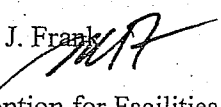


DATE: January 8, 2010  
TO: Natural Resources Board  
FROM: Matthew J. Frank   
SUBJECT: NRB adoption for Facilities and Lands Rule Order LF-08-09,

I am requesting Natural Resources Board adoption of LF 08-09, creating CH. NR 52 regarding public use of lands acquired under the Knowles Nelson Stewardship Program.

### **2007 Stewardship Reauthorization**

The 2007-2009 state budget reauthorized the Knowles Nelson Stewardship Program and increased funding to \$86 million annually beginning in July, 2010. (2007 Act 20). The Stewardship Program is the primary funding source for land acquisition for conservation and public outdoor recreation in Wisconsin. The 2007 reauthorization of the Stewardship Program also directed the promulgation of rules to more explicitly lay out public access requirements.

The proposed rule reinforces the presumption, and the historical practice, that Stewardship lands must provide public access and that limitations are to be the exception rather than the rule. Through the 2007 reauthorization and other legislation enacted over the years, the legislature has also recognized that there are situations in which it is appropriate to have some limitations on public access.

2007 Act 20 further defined the public access requirement, requiring that lands acquired with funds from the stewardship program are required to be open to the public for hunting, trapping, fishing, hiking and cross country skiing (NBOA's-Nature Based Outdoor Activities) unless it is necessary to prohibit one or more of these NBOAs to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns as defined by rule. The rule proposal incorporates the new law and harmonizes it with existing law. Act 20 did not change other laws governing state land use, land acquisition or stewardship grant subcategories.

### **The History of Public Access under the Knowles Nelson Stewardship Program**

Since its inception twenty years ago, the Stewardship Program has a solid record of providing public access for a wide range of outdoor enthusiasts. The Stewardship Fund has assisted in the purchase of more than 515,000 acres of land that is open to the public with 473,000 acres of that land open to public hunting and much of it open to public trapping, as well. Over the years, the legislature has enacted numerous laws designed to serve a multitude of goals that serve the public interest through the Stewardship Program, including land conservation and scenic beauty, protection of fish and wildlife habitat, preservation of forest and plant communities, as well as providing a wide range of outdoor recreation opportunities for all of Wisconsin's citizens, both in rural and urban areas.

Stewardship serves a wide variety of outdoor recreational opportunities. One of the things we cherish most in Wisconsin is the richness of our natural resources and how much they enhance our quality of life. Wisconsin citizens enjoy the outdoors in a wide variety of activities ranging from hunting, fishing, trapping, hiking, biking, cross country skiing, wildlife viewing, canoeing, and horseback riding to

camping, boating, snowmobiling, and ATV'ing, to name a few. It is the Department's responsibility to serve all of Wisconsin's citizens and maintain a wide range of outdoor recreation opportunities.

Wisconsin's Stewardship program is a national model which has significantly enhanced Wisconsin's strong hunting, fishing and trapping heritage. Whether through land preservation to forever protect existing hunting opportunities, opening up private lands to public hunting that were previously closed, or by restoring wildlife habitat to expand hunting opportunities which were previously limited, the Stewardship program has greatly expanded outdoor opportunities for sports men and women. No other state in the country has done a better job than Wisconsin in strengthening its hunting heritage through a public land purchase program supported by all state taxpayers.

Since its creation, the Stewardship fund has assisted in the purchase of more than 515,000 acres of land that is open to the public with 473,000 acres of that land open to public hunting and much of it open to public trapping as well. Lands that might be closed to hunting or trapping include state park lands, wildlife refuges, administrative facilities and land surrounding fish hatcheries, forest nurseries and administrative sites and lands within municipal boundaries subject to local ordinances.

Stewardship funds are conservatively estimated to have leveraged \$200,000,000 additional dollars from government, land trust and federal sources. Land Trusts alone have completed over 400 separate real estate transactions protecting nearly 40,000 acres of land and local governments have completed over 500 transactions protecting more than 15,000 acres. Of the 55,000 acres protected by local government and land trust partners, 40,000 acres are open to some form of public hunting.

### **Accountability and Transparency**

The rule preserves the success the Stewardship program has achieved in two critical areas- making timely decisions to take advantage of land buying opportunities, and leveraging state Stewardship dollars with dollars from other governmental and non-governmental partners to greatly expand the number of acres that are acquired for public benefit. The accountability and transparency provisions of the proposed rule retain the flexibility of the Stewardship program to take full advantage of public land acquisition opportunities.

The proposed rule establishes new accountability and transparency provisions that have not previously existed, creating new checks and balances over the Department's decisions regarding public access. The proposed rule sets up a process and criteria for department decisions about when certain activities will be limited on parcels of land acquired with Stewardship funds as well as a system for the Natural Resources Board to monitor public access decisions. The criteria, decision process and monitoring provide greater accountability and transparency for department decision making and create a framework under which citizens who disagree with a department decision can appeal the decision.

For example, the rule specifies internal procedures that the Department must use to provide an opportunity for public input whenever it considers limiting public access in a particular land acquisition.

For the first time, clear standards and a decision-making process are set forth in a rule that will be subject to oversight by the Natural Resources Board. With the enactment of the rule, the Board will enhance its authority to exercise oversight by modifying Department policy on public access to Stewardship lands through rule amendments or modifications as approved by the Board. The rule requires the Department to publish data and information regarding public access and to file regular reports with the Board, which will enhance the ability of the public and the Board to monitor the Department's performance.

In addition, for the first time, citizens or organizations who wish to challenge a public access decision can do so through a chapter 227 administrative appeal. Previously, in the absence of a rule, parties had no access to a review by an independent third party and could only appeal to the Department. Under the proposed rule, parties will be able to appeal a Department decision to an administrative law judge and ultimately to circuit court.

In addition to promulgating this rule, the Department is working hard to develop a more robust system so that all of our citizens can more easily find and access public land. These efforts include improving signage as well as enhancing website and internet information to make information instantaneously available.

### **Summary of the Rule:**

Chapter NR 52 creates standards and criteria that will be used by the department to determine when it is necessary prohibit one or more NBOA to protect public safety, unique plant or animal communities or to accommodate usership patterns. The rule identifies the factors that will be considered in setting a prohibition and creates a process for reviewing land acquisition proposals for compliance with the law. Decisions to prohibit an NBOA will be based on sound science, legitimate safety issues and other factual data pertaining to incompatible uses. Chapter NR 52 requires that when one or more NBOAs are proposed to be prohibited the department will notify the public by internet posting with the capability for individual subscriptions to updates. The web posting will include a checklist indicating which NBOAs are available at the site and if NBOAs will be limited, the reason for the limitation. The public will have a chance to comment on the proposal to limit NBOAs. The department will evaluate the public comments and apply the standards and criteria identified in the rule when determining whether the limitation meets the intent of s. 23.0916, Stats. Further, department decisions under this chapter will be appealable under Ch. 227.

2007 Act 20 directs the Natural Resources Board to establish a process for the review of determinations under ss. 23.0916. Stewardship land is presumed to be open unless one of the exceptions provided by the Legislature is present. Consistent with the Board's policy role outlined in s. 15.05(1) (b), the proposed rule provides a process for the Board to monitor the Department's day to day actions under this rule and consider whether any changes in policy are needed. Each month the Department staff will provide the NRB with a report that summarizes all stewardship land purchases that have been made and the determinations on public access that have been made under the rule. The NRB will then have an opportunity to hear testimony from the public on this report on a biannual basis.

### **Public Hearing Summary:**

In August the Natural Resources Board authorized public hearings on the draft rule, CH. NR 52. The Department held five public hearings during October. The locations of the hearings were: Eau Claire; Green Bay; West Bend; Rhinelander; and Madison. Approximately 113 people registered at the public hearings with about half of those provided testimony; an additional 175 people commented by e-mail and 28 by US mail service. Appendix 1 to this memo contains a detailed summary of, and response to all public comments. Major themes from the comments can be summarized as follows:

1. Modify the rule to provide for more Natural Resources Board (NRB) review of individual decisions or to provide some appeal authority to the NRB of individual decisions made by the department.

As discussed in the rule summary, the proposed rule is intended to be consistent with the NRB's policy making authority. Under s. 15.05 (1)(b), Stats., the NRB's authority is "policy making" and "not administrative". The NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for the Department to exercise its administrative authority in making individual determinations for each license, permit or grant application. All administrative duties and powers are vested in the Secretary, according to s. 15.05 (1)(b).

The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department.

2. Remove or modify certain sections of the rule related to factors that will be considered when making a determination to prohibit an NBOA.

The factors listed in the rule that guide the department's decision making for public access determinations were agreed upon by the Citizen Advisory Committee. The factors provide the criteria for the agency to decide when one of the statutory exemptions applies to a stewardship project. The department believes it is important to provide flexibility in the rule and follow, as closely as possible, the CAC recommendations on the factors.

3. Support the rule as written.

4. Add biking and mountain biking as a 6<sup>th</sup> NBOA.

The department recommends that Department master plans and other similar planning efforts at the local level continue to dictate public use for biking and all of the many other activities listed in NR 51.002(19).

4. Provide special consideration for state natural areas as the statutory purpose of this program is to protect unique plant and animal communities rather than to provide recreation.

s. 23.0916 Stats. does not give the Department any authority to exempt programs such as the natural areas program from the law

5. Recognize the need for local units of government to make local decisions about these activities based on local comprehensive plans, local ordinances and local safety issues.

The department does recognize the importance of local ordinances, local plans and local control in making decisions about public access and has included such references in the proposed rule. The Public Safety section includes a local ordinance as a factor to be considered when limiting public access under this exemption. In addition, the definition of "primary purpose" and the General Provisions section reference the importance of local and regional plans in helping to determine the primary purpose for the land acquisition.

6. Provide exceptions for southeast Wisconsin.

s. 23.0916 Stats., does not give the Department any authority to create geographical exceptions for southeast Wisconsin.

## Response to Legislative Clearinghouse Report

The department has responded to the Legislative Clearinghouse Report by incorporating suggested changes where appropriate. The department's response to the Clearinghouse on the issues raised, but not responded to in the rule follows below.

### The Clearinghouse raised a question on the statutory authority that exists for individual grant decision making by the department.

Under the rule, the Natural Resources Board (NRB) is not delegating decision making responsibility to the department. The NRB is making the broad determination required by s. 23.0916, Stats., in the rule, the department is administering it.

The proposed rules on access to properties purchased with Stewardship funds, ch. NR 52, Wis. Adm. Code, are intended to be consistent with the NRB's "policy-making" authority. Under s. 15.05(1)(b), Stats, the NRB's authority is "policy making" and "not administrative". The NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for the Department to exercise its administrative authority in making individual determinations for each license, permit or grant application. All administrative duties and powers are vested in the Secretary, according to s. 15.05 (1)(b).

As required by s. 23.0196(2)(b), Stats., in the proposed rules the NRB makes the determination that it is necessary to prohibit public access to protect public safety, protect a unique plant or animal community, or to accommodate usership patterns. The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department. In response to the report the NRB may, pursuant to its policy-making and regulatory duties, direct the Department to proceed with a rule change to ch. NR 52, and/or pursue a change in how the Department implements its administrative duties in making individual determinations for each grant property.

