



WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



Stewardship Access Rule  
Beth

ADMINISTRATION  
210 COTTONWOOD AVENUE  
HARTLAND, WI 53029  
PHONE (262) 367-2714  
FAX (262) 367-2430  
[www.villageofhartland.com](http://www.villageofhartland.com)

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March 16, 2010

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

RE: NR 52

Senators,

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

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

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

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

Senate Committee on the Environment

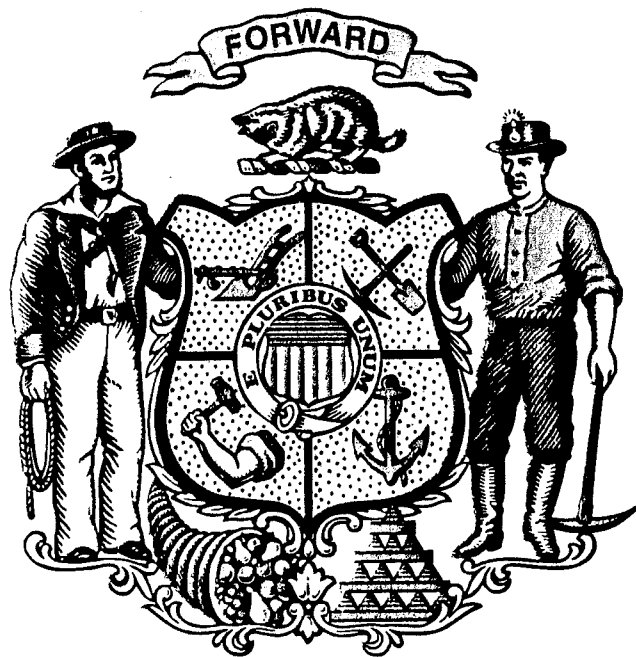
Page 2

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

Respectfully submitted,



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





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March 16, 2010

Senate Environment Committee

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

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

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

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

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

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

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

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

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

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

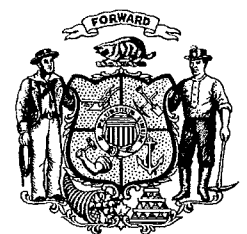
If we had been required to make this property open to all public access, we would likely not have purchased it because of the difficulty of managing safety conflicts due to the large number of people including children who live nearby. The land was owned by a developer who was planning a residential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

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

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

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

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





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

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

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

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

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

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

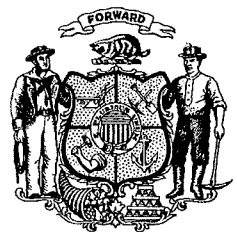
Municipalities that have adopted a ban on hunting or the use of firearms should not be at a disadvantage when applying for stewardship dollars. Otherwise, metropolitan areas and urbanizing communities, where most of the state's population resides, will be shut out of the stewardship program.



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

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

Thank you for considering our comments and concerns.





State Senator  
**Neal J. Kedzie**

11th Senate District

March 17, 2010

State Senator Mark Miller  
Chair, Senate Environment Committee  
Room 317-East, State Capitol  
Madison, WI

Dear Senator Miller,

Thank you for convening a public hearing of the Senate Environment Committee on Clearinghouse Rule 09-077, relating to potential restrictions to accessing land purchased through the Stewardship Fund program, as proposed by the Department of Natural Resources.

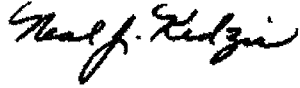
I believe the hearing on this very important rule was of great value to the committee and all interested parties. After listening to the testimony and reasoned arguments on both sides of this issue, I am convinced the rule must be returned to the Department in order to resolve numerous concerns raised. I would also request the Senate Environment Committee object to the rule if the Department does not agree to consider modifications on the basis it fails to comply with legislative intent(Wis. Stats 227.19(4)(d)3), is in conflict with state law(Wis. Stats 227.19(4)(d)4), and is arbitrary and capricious(Wis. Stats 227.19(4)(d)6).

