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Chapter N

Natural Resources

“Natural resources,” for purposes of this chapter of the Briefing Book, consist of the water, land, wild animals, and wild plants within this state.

Most of the state agency responsibilities related to natural resources are delegated by the Legislature to the Department of Natural Resources (DNR), although some are also assigned to other agencies. Local units of government (counties, cities, villages, and towns, and certain special purpose districts such as lake districts) also have responsibilities related to natural resources.

In addition to this governmental role, much of the management of natural resources is undertaken by individual landowners and private organizations and associations.

Natural Resources and Applicable Laws

Water. Wisconsin has approximately 15,000 lakes that consist of about one million acres of surface water, not including Lake Michigan or Lake Superior. (The entire state is almost 35 million acres.) Wisconsin has hundreds of miles of shoreline along Lake Superior and Lake Michigan. Wisconsin also has 44,000 miles of streams, of which nearly 10,000 miles are of sufficient quality to provide trout habitat. In addition to these surface water resources, Wisconsin has over 5 million acres of wetlands.

Water Regulations. The Wisconsin Constitution protects a variety of public uses of navigable waters and protects certain rights of private waterfront property owners. The state’s water resources are subject to numerous and varied regulations at all levels of government intended to reconcile and protect these uses while protecting the water resource. Water resources can be the source of many questions directed to the offices of legislators and to the DNR and local units of government. Some of the examples of regulation are:

- Based on a statutory framework of regulations, the DNR issues a variety of permits for activities that may affect navigable waters, such as dredging, grading near waters, constructing dams, or placing structures or fill in the water. Many of these regulations can be found in ch. 30 of the statutes.
- Local units of government (counties, cities, villages, and towns) administer certain water regulatory programs pursuant to state mandates, including shore-land zoning, wetland regulation, and floodplain zoning.
- Local units of government are authorized to regulate boating activities. Local units of government are not required to adopt such regulations, but any regulations adopted must be consistent with certain statutory limits set by the Legislature.

Public Trust in Navigable Waters. Water resources in Wisconsin that meet the standard for navigability as established by the Wisconsin Supreme Court are subject to the “public trust doctrine,” which is part of the state’s constitution. The public trust doctrine requires that “the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefore.”

The Wisconsin Supreme Court has construed the public trust doctrine broadly to include not just navigation by means of watercraft, but also fishing, hunting, swimming, and enjoyment of scenic beauty. While the navigable waters in Wisconsin are public, they may only be used by the public if access is available without trespass. The DNR or local units of government frequently purchase land to provide such public access.

Land

Publicly Owned Land. There are more than 5 million acres of publicly owned land in Wisconsin that is dedicated to conservation and recreation. The U.S. government owns nearly 1/3 of the public lands which are primarily in the national forests. The DNR owns approximately 1/4 of the public lands. The largest portion of these DNR lands are state forests and wildlife habitat. Other examples of DNR lands include parks, natural areas, and lands related to fishing. The largest public land ownership in Wisconsin is in county parks and forests, consisting of 45% of the public lands. There are additional entities that own public land that has recreational potential, such as other local governments, school districts, the Department of Transportation, the University of Wisconsin (UW), and the Board of Commissioners of Public Lands.

In addition to publicly owned land, there is land that is privately owned but is subject to publicly or privately owned easements that protect the natural values of the land. In many cases, this land is available for public uses specified in the easements, such as for fishing in a streamside buffer area.

Private Forestry. Wisconsin has 16 million acres of forest land that cover close to 1/2 of the state’s area, mostly concentrated in the north. A variety of state and federal programs encourage individuals and families to keep land as forest, rather than converting it to other uses, and to manage the land for timber production. The primary program is Wisconsin’s managed forest law which gives a property tax reduction for enrolled land. The managed forest law encourages private owners to allow public use of the land entered in the program by providing a lesser tax on land upon which public access is allowed. The law also recognizes the interests of private forest owners in having some exclusive use of the land, by allowing the owner to close up to 160 acres to public access without paying the higher tax rate.