The 2007 Stewardship statute, s. 23.0916(2)(b), Stats., does not include a reference to the statute on the NRB's authority, s. 15.05(1)(b), Stats., so it does not specifically amend the requirement that the NRB's authority is "policy making" and "not administrative". "All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her, under the direction of the Board." Consequently the above two statutes must be interpreted in a harmonious fashion. Wyss v. Albee, 193 Wis. 2d 101, (1995). In order to prohibit access on Stewardship grant properties, the NRB is required to make the broader policy determinations that guides the Department in making individual (administrative) determinations for each specific grant property according to factors, criteria and a process established by the NRB through rule-making, under its regulatory authority.

Further, individual determinations for each grant property are final decisions subject to appeal according to s. 227.42, Stats., and 227.52, Stats. If the NRB were to make individual determinations, their determinations would be subject to appeal, which would be contrary to their role as a regulatory and policy setting citizens board in which their policy setting decisions are not appealable under the state constitution's sovereign immunity clause and as upheld by the courts in Lister v. Board of Regents, 72 Wis. 2d 282 (1976). The NRB's role and authority under

s. 15.05(1)(b), Stats., i.e. "not administrative", would have to be specifically modified if the NRB was going to act in an administrative capacity in making individual determinations for each grant property that would subject the NRB to contested case hearings and lawsuits challenging their decisions. The Board does not make administrative decisions on individual permits, licenses or grants. They remain the policy setting body for the DNR.

For further information on this issue, please see Appendix 2, attorney Tim Andryk's memo to Deputy Secretary Henderson, dated November 20, 2009.

The Clearinghouse raised a question about using the term "assessment" in 52.04 (1)(d).

The department believes that the term "assessment" is proper in this section of the rule rather than using the term "initial determination". Later in the rule, it is made clear that the department will be making a determination on each project. It does not make sense procedurally to make a determination decision twice for each stewardship project.

The Clearinghouse commented on the location of substantive material in the Purpose and Applicability section of the rule.

The language in the Purpose and Applicability section of the rule discussing "restrictions" and "prohibitions," has been moved to the Definition section in a definition of the term "prohibition."

### **Stakeholder Involvement**

In addition to the public hearings that were held in September and October, the Department conducted an extensive public process through an appointed Citizen Advisory Committee (CAC). In July of 2008, the department appointed a 28 member citizen advisory committee to provide input on developing these administrative rules. The CAC 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/news/PDF/stewmembers.pdf>.

The citizen advisory committee met 6 times between July 2008 and January 2009. A professional facilitator was hired to manage the meetings and lead the group through a variety of exercises intended to identify important issues. The CAC developed recommendations on each of the NBOA public access exceptions identified in the statute and the department staff used these recommendations to prepare four concept papers on the following topics: A Process for the Review of Determinations Made Under s. 23.0916, Stats., Public Safety; Unique Plant and Animal Communities; and Usership Patterns. These concept papers were used by department staff to draft proposed CH. NR 52. The final drafts of these concept papers can be found at: <http://dnr.wi.gov/stewardship/CAC/>.

### **Small Business and Regulatory Flexibility Analysis:**

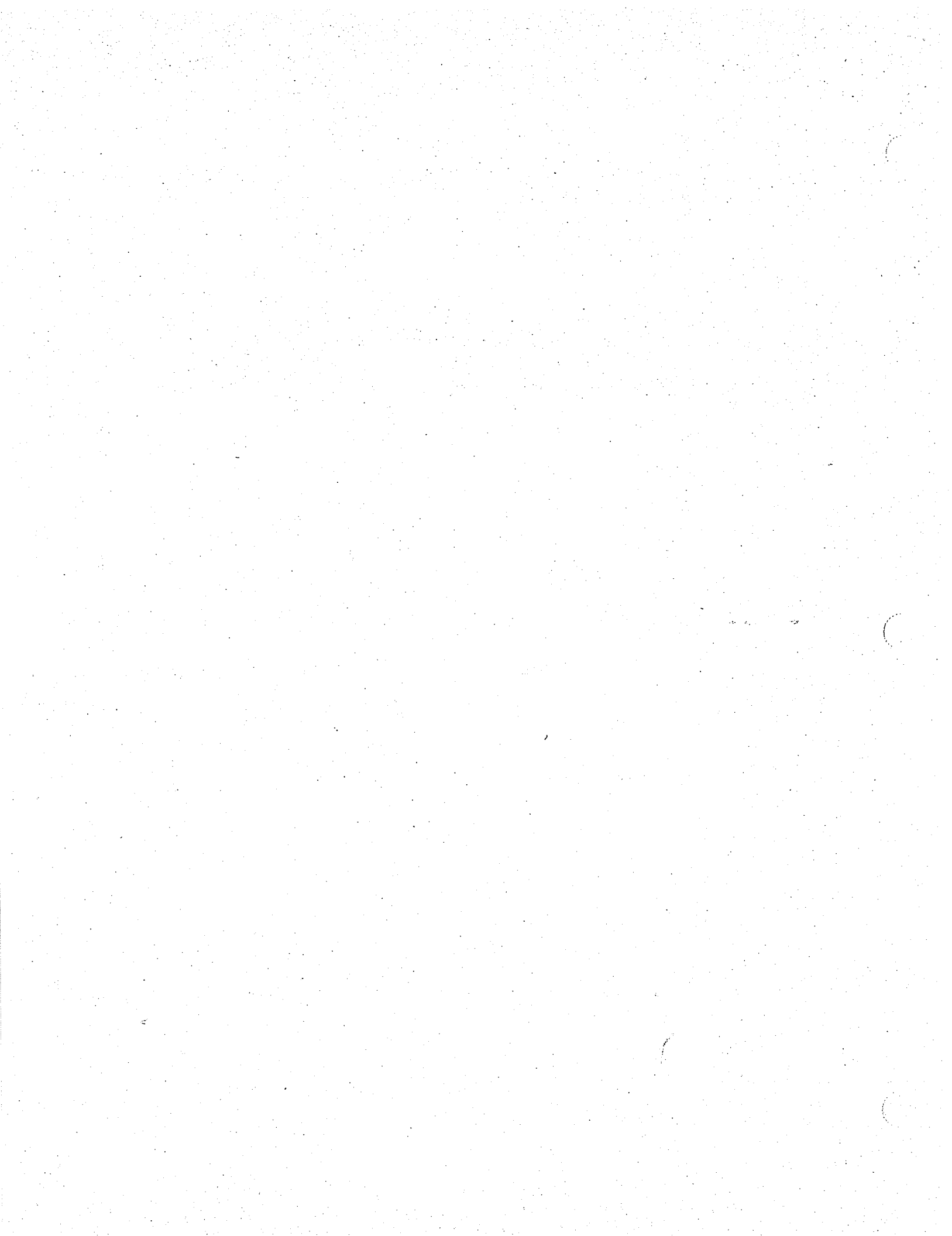
Chapter NR. 52, Wis. Admin. Code relating to hunting, trapping, hiking, cross country skiing and fishing is applicable to the Department, local units of government and non-profit conservation organizations and to individuals and imposes no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule that affect small business. Therefore, under s. 227.19 (3m) Stats., a final regulatory flexibility analysis is not required.

**Environmental Analysis:**

The Department has determined that these rules are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

**Conclusion**

In conclusion the Department believes the proposed rule reflects the original vision of the Knowles Nelson Stewardship program to create a funding source that will provide for the preservation of Wisconsin's most unique and threatened land and water resources and meet the diverse outdoor recreational needs of Wisconsin's residents both in its most urban places and in the wildest most remote corners of the state.





**Remarks on NR 52 – Assembly Natural Resources Committee**  
**Pat Henderson, DNR Deputy Secretary**  
**March 24, 2010**

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Good afternoon and thank you for the opportunity to speak to you today. With me is Doug Haag, real estate operations manager and Elizabeth Kluesner, Coordinator of our Nature is our Business project.

WI's stewardship program is the envy of many states. It is a unique Wisconsin Idea that has significantly enhanced our outdoor heritage. Whether through land preservation to forever protect existing hunting opportunities, opening up private lands to public hunting that were previously closed or by restoring wildlife habitat to expand hunting opportunities which were previously limited - the Stewardship program has greatly expanded outdoor opportunities for sports men and women.

The code before today has gone through an exhaustive public input process.

- The DNR established a 30 person citizen advisory committee to help guide our rule writing. We met for 6 months and together wrote concept papers that we used as guidance in the rule writing and in many cases pulled language directly from those papers.
- The rule then went out for six public hearings across the state and countless numbers of comments came into the DNR from engaged citizens and advocacy groups.

What we found out was that the Stewardship program serves a wide variety of citizens and who enjoy an even wider variety of outdoor recreational opportunities. It is important that all of Wisconsin's citizens are given an opportunity to enjoy the outdoors.

Each of you are already familiar with this rule and why we are here today so we would like to address a few issues that have come up regarding this rule. Namely, the legislative intent of the statute relating to the Natural Resources Board decision making on Stewardship Projects.

23.0916 (2) and (3) of the statute says "public access may be prohibited for one or more nature-based outdoor activities if the natural resources board determines that it is necessary" and the law goes on to say – "the natural resources board, by rule, shall develop A process for the review of determinations made under subs. (2)(b) and (3)(b)."

This language gives the agency clear direction to write a rule that lays out a process for making decisions about the public access exemptions in the statute. The rule before you treats access decisions in the same manner as all of our permitting decisions

that the DNR makes everyday. The Legislature and the NRB set the standards for environmental protection and the DNR staff carries out those directives. If an individual disagrees with any department permitting decision they have the right to a contested case hearing. The decisions under the rule regarding public access on stewardship funded land purchases would be afforded the same opportunity.

However, we did not stop there...we have made the decision making process much more transparent and open to the public. Under these rules we will put out a public notice with the staff analysis explaining the need for the public access restriction and how it conforms to these rules and the statutes before a decision is made to allow the public access restriction. Individuals will be able to review that staff analysis (an opportunity they are not provided currently) and may file an objection with the department. If a resolution cannot be found the objector maintains his or her right to file for a contested case. In addition, the Department will make monthly presentations to the Natural Resources Board on determinations made under the rule and the Natural Resources Board will hear public testimony on determinations made under the rule at least twice a year. This will ensure that the policy making Natural Resources Board can suggest policy changes consistent with public opinion about the rule. Lastly, in addition to all of those checks and balances the Joint Finance Committee oversight was added for projects over \$750,000. It is clear that the public is fully engaged throughout the decision making process.

These additional provisions do not come without some cost. There is no doubt that there is more bureaucracy being added to the process which adds time, complexity and uncertainty to the real estate process which in turn may scare off potential sellers who are eager to sell. It also weakens the conservation community's ability to compete with private interests when attempting to purchase natural resources that are appealing both for their public purpose and for private investment. I do not bring this up to suggest that we reduce the transparency of our process but to ask the committee to ensure that the program remains nimble and does not get bogged down.

The Department believes the proposed rule reflects the original vision of the Knowles Nelson Stewardship program - the preservation of Wisconsin's most unique and threatened land and water resources and meets the diverse outdoor recreational needs of our residents both in its most urban places and in the wildest most remote corners of the state

With that, I'll turn it over to Doug to take you through a few additional key provisions of the rule...

Assembly Natural Resources Committee  
NR 52 Public Hearing  
DNR Staff Presentation  
March 24, 2010

Good Afternoon. My name is Doug Haag. I am the Real Estate Operations Manager for the Department of Natural Resources. I would like to address 3 aspects of proposed administrative rule NR 52 that received considerable discussion at the recent Senate hearing and throughout the entire rule making process.

