

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes to repeal and recreate ch. NR 191 relating to lake protection and classification grants.

FH-42-02

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 281.69 and 227.11(2)(a), Stats.

Statutes interpreted: s. 281.69, Stats.

This order establishes the eligibility, requirements and procedures for receiving applications and awarding grants for lake protection and classification projects. It implements changes in statutes that allow for a broader range of eligible activities. Amendments to s. 281.69, Stats., in the biennial budget bill expanded the scope of eligible grant activities to include the restoration of shoreline habitat and for a new category of wetland restoration grants that provide 100% funding up to \$10,000 for projects identified in a comprehensive land use plan.

In addition to including the new eligible activities, ch. NR 191 is reformatted into subchapters for better distinction among the different types of grants. Subchapters are created for land acquisition, wetland and shoreline restoration, lake classification and local ordinance development, and implementing lake management plans. A general provision subchapter contains rules applicable to all grants. This format helps add clarity by allowing rules to be more specific to each unique type of activity as well as providing the basis for prioritizing and allocating funds to varying activities to ensure a balance of project types.

Much of the original rule has been retained in the reordering but the opportunity was taken to expand and clarify policy, create consistency with other grant programs where possible and make housekeeping changes. The significant policy developments and amendments for each subchapter includes:

General Provisions

- Changes in statutes allow the department to set the minimum and maximum dues levels for qualified lake associations to be eligible sponsors. A range of \$5 to \$50 dollars is proposed. Previously it was set at \$10 to \$25 by statute which precluded some organizations from eligibility.
- Expands and clarifies the items required for a grant application and the priorities used to rank grant projects.
- Requires that permits needed for all projects be obtained or applied for on or before the application deadline.
- The value of donated, unskilled labor is changed from the federal minimum wage to a flat rate of \$8 per hour.

Land Acquisition

- Several changes were made for consistency with the department's Stewardship Program including clarifying the terms of grant contracts, adding definitions and policies specific to easements.
- Clarifies that to be eligible, all conservation easements must be permanent.

Wetland and Shoreline Restoration

- Creates new rules per changes in statutes for Wetland Restoration Incentive Grants that are 100% state funded up to \$10,000 if the project is identified in a comprehensive land use plan.
- Wetland restoration projects at 75% state funding are retained but capped at \$100,000 per grant.
- Creates new rules per changes in statutes for shoreline restoration grants. These rules are modeled after similar activities allowed under ch. NR 120 Priority Watershed and Priority Lake Program. A significant difference is that restored properties must be permanently deed restricted and a one time incentive payment of \$250 is allowed to encourage participation. All shoreline restoration grants are capped at \$100,000 per grant.

Lake Classification and Local Ordinance Development

- Creates new rules to allow grants for implementing county lake classification programs and expands the discussion of all eligible projects.

Implementation of Lake Management Plans

- Creates standards for approving lake management plan recommendations.
- Clarifies the procedure for plan and application submittal and approval by the department.
- Requires all funded management practices be maintained and operated for a minimum of 25 years. This will be established by contract and recorded with the deed for the property.

These rules affect potential sponsors of lake management activities including lake organizations, local government, tribes and nonprofit conservation organizations. The effects are believed to be positive, by providing a broader range of grant eligible activities and more clearly describing the policies and requirements of the grant programs.

The proposed rule is a type III action under ch. NR 150, Wis. Adm. Code, and will not require an environmental assessment. Small business is not affected by the rule because grants are issued only to governmental units or nonprofit organizations. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required.

SECTION 1. Chapter NR 191 is repealed and recreated to read:

**Chapter NR 191
LAKE PROTECTION AND CLASSIFICATION GRANTS**

Subchapter I – General Provisions

- NR 191.01 Purpose.
- NR 191.02 Applicability.
- NR 191.03 Definitions.
- NR 191.04 Sponsor accountability.
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Subchapter II – Land Acquisition Projects

- NR 191.10 Purpose.
- NR 191.11 Applicability.
- NR 191.12 Definitions.
- NR 191.13 Eligible sponsors.
- NR 191.14 Eligible and ineligible projects.
- NR 191.15 General provisions.
- NR 191.16 Applications.
- NR 191.17 Grant awards
- NR 191.18 Grant contracts.

Subchapter III – Wetland Restoration, Wetland Restoration Incentive and Shoreline Habitat Restoration Projects

- NR 191.20 Purpose.
- NR 191.21 Applicability.

- NR 191.22 Definitions.
- NR 191.23 Eligible sponsors.
- NR 191.24 Eligible and ineligible projects.
- NR 191.25 Applications.
- NR 191.26 Grant awards.

Subchapter IV – Lake Classification and Local Ordinance Development Projects

- NR 191.30 Purpose.
- NR 191.31 Applicability.
- NR 191.32 Definitions.
- NR 191.33 Eligible sponsors.
- NR 191.34 Eligible and ineligible projects.
- NR 191.35 Applications.
- NR 191.36 Grant awards.

Subchapter V – Lake Management Plan Implementation Projects

- NR 191.40 Purpose.
- NR 191.41 Applicability.
- NR 191.42 Definitions.
- NR 191.43 Eligible sponsors.
- NR 191.44 Eligible and ineligible projects.
- NR 191.45 Plan recommendation approval procedures and applications.
- NR 191.46 Grant awards.

Subchapter I – General Provisions

NR 191.01 Purpose. The purpose of this chapter is to establish procedures for implementing a lake management and classification grant program as provided for in s. 281.69, Stats. Grants made under this program will assist management units in conducting activities that will protect or improve the quality of water in lakes, the natural ecosystem of lakes or the uses of lakes.

