

Administrative Rule NR 52

Stewardship Land Access
s. 23.0916, Stats.



The Components of Stewardship

Land Acquisition Subprogram

DNR \$50 million
NCO \$12 million

Local Assistance Subprogram

Local Government/NCO
land acquisition
park development
\$11.5 million



NR 52 Rule Summary

- Gather information about a proposal to prohibit one or more NBOAs.
- Review the information and make a preliminary decision about the proposal.
- Share the information that was gathered and the preliminary decision with the public and accept public comment on the proposal.
- Review the public comment and evaluate any new information that was received.
- Make a final written determination.
- Provide reports to the Natural Resources Board on the Stewardship Program and decisions made under the rule.



s. 52.01 Purpose and Applicability

- The purpose of NR. 52 is to establish standards and criteria for prohibiting public access on lands acquired with funds from the Knowles Nelson Stewardship Program.
- Decisions will be made based on sound science, legitimate safety issues, factual data and relevant information.
- Most Easements, State Park acquisitions, fish hatcheries, fish, wildlife and game refuges are exempt from the law. Use of these lands is governed by existing statutes and administrative code.



s. 52.02 Definitions

- "Accommodate Usership Patterns" means to consider the factors found in s. 52.05(c) when making a determination to prohibit an NBOA.
- "NBOAs" means the nature based public outdoor activity of hunting, fishing, trapping, hiking or cross country skiing.



s. 52.02 Definitions – Cont.

- “Primary Purpose” means the recreational or conservation purpose for which the property is being acquired as guided by state statute and by state, regional or local plans that support the project.
- “Prohibit Access for an NBOA” means not to allow the activity in its entirety, or to restrict the activity so that a major or significant amount of the activity is not allowed.



s. 52.03 General Provisions

- Proposals to prohibit an NBOA shall include:
 - A description of the public uses proposed for the project.
 - A check list indicating which NBOAs will be provided.
 - An explanation of the primary purpose for the project.
 - A description of the NBOAs to be prohibited and the reason.
 - All uses are subject to federal, state and local laws.



s.52.04 Public Notice and Comment

- All proposals to prohibit NBOAs will be noticed to the public. The notice will include:
 - The name, address and phone number of the Department's contact person for the project.
 - The checklist described earlier.
 - A summary of NBOAs being prohibited and why.
 - The Department's assessment of the need to prohibit the NBOAs.



s.52.04 Public Notice and Comment

- The Public Comment period is 15 business days.
- The Department has a 15 business day evaluation period.
- The Department will create a final written summary on the proposal to prohibit an NBOA.



s. 52.04 Public Notice and Comment

The Department will submit a monthly report to the NRB regarding determinations made under this chapter and the NRB will hear public comment biannually.



s.52.05 NRB Determinations

- The Natural Resources Board has determined that it is necessary to prohibit one or more NBOA's to protect public safety, protect unique animal and plant communities and to accommodate ushership patterns.
- The Department will make administrative determinations for each individual proposal to prohibit an NBOA.



NR.52.05 Factors to Consider

Public Safety


- The primary purpose for the project;
- Laws and ordinances that may impact NBOAs;
- Potential user conflicts that create a safety risk;
- Physical characteristics of the site;



Factors to Consider

Protect Unique Plant and Animal Communities

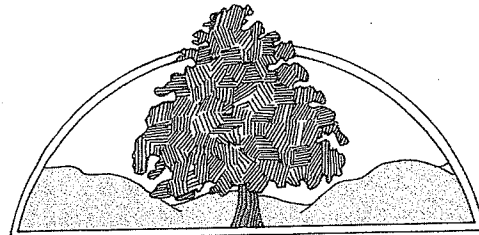
- The primary purpose for the project;
- To protect biological diversity;
- The potential to impact a natural area according to s. 23.28(3) Stats;
- The potential for an activity to increase over time and cause harm;
- The potential for an NBOA to lead to poaching rare plants or animals;



Factors to Consider

Accommodate Usership Patterns

- The primary purpose for the project;
- NBOAs available at the location at the time of purchase;
- User incompatibility that may occur;
- Feasibility of separating activities
- Size and shape of the parcel;
- The mix of NBOAs which will provide a quality experience;



Waukesha County Land Conservancy

I am Ellen Gennrich, President of the Waukesha County Land Conservancy, a non-profit land trust protecting environmentally significant lands in Waukesha County.

Our land trust currently protects over 2300 acres of land. All of the land we own is open to the public. All of the lands that we have purchased with assistance from the Stewardship Fund are open to deer hunting, if hunting is allowed in that community.

BOARD OF DIRECTORS:

President:
Ellen Gennrich
Land Conservation Advocate

Treasurer:
Steven Schmuki
Attorney

Secretary:
Riene Wells
Owner: Eagle Centre House

Phil Crump
Community Volunteer

Christopher F. Gloe
VP & Trust Counsel:
Marshall & Ilsley Trust Co.

Phillip J. Hinman
VP Financial Analysis:
Fiserv, Inc.

Marlin Johnson
Prof of Biology: UWWC

Janet M. McKenna
Community Volunteer

Donna Meyer
Community Volunteer

Neal O'Reilly
VP Water Resources:
Hey & Associates, Inc.

Ron Siepmann
Board Chairman:
Siepmann Realty Corp.

Cindy Ziegler-Fritz
Community Volunteer

The only controversy in NR52 is whether all land purchased with the help of Stewardship Funds should be required to be open to all kinds of hunting –with no regard to other users who would like to use the lands during some of those hunting seasons and would not feel safe doing so with hunters on the land; with no consideration of whether there are school groups who would take students to a property if they were sure it was safe. Allowing all kinds of hunting on all sites means only hunters would use the Conservancy's lands for much of the year. We feel that this would be unfair. Among taxpayers, there are more wildlife watchers photographers than there are hunters - at a rate of over 6 to 1. There are certainly more birder watchers among the Waukesha County Land Conservancy's members than hunters. These are the folks who don't just pay their share of the taxes that go into the Stewardship Fund, but who also raise the other half of the money to purchase these lands. Hunting organizations do not.

When NR52 was written, there was a large committee with input into the formation of this rule. Then there were hearings around the state. Three officers of our Conservancy testified at one of those hearings in West Bend. When NR52 was taken before the Natural Resources Board, inexplicably, a single sentence was added – with no public input whatsoever. This is #10 on page 2 of the document.

The original committee had agreed that the DNR staff should have the flexibility to study each parcel to decide which of the public uses was appropriate. That meant that an organization might ask to limit certain hunting, perhaps to protect a certain species at some time of the year, or to meet the wishes of the selling landowner, or to accommodate other users. But somehow, the hunting community managed to sneak in #10, which says, innocently sounding enough, that restricting an activity is to be considered a prohibition of that activity. Allowing deer hunting would be considered prohibiting hunting. This is ridiculous and will cause our land trust and others not to apply for Stewardship Funds for many purchases in the future. And much less land will be protected in those populated areas.

Definition #10 was added to this rule without any public input. I am asking that you remove #10 before you even consider passing NR 52.



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WISCONSIN STATE SENATE

Committee on the Environment

Comments of the Waukesha County Environmental Action League (WEAL)

March 16, 2010

WEAL was formed in 1978 with a mission of "*Representing the Waukesha County community for protection of Waukesha County's natural resources through dedicated grass-roots participation and action.*" As a part of that mission WEAL has partnered with local units of government, non-profit conservation organizations, and friends groups to help acquire, manage and preserve lands for outdoor recreation and habitat protection in Waukesha County. WEAL has partnered with these entities not only to support acquisitions for nature based outdoor activities (NBOA's) but also acquisitions solely to protect the intrinsic conservation values of the property.

WEAL is not an anti-hunting organization. WEAL is not opposed to hunting per se, as a recreational pursuit and takes no position regarding hunting as a NBOA.

However, WEAL's membership believes NR 52, clearinghouse rule 09-077, as written is broad and overreaching. WEAL does not believe the rule as it pertains to land purchased by nonprofit conservation organizations or local units of government with assistance of the Knowles-Nelson stewardship fund fairly represents the state of Wisconsin's demographics.

We oppose NR 52 outright and ask the Committee at a minimum send the rule back to the Department of Natural Resources for redrafting so that it might more fairly reflect all of Wisconsin's outdoor recreation enthusiasts. We ask the Committee send the rule back for the following reasons:

1. The rule as currently written panders to a vocal minority of the state's outdoor recreation enthusiasts. By mandating public access for all forms of hunting during all times such hunting may be legally pursued, the rule limits access for a significant majority of Wisconsin's other outdoor recreational enthusiasts. Many WEAL members, who are birders,

photographers, hikers and the like are not comfortable sharing the landscape knowing others also may be there with weapons.

2. The rule as written will diminish the effectiveness of the Knowles-Nelson Stewardship fund. As you know the Stewardship fund was first established by the legislature in Act 31 in 1989. It was codified in Chapter 23 of the Wis. Stats. which outlines Wisconsin's conservation priorities and history.

In Section 23.09(1) it states.....

WEAL is already aware of a number of NCO's who will be reluctant to participate in the program if every property they protect must be open to all forms of hunting. WEAL does not believe that this is what was envisioned by the authors of this legislation and certainly not by its namesakes.

3. In late 2009, numerous parties spoke out at public hearings on this proposed rule. Many asked that the rule be written with more flexibility in mind. Instead, the rule since those hearings has been redrafted to be even more rigid. Language has been added to the purpose section and the definitions to say that even a *restriction* of some hunting could be interpreted as a *prohibition*. This goes too far. WEAL believes and supports the proposition that there are many sites that may, for any number of science based reasons, need to be restricted from hunting or for that matter any of the other NBOA's. To have the rule read that *any restriction* can now be considered an illegal *prohibition* completely handcuffs the NCO or local unit of government from practicing sound resource management.

Finally, WEAL requests that if the Committee continues to move the rule forward it add the following amendatory language to sections 52.05 (a) (b) and (c) as an additional criteria to be used in determining whether to prohibit NBOAs to accommodate usership patterns, protect public safety or protect unique plant or animal communities.

Does the NBOA materially interfere with the mission and/or specific management goals of the NCO or local unit of government acquiring the non-departmental land.

If the Committee believes as WEAL does that the purpose of the Knowles-Nelson Stewardship fund is to protect the best of Wisconsin's outdoors, not

only for NBOAs but all of the lands unique and intrinsic values as well, then you should have no problem sending this back for a rewrite or at least adding additional flexibility as WEAL has proposed. To do any less, is in WEAL's view, to eviscerate the intent and purpose of the Stewardship fund itself.

2.5

We are creating this onerous rule
to deal w/ 8% of the land acquired by Stewardship

Why does the States 50% trump the private
50%

If you do send this back for rewrite please
be sure to include Scientists who look @ land
preservation for its intrinsic conservation values -



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March 16, 2010

Senate Environment Committee

Re: Administrative Rule NR 52 (Knowles-Nelson Stewardship Program public access rule)

My name is Jim Welsh. I am the Executive Director of the Natural Heritage Land Trust, which is a non-profit conservation organization working to protect natural areas, wildlife areas, working farms, and other important lands in the Dane County region.

Thank you for the opportunity to provide comments on the Stewardship Program Public Access Administrative Rule NR 52.

The Natural Heritage Land Trust supports the Stewardship Program public access administrative rule as approved by the Natural Resources Board in January.

The rule maintains a proven mechanism for funding important land acquisitions. It provides flexibility to help the communities we work with meet their conservation and outdoor recreation goals by selectively limiting some nature-based recreation activities consistent with the conservation resources and location of the property.

Also, the rule creates a dependable decision-making process that gives us the certainty we need to successfully negotiate land transactions with willing landowners.

Since 1983, the Land Trust has protected over 6,300 acres of important land and water, often in conjunction with the Department of Natural Resources. We have received 23 matching grant awards from the Stewardship Program. Over 80% of the lands for which we've received Stewardship funding are fee title purchases open to the public. The Land Trust completes many types of projects that feature all nature-based outdoor activities, including hunting and trapping. It is critical to us and our community partners to allow for reasonable limitations on public use. Two cases in point:

In 2008, the Land Trust worked with Dane County to purchase approximately 480 acres next to the Mazomanie Wildlife Area near the Wisconsin River. This acquisition is in a rural area, and all of this land is open for hiking, cross-country skiing, fishing, trapping, and hunting. We purchased another 40 acres adjacent to the Wildlife Area in December 2009, and that land will also be open to all nature-based outdoor activities.

In 2007, the Land Trust purchased 23 acres at the Patrick Marsh Natural Resource Area. Patrick Marsh is located on the eastern door step of the City of Sun Prairie, a rapidly



growing community. This land is open to all nature based outdoor activities except for hunting. It is not open to hunting because of safety conflicts due to its location directly adjacent to a residential subdivision, and because the adjoining DNR land is not open to hunting.

If we had been required to make this property open to all public access, we would likely not have purchased it because of the difficulty of managing safety conflicts due to the large number of people including children who live nearby. The land was owned by a developer who was planning a residential subdivision on the property; it likely would have been developed and the recreation and wildlife habitat values destroyed if we had not been able to purchase it.

The rule adopted by the Natural Resources Board balances the needs of the various beneficiaries of the land permanently protected by the Stewardship Program. It provides the flexibility we need to protect a variety of landscapes: rural, on the edge of urbanizing areas, and next door to where large numbers of people live.

The future of land conservation rests with the next generation of Wisconsinites, and we need to create every opportunity we can to get those people away from their computer and TV screens and out of doors, whether it be for hunting or hiking or other nature-based activities. In my two examples above, I suggest that many more people are going to be introduced to nature at Patrick Marsh than at Mazomanie Wildlife Area because of the proximity of Patrick Marsh to a city. If we couldn't have purchased that land with Stewardship funds, we would have missed a tremendous opportunity to build support for land conservation with the hundreds of people who live right next door.

We also support that the rule's provision that decision-making about funding grants is vested with staff at the DNR. This is the appropriate level for such decision-making; an appeals process at the level of the Natural Resources Board could politicize the Stewardship program and delay good land conservation projects.

The Natural Heritage Land Trust supports the proposed Stewardship Program public access administrative rule (NR 52).

Wisconsin Wildlife Federation

Good afternoon Chairman Miller and Members of the Senate Environment Committee. My name is George Meyer and I am Executive Director of the Wisconsin Wildlife Federation.

The Wildlife Federation has been an advocate for strong public access on lands purchased with Stewardship funds.

We do not believe that that the proposed Stewardship Public Access rules comply with the legislative intent of Section 23.0916, Wisconsin Statutes, and we also believe that the rules are arbitrary and capricious. We respectfully request that the Committee send the rules back to the Department of Natural Resources for revision.

Mr. Knuth and I will detail the several specific changes the Federation is requesting. Specifically we ask that:

1. The rule should be modified to require that the Natural Resources Board, not senior Department staff, be the decision-makers when it is proposed to place prohibitions or restrictions on the right to hunt, fish or trap on lands purchased with Stewardship funds.

We have attached to our written testimony a detailed legal opinion specifying the several reasons why the statute mandates that the Board, not the Secretary, should be the final decision-maker. This is consistent with the past interpretations of Legislative Council attorneys.

2. The rule should be modified to provide that public access for hunting, fishing and trapping on a new Stewardship funded parcel not be denied on the basis that hunting, fishing or trapping is available on nearby public lands.

DNR has already made decisions that because there was public land within five miles of a new parcel that they would prohibit hunting and trapping access on the new Stewardship funded parcel. This rationale would justify the prohibition of such access on new parcels in a major part of the state.

3. The rule should be modified to provide that the mere speculation that a user conflict may arise in the future should not be a basis for prohibiting hunting, fishing and trapping on a Stewardship funded parcel at this time. If, in fact, a user conflict does start to become apparent, restrictions or prohibitions, if necessary, can be put into place.
4. Lastly, the rule should be modified to provide that public access for hunting, fishing or trapping on a new Stewardship funded parcel should not be denied just because the land is adjacent to other lands purchased by the applicant before the

requirement for public access was mandated in the statute. Allowing this type of exception would render the statutory public access requirement to be meaningless in many situations.

Chair Miller, Members of the Committee, thank you for the opportunity to testify here today. In his testimony, Mr. Jerry Knuth, will present additional changes that the Federation believes necessary with the existing rule.

George Meyer
Executive Director
Wisconsin Wildlife Federation

March 16, 2010

Wisconsin Wildlife Federation

Good afternoon Chairman Miller and member of the Senate Environment Committee. My name is Jerry Knuth from Plover Wisconsin and I am Chair of the Parks and Forestry Committee of the Wisconsin Wildlife Federation.

The Wildlife Federation has been a strong advocate for broad public access on lands purchased with Stewardship funds from the 2007-2009 budget adoption when the Stewardship Fund was reauthorized through all of the subsequent DNR rulemaking processes that have led to today's hearing.

We do not believe that that the rule as proposed meets the requirements of the current Stewardship statutory language requiring public access. In addition to the changes requested in our Executive Director's testimony, we are specifically asking that:

1. The rule be modified to provide that the "unique plant or animal community" exception to providing public access for hunting, fishing and trapping not apply to species of Wisconsin animals that are defined as either "game" or "unprotected" species.
2. The DNR has used the "unique plant or animal community" exception to the public access requirement to prohibit hunting or trapping for common game species such as coyotes, fox and bear. This clearly is not what was intended by the legislature.
3. We also request that the rule be modified to provide that the past practices and preferences of a prior landowner for hunting, fishing or trapping on the parcel to be purchased with Stewardship funds not be a basis to prohibit or restrict hunting, fishing or trapping on the property once it is acquired with Stewardship funds.

Currently the rule as written allows the DNR to prohibit hunting, fishing or trapping on a parcel based on whether there was hunting, fishing or trapping on the parcel in the past. The Federation does not believe that the past hunting, fishing or trapping practices of a selling landowner should be used to overrule the clear legislative intent that Stewardship lands be open to hunting, fishing and trapping.

4. We also request that the rule be modified to provide that Stewardship grants not be issued to any non-profit organization that prohibits hunting, fishing or trapping as a matter of organizational policy. The Wisconsin Trappers Association will be addressing this issue in greater detail. The Wildlife Federation has seen over the last two years that when an organization has a general policy against a recreational pursuit such as trapping, that the grant applicant and the DNR stretch the "unique plant or animal community" and "usership pattern" exceptions in

ways to justify the grant applicant's broad organizational ban on either hunting or trapping.

In conclusion, I would like to thank you for the opportunity to testify today on behalf of the Wisconsin Wildlife Federation.

Jerry Knuth, Chair
Parks and Forestry Committee
Wisconsin Wildlife Federation

March 16, 2010

Wisconsin Wildlife Federation

January 25, 2010

To: Wisconsin Natural Resources Board
From: George Meyer, Executive Director, Wisconsin Wildlife Federation
Subject: Legal Analysis of Responsibility of the Natural Resources Board to Hear Appeals of Decisions to Deny Public Access on Stewardship-funded Grants

Statute: Section 23.0916 (2) states:

“(a) Except as provided in Par. (b)..., any person receiving a stewardship grant on or after October 27, 2007, that will be used to acquire land in fee simple or to acquire and easement on former managed forest land shall permit public access to the land for nature-based outdoor activities.

(b) The person receiving the stewardship grant may prohibit access for one or more nature-based outdoor activities, **if the natural resources board determines** that it is necessary to do so in order to do any of the following:”

Question: Does proposed NR 52 comply with section 23.0916 (2) and constitute a determination by the Natural Resources Board for a “grant” allowing a “person” to “prohibit access for one or more nature-based outdoor activities”? Does such a determination need to be made by the Natural Resource Board directly or at least through an appeal process to the Board?

Answer: Section 23.0916 (2) is clear that the determination to prohibit access for one or more nature-based outdoor activities on individual parcels proposed to be purchased with Stewardship funds must be made by the Natural Resources Board. The clear language and the legislative history of section 23.0916 establishes that proposed NR 52 establishing broad guidelines for Department of Natural Resources staff does not constitute a determination on a “grant” allowing a “person” to “prohibit access for one or more nature-based outdoor activities.

Analysis:

1. The Department’s legal analysis states that section 15.05 (1) (b), Wisconsin Statutes, precludes the NRB from making individual decisions on denial of public access for a nature-based outdoor activity on a parcel of land purchased with Stewardship funds.