The first issue I would like to address is how the rule deals with restrictions and prohibitions of Nature Based Outdoor Activities (NBOA's). By definition in the rule "Prohibit Access for an NBOA" means to not allow the activity in its entirety, or to restrict the activity so that a major or significant amount of the activity is not allowed." The rule goes on to establish a checklist for specific nature based activities that will be allowed on the property. The checklist, by rule, includes waterfowl, small game, turkey and big game hunting and distinguishes between gun hunting and archery hunting. In addition the checklist includes water and land trapping, boat and shore fishing, trail and non-trail hiking and groomed and off-trail skiing. The Department believes the inclusion of the above information results in a rule that clearly evaluates major restrictions and all prohibitions of the 5 NBOA's.

Another concern we have heard is that the rule allows the Department to consider the potential for a Nature Based Outdoor Activity to accelerate or increase resulting in the need to prohibit one or more NBOAs. It is true that the rule does consider this potential. However the language is very specific in the rule. First of all, this is a factor for consideration under the statutory directive to protect unique animal and plant communities, which greatly limits its application. Secondly, the rule limits the evaluation of any future use of the land to any impacts those uses could have on the natural values of the site. The term natural values has a very specific definition in the rule and in statute. The result of this language in the rule is that any consideration of future recreational uses has the specific and limited purpose of protecting the most unique and fragile of our natural resources.

The final point I would like to make concerns language in the rule under the statutory directive to accommodate usership patterns. The rule contains language that allows for the consideration of other recreational uses available at the location of the project at the time of the purchase. This language is necessary as it allows the Department to accommodate certain patterns of recreational activity, as directed by the statute, that exist at the time of the purchase. Examples of how this might influence decisions under the rule include real estate transactions where a land trust is buying land inside or adjacent to a DNR project boundary such as a state park or wildlife area. This situation happens frequently and it is essential that the rule contain a mechanism for ensuring consistent use on all adjacent public lands. Another example may be a land trust adding additional land to one of their long standing projects. I recently heard testimony from the Audubon

Society about their concerns that this rule would limit their ability to add land at Goose Pond, one of the premier bird watching locations in south central Wisconsin. In order for the rule to accommodate the existing pattern of public use at Goose Pond, and allow the use of Stewardship funds to be used to acquire additional land, some consideration must be given for public uses occurring at the time that additional land is purchased.

In closing I would like to ask for the committee's support of this rule. The Knowles Nelson Stewardship Program serves the recreational needs of all of Wisconsin's residents whether they are hunters, trappers or children enjoying their first experiences with nature in a park near their home. This rule will ensure that all Wisconsin' residents have safe, viable and enjoyable places to pursue their outdoor recreational interests. Thank you for your time and consideration of my comments. This concludes our testimony and we are happy to answer any questions you may have.

## CORRESPONDENCE/MEMORANDUM

DATE: November 20, 2009  
TO: Pat Henderson -- AD/8  
FROM: Tim Andryk -- LS/8 *Ta*  
SUBJECT: NRB Stewardship Access Determinations

## STATUTE

According to sec. 23.0916(2)(b), Stats., public access for a nature based outdoor recreation activity (NBOA) may be prohibited "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 plant or animal community.
3. Accommodate usership patterns, as defined by rule by the department."

## QUESTION

Does s. 23.0916(2)(b), Stats authorize and require the Natural Resources Board (NRB) to make individual determinations that it is necessary to prohibit access for each grant property, or does it require the NRB to make broad policy determinations, commensurate with the NRB's policy making role, in order to prohibit access on Stewardship grant properties?

## ANSWER:

The NRB is required by sec. 23.0916(2)(b), Stats., to make a determination that it is necessary to prohibit public access in order for it to be prohibited on Stewardship grant properties. However, because the NRB's authority is "policy-making" and "not administrative" according to s. 15.05(1)(b), Stats., the NRB is charged with making broad policy making determinations, including factors, criteria and a process for individual determinations to be made for each grant property by the Department, since all of the administrative powers and duties are vested in the Secretary, according to s. 15.05(1)(b), Stats.

## ANALYSIS

According to s. 15.05(1)(b), Stats., "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 him or her under the direction of the board." The NRB exercises their authority by adopting rules (regulatory) with broad policy determinations that include factors, criteria and a process for the Department to exercise its administrative authority in making individual determinations for each license, permit, or grant application.

The 2007 Stewardship statute, s. 23.0916(2)(b), Stats., does not include a reference to the statute on the NRB's authority, s. 15.05(1)(b), Stats., so it does not specifically amend the requirement that the NRB's authority is "policy making" and "not administrative". Consequently the two statutes must be interpreted in a harmonious fashion. Wyss v. Albee, 193 Wis. 2d 101, (1995). In order to prohibit access on Stewardship grant properties, the NRB is required to make the broader policy determinations that the

Department is to follow in making individual (administrative) determinations for each grant property according to factors, criteria and a process established by the NRB through rule-making, under its regulatory authority.

Individual determinations for each grant property are final decisions subject to appeal according to s. 227.42, Stats., and 227.52, Stats. If the NRB were to make individual determinations, their determinations would be subject to appeal, which would be contrary to their role as a regulatory and policy setting citizens board in which their decisions and determinations are not appealable under the State Constitution's sovereign immunity clause, upheld in court in Lister v. Board of Regents, 72 Wis. 2d 282 (1976). The NRB's role and authority under s. 15.05(1)(b), Stats., ie. "not administrative", would have to be specifically modified if the NRB was going to act in an administrative capacity in making individual determinations for each grant property that would subject the NRB to contested case hearings and lawsuits challenging their decisions.

#### CONCLUSION

The proposed rules on access to properties purchased with Stewardship funds, ch. NR 52, Wis. Adm. Code, are intended to be consistent with the NRB's "policy-making" and "not administrative" authority, under s. 15.05(1)(b), Stats. As required by s. 23.0196(2)(b), Stats., in the proposed rules the NRB makes the determination that it is necessary to prohibit public access to protect public safety, protect a unique plant or animal community, or to accommodate usership patterns. The proposed rules specify criteria, factors and a process for the Department to administer in making individual access determinations for each grant property. In addition, the proposed rules include an oversight role for the NRB in reviewing at each NRB meeting a report of the individual access determinations made by the Department. In response to the report the NRB may, pursuant to its policy-making and regulatory duties, direct the Department to proceed with a rule change to ch. NR 52, and/or pursue a change in how the Department implements its administrative duties in making individual determinations for each grant property.

To: Assembly Natural Resources Committee  
From: Ray Heidel  
Re: CR-09-077 NR 52 Stewardship Public Access Rules  
March 24, 2010

My name is Ray Heidel and I live at W8043 Hwy. ZN Onalaska, WI. Given the person with whom I have spent the last 28 years, my wife, Sandy Heidel, I am no stranger to conservation issues and involvement, however I am a relative newcomer and perhaps a little naïve about how Madison works.

I come before you today with a level of decreased trust in agencies and even our legislative process. This distrust may have its roots in my possible naivete concerning what really happens here in Madison, but it is there nonetheless. I need to give you a little background:

You may recall the Comprehensive Conservation Plan on the Upper Mississippi River National Wildlife Refuge, which encompasses pretty much the Wisconsin portion of the Mississippi. The CCP documents and process were one of the strongest attacks on consumptive users of the Refuge we'd ever seen. The documents and their intent literally stomped the Public Trust Doctrine into the mud through unwarranted restrictions on hunters, anglers, and trappers who had supported conservation efforts for many decades. USFWS staff engaged in what could only be described as "smoke and mirrors" deception concerning the need for serious restriction placed on those who used, preserved, and respected the resource

When I first saw the CCP document, literally the first thought that popped into my head was that the Wisconsin DNR along with the Natural Resources Board, would surely step into the fray in defense of the hunters, anglers, and trappers of our state as well as our proud heritage of conservation-minded use of the Mississippi. I, and many others waited for the WDNR cavalry to come, but they never arrived. Instead we found that we had been sold down and up the River by the current Secretary of the WDNR well before the public even had a chance to review the documents. Some of the members of the legislature and of this committee stepped up to the plate and we will always remember and appreciate their contributions and hard work on our behalf. Despite the efforts of our legislators, a deep distrust of the motives and purpose of the WDNR arose in myself and many others.

Now we are a few years later and we have another situation where we are again faced with diminishing access to lands. Many of us invested a lot of time and effort to ensure that Stewardship would be renewed at funding levels higher than ever, with the trust that our access and uses would be recognized, ensured, and promoted by the agency that has claimed to be the advocate for hunters, anglers, and trappers in this state. We celebrated when the Stewardship Programs was funded at a remarkable level with what we thought was language and law guaranteeing access to all who wished to enjoy the Stewardship legacy. Yet then I saw arising and growing another bout of smoke and mirrors deception





through creative wordsmithing of what I thought was a clear and concise law regarding the Natural Resources Board approval of public uses of Stewardship funded lands.

WDNR staff are again widening the schism between their agency as the purported advocate for hunters, anglers, and trappers in Wisconsin by using coyotes and bears as species of concern in an effort to exclude hunters and trappers from lands they gained access to if the letter of the new Stewardship Fund law was actually going to be followed. The Mississippi Valley Conservancy, a private land trust near Onalaska tried using Bobwhite Quail, another huntable species, to try to prohibit bird hunting on lands they purchased using Stewardship Funds. It worked until the public became aware and called it to the attention of staff in La Crosse and Madison who knew fully well of the situation but did nothing about it until pressure was applied. The list, at this point, of deceptive tactics to exclude hunters, anglers, and trappers from Stewardship lands has been growing despite that very clear and concise law that was passed in 2007. So has my distrust.

I do have to mention, however, a positive action that was taken by the The Nature Conservancy. It was pointed out to their representatives on March 16 that a blanket prohibition on trapping as part of the list of uses of their preserves was still posted on their Wisconsin website. While it was still there late that evening, it was removed on March 17. I hope this is a positive gesture toward further trapping access on their lands that are purchased with Stewardship funds.

Despite the past, I accompanied my wife to the State Capitol in Madison on March 16 to hear her and others testify so eloquently that the Senate Committee should turn the Draft Rules concerning uses of the Stewardship lands back to the WDNR to be redone in reflection and accordance with the reauthorization language and very obvious (to me and the rest of the public) allowance for hunting, fishing, and trapping. It was at least called a Public Hearing in front of the Senate Committee chaired by Senator Miller. I took a day off from work, put 6 hours on the road, and sat in the same chair for well over 6 hours listening to testimony by a variety of individuals, those representing groups, and legislators, all with passion, conviction, and worlds of experience in their statements. I felt proud and optimistic sitting here in the capitol in the presence of those that create and purportedly stand by laws, that the very clear and concise law reauthorizing Stewardship would not become another convoluted smoke and mirrors show. Maybe I was still naïve, but I really thought the public process on that day would work as hard and efficiently as we did to get Stewardship reauthorized, and that the Chairman of that committee would even consider sending them back to the WDNR to be redrafted from their current, deceptive form. Yet then I heard him reply when questioned about his intentions that "Chairmen are pretty much dictators...." and went on with language that pretty much shattered my optimism and trust in the Madison system.

Despite all that I am here again today, Chairman Black and members of this committee, to express my personal opinion that the current process and language regarding the rules regarding uses of Stewardship lands is yet another smoke and mirrors show that should be sent back to the WDNR with a clear and concise directive that they should at the very least comply with the clear and concise law reauthorizing the Stewardship Program.



Anything less will further dissolve my trust in the WDNR and even the legislative system. Anything less would have earned the scorn and criticism of our conservation predecessors as it will contemporary conservationists that hunt, fish and trap, as I do.