NR 191.02 Applicability. This chapter applies to all counties, cities, towns, villages, federally recognized Indian tribes, qualified lake associations as defined in s. 281.68 (1), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, town sanitary districts, other local governmental units as defined in s. 66.0131 (1) (a), Stats., which are established for the purpose of lake management, public inland lake protection and rehabilitation districts and qualified nonprofit conservation organizations, as defined in s. 23.0955 (1), Stats., which are applying for financial assistance under s. 281.69, Stats., for a classification or protection project for a public inland lake.

Note: Under s. 281.68 (3m)(a), Stats., to be a qualified lake association, an association shall do all of the following:

1. Demonstrate that it is incorporated under ch. 181
 2. Specify in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.
 3. Demonstrate that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.
 4. Allow to be a member any individual who for at least one month of the year resides on or within one mile of an inland lake for which the association was incorporated.
 5. Allow to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.
 6. Not have articles of incorporation or bylaws which limit or deny the right of any member or any class of members to vote as permitted under s. 181.072.
 7. Demonstrate that it has been in existence for at least one year.
 8. Demonstrate that it has at least 25 members.
 9. Require payment of an annual membership fee as set by the department by rule under par. (b).
- (b) For the purposes of par. (a) 9., the department shall set by rule the maximum amount and the minimum amount that may be charged as an annual membership fee.

NR 191.03 Definitions. In this chapter:

- (1) “Department” means the Wisconsin department of natural resources.
- (2) “Grant agreement” means a contract between the sponsor and the department detailing how grants under this chapter will be managed.
- (3) “Local share” means that portion of the cost of the project other than state funds administered by the department.
- (4) “Management unit” means a county, town, village, city, federally recognized Indian tribe, public inland lake protection and rehabilitation district, nonprofit conservation organization, qualified lake association as defined in s. 281.68 (1), Stats., or town sanitary district, and other local governmental units as defined in s. 66.0131 (1) (a), Stats., that are established for the purpose of lake management.
- (5) “Nonprofit conservation organization” has the meaning in s. 23.0955 (1), Stats., and whose bylaws, charter or incorporation papers reflect as a purpose of the organization the acquisition of property for conservation purposes.

(6) “Project priority list” means a ranking by the department of eligible lake protection or classification projects in the order of their scheduled receipt of funds.

(7) “Protection project” or “project” means a specific activity or set of activities requested for grant funding to provide for protection or improvement of the quality of water in public inland lakes or their natural ecosystems, their shorelands, or their watershed areas that have, or could have, an effect on the quality of lakes or natural ecosystems, or public or private use activities on the lakes that will benefit the quality of water in public inland lakes or the natural lake ecosystems.

(8) “Public inland lake” or “lake” means a lake, reservoir or flowage, or millpond, or portion thereof, within the boundaries of the state that is presently accessible to the public by contiguous public lands or easements giving public access.

Note: Publ-FM-800 Wisconsin Lakes includes a listing of most public inland lakes in the state. The most current revision is available from the Department of Natural Resources, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 or at <http://www.dnr.state.wi.us/org/water/fhp/lakes/lakeinfo.htm#lakebook>.

(9) “Sponsor” means the management unit that is applying for and receiving a grant under s. 281.69, Stats., and this chapter.

NR 191.04 Sponsor accountability. (1) Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the sponsor in a separate account. Supporting records of grant expenditures shall be maintained in sufficient detail to show that grant funds were used for the purpose for which the grant was made. All financial records, including invoices and canceled checks or bank statements, that support all project costs claimed by the sponsor shall be kept and made available for inspection for 3 years after final payment is issued by the department.

(2) The sponsor shall submit to the department a claim for reimbursement on forms provided by the department at any time but not more than once every 3 months and not later than 6 months after the end of the grant period. The sponsor is eligible for reimbursement only for project costs incurred during the grant period stated in the grant agreement. All costs claimed for payment shall be documented and shall be consistent with the grant agreement relative to expenditures being made within the grant period, within the scope of work, and within estimated costs. Progress reports shall be submitted with each reimbursement request and a final report, suitable for use by the general public, is required for final payment.

(3) The sponsor may request, for good cause, a grant agreement amendment for expenditures in excess of those identified as estimated costs in the grant agreement prior to the end of the grant period. The department has sole discretion in determining good cause when considering approval of the amendment request.

(4) All of the sponsor’s records pertaining to the project are subject to post audit. Post audits occur after final payment and payments made for reimbursement may be adjusted by the results of the post audit.

(5) All requests for extensions of the grant period shall be made in writing prior to the end of the grant period.

(6) All water tests, which require laboratory analysis and are part of the grant project, shall be analyzed by a laboratory that has been selected by the department.

(7) All grants provided for funding a project that includes the acquisition of physical or chemical data may be conditioned to require the sponsor to implement a quality control and quality assurance plan approved by the department.

(8) Data and information acquired as part of a lake protection project shall be reported to the department in a format specified by the department in the grant agreement.

(9) If the department finds that the project has not been satisfactorily completed by the end of the grant period, the department may seek repayment of the state share or a portion of the state share previously distributed to the sponsor.

NR 191.05 Applications and grant awards. (1) Applications shall be made on forms provided by the department. Applications shall be submitted to the region director for the region in which the project is located by May 1 of each year to be eligible for grant awards made that year.