Acquisition Programs for Public Land. Wisconsin has had active programs for land acquisition in the DNR and its predecessor agency, the Conservation Commis-

sion. The latest version is the Warren Knowles-Gaylord Nelson Stewardship Program, reauthorized for an additional 10 years (to 2019-20) in the 2007-09 Biennial Budget. Under this program, the state may issue bonds for \$86 million annually, primarily for state land acquisition, with lesser amounts provided for property development and local assistance. In addition, the stewardship program includes cost-sharing opportunities for private conservation organizations.

Land Use Regulations. Some of the most well-known state land use regulations bear a direct relation to natural resources, including regulations concerning shorelands, wetlands, and floodplains. Other land use regulations in Wisconsin related to natural resources are primarily a local matter, including zoning and comprehensive planning.

Wild Animals and Plants

The regulation of uses of wild animals and plants is primarily a state function. The Legislature sets state policy in statute, and the DNR promulgates rules to administer those statutes. For example, the DNR promulgates major rule packages annually for hunting and fishing seasons.

Regulation and Enforcement. The statutory framework for fish and game regulation is primarily found in ch. 29, Stats. These statutes govern the regulations applicable to hunting, trapping, and fishing, and the licenses or approvals required for those activities. Chapter 29 also regulates commercial activities regarding fish and game (such as commercial fishing), hunter education, and stocking of fish and game. Chapter 29 also contains the provisions regarding endangered and threatened species. One key statutory provision is s. 29.014, which is the broad grant of authority to DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

The enforcement of regulations regarding hunting, fishing, and trapping is done by DNR wardens and is based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture rather than a criminal penalty. Some of the more serious fish and game law violations do have criminal penalties.

DNR wardens may generally enter private "open fields" areas without a warrant for enforcement activities; however, constitutional restrictions limit all law enforcement officers' authority to perform warrantless searches in the area around a house and other areas in which the owner has an expectation of privacy.

Fish and Game Management. The DNR has many programs for fish and game management that involve stocking animals or fish, improving habitat for fish and game, and conducting surveys of fish and game to determine species status and to set appropriate regulations and bag limits.

The state has mounted a major effort to contain and eradicate chronic wasting disease among wild deer in the south central portion of the state. The DNR and the Department of Agriculture, Trade and Consumer Protection (DATCP) have the primary responsibility for administering this effort. The situation has evolved rapidly since the disease was first discovered early in 2002. More information can be found at: <http://www.dnr.state.wi.us/org/land/wildlife/whealth/issues/CWD/index.htm>.

Summary of Current Issues

This portion of the chapter highlights some natural resources issues that arise on a regular basis.

The OHWM is defined in Wisconsin law as: “the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.”

Shoreland Zoning. The state’s shoreland zoning program regulates certain activities within shorelands (generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream). These regulations generally only apply to shorelands in unincorporated areas. The purposes of this program include to “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses and preserve shore cover and natural beauty.”

The shoreland zoning statute, and DNR’s rules administering it, set minimum standards; counties can opt to be more restrictive in their implementing ordinances. Shoreland zoning restrictions control lot size, require building setbacks and buffer strips, control modification or expansion of buildings, restrict a lot’s total impervious surfaces, require mitigation of certain activities, and restrict land divisions. A major revision of this program was recently promulgated by the DNR.

For purposes of shoreland zoning regulation and many other regulations, the transition point between a lake or a stream and its shorelands is the ordinary high-water mark (OHWM). The OHWM is defined in administrative code as “the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.” The location of the OHWM is a critical issue because it determines where many activities can occur, including the location of building setbacks. It also forms the boundary line between public ownership of lakes and lake beds and private ownership of shorelands (this is generally not the case with rivers and streams—the public owns the water resource but unlike with lakebeds, riverbeds are typically privately owned). Because so much rests on the location of the OHWM, problems arise when errors are made determining the OHWM, when the OHWM changes over time, or there is just disagreement about its location.

Dams. According to the DNR, Wisconsin has over 3,800 dams, many of which are in a poor state of repair. Approximately 100 dams have been removed from Wisconsin streams since 1967. DNR has a dam safety program which focuses on inspections, but there is very little funding available to help to repair or remove dams. DNR has broad authority over dams, including the power to require a dam to be repaired or removed, if necessary.