In my opinion, the interests of the hunting, fishing and trapping community have not been well represented in this regard, and am concerned the ability for Wisconsin hunters, anglers, and trappers to enjoy their sport of choice may be compromised. I believe deer hunting in Wisconsin is at a critical juncture. Late last year, I delivered more than 8,400 comments from deer hunters across the state to DNR Secretary Matt Frank and his staff during a joint public hearing of the Senate and Assembly Natural Resources Committees. Those comments reflected a general displeasure and, at times, outrage of the current deer herd management practices.

If this rule is not returned to the agency, and instead, passively approved by the Committee, we will only add to a growing frustration and anger by the men and women who once valued the hunting, fishing, and trapping opportunities available to them in the State of Wisconsin. I ask you give serious consideration to this request, and ensure the Committee gives final approval to a rule that all users of our vast natural resources can support.

Thank you for your time and attention to this important issue before the Senate Environment Committee.

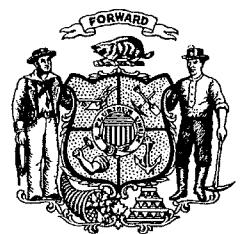
Sincerely,

A handwritten signature in black ink, appearing to read "Neal J. Kedzie". The signature is written in a cursive style with a large initial "N".

**Neal Kedzie**  
State Senator  
Senate Environment Committee, Ranking Minority member  
11<sup>th</sup> Senate District

NJK: dj

CC: Members, Senate Environment Committee





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## Luther S. Olsen

State Senator  
14th District

March 17, 2010

State Senator Mark Miller  
Chair, Senate Environment Committee  
Room 317 East, State Capitol  
Madison, WI

Dear Senator Miller,

Thank you for holding a public hearing on Clearinghouse Rule 09-077, which creates rules to ensure lands acquired with funding from the stewardship program are open to public hunting, trapping, fishing, hiking and cross country skiing.

The hearing gave everyone on both sides an opportunity to express their thoughts on the proposed rule. I think it was evident that although the proposed rule may be better than the current system, there are still many areas of great concern.

Among my many concerns is the rule doesn't reflect the legislative intent of state statute 23.0916 (2) which states that "the person receiving the stewardship grant may prohibit access for one or more nature-based outdoor activities, if the **natural resources board** determines that is necessary to do so..." The rule as written would give this decision-making authority to department staff.

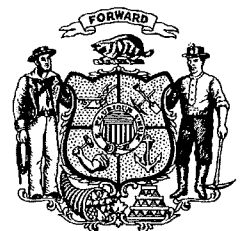
I am also concerned that the hunters, anglers and trappers, who supported the extension of the stewardship program during the 2007-09 budget, are frustrated and confused that the concerns they have are falling on deaf ears. It is my sincere hope that staff from the DNR who attended the hearing really listened to the many hours of testimony of the sportsmen and women of our state. Their concerns have merit and it would be shame for the DNR to turn their backs on them.

I am requesting that the rule be sent back to the Department of Natural Resources for modifications. I would appreciate your consideration of my request.

Sincerely,

A handwritten signature in black ink, appearing to read "Luther Olsen", is written over a horizontal line.

Luther Olsen  
State Senator  
Member, Senate Committee on Environment





## ROBERT W. WIRCH

STATE SENATOR TWENTY-SECOND DISTRICT

March 18, 2010

State Senator Mark Miller  
Chair, Senate Environment Committee  
Room 317-East, State Capitol  
Madison, WI

Dear Senator Miller,

I appreciate you holding a public hearing on Clearinghouse Rule 09-077, relating to the potential restrictions to accessing land purchased through the Nelson-Knowles Stewardship Fund program. I was glad to see the dialog between user groups, and learn more about the partnerships that currently exist to enhance our land, lakes and streams.

I understand that diligent work on this rule has been done by all parties that serve to preserve and protect our land and natural resources; however, the hearing brought to light several concerns that are still not resolved. In the hearing there seem to be areas where further agreement can be reached, therefore I am requesting Clearinghouse Rule 09-077 be returned to the Department of Natural Resources for further consideration and revision.

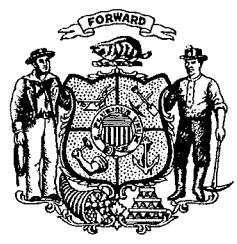
Thank you for your sincere consideration of my request. Also, thank you again for bringing this important matter before the Senate Environment Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'RW' with a flourish.