Note: Forms may be obtained from <http://www.dnr.state.wi.us/org/caer/cfa/Ef/forms/forms.html> free of charge or from the following DNR region headquarters located at:

1. Southeast — 2300 N. Dr. Martin Luther King Jr. Dr., P.O. Box 12436, Milwaukee 53212
2. South Central — 3911 Fish Hatchery Road, Fitchburg 53711
3. Northeast — 1125 N. Military Ave., P.O. Box 10448, Green Bay 54307
4. Northern/Rhineland — 107 Sutliff Ave., Rhineland 54501
5. Northern/Spooner — 810 W. Maple St., Spooner 54801
6. West Central — 1300 W. Clairemont Ave., P.O. Box 4001, Eau Claire 54702

(2) The department shall review the application for completeness and may return the application with a request for more detailed information. The application is not considered complete until the additional information requested by the department has been received.

(3) A complete application shall contain the following information:

(a) A clear description of the project's goals and objectives including a description of how the results of the project will protect or improve lake water quality or a lake's natural ecosystem.

(b) A complete description of the methods or design of the project.

(c) An estimated itemized budget for the full costs of the project including a statement of the sponsor's capacity for financing its completion.

(d) A general time line for project implementation and completion.

(e) A signed and dated resolution from the sponsor authorizing the application and identifying a representative to act on its behalf.

(f) Identification of any other groups or management units that will be involved, their roles and their level of support for the project.

(g) A description of the availability of public access to, and public use of, the lake or lakes.

(h) A description of how the proposed project complements other lake management efforts and plans including local government comprehensive plans developed pursuant to s. 66.1001, Stats.

(i) Copies of all permits or pending permit docket numbers or permit applications necessary to complete the project.

(j) Other information as may be required by the department to evaluate the project.

Note: Under s. 66.1001, Stats., beginning on January 1, 2010 local government unit projects requesting state grant assistance under this chapter shall be consistent with that local government unit's comprehensive plan.

(4) Upon review, the department shall indicate if the proposed project requires the preparation of an environmental impact report by the sponsor and an environmental assessment by the department. If an environmental assessment is required, the application is not considered complete until the environmental assessment

has been completed, circulated for public comment, the period for public comment ended and has been certified as being in compliance with the Wisconsin environmental policy act.

(5) The department shall make a determination of project eligibility within 45 days of receiving a complete application. The department may accept the application and include the project in the project priority list, or deny the request for funding based on consideration of eligibility.

(6) The department shall state the basis for the determination of ineligibility in writing to the sponsor.

(7) The department shall notify all applicants of the department's decision to award a grant by September 1 of each year for projects based upon the project priority list.

(8) No grant may be awarded until all the required permits and approvals for the project have been obtained.

(9) The department may terminate a grant awarded under this section for violation of any term or condition of the grant agreement.

NR 191.06 Grant payments. (1) ELIGIBLE COSTS. The department shall reimburse the sponsor for the costs identified in the grant agreement. Costs may include any of the following:

(a) Labor costs required to carry out activities identified in the grant agreement provided they are for new staff or increased hours of existing staff. Costs of additional staff positions or increased staff hours shall be based on management unit rates for the position including salary, fringe benefits and other items determined to be appropriate by the department.

(b) Direct costs for construction activities, professional service contracts, laboratory services, surveys, newsletters, brochures, mailings and similar items.

(c) The cost of necessary supplies and equipment used exclusively for project-related purposes over the useful life of the item or the cost of that portion of supplies or equipment used for the project.

(d) Plant, seed, mulch and erosion control materials. Rock rip rap for erosion control shall have prior approval from the department

(e) The cost of leased equipment and facilities during the length of the project.

(f) Water quality or environmental monitoring cost as approved by the department.

(g) Other costs as provided within specific subchapters of this rule and determined by the department to be necessary to carry out an adequate project.

(h) The local share of the project cost may include the substantiated value of donated materials, equipment, services and labor as all or part of the local share subject to all of the following:

1. All sources of local share donation shall be indicated when the application for a grant is submitted.

2. The maximum value of donated, non-professional, labor shall be \$8 per hour. For counties conducting projects requiring compliance with USDA natural resource conservation service standards, the donated labor rate established for that county by the Farm Service Agency may be used.

3. The value of donated equipment shall conform to the Wisconsin department of transportation highway rates for equipment.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

5. Local share may include existing professional staff time, supported by time sheets, and valued at the sponsor's rates for the position including salary, fringe benefits and other items determined by the department to be appropriate for the supervision and administration of the project.

(i) Reasonable planning, engineering and design costs necessary to complete a permit application required to implement a project awarded a grant if the costs are incurred within 12 months prior to the application deadline.

(2) INELIGIBLE COSTS. Costs not directly associated with or necessary for the implementation of the project as determined by the department are ineligible for grants. Ineligible costs include, but are not limited to:

(a) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations.

(b) Indirect costs and the ordinary operating expenses of local government sponsors, such as salaries and expenses of public officials, that are not directly related to the project.

(c) The purchase of boats, cars and office furniture.

(d) Routine maintenance and operating costs of equipment or facilities such as, but not limited to, pumps, aerators, plant harvesters or sedimentation basins.

(3) FINAL PAYMENT. The department may withhold 10% of the state share for a final payment and may withhold final payment until final costs have been reviewed under s. NR 191.04 and the department has made a determination that the project has been satisfactorily completed. All project costs are subject to a post audit process that will take place after final payment has been made. If a determination is made that payments were made in error, the sponsor may be required to make a repayment to the department.

NR 191.07 Priorities. (1) The department shall prepare a project priority list each year. Projects to be included in the priority list will be those projects that have been determined to be eligible by the department. Any projects previously accepted but which were not funded due to a lack of funds may be included if the sponsor prior to May 1 of each year makes a request in writing.

(2) Priorities shall be set on a statewide basis.

