

Chapter NR 50

ADMINISTRATION OF OUTDOOR RECREATION
PROGRAM GRANTS AND STATE AIDS

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Note: The following recreational aids programs are found elsewhere: Motorcycle Recreation Program, ch. NR 65 and Recreational Boating Facilities Program, ch. NR 7.

History: Chapter NR 50 as it existed on March 31, 1975 was repealed and a new chapter NR 50 was created, effective April 1, 1975.

NR 50.01 Purpose. The purpose of this chapter is to establish procedures for implementation of various recreational aids programs under ss. 20.370 (4) (bx), 23.09 (11), (12), (17m), (20), (25) (e) and (26), 23.30 (3) (h), 30.275 and 350.12 (4), Stats., and 16 U.S.C. ss. 460d, 460L-4, et seq.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; am. Register, April, 1984, No. 340, eff. 5-1-84; am. Register, November, 1986, No. 371, eff. 12-1-86; am. Register, April, 1989, No. 400, eff. 5-1-89.

NR 50.02 Applicability. The provisions of this chapter are applicable to all sponsors of recreational aid programs under ss. 20.370 (4) (bx), 23.09 (11), (12), (17m), (20), (25) (e) and (26), 23.30 (3) (h), 30.275 and 350.12 (4), Stats., and 16 U.S.C. ss. 460d, 460L-4, et seq.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; cr. (6), Register, March, 1977, No. 255, eff. 4-1-77; cr. (7) and (8), Register, June, 1980, No. 294, eff. 7-1-80; cr. (9), Register, September, 1980, No. 297, eff. 10-1-80; r. and recr. Register, May, 1983, No. 329, eff. 6-1-83; am. Register, April, 1984, No. 340, eff. 5-1-84; am. Register, November, 1986, No. 371, eff. 12-1-86; am. Register, April, 1989, No. 400, eff. 5-1-89.

NR 50.03 Definitions. (1) "Department" means department of natural resources.

(2) "Secretary" means secretary, department of natural resources.

(3) "Applicant" means unit of government applying for a grant.

(4) "LAWCON" means land and water conservation fund act of 1965.

(5) (a) "Acquisition project" includes the acquisition of land or rights thereto for a well defined outdoor recreation area or purpose.

(b) "Development project" includes the development of structures, utilities, facilities or landscaping necessary for outdoor recreation use of an area.

(6) "Approval" means the signing by the secretary or designee of a project agreement resulting in encumbering a specified amount of federal or state aid funds for a specific purpose.

(7) "Assistance" means funds made available by the department to a sponsor in support of a public outdoor recreation project.

(8) "Contingency fund" means that part of the LAWCON apportionment that is not immediately apportioned to counties or state agencies but held by the department to meet high priority, unforeseen, or emergency needs.

(9) "Project agreement" means a contract between the sponsor and department setting forth the mutual obligations with regard to a portion or all of a specific project.

(10) "Sponsor" means local unit of government, state agency, Indian tribe or snowmobile club receiving assistance.

(11) "Snowmobile trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by snowmobile operators by the governmental agency having jurisdiction, but excluding highways except those highways on which the roadway is not normally maintained for other vehicular traffic by the removal of snow.

(12) "District" means one of the 6 field administrative offices of the department of natural resources.

(13) "Project period" means the period of time specified in the agreement during which all work must be accomplished.

(14) "Basic facilities" means the minimum improvements necessary to enable people to make use of recreation sites with minimum maintenance.

(15) "State outdoor recreation plan" means the comprehensive state-wide outdoor recreation plan required by the land and water conservation fund act.

(16) "Enforcement" means the detection and prevention of crimes and civil violations, and the arrest of those persons who violate such laws. To qualify for state aids under ss. 30.79 and 350.12, Stats., and ss. NR 50.12 and 50.13, officers involved in the "enforcement" of ss. 30.50 to 30.80 or ch. 350, Stats., must have the authority to make arrests for the violations of the laws they are employed to enforce.

(17) "Force account" means the performance of a development or maintenance project with the forces and resources of the sponsor, including personal services, equipment and materials.