ROBERT W. WIRCH  
State Senator  
22<sup>nd</sup> Senate District





April 1, 2010

Matt Frank, Secretary  
Department of Natural Resources  
PO Box 7921  
Madison, WI 53707

Dear Secretary Frank,

The Senate Environment Committee met today on Clearinghouse Rule 09-077, relating to ensuring that lands acquired with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., are open to public hunting, trapping, fishing, hiking and cross county skiing. The Committee requests that you consider the specific modifications attached to this letter.

I would like to thank you for the hard work of the Department on this rule package. I would ask that you work with the affected parties on implementing the intent of the clarifications to the proposed rule.

If the Department intends to consider these modifications, please respond by 4:00pm, April 2, 2010.

Sincerely,

Mark Miller, Chair  
Senate Environment Committee

Moved, that the Senate Committee on Environment, pursuant to s. 227.19 (4) (b) 2., Stats., requests that the Department of Natural Resources agree to consider specific modifications, as detailed in the attachments, to Clearinghouse Rule 09-077, relating to ensuring lands acquired with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., are open to public hunting, trapping, fishing, hiking and cross country skiing.

If the Department of Natural Resources does not agree to consider these modifications to Clearinghouse Rule 09-077 by 4:00 p.m., April 2, 2010, in a letter addressed to the chair of the Senate Committee on Environment, the Senate Committee on Environment objects to Clearinghouse Rule 09-077, pursuant to s. 227.19 (4) (d) 1., 3., and 6., Stats., on the grounds that the proposed rule is being proposed with an absence of statutory authority, fails to comply with legislative intent, and is arbitrary and capricious, and imposes an undue hardship.

1. Direct that the NRB revise NR 52.04 and 52.05 to provide that the NRB approve all prohibitions and restrictions to the exercise of Nature Based Outdoor Activities (NBOAs) on Stewardship purchased lands. Such revision should be done in a manner that streamlines the time for approval of all uncontested prohibitions and restrictions and provides fair but timely NRB determinations of contested requests. **(See attached Natural Resources Board appeal process)**
2. Direct the DNR to create NR 52.04 (2) (f): If the Department after evaluating any objections, determines there is an unresolved objection based on standards set forth in this chapter or there is a material dispute of fact and/or a misapplication of section 23.0916 or rules developed pursuant thereto and the issue cannot be resolved within the departments evaluation period, the department shall submit the proposal to the Natural Resources Board for its determination.
3. Direct the NRB to modify NR 52.05 (1) (b) to provide that the “unique plant and animal community” exception to public access for NBOAs on Stewardship funded lands is not to be used to protect “game” and “unprotected” animals.
4. Direct the NRB to delete NR 52.05 (1) (c) (2), which allows that the NBOA preferences of past landowners of a parcel to override the legislative intent that Stewardship Funded lands to be open to NBOAs.
5. Direct the NRB to modify NR 52.01 (3) to include the following: notwithstanding NR 51.03(1)(c), contributions of property used as sponsor match are not subject to this chapter.
6. Direct the NRB to modify NR 52.05 (1) (c) in order to provide that the fact that NBOAs are allowed on public lands near a proposed Stewardship parcel not be used as a factor in exercising the “accommodation of usership patterns” exception for public access for NBOAs on such a parcel.
7. Direct that the NRB modify NR 52.05 (1) (a) (3) by deleting the word “potential”, in order to avoid the prohibition or restriction of NBOAs on the speculative basis that sometime in the future a conflict might arise.
8. Direct that the NRB create NR 52.05 (2) to provide that “If a Stewardship grant applicant, who proposes to prohibit or restrict an NBOA, has a general organizational policy prohibiting or restricting that NBOA, the applicant must identify that general policy in its application and must demonstrate that the requested NBOA restriction or prohibition is justified regardless of the general policy. The Department will provide a thorough review of such proposed prohibition or restriction to ensure that it is consistent with the intent of the statute and this section.”