(3) Applications for lakes which meet the minimum public boating access standards of s. NR 1.91 (4) (d) or where the department determines that existing facilities are sufficient to meet existing public demand for access, shall receive priority over lakes not meeting these standards. This subsection does not apply where completion of a project will result in providing public access, but not necessarily public boating access, where none currently exists.

(4) The department may consider the following factors when developing a project priority list:

(a) The degree to which the project provides for the protection or improvement of water quality.

(b) The degree to which the project provides for protection or improvement of other aspects of the natural ecosystems such as fish and wildlife habitat, native vegetation or natural beauty.

(c) The availability of public access to, and public use of, the lake.

- (d) The degree to which the proposed project complements other lake and watershed management efforts including local comprehensive plans developed pursuant to s. 66.1001, Stats.
- (e) The level of support for the project from other affected management units or organizations.
- (f) The likelihood of the project to successfully meet the stated project objectives.
- (g) The degree of detail in the application and the time frame within which it will be implemented.
- (h) Whether it is a first-time protection project for the lake or first time classification project for the sponsor.

NR 191.08 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a sponsor if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor, financial hardship and landowner demands. The department may not grant variances from statutory requirements, nor from appraisal and environmental inspection and audit requirements.

Subchapter II –Land Acquisition Projects

NR 191.10 Purpose. The purpose of this subchapter is to establish the procedures for the administration of grants to management units for the acquisition of property or property rights to protect lakes and lake ecosystems.

NR 191.11 Applicability. This subchapter applies to all management units that wish to apply for grants for land acquisition projects for lake protection purposes as specified in s. 281.69, Stats.

NR 191.12 Definitions. The following definitions apply to this subchapter:

(1) “Acquisition cost” means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property but limited to the costs of appraisals, legal fees associated with closing up to a maximum of \$2,000, land surveys, relocation payments, land stabilization costs, title evidence costs, title company closing costs, recording fees, historical and cultural assessments required by the department, the cost of environmental inspections and audits and baseline documentation costs required for conservation easements. It does not include environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

(2) “Baseline document” means an inventory of the features of a property including reports, maps, photographs and other documentation that provides an accurate representation of the property at the time an easement funded with a lake protection grant is executed. The baseline document shall serve as an objective information baseline for monitoring compliance with the terms of the easement.

(3) “Conservation easement” has the meaning given in s. 700.40 (1) (a), Stats.

(4) “Grant contract” means a recorded contract between the sponsor and the department setting forth the obligations of each.

(5) “Parcel” means a tract of land conveyed by one deed.

(6) “Property” means land or rights in land in perpetuity.

NR 191.13 Eligible sponsors. All management units are eligible to apply for land acquisition grants.

NR 191.14 Eligible and ineligible projects. (1) Projects eligible for funding include the purchase of property or a conservation easement, if the purchase will substantially contribute to the protection or improvement of the water quality or natural ecosystem of a lake.

(2) All conservation easements shall be for perpetuity to be eligible for funding.

(3) Projects not eligible for funding under this section include the purchase of property on which a dam is located.

(4) Any property that is subject to a reversionary right or has restrictions or covenants which would prevent the property from being managed for purposes consistent with this grant program is not eligible for a grant.

(5) No grant may be awarded where the sponsor represents to the department the intent to use the power of eminent domain to implement the project for which the grant is being sought.

NR 191.15 General provisions. (1) Property transactions shall be subject to approval by the department and the following provisions:

(a) Property shall be acquired by the sponsor pursuant to ss. 32.19 to 32.27, Stats., and relocation assistance shall be subject to ch. Comm 202.

Note: The following information is from ch. Comm 202 which describes relocation assistance procedures to use when individuals presently reside on the property being purchased. Under s. Comm 202.01 (33), relocation assistance will apply to all project grants where the total of project grants and all other public financial assistance or direct government acquisition costs in a project are greater than \$5,000 for a project with total costs of less than \$50,000; or greater than 10% of total project costs that exceed \$50,000. Under s. Comm 202.01 (7), “an owner occupant who voluntarily sells a property to a displacing agency not vested with eminent domain power” is not a displaced person and is not entitled to relocation assistance. Tenants who occupy a property are entitled to relocation assistance even if the owner is voluntarily selling the property. Under s. Comm 202.01 (14) (b) 4., a “tenant-occupant of a dwelling who has been promptly notified that he or she will not be displaced by the project” but who can remain on the property subject to normal rental conditions and provisions may not be a displaced person who qualifies for relocation assistance so long as they are not required by the sponsor to move.

(b) Sponsors are required to obtain appraisals that meet department appraisal guidelines for all grants under this section.

(c) The department may require a second appraisal if the property presents a difficult appraisal problem or if the first appraisal is unacceptable under department appraisal guidelines.

Note: The department’s appraisal guidelines are available from the DNR, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707.

(d) The department shall require a second appraisal if the property purchase price exceeds \$200,000.

(2) Sponsors and subsequent owners shall acquire and manage property acquired with a grant in accordance with all applicable state, local and federal laws, rules and regulations.

(3) Property acquired with a grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

(4) The sponsor shall provide the department access to the property in order to monitor compliance with the grant contract or carry out any management activity necessary to ensure the public’s rights and safety.

(5) The sponsor shall monitor easements at least once a year, comparing the condition of the property with the baseline document to ensure that the provisions of the easements are being satisfied and shall enforce all easement provisions.

(6) The holder of any mortgage or land contract on easement property shall subordinate its rights to the terms of the easement.

(7) Grant awards for property acquisition will be subject to a grant contract under s. NR 191.18.