(18) "Conservancy zone" is the designation a unit of government may give to a natural area held for the preservation of open space and supporting environmental education, nature interpretation and research activities.

(19) "Qualified naturalist" means a person who has had academic training and/or experience in ecology and outdoor education.

(20) "Fringe benefits" are employers' contributions or expenses for social security, employe's life and health insurance plans, unemployment Register, November, 1993, No. 455

(c) Improvement of surface water quality and surface water flow.

(4) **APPLICATION PROCEDURE.** Applications for project grants shall be submitted to the department no later than November 1 of each state fiscal year for which funding is requested. The department shall review applications for completeness. An application shall contain the following items:

(a) A completed application form.

Note: Application forms may be obtained, at no charge, from the Bureau of Aid Programs, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

(b) A resolution adopted by the governing body of the municipality, Indian tribe or the department designating an authorized representative to apply for grants under s. 30.275, Stats., and this section on behalf of the municipality, Indian tribe or the department. The authorized representative shall be an official or employe of the municipality, Indian tribe or the department.

(c) Description of project; including proximity to urban areas, types of water-based recreational activities the project would promote, a detailed estimate of project costs, and an estimate of the number of people who would be expected to enjoy the benefits of the project.

(d) Plans and specifications for the project.

(e) Other information as requested by the department.

(5) **ALLOCATION OF FUNDS.** Annual appropriations will be allocated equally among all designated scenic urban waterways as soon as possible after July 1 of each year. Funds allocated to a designated scenic urban waterway that are not needed to fund applications received by November 1, may be reallocated equally among designated scenic urban waterways which have requested funds in excess of their allocations. The reallocation shall be completed by February 1 of the following year.

(6) **WATERSHED COMMITTEES.** The selection of projects within a designated scenic urban waterway shall be made by a watershed committee for that scenic urban waterway appointed by the department. The committee shall have members from each county within the designated scenic urban waterway; some cities, villages, towns and inland lake protection and rehabilitation districts within the designated scenic urban waterway; the department and independent citizens within the designated scenic urban waterway. Existing watershed committees may be used to select projects. Regional planning commissions may and the department shall be coordinators and advisors to the committee.

(7) **SELECTION OF PROJECTS.** The watershed committee shall give priority to local government projects. Department projects may be selected only if sufficient funds remain after local government projects within the designated scenic urban waterway are selected. Priority shall be given to applications based on the degree to which the potential benefits of each project correspond to the program's purpose pursuant to s. 30.275 (1), Stats.

(8) **GRANT AWARDS.** The department shall issue grant awards by February 28 of each year. The state share of the project cost shall be no greater than 80% of the eligible project costs. The department may not issue grants to applicants whose application is not complete.

(9) **GRANT CONDITIONS.** (a) Grant awards are subject to the conditions of this section and s. 30.275, Stats.

(b) Projects funded under this section shall be consistent with any approved areawide water quality management plan encompassing the project.

(c) Nonpoint source projects to improve surface water quality and surface water flow are subject to the requirements of ss. NR 120.14 and 120.15.

(d) The general provisions of s. NR 50.05 apply to awards made under this section.

History: Cr. Register, November, 1986, No. 371, eff. 12-1-86.

NR 50.20 Fish rearing pond grants. (1) **PURPOSE.** The purpose of this section is to establish standards and priorities for the implementation of a grant-in-aid program for restoration of unused or underutilized fish rearing ponds, under s. 20.370 (4) (bb), Stats., and s. 3040 (11j), 1989 Wis. Act 31.

(2) **ELIGIBLE PROJECTS.** Grants may be made available only to restore unused or underutilized fish rearing ponds that may be restored at reasonable cost, that in were existence on August 9, 1989 and that are located in an off-reservation area where American Indian tribes or bands have federal treaty rights to fish.

(3) **ELIGIBLE RECIPIENTS.** Grants may be given only to applicants who are owners of fish rearing ponds or groups that have entered into agreements with such owners to use their ponds for fish rearing.