9. Direct that the NRB modify NR 52.05 (1) (c) to require that an NBOA restriction or prohibition on adjacent land owned by the applicant either purchased without Stewardship funds or purchased with Stewardship funds before the adoption of section 23.0916, Wisconsin Statutes, cannot be used as the sole factor in exercising the “accommodation of usership patterns” exception for public access for NBOAs on such a parcel.
10. Direct the DNR to modify NR 52.05 to 1. Fully take into account the public rights protected by the public trust doctrine and 2. Clarify the authority and responsibility of the Department to adopt state regulation on waters purchased or accessed through properties purchased with Stewardship funds. The department shall include sportsmen and women, land trusts, and other appropriate individuals and organizations in the development of these provisions.
11. Direct the NRB to modify NR 52.04 (1) (d) to read: “The department’s initial assessment of the need to prohibit the NBOA pursuant to ss.23.0916 (2) (b) or (3) (b), Stats., include the comments of local, regional and statewide resource professionals that have information related to the natural resources on the property.
12. Direct the NRB to delete NR 52.04 (2) (d).
13. Direct the NRB to delete NR 52.04 (2) (g).
14. Direct the NRB to create NR 52.05 (3): “Proposed restrictions or prohibitions of NBOAs for Stewardship purchased parcels in incorporated communities are determined to be in conformance with section 23.0916, Wisconsin Statutes, if:
  - a. the parcel is five acres or less in size; and
  - b. the parcel is not adjacent to a public property where the restricted or proposed NBOA is allowed; and
  - c. the restrictions or prohibitions are not fishing related and the parcel is adjacent to a public waterway.

## Natural Resources Board Streamlined Appeal Process

1. For proposed grant and land purchases that have proposed NBOA restrictions and prohibitions and are not objected to or do not have any unresolved objections or disputes of material fact or material misapplications of section 23.0916 or rules developed pursuant thereto (as defined in NR 52.04(2)(f) above):

---NRB Approval of such transactions by adding as Item B under standard Board Item 2: "Ratification of Acts of the Secretary" (Item takes a minute on the Board agenda)

---NRB Teleconference approval of such transactions in the two months when no NRB or as necessary to meet deadlines.

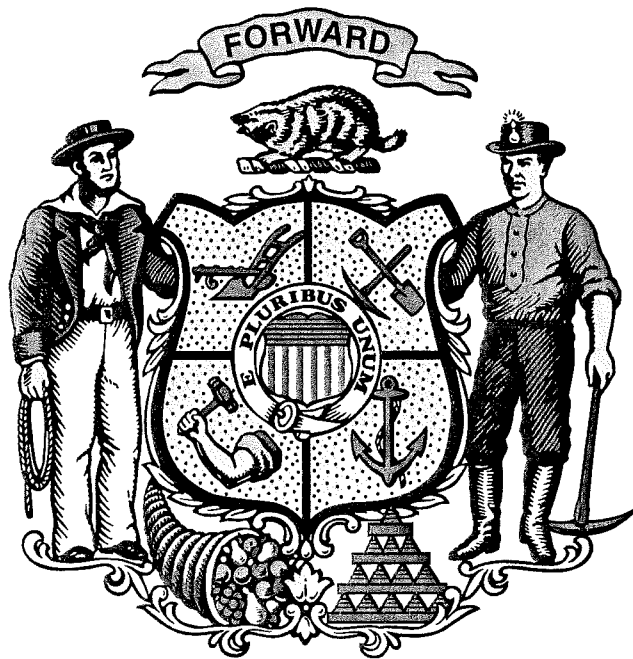
---In exigent situations, such as an urgent need to complete a closure, a signed grant may be done with a Board after-the-fact ratification

2. For proposed grant purchases that have proposed NBOA restrictions or prohibitions and that have unresolved objections based on standards set forth in this chapter or that have a unresolved dispute of material fact or material misapplications of section 23.0916 or rules developed pursuant thereto (as defined in NR 52.04(2)(f) above):

---Background information document put together by DNR staff including the reason for the proposed restriction or prohibition, the comments of the objector and the Department's decision.

---Item is placed on next NRB agenda with seven days notice to the applicant and the objector or less if agreed upon by all parties; Parties can furnish the Board with additional written materials.