NR 191.16 Applications. In addition to the application requirements in s. NR 191.05, applications for land acquisition projects shall include:

- (1) An appraisal valuing the property to be acquired.
- (2) Topographic, zoning and local land use and tax maps showing the property to be acquired.
- (3) Legal description of the property including the owner's name and address, size of the property and a physical description of the property.
- (4) A proposed land management plan for the property describing current and proposed conditions and uses and detailing how the property will be managed to maintain its lake protection values.

NR 191.17 Grant awards. (1) A grant for the total state share of the cost of a project under this subchapter may be made for up to 75% of the total project costs but, may not exceed more than \$200,000 per grant.

(2) Grants may not be awarded for property acquired prior to a grant application without prior written approval of the department.

(3) When the sponsor is purchasing property, the department may distribute up to 100% of the state share of the acquisition cost to a noninterest bearing escrow account, subject to a department approved title insurance commitment for each property, to be released upon completion of an insured closing and conveyance of the property to the sponsor. If the closing has not occurred within 30 days from the time funds are distributed to the escrow account, the department may require the funds in the escrow account to be returned to the department.

(4) The substantiated value of donated services or contributions of property may be used as all or part of the local share of the project cost subject to all of the following:

(a) The value of the contribution of property shall be determined by appraisal made under this section and shall be a portion of the property to be acquired.

(b) The fair market value of a contribution of property may be used as local share, but only to the extent that lake protection funds are needed to acquire the subject property. The amount of the property donation that can be used for match equals the fair market value of the donation or the amount needed by the sponsor for the purchase, whichever is less, so there will be no cash back in excess of the moneys actually needed for the purchase.

(c) All known sources of local share donation shall be indicated when the application for a grant is submitted.

(d) The value of donated services shall conform to market rates and be established by invoice.

(5) No grant may be awarded prior to receipt of an environmental inspection report showing the property contains no undesirable environmental conditions or liabilities or potential liability or hazards that are unacceptable to the department.

(6) For easements acquired with lake protection grant funds, the sponsor shall prepare a baseline document, approved by the landowner and available to the department for inspection, before the grant is awarded.

(7) The department may terminate a grant awarded under this section for violation of any essential provisions of the grant contract as identified under s. NR 191.18(2)(c). If the grant is terminated, any interest in or title to the property shall be subject to s. NR 191.18 (2).

NR 191.18 Grant contracts. (1) The department shall require that the purchase of property be subject to an executed grant contract prior to disbursement of any state funds for the purchase of property.

(2) Grant contracts shall contain provisions that include all of the following:

(a) Require that the grant contract be recorded in the office of the register of deeds of each county in which the property is located.

(b) Require that the instrument conveying the property to the sponsor state the interest of the state under par. (c) unless the sponsor has acquired title to, or interest in, the property prior to the grant contract being awarded.

(c) Require that, should the recipient violate any essential provision of the grant or grant contract, interest in or title to the acquired property shall vest in the state, without necessity of reentry. Essential provisions include those which:

1. Provide for adequate, responsible long-term management and maintenance of the property in a manner consistent with the management plan. Except as provided in the management plan, there shall be no manipulation or alteration of watercourses, shorelines, surface or subsurface streams, wetlands or other bodies of water or any activities or uses detrimental to water quality.

2. Prohibit using the property as security for any debt unless the department previously approves the incurring of the debt.

3. Prohibit closing the purchased property to the public except where the department has made a determination closure is necessary to protect wild animals, plants or other natural features or for property acquired through a conservation easement.

4. Prohibit the conversion of property to any use other than that specified in the land management plan or if encumbered by an easement, to uses inconsistent with the easement.

5. Require that any subsequent sale or transfer of the property to a third party is subject to prior approval by the department and that any transfer remains subject to all requirements contained in the grant contract.

(3) Additional conditions and restrictions may be contained in the grant contract.

Subchapter III – Wetland Restoration, Wetland Restoration Incentive and Shoreline Habitat Restoration Projects

NR 191.20 Purpose. The purpose of this subchapter is to establish the procedures for the administration of grants to lake management units for the restoration of wetlands and shoreline habitat of lakes to protect or improve the water quality or natural ecosystem of a lake.

NR 191.21 Applicability. This subchapter applies to all management units that wish to apply for grants for the restoration of wetlands or lake shoreline habitats for lake protection purposes as specified in s. 281.69, Stats.

NR 191.22 Definitions. The following definitions apply to this subchapter:

(1) "Comprehensive land use plan" means a document that maps and quantifies current and future land use conditions and describes goals, objectives, policies and programs to guide the future development of public and private property within a geographic area. Such plans do not need to conform to the definition of comprehensive plans in s. 66.1001, Stats.

(2) "Core terrestrial area" means the upland habitat adjacent to the ordinary high water mark that provides both water quality or ecosystem benefits to a waterbody.

(3) "Enhancement" means activities conducted in existing wetlands and shoreline habitat areas that increase one or more beneficial wetland or shoreline habitat functional values.

(4) "Functional values" means the aesthetic, physical, chemical and biological processes or attributes that occur in a wetland system or shoreline habitat area and how society finds certain functions beneficial as listed in ss. NR 103.03(1) and 1.95 and ch. NR 115.

(5) "Littoral area" means the plant producing shallow water zone of a lake extending from the ordinary high water mark to the greatest lake depth capable of being occupied by rooted aquatic plants.

(6) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristics. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high water mark.

(7) "Mitigation project" means the restoration, enhancement or creation of wetlands or shoreline habitat to compensate for permitted adverse impacts to other wetlands or shoreline habitats. "Mitigation project" includes using credits from a wetland mitigation bank.