I issue a challenge to you, Chairman Black and members of this committee, to take action that will begin to regain the trust of hunters, anglers, and trappers in this system that has served our state so well, and send these Public Access Rules back to the WDNR for revision, and with the clear and concise directive that they do their job this time.

Thank you for your time and this opportunity.

Ray Heidel  
W8043 Hwy. ZN  
Onalaska, WI 54650



March 24, 2010

Dear Members of the Committee on Natural Resources,

Human Powered Trails, Inc. (HPT) is a 501(c) (3) organization whose mission is to develop and maintain sustainable and environmentally correct human powered shared-use trails. As an organization HPT has logged over 4500 hours of volunteer hours in trail building and reclamation and other public service activities in the greater La Crosse, Wisconsin region. HPT currently faces an oppressive situation that although on the surface represents a local issue but in reality has profound statewide implications to the citizen of Wisconsin. As to be to the point I have supplied you with a more detailed explanation of our situation on the following page.

After a nearly two year process of planning meetings, in December of 2001, the Mississippi Valley Conservancy (MVC), the City of La Crosse Park Board, in consultation Myrick Hixon ECO Park, the Department of Natural Resources (DNR) and HPT signed a formal agreement known as the La Crosse Bluffland Protection Plan (LBPP). Trail construction began on a parcel of land that was purchased with Knowles-Nelson Stewardship fund and matching funds from the City of La Crosse. An order was handed down from the DNR to cease trail construction. Two meetings between all parties were held to discuss the department's rationale, and to allow for time additional review. Ultimately a letter from Mr. Vance Rayburn dated May 13, 2009 directed to MVC restating the departments rationale for termination of trail construction and further defining timelines for reclamation of the newly constructed trail. We continue to work with the department in hopes of arriving at an amicable solution to this issue.

I am opposed to the proposed rule NR 52 as it is written. Based on the experience of HPT and following a review of the January 2010 Natural Resources Board Agenda Items ("Green Sheet") data I base my opposition on the following criteria:

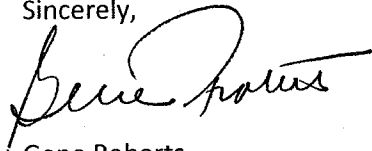
It is HPT's belief that while it is true that not every parcel of land is suitable for biking it is also true that excluding biking from every parcel is not appropriate and requires an individual review. The department's response to this logic is to "recommend that all activities other than the five NBOA's listed in 23.0916 stats, are best dealt with in a master planning process for a parcel or project". As evident by our experience utilization of the master planning process has its inherent flaws and subject to the Department's arbitrary criteria of what is and is not allowable activity on Stewardship lands. The department conveniently uses Chapter 23 as a means to exclude otherwise allowable activities as noted in NR 51.002(19). It is this type of circular logic that the citizen is unable to decipher or circumvent.

It is suggested that this proposed rule NR 52 has more transparency and thus more accountability is placed on the department for the decisions to deny an activity on Stewardship lands. In reality the department is required only to "report" their decisions to the NRB quarterly. As such the only authority the NRB has, by its policy-making and regulatory duties, is to direct the Department to change the rule. NR 52 and or change how the Department implements its administrative duties with regard to each property. Should a citizen be opposed to the Department's decision they have the right to appeal under

ss 227.42 and ss 227.52, stats. To the average citizen this process would be onerous and expensive. The likelihood of successful appeal by either proceed is highly unlikely.

On behalf of HPT and myself as a citizen of Wisconsin I am asking this committee to reject this rule and instruct the Department through policy included in Administrative Code NR 52 that bicycling must be given the exact and equal considerations, protection and implementation with regards to Knowles-Nelson Stewardship lands as any of the existing NBOA's per Chapter 23. Additionally, I am asking for a closer examination of the review process of NR 52 to ensure due process to protect the citizen of Wisconsin. By doing so may then prevent issues similar to those issues that have risen in La Crosse.

Sincerely,

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

Gene Roberts  
N1195 Crystal Drive  
La Crosse, WI 54601

Board of Directors  
Human Powered Trails, Inc

After a nearly two year process of planning meetings, in December of 2001, the Mississippi Valley Conservancy (MVC), the City of La Crosse Park Board, in consultation Myrick Hixon ECO Park, the Department of Natural Resources (DNR) and HPT signed a formal agreement known as the La Crosse Bluffland Protection Plan (LBPP).

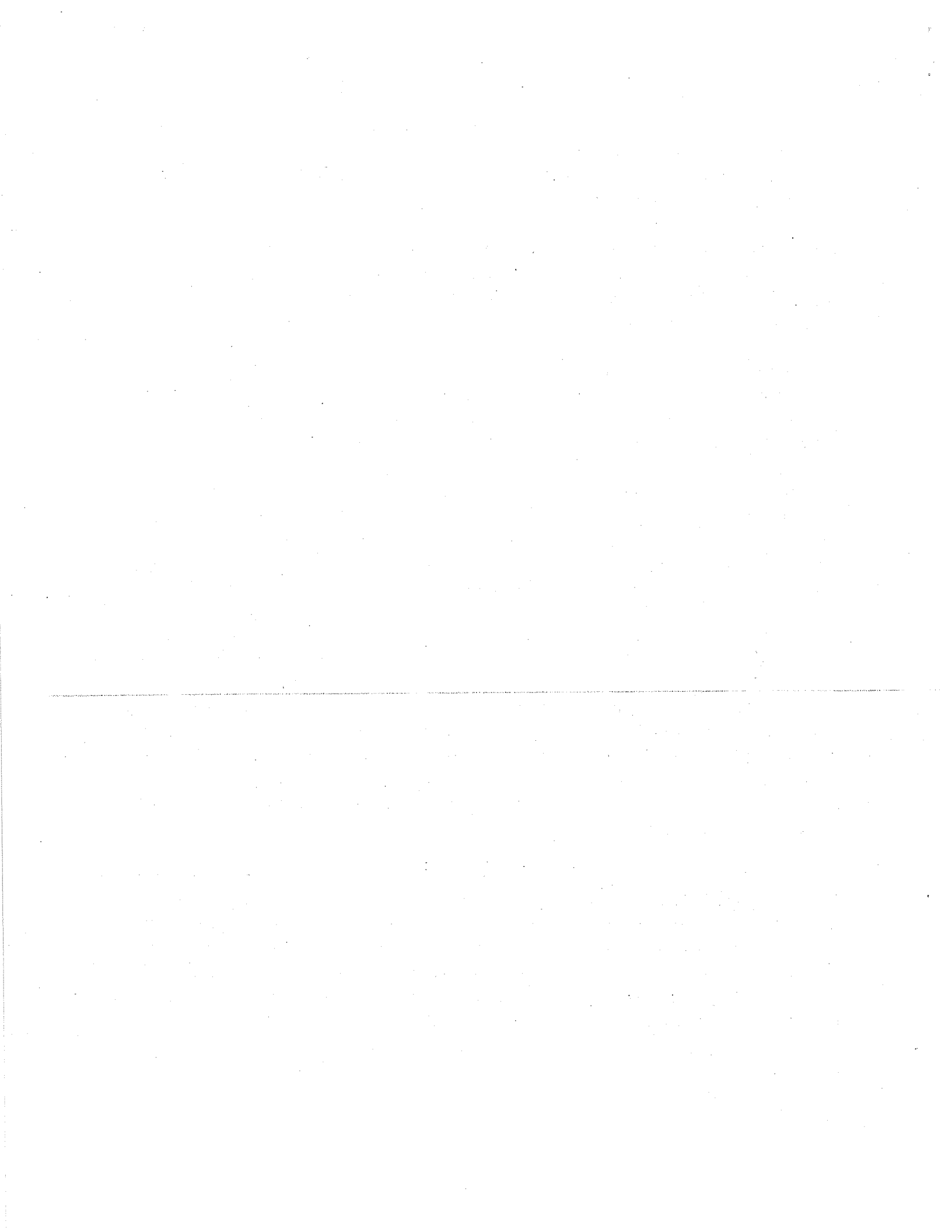
***LBPP Purpose: "While natural resources have been at the heart since day one, the compatible recreational of the bluffland area is also a key part of the Bluffland Protection Program. This plan strives to broadly define the proper balance between resource protection and public use, allowing for enjoyments and education."***

The goal is to allow recreational use as long as there is only negligible impact to wildlife and the natural environment resources by helping direct the flow of human-powered traffic from sensitive areas rather than the rogue trail development that has existed from years past. Properties included in this project are parcels of land that were purchased by MVC with Knowles-Nelson Stewardship funds.

After construction of several miles of trail on a the Mathy tract of land MVC was directed by Ms Mary Teves of the DNR on April 17, 2009 to instruct HPT to cease trail construction, which we complied. A meeting of the groups involved in the development of the LBPP master plan, representative of the DNR (Tim Andryk, DNR attorney, Karen Blodgett, Community Services Specialist, Kimberlee Wright Nonprofit Grant Manager, Craig Thompson, West Central Regional Land Manager, and two Regional DNR biologists) was held May 1, 2009. At this meeting Mr. Thompson, whom was involved in the master planning of the LBPP, expressed his apology for his misunderstanding of allowable activities on stewardship purchased land. HPT reaffirmed the stated goal for the LBPP was to have trails that provided better protection for the natural resources by helping direct the flow of human-powered traffic from the most sensitive areas rather than rogue trail development. HPT supplied maps revealing rogue trails that were previously unknown to the DNR representatives and a proposed new trail. The conclusion of this meeting resulted in the agreement that the DNR would review the issues presented, revisit the properties, and relook at the biking issue. A follow-up meeting was scheduled for May 21, 2009 to allow adequate time for department review and group tour of the property. The department did not comply with the agreed plan to tour the property with all parties.

On May 21, 2009, representatives of HPT, MVC and the City of La Crosse entered that meeting in good faith but it was apparent from the onset that there was to be no compromise. We had been called summarily to be hand delivered a letter from Mr. Vance Rayburn dated May 13, 2009 directed to MVC restating the departments rational for termination of trail construction and further defining timelines for reclamation of the newly constructed trail. To date, HPT has complied with all of the demands of this letter. At this time we continue to work with all LBPP parties and DNR representatives in La Crosse and Madison in hopes of arriving at an amicable solution to the Mathy tract issue.

Gene Roberts  
N1195 Crystal Drive  
La Crosse, WI 54601





Chapter 23: Conservation

**23.0916 Stewardship land access. (1) DEFINITIONS.** In this section:

(a) "Former managed forest land" means land that was withdrawn from the managed forest land program under subch. VI of ch. 77 on or after October 27, 2007.

(b) "Nature-based outdoor activity" means 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.

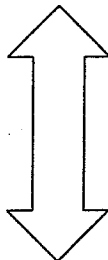
(c) "Stewardship grant" means a grant that consists in whole or in part of funding from the stewardship program under s. 23.0917.

**(2) REQUIREMENT OF ACCESS; NONDEPARTMENT LAND. (a)**

Except as provided in par. (b) and sub. (4), 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 an 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 public 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:

1. Protect public safety.
2. Protect a unique animal or plant community.
3. Accommodate usership patterns, as defined by rule by the department.



Chapter NR 51: Administration of Stewardship Grants

**51.002 (19)** "Nature-based outdoor recreation", under s. 23.0917 (4), Stats., means activities where the primary focus or purpose is the appreciation or enjoyment of nature. These activities may include but are not limited to hiking, bicycling, wildlife or nature observation, camping, nature study, fishing, hunting, picnicking, cross-country skiing, canoeing and multi-use trail activities. Support facilities for these activities may include but are not limited to access roads, parking areas, utility and sanitation systems, sanitary and shelter building, signs, interpretive items, and other features that enhance nature-based outdoor recreation or improved disabled accessibility. Ineligible activities include but are not limited to sports that require extensively developed open space such as dedicated sports fields, swimming pools and tennis courts.