Piers. Statutes control the size and configuration of piers that may be placed by riparian owners without a permit from DNR (exempt pier). An exempt pier must generally be no more than six feet wide, with an eight foot wide loading platform extending only to the depth necessary to moor a boat or three feet (whichever is deeper), and have no more than two boat slips for the first 50 feet of water frontage and one more boat slip for each additional 50 feet of frontage. Statutes also address piers that were placed prior to the enactment of the existing exemption. The statutes allow an owner to seek a permit for a larger pier.

The Legislature in the 1990s created a program for payment of aids in lieu of property taxes for property acquired by the DNR.

Loss of Tax Base. Land acquisition for public purposes, particularly the large-scale acquisitions by the DNR for parks, forests, and recreation areas, often creates conflict at the local level due to the perceived consequences to the property tax base because land in public ownership is not subject to property taxation. In the 1990s, the Legislature created a program for payment of aids in lieu of property taxes for

property acquired by the DNR. These state aids are calculated so as to be equivalent to property taxes that would otherwise have been levied on the land.

Liability on Private Land. The recreational immunity statute reduces the potential liability of private property owners who allow other people to use their land, to encourage private owners to provide recreational opportunities for the public. The statute only applies if the landowner is generally not in the business of receiving compensation in exchange for the use of his or her land. This statute does not prohibit the filing of a lawsuit by an injured person.

Hunting and Trapping. Hunting and trapping statutes and regulations are constantly evolving. Some of the many recent changes include:

- The creation of a hunter mentoring program.
- New trapping regulations related to possession of green skins, transfer of animals and animal parts, and identification tags on traps.
- Expansion of crossbow hunting opportunity.
- Repeal of the archery license waiting period.
- New bobcat season regulations.

Invasive Species. Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack the natural controls, like predators, from their home territory and may be able to out-compete native species for food, habitat, and other resources. The Legislature recently enacted revisions to the statewide invasive species control program that modify existing rules relating to the transportation of aquatic plants and animals and the placement of objects in navigable waters. It is now generally illegal to place or operate a vehicle, seaplane, watercraft, or other object of any kind in a navigable water if it has any aquatic plants or aquatic animals attached to its exterior, except during the period of time when the object is being operated in the same navigable body of water in which the plants or animals became attached. People also may not take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached.

Endangered Resources. The DNR maintains a list of species that are either endangered or threatened in Wisconsin. The U.S. Fish and Wildlife service also maintains a list of endangered and threatened species under the federal Endangered Species Act (ESA). A good deal of controversy has surrounded the gray wolf, which has experienced a very successful recovery in this state. The estimated wolf population is far above the target state population goal. This species has been removed from Wisconsin's protected list and efforts have been underway since before 2003 to remove it from the federal ESA list. Multiple lawsuits have prevented the federal delisting of the gray wolf in Wisconsin, which prevents the DNR from using lethal means of controlling problem wolves or wolf populations. Damages caused by wolf depredations are paid by DNR, usually for attacks on livestock or hunting dogs.

Wildlife Damage. The Wildlife Damage program is funded by fees collected from hunters. Payments are available from this program for damage caused by deer, bear, geese, and turkey. The statute also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR. Land for which wildlife damage payments are made may be required to be open to hunting.

Additional References

A key DNR contact for state legislators is Paul Heinen, Policy Advisor to the Secretary [(608) 266-2120].

The DNR website contains useful information about natural resources management. Current topics of special interest are noted on the home page, and other information is readily available at: <http://www.dnr.state.wi.us>.

The DNR website has a weekly posting of news articles on subjects of current interest at: <http://dnr.wi.gov/news/weekly.asp>.

State park campsites can be reserved by calling the toll-free number, 1-888-947-2757, or on the web through ReserveAmerica at: http://www.reserveamerica.com/client/client_wi.jsp.

The UW-Extension website has a large number of articles regarding natural resource issues at: <http://learningstore.uwex.edu/Natural-Resources-C5.aspx>.

The Legislative Fiscal Bureau also has prepared very detailed summaries of many state programs related to natural resources. For informational papers on topics such as the Conservation Fund or the Warren Knowles-Gaylord Nelson Stewardship Program, see: <http://www.legis.state.wi.us/lfb/Informationalpapers/info.html>.

Wisconsin Legislative Council

One East Main Street
Suite 401
Madison, WI 53703-3382

Phone: (608) 266-1304
Fax: (608) 266-3830

www.legis.state.wi.us/lc