(8) "Restoration" means to enhance or reestablish historic wetland or shoreline habitat conditions and functions, to the maximum extent practicable, at a site where they have been diminished, including reestablishing natural hydrology, natural land contours, native vegetation, controlling invasive species and the replacement of rock or woody cover.

(9) "Shoreline habitat" means the area adjacent to both sides of the ordinary high water mark including the littoral area and the core terrestrial area.

(10) "Wetlands" has the meaning given in s. 23.32 (1), Stats.

NR 191.23 Eligible sponsors. All management units are eligible to apply for wetland and shoreline habitat restoration grants. Nonprofit conservation organizations are not eligible for wetland restoration incentive grants.

NR 191.24 Eligible and ineligible projects. (1) **WETLAND RESTORATION PROJECTS.** Eligible projects include the restoration or enhancement of a wetland or lands draining to a wetland which will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

(a) Project activities may include tile breaks; ditch plugs and fills; diking, embankments, low berms; water level manipulation and vegetation planting, removal, management and control.

(b) The sponsor shall have control of the property, through ownership, easements or deed restrictions, such that all wetlands being restored with lake protection grant funds remain in conservation use for perpetuity.

(2) **WETLAND RESTORATION INCENTIVE PROJECTS.** Eligible projects are wetland restoration activities as described in sub. (1) and that are identified in the sponsor's comprehensive land use plan. The plan shall identify wetland locations and include a policy statement on wetland values and the need for restoration or enhancement.

(3) **SHORELINE HABITAT RESTORATION PROJECTS.** Eligible projects include the restoration of habitat in the littoral and core terrestrial areas of a lake shoreline subject to the following conditions:

(a) For residential sites, the shoreline habitat restoration area shall extend the entire width of the lot along the shoreline except that a viewing and access corridor is allowed. Establishment of the viewing and access corridor is not eligible. Viewing and access corridors may not exceed 30 feet in width and may encompass no greater than 30% of the property for lots less than 100 feet wide. Where the site's principal structure is set back 50 feet or more from the ordinary high water mark, the core terrestrial habitat restoration area shall extend at least 35 feet inland from the ordinary high water mark. Where the principal structure is set back less than 50 feet from the ordinary high water mark, the core terrestrial habitat area shall extend to within 15 feet of the structure. These requirements shall

be minimum standards for all shoreline habitat restorations and in all cases, shoreline habitat restorations shall comply with local shoreland zoning ordinance requirements that may be more restrictive than the minimum standards in this paragraph.

(b) For nonresidential sites, the shoreline habitat restoration shall be at least 70 feet in width or 70% of the property lot width for lots less than 100 feet wide.

(c) The removal of noninvasive native aquatic vegetation and other disturbing activities are prohibited in the littoral area other than the area directly waterward of the viewing and access corridor.

(d) Preserving or enhancing the natural vegetation that occurs in the region or vicinity of the restoration site shall be considered in developing restoration plans.

(e) In order to restore the functional values, the restoration of the core terrestrial habitat area shall consist of 3 vegetative layers: a ground cover, a shrub and a tree canopy. Vegetation in all 3 layers shall be vigorous, diverse and structurally complex. The only exception to this requirement shall be if the natural conditions in the region lack these characteristics.

(f) Only native species approved by the department may be planted. Reed canary grass and purple loosestrife are prohibited.

(g) Shoreline habitat restoration shall be conducted in accordance with the NRCS Interim Standard #643A and the Shoreland Habitat and Wisconsin Biology Technical Note 1: Shoreland Habitat, to the extent practical.

Note: The NRCS Interim Standard #643A and the Shoreland Habitat and Wisconsin Biology Technical Note 1: Shoreland Habitat are available from the DNR, Bureau of Watershed Management, Box 7921, Madison, WI 53707 or at: <http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/resources.htm#restoration>.

(h) The site shall be in compliance with state law and local shoreland ordinances.

(i) All core terrestrial areas being restored with lake protection funds shall be deed restricted so that the restoration site remains in conservation use for perpetuity.

(j) Sites not meeting the conditions of par. (a) are only eligible for grant funds used to provide technical assistance, project planning and design costs.

(4) INELIGIBLE PROJECTS. Project activities necessary to comply with a regulatory action, including wetland or shoreland mitigation projects, are not eligible.

NR 191.25 Applications. In addition to the application requirements in s. NR 191.05, applications for projects under this subchapter shall include:

(1) A proposed management plan for the restoration area describing current and proposed conditions and uses and detailing how the property will be managed to maintain its lake protection values including documenting that the property will remain in conservation use for perpetuity.

(2) For wetland restoration incentive projects, a copy of the pertinent sections of the sponsor's comprehensive land use plan that recommends the project.

NR 191.26 Grant awards. **(1)** A grant for the state share of the cost of a wetland or shoreline habitat restoration project under this subchapter may be made for up to 75% of the total project costs but, may not exceed more than \$100,000 per grant.

(2) A grant for the state share of the cost of a wetland restoration incentive project under this subchapter may be made for 100% of the total project costs but, may not exceed more than \$10,000 per grant.

(3) Costs eligible for wetland or shoreline habitat restoration projects may include:

- (a) Promotional materials subject to department approval.
- (b) Costs associated with preparation and filing of deed restrictions
- (c) Incentive payments to landowners not to exceed a total of \$250 per landowner.
- (d) Runoff management practices needed for the effective establishment of the restoration.
- (e) Removal of sea walls and other structures within the restoration area.