# Wisconsin Wildlife Federation

Good afternoon Chairman Black and Members of the Assembly Natural Resources 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. Hammes 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 Black, Members of the Committee, thank you for the opportunity to testify here today. In his testimony, Mr. Don Hammes, will present additional changes that the Federation believes necessary with the existing rule.

George Meyer  
Executive Director  
Wisconsin Wildlife Federation

March 24, 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 an 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





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

The following table shows the results of the experiment. The first column is the number of trials, the second column is the number of correct responses, and the third column is the percentage of correct responses.

Number of trials	Number of correct responses	Percentage of correct responses
10	7	70%
20	14	70%
30	21	70%
40	28	70%
50	35	70%
60	42	70%
70	49	70%
80	56	70%
90	63	70%
100	70	70%

The results show that the percentage of correct responses is constant at 70% for all numbers of trials. This suggests that the subject is performing at a constant level of accuracy, regardless of the number of trials.

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.



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*Kohler*

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*West Bend*

Good Morning, my name is Todd Holschbach and this is Matt Dallman. We are here today representing The Nature Conservancy in Wisconsin and our 20,000 members statewide. The Nature Conservancy is a private non-profit conservation organization and the largest land trust in the state. Thank you for the opportunity to speak in favor of the rule today.

At the outset, we would like to state that we are currently reaching out to hunting, trapping and fishing group representatives in hopes of reaching an agreement on this rule.

Over the past 50 years The Nature Conservancy has been conserving threatened and endangered plant and animal communities throughout Wisconsin, protecting thousands of acres of habitat for game-species as well as non-game species.

We also have 50-year tradition of opening lands that would have otherwise been closed to the public, for all types of hunting and outdoor recreation. In fact, we are proud to have helped conserve over 140,000 acres, opening more land for outdoor recreation (including hunting, trapping and fishing) than any other conservation organization in this state. We have done this by bringing millions of dollars of private citizen donations, forest industry dollars and federal funding to land acquisition efforts in Wisconsin. Land management flexibility has been critical to this success.

You may hear criticism today of access provisions on specific pieces of habitat we have conserved. Please recall that our goal is to provide quality access for all types of outdoor recreation---and we do this---it is just not possible for every acre to provide every type of access for everyone. Access rules need to allow private land owners flexibility in land management and an approval process that keeps up with the pace of real-estate transactions.

Maybe the best way to demonstrate our history of commitment to providing quality outdoor recreation with Stewardship dollars is through on-the-ground examples:





- Caroline Lake, (Ashland County): over 1,000 acres of upland forest and contains frontage on Twin Lakes East and West and provides the only public access to Caroline Lake via a lease agreement with the Town of Morse. It is open for deer and small game hunting, fishing and a variety of additional outdoor activities--- and it is actively managed for timber production. This land had been under threat of private development and closure to the public.
- Wild Rivers Legacy Forest (Forest, Forence and Marinette counties): 64,600 acres open permanently (forever) for the same uses allowed under the Managed Forest Law including all types of hunting and fishing. 70 miles of undeveloped lake and river shoreline, over 20 miles protected for public access on the Pine and Popple Rivers, two state-designated wild rivers. Conserved with Stewardship dollars and an innovative partnership between TNC, the state and private timber investment.
- Recent Door County tract: a grant approved since reauthorization protecting 28 acres of uplands and wetlands, securing wetland habitat for the globally threatened Hines Emerald Dragon Fly. It is open to deer hunting, turkey hunting, pheasant hunting, waterfowl hunting, fishing and upland trapping. This grant is currently being challenged for not allowing water trapping.

The Nature Conservancy also voluntarily opens lands not purchased with stewardship funds for hunting and other outdoor recreation. This is in keeping with our long tradition of excellent relationships with the hunters and other outdoor enthusiasts that use our properties and local communities we work in.

The Nature Conservancy has long believed that sportsmen and women's groups are a critical component of conservation success in Wisconsin. Like these organizations, The Nature Conservancy and the land trust community worked very hard for reauthorization of the Stewardship program. It's time to recognize our common goals and approve a flexible rule that satisfies all user groups and continues to protect critical wildlife habitat.









# Madison Audubon Society Inc.

Serving Columbia, Dane, Dodge, Iowa, Jefferson, Richland and Sauk Counties

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masoffice@mailbag.com • www.madisonaudubon.org • fax 608-255-2489

24 March 2010

Assembly Committee on Natural Resources

Comments on NR-52 (Stewardship Fund)

Peter Cannon, Program Chair

Good morning.

My name is Peter Cannon, I live near Tenny Park, about a mile from here. Madison Audubon Society has 2,400 members in 7 counties in southcentral Wisconsin. We manage more than 1,300 acres of property in Columbia and Jefferson counties, much of it purchased with the help of Stewardship dollars matched by membership contributions and federal dollars. Most of these acres are open to the public.

In addition, we acquired and restored Zeloski Marsh with the help of many partners. This property was then transferred to DNR – thus hunters have 1,500 more acres available to them in Jefferson County. This may not have happened without Madison Audubon's involvement.

We have also administered three \$1 million federal NAWCA grants for the Southcentral Wisconsin Prairie Pothole Initiative, each involving 10-12 partners, including Ducks Unlimited, Pheasants Forever, DNR, and Wisconsin Waterfowl Association. Partnerships are clearly important in reaching our mutual goals of acquiring and restoring habitat for wildlife.

The Stewardship Fund has helped foster cooperation among those interested in protecting the natural resources of our state. But suddenly, whether by intent or by accident, the changes enacted last session threaten that spirit of cooperation. We are told that all non-urban land purchased with Stewardship funding should be open to hunting. Every exception to opening all non-urban land to all hunting must receive the scrutiny of an ever more politicized Natural Resources Board.

We see nothing in the statute that creates a presumption that hunting takes precedence over all other outdoor activities. There is nothing in the statute that suggests a rank order of outdoor activities. If these people are correct, then we are talking about a fundamental change in the nature of the Stewardship Fund. The Stewardship Fund comes from general fund and forest tax dollars, not from hunting fees. If, in fact, hunting is required on all non-urban lands then it is no longer the Stewardship Fund it's the Hunting Land Purchase Fund.

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There is an implicit assumption in their argument that hunting is compatible with all other outdoor activities. We do not agree. We must recognize that not all uses are compatible at all times in all places. For example, having dozens of volunteers scattered across many acres of prairie collecting seed (2-3 times per week for 2 months or more in the fall) is not compatible with hunting on the same property. We need to be able to collect local genotype seed in order to plant more habitat for more wildlife. What we need is the ability to provide public access whenever possible, but with the flexibility to control the types of activities and where and when they occur. It is Madison Audubon's strong opinion that each property needs to be assessed separately, and this is best done by staff, not by the NRB in a politicized discussion.

We share the goal of maximizing public access. All of us want to see more people learn to enjoy outdoor activities of all types. For the Stewardship Fund to work, incompatibilities between the various outdoor activities must be recognized.

Someone suggested at a previous hearing that the refunding of the Stewardship Fund would not have happened without support from hunting groups. That may be true, but it also would not have happened without the support of land trusts and groups like Madison Audubon. If all non urban lands purchased with Stewardship Fund dollars are opened to hunting there will be no incentive for Madison Audubon and other groups whose primary missions do not include hunting to help find the votes to renew the Hunting Land Purchase Fund in the future.

Please choose cooperation over competition. The goal of Stewardship is to protect and restore as much land for wildlife and people as possible. To accomplish this, we also need to protect valuable partnerships. We hope that you will keep this in mind.

Thank you for this opportunity to comment.

Assembly Committee of Natural Resources Member

Public Hearing  
Wednesday, March 24<sup>th</sup>, 2010  
10:00am

Written Testimony

Re: NR 52

Dear Assembly Committee of Natural Resources Members,

As a Wisconsin resident one of the truly unique “fabrics” of our state is how conservation minded and outdoors enthused our residents are. This “fabric” is reflected by the creation and funding of Knowles-Nelson. As you know, funding of this type and amount is truly unique amongst states. As a volunteer and financial contributor on conservation based recreation projects and member of Human Powered Trails Board of Directors I am concerned with how the Wisconsin Department of Natural Resources is administratively managing Knowles-Nelson and encourage the Legislature to create a policy through NR 52 that protects the common citizens.

In the La Crosse area in 2009 Human Powered Trails volunteer organization contributed approximately 4,500 hours of trail building, reclaiming rogue trails, patrolling trails, educational events, nature hikes, birding, chain saw and trail building training and certifications. These hours logged were truly the result of a community focused on protecting our resources through the La Crosse Bluffland Protection Plan, a plan that involved Mississippi Valley Conservancy, City of La Crosse, Department of Natural Resources, Hixon Forest, and Human Powered Trails. Some two years after the plan was approved the DNR and other groups, the DNR at the local level excluded bicycles from lands purchased with Knowles-Nelson funding, reason being that the NBOA did not include bicycling and department did not want to create a “slippery slope” as bicycles are “strictly” prohibited on Knowles-Nelson properties. The trails that have now been closed by order of the department and the departments mishandling of the issue has disenfranchised a large group of conservation minded volunteers in the La Crosse area. Additionally, this closure forces families to ride on county highways to get to parking areas and trail systems. The life safety issue that the department created in La Crosse is appalling to say the least. My global concern for the events that have taken place in La Crosse, if similar events are occurring in other areas of the state is that it is a matter of time in tight budgets before funding for this great program are drastically reduced.

The following is my request of the Respective Legislative Committees:

1. Acknowledge the Scorp report that list bicycling as an outdoor family activity that Wisconsinites list higher than any of the existing NBOA.





2. Instruct the department through policy included in NR 52 that bicycling must be given the exact equal considerations, protection and implantation with regards to Knowles-Nelson lands as any of the existing NBOA's per chapter 23. Specifically, the reason this request should be included and fits into NR 52 is that the review process of NR 52 will then prevent issues similar to those issues that have risen in La Crosse. If they do arise NR 52 lays out the process for review and therefore the Wisconsin citizen is protected.

Thank you for your time and consideration in these requests.

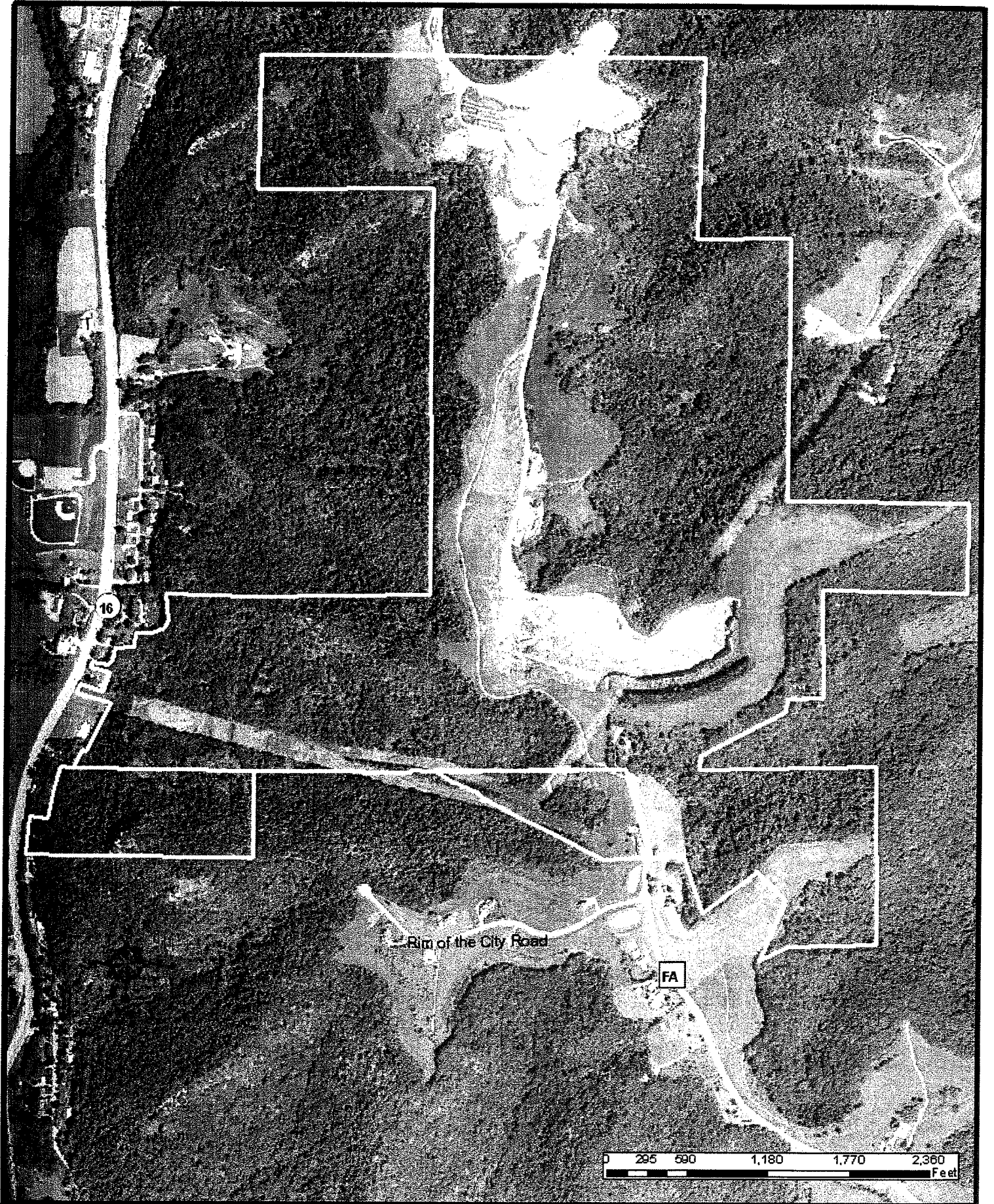
Very Truly Yours,



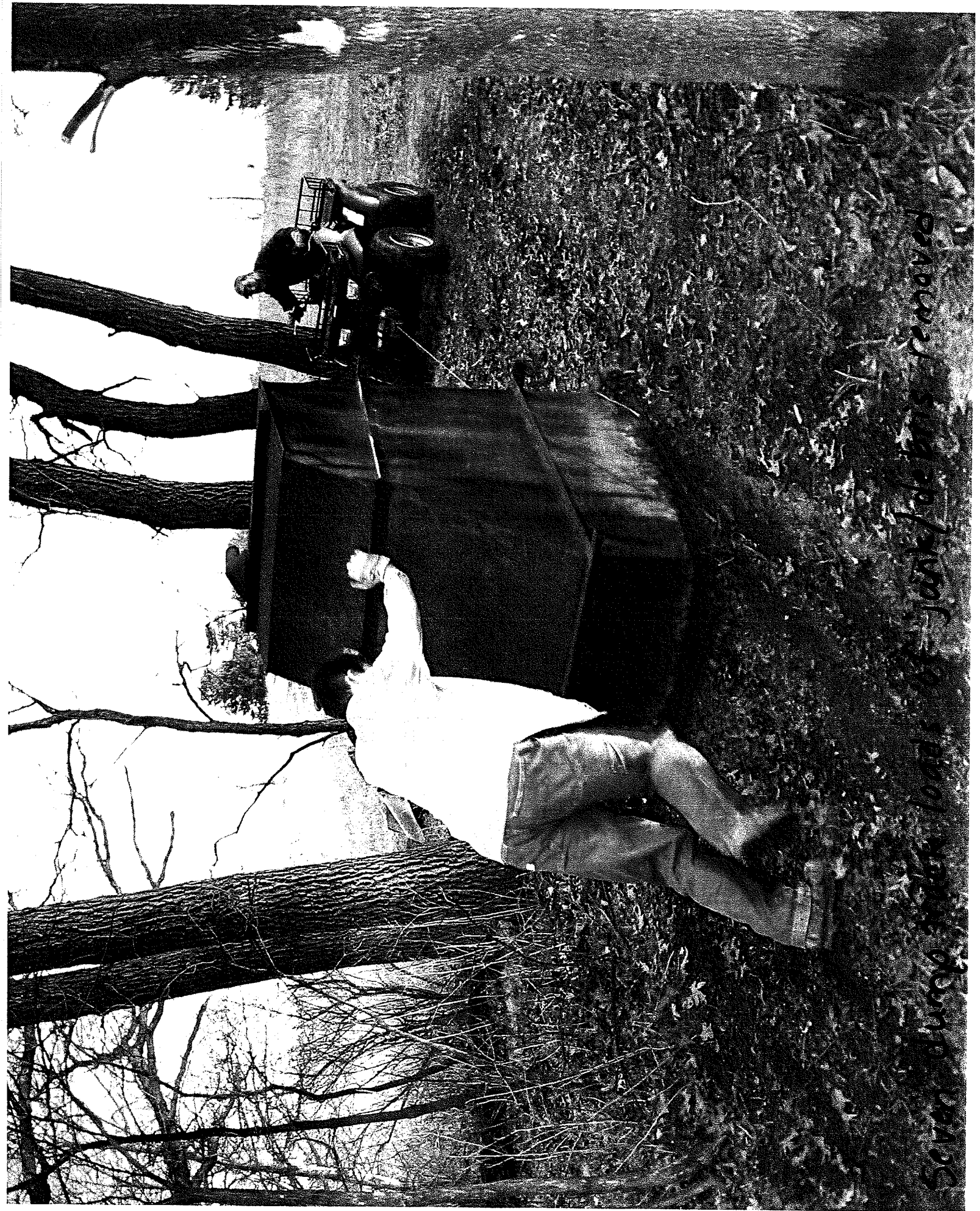
Marvin Wanders  
142 S. 14<sup>th</sup> Street  
La Crosse, WI 54601  
[marvin@threesixty.bz](mailto:marvin@threesixty.bz)  
Phone: 608-782-7368 (office)  
608-317-4678 (cell)



# Mathy Property Map







Several dump trucks - junk/debris removed

बसनेस जिन्स/शुल 70 शरीर शरीर अग्रिम 1992

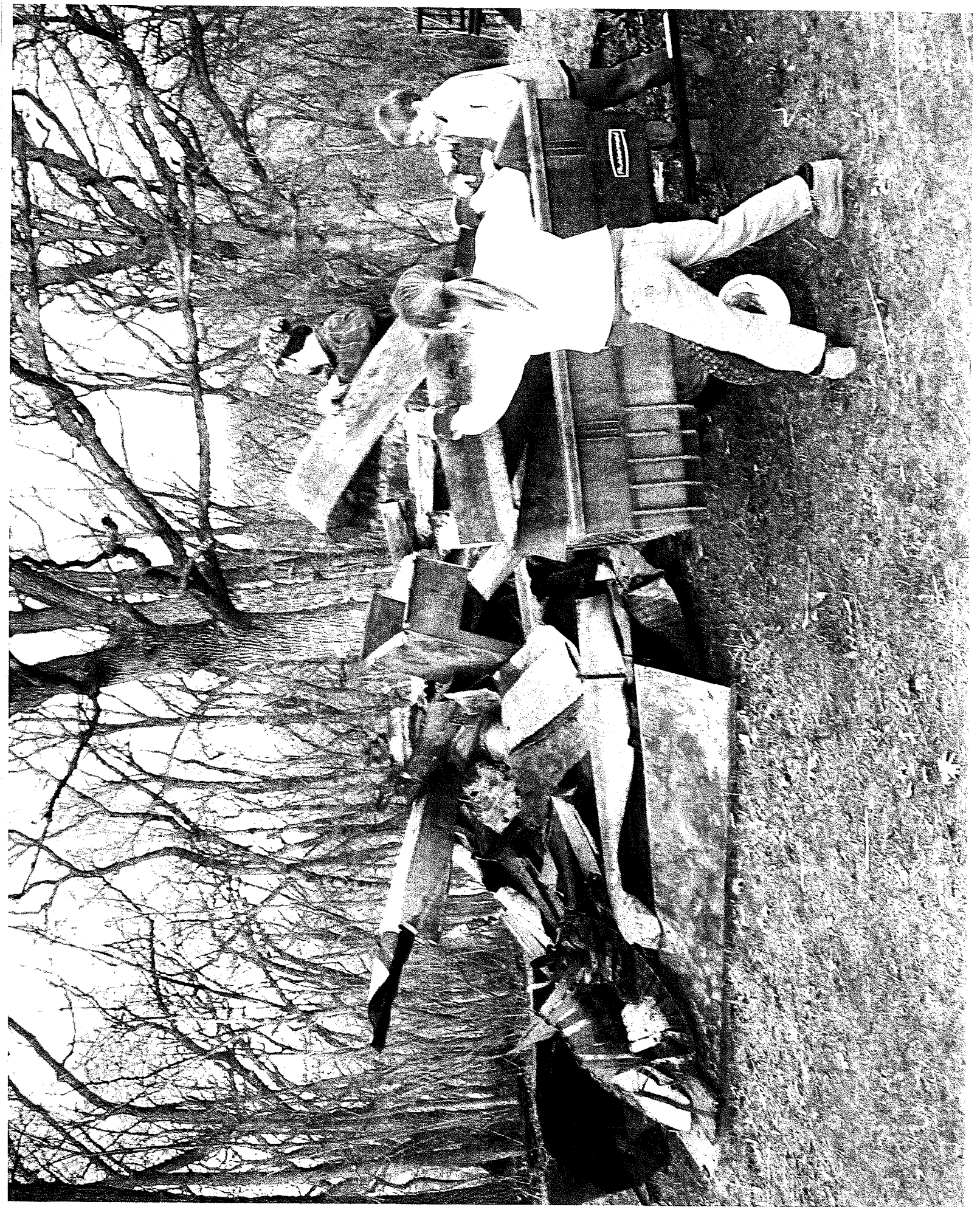


















# Human Powered Trails...

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Creates trails to Protect our Natural Resources







# Human Powered Trails...

---

Creates nature based recreation opportunities



 HUMAN POWERED TRAILS



# Human Powered Trails...

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Works cooperatively with many other groups toward managed trail design.