Section 15.05 (1) (b), Stats., provides that “the powers and duties of the board shall be regulatory, advisory, and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by

THE HISTORY OF THE UNITED STATES

1776

The first of the thirteen original states to ratify the Constitution was Delaware on September 17, 1787. It was followed by Pennsylvania on December 12, 1787, and New Jersey on December 18, 1787. The remaining states followed in the following order: New York (July 26, 1788), Massachusetts (February 6, 1788), Connecticut (January 9, 1788), Virginia (September 17, 1787), North Carolina (November 21, 1787), South Carolina (March 23, 1788), New Hampshire (September 17, 1787), Maryland (April 28, 1788), and Georgia (September 24, 1787).

1787

The Constitution was signed on September 17, 1787, in Philadelphia. It was the result of the work of the delegates to the Constitutional Convention, who met from September 1787 to September 1787. The Constitution was then sent to the states for ratification. The process of ratification was completed by the end of 1787.

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1788

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him or her under the direction of the board.” The Department’s legal analysis goes on to provide that the NRB exercises its authority by adopting rules with broad policy determinations that include factors, criteria and a process for the Department to exercise its administrative authority in making individual determinations.

The Department’s analysis belies the fact that the Natural Resources Board on a monthly basis makes tens of individual administrative decisions when it approves each land purchase by the Department either individually or en masse under the standard Board item: “Ratification of the Acts of the Secretary---Real Estate Transactions”. While it may be argued that approval of project boundaries for a DNR property may be a “policy decision”, approval of all individual DNR land purchases, sometimes as small as a tenth of an acre, must be characterized as an administrative decision, not a policy decision.

2. Setting aside for purpose of further analysis the Department’s inconsistent interpretation of section 15.05 (1) (b), Stats., if s. 23.0916 (2), Stats., and s.15.05 (1) (b), Stats., are in conflict, the specific wording of s. 15.05 (1) (b) is the more specific language as it relates to making Stewardship grant decisions and according to standard rules of statutory interpretation, the more specific statutory language is the controlling authority on the Natural Resource Board’s responsibilities on this issue. “Where general and specific statutory provisions are in conflict, the specific provisions take precedence.” Gillen v. City of Neenah 219 Wis. 2d 806 (1998). “Where two statutes apply to the same subject, the more specific controls, and this is especially true where the specific statute is enacted after the general statute.”

3. It is very clear that the Legislature, in this narrow field of decision-making, intentionally legislated that a public access decision prohibition is to be made by the NRB itself and not by the Department and its staff. Throughout the remainder of the statutes relating to the Stewardship Fund, all agency references are to the “department”. It is only in relation to this singular issue that the Legislature specifically assigns responsibilities to the Natural Resources Board. This unambiguously illustrates the intent of the Legislature that they are directing the Board, not the Department, to make public access determinations regarding Stewardship funded grants.”

4. In addition, another clear indication that the Legislature intended the Natural Resources Board and not the Department to make these decisions is that, based on a review of Wisconsin Statutes, **this is the only specific delegation of responsibility and reference to the Natural Resources Board,** except for the statutes creating the Board and setting standards for conflict of interest. In this case the Legislature felt so strongly on the public access issue, it did not allow the Board to delegate that responsibility to Department staff.

5. This opinion is shared by the Wisconsin Legislative Council, the official legal advisors for the Legislature. In an October 28, 2009 legal opinion, highly respected former Senior Staff Attorney Mark Patrosky ruled: “Based on my analysis of this statute, I believe that the grant recipient must allow access for all of the nature-based outdoor activities, unless specific approval is obtained from the Natural Resources Board to prohibit public access

for one or more of these activities. The statute, both for nondepartment land (i.e. land acquired by local governmental units and nonprofit conservation organizations) and department land, permits two options. The first option is that the grant recipient “shall permit public access to the land for nature-based outdoor activities.” The other option is that the grant recipient “may prohibit public access for one or more nature-based outdoor activities,” as determined necessary by the Natural Resources Board. I believe the statute is clear that the only way for the grant recipient to prohibit any public access is with the approval of the Natural Resources Board. Therefore, the grant recipient must otherwise allow access for all nature-based outdoor activities, because the grant recipient may only prohibit one of those activities with the approval of the Natural Resources Board.”

Attorney Patronsky then responded to the question whether the Natural Resources Board could delegate public access requirements to Department of Natural Resources staff: “Your second question is whether the Natural Resources Board itself must review any application to prohibit public access for any nature-based outdoor activities on Stewardship land, or whether the Natural Resources Board may establish criteria for this decision and delegate the decision to DNR staff. The statute clearly requires the Natural Resources Board to determine the necessity of prohibiting any public access. The statute does not authorize delegation of this decision. However, the Natural Resources Board could delegate fact-finding responsibilities to the staff, with a staff report and recommendation presented to the Natural Resources Board for its final decision. This interpretation of the statute is supported by the Wisconsin Supreme Court in *Park Building Corporation v. Industrial Commission*, 100 N.W.2d 571 (1960). The Supreme Court in this case relied on an earlier case to determine the extent to which a public officer or agency may delegate its authority:

The extent to which a public officer or administrative agency may subdelegate to subordinates an express delegated power, such as in the instant case to make an order, is well stated in *School Dist. No. 3 of Town of Adams, v. Callahan*, 237 Wis. 560, 576, 297 N.W. 407, 415 (1941), as follows:

‘However, the rule that requires an executive officer to exercise his own judgment and discretion in making an order of such nature does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order, and also to draft it in the first instance. [citing cases] It suffices that the judgment and discretion finally exercised and the orders finally made by the superintendent were actually his own.’

The Wisconsin Legislative Council also ruled on the issue that the Natural Resources Board cannot delegate public access prohibition issues to Department staff when in its Legislative Clearinghouse comments on this specific rule, the Council stated:

“Section 23.0916 (2) and (3), Stats., generally provide that nature-based outdoor activities must be allowed on certain lands unless the Natural Resources Board determines that it is necessary to prohibit public access for one or more nature-based outdoor activities. However, s. NR 52.04 (2) (a) provides that if no objection is received within a 15-business day

comment period following the submission of a proposal to prohibit a nature-based outdoor activity, the department will allow the project to proceed. Thus, in the situation in which no objection is received to a proposal to prohibit a nature-based outdoor activity, the statutory presumption of open use of the property is reversed into a presumption that some activities will be prohibited without a specific determination made by the Natural Resources Board. What statutory authority exists for this rule provision?"

6. The Department's position is that the appeal process for a Department determination denying public access is not for the Natural Resources Board but rather through a direct appeal to Circuit Court pursuant to Chapter 227, Wis. Stats., or by requesting an administrative hearing pursuant to section 227.42, Stats. The grant or denial of a section 227.42, Stats. administrative hearing is totally a discretionary decision of the agency itself. Currently the decision to grant such a hearing is made by the same person, (the Deputy Secretary), that signs the Stewardship grants denying public access.

A Circuit Court appeal will require an individual precluded from public access on a property to have to hire a private attorney to challenge an erroneous decision. Even a petition for an administrative hearing pursuant to section 227.42 would likely need a lawyer's assistance in order to be successful.

7. The issue as to who is the decision-maker on an individual determination of whether public access should be denied on a parcel purchased by the Stewardship fund was highly and specifically negotiated during the 2007-2011 state budget process and was one of the last issues resolved in that budget process with the negotiated settlement resulting in the specific language requiring that such a decision was to be made by the Natural Resources Board itself, not by agency staff. This issue was specifically in the mind of the Legislature when it adopted the language in section 23.0916 (2). The Board needs to carefully carry out this legislative intent.

Conclusion: The Legislature when it reauthorized the Stewardship Fund in the 2007-2011 state budget included unique language in section 23.0916 (2), Stats., specifying that the Natural Resources Board, not Department of Natural Resources staff, would be required to make the final agency determinations that public access for the specified nature-based outdoor recreational activities could be prohibited on specific parcels purchased with Stewardship funds. The rules proposed in Chapter NR 52 recommended by DNR staff to implement section 23.0916 fail to comply with that statutory requirement.

1875
The first of these was the "Theodore Tilton Case," in which the
Bible Society was accused of publishing a tract which
contained a libelous charge against the Rev. Theodore Tilton,
a prominent Unitarian minister in Boston. The case was
tried in the Supreme Court of the United States, and the
Bible Society was found liable for damages.

The second case was "The Rev. Theodore Tilton vs. the
Bible Society of America," in which the Rev. Theodore
Tilton brought an action against the Bible Society for
damages, claiming that the tract published by the
Bible Society was libelous and defamatory to him.
The case was tried in the Supreme Court of the
United States, and the Bible Society was found liable
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Wisconsin's Waterfowl and Wetland Resources"*

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3/15/10

Senator Mark Miller, Chair
Senate Committee on the Environment
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Miller and Committee Members,

On March 16, 2010 your committee will be hearing one of the most critical rules ever put forward regarding the future of hunting, fishing and trapping. I am referring to NR 52 the rule dealing with access to properties purchased with Knowles Nelson Stewardship funds. This affects 1,000 of acres of land in your district.

The Wisconsin Waterfowl Association (WWA), is a statewide non-profit organization with 30 chapters in Wisconsin. WWA has been actively involved with the Knowles-Nelson Stewardship program for many years. In fact our habitat team has been a critical part of over 30 habitat restorations on stewardship properties.

In 2007 WWA worked closely with your office as well as other legislators to see the reauthorization of the program through the budget. Prior to these efforts we had raised concerns regarding purchased properties that limited access for hunters, anglers and trappers. It was this reason that language was put in place to make certain that where appropriate these uses would be allowed.

The DNR convened a committee to develop rules regarding access to these properties. WWA again sat on this committee and work diligently towards a reasonable conclusion. It became apparent that some people were there only to try to manipulate the process. Protests from the hunting, fishing and trapping community were largely ignored.

During the time since the law was passed we have seen grants awarded by DNR to organizations that go against not only the spirit but also the letter of the law. Including allowing an NGO to place restrictions on waters of our state in violation of the Public Trust Doctrine.

Legal opinions by legislative council and letters from legislators that supported our position have been ignored. An orchestrated misinformation campaign has made people believe that this is about hunters in blaze orange hiding behind swing sets on playgrounds.

The only thing the hunting, fishing and trapping community ever wanted was a reasonable discussion about compatible uses of these properties purchased. We recognize that not every property should be open to hunting, fishing and trapping. We have never sought to restrict anyone from sharing these properties with us and as a matter of fact during the rule committee meetings we tried diligently to uncover records of user conflicts between hunters, anglers and trappers and other users on multi-use properties, no one could come up with any evidence that these conflicts actually exist.

In our opinion and in the opinion of the many members of the hunting, fishing and trapping community this is the biggest issue that the future of our traditions will face. We ask you to vote to send these rules back to DNR and require that they get them right. We will live with these rules a long time, time spent now is time well spent.

Sincerely,



Jeff Nania

Special Projects Coordinator

Executive Director (retired) any questions 608-697-7002



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Senate Committee on The Environment
Senator Mark Miller, Chair
P.O. Box 7882
Madison, Wi 53707-7882

3/16/10

Dear Chairman Miller and Committee Members,

These are our comments on the proposed rule, NR 52. We have been a working part of the development of this rule, since it's inception. We strongly encourage you to send this rule back to DNR, it needs more work. We seek only to have a fair process by which to determine compatible uses of these public properties. We recognize that not all properties will be open to hunting, fishing and trapping. We hope that the process of review regarding compatible uses will be based on quantifiable fact, not personal prejudice or supposition.

The Wisconsin Waterfowl Association, a non-profit organization with 30 chapters across Wisconsin, is pleased to have been an active partner in the Stewardship program. Whether it is working with the legislature for reauthorization, developing rules for access or completing over 30 wetland projects on Stewardship properties, our commitment to this program has been unwavering. Establishing fair rules and successful implementation will help make sure that this program survives and prospers now and in the future.

As we move forward with these rules we feel it is important that we make note of a concern. We do not feel that it is appropriate for non-governmental organizations whose staff and overhead costs are in part funded by the DNR to lobby on these rules. There are several organizations that receive operational funds from the DNR that have been very active on this issue.

Hunting

We continue to see information distributed by both DNR and various NGOs that make statements regarding the amount of Stewardship property that is open to hunting. Hunting is defined by statute as reflected in the proposed rule. If a property is open for only deer hunting we do not believe that this means the property is open to hunting. It is very misleading to refer to this limited hunting as *open to hunting*.

Public Notice 52.04

We object to determinations regarding prohibitions of NBOAs be undertaken by DNR staff. This should fall to the Natural Resources Board. We believe this is contrary to the

law. We strongly concur with the legal opinion of Wisconsin Legislative Council Senior Staff Attorney Mark Patronskey. He stated, "Based on my analysis of this statute, I believe the grant recipient must allow access for all of the nature-based outdoor activities, unless specific approval is obtained from the **Natural Resources Board** to prohibit public access for one or more of these activities." To us this means the properties purchased with public Stewardship funds are presumed to be open for all NBOAs unless closed by specific action undertaken by the Natural Resources Board.

The primary purpose for the project 52.05

This is defined in the rule as "means recreational or conservation purpose for which the property is being acquired as guided by ss.23.09(2), 23.09(20) (am), 23.0915, 23.0917, Stats., s. NR51.05 and by state, regional or local plans that support the project. "Primary purpose" became a point of discussion in the advisory committee that most often referred to limiting one or more of the NBOAs particularly hunting and trapping. We strongly suggest that "The primary purpose for the project." Be deleted completely from the rule. This is will become a major point of contention in that we are concerned that it will be used as a means to establish prohibitions that are otherwise unwarranted.

52.05 c 2 The NBOAs available at the location of the acquisition at the time of purchase or that existed previously, if any

52.05 c 5 The size shape and location of the property and surrounding land uses, including the use of other nearby public lands which may or may not have been funded with stewardship funds.

Previous land uses and current uses of adjoining land should have no bearing on new purchases. This should be deleted from the rule.

Signage for stewardship properties

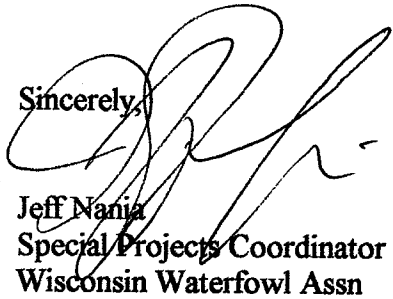
We believe that the rule should require that adequate signage be placed on all properties purchased with any stewardship funds. These signs should clearly show boundaries, compatible uses and contact information for the property managers. The Natural Resources Board should adopt a rule that allows signage to be covered with stewardship funds.

In conclusion we wish to note that there are several areas in the sections regarding appropriate reasons for prohibitions that are extremely difficult if not impossible to quantify or predict. An example would be **52.05 (b) 4 The potential for an NBOA to accelerate or increase over time and cause damage to the natural values of a site.**

The more objective the review of these properties the less potential there is for conflict during this process. It is critical that the criteria used to determine which NBOAs will be allowed or prohibited be as clear as possible.

Thank you for taking our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Nania", written over the word "Sincerely,".

Jeff Nania
Special Projects Coordinator
Wisconsin Waterfowl Assn

**Gathering Waters Conservancy's Testimony to the Senate Environment Committee
on Administrative Rule NR 52
March 16, 2010**

Thank you for the opportunity to comment this afternoon in support of Administrative Rule NR 52. My name is Mike Carlson, and I am here representing Gathering Waters Conservancy. Gathering Waters is the statewide service center for Wisconsin's fifty land trusts, and we build the capacity of these land trusts through consulting, education, outreach and public policy advocacy.

To date, land trusts and local governments have raised nearly \$200 million in federal, local, and private funds to match Stewardship grants, and have protected more than 60,000 acres of land in Wisconsin. Virtually all of this land is open to the public for a wide range of recreational opportunities, and this investment represents an enduring legacy that everyone in Wisconsin should be proud of.

From the beginning of this rulemaking process, Gathering Waters recognized that the final rule would have to represent a compromise among many diverse interests. All that we asked from the beginning was that the rule, while following the letter of the law, provide adequate flexibility and predictability for land trusts and local governments to continue protecting Wisconsin's special places and continue providing high quality public access of all kinds. While there are certainly aspects of the rule that we wish were different, we believe that the overall rule represents a reasonable compromise, and effectively captures the input of the diverse Administrative Rule Citizen Advisory Committee.

This 29-person Committee included 10 individuals from hunting, trapping and fishing organizations, 6 individuals representing land trusts, 6 individuals representing local governments, and 7 individuals representing a range of other interests. It was a diverse and opinionated committee, but the DNR did an effective job of turning the group's input into rule language.

We are hopeful that the current draft of NR 52 will provide a reasonable amount of flexibility. When considering a prohibition of certain activities the rule takes into account many reasonable factors, such as the size and shape of the property, user compatibility, local ordinances, surrounding land uses, and the primary purpose of the project, among many others. These factors are all crucial to help inform what it means "to be necessary to prohibit an activity to protect public safety, to protect a unique plant and animal community, and to accommodate usership patterns."

Stewardship Access Rule (NR 52)
Wisconsin Senate Environment Committee

March 16, 2010

Madison Audubon Society - Comments

My name is Peter Cannon, 420 Sidney St., Madison, WI 53703 and I'm here representing the Madison Audubon Society, with 2,500 members in seven counties in south central Wisconsin.

Imagine, if you will, how much the members of a chapter of the National Audubon Society want to go out on a lovely fall afternoon and watch people shoot ducks! Bird watching and duck hunting are simply not compatible activities.

Half the money used in any Stewardship land purchase by Madison Audubon and other Non-profit Conservation Organizations comes from non-state funds. The Stewardship half comes from general fund and forest tax dollars. Less than a quarter of the Stewardship funds go to NCGs, yet you are being asked by some of those here today to force us to open land which is purchased with general fund dollars and non-state money raised by the NCO to be open to hunting.

The statute and rule in question here today call for land purchased with Stewardship Fund dollars to be open to "nature-based outdoor activities", hunting fishing, trapping, hiking, cross-country skiing and other nature-based activity designated by rule by the department. But many of those speaking today are really saying that one "nature-based activity", hunting, takes precedence over all other activities. They say that hunting does not interfere with other uses of the land. Our members, including many who hunt, disagree. Many of our members do not go into any area open to hunting during hunting season.

What you are hearing today is an attempt on the part of certain elements within the hunting community to hijack general fund dollars intended to buy land



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To: Senate Committee on Environment
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: March 16, 2010
Re: **NR 52; Clearinghouse Rule 09-077**

The League of Wisconsin Municipalities supports the proposed stewardship public access rule, NR 52. The League is a voluntary association of Wisconsin cities and villages working to advance local government. First established in 1898, its membership consists of 189 cities and 390 villages.

We believe the department has, for the most part, fairly balanced the competing values reflected in the stewardship program reauthorization language in 2007 Act 20. These competing values are protecting public safety and established usership patterns against the policy and tradition of allowing hunting and other nature based outdoor activities on all stewardship lands.

We are pleased the rule provides that one of the factors the department shall consider when determining whether it is necessary to prohibit hunting on land acquired with stewardship funds is the existence of a municipal ordinance or policy banning hunting. We are also pleased the rule expressly states that public use of lands purchased with funding from the stewardship program shall be subject to all applicable local laws.

We believe the rule can be improved, however, by adding language explicitly recognizing that local government determinations about the need to protect public safety and established usership patterns are a controlling factor in judging the appropriateness of prohibiting hunting on municipal lands acquired with a stewardship grant.

In addition, the rule should make clear that communities remain eligible for stewardship grants even if they exercise their powers of local control and pass ordinances banning the use of firearms and hunting in municipal parks to protect public safety or to manage competing parkland uses.

Municipalities that have adopted a ban on hunting or the use of firearms should not be at a disadvantage when applying for stewardship dollars. Otherwise, metropolitan areas and urbanizing communities, where most of the state's population resides, will be shut out of the stewardship program.

To ensure that municipal public safety determinations and park and open space plans are given great weight by DNR when considering the appropriateness of a NBOA prohibition, and to clarify that municipalities banning hunting remain eligible for stewardship grants, we recommend NR 52 be modified in the following three ways:

- ◆ Add language expressly stating that a local ordinance or policy banning hunting or the discharge of firearms within the community creates a strong presumption that banning hunting within lands proposed to be acquired with stewardship program dollars is necessary to protect public safety.
- ◆ Add language to the rule expressly stating that the existence of a local ordinance or policy banning hunting or the discharge of a firearm within land that is proposed to be acquired with stewardship program dollars shall not be considered by DNR staff as a negative factor when evaluating stewardship grant applications submitted by local governments.
- ◆ Add language to the rule expressly stating that with regard to local government applications, in determining whether to allow the prohibition of a nature based outdoor activity to accommodate “usership patterns,” the local government’s recommendations in its comprehensive outdoor recreation plan shall serve as the primary basis for the agency’s decision.

Thank you for considering our comments and concerns.

Comments to the Senate Environment Committee of the Wisconsin Legislature on NR52

Hello. My name is David Wernecke, executive director of the Baraboo Range Preservation Association - a land trust working with landowners and conservation organizations in and around the Baraboo Hills. Thank you for providing this opportunity to urge you to support Administrative Rule NR52 as unanimously approved by the Natural Resources Board.

For the past several years, I've been following the negotiations to clarify the process for determining access to lands protected through the Stewardship Program. There are many facets to the access issue and this rules process, I'll limit my comments to two of them.

First, I've been amazed that an issue has been made about access to lands purchased through the Stewardship Program. You are already aware that the vast majority of these lands have nearly full public access. This fact demonstrates that Wisconsin Department of Natural Resources staff have honored the Stewardship Program's goal of "providing the land base and recreational facilities needed for quality outdoor experiences." I understand that over 90% of land purchased with Stewardship Program monies is open to hunting and trapping. Please consider that all Wisconsin residents pay for the Stewardship Program and that not all hunt, fish, or trap game. Please also consider that many Wisconsin residents support the Stewardship Program and other conservation efforts simply because they believe it is the right thing to do regardless of whether they ever set foot in a public park or on a protected property or have an opportunity to hunt or fish on it. Increasingly, we are recognizing that nature provides us with many benefits which we depend on and which we can no longer take for granted. Many citizens also recognize the value of protecting tracts of land solely for the benefit of other species.

Second, a great deal of precious DNR staff time and other conservation worker's time have been spent on this minor issue. I hope that you will support the position the Natural Resources Board took in the proposed rule which recognizes and relies on the professional and skilled staff at WDNR. I was glad to see the recognition of this in the administrative rules' purpose statement: "Decisions ...will be reviewed by the department using professional judgment and will be based on sound science, legitimate safety issues, factual data and relevant information."

I hope the State Legislature recognizes that the judgment of WDNR staff needs to be relied on and honored as much or more than a clear scientific finding when deciding whether access should be restricted or not allowed, since conclusive proof is often not available when determining whether access will be detrimental or not to natural communities. I further hope that this Committee will not permit projects to be unnecessarily bogged down or denied simply on the basis that some individuals or specific organizations politicize a particular property or demand this conclusive proof and misuse additional appeal rights to this end. Hopefully, your support for this Administrative Rule and its resolution of the access issue will permit DNR staff, local governments, and conservation organizations return to their important work rather than have that work unnecessarily disrupted.

Wisconsin residents pay for an agency of knowledgeable and dedicated natural resource professionals to work for them. Wisconsin residents also rely on the judgment of local officials and conservation organizations they support. It's time for us to rely on the judgment of these professionals and let them get on with their important work.

The Administrative Rule NR52 formalizes a process for putting access for hunting, fishing, trapping, hiking and cross country skiing at the forefront to respond to a legislative directive. The rule before you succeeds in addressing the access issue while maintaining some flexibility for considering appropriate limitations to access to parks in population areas and environmentally sensitive lands.

The Stewardship Program and its staff have served Wisconsin residents well, I hope you'll help this program and its staff to continue to do so by supporting Administrative Rule NR52 as unanimously approved by the Natural Resources Board.

Thank you for your consideration,

David Wernecke



Written Testimony in Opposition to CR 09-077
Senate Committee on the Environment
March 16, 2010

Dear Chairman Miller and Committee Members,

Thank you for scheduling a hearing on Clearinghouse Rule (CR) 09-077 and for allowing public comment on its consequences. As you know, it is the Legislature who originally wrote the related law and it is essential that our body communicates with the agency responsible for implementing it.

Protecting our public lands is one of the most fundamental ways to maintain our sporting heritage and is critically important to today's sportsmen and women and tomorrow's hunters, anglers and trappers. However, I am concerned that the language of CR 09-077 does not reflect the legislative intent of the language contained in State Statute 23.0916, which guarantees open access for hunting, fishing and trapping on Wisconsin's stewardship lands. In addition, it eliminates any accountability to our constituents by absolving the Natural Resources Board from upholding this important responsibility.

Statutes 23.0916(2)(b) and (3)(b) clearly state that prohibitions on any of the nature based activities can only occur "if the natural resources board determines that it is necessary to do so in order to do any of the following: 1. Protect public safety, 2. Protect a unique animal or plant community, or 3. Accommodate usership patterns, as defined by rule of the department."

Serving as Assembly Speaker throughout the 2007-09 budget negotiations, I know firsthand the significance of the details in the negotiated extension of the Knowles-Nelson Stewardship Program. Access to the land for hunting, fishing and trapping was an essential component of the agreement, a key part of the negotiation which extended the Stewardship program with funding of \$86 million annually beginning in July, 2010.

With no point of contention raised, representatives of the Doyle administration, were in complete agreement with the meaning of this language; that if any parcel is being purchased using stewardship money, it must be open to nature-based activities unless the board specifically granted an exemption on that parcel. To renege on the agreement simply because the Governor is not facing the voters again is dishonest.

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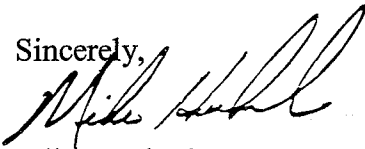
Instead, CR 09-077 will water down this agreement and identifies new factors that may be considered when a prohibition is proposed. In addition, it allows the DNR, not the Natural Resources Board, to evaluate the information supporting the prohibition. The Department is only required to provide a monthly report to the Natural Resources Board on its actions.

I ask that we not turn our back on an agreement made in good faith and maintain current Stewardship procedure when it comes to prohibition of public access on land trusts. CR 09-077 should be returned to the Department for further modification and bring forward a rule that secures the original legislative intent—a strong commitment to public access for hunting, fishing and trapping.

Should the Department reconsider these changes, NR 52 should be amended to require full board approval for any parcel acquisition when exemptions to the nature-based activities requirement are requested and all proposed prohibitions should be covered by this requirement.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Huebsch", written in a cursive style.

Mike Huebsch
State Representative
94th Assembly District



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR DALE SCHULTZ

FROM: Mark C. Patronsky, Senior Staff Attorney

RE: Questions Regarding Public Access and Use of Land Purchased in Part With a Stewardship Grant

DATE: October 28, 2008

This memorandum is in response to your request for analysis of one of the new statutory requirements regarding public access to land that is purchased in part with Stewardship funding. (2007 Wisconsin Act 20, creating s. 23.0916, Stats.)

The Legislature adopted new requirements for public access to Stewardship lands in the 2007-2009 Budget Act. A copy of this statute is included as an attachment to this memorandum.

Your first question is whether s. 23.0916, which requires the recipient of a Stewardship grant to permit public access to the land "for nature-based outdoor activities," requires the grantee to make that land accessible for all of the activities in the definition. The definition of "nature-based outdoor activity" is "hunting, fishing, trapping, hiking, cross-country skiing, and any other nature-based outdoor activity designated by rule by the department for purposes of this section." "This section" is a cross-reference to the new statute on Stewardship land access. The Department of Natural Resources (DNR) has not yet adopted administrative rules that would add any activities to the current list of statutory activities.