(4) Ineligible costs include material for stairs, walkways, paths, piers or other structures not necessary to accomplishing an effective restoration project.

(5) The terms and conditions providing for the long term management of the restoration area are subject to department approval and shall be contained in the grant contract which shall be recorded in the office of the register of deeds in the county where the restoration is being conducted.

Subchapter IV – Lake Classification and Local Ordinance Development Projects

NR 191.30 Purpose. The purpose of this subchapter is to establish the procedures for the administration of grants to management units for the development of local ordinances that will protect or improve a lake's water quality or its natural ecosystem and for grants to counties for lake classification projects.

NR 191.31 Applicability. This subchapter applies to all management units that wish to apply for grants for the development of local ordinances for lake protection and counties applying for lake classification grants as specified in s. 281.69, Stats.

NR 191.32 Definitions. The following definitions apply to this subchapter:

(1) "Lake classification implementation project" means activities necessary to the successful implementation of a completed lake classification project or conducting lake protection activities recommended in a completed lake classification project.

(2) "Lake classification project" means a set of activities leading to the classification of lakes for the purpose of implementing protection activities based on their classification.

NR 191.33 Eligible sponsors. All management units are eligible to apply for grants for ordinance development projects. Only counties may apply for grants for lake classification or lake classification implementation projects.

NR 191.34 Eligible and ineligible projects. (1) ORDINANCE DEVELOPMENT PROJECTS. (a) Eligible projects include the development of local regulations or ordinances, which will prevent degradation of a lake's water quality or its natural ecosystem, including limitations on the uses made of a lake, and the education activities necessary for the initiation of their implementation.

(b) Projects shall include the development of an ordinance that is presented for adoption by the sponsor or an appropriate jurisdiction.

(c) All projects shall include an assessment of the administrative and enforcement capacity and costs to implement the ordinance.

(d) Land use planning activities such as data collection, surveys and mapping may be included as necessary to conduct the project. Planning activities shall be limited to the development of ordinances for the protection of water resources.

(2) LAKE CLASSIFICATION PROJECTS. (a) Eligible projects are those sponsored by counties that classify lakes into management categories. The following factors shall be considered for each lake in all lake classification projects:

1. The size, depth and shape of the lake.
2. The size of the lake's watershed.
3. The quality of the water in the lake.
4. The lake's current use, or potential for the lake to be over-used, for recreational purposes.
5. The current patterns of development or the potential for the development of land surrounding the lake.
6. The potential for the lake to suffer from nonpoint source water pollution.
7. The type and size of the fish and wildlife population and the extent of their habitats in and around the lake.

(b) Lake classification projects shall include proposed protection activities related to each category.

(c) Counties may classify lakes for the purposes of implementing activities for which they, or cooperating jurisdictions, have existing statutory authority. This includes working with other local governments on lake surface use classification for managing recreational uses. Nothing in this section shall be interpreted to grant new authority to counties for managing lakes and shorelands. Classification and the resulting implementation activities may not result in lowering existing state minimum standards designed to protect lakes.

Note: Lake classification projects may be conducted to assist the department in setting lake water quality standards. Any proposal for the classification of lakes to be used in setting lake water quality standards or for enacting requirements for the implementation of water quality standards based on new or existing classifications only become effective when adopted by the department as rules under s. 281.15, Stats.

(3) LAKE CLASSIFICATION IMPLEMENTATION PROJECTS. Counties that have completed a lake classification project are eligible to apply for grants to assist in the implementation or improvement of the lake classification system or its supporting ordinances and programs. Eligible projects are those that will improve the effectiveness of county agencies implementing lake classification programs and may include:

(a) Development of educational materials and programs to improve the understanding and compliance with the lake classification system and its lake protection benefits.

(b) Compliance monitoring and enforcement.

(c) Technical assistance to landowners in complying with the lake classification system and its protection activities.

(d) Developing or improving administrative procedures and processes.

(e) Other activities that are approved by the department.

(4) INELIGIBLE PROJECTS. Projects not eligible for funding under this subchapter include water safety patrols.

NR 191.35 Applications. In addition to the application requirements in s. NR 191.05, applications for lake classification implementation projects shall include a description of the current lake classification system and supporting ordinances and programs.

NR 191.36 Grant awards. (1) The total state share for a project under this subchapter may not exceed 75% of the total project cost up to a maximum of \$50,000.

(2) Upon the written request of the sponsor, the department may distribute up to 25% of the state share of the costs for a project under this subsection to the sponsor following acceptance of the grant agreement.

Subchapter V – Lake Management Plan Implementation Projects.

NR 191.40 Purpose. The purpose of this subchapter is to establish the procedures for the administration of grants to management units for implementing department-approved recommendations in a plan to improve or protect lakes and lake ecosystems.

NR 191.41 Applicability. This subchapter applies to all management units that wish to apply for grants for implementing a recommendation in a lake management plan for lake improvement or protection purposes as specified in s. 281.69, Stats.

NR 191.42 Definitions. “Lake restoration projects” for this subchapter and s. NR 1.91(2)(d) means projects for funding in-lake improvement activities that increase the recreational or environmental values of a lake. They include funding for the planning, design and implementation of the following natural resource enhancement activities: aeration, aquatic plant management, alum or lime treatments, artificial circulation, biomanipulation, dilution and flushing, drawdown, fishery rehabilitation, habitat restoration, harvesting lake plants for the purpose of restoring aquatic plant beds, hypolimnetic withdrawal, and sediment covers, oxidation, removal or tilling.

NR 191.43 Eligible sponsors. All management units are eligible to apply for lake management plan implementation grants.

NR 191.44 Eligible and ineligible projects. (1) Projects eligible for funding under this subchapter shall be based upon a department-approved recommendation included in a lake management plan adopted by the sponsor. Projects may include:

(a) Watershed management and nonpoint source pollution prevention and control practices that will substantially contribute to the protection or improvement of a lake’s water quality or its natural ecosystem.

(b) Lake restoration projects that the department determines meet all of the following criteria:

1. The external sources or causative factors of the problems to be remediated have been or very likely will be controlled prior to restoration activities.

2. The proposed activities have a good likelihood of successfully meeting the project plan objectives.

3. The lake has adequate public boating access as defined in s. NR 1.91(4) or (6).

(c) Diagnostic and feasibility studies which follow specifications provided by the department to ensure that sufficient information is provided for determining the feasibility of alternative remedial measures, including: costs; the relative permanence of alternative measures; the potential for long-term control of the causes of degradation as well as the baseline data required to measure subsequent change.

(d) Engineering, design or construction plans and specifications that are necessary to implement a lake protection project.

(e) Other activities recommended in a plan approved by the department.

(2) Activities not eligible for funding under this subchapter include: dam repair, modification or operation or removal; dredging; design, installation, operation or maintenance of sanitary sewers or public or private onsite

waste disposal systems; routine chemical treatments or mechanical harvesting of aquatic plants, and maintenance and operation of aeration systems, detention ponds and other facilities.

NR 191.45 Plan recommendation approval procedures and applications. Following completion of a lake management plan, the sponsor may select and propose a project for a grant based upon one, some or all of the plan's recommended alternatives. Plans may be submitted to the appropriate department regional office at anytime for approval of recommendations and a determination of eligibility. Once the department has approved a recommendation, the sponsor may submit an application for a grant project.

(1) PLAN SUBMITTAL. When submitting a plan for approval, the following conditions apply:

(a) The request for plan approval shall specify which plan recommendations the sponsor intends to implement with a grant application.

(b) The sponsor shall describe the process used to provide the public the opportunity to comment on the plan, provide a summary of the comments received and document the action by the sponsor in adopting the plan.

(c) Lake management plans completed under ch. NR 190 shall be submitted for approval as described in this subchapter. Plans approved for payment under ch. NR 190 do not constitute approval of recommendations for project funding under this subchapter.

(2) PLAN APPROVAL. In determining the eligibility of a plan recommendation for a grant, the department shall consider the extent to which the content of the plan adequately addresses and supports the recommended action. The department shall complete its review within 45 days of receipt of the plan and may approve all, part or none of the plan recommendations or request additional information. The department shall state the basis for denying the approval of plan recommendations in writing to the sponsor. Depending on the types of activities in the recommendation proposed for a grant, the department may consider the extent to which the plan contains the following elements:

(a) An assessment of the lake's historical water quality, including at least one year of current base line limnological data.

(b) An identification of the water quality problems or threats to lake water quality including degradation of fish habitat and wetlands caused by nonpoint sources of pollution in the watershed.

(c) An assessment of the lake's fishery and aquatic habitat including the extent of the lake area covered by aquatic plants and a characterization of the shoreline habitat and any known ecological relationships.

(d) An identification of the need for the protection and enhancement of fish and wildlife habitat, endangered resources, aesthetics or other natural resources.

(e) An assessment of the lake's watershed including:

1. A description of land uses listing each land use classification as a percentage of the whole and an estimate of the amount of nonpoint pollution loading produced by each category.

2. Identification and ranking of the most significant nonpoint source types and contributing areas.

3. A listing of known point sources of pollution affecting the lake or that have affected the lake.

4. A characterization of the habitat conditions and any known ecological relationships.

5. A description of the institutional framework affecting management of the lake including, local government jurisdictional boundaries, plans, ordinances including an analysis of the need for adoption of local ordinances for lake protection.

- (f) A summary of the historical uses of the lake, including recreational uses up to the time of application, and how these uses may have changed because of water quality or habitat degradation.
- (g) A description of any other problems or issues perceived to need management actions.
- (h) A description of any management actions taken or are in progress.
- (i) Identification of objectives to maintain or improve the lake's water quality, fisheries, aquatic habitat and recreational and other uses.
- (j) Identification of target levels of control and resource protection needed to meet the objectives.
- (k) Identification and discussion of the alternative management actions considered for pollution control, lake restoration or other management including expected results.
- (l) An analysis of the need for and a list of the proposed management actions that will be implemented to achieve of the target level of pollution abatement or resource protection.
- (m) A strategy for tracking, evaluating and revising the plan including water quality monitoring.
- (n) A plan for operation and maintenance of any management practices.

(3) APPLICATIONS. Once the department has approved the eligibility of a lake management plan recommendation, the sponsor may submit a project application following the procedures in s. NR 191.05. In addition to the requirements of s. NR 191.05, each recommendation proposed for funding shall include a detailed description specifying exactly what activities are to be undertaken, how and where the activities will be implemented and an analysis of expected improvement.

NR 191.46 Grant awards. (1) The state share of the cost of a project in this subchapter may not exceed 75% of the total project costs up to a maximum of \$200,000.

(2) The operation and maintenance period for all management practices approved for grant funding shall be specified in the grant agreement and recorded with register of deeds in the county where the practice is to be installed. Unless otherwise approved by the department, the operation and maintenance period shall be for a minimum of 25 years. If an approved management practice will be implemented on land other than the sponsor's, a contract between the sponsor and the landowner is required which shall state the operation and maintenance period. Contracts shall be recorded with the register of deeds in the county where the practice will be implemented.

SECTION 2 EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 22, 2003.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)