also, sub. (2) (a).]

n. In s. NR 52.04 (2), the introductory material should be renumbered as par. (a) and the remaining paragraphs should be renumbered accordingly. Also, in what is currently in sub. (2) (e), the word "rule" should be replaced by the phrase "section .... [legislative reference bureau inserts date]."

o. In s. NR 52.04 (2) (b), the department refers to procedures following resolution of issues during a comment period. The department should elaborate on the procedure if no resolution is reached during that time. Generally, the department should further explain the

review process it intends to use. For example, s. NR 52.04 (2) (e) Note refers to review by the Natural Resources Board. The rule could be clarified with regard to this review, as well the procedure after the board hears the department's report as described in s. NR 52.04 (2) (e). Additionally, the decision-making process of the department in s. NR 52.04 (2) (d) could be clarified.

p. In s. NR 52.04 (2) (d), the department should refer to "pars. (b) and (c)" and "s. 23.0916 (2) (b) and (3) (b), Stats."

q. In s. NR 52.05 (1) (b) (intro.) and 2., the department should avoid repetition of the phrase "the necessity to prohibit."

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

a. Section NR 52.01 (3) provides that certain provisions of the administrative code will govern public access on "all other department and non-department lands." This sentence should be expanded to specifically contrast this land to land covered under other provisions; for example, the sentence could read: "...all department and non-department lands acquired in whole or in part with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., that are not referred to in sub. (1) or (2)."

b. In s. NR 52.03 (1) (a), the department should rephrase the last sentence to say "This paragraph applies to new plans as well as...."

c. In s. NR 52.04 (1) (d), the department should replace "assessment of the need" with "determination" or provide additional information distinguishing the two terms. Generally, should the department choose different terms of art to differentiate between decisions made by the department and decisions made by the board?

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2009 Session

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 52

Subject

Public use of lands acquired under the Knowles Nelson Stewardship Program

Fiscal Effect

State: ☒ No State Fiscal Effect
☐ Indeterminate

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

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ 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

Assumptions Used in Arriving at Fiscal Estimate

2007 Act 20 included reauthorization of the Knowles Nelson Stewardship Program which is the primary funding source for acquiring land for conservation and public outdoor recreation. Act 20 included a provision that certain lands acquired with funds from the Stewardship Program under ss. 23.0915 and 23.0917, Stats., be open to five nature based outdoor activities (NBOA's): hunting; trapping; hiking; fishing; and cross country skiing. The Act also provides for exceptions to the statute if it is necessary to prohibit one or more of the activities to protect public safety, protect unique plant and animal communities or to accommodate usership patterns.

This rule implements ss. 23.0916, Stats., by creating standards and criteria that will be used by the Department to determine whether it is necessary to prohibit one or more nature based outdoor activities. The Department does not anticipate any fiscal impact to state or local government as it implements CH. NR 52.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
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Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	11/18/2009

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2009 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 52

Subject

Public use of lands acquired under the Knowles Nelson Stewardship Program.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

0

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs	0	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
Total State Costs by Category	$ 0	$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$ 0	$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 0	$ 0
Net Change in Revenues	$ 0	$ 0

Prepared By:	Telephone No.	Agency
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Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	07/29/2009

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Assumptions Used in Arriving at Fiscal Estimate – Continued

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

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

LF-08-09

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted: s. 23.0916, Stats.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency contact person:

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

Chapter 52. STEWARDSHIP LAND ACCESS

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

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

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

52.02 Definitions. In this chapter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The primary purpose for the project.

2. Laws and ordinances that may impact one or more NBOAs on the property.

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

3. Potential user conflicts that may create public safety issues and impact one or more NBOAs on the property.

4. The physical characteristics of the property including size, shape, groundcover, topography or proximity to inhabited buildings that create public safety issues and influence NBOAs on the property.

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

1. The primary purpose for the project.

2. The necessity to prohibit an NBOA to protect and enhance the biological diversity, composition and ecological functions of natural communities exhibiting relatively little human disturbance or that have the capacity to be easily restored to such conditions.

3. The potential for an NBOA to impact the natural values of the site, according to s. 23.28 (3), Stats.

4. The potential for an NBOA to accelerate or increase over time and cause damage to the natural values of a site.

5. The potential for an NBOA to increase the risk of poaching rare plant or animal species, or the removal or destruction of rare geological or archeological features.

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

1. The primary purpose for the project.

2. The NBOAs available at the location of the acquisition at the time of purchase or that existed previously, if any.

3. User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.

4. The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement.

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

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

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

Section 3. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin_____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Mathew J. Frank, Secretary

(SEAL)