Based on my analysis of this statute, I believe that the grant recipient must allow access for all of the nature-based outdoor activities, unless specific approval is obtained from the Natural Resources Board to prohibit public access for one or more of these activities. The statute, both for nondepartment land (i.e. land acquired by local governmental units and nonprofit conservation organizations) and department land, permits two options. The first option is that the grant recipient "shall permit public access to the land for nature-based outdoor activities." The other option is that the grant recipient "may prohibit public access for one or more nature-based outdoor activities," as determined necessary by the Natural Resources Board. I believe the statute is clear that the only way for the grant recipient to prohibit any public access is with the approval of the Natural Resources Board. Therefore, the grant

recipient must otherwise allow access for all nature-based outdoor activities, because the grant recipient may only prohibit one of those activities with the approval of the Natural Resources Board.

Your second question is whether the Natural Resources Board itself must review any application to prohibit public access for any nature-based outdoor activities on Stewardship land, or whether the Natural Resources Board may establish criteria for this decision and delegate the decision to DNR staff. The statute clearly requires the Natural Resources Board to determine the necessity of prohibiting any public access. The statute does not authorize delegation of this decision. However, the Natural Resources Board could delegate fact-finding responsibilities to the staff, with a staff report and recommendation presented to the Natural Resources Board for its final decision. This interpretation of the statute is supported by the Wisconsin Supreme Court in *Park Building Corporation v. Industrial Commission*, 100 N.W.2d 571 (1960). The Supreme Court in this case relied on an earlier case to determine the extent to which a public officer or agency may delegate its authority:

The extent to which a public officer or administrative agency may subdelegate to subordinates an express delegated power, such as in the instant case to make an order, is well stated in *School Dist. No. 3 of Town of Adams, v. Callahan*, 237 Wis. 560, 576, 297 N.W. 407, 415 (1941), as follows:

“However, the rule that requires an executive officer to exercise his own judgment and discretion in making an order of such nature does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order, and also to draft it in the first instance. [citing cases] It suffices that the judgment and discretion finally exercised and the orders finally made by the superintendent were actually his own.”

If I can provide further information on this subject, please feel free to contact me.

MCP:jb;wu
Attachment



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March 16, 2010

To: The Honorable Chairman, Senator Mark Miller and Members
Wisconsin Senate Committee on the Environment
Madison, Wisconsin
From: Wallace C. Thiel, Village Administrator
Hartland, Wisconsin

RE: NR 52

Senators,

Thank you for the opportunity to appear before you this afternoon. My name is Wallace Thiel. I am a hunter, fisherman and, in general, avid outdoorsman. A native of Wisconsin, I am also the Village Administrator in Hartland, Wisconsin in central Waukesha County. I'd like to offer a few simple observations and comments regarding NR 52, the rule you are considering here today.

The use of Stewardship funds for preservation of outdoor recreation space should simply not be limited to those spaces which can easily or even reasonably accommodate hunting, trapping and similar activities. There are and will continue to be significant opportunities for municipalities with fairly dense human populations to benefit from the Stewardship program, but it is very difficult to allow the discharge of firearms or the placement of traps in many urban or suburban communities.

My view of the issue goes to a common-sense notion of the value of many forms of outdoor recreation, including passive observation of nature, photography, hiking and similar activities that could be jeopardized by conflicts with hunters and/or trappers in some urban or suburban settings. Please include clear guidelines in NR 52 that would allow the use of Stewardship funds in such settings where the obvious conflicts between more passive recreational uses and activities such as hunting and trapping would occur.

As an avid outdoorsman I have hunted both small and large game since I was allowed to do so almost 50 years ago. I am a municipal administrator in a municipality blessed with over 200 of acres of high quality natural areas, many under the influence or control of conservation interests and the potential for even more to be controlled by municipal or land conservancy interests. Yet

Senate Committee on the Environment
Page 2

it is quite inappropriate to consider hunting or trapping in this fairly densely populated sub-urban environment. Stewardship funds are an integral part of land preservation here as well as in more remote areas. Please consider this as you contemplate NR 52.

Respectfully submitted,



Wallace C. Thiel, Village Administrator
Village of Hartland
210 Cottonwood Avenue
Hartland, Wisconsin 53029

Date: March 16, 2010

TO: Senate Environment Committee spoken testimony

FROM: Sandy Heidel, Onalaska

RE: CR - 09-077 NR 52 Stewardship Public Access Rule

Thank you Senator Miller and members of the Senate Environment Committee for holding this public hearing on this very important rule.

I was a member of the DNR's Citizen Advisory Committee and it is my opinion that this rule fails to provide the legal framework for Stewardship grant recipients. It continues to allow them to use their own policies to restrict and prohibit public use of Stewardship land.

This rule also sidesteps the legislative directive that placed the responsibility squarely on the shoulders of the Natural Resources Board when hunting, fishing and trapping were restricted or prohibited on Stewardship lands. The buck needs to stop with the NRB.

Please modify this rule to restore this important responsibility to the NRB.

One recent grant to The Nature Conservancy for a project in the Baraboo area said bears that MAY be present needed protection under the unique animal community exception. On another property coyotes were given protected status. I don't believe this exception was intended for this purpose.

Please add to the rule a mandatory review by the DNR Wildlife Division staff of any restriction or prohibition to see if it consistent with current hunting, fishing and trapping regulations and management plans. Please also require that any approved restriction or prohibition be brought to the spring hearings and codified as part of the state hunting and trapping regulations.

The Nature Conservancy current prohibits and restricts fishing on many of the lakes in its Catherine Wolter Wilderness Area. These prohibitions on the public use of these navigable waters of the state are in my opinion a violation of the Public Trust Doctrine.

Please require that DNR Fish Managers review any grant application that includes any restriction or prohibition of fishing. Please also require that any approved restriction or prohibition be brought to the spring hearings and codified as part of the state fishing regulations.

TNC also recently was awarded a grant that prohibits waterfowl hunting on another navigable lake. Waterfowl hunting on navigable waters is a specific right afforded to all citizens under the Public Trust Doctrine

Please modify this rule and require that DNR evaluate all grant applications for Public Trust violations and not allow the wishes of a grant recipient to supersede this very important constitutional right of the public.

In conclusion, I don't believe that this rule clarifies when prohibitions can be made on Stewardship funded lands. What I had hoped from the beginning of the reauthorization process is what sportsmen and women across the state asked for - that access for hunting, fishing and trapping be the same on all Stewardship funded lands no matter if they are DNR owned or grant funded and owned by a land trust or municipality. This rule does not achieve that.

I would like to ask that you send this rule back for modification and bring forward a rule that secures public access for hunting, fishing and trapping now and in the future and protects the interest of the public and the public's right to use the navigable waters of the state and does not bow to the wishes of the grant recipients.

Sandy Heidel
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