HUMAN POWERED  
TRAILS

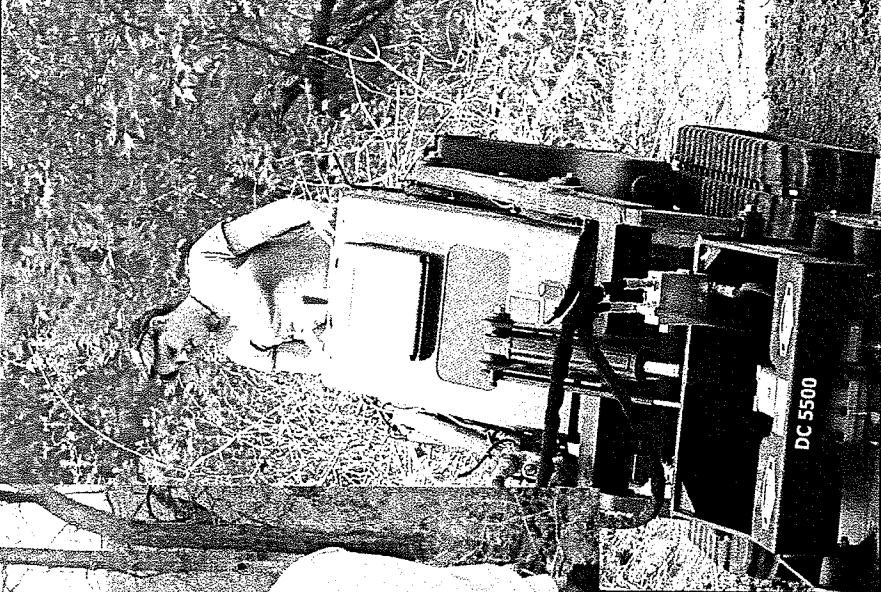




# Human Powered Trails...

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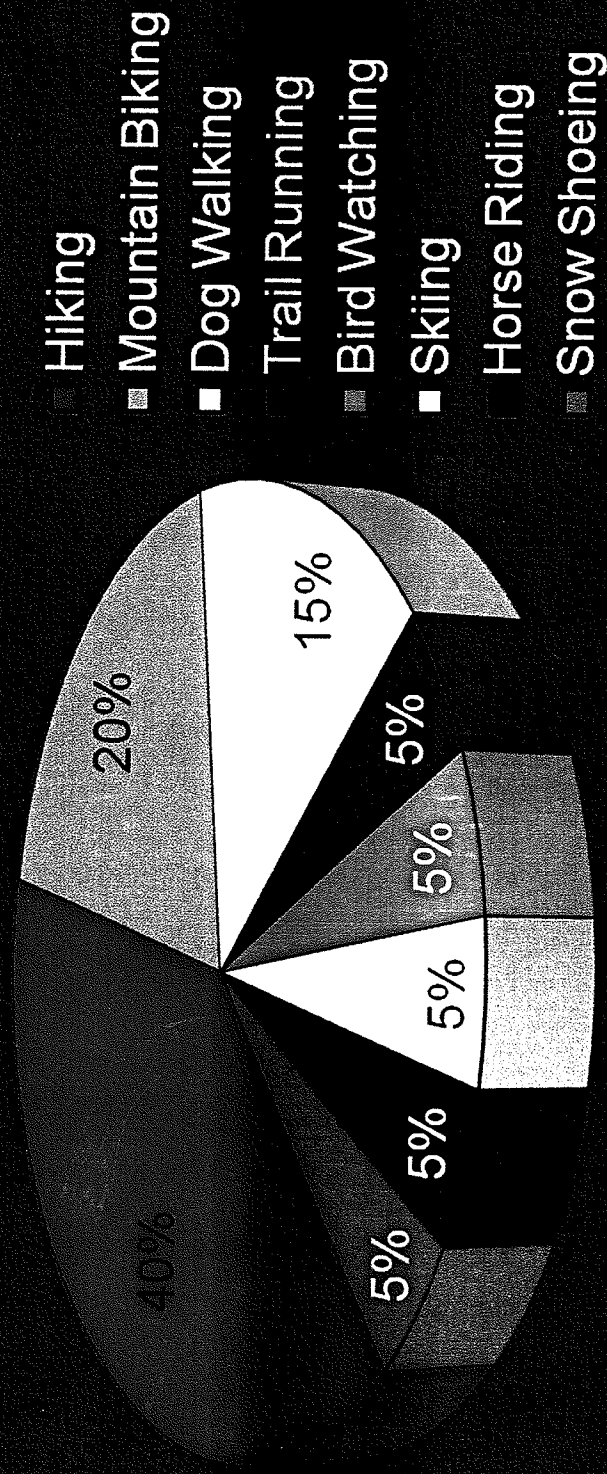
- Professionally trained - 100% volunteer





# Trail Activities on HPT Shared-Use Trails

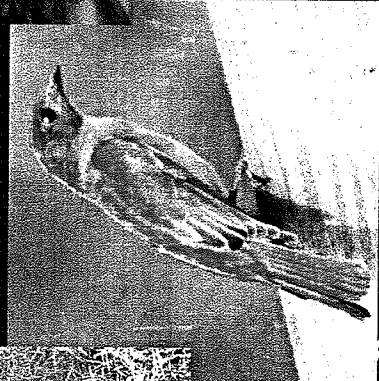
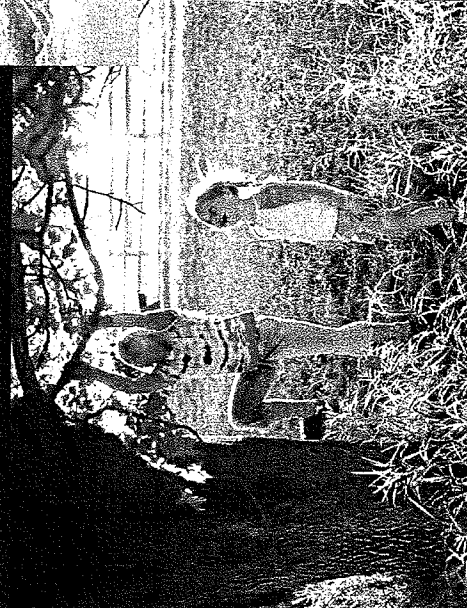
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2019-2020 Survey List and Statistics



# Trail Activities



HUMAN POWERED  
TRAILS





# Reclaim and Redesign

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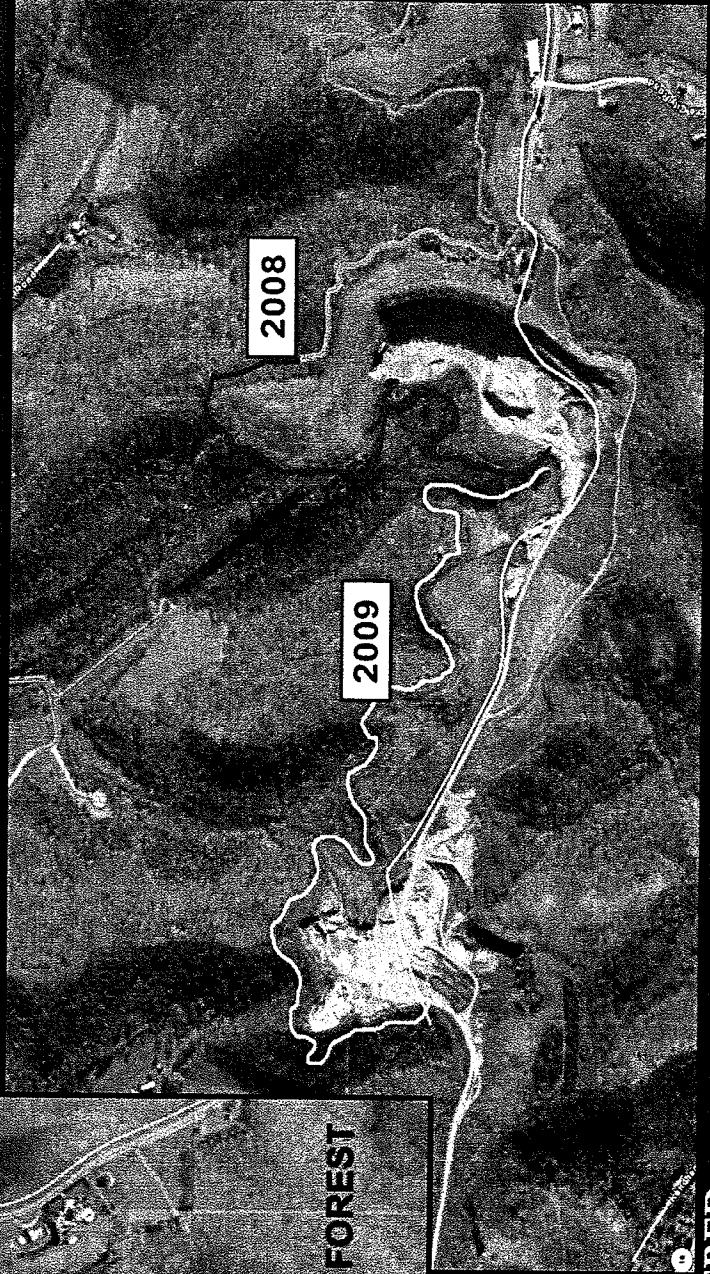
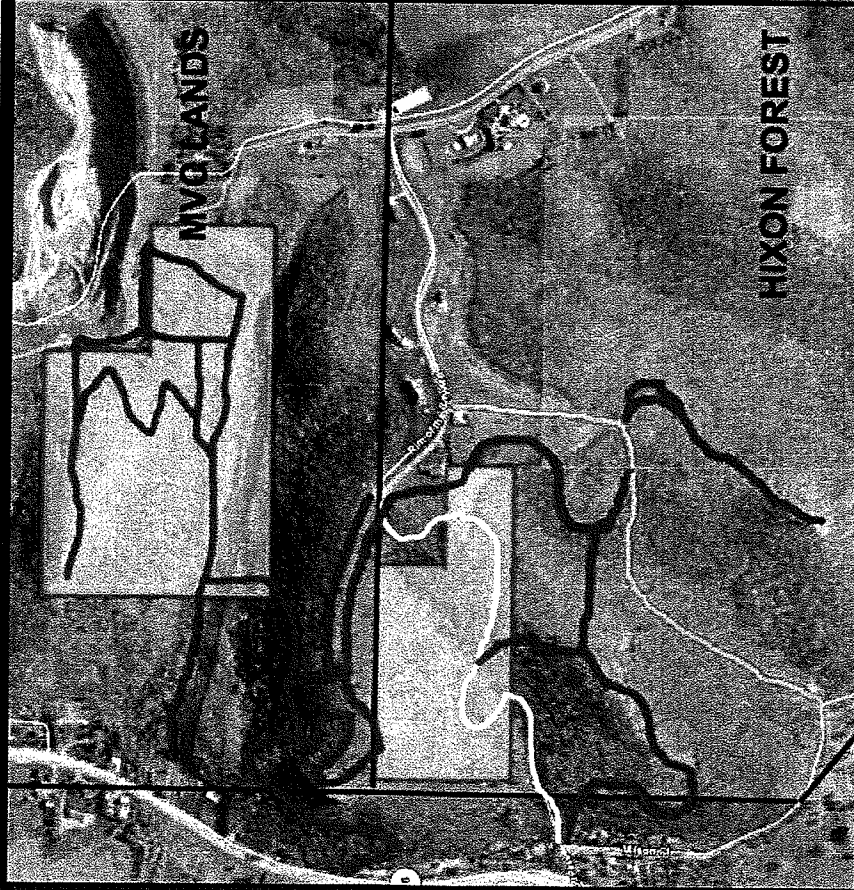


# Choices...

Illegal and destructive?

-or-

Designed/Managed?







*"Dedicated to the Conservation of  
Wisconsin's Waterfowl and Wetland Resources"*

WISCONSIN WATERFOWL ASSOCIATION, INC.  
P.O. Box 427  
Wales, WI 53183  
(262) 968-1722  
(800) 524-8460  
wwainfo@centurytel.net  
www.wisducks.org

3/24/2010

Rep. Spencer Black, Chair  
Assembly Committee on Natural Resources  
P.O. Box 8952  
Madison, WI 53708

Dear Chairman Black and Committee Members,

Today 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.

