

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
LF-08-09

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.0916 and 227.11, Stats., interpreting ss. 23.0915 and 23.0917, Stats., the Department of Natural Resources (DNR) will hold public hearings on creation of ch. NR 52 Wis. Adm. Code relating to public use of lands acquired under the Knowles-Nelson Stewardship Program.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will begin at 6:30 p.m. on the following dates and locations:

October 14, Wednesday

DNR West Central Region Headquarters (Room 158/185)
1300 West Clairemont
Eau Claire, WI 54702

October 15, Thursday

Nicolet Area Technical College (Learning Resources Center Theater)
5364 College Drive
Rhineland, WI 54501

October 20, Tuesday

Madison Area Technical College, Truax Campus (Student Lounge – 142C)
3550 Anderson St.
Madison, WI 53704

October 21, Wednesday

Northeast Wisconsin Technical College (Room CB213 C&D)
2740 W. Mason Street,
Green Bay, WI 54307

October 22, Thursday

UW Washington County (Lecture Hall 201)
400 S University Dr
West Bend, WI 53095

NOTICE IS HEREBY FURTHER GIVEN that a 30-minute informational briefing on the Knowles-Nelson Stewardship Program will precede the hearing (beginning at 6:00 p.m.). The hearings will begin at 6:30 p.m. with an overview of ss. 23.0916, Stats., and an overview of the proposed rule. Public Comments will be accepted beginning at 7:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that the proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> (search using keyword “NR 52”). Written comments on the proposed rule may also be submitted via U.S. mail to Mr. Douglas Haag, Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707 or by email to DouglasJ.Haag@Wisconsin.gov. Comments may be submitted until October 30, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet

access, a personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Haag at the address above or by calling (608) 266-2136.

Plain Language Rule Analysis: Chapter NR 52 creates standards and criteria that will be used by the DNR 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 DNR will notify the public by posting the information on the DNR's website. The public will have a chance to comment on the proposal to buy the land and prohibit the activity. The DNR 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 ss. 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 U. S. 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 U. S. Fish and Wildlife Service administers several programs that provide funding to the DNR for land acquisition and facility development. Most of these funds target specific purposes 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, wildlife habitat protection and management, and fisheries habitat protection and development. Generally, land acquired with funds from the U. S. Fish and Wildlife Service must be open to the public. There are some limited restrictions on the types of activities 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, through either easements or fee simple purchases. Many of these programs are similar to the Nelson-Knowles 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 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 Wis. Act 20 included reauthorization of the Knowles-Nelson Stewardship Program that 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 DNR administered the Knowles-Nelson Stewardship Program according to an interim protocol adopted by the Natural Resources Board in December 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 2008 and invited public comment by personal testimony, email, 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 DNR appointed a 29-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 managed the meeting and lead the group through a variety of exercises intended to identify important issues. The DNR 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 DNR 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 DNR 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 DNR 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. It is anticipated that no new funding or business activity will be created.

Agency contact person: Douglas Haag
Realty Operations Chief
(608) 266-2136
DouglasJ.Haag@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 DNR's Small Business Regulatory Coordinator may be contacted at DNRSMBusinessCoordinator@Wisconsin.gov or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the DNR 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 DNR may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the DNR'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 Doug Haag at (608) 266-2136 or DouglasJ.Haag@wisconsin.gov with specific information on your 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