(4) **ELIGIBLE ACTIVITIES.** Grant recipients may use the grant moneys only for repair or construction of dams, dikes, levies or other water retaining structures, for replacement or repair of pumps or other related equipment and for associated costs necessary to restore ponds for fish rearing. Grant recipients may not use grant moneys for the operation or routine maintenance of rearing ponds, for new pond construction or for expansion of ponds existing on August 9, 1989.

(5) **RESTRICTION ON USE OF PONDS.** A fish rearing pond restored with a grant under this section may be used only for the rearing of walleye or muskellunge or both.

(6) **PRIORITIES.** The department shall select projects for financial assistance by reviewing each project according to the following project criteria, which are not listed in order of priority:

(a) Projects which are geographically located to provide the most efficient distribution of fish to waters managed for walleye and muskellunge receive higher priority.

(b) Projects which have a high level of volunteer labor associated with renovation and operation receive higher priority.

(c) Projects where the applicant has shown by prior record the ability to complete renovations and successfully operate the ponds to produce muskellunge or walleye receive higher priority.

(d) Projects to renovate existing ponds in greatest danger of being lost for fish rearing purposes receive higher priority.

(e) Projects where the applicant is financially able to adequately maintain and operate the pond receive higher priority.

(7) **ALLOWABLE COSTS.** (a) One hundred percent of the reasonable, actual net costs which are attributed to activities considered eligible under sub. (2) will be funded, but not more than \$30,000 for any one grant.

(b) The department shall determine whether projected costs to renovate ponds are reasonable.

(c) Cost overruns beyond the original grant award are not allowable.

(d) Donated labor, materials, land, or other activities which do not result in an actual expenditure by the applicant are not allowable.

(e) Indirect costs are not allowable.

(8) **APPLICATION AND GRANT AWARD PROCEDURES.** (a) A person who wishes to apply for a grant under this section shall apply on forms available from the department. Applications shall be submitted to the department no later than May 1 in order to be considered.

Note: Grant application forms are available from the department's district offices and from the Bureau of Fisheries Management, Department of Natural Resources, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707.

(b) The department shall evaluate completed applications by June 30 to determine which applicants will receive grants under this section.

(c) Applicants shall be notified by the department of its determination. Successful applicants shall be sent a grant agreement which indicates the date the project is approved and the project termination date and includes an agreement to rear walleyes or muskellunge or both for distribution consistent with department procedures for a period of not less than 5 years from the expected date of completion of pond renovation.

(d) No grant may be awarded and development work under the grant may not proceed until the grant agreement under par. (c) has been signed by the applicant and department.

(e) Grant expenditures shall be within the grant period, grant scope and grant amount shown in the grant agreement.

(f) Billings may be submitted to the department for partial payment or upon completion of the project.

(g) A request for grant extension shall be submitted prior to the project termination date.

History: Cr. Register, May, 1990, No. 413, eff. 6-1-90.

NR 50.21 National recreational trails program. (1) **PURPOSE.** The purpose of this section is to establish standards for the administration of the Symms national recreational trails fund act of 1991, 16 USC ss. 1261, 1262 and 26 USC ss. 9503 (6), 9511.

(2) **APPLICABILITY.** The provisions of this section are applicable to all towns, villages, cities, counties, tribal governing bodies, school districts, state agencies, federal agencies and incorporated organizations participating in the national recreational trails program.

(3) DEFINITIONS. As used in this section:

(a) "Applicant" means a town, village, city, county, tribal governing body as defined in s. 580.86 (9), Stats., school district, state agency, federal agency or incorporated organization applying for a grant.

(b) "Incorporated organization" means an organization incorporated pursuant to s. 181.32, Stats., whose primary purpose is promoting, encouraging or engaging in outdoor recreational trail activities.

(c) "National recreational trails program" means the program created under 16 USC ss. 1261, 1262 and 26 USC ss. 9503 (6) and 9511 with funds appropriated under ss. 20.370 (1) (ky), 20.370 (4) (bx) and 20.370 (4) (im), Stats.

(d) "Recreational trail" means a thoroughfare or track across land or snow used for recreational purposes such as bicycling, cross country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long distance backpacking, snowmobiling, aquatic or water activity, and vehicular travel by motorcycle, 4-wheel drive or all-terrain off-road vehicles.