---Ten minutes total scheduled for those supporting restrictions or prohibitions and ten minutes total scheduled for those that object to the proposed restrictions or prohibitions.



**Executive Session Notes**  
**April 1, 2010**

**Call Executive Session to Order and ask Clerk to call the roll**

- ROLL CALL

**Allan Jansen**, of Hazel Green, as a member of the Waste Facilities Siting Board, to serve for the term ending May 1, 2012.

**James Schuerman**, of Wisconsin Rapids, as a member of the Waste Facilities Siting Board, to serve for the term ending May 1, 2013.

**SB 557**, relating to notices concerning construction near or on lakes, streams, or wetlands that are given to applicants for building permits and other construction approvals, requiring the Department of Natural Resources to furnish informational brochures about wetlands laws, requiring the Department of Natural Resources to provide evaluations and statements about whether certain land contains wetlands, and making an appropriation

***Senate Amendment 1 to SB 557***

- MOTION FOR ADOPTION
- SECOND
- DISCUSSION
- ROLL CALL

***SB 557***

- MOTION FOR PASSAGE AS AMENDED
- SECOND
- DISCUSSION
- ROLL CALL



**SB 632**, relating to control of nonpoint source water pollution in certain areas with carbonate bedrock and granting rule-making authority

**SB 632**

- MOTION FOR PASSAGE
- SECOND
- DISCUSSION
- ROLL CALL

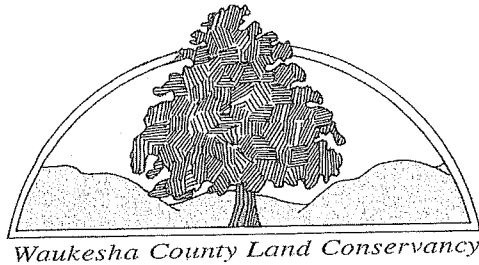
**CR 09-077**, relating to ensuring that lands acquired with funding from the stewardship program under ss. 23.0915 and 23.0917, Stats., are open to public hunting, trapping, fishing, hiking and cross county skiing

**CR 09-077**

- MOTION FOR MODIFICATION
- SECOND
- DISCUSSION
- ROLL CALL

**Adjourn Executive Session**





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

BOARD OF DIRECTORS:

*President:*  
Ellen Gennrich  
*Land Conservation Advocate*

*Treasurer:*  
Steven Schmuki  
*Attorney*

*Secretary:*  
Riene Wells  
*Owner: Eagle Centre House*

Phil Crump  
*Community Volunteer*

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

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

Marlin Johnson  
*Prof of Biology: UWWC*

Janet M. McKenna  
*Community Volunteer*

Donna Meyer  
*Community Volunteer*

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

Ron Siepmann  
*Board Chairman:*  
*Siepmann Realty Corp.*

Cindy Ziegler-Fritz  
*Community Volunteer*

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

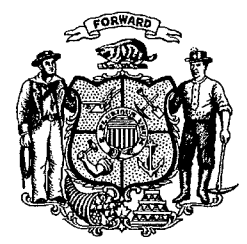
The only controversy in NR52 is whether all land purchased with the help of Stewardship Funds should be required to be open to all kinds of hunting –with no regard to other users who would like to use the lands during some of those hunting seasons and would not feel safe doing so with hunters on the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

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

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

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





# Wisconsin Wildlife Federation

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

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

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

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

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

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

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

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

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

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

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

George Meyer  
Executive Director  
Wisconsin Wildlife Federation

March 16, 2010

## Wisconsin Wildlife Federation

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

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

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

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

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

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

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

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

Jerry Knuth, Chair  
Parks and Forestry Committee  
Wisconsin Wildlife Federation

March 16, 2010



# Wisconsin Wildlife Federation

January 25, 2010

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

**Statute:** Section 23.0916 (2) states:

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

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

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

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

**Analysis:**

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

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

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 Patronskey ruled: “Based on my analysis of this statute, I believe that the grant recipient must allow access for all of the nature-based outdoor activities, unless specific approval is obtained from the Natural Resources Board to prohibit public access

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

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

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

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

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

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

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

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

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

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

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