

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
CF-28-09

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885, 169.21, 169.39 and 227.11, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 51, Wis. Adm. Code, relating to the administration of Stewardship grants.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held by videoconference on December 1, 2010, at 1:00 p.m. at the following locations:

MADISON

The Pyle Center
Room 315
702 Langdon St.
Madison, WI 53702

WAUKESHA

Waukesha County Technical College
Rm. B-091
800 Main Street
Pewaukee, WI 53072

GREEN BAY

Green Bay State Office Building
Room 618
200 North Jefferson Street
Green Bay WI 54301

WAUSAU

UW-Marathon County Wausau
Room 218
518 S. 7th Ave.
Wausau, WI 54401

SPOONER

UWEX Cooperative Extension Northern District Office
Professional Building Conference Room (not the Administrative Office)
Just south of the post office
702 Front St.
Spooner, WI 54801

EAU CLAIRE

Eau Claire State Office Building
Room 139
718 W Clairemont Ave
Eau Claire, WI 54701

NOTICE IS HEREBY FURTHER GIVEN that the proposed rule and fiscal estimate may be reviewed at the following Internet site: <http://adminrules.wisconsin.gov> .

Written comments on the proposed rule may be submitted as follows:

- Via U.S. mail to Ms. Amy Bradley, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707.
- Electronically at the following Internet site: <http://adminrules.wisconsin.gov> .

Comments may be submitted until 4:00 p.m. on Wednesday, December 8, 2010. Written comments -- whether submitted by U.S. mail or electronically -- will have the same weight and effect as oral statements presented at the public hearings. Hard copies of the proposed rule and fiscal estimate may be obtained by contacting Ms. Bradley at the e-mail address or phone number listed below.

Plain Language Rule Analysis: Chapter NR 51, Wis. Adm. Code, establishes applicant and project eligibility standards and subprogram criteria that are used by the Department of Natural Resources (DNR) 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.

Related Statute or Rule: General guidelines for department land acquisition are located in ch. NR 1, Wis. Adm. Code. The Department recently promulgated ch. NR 52, Wis. Adm. Code, relating to public access for nature based outdoor activities on both department and non-department lands that are acquired in whole or in part with funding from the Stewardship Program.

Comparison with Rules in Adjacent States: Minnesota, Michigan, Iowa and Illinois all have land acquisition programs that allow for the purchase of land, either in fee or as easements. Many of these programs are similar to the Stewardship program.

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.

<http://www.dnr.state.mn.us/grants/landlnaturalLscenic.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. http://www.michigan.gov/dnr/O.1607.7-153-10366_37984_37985-124961--OO.html

Iowa: Iowa has two programs of interest:

1- The Resource Enhancement and Protection grant program in Iowa was created to enhance and protect Iowa's natural and cultural resources. This program provides up to \$20 million annually to acquire land for recreational purposes. <http://www.iowadnr.gov/reap/index.html>

2- The Wildlife Habitat Promotion with Local Entities provides funding to county conservation boards for the acquisition and development of wildlife habitat. <http://www.iowadnr.gov/grants/wildlife.html>

Illinois: The Open Space Lands Acquisition and Development Program in Illinois provides approximately \$20 million in assistance annually to local government agencies for acquisition and development of land for public parks and open space. <http://www.dnr.state.il.us/ocd/newosladi.htm>

Federal Regulatory Analysis: The Land and Water Conservation Fund (LWCF) is a federal grant program administered by the U.S. National Park Service. This program provides funding to states for the acquisition of land and the development of facilities for public outdoor recreation. Use of LWCF funds is directed by the Statewide Comprehensive Outdoor Recreation Plan that 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, the Department receives Federal funding for motor boat access acquisition and development, for wildlife habitat protection and management, and for fisheries habitat protection and development. Land acquired with funds from the U.S. Fish and Wildlife Service must generally 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.

Summary of Factual Data and Analytical Methodologies: *2007 Wis. Act 20* included reauthorization of the Knowles-Nelson Stewardship Program for another 10 years with annual appropriations of \$86 million. The Stewardship Program is the primary funding source for land acquisition for conservation and public outdoor recreation in Wisconsin. Reauthorization included a provision requiring that lands purchased in whole or in part with funds from the Stewardship Program under ss. 23.0915 and 23.0917, Stats., be open for nature-based outdoor activities (hunting, fishing, trapping, hiking, and cross country skiing) unless the Natural Resources Board determines it is necessary to prohibit one or more of the nature-based outdoor activities to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns.

2007 Wis. Act 20 also added two new grant subprograms and required that the recreational boating facilities grant program now be funded under the Stewardship Program.

In addition to noting needed rule revisions in the 10 years since ch. NR 51 was last revised, Department staff have worked with the Stewardship Advisory Committee (SAC) on proposed revisions to this rule. The SAC is appointed by the DNR Secretary. A complete listing of SAC members can be found at <http://dnr.wi.gov/org/caer/cfa/Grants/Agendas-Minutes/StewMembers.pdf> Department staff also collected comments while working with the WI County Forest Administrators and the WI Waterways Commission.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Agency Contact Person: Amy Bradley, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921, (608) 267-0497, amy.bradley@wisconsin.gov

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Amy Bradley at (608) 267-0496 with your specific accommodation request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary