

Report From Agency

REPORT TO LEGISLATURE

NR 10 and 45, Wis. Adm. Code
Hunting on State Ice Age trail areas that are owned by the department
Board Order No. WM-04-08
Clearinghouse Rule No. 08-022

Basis and Purpose of the Proposed Rule

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

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

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

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

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

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

- Hunting for any species for which a season is open during the period beginning on November 1 and ending on March 31.

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

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

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

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

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

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

In implementation of this rule, the department believes that it will be important to provide sufficient notice of possible hunting decisions in advance of the property acquisition process. The department will evaluate providing individual notification over the internet, or through other means, to any person requesting to receive a notice of a proposal to allow or prohibit hunting on department lands that are proposed to be acquired as part of the State Ice Age Trail area. The department will also evaluate the feasibility of providing a news release or other notice of intended actions in a way that is consistent with how notices under ch. NR 150 Wis. Admin. Code are issued for acquisitions of stewardship lands following ch. NR 52 requirements. This proposed rule change does not require hunting decisions to be addressed immediately at time of acquisition, but rather anytime prior to master planning. Should the department recommend, when necessary to complete transactions in a timely way, and the Natural Resources Board accept, hunting decisions may be deferred at time of acquisition until adequate public input can be noticed and received. It would be the Department's intent that this deferral would not be for a period beyond six months from the date of acquisition.

Summary of Public Comments and Department Response

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

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

Written Comments

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

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

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

Response to Public Comments

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

This rule does not assure that the primary use of the Ice Age Trail continues to be as a footpath. In order to provide further assurance that management will continue to be primarily for foot travel, the department has modified this proposal to restate language from Ch. NR 1.29 in the section which is created by this proposal. Ch. NR 1.29 establishes that the Ice Age trail shall be managed primarily as a footpath for pedestrian use. Another change that has been proposed following the hearings is that the presumption will be that a property is closed to hunting unless action has been taken upon purchase or through the master planning process to make it open.

This rule will not require or encourage management practices such as stocking or improving habitat specifically for game species.

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

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

Hunting and hiking are generally incompatible.

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

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

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

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

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

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

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

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

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

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

Most hunting seasons are statewide in nature and hunting may occur nearly anywhere that firearm discharge is not prohibited by local ordinances. By establishing the ability to close portions of an Ice Age Trail area property and providing the option of more limited times when

hunting may occur, there may actually be less hunting occurring than on other types of department property or on private land.

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

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

Hunting should not be allowed until it is proven safe.

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

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

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

Please do not exclude hunters and fisherman from stewardship lands.

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

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

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

These lands should be open to trapping.

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

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

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

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

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

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

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

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

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

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

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

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

Modifications Made

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

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

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

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

Appearances at the public hearings

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

Summary of Hearings on WM-04-08.

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

Changes to Rule Analysis and Fiscal Estimate

The rule analysis and fiscal estimate were changed to reflect the modifications described previously under "Modifications made".

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Clearinghouse had no comments.

Final Regulatory Flexibility Analysis

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.