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.

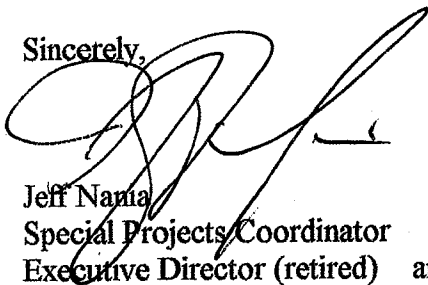
Legal opinions by legislative council and letters from legislators that supported our position have been ignored. An orchestrated misinformation campaign has made people

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





"Dedicated to the Conservation of  
Wisconsin's Waterfowl and Wetland Resources"

WISCONSIN WATERFOWL ASSOCIATION, INC.  
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Assembly Committee on Natural Resources  
Rep Spencer Black, Chair  
P.O. Box 8952  
Madison, Wi 53708

3/24/10

Dear Chairman Black 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 Patronsky. 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**

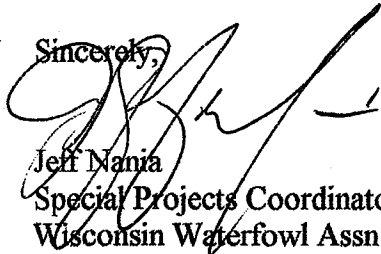
We believe that the rule should require that adequate signage be placed on all properties purchased with any stewardship funds. These signs should clearly show boundaries, compatible uses and contact information for the property managers. The Natural Resources Board should adopt a rule that allows signage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

Jeff Nania  
Special Projects Coordinator  
Wisconsin Waterfowl Assn



**Gathering Waters Conservancy's Testimony to the Assembly Natural Resources  
Committee on Administrative Rule NR 52  
March 24, 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."



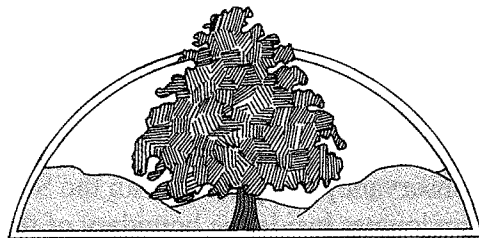
In terms of predictability, land trusts and local governments have come to rely on clear criteria and objective, science based decision-making when applying for Stewardship grants and as they try to raise the 50% match from non-Stewardship sources. The current draft of NR 52 would help to maintain a predictable and timely process by vesting the final decision-making about individual grants with the DNR and not the Natural Resources Board, while at the same time providing ample opportunity for public input on projects. Under this rule as it is currently drafted, public oversight and scrutiny of the Stewardship grants program will already be much greater than any other grants program in the state government. As any real estate specialist will tell you, land deals are already incredibly complicated, and so adding an unpredictable and inefficient approval process would have a real world impact and severely diminish the ability of land trusts to protect land in Wisconsin

While we do still have some serious concerns about the impact of this rule on land trusts, and especially those organizations operating in more urbanizing areas in portions of southeast Wisconsin, we are supporting rule and believe this framework, which was approved unanimously by the Natural Resources Board after substantial public input, will be workable.

Again, thank you for the opportunity to speak on this important issue, and I would welcome any questions.







*Waukesha County Land Conservancy*

I am Ellen Gennrich, President of the Waukesha County Land Conservancy, a land trust whose mission is to protect environmentally significant lands in Waukesha County. All of the Conservancy's lands that were purchased with the help of Stewardship Funds are open to both gun and bow deer hunting if they are located in communities where hunting is allowed.

BOARD OF DIRECTORS:

*President:*  
Ellen Gennrich  
*Land Conservation Advocate*

*Treasurer:*  
Steven Schmuki  
*Attorney*

*Secretary:*  
Riene Wells  
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Phil Crump  
*Community Volunteer*

Phillip J. Hinman  
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*Fiserv, Inc.*

Marlin Johnson  
*Prof of Biology: UWWC*

Susan Marguet  
*Attorney*

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 DNR's survey's show that the citizens of Wisconsin want more land preserved near urban areas, where they live. People want to use these open spaces for many different activities. They are school children, bird watchers, hikers, nature photographers – and hunters. Throughout the United States, these hikers, birders and photographers outnumber hunters by a ratio of 6 to 1 (according to USA Today). When we tell you that 90% of the land purchased with Stewardship Funds is open to hunting, the hunters tell you that not all of that is open to ALL hunting. But even if that number is way off, say it is 50%, it is much more than the percentage of hunters in the population.

If the Waukesha Land Conservancy were to allow all hunting during all of the many hunting seasons, many other users would be eliminated. We do not think this is fair. Nor was it the intent of the Stewardship Fund when it was written. You must allow the DNR staff the flexibility to make decisions on appropriate use of these properties on a site by site basis.

Many of our lands would not be open to any kind of hunting if the Conservancy hadn't purchased them. Our largest property, purchased some years ago with Stewardship help, would not be open to the public at all. The landowner died a few months after he sold the land to us. If we had not purchased it, his heirs would undoubtedly have sold it to a developer. There would be no public access land there today. Waukesha County is a rapidly urbanizing area. We are not the only buyers. Yes, we made a concession to the landowner that we would allow deer hunting only for management purposes. We are a private entity. We do not have the right of eminent domain. We must buy from willing sellers.

Do you want land protected by the Stewardship Fund in urbanizing areas?

At the Senate hearing, I was told by a committee member that when we are purchasing land, we are negotiating for the state. This is not true. Our land trust is a private entity which has been awarded a grant from the State to assist in our activity. The Conservancy insures the land. The Conservancy manages the land. The Conservancy raises 50% of the selling price – most of it from family memberships that start at \$35 each.

(over)



The Waukesha County Land Conservancy is a partner with the State. We have GIVEN money to the DNR to purchase land. A landowner inside the boundary of the Kettle Moraine State Forest refused to sell her land at the appraised value, so we raised the additional \$35,000 for the DNR to complete that purchase. We are partners. The DNR has used the Conservancy's privately-owned land for a match for a federal grant. This grant will give the DNR extra funds to purchase land in the Mukwonago River watershed. The Conservancy's mission is to protect such lands. We do not compete with the State. We don't care who is protecting the land. We are partners.

If all of these Stewardship Grant applications are sent to the DNR board, we will lose many of these deals. The DNR board doesn't want this. They have made it clear that they have set this policy from which the DNR staff is to act. The DNR staff understands that for the Stewardship Fund to work, they must treat each case individually. If all lands are to be treated the same, allowing all seasons of hunting on every parcel, land trusts in urban areas will not be using Stewardship Funds. We will buy half as much land. We will take more Conservation Easements – none of which will be open for any public use.

Sincerely,

A handwritten signature in cursive script that reads "Ellen Gennrich".

Ellen Gennrich, President  
Waukesha County Land Conservancy



62

303 S. Paterson St.  
Suite 6  
Madison WI 53703  
608.258.9797  
608.258.8184 fax  
www.nhlt.org

March 24, 2010

Representative Spencer Black  
Chair, Committee on Natural Resources  
c/o john.maycroft@legis.wi.gov

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

Dear Representative Black:

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

The Natural Heritage Land Trust is a non-profit conservation organization working to protect natural areas, wildlife areas, working farms, and other important lands in the Dane County region.

**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. 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.

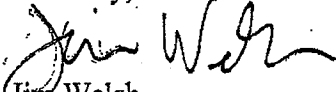
If we had been required to make the Patrick Marsh property open to all public access, we would likely not have purchased it because of the difficulty of managing safety conflicts due to the large number of people including children who live nearby. The land was owned by a developer who was planning a 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.

Sincerely,



Jim Welsh

Executive Director



122 W. Washington Avenue  
Suite 300  
Madison, Wisconsin 53703-2715

608/267-2380  
800/991-5502  
Fax: 608/267-0645

E-mail: [league@lwm-info.org](mailto:league@lwm-info.org)  
[www.lwm-info.org](http://www.lwm-info.org)

To: Assembly Committee on Natural Resources  
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities  
Date: March 24, 2010  
Re: **Support for 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.

While the rule could have more strongly stated that the department must give municipal public safety determinations and park and open space plans great weight when considering the appropriateness of a NBOA prohibition on stewardship lands, we are satisfied that municipal ordinances banning hunting will be a controlling factor in the department's determinations.

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.

We urge the committee to take no action on NR 52, and allow it to be promulgated as approved by the Natural Resources Board. Thank you for considering our comments and concerns.



Steven D. Schmuki, President  
Waukesha County Environmental Action League, Inc. (WEAL)

Comments regarding NR 52 regarding public use of lands acquired under the Knowles  
Nelson Stewardship Program

Before the Wisconsin State Assembly Committee on Natural Resources  
March 24, 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 NBOAs, 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 Nature Based Outdoor Activity.

However, WEAL believes the rule as written is broad and over reaching. We do not believe that NR52 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 on Natural Resources decline to adopt the rule as it is presently written. We ask that the Committee send the rule back to be re-written for the following reasons.

1. Creation of this rule 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 legally be pursued, the rule limits access for a significant portion of the state’s outdoor recreational enthusiasts. Many WEAL members, who are birders, photographers, hikers and the like, are not comfortable sharing the landscape knowing others also will be there with weapons.
2. The rule diminishes the intent of the Knowles-Nelson Stewardship Fund. The purpose of the Stewardship fund is to assist NCOs and local units of government in protecting the best of Wisconsin’s outdoors. This rule limits the stewardship fund’s effectiveness because NCOs and local units will become reluctant to participate in the program if every property they acquire must be open to all forms of hunting. Furthermore, and perhaps more critical, the important matching funds that come from groups such as WEAL may decline, as WEAL may step back from contributing due to the perceived use of the properties exclusively for hunting.
3. Numerous parties spoke out at the public hearings on this 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 that there are many sites that may, for any number of science-based reasons, need to be restricted from hunting or trapping or other NBOAs. 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 good management.

Finally, WEAL requests that if the Committee continues to move the rule forward it consider adding the following factor under 52.05(a) (b) & (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-department 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 for all the land's unique and intrinsic natural values as well, then you should have no problem in either rewriting the rule 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.

Thank you.

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**Senator Jauch Testimony in Support of SB 348  
Revisions to the Marina Condo Law  
Wednesday March 24, 2010**

I would like to thank Rep. Black and the members of the committee for allowing me the opportunity to provide written testimony today on my support for SB 348, which makes some small and primarily technical revisions to the Marina Condo Law. I am sorry I could not be here today in person.

I introduced the bill with Representative Sherman at the request of a marina condominium development and its unit owners in our districts. This bill was written with the input and support of the DNR. Language was included in the 2007 Budget bill with the support of the DNR to bar creation of new marina condominium developments. The Budget language also clarified the legal status of existing marina condominiums.

Under statutes regulating condominium associations, a 2/3 vote of unit owners is required in order to modify or amend the declaration for a condominium project. The budget language, however, imposed a unanimous vote requirement upon marina condominiums, which appears to be unnecessarily restrictive. Accordingly, SB 348 would remove this more restrictive language and utilize the same 2/3 requirement which is applicable for all other existing condominium associations. Finally, the Revisor of Statutes identified a couple drafting errors which are corrected in the bill.

This bill does not revise the budget language in any way that would allow for the creation of new marina condominiums, nor does it amend anything pertaining to the legal status of existing marina condominiums.