(e) "Sponsor" means a town, village, city, county, tribal government, school district, state agency, federal agency or incorporated organization receiving assistance.

(f) "State trails council" means the 9 member council created under s. 15.347 (16), Stats.

(4) ALLOCATION OF FUNDS. (a) National recreational trails program funds allocated to Wisconsin each fiscal year shall be divided as follows:

1. An amount not exceeding 7% of the amount received by the state to the department for the costs of administering the national recreational trails program.

2. An amount not to exceed 5% of the amount received by the state to the department for the operation of environmental protection and education programs relating to the use of recreational trails.

3. After the reductions of subds. 1. and 2., the amount received by the state shall be allocated by the department in the following manner:

a. At least 30% shall be reserved for uses relating to motorized trail recreation. Of this amount, 80% shall be used for grants to applicants under sub. (3) (c) and 20% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or used by the department for motorized trail purposes.

b. At least 30% shall be reserved for uses relating to non-motorized trail recreation. Of this amount, 80% shall be used for grants to applicants under sub. (3) (c) and 20% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or used by the department for non-motorized trail purposes.

c. Not less than 40% for uses that provide for the greatest number of compatible recreational trail uses or that provide for innovative recreational trail corridor sharing to accommodate motorized and non-motor-

ized recreational trail use. Of this amount, 50% shall be used for grants to applicants under sub. (3) (c) and 50% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or used by the department for diversified trail purposes.

(b) Funds allocated to the state but not encumbered in projects shall remain allocated to the state during subsequent state fiscal years. These funds shall remain allocated under the respective motorized, non-motorized and diversified categories.

(5) GENERAL PROVISIONS. Unless otherwise noted, the general conditions of s. NR 50.05 also apply:

(a) Eligible applicants may receive a state grant for up to 100% of the total project costs of a recreational trail project.

(b) Any use of national recreational trail program funds for trails on private lands shall be accompanied by a written easement or other legally binding agreement that ensures public access to the trail improvements.

(c) When a corridor to be developed is obtained through an easement or subject to other legally binding agreement, the degree of control over the corridor by the sponsor and the period of time that the written easement or legally binding agreement continues shall be factors in determining the amount of national recreational trails program funds to be granted to the project.

(d) National recreational trails program funds are to be used on trails and trail related projects which have been identified in or which further a specific goal of a trail plan included or referenced in a statewide comprehensive outdoor recreation plan required by LAWCON.

(e) Cost overruns beyond the original grant award may be allowed for good cause. Awarding of cost overruns shall be contingent upon funds available and review by department staff.

(f) Acquisition of real property shall be in accordance with state and federal guidelines for preparation of appraisals and relocation assistance.

Note: Guidelines for the preparation of appraisals are available from the Bureau of Community Assistance, Department of Natural Resources, Box 7921, Madison, WI, 53707. Guidelines for relocation assistance are available from the Relocation Services Unit, Equal Rights Division, Department of Labor, Industry and Human Relations, Box 8928, Madison, WI, 53707.

(g) Administrative costs of acquiring lands or land rights including the cost of appraisal, relocation payments, title insurance and recording fees are not eligible costs for reimbursement.

(h) A grant may not be made to share costs for land acquisition, planning or engineering costs incurred prior to approval of a grant application.

(i) Title to lands or rights in land acquired under this section shall vest in the sponsor, but the lands purchased may not be converted to uses inconsistent with this section without the prior approval of the department. Proceeds from the sale or other disposal of the lands shall be used to promote the objectives of this section.

(j) Project agreements with incorporated organizations for the acquisition of land shall incorporate a special condition that should the sponsoring incorporated organization be dissolved, the title to property acquired with national recreational trails program funds shall revert to the department.

(k) Actual fringe benefits paid as part of the direct labor costs claimed are eligible expenses for all governmental sponsors.

(l) Claims for payment shall be submitted by the sponsor within 6 months of the project termination date.

(m) Claims for payment shall be paid on a cost reimbursement basis.

(n) Trail grooming rates shall be established by the department. These rates will reflect the operating costs of tractor units and attached grooming devices.

