

Clearinghouse Rule 10-127

Report to Legislative Council Rules Clearinghouse
Ch. NR 51, Wis. Adm. Code
Natural Resources Board Order CF-28-09

Wisconsin Statutory Authority

ss. 23.09 (2)(d), (2dm), (2p), (2q), (19), (20, and (20m); 23.0915; 23.09165; 23.0917; 23.092; 23.094; 23.096; 23.098; 23.17; 23.175; 23.197; 23.198; 23.27 (4), (5), and (6); 23.293 (4) and (5), 26.38 (2m)(a), 30.24, 30.277, and 227.11, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None.

Analysis of the Rule – Rule Effect – Reason for the Rule

Chapter NR 51, Wis. Adm. Code, establishes applicant and project eligibility standards and subprogram criteria that are used by the Department of Natural Resources in determining Knowles-Nelson Stewardship grant awards to local units of government, nonprofit conservation organizations, and Friends Groups for land acquisitions and development projects. The proposed rule contains a total of 19 subchapters: 3 subchapters address general provisions and the remaining 16 address specific Stewardship subprograms.

Proposed changes to ch. NR 51 fall into the following categories:

1. Housekeeping -- Corrections of grammar, sentence structure, definitions of terms used in the existing ch. NR 51 but not previously defined, and gathering of requirements from throughout ch. NR 51 into one location when those requirements apply to all categories of Stewardship grants.

2. Changes resulting from reauthorization of the Knowles-Nelson Stewardship Program in 2007 *Wis. Act 20* -- Adds public access requirements by reference to ch. NR 52, Wis. Adm. Code. Adds new signage requirements. Adds three new subchapters, as follows:

- Grants to Counties for County Forests (s. 23.0953(2)(a)1., Wis. Stats.)
- Grants to Counties when the DNR asks for Assistance (s. 23.0953(2)(a)2., Wis. Stats.)
- Recreational Boating Facility grants (s. 23.0917(2)(a)3m., Wis. Stats.)
- Allows grant awards for up to 75% of total project costs to nonprofit conservation organizations that meet certain criteria (s. 23.096 (2m), Wis. Stats.)

3. Incorporation of Existing Grant Practices – Many of these practices have evolved and been used since ch. NR 51 was last promulgated in 2001. Some changes in this category represent changes in policy.

Policy issues that are addressed in the proposed rule include:

1. Change the amount of grant funds typically advanced to Friends Groups to avoid problems with repayment to the DNR and to comply with the IRS Code. In general, 50% will be advanced; higher amounts can be advanced under certain conditions. To address Friends Group cash flow in 50% advance circumstances, Friends Groups may also request partial reimbursements once the grant agreement has been signed. Increasingly, grant close out has been slow and documentation inadequate to justify entire advance. When a 100% advance is provided and all funds are expended, there may be no funds available to repay the state for undocumented expenditures. In addition, the IRS Code restricts what can be done with the proceeds from the sale of tax-exempt bonds. The State agrees to prohibit bond proceeds from being invested at a higher yield than those paid by the bond; this means Friends Group should not place grant advances in an interest-bearing account. Failure to comply with this IRS

conditions can, and has recently, resulted in monetary penalties against the violator and puts the State's bond rating at risk. The practical result is that advances to Friends Groups must generally be more limited. Our solution is lesser advances but access to partial reimbursement.

2. Clarify that grants provided for development projects must encumber the grant property in perpetuity. By practice over the last decade, the DNR has required that properties are encumbered under the Stewardship program even if the DNR has only provided a Stewardship grant for a development project. This change to ch. NR 51 codifies past practices. To formalize the process, grant contracts will be recorded on the property deed.

3. Make "playgrounds" a grant-eligible support facility for nature-based outdoor recreation. Getting children into the outdoors and beginning an appreciation of nature often begins with playground equipment in parks. The statutes allow the DNR to add to the definition of nature-based outdoor recreation by rule. Local governments have requested this addition to the definition of nature-based outdoor recreation. The DNR feels playgrounds should be considered on a case-by-case basis so long as the playground is supplemental to the primary purpose of the grant.

4. Further defines criteria for nonprofit conservation organizations to be eligible to apply for a Stewardship grant.

5. Removes the requirement that the DNR "shall" provide a Stewardship grant for Natural Area projects if funds are available. This change acknowledges that project approval is also contingent upon approval of the Natural Resources Board and Joint Finance Committee, where appropriate.

6. Increases the required lease length on developed properties not owned by the sponsor from 20 to 25 years. This change provides increased protection for properties where Stewardship grant funds are used.

7. Simplifies the formula for determining how long nonprofit conservation organizations have to use "residual credits". Residual credit is the term used to describe any remaining value of a donated property where that property had earlier been used to match a Stewardship project. Project sponsors will have 36 months to use residual credit from the date that the first grant contract is issued to use residual credit. In addition, residual credit cannot be transferred among nonprofit conservation organizations and can only be used as match to projects within the same Stewardship grant subprogram.

8. Requires that a comprehensive outdoor recreation plan (CORP) be adopted by the time of a Stewardship grant application rather than the CORP being "under development" at the time of grant application. The DNR has experienced several instances where local government projects scored well enough to rank high enough to receive grant funding, but the project is delayed more than one year because the CORP took so long to be adopted. Funds reserved for local governments in these cases could have been awarded to the next highest-ranked project that was ready to proceed. Requiring that CORP be adopted by the time of a grant application ensured that Stewardship grant funds are used in a timely manner.

9. The proposed rule requires Natural Resources Board review for grant awards of \$500,000 or more.

10. Other issues identified through public outreach and comment during the rule making process.

Agency Procedures for Promulgation

Public hearings, followed by Natural Resources Board adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

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