(o) Rates for equipment used for maintenance, rehabilitation or development activities performed by a sponsor may not exceed the county machinery agreement rate established annually with each county by the state department of transportation. All hand tools necessary to carry out a project are the responsibility of the sponsor.

Note: Copies of the county machinery agreements are available from the county highway departments.

(p) The department may approve a variance from the requirements of this section that are not elements of the federal statutes, 16 USC ss. 1261, 1262, upon request of a sponsor when the department determines that the variance is essential to effect necessary grant actions or program objectives, and where special circumstances make the variance in the best interest of the program. Before granting a variance, the department shall take into account factors such as good cause and circumstances beyond the control of the sponsor.

Note: The following provisions of the rule are elements of the federal statutes: ss. NR 50.21 (2); (3) (i); (4) (a) 1 and 2; (5) (b) to (d), (g), (q); (6); and (7). The remaining provisions are not elements of the federal statutes.

(6) **ELIGIBLE PROJECTS.** Projects eligible for funding under this section include:

- (a) Development of urban trail linkages near homes and workplaces;
- (b) Maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;
- (c) Restoration of areas damaged by use of recreational trails;
- (d) Development of trailside and trail head facilities;
- (e) Provision of features which facilitate the access and use of trails by persons with disabilities.
- (f) Acquisition of easements for trails, or for trail corridors identified in a state trail plan;
- (g) Acquisition of fee simple title to property from a willing seller when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(h) Construction of new trails on state, county, municipal or private lands where a recreational need for this construction is shown;

(i) Construction of new trails crossing federal lands only where necessary and required by the state comprehensive outdoor recreation plan, approved by the department and the administering federal agency or agencies charged with administering all impacted lands and consistent with applicable federal land management plans and policies.

(7) **INELIGIBLE PROJECTS.** National recreational trails program funds may not be used for the following:

(a) Condemnation of any kind of interest in property;

(b) Construction of any motorized trail on national forest lands unless the lands have been allocated for uses other than wilderness by a forest land and resource management plan approved by the U. S. forest service or have been released to uses other than wilderness by an act of congress and the construction is consistent with management direction in the national forest land and resource management plan.

(c) Upgrading, expanding or otherwise facilitating motorized use or access to trails predominately used by non-motorized trail users, and as of May 1, 1991 motorized use is either prohibited or has not occurred.

(d) As otherwise noted in 16 USC s. 1261 (e) (2).

(8) **PRIORITIES.** The department shall establish a project priority list based on the following factors to select projects for financial assistance:

(a) For motorized projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail sponsor has or can demonstrate the ability to carry out a trail project.

3. The trail project will promote safe trail use.

4. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.

5. The trail provides for more than one motorized activity.

6. The trail provides for year around trail use.

7. The trail links with other trails to form a trail system or leads to a trail system.

8. The trail project is located on land where control of the trail corridor is long term.

(b) For non-motorized projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail sponsor has or can demonstrate the ability to carry out a trail project.

3. The trail project will promote safe trail use.
4. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.
5. The trail project is located close to high population areas.

(c) For multiple or compatible use projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail project will promote safe trail use.

3. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.

4. The trail project will provide for the greatest number of compatible trail uses.

5. The trail project will provide for the greatest number of other outdoor recreational uses in addition to trail use.

6. The trail project will resolve conflict between historically conflicting trail uses.

7. The trail project will provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized trail use.

8. The trail project is located close to high population areas.

(9) APPLICATIONS AND GRANT AWARD PROCEDURES. (a) Applicants for national recreational trails program funds shall submit applications on the prescribed department form to the appropriate district office by May 1 of each year.

Note: Application forms and instructions are available from department district offices.

(b) The department shall evaluate completed applications to determine which applicants will receive grants according to priorities in sub. (8).

(c) Successful applicants shall be notified by the department and sent a project agreement. Development or maintenance work under the project agreement may not proceed until the agreement is signed by the department and the applicant.

(10) ROLE OF STATE TRAILS COUNCIL. The state trails council shall provide guidance on the administration of the national recreational trails program and rules to implement the